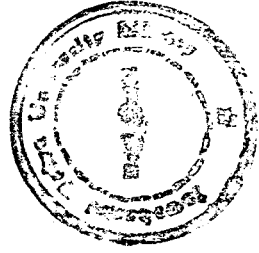


The Constitution of the Hungarian Peoples Republic : A Study

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Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirement for
the award of the degree of
MASTER OF PHILOSOPHY

**CENTRE FOR SOVIET AND EAST EUROPEAN STUDIES
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JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI
1988**



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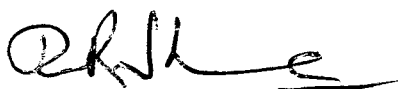
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C E R T I F I C A T E


It is certified that the dissertation entitled
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A STUDY" submitted by MR. SANJAY KUMAR JHA in
fulfilment of six credits out of the total requirement
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PREFACE

With the emergence of the People's democratic states after the World War Second, the socialist constitutional theory and practice entered into a new phase of development. The constitution of the Hungarian People's Republic which was adopted in this phase occupies an important place among the People's democratic constitutions. Here it is important to point out that Hungary, unlike all other East-European socialist countries, did not undergo the process of constitutional replacement as such, rather it was thoroughly revised to suit the contemporary changes. This departure from the common course of East-European constitutionalism contributes some new aspects to the evolution of socialist constitutionalism. Apart from this important aspect of the Hungarian constitution, there are some other specific characteristics which are needed to be studied in order to understand the Hungarian political process. Keeping all these points into account this study is a modest attempt to understand the vital aspect of the Hungarian Constitution.

The study has been divided into five chapters. The first chapter covers socialist constitutionalism: A theoretical framework; in which an attempt has been made to focus attention on the socialist constitutional

theories. The second chapter deals with the process of constitutional development of the Hungarian People's Republic (1949-72). The third chapter analyses the social order and political system of the Hungarian People's Republic; This chapter covers all the important institutional structure under one title and the Judiciary and socialist legality under another separate title. The fourth chapter deals with the provisions of fundamental rights and duties. The final chapter sums up and elucidates the findings of the study.

The study is primarily based on the actual text of the present constitution of the Hungarian People's Republic; The English translation of the text is taken from the book "Politics and Public Administration in Hungary" Gyorgy Szoboszlai ed., Akademiai Kiado, Budapest (1985).

I would like to record my deep sense of gratitude to my learned supervisor Dr. 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. However, the shortcomings are all of my own.

Besides I owe a debt of gratitude to a number of

friends and individuals who extended help and cooperation in various ways to facilitate my study.

Last but not the least, I shall be failing in my duty if I do not thank my family members who endured my long absence while writing the dissertation.

NEW DELHI
July 1988

S.K.J.
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CHAPTER - ONE

SOCIALIST CONSTITUTIONALISM: A THEORETICAL
FRAMEWORK

The study of constitutionalism occupies a significant place in comparative politics. It may have some degree of international significance also in view of the fact that it is the constitution that directly or indirectly affects the exercise of the Sovereign Power of a State. It postulates effective checks on the absolute powers of government so that the liberties of the citizens are not curtailed without adequate reason. It stands for the supremacy of law and justice and not for arbitrary rule of the individuals. It is a set of rules and procedures - codified or established by a long practice which prescribes the structure and functions of government, its powers and mutual relationship among various organs and their limitations.

It is quite difficult to give a comprehensive definition of constitution and constitutionalism not only because of the existence of two distinct systems but also because of its different manifestations under the broader framework of each system. The term "constitution" has been attributed both wider and narrower connotations at different times. In the broader sense, we can say that the constitution "means the whole scheme whereby a country is governed; and this includes everything else besides law in its narrower sense, constitution means the leading legal rules usually collected

into some document which comes to be almost venerated as the constitution".¹ In another words the constitution has been interpreted as "The trust which men repose in the power of the words engrossed on parchment to keep a government in order".² Here it is necessary to note that inspite of a great variety of constitutional forms, a constitution does not permit any government to exercise legitimate power without some effective restraints. Every constitution has its own scheme of limitations and it has to be adjusted in various forms of public relations. A constitution "may be said to be a collection of principles according to which the power of the government, the right of the governed, and the relations between the two are adjusted".³ In other words, it may be described as set of principles and rules of a political society.

The modern constitutionalism has come with struggle against irresponsible authority; it is the product of the vision of a new freedom. The chaotic struggle in America

1. Encyclopaedia Britannica, Vol.3, P. 103.

2. International Encyclopaedia of social sciences, Vol.3, p.319.

3. C.F. Strong, Modern Political Constitutions (London, 1966), p. 364.

had hardly centred upon independence before charters for colonies began to be converted into constitutions for commonwealths. The French Revolution, the war of liberation in South America, the reform movement in 1848 were all followed by many great enactments. The constitutions of the contemporary European shifted their emphasis to an increasing degree of economic rights in the wake of the great anxiety which the bourgeoisie felt to keep it safe from the revolutionary communist menace.

The rise of a constitutional state is essentially a historical process whose chief material is contained in the history of political institutions coupled with the history of western political ideas right from the Greek to the modern writers. The history of the development of constitutionalism is thus a history of the growth of political institutions that had their first important manifestation in ancient Greece and Rome and thereafter they witnessed their rise during the middle and modern ages. Side by side reference should also be made to the ideas of great political thinkers who either drew stimulus from the development of political institutions or who thought in terms of having a particular form of polity under the idea or obtainable conditions.

I. LIBERAL VIEW OF CONSTITUTIONALISM:

With the emergence of industrial revolution, a new production relation, in which industry was the chief mode of production and commerce the predominant economic activity, prevailed in Europe. A new mercantile and industrialist class came into being. This so called new middle class, by virtue of its growing economic power, advanced its claim for a share in political power also. In fact the early constitutionalism of the seventeenth and eighteenth centuries largely sought to win the same rights and privileges for the new industrial-commercial middle class which were enjoyed by the landed aristocracy in the Feudal age.

Thus the liberal tradition, which initiated the early constitutionalism, was originally designed to serve the interest of a particular class although it pretended to invoke the "rights of man" in general.

It is important to note that Locke's famous list of natural rights gave prominence to the "right to life, liberty and property". Though the concept of property was initially formulated as a product of man's labour, but this proviso was never applied to set any limits on the size of one's property or to enquire into any link between the amount of

labour put in and the amount of property acquired by an individual. The liberal movement only sought to smash the barriers in the way of equality of man so long as these barriers associated political rights to one's status by birth. The feudal order has restricted political rights to the landed aristocracy - a class which owned property by birth. The exponents of liberal theory still regarded property as a symbol of political wisdom and insisted that those who had acquired property through the new avenues of commerce and industry should also be given equal political rights. They also regarded that in a "free society" any man could acquire property by dint of his talents and enterprising spirit which would entitle him to political rights. They believed that only the social conditions of feudalism had been responsible for artificial barriers in the progress of mankind because they had created a rigid and unalterable pattern of ownership of landed property which prevented the talented and enterprising men from achieving fuller self-development. But the new field of commerce and industry had removed those barriers and now men could find ample opportunities of self-development only if they were given complete freedom to pursue their self appointed goals. Acquisition of private property was recognized a noble goal

which entitled men to political rights. This implied exclusion of lower classes or havenots from equal political rights.

In the economic sphere, the early liberalism upheld the principle of laissez - Faire, a term meaning "Leave alone" or the least interference by the State in the economic affairs of men. It envisaged that the pattern of "free market society" would automatically secure justice for all men in society. The arguments advanced by Adam Smith and Jermy Bentham echo these ideas. Their chief purpose was to pave the way for the establishment of capitalism. Thus, till the middle of the nineteenth century the constitutional struggle strongly tilted in favour of capitalism.

The later constitutional battle in the liberal world has largely centered around proper limitations of the "freedom of contract" and right to property. Other civil liberties have since been accepted as universal tenets of constitutionalism. But the freedom of contract and the rights to property have a direct bearing on economic system of society which create differential conditions for different sections, particularly unfavourable to the large majority of the have-nots. The recent trend in the liberal constitutional theory and practice calls for proper safeguards for

the protection of the underprivileged sections. Twentieth century has witnessed momentous changes in this direction in the outlook of judiciary on the legal and constitutional issues. The great publicists and constitutional authorities like Thomas Paine, Alexis de Tocqueville, James Bryce, Harold J. Laski, Herman Finer, Charles H. McIlwain and a host of others have taken the view that constitutionalism is both an end and a means; it is both value-free and value-laden; it has both normative and empirical dimensions. The provisions of the constitution not only provide for the composition of various organs of the government and the powers entrusted to them, they also attach sanctity to the norms of liberty, equality, justice, rights etc. According to this view, the constitution is not only an end that has got to be respected by all, it is also a means to an end, the end being the achievement of security and the protection of liberty of the people.

According to a writer, "whether the constitution is in the form of a document made at a particular time of history as the American constitution was made by the Philadelphia Convention of 1787, or it is in the form of numerous laws, institutions and conventions, western concept of constitutionalism lays emphasis on this point that the principles of the fundamental law of the land should be such that there occurs a fundamental difference between the government of the people and the constitution of the people. The constitution is more important than the government".⁴

4. J.C. Johari, Comparative Politics (New Delhi, 1980), p.286.

II. MARXIST VIEW OF CONSTITUTIONALISM:

Different from the liberal view, the Marxist perception of constitutionalism characterizes a constitution as a means to implement the ideology of scientific socialism. In a socialist state constitution is not an end as it is in the case of liberal constitutions. The constitution, according to Marxist ideology, is a tool in the hands of the dictatorship of the proletariat that seeks to establish a classless society that would eventually turn into a stateless condition of life. The purpose of having this constitution is not to limit the powers of the government but to make them so vast and comprehensive that the ideal of workers state is realised and a new type of state comes into being. The real aim of the constitution in such a polity is to ensure liberty and equality, rights and justice for all as also to see that the enemies of socialism are destroyed and the new system is firmly consolidated.

This concept of constitutionalism is based on the principles of Marxism - Leninism and its theory of state.

Towards the middle of the nineteenth century, when capitalism had established itself in Europe and America,

and conditions of working class had generally deteriorated Karl Marx and Friedrich Engels came to the conclusion that the liberal or bourgeois constitutionalism was nothing but a device for legitimization of an exploitative capitalist system. In their Communist Manifesto they observed that the contemporary state, in spite of all its claims to be the guardian of the freedom of man, was in fact an instrument to serve the interests of the capitalist class. Thus they declared that "The executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie".⁵ On the basis of a searching analysis of human history, Marx and Engels demonstrated that political institutions as well as morals and culture of society at any historical stage were shaped by the character of the prevailing economic relationship emanating from the prevalent mode of production. In Marxist terminology, the economic mode of production constituted base or substructure of society while the state only represented a super structure.

5. The Communist Manifesto (Moscow, 1975), p. 44

Throughout development of history, a small minority of men managed to secure ownership of the means of production, and they became dominant class while the large majority was forced to live by its labour, and became dependent class. History of mankind represented a constant struggle between these two classes. The dominant class used political power to hold the dependent class in perpetual subjugation in order to carry on its exploitation. In the ancient society the class division was represented by the masters and the slaves, in the medieval society it was represented by the Feudal Lords and serfs, and in the modern capitalist society, it took the form of bourgeoisie (the capitalist) and proletariat (the propertyless workers). The contemporary state, therefore, represented an instrument to serve the economic interest of the capitalist class, although it sought to project an image of universal freedom in the shape of freedom of contract. Thus it is clear that from Marxist point of view the term state denotes "State power". According to this theory state should not be understood as a symbol of universal political right and equality because it is always used in the interest of a particular class.

At each stage of social development a particular class gets control of the means of production and exploits

the rest. The exploitation carried out thus can not be said to be the result of chance, but is, in fact, the inexorable law of social development. The dominant class alone has freedom and in order to preserve this, it acts the part of oppressors. It, therefore, creates the repressive instrument, by the use of which it hopes to maintain its position and which is called the state.

Changes in the form of state are bound to occur because it can not rule over the people always in the same way. It changes its form and colour according to the changes in the form of struggle of dependent classes against the ruling class. However, never does it change its exploitative content and character. Marx wrote that "After every revolution marking a progressive phase in the class struggle, the purely repressive character of the state stands out in bolder and bolder relief".⁶ As the condition of production change, the existing state ceases to meet the

6. Karl Marx and F. Engels, The Civil War in France Selected works (Moscow, 1970), Vol.1, pp.285-6.

requirements of the new emerging exploiting class and gives way to the another type of state. The capitalist state makes class struggle all the sharp. In course of development the simplest phase of class division emerges when the capitalist and the proletariat came face to face. This is the stage which is considered ripe for the proletarian revolution and the creation of a new social and political order by the working class.

The liberal constitutionalism as the cornerstone of a capitalist system, is by its very nature incapable of serving the interest of the workers who constitute bulk of the society. A constitution in such a state, howsoever, democratic it may seem, is nothing but the Juridico - political documentation a facade under which class - rule is sought to be perpetuated most cleverly. The constitutional authority of the people in general remains the constitutional authority of the few in real sense.

The socialist revolution about which Marx noted was to be led by the proletariat in order to destroy the capitalist system. The most important thing which relates to the socialist revolution is the question of power,

i.e., transfer of power from the hands of the bourgeoisie to the working class. As Lenin put it "The transfer of state power from one class to another is the first, the principal and the basic sign of a revolution both in the strictly scientific and practical political meaning of the term".⁷

In addition to the class character of the state another central theme of the Marxist view of state is related to the form of state apparatus. With the capture of state power by the proletariat the old state machine must be replaced by a new one. The proletariat does not require to make use of the old state machine of the exploiting class. On the contrary, it attempts to create an entirely new state apparatus. It is relevant to quote what Lenin wrote in *The State and Revolution*.

The point is not at all whether the ministries will remain or whether committees of specialists or some other institutions will be set up; that is quite immaterial

7. Cited in Jack Woodis, New theories of Revolution (New York, 1977), p.17.

The point is whether the old state machine (Bound by thousands of threads to the Bourgeoisie and permeated through and through with routine and intertion) shall remain, or be destroyed and replaced by a new one. Revolution consists not in the new class commanding, governing with the aid of the old state machine, but in this class smashing this machine and commanding, governing with the aid of new machine".⁸

From this point of view socialist constitutionalism expressing the aspirations of the exploited people marked a historical departure from bourgeois constitutionalism the real scope of whose lofty declaration of rights remained confined to the interests of the ruling class only.

Soviet Scholar A.KH. Makhnenko has enumerated eight fundamental features of the socialist constitution, which broadly distinguish them as typical socialist constitutions.

8. V.I. Lenin, State and Revolution (Moscow, 1977), pp. 108-9.

Accordingly:

- (1) The socialist constitution serve the socialist basis, they establish socialist ownership of mineral wealth, state forests, Factories, mines and other basic instruments of production. They secure full employment maintaining citizens, right to work, leisure, education etc.
- (2) State power in the socialist countries, is vested in the working class and working peasantry; the laws express will and interests of the working people for whose benefit social order is set up.
- (3) 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 world.
- (4) They establish equality of all citizens regardless of sex, property, status, education, residence etc.
- (5) The constitution of the socialist countries do not merely proclaims the rights and freedoms of the citizens; they place their main emphasis on guaranteeing these rights and on the means for

their implementation.

- (6) They aim to world peace.
- (7) They include programmatic provisions referring to the building of socialism and communism, and
- (8) Unlike bourgeois constitution which legalizes the state power of the exploiting minority under the cover of hypocritical references to the rule of the people, equality etc., socialist constitution, by vesting state power in the hand of working people, expressly formulate the nature of that power and the guarantees which ensure its implication.⁹

It become quite clear from the foregoing discussion that socialist state is a new type of state which negates the basic foundations of bourgeois state and creates a new social system in which the class basis of the state is changed.

9. A.KH. MAKHNENKO, The State Law of the socialist countries, Progress Publishers, (Moscow, 1976), pp.55-8.

It may be asked in this context if there is anything common between the bourgeois and the socialist state. Here it should be understood that even after negating the basic foundations of bourgeois state it would be erroneous to assume that the bourgeois elements are completely wiped out from the socialist state. The basic difference between the two types lies in the fact that fundamental economic and class basis of the state is changed under socialism. The political structure is also required to be such as to conform to this basic reality. Apart from this, the socialist state is said to be a progressive continuation of the bourgeois state in as much as every democratic idea of the bourgeois tradition is properly inherited and adequately developed by socialism. In this way it can be observed that socialist constitutionalism can not absolutely negate the lofty principles of bourgeois civilization. Which it is a complete negation of the bourgeois structural order the socialist constitutionalism symbolises the complete efflores^{sce}nce of its democratic ideals.

There are some other very significant points that also explain the importance of socialist constitutionalism. According to a famous Hungarian scholar, there are three

important features of socialist constitutions :-

1. The absence of fictitiousness
2. The exclusiveness of the fundamental law ; and
3. The stability of the constitution.¹⁰

Regarding the fictitiousness of the constitution the idea is that every bourgeois constitution is based on imaginary assumptions. A capitalist state instead of doing away with illusions consciously tries to nurture it in the broad strata of society. In such a society the constitution is used as a means of propaganda by the bourgeoisie with the aim of diverting the revolutionary potentials of the exploited people. The capitalist class can not enforce the constitutional norms in reality as this would be conflicting with its economic and political interests. The bourgeois constitution is therefore remains the fictive constitution which only serves the interest of bourgeoisie.

The term exclusiveness implies that a socialist constitution is directly linked with the prevailing socio-economic and political conditions in the state. In other

10. Otto Bihari, Socialist Representative Institutions (Budapest, 1970), p.181

words, the constitution being the fundamental law of the land has to respond to and reflect the socio-political reality. It is probably because of this reason that the validity of an unwritten constitution or constitutional convention is not recognised in socialist constitutional practice. On the contrary, only the written constitution commands any legal validity, because only through such a legal document the nature and character of a socialist state in a certain period can be reflected. Furthermore, it may also be stated that the amendment, modification and replacement of a socialist constitution have to be carried out in accordance with the ongoing change and development at the social plan.

Finally the stability of the constitution is said to consist in that the amendment of the constitution is tied to a special procedure of the regular legislative organ (the supreme representative organ of the state power), and its approval requires a qualified majority.

The objectives of the socialist constitution may be interpreted as establishing the basic rights, freedoms and duties of the citizen and defining the manner of their exercise in its most essential features. However, the

concept of a socialist constitution views the fundamental law not merely as a legal enactment, but the most important political document of its time. Together with giving the force of law to what has already been achieved, it proclaims the main objectives and aims of socialism and the principles of state organization. This to a significant degree expands the possibilities of constitutional regulation and allows the constitution to embrace the principles and fundamentals of the mutual relationship between society, the state and the individual. To establish the constitutional principles or man's status in society is a far greater task than simply stating the rights and duties of the citizen. The functions of a constitution understood in this sense are very wide. The constitution itself gives an integral idea of the character and type of relationship that exists between the individual and the state under socialism. This aspect of socialist constitution determines its tremendous significance for society as a whole and also for each individual citizen.

The constitution, like any state law, enjoys the fundamental status which may be directly referred to by anyone in support of his demands or claims on the state bodies, the public organisations, or citizens. In the



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traditions of socialist democracy the fundamental rights and duties of the citizen are an important part of the constitutional act and an indication of the degree of its democracy. But regulating relations between the state and the individual is a function of the socialist constitution as a whole, not of its separate sections, chapters or articles. Generally speaking each constitutional provision, whether it refers to the granting of a particular right to a citizen or the terms of reference of the higher organs of state power and administration, relates directly to this question, adding to the general picture and specifying various aspects of the relationship between the individual and the state.

Another important phase to develop socialist constitutions by widening the field of constitutional regulations was started in the stage of relatively matured socialist nature of society. This tendency was clearly expressed in the 1977 constitution of the USSR, which included a number of clauses that were either entirely new, or had previously been part of current legislation and now, by virtue of their greater social significance, became constitutional norms. For instance, the right to housing previously belonged to the working people and was exercised according to soviet laws and statutory instruments.

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But this right has become constitutional and consequently can be more firmly guaranteed as a result of the extensive housing programme. The constitution of the USSR is one of the first in the world to proclaim this important human right. As a result of extending the subject matter of the constitutional regulation, new possibilities have appeared in the sense of a fuller and more accurate reflection of the relationship between the state and the individual.

In fact, developed socialism is a society in which powerful productive forces and progressive science and culture have been created, in which the well-being of the people is constantly rising and more and more favourable conditions are being provided for the all round development of the individual.

It is a society of mature socialist relations, in which, on the basis of the drawing together of all classes and social strata and of the juridical and factual equality of all its nations and nationalities and their fraternal cooperation, a new historical community of people has been formed.

It is a society of high organizational capacity, ideological commitment and high consciousness of the working people, who are patriots and internationalists.

It is a society, in which the law of life is concerned, with all for the good of each and concern of each for the good of all.

In this stage of society, the political system ensures effective management of all public affairs. Evermore active participation of the working people in running the state, and the combining of citizens real rights and freedom with their obligations and responsibilities to society.

In elucidating the ideological role of the socialist constitution considerable interest is attached with the pronouncements of Lenin relating to the time of the adoption of the first Soviet constitution (1918). According to him "The Soviet constitution - the fundamental law of the Russian socialist Federative Republic - reflected the ideals of the proletariat of the whole world".¹¹

11. V.I. Lenin, Collected works, (Moscow: Progress Publishers 1965), Vol. 27, p.551

Characterising the 1918 constitution Lenin stressed that, "it embodies what experience had already given, and will be corrected and supplemented as it is being put into effect".¹²

III. CLASSIFICATION OF SOCIALIST CONSTITUTION:

On the basis of different phases of development of socialist states within particular types the following classification may be suggested.

1. Those constitutions which belong to the group of Soviet socialist type;

(a) In this group related to the first phase of evolution of the socialist state are included the Soviet constitution of 1918, and all other Union Republican Soviet constitutions adopted in its wake, the constitution of the Hungarian Soviet Republic of 1919, the transcaucasian constitutions of 1922, the constitution of the Soviet Union of 1924, and the

12. Ibid., Vol. 28, p.36.

constitution of the Union Republics introduced after its approval.

(b) The second group of constitutions are related to the second phase of evolution of the socialist state i.e. the constitutions of the period marking the completion of socialist constitution. They include the 1936 constitution of the Soviet Union, the Soviet constitutions of the Union and the Autonomous Republics;

(c) The third type of socialist constitution is the constitution of the period of developed socialist construction marking the transition to communism.

2. Within the group of popular democratic constitutions the main categories of classification are likewise associated with the phases of evolution of the socialist state. Accordingly, there are constitutions of -

(a) The building up of socialism i.e. with the exception of the new Czechoslovak and Mongolian constitutions, those of all other popular democracies, Further

(b) popular democratic constitutions introduced after the foundations of socialism have been laid, here

understood the new Czechoslovak and Mangolian constitution.

On the basis of the foregoing classification further sub-divisions may be suggested within the first group of popular democratic constitutions. For example, within the popular democratic constitutions of the phase of building of socialism specific characteristics distinguish the constitutions approved in the early phase of their evolution. This period of the evolution of the popular democratic constitutions lasted till the time of promulgation of the Hungarian constitution. The approval of the Hungarian constitution already opened up the second phase of popular democratic evolution. The constitutions of the early phase are those of the Yugoslav Democratic Republic of the 31st January, 1946, the people's Republic of Albania of 1946, the People's Republic of Bulgaria of 1947, the People's Republic of Rumania of 1948, the Czechoslovak Republic 1948, and G.D.R. of 1948. Further constitutions of Asian countries like Vietnam of 1946, Korean Popular Democratic Republic, 1948, should also be mentioned. Of these early popular democratic constitutions it is in general characteristic that they contain no provision on social ownership of the bulk of the means of production.

These constitutions define the fundamental civic rights, although they refer to the substantive guarantees of these rights with limitations only. Some of these constitutions make no mention of the right to work e.g. that of the Korean Popular Democratic Republic. The class content of the state is not defined in all cases. Quite often no reference is made to the leading role of the working class and leadership of the Party. On the other hand, the principal feature of a democratic governmental organisation are clearly defined in these constitutions, however, certain remnants of the earlier governmental organization are preserved in their formal elements.

The group of constitutions of the second phase of popular democratic evolution (still in the first phase of the growth of the socialist state) besides the Hungarian constitution, includes the constitutions of People's Republic of Poland of 1952, the Rumanian People's Republic of 1952, the People's Republic of China of 1954, the Vietnamese People's Republic of 1959. The constitutions adopted in the second phase of popular democratic evolution, without exception, explicitly give expression to the process of building socialism, to the leading role of the party; instead

of a generalised reference to popular sovereignty these constitutions define the class content of the state characteristic of the dictatorship of the proletariat. In these constitutions civic rights and their substantive safeguards have been extended, and the provisions of the constitution defining the organization of the state have put into words the socialist forms with greater clarity and consistency.

It is interesting to note that the popular democratic constitutions promulgated before the Hungarian constitution included a far greater number of provisions which were characteristic of the early stage of socialist evolution. On the other hands, as regards structure and definition of points of law, the Hungarian constitution come nearer to the Soviet constitution than the early popular democratic constitutions.

As Istvan Kovacs has written:

"Still when it comes to an appraisal of the problem it should not be ignored that after the recognition of the class character of popular democracy as one of the forms of dictatorship of the proletariat and clearing up its problems of principle, the Hungarian People's Republic was the first to introduce a constitution which laid down in unequivocal terms the principles of the dictatorship of the proletariat".¹³

13. Istvan Kovacs, New elements in the evolution of socialist constitutions, (Budapest, 1963), p.129.

On the basis of above mentioned fact it is clear that the creation of the constitution of the Hungarian People's Republic contributed a new element in the theoretical base of People's democratic constitutionalism. Having clearly mentioned the class character of the Hungarian state as the state of dictatorship of proletariat the Hungarian constitution made its specific character and started a new phase of People's democratic constitutions.

The second group of popular democratic constitutions comprises the constitution of the Mangolian People's Republic of 1960 and that of Czechoslovak Socialist Republic of 1960. These constitutions mark the final victory of socialism. They express the abolition of the multi-sectoral character of the economic system, remove the last remnants of the earlier governmental organizations, and ^{all} of their provisions emphasize the fact of their having been born on the ground of the moral and political unity of the people.

On the basis of above analysis of liberal and Marxist theories of constitutionalism we can arrive at some meaningful conclusions.

The emergence of the liberal view of constitutionalism

was the result of the new production relations prevailing in Europe at that time which created capitalist industrial production and commerce as the predominant mode of economic activity, in the society. The new economic relation demanded its share in politics which had been monopolised previously by the landed aristocracy. Liberal revolution was a result against the aristocracy which owned property by birth. The exponents of liberalism insisted that those who had acquired property through the new avenues of commerce and industry should also be given equal political right. According to liberal view of constitutionalism every body should be given complete freedom to acquire private property because property right is given by birth. State should not interfere much more in the economic affair of men. Free market society was considered as the justice for all men in the society. Most of the liberal thinkers believe that constitutionalism is both an end and a means. It is an end so it should be respected by all and it is a means therefore, it is necessary to achieve an end. It guarantees the security and the protection of liberty of the people.

The Marxist view of constitutionalism is different from the liberal view because it believes that a constitution

is not an end in itself but it is only a means to implement the ideology of scientific socialism. It is a tool in the hands of proletariat to establish a class-less society that would eventually turn into a stateless condition of life. The Marxist view of constitutionalism denounces the liberal view on the basis of its bourgeois class character. According to this view the liberal constitutionalism serves the economic interest of the bourgeoisie, although it seeks to project an image of universal freedom. In fact, in a bourgeois state it is the dominant class, which, although remains a numerical minority, enjoys all the rights and liberties guaranteed by the constitution. This class formulates laws by the use of which it hopes to maintain its position. The constitutional authority of the people in general remains the constitutional authority of the few in real sense. The revolution in this stage becomes inevitable. Through this revolution the proletariat and other exploited people overthrow the capitalists and assume state power to construct a new post - revolutionary socio-economic and political order. Only at this stage a constitution represents the aspirations of the common people. The content and character of the socialist constitution continue to change as a reflection of similar change at the social plan.

CHAPTER - TWO

DEVELOPMENT OF THE HUNGARIAN
CONSTITUTION (1949-72)

Post - world war II and defeat of Nazism in this war created a new situation particularly in Eastern Europe. In this phase the task of social transformation could become relatively peaceful in nature. Parliamentary and united people's front politics proved to be a powerful method of revolutionary change. The constitution of the Hungarian People's Republic was also enacted in this period of peaceful transformation. The process of making of the constitution in this phase could not avoid the effect of earlier institutions, in its enactment. Making of the constitution at this stage was broadly effected by the phenomenon of the prevailing situation. As an Hungarian author has explained: "The new elements of constitutional law had in the first place been determined by the domestic experience of Post - war development, the example of the institutions of the friendly people's democracies, and primarily those of the socialist Soviet Union".¹ The influence of old and new existed side by side and traditions exerted a strong influence on the

1. Gyorgy Szoboszlai (ed.), Politics and Public Administration in Hungary (Budapest, 1985), p.3.

legal form of the various other institutions of political or constitutional law. The Hungarian revolutionary traditions and culture have a significant influence on the legal and social life in Hungary. It may be observed in this context that the traditional elements which influenced significantly in the period of stabilization, were pushed to the background in the course of rapid transformation subsequently.

From this point of view the whole process of constitutional development of the Hungarian People's Republic occupies an important place in the socialist world. Hungary adopted its constitution in 1949 which remained operative till 1972 when it was thoroughly amended. This revised version along with a separate act on the council passed in 1971 is in operation till date. Hungary, unlike all other East-European socialist countries, did not undergo the process of constitutional replacement.

First of all it is necessary to understand, why Hungary did not adopt a new constitution. Unlike other East-European peoples democracies, this departure from the

common course deserves attention. With the enactment of the constitution of 1949 Hungary was the last of the People's democracies to introduce a new constitution. Poland may perhaps be the only exception where in 1947 an incomplete constitution had been introduced and a complete constitutional charter was adopted only in 1952. In 1976 the constitution of 1952 was amended thereby solving the problems related to the adjustment of the constitution to changed social circumstances. Here also it was perhaps not by chance that in Poland, too, no new constitution was drawn up.

The short period after the Second World War, i.e. between 1946 and 1949 when all the people's democratic constitutions were made, was perhaps of fundamental importance for socialist countries. The political lines of forces of international relations became settled and consolidated. It was at this time the thesis received general recognition that the people's democratic socialist state could be regarded as a specific variant of the dictatorship of the proletariat by the side of the other variant of this dictatorship, namely, the Soviet socialist state.

And it is at this point that we come across a speciality of the Hungarian constitution of 1949. Of all People's democratic constitutions the Hungarian was the first to be drafted and approved consciously as a socialist constitution. In other words, we can say that although Hungarian constitution was enacted after all other People's democratic constitutions, it was the first people's democratic constitution in Eastern Europe which was consciously made as the constitution of a specific variant of the dictatorship of the proletariat. However, unlike the Hungarian constitution, the other People's democratic constitutions had not clearly included and spelt out the elements of socialism in their provisions. The Hungarian case, in this sense, was more eloquent and forthright. From this point of view, the Hungarian constitutional experiment was the beginning of a new phase of People's democratic constitution.

The development of the Hungarian constitution on the whole coincides with the process of translating the constitution of 1949 into practice. As is known, at least in point of principle, that the socialist constitutions have as their aim the consolidation of the fundamental

institutions of a society growing and changing on the grounds of a long-term, scientifically conceived programme. Every socialist constitution is the fundamental law of a period of a certain length. It also stands to reason that constitution is a legislative act, a legal instrument, part and parcel of the legal system of a country. The problems arising from this dual character of the constitution are specially conspicuous in certain phases of socialist development. In the period of rapid transformation a socialist constitution is regarded as a specific political programme. In the course of constitutional development in Hungary, when prominence has been given to the legal aspects of the constitution, this meant a land mark in a certain sense. This indicates that in the socialist constitutional development, too, a phase has been entered where the primary function of the constitution is the stabilization and preservation of institutions once established. Looking from this point of view it can be observed, why in Hungary constitutional problems have been solved by an amendment rather than drawing up a new constitution. In Hungary the amendment to the constitution adjusted the wording of the constitution so as to be in

agreement with the consequences of the social transformation of nearly 25 years. It has modified the two chapters on the fundamental institutions of the social conditions nearly in all their details. The amendment has brought about changes even in the structure of the constitution.

First of all, the class character of Hungarian state power and the position of the constitution regarding this needs to be examined. It is essential to analyse what has changed and what has remained unchanged since 1947. Although the working class has continued to be in a leading position since the beginning. It is the large scale regrouping of the society that considerably changed the weight and role of the various social strata over the years.

1949 constitution of Hungarian People's Republic declared that "Hungary is a People's Republic".² "The Hungarian People's Republic is the state of workers and

2. 1949 Constitution of Hungarian People's Republic
Article-I.

working peasants".³ In this constitution nothing special was included about middle strata of society and intelligentsia. Working class and peasantry were the basis of power theoretically. Constitution declared that "In the Hungarian People's Republic all power belongs to the working people". This declaration had double meaning at that time. Firstly, it was a wise expression about the alliance character of the dictatorship of the proletariat, a dictatorship embracing all layers of the working people. Secondly, it means that the non-working people, had no share in the state power.

The amended constitution introduced more differentiated formula than the previous one. Rather it was a new formula for the definition of character of the state power. According to the new constitution "The leading class of the society is the working class which exercises power in alliance with the peasantry organised in co-operative and jointly with the professionals and the other working strata of society".⁴

3. Ibid., Art. 2.

4. Constitution of the Hungarian People's Republic (Budapest, 1985), Art. 2, para-3.

This new formula very clearly reflects the significant changes that have taken place in the nature and the character of Hungarian society and state power. It also indicates the changes in the composition and the numerical ratio of the peasantry. Out of all earning population 55 per cent belonged to the peasantry in 1949, while by the eighties it reduced to 18 per cent. At the same time the numerical increase in the ranks of the intelligentsia is also equally important.

After the thorough amendment of the constitution even unchanged provisions have gained new interpretations. The provision that "All power belongs to the working people"⁵ with the establishment of socialist relations and liquidation of exploiters as class, indicates that every citizen of the country can participate in exercising political power without any discrimination or restrictions on the basis of class affiliation.

The constitutional provision regarding the

5. Ibid., para-2.

organizational structure of political institutions and political power and its mechanism testify to a remarkable development. The unamended constitution while interpreting the condition of society, describes the representative foundations of the political system. It emphasized the institutions of direct democracy in connection with the local organisation of the sovereign power, whereas on regulating the fundamental civic right it declared the right of association to the social organizations, e.g. to the Party of working class and the popular front, the trade union, etc.

At the time of approval of the constitution there was a number of political parties. However, these parties were recognising the leading role of the workers party in politics. Hence this method of regulation, too, reflected an actual political conditions of the given period. It is an historical and social fact today that no political party except Marxist - Leninist Party of the working class exists in Hungary. Although existence of any political party is no prohibited by law, perhaps it is historical development that accept only Marxist - Leninist party in Hungarian society.

The Popular Front, before the establishment of the dictatorship of the proletariat functioned as the loose coalitional framework of the political parties. After the establishment of the power of the working class it was a question as to what will be the fate of Popular Front. How should it operate in the political system? The constitution of 1949 defined the Popular Front as the federation of social associations and it was on this consideration that the constitution placed the people's front under the control of the provisions governing the right of association. In this form, however, the People's Front did not operate at all. Its way of functioning and pattern of operation has developed in different direction and in several transitional stages. In the real sense the Popular Front is considered as a broad mass movement operating on the broadest layers of society. The amended text of the 1949 constitution has defined the position and role of the Hungarian Patriotic People's Front among the fundamental political institutions of the social system. "The Patriotic People's ^{front} unites the forces of society for the complete building up of socialism, for the solution of political, economic and

cultural tasks, it co-operates in the election and operation of the organs of popular representation".⁶

The position of the popular front under constitutional law has developed in peculiar form. It has shifted and readjusted its role according to the changes and development in the nature of Hungarian state power.

The unamended constitution of 1949, laid stress only on the general functions of trade unions. In this general function, the trade unions were authorised to take part in socialist construction work, safeguard and reinforce the power of the people. But the restated form of 1949 constitution indicates that the trade unions discharge a duality of functions. In addition to the above mentioned general functions, the trade unions are given another special functions also. Within the sphere of their special functions they serve group interests. They safeguard and represent the interests of their members, of the working people. This amended constitution

6. n.4, Article-4, para-2.

has taken up the trade unions among the fundamental institutions of the political system. Now trade unions are such an organization whose primary function is to transmit the policy of the worker's party to the various layers of the wage and salary earning population. And at the same time this is also understood that the trade unions can not be considered simply an organization of transmitting policy, but it is also accountable to the working class for safeguarding their interests.

In other words we can say that through this amendment regarding the functions of the trade unions, the earlier wordings of the constitution that the trade unions have no other functions than safeguarding the interests of the people has got another specific dimensions also. The new and special functions of the trade union given by the amendment of the constitution has broaden its responsibilities towards the people in general and the workers in particular. Now trade unions are considered as not only an organization which implement the policy of the government, but also maintain its responsibilities towards the workers to whom it is specially accountable.

The process of the election of the representative organs by the population has been maintained unchanged. However, in addition, the amended constitution indicates the method of exercise of the sovereign power by the way of direct democracy. "At their place of work and domicile the citizens take part in the administration of public affairs also directly".⁷ This development in the constitution reflects the recognition of democracy in the public life.

The changes in the rules governing the state functions have also been introduced. This development results mainly from the circumstances that following upon the laying of the foundations of socialism the state of the Hungarian People's Republic "organizes the forces of society for the complete building up of socialism".⁸

The external functions of the state have been dealt with very briefly in the 1949 constitution. But the

7. n.4, Article-2, para-5.

8. Ibid., Art. 5, para-1.

amended text of the 1949 constitution clearly described its relations with other socialist countries. "The Hungarian People's Republic as part of the socialist world system, develops and strengthens its friendship with socialist countries; in the interests of peace and human progress. It strives for co-operation with all peoples and countries of the world".⁹

The 1949 constitution, beyond proclaiming the social ownership of the means of production confined itself essentially to the formulation of programmatic rules in organising the national economy. It drew the outlines as aim for gradual elimination of the exploiting classes from the economy. The restatement of the constitution of 1949 points out the liquidation of the exploiting classes of society and the predominance of the socialist relations of production. This disappearance of the exploiters as a class of society was made possible by the social development in Hungary. And this reality was expressed by the amended constitution of 1949.

9. Ibid., Article 5, para-2.

According to constitutional provision "The state promotes and protects all forms of social property".¹⁰ Incidentally the text of the constitution does not determine the sphere of forms of property which may be recognised as social. Although it cannot be argued that the constitution defines state and cooperative property as the fundamental forms of social property. At the same time the property of the cooperative organizations also should be considered as social property because these properties are not governed by the law of Associations.

It may be remembered that the Hungarian constitution of 1949 was the first to speak of social property as a general category embracing the various forms of state and group property. If we compare the regulations incorporated in several constitutions regarding social property, we find that the majority of the socialist countries speak of socialist ownership of the means of production and not of the social property. It refers to state and cooperative

10. Ibid., Art.6, para-2.

property as the two type of socialist property. Later on only the Czechoslovak constitution of 1960 and the Bulgarian constitution of 1971 defined social property in accordance with the Hungarian constitution.

In the 1949 constitutional provisions of Hungarian People's Republic by the side of state and cooperative property the property of public body or communities was dealt with as a sub-specy of social property. Soon after the enactment of the constitution of 1949 the unity of state property could be regarded as definitive and consolidated as regards to both the object and subject of this property. On the other hand, it can not be argued that in certain phases of socialist constitution exaggerated consequences were attributed to this unity which pointed by far beyond the guarantees needed for the unity of state property. In the restatement of the constitution expression has been given to the thesis that in the present phase of socialist development neither the reinforcement of enterprisal autonomy nor the guarantee of the self-government of the council can affect the unity of state property. Now solution of any given case consists in a structure of the system of economic management and its

method which guarantees an autonomy for both the enterprises and the local government councils representing certain territorial units in harmony with their functions in respect of the utilization of state property entrusted to their case.

Furthermore, as a Hungarian scholar writes:

"Two further amendments affecting state property also came within the scope of economic management. Namely one which narrows down the sphere of objects of property, and economic activities, directly defined by the constitution and exclusively reserved for the state and refers the specification of these objects to special legislation. The amendments also imply the widening of the guarantees of planned economy. Earlier the constitution in the first place included these guarantees in the provisions governing state property, whereas the restatement includes in these guarantees even such as come within the scope of cooperative property".¹¹

Another very important development has taken place in the cooperative movement. Initially stress was laid mainly on the state direction of the cooperative movement,

11. Szoboszlai, n.1, p.27.

but now the constitution has extensive power regarding cooperatives. "The state promotes the cooperative movement based on the voluntary association of the working population, the expansion of socialist cooperative property, guarantees the autonomy of the cooperatives, and exercises supervision over their activities for the enforcement of the principles of socialist cooperation".¹² Regional and all national associations, Federations of cooperatives of a variety of types acted as representative organs of cooperative and exercised also many rights otherwise vested in the public authorities exactly in the field of cooperative management. Federations become integrated part of the hierarchical system of the public administrative machinery. Even in the agricultural cooperative, where the Federations were non-existent, the local governmental organs, the councils and their administrative organs at the same time exercised the rights of Federations of cooperatives. In this way Federations of cooperative were established in almost all field of cooperative movements. All these developments in one side indicate the broadening of cooperatives and

12. n.4, Article-10, para-2.

at the same time it also reflects the state controlled cooperatives and full supervision of state over cooperatives. So far as provisions about personal property or property of small-scale producers are concerned, the amended constitution expresses there two under separate but intersely worded regulation. The constitution does not indicate any thing more about these two. It can be observed by the constitutional provision regarding small scale producers that the constitution does not recognise small-scale producing property as a special category of property. It only recognises small-scale production if it is socially useful and necessary.

As to the constitutional provision connected with the state organisations it may be noted that at the time of enactment of 1949 constitution only the central organs of the state power were incorporated in some-what consolidated stage in the constitution. But gradually many other elements of the s tate organisation were given an institutional form by further constitutional amendments. New laws were formulated for this prupose. The thorough amendment of 1972 effected the whole chapter of state organisation very broadly. Even after 1972 amendment a

very significant development took place which effected again the state structure in their entirety. In these reforms greater attention is being paid to social interest group and the role of the big social organisations.

Constitutional development regarding the position of Parliament has a long background of complexities. Before 1949 Parliament shared the exercise of head of executive. The expansion of the activities of Parliament could take place within the frame work of the constitution enacted in 1949. However Act I of 1972 amendment has contributed in the creation of new provisions regarding legislature, too. According to Article-19 para-I of the constitution "Parliament is the supreme organ of state power and the popular representative of the Hungarian People's Republic".¹³ The whole development as regard the position of Parliament can be studies by analysing the political, legislative, controlling and organizational functions of Parliament and further development in these areas.

13. n.4, Article-19, para-I.

In the political functions of Parliament, the debate on political programmes and development planes affecting state activity can be counted. Parliament discusses the government programme, debates on the bill of the national economic plan and the annual budget appropriation and passes resolution on these subjects. This function has been affected by the latest amendment. At the same time the political functions include the issue of resolutions of parliament in matters of international relations. Another important political function has been included and that is Parliament also embrace the activities of the county groups of members.

So far as legislative functions are concerned it should be remembered that the latest amendment to the constitution in particular with the extension of the scope of legislation as defined by the constitution has broadened the jurisdiction of Parliament regarding legislation. The competence of Parliament has been defined without reference to separate legislation, partly explicitly when certain subjects of regulation have expressly been referred to legislation. The extension of the legislative powers of Parliament was expressly intended by the provision

of resolution No.1 of 1956 Parliament according to which "Any question of fundamental importance affecting the totality of the working people should be brought under regulation by act of Parliament. Accordingly, the extension or legislative activity is indispensably necessary in a sense that the provisions of law affecting the fundamental rights and essential duties of the citizens shall be enacted in the form of Acts of Parliament".¹⁴

Act I of 1972 amendment of the constitution clearly states that "In the Hungarian people's Republic , an act of Parliament establishes the rules applying to the fundamental rights and duties of the citizens".¹⁵

By leaving earlier provisions unchanged the constitution establishes the following new subjects of legislation: in chapter I the objects of exclusive state ownership, the scope assigned to exclusive state activities, the autonomous responsibility of the state enterprises and its guarantees; in chapter-II the approval of the

14. Cited from Szoboszlai, no1, pp.35,36.

15. n.4,

enforcement of Budget Act; In chapter-III the legal status of the members of the Council of ministers and secretaries of state and the manner of calling them to account, in chapter- V the rules relating to the judiciary, and separately rules stating the causes of recalling judges and the method of the election of professional judges; in chapter-VI the rules relating to the office of the prosecutor, in chapter-VII the fundamental rights and duties of the citizens and in addition to the general provisions of the constitution specially mentions the rights of association, in chapter-VIII beyond the rules relating to the election of the members of Parliament and their recall which according to the earlier were also subject of legislation, the constitution emphasizes the rules of the election and recall of the members of the Councils and the case of disbranchisement.¹⁶

Constitutional development as regard to the controlling functions of Parliament can be seen in the reinforcement of the right to put question and interpretations. The amendment to the constitution of 1972

16. Szoboszlai, n.1

has widened the controlling functions. According to the constitution "Parliament guarantees the constitutional order of society",¹⁷ and "Supervises the observance of the constitution",¹⁸ Recent amendment in 1983 has created a new institution controlling constitutionality. Accordingly, "Parliament elects a constitutional council. The constitutional council controls the constitutionality of legal statutes and legal guidelines". Constitutional council functions as an organ of separate competence as regard to the interpretation of the constitution and the control over legislation in the broad sense of the word.

As regard to organisational functions, nothing new has been added by the amendment of constitution. In this function Parliament is understood implying the formation of its internal organisation and the creation, election, recall of the principal state organs. There functions are the same since the beginning.

17. n.4, Article-19, para-2.

18. Ibid., Art.19, para-3.

In respect of the Presidential Council it may be observed no changes were introduced regarding its status and powers. The Presidential Council, according to the amended constitution, enjoys the same power and status as earlier. It operates as the collective head of state and acts as a substitute for Parliament during its recesses.

A few amendments, however, have been carried through in the provisions defining the competence of the Presidential Council. Accordingly, the Presidential Council exercises the power of granting of public pardon, or the foundation of orders or decorations.

A very important power regarding the competence have been given to the Presidential Council by amendments. "The Presidential Council supervises the enforcement of the constitution. Within this competence it may annu or modify any rule, administrative resolution or measure contrary to the constitution".¹⁹ Through this provision the Presidential Council takes initiative in cases where the constitution has been infringed upon by the default of anyone of the organs rather than by an act.

19. Ibid., Art.30, para-2.

Another very important power which the Presidential Council exercises, is the constitutional supervision over the councils. Within this sphere the Presidential Council sets the date for the general election of the councils, dissolves the council whose operation conflicts with the provisions of the constitution. Further it takes care of the safeguard of the rights of the councils.

Article 31, para-I of the constitution of the Hungarian People's Republic is another one of the most important new provisions regarding the right of the Presidential Council. Accordingly "In the event of war or danger gravely menacing the safety of the state, the Presidential Council may institute a council of national defence vested with extraordinary powers".²⁰

Since 1949 a large number of amendments to the constitution were introduced which affected the chapter dealing with the Council of Ministers. Some of these amendments carried through changes in the number of

20. Ibid., Article 20, para-I.

departments. This situation came to an end with the amendment of the constitution by act II of 1957 when the enumeration of the government departments was deleted in the wording of the constitution, and was left to a separate act of Parliament.

The functions of the Council of Ministers discharged in the all national direction of the Councils and their organs underwent changes on several occasions since 1949. The Constitution of 1949 by assigning, beyond the right of annulment and amendment of the acts of the organs of public administration, the right of annulment and amendment of the acts of the local organs of state power to the competence of the Council of Ministers. At the same time it indicated that at least in the period of consolidation of the organisation of Council of Ministers it wanted to entrust it and not the supreme organs of state power and representation with the general supervision and the all-national direction of the Councils and the organ subordinate to them. Similar provisions were made in the Council Act 10 (2) Act I of 1950. The amendment of the constitution by Act VIII of 1954 has a precondition of the introduction of the solutions intended by the Second Council Act (Act X of 1954) entrusted the

Presidential Council with the general direction of the councils as organs of state power and at the same time withdrew from the Council of Ministers the right of annulment and amendment of the act of the Councils. As has already been indicated, this general directing competence of the Presidential Council has not become established in reality. Act I of 1971 therefore again entrusted the Council of Ministers with the general direction of the various council organs. In line with this was the amendment introduced by Act I of 1972, according to which the Council of Ministers directs the Council, supervises their activities from the point of view of legality. Within this competence "The Council of Ministers annuls the decrees and resolutions of the Councils which violate the interests of society".²¹ It should be noted that this competence is narrower than the original granted under the constitution of 1949 in so far as it does not extend to the amendment of the act of the councils. This indicates the independent recognition of the independent competence of the councils. On the other hand, the provision goes

21. Ibid., Art.35, para-4.

beyond the scope of the right of annulment guaranteed by the Council Act. As a matter of fact the Council Act provides for the right of annulment of the Council of Ministers only in respect of the decrees and resolutions of the county councils and in the metropolitan councils (Art. 72 of Act I of 1971). The formulation of the constitution appears to be in agreement with the role played by the Council of Ministers in the state organisation as a whole.

The restatement of the constitution on defining the competence of the Council of Ministers enumerates many important functions e.g. the safeguard of the state and social order and of the right of the citizens, the drawing up of the national economic plans, the definition of the trends of scientific and cultural development of the system of social and health care, and the guarantee of the necessary personal and financial conditions of these. In addition, the restatement of the constitution mentions the functions of the Council of Ministers in foreign affairs and foreign policy. Thus the Council of Ministers has been vested authority to conclude and approve treaties for and on behalf of the government.

The activities of the Council of Ministers as a whole are affected by the new provisions of the constitution according to which "In the performance of its function the Council of Ministers cooperates with the social organizations concerned".²² Also the designation of the Council of Ministers has been changed. The constitution refers to it as the government of the country and not the supreme organ of state administration.

In the central organization of public administration directly subordinate to the Council of Ministers the most significant change of the sixties was the establishment of the institution of secretaries of state. Later on the use of the institution of secretaries of state has become wider, it was applied in other field of public administration.

The constitution of 1949 declared that the manner of calling to account the President of the Council of Ministers, his deputies and the members of the council would be defined by a special act of Parliament. As is known this provision of the constitution has not been carried

22. Ibid., Article 36,

into effect. Act I of 1972, amending this provision, declares that a special act of Parliament will bring under regulation the legal status and manner of calling to account both the members of the Council of Ministers and the secretaries of the states. This provision has been given statutory formulation in Act II of 1973 when the legal status of the members of the Council of Ministers and of the secretaries of state has also been defined, and law - decree no.5 of 1968 so far governing the institution of secretaries of state has been set aside.

The amendment to the constitution accepted in Act II of 1983 has affected the rules and provisions on government and the central organ of public administration. The President of the Central People's Control Committee who previously attended the sessions of the government in an advisory function became member of the government. The second modification expended the legislative competence of the secretaries of state of the national organs of public administration by authorizing them to creat law - decrees generally binding upon the citizens.

The constitution of 1949 set before itself the creation of a new type socialist local administration as an object. To ensure the enforcement of the constitution

three "Council acts" have been issued so far: the first in 1950, then later a second in 1954 and finally the third in 1971. The drafters of the constitution of 1949 had the idea of ^astrongly centralised state organisation before them. The constitution deliberately built up both the central and the local organs on uniform organizational forms. Act I of 1950 puts signs of equality between various level of local organs, the municipal and communal councils further the territorial, i.e. district and county councils, and their administrative organs. But this much centralism created a more aggravated situation when the finance at the disposal of the council were reduced to a minimum.

A modification was required in the operation and the competences of the hierarchical levels. Act X of 1954 was an effort in this direction. This act attempted to separate the competences of the representative organs - organs of general competences - from specialized organs. The reinforcement of the legal guarantees of autonomy was also aimed at in order to promote the development of the council system. The new act entailed the amendment of certain provisions of the chapters of the constitution relating to the local councils.

Formally the second Act was in force for more than 15 years. However, attempts were made in sixties to recognize the system of councils. Act I of 1971 has been passed by Parliament as an act amending the constitution. According to Article 75 (2) of Act I of 1971, the provisions of Act XX of 1949, (the constitution) relating to the councils have been modified so as to conform to the provisions of the new council Act. The amendment of the constitution as decreed by Act I of 1972 has carried Act I of 1971 on the wording of the constitution.

These multi-level types regulation of the constitution provide primarily a fundamental framework for the appropriate recognition of the more or less divergent functions of the municipal, communal and county councils in their development. The constitution itself draws a line between municipal and communal organs discharging also self-governing functions and the county organs acting in the first place as intermediaries between the central and local organs. Even in the structure, communal and municipal councils are elected by the population by direct vote, whereas the members of the county councils are elected by the municipal and communal councils.

Relatively fewer modifications have been carried in the field of judiciary. The first reform was introduced by Act IX of 1950 which abolished the interterritorially organised high courts. By this the system of courts of the People's Republic became built up on three levels instead of the earlier four.

Among the formal modifications undoubtedly those associated with the election of the Judges are the most significant ones. As it is known, the constitution replaced the earlier judiciary (operating within the legal framework of the period before 1945 and consisting of appointed professional Judges) by a new organization of the administration of justice formed of Judges elected by the corresponding central and local representative organs for definite periods, who could even be recalled by the same organs, and of assessors of equal rights. From that time on several attempts have been made at the enforcement of these provisions of the constitution. Act II of 1954 decreed special measures to transplant the relevant provisions of the constitution into practice. However, this and other attempts succeeded partially only. The district and county councils have never made use of their right to elect and recall professional Judges. Eventually Act I of 1972 has

amended this provision. The election of the professional Judges for terms indefinite has been entrusted to the Presidential Council of the People's Republic. At the same time the provision relating to the recall of Judges has been brought into harmony with the principle of independence of the Judges when the constitution has declared that Judges once elected can be recalled only for reasons defined by the law.

The amended wording of the constitution also provides for the right of defence to those persons against whom criminal proceedings have been instituted.

The amended constitutional act on the organization of the judiciary enforces the constitutional principle of "The Administration of justice through the judiciary" in a by far more consistent manner than the earlier regulation. The new regulation narrow down the sphere of non-judicial organs entrusted with judicature and vests their jurisdiction in the courts of law. It also determines the sphere of social relations where only the courts have jurisdiction and other organ may proceed in exceptional cases only by authority received under a statute or a decree of the council of Ministers. In general even in such cases the

courts have supervisory rights if decisions passed by such organs affect the rights or duties of the citizens.

The amendment to the constitution introduced by Act II of 1983 affected the structure of the courts only in so far as with the abolition of the districts the districts courts were reorganised into local courts.

The constitution of 1949 indicated about the creation of a new type organization of prosecutor's office; beyond the usual functions in criminal matters, the prosecutor was also vested with the right of general supervision of legality. These provisions of the constitution were carried into practice only as late as 1953. By this a wholly new-type organ has been integrated into the system of state organs of the Hungarian People's Republic, an organ which defies classification as a representative, administrative or judicial body. With the creation of the prosecutor's office an organ independent of all other state organs and responsible only to the supreme organs of state power and representation has become the special organ of the control of legality. It has not only brought about changes in the mechanism of the whole

controlling activities discharged by the state, but reacted also on the traditional duties of the prosecutor, on the discharge of functions with criminal investigation. The restatement of the constitution, enacted as Act I of 1972, the chapter relating to the prosecutor's office has been reworded in its entirety.

Act V of 1972 following the wake of the amendment of the constitution describes the organization and operation of the prosecutor's office. Relying on the restated constitution the new act distinguishes between the functions of the prosecutor's office in criminal pro^{ce}dure and those discharged in his general supervisory capacity of legality with greater clarity than the earlier wording of the constitution.

Essentially the prosecutor's organization takes part in judicial procedure within the earlier limits. In this respect, however, the act, exactly with regard to the independence of the judges and its extended guarantees, omits any reference to the supervision of legality.

A special stress has been laid on the functions of the Prosecutor's activities in legislation. The Chief

Prosecutor may, at the lowest of the Council of Ministers, the government departments, the administrative organs of all-national competence, initiate the promulgation of new provisions of law. The drafts of legislation on higher levels than decrees of government departments have to be commented on from the point of view of legality - by the Chief Prosecutor beforehand.

So far as the position of the Chief Prosecutor or the organization of the Prosecutor's office concerned, it has not gone to change. The Chief Prosecutor is invariably responsible only to the supreme organs of state power and representation and the organization of the prosecutor's office is invariably directed and supervised by the Chief Prosecutor.

Constitutional development regarding fundamental rights and duties of the citizen has been affected by many national and international factors in Hungary. Fastly changing national and international scene has posed questions which have contributed to the proves of constitutional development.

Article 54 (1) of the Hungarian constitution declares that "The Hungarian People's Republic respects human rights".²³

23. Ibid., Article 54 (1)

As it is known the makers of the socialist constitution for a long time refrained from using the term 'human rights'. This they did on the plea that the use of the term human rights or fundamental rights would at the same time have drawn a line between the doctrine of natural law, on the one hand, and positivist law on the other. This is no longer the case. By human rights international usage understands a more or less well-defined group of fundamental rights which sets up a definite system of postulates to the legal system of the particular states, without, however, giving the term of human rights a hue of natural law. Accordingly, this new thesis of the constitution is but the declaration of the voluntary understanding of the Hungarian People's Republic to respect and recognise this standard of the community of nations.

In national level because of the non-existence of the exploiting classes the regulation of the whole system of fundamental rights and their guarantees have been affected. Ending of exploiting classes have opened a historical path in Hungarian society. The regulation of each of the fundamental rights has got entirely a new direction. Now each of the fundamental rights is regulated

in general nature, unlike the earlier regulation which formulated some of the rights as such of the working people. This was the case with the rights to rest, recreation, health care, and culture, with the guarantee of the freedom of speech, the press, assembly and association. As far certain rights, the earlier wording of the constitution, by pleading the "interests of the working people" gave expression to the fact that here there was a case of rights granted to the working people and not to the population in general.

The restatement of the constitution has considerably widened the sphere of the scope of civic rights taken up in the constitution. The right of the citizens to material provision can be mentioned and so also the right to the freedom of scientific and artistic creative work, the right to the submission of proposals in the interest of the public and among the guarantees of the public health, environmental protection. Finally special stress has to be laid on the thesis taken up in the wording of the constitution on the fundamental rights of each citizen as well, i.e. the declaration of the right of each citizen to take part in the management of public affairs. This thesis expresses among the civic rights that in the Hungarian People's Republic. After the foundation of socialism have been laid, all class limitations have participated in the exercise of political power with equal chances.

An overall study of the process of constitutional development in the period of 1949-72^{shows} that in spite of a thorough revision of the constitution the basic character of the 1949 constitution^{is} maintained. Although the amendments confirmed the development in appropriate public thinking and political competence, the provisions of 1949 constitution still expresses the character of power, the social system, and the objectives of development in a valid manner and perhaps this is the reason which did not allow the constitution makers to replace it by a new constitution. The major part of the fundamental principles of the 1949 constitution is still continued while the new provisions give the expression to the development which has taken place in the life of Hungarian people since then. Through this amendment of the fundamental law, the successes, the political and social achievements and their foremost result and pledge: the achievement and consolidation of the people's power under the leadership of the working class, finds expression in more than two decades of activity of the Hungarian people and society.

CHAPTER - THREE

THE SOCIAL ORDER AND POLITICAL SYSTEM
OF THE HUNGARIAN PEOPLE'S REPUBLIC

In this chapter we will discuss the social order and political system of the Hungarian People's Republic. We will concentrate here basically on the legislature, executive, judiciary and local-self government. This includes the Parliament, the Presidential Council, the Council of Ministers, the Councils and the Judiciary and socialist legality. All these institutions of the political system provided for in Hungarian constitution constitute the main constitutional structure. We will also study the compositions and functions of all these institutions and discuss the jurisdiction of each component part and their co-relation and accountability towards respective bodies.

THE PARLIAMENT

The Parliament (National Assembly) is the supreme representative body in the Hungarian People's Republic. According to Article 19, para-1 of the Hungarian constitution "Parliament is the supreme organ of state power and the popular representation of the Hungarian People's Republic".¹

1. Constitution of the Hungarian People's Republic, Art.19, para-1.

It is not only the organ of legislation but at the same time it is vested with the right of directing and controlling the state organization as a whole and within it the government and so also the central administrative organisation. The constitution of the Hungarian People's Republic, in its Articles 19 to 28, has dealt with the provisions regarding the Parliament extensively. Accordingly Parliament has been given all those rights which have been derived from the sovereignty of the people. It is the Parliament which makes a guarantee for the constitutional order of society. The Parliament has a vast power and because of these powers it easily determines the organization, direction and conditions of the government.

Being the supreme administrative and representative body the national assembly uses unlimited authority according to the constitution of the country. The constitution transfers the most important state decisions to the sphere of authority of the National Assembly. To study the functions of the Parliament, it is necessary to study the constitutional provisions more precisely. According to Article 19, para-3 of the constitution, "Parliament -

- a. Enacts the constitution of the Hungarian People's Republic;
- b. Enacts laws;

- c. Draws up the national economic plan;
- d. Prepares the state budget and approves its enforcement;
- e. Discusses and approves the programme of the government;
- f. Ratifies treaties on behalf of the Hungarian People's Republic;
- g. Decides on the declaration of a state of war and on the question of the conclusion of peace;
- h. Elects the Presidential Council of the Hungarian People's Republic;
- i. Elects the Council of Ministers of the Hungarian People's Republic;
- j. Creates ministries;
- k. Elects the President of the Supreme Court of the Hungarian People's Republic and the Chief Prosecutor of the Hungarian People's Republic;
- l. Supervises the observance of the constitution, annuls measures of state organs conflicting with the constitution or violating the interests of the society".²

2. Ibid., Article-19, para-3.

An over all study of the functions of the National Assembly shows that it performs four types of major functions. These functions may be categorised as political, legislative, controlling and organizational functions.

The concrete form of the discharge of the political functions of the National Assembly is the debate on political programmes and development plans affecting state activities as a whole or certain branches of it, and on the ground of this debate the approval of resolutions binding the state organ responsible for their enforcement, is very important. The political functions of the Parliament can be seen in the discussion of the government programme on the bill of the National Economic Plan and the annual budget appropriation, certain cases on the long term development plans of particular administrative or economic branches and the passing of resolutions on these subjects. In the same way the political functions include the issue of resolutions of Parliament in international matters, or in general the functions of Parliament concerning international relations.

According to Article-25, para-2 of the constitution of the Hungarian People's Republic "The right of legislation is vested in Parliament"². The process of legislation may

2. Ibid., Article-25, para-2.

be initiated by the Presidential Council of the Hungarian People's Republic, the Council of Ministers, every Parliamentary Committee, and every member of the Parliament. The constitution in Article-19 clearly mentioned that the Parliament can enact laws and also it has right to enact the constitution of the Hungarian People's Republic. By having earlier provisions unchanged the constitution (Thoroughly amended in 1972) establishes many new subjects of legislation. Accordingly, the Parliament has the right of legislation of exclusive state ownership, the scope assigned to exclusive state activities, the autonomous responsibility of the state enterprises, the approval of the enforcement of Budget Act, the legal status of the members of the Council of Ministers and secretaries of state and the manner of calling them to account, the rules relating to the judiciary, the rules relating to the office of the Prosecutor. The fundamental rights and duties and also rules related to the election of the members of the Parliament and recall of the members.

The amended constitution of the Hungarian People's Republic has given a very wide controlling functions to the

Parliament. According to the constitution "The Parliament guarantees the constitutional order of society", and "Supervises the observance of the constitution". According to the recent constitutional development the Parliament elects a constitutional council which controls the constitutionality of legal statutes and legal guidelines. This recent development has also widened the controlling functions of the Parliament.

So far as the organisational functions are concerned, they include the functions of Parliament regarding the formation of its internal organization. For example, Council of Ministers and the Presidential Council, etc., are elected by the Parliament. Parliament elects a speaker, deputy speakers and recorders from among its members. It also elects a constitutional council to control the constitutionality of law - decrees and legal guidelines. In this function many other activities can be included. For example, election and recall of the principal state organs etc. also can be included in this category.

Members of the Parliament are elected by the voters for a term of five years.

4. Ibid., Article-19, para-2.

5. Ibid., Article-19, para-3.

The members of the Parliament are under the obligation to render account on their activities to their constituents regularly. Without the consent of the Parliament a member of Parliament must not be arrested or prosecuted except if caught in the act. Members of the Parliament may put questions to the Presidential Council, to the council of Ministers or to any of its members, to the secretaries of state, to the President of supreme court and to the Chief Prosecutor in any matters coming under their competence.

The Parliament meets at least twice annually. Apart from this it can hold its meeting by the resolution of the Presidential Council or at the written demand of one-third of its members. The sittings of the Parliament are usually public. In an extraordinary situation the Parliament may decide on holding a session in camera.

The Parliament is elected for a term of five years. On the expiry of this term its mandate terminates and a new election has to be called. The Parliament may declare its dissolution even before the expiry of its mandate. In the event of war or other emergency,

the Parliament may declare the extension of its mandate for a definite term. According to Article 28, para 3 of the Hungarian constitution "Parliament dissolved may in the event of war or other emergency be reconvened by the Presidential Council of the Hungarian People's Republic. The Parliament so convened decides on the extension of its mandate".⁶

After the expiry of the mandate of the Parliament a new Parliament is elected within three months and that Parliament is convened by the Presidential Council within a month following the election.

THE PRESIDENTIAL COUNCIL

The Presidential Council is formed of a President, two Vice-Presidents, a Secretary and 17 members, all elected at the first session of the National Assembly from among its members. Only members of the National

6. Ibid., Article-28, para-3.

Assembly can be elected on the Presidential Council. There is but one very important point to be noted that according to the constitution "The President of the Council of Ministers, its Vice-president, its members and the secretaries of the state, as the leading officers of the executive organs of the state may not be elected as members of the Presidential Council".⁷

The Presidential Council is responsible to Parliament and is bound to render account of its activities to Parliament. The Parliament has the right to recall the Presidential Council or any of its members.

The mandate of the Presidential Council is valid for the whole duration of the mandate of the Parliament. Its mandate ceases only with the election of a new Presidential Council by the newly elected and convened Parliament. When the Parliament extends the term of its own mandate, the Presidential Council continues in its office.

The constitution contains the fundamental procedural

7. Ibid., Article-29, para-2.

rule that for a quorum of the Presidential Council presence of nine members besides the President and the Secretary is necessary. Further both the President and Secretary have to sign all resolution or acts passed by the Presidential Council. In case if circumstances prevent the President of the Presidential Council from fulfilling any of his duty, in place is taken by the Vice-president. If the Secretary is so prevented by circumstances his place is taken by an appointed member of the Presidential Council. The Presidential Council has right to lay down its rules of procedure. It does it on its own basis.

The Presidential Council is vested with the substitutive authority of the Parliament when Parliament is not sitting. According to the constitution Presidential Council discharges functions as collective head of the state, it acts as a substitute for Parliament during its sessional interims. Hence it is the general deputy of the Parliament during the interval between two sessions. It has power to constitutional supervision. It can annul or modify any rule or measure contrary to the constitution. However, the principal limitation to this substitutive authority is that the Presidential Council cannot amend the constitution. There are many other limitations imposed

on the substitutive powers of the Presidential Council, which, however, do not affect the general character of its substitutive authority.

The Presidential Council own scope of authority is very broad. Its authority includes its jurisdiction regarding Parliament, national importance, international relations, right of nomination, appointment and commissioning award of orders and distinctions, regarding local agencies of the sovereign powers, supervision over state administration, right of pardon, special acts in the Parliament.

First of all, the Presidential Council of the Hungarian People's Republic sets the date of Parliamentary elections, convenes the Parliament at least twice in a year and it initiates legislation process in the Parliament.

In matters of national importance the Presidential Council may call a plebiscite. A plebiscite may be called in any affair of state where taking of national position is required. The decision over plebiscite binds the

Parliament and Presidential Council. No act can be passed, before another plebiscite annuls the decision of the earlier.

In international relations the Presidential Council signs and rectifies all international agreements on behalf of the Hungarian People's Republic. It may conduct negotiations aimed at the entering into agreement or conventions and sign to them. At the same time the Presidential Council may simply ratify the agreements of conventions duly signed.

The Presidential Council accredits the ambassadors or the Hungarian People's Republic and receives foreign diplomatic representatives.

The Presidential Council appoints the principal dignitaries of the civil service and the high ranking officials of the armed forces. According to Article 30, para-4, the Presidential Council "appoints the secretaries of state and state officials holding commissions of importance as defined by act of Parliament, as well as the high ranking officers of the armed forces".⁸

8. Ibid., Article-30.

The Presidential Council of the Hungarian People's Republic institutes and awards the order and titles of the Hungarian People's Republic. It also authorizes the wearing of foreign order and titles. Here it should be noticed that a Hungarian citizen can not accept a foreign order or distinction without the approval of the Presidential Council.

The Presidential Council exercises the power of pardon associated with criminal judicature. By this power the grant of individual pardon should be understood in as much as a general pardon or amnesty can be granted only by Parliament. However, between two sessions of the Parliament, the Presidium may also decree a general amnesty.

A most important authority of the Presidential Council is the exercise of constitutional supervision over the councils. According to Article 30, para-3 of the Hungarian constitution "The Presidential Council exercises constitutional supervision over the councils:

- a) It sets the date of the elections for the councils;
- b) Ensure the protection of rights of the councils;

c) Dissolve council activities which infringe the constitution or gravely imperil the interests of the people".⁹

As it is very clear from the above Article of Hungarian constitution that within this sphere the Presidential Council not only sets the date for election of council but at the same time it can dissolve any council whose operation conflicts with the provisions of the constitution. Further, it takes care of the safeguard of the rights of the councils.

Finally Article 31, para-I of the constitution of the Hungarian People's Republic is another one of the most important provisions regarding the competence of the Presidential Council. Accordingly, "In the event of war or danger gravely menacing the safety of the state, the Presidential Council may institute a council of national defence vested with extraordinary powers".¹⁰ According to

9. Ibid., Article-30, para-3.

10. Ibid., Article-31, para-I.

another provision of the constitution the presidential council can proclaim a state of grave danger menacing the safety of state, as well as the cessation of such danger. These very powerful rights make the Presidential Council an extraordinary authority of the Parliament.

Having analysed the significance of the Presidential Council it can be stated that the Presidential Council exercises the powers of the National Assembly between the sessions of the latter. The rules of law framed by the Presidential Council are law decrees. These have to be presented to Parliament in the next session.

THE COUNCIL OF MINISTERS

Chapter-III of the Hungarian constitution deals with the provisions connected with the council of Ministers. First of all it deals with the composition of the council of Ministers. In conformity with the constitution the members of the Council of Ministers are its President, the Vice-president, the Minister of State, the ministers heading the ministries, the President of the national Planning Committee and the President of the Central People's Control Committee.

The Presidential Council proposes the members of

the council of Ministers for election to the Parliament, and it is also on the initiative of the Presidential Council that the members of the council are relieved of office.

The members of the Council of Ministers take part in and may address the sittings of Parliament. The Council of Ministers is responsible to parliament for its activities. It is bound to render regular account of its work of Parliament. According to Article 39, para-2 of the Hungarian constitution:-

"The members of the council of Ministers and the Secretaries of the state are responsible to the Council of Ministers and to Parliament, they are bound to render account of their activities to the Council of Ministers and to Parliament. Special acts of Parliament regulate their legal status and the manner of calling them to account".¹¹

"The mandate or office of the Council of Ministers does not cease simultaneously with the expiry of the Parliament. However, the newly elected Parliament has to decide on the extension of the mandate of the Council of Ministers. In practice, the Council of Ministers tenders its resignation to the new Parliament, states the policy of the government, and thereafter the Parliament decides on whether the council should be re-elected in its original composition, or wholly or partially a new council should be elected".¹²

11. Ibid., Article-39, para-2.

12. Dr. Lajos Szamel, System of government in Hungarian People's Republic (Budapest, 1966) p.54.

The Council of Ministers is the supreme executive organ, whose primordial duty is to provide for the enforcement of acts of the supreme organ of the sovereign power. The council of Ministers performs these functions through both its government activities and the supreme guidance of the state administration.

Functions of the Council of Ministers:-

The Council of Ministers draws up the National economic plan for discussion and approval by the Parliament. The Council of Ministers is called to serve the Parliament in the sense that it prepares resolutions of a nation wide importance for the debate in Parliament. In fact the Council of Ministers in the continuous flow of its operations, has direct access to all informations and data which help to make an appraisal of the problems in which the Parliament will be required to adopt a stand.

The Judiciary and Prosecutor's office are separate and self-administered organ of state power but through one of the principal constitutive elements of its government activities, viz., legislation, the Council of Ministers

exercised an influence on both the Judiciary and the Prosecutor's office in as much as rules of law promulgated by the Council of Minister have to be applied also by these organs. According to the constitution "The Council of Ministers ensures the enforcement of law and law decrees".¹³ As regard to the Councils, the Council of Ministers supervises their activities for the observance of legality.

In conformity with the constitution "The Council of Ministers direct the branches of Public Administration coming within their scope of functioning and direct the organs subordinate to them in conformity with the rules of law and resolution of the Council of Ministers."¹⁴ Here it can be observed that in conformity with the constitution the Council of Ministers may take action directly or through a government department in any matter with in the scope of state administration.

Another important function of Council of Ministers is that "It annuls or amends any of the laws, resolutions, or measures enacted by the subordinate organs which infringe the law or violate public interest".¹⁵ This privilege has

13. n.1, Article-35, para-1

14. Ibid., Article-37, para-II

15. Ibid., Article-35, para-III.

been vested in the Council of Ministers to enable it to discharge its supervisory functions as part of the guiding authority".¹⁶ In fact, the Council of Ministers may declare void or amend administrative acts in order to promote the interests of the working people and also public interests, even when no protest has been raised against the act on grounds of an infringement of legality.

"The Council of Ministers directs the work of the ministries and of the other directly subordinate organs, co-ordinates their activities".¹⁷ It can draw any branch of the state administration into its sphere of supervision and create special agencies for the purpose. By virtue of this power the council of Ministers may dissolve administrative agencies, modify their position and reshuffle their functions and competence.

Another very important function of Council of Ministers is to direct the councils, supervise their activities for the observance of legality. The Council of Ministers annuls the decrees and resolutions of the councils which violate the interests of the society. Apart from above mentioned very important functions there are many other functions which are exercised by the Council of Ministers.

16. Szamel, n.12, p.53

17. n.1, Article-35, para-I.

The Council of Ministers safeguards and guarantees the political and social order of the state and the rights of the citizens. It marks out the main lines of scientific and cultural development, provides the necessary personal and the material conditions. It establishes the system of the social and health service, provides the necessary funds. It performs all functions which rules of law refer to its competence.

Within its own sphere of functions the Council of Ministers issues decrees and passes resolutions. These are signed by the President of the Council of Ministers. However, decrees and resolution of the Council of Ministers may not be contrary to the rules of law and law decrees.

Meetings of the Council's are the principal form of functions of Council of Ministers. Regulations of the Council and normative decisions can be passed only by the meetings of the council. In general, the Council of Ministers meets at fortnightly intervals. It discusses reports and proposals in these meetings, and take decisions on proposed discussion. The reports and proposals are in general drafted by the ministers responsible for the

subject matter. The reports are forwarded by the competent ministers to the secretariat of the council at least ten days before the date fixed for the meeting of the Council. The secretariat passes on the report to the members of the council so as to make allowance for an adequate interval for a study of the subject matter. The meeting of the council are attended by the Prosecutor-general, and the President of the Central Committee of People's Control in an advisory capacity. The Council of Ministers passes resolutions by a majority of votes.

THE COUNCILS

The constitution of 1949 set before itself the task of creating a new type of socialist local administration. For this purpose many council acts were issued in 1950, 1954 and 1971 respectively. The constitution provides for the appropriate recognition of more or less divergent functions of the municipalities; communal and county councils in their further development. Hence it is necessary to understand the constitutional provisions regarding the structure, function and importance of councils.

Chapter IV, Articles 41-44 of the Hungarian constitution

deals with the provisions regarding councils. Article 41 para-I declares that "The territory of the Hungarian People's Republic is divided into the capital, counties, town and communities".¹⁸ Further Article 41, para II of the constitution lays down that "The capital and the town may be divided into districts".¹⁹ According to the constitution, councils are active in the capital, the counties, the districts of the capitals, the towns and communities, it is also mentioned in the constitution that several communities may form a council jointly. The members of the councils are elected for a period of five years. The constitution itself draws a line between municipal and communal organs discharging also self-governing functions and the county organs acting in the first place as intermediaries between the central and local organs.

The communal and municipal councils are elected by the population by direct vote, whereas the members of the county councils are elected by the municipal and communal councils.

18. Ibid., Article-41, para-I

19. Ibid., Article-41, para-II

In discharging their functions councils are bound to cooperate with the population. It is the participation of the people which determines the functioning of the councils. Here role of the various social organisation becomes quite significant as they cooperate with the councils in their functioning. According to the constitution "The members of councils are bound regularly to render account of the work of the council and their own activities to their constituents".²⁰

The Council Act emphasizes the significance of councils as representative, self-governing and administrative organs of the socialist state which realize the people's power functioning on the basis of democratic centralism.

This definition clearly shown that the councils are organs entrusted with authority and they occupy a specific position in the state organisation by having a representative, self-governing and administrative quality.

According to Article 43 "The councils represent the interest of the population, realize the self-government

20. Ibid., Article-42, para-4.

of the working people within the given sphere of operations".²¹

The elected body of the council is above the other local-regional state organs through its representative role. Because of this representative role it can be stated that councils reflect the quality of socialist democracy. It ensures the participation of masses in the public administration through the elected body of councils. It is in close connection with the problem of the management of society and in addition it makes administration a rational unit and reflects an example of representative democracy at all levels of councils. The fact that the inhabitants elect the members of the local councils directly, that the elected council representatives must report back to the electorate and they are recallable from their post show that representative and direct democracy are interrelated and complementary to one another. Such form of direct democracy as village and town meetings, the consultations organised for the citizens by the patriotic popular front increase the efficiency of representative democracy.

21. Ibid., Article-43,

The executive committee and the specialised organs of local administration are subordinated to and directly guided by the elected bodies of the councils. Therefore, the council with their representative and their self-governing roles, have a wide scope of authority including important personal issues, organizational matters, financial administration as well as local and regional development. They may also oblige the official organs, to render account on their work and they may determine tasks for them. Councils have power to make legal rules binding on all citizens and action can be taken against those who infringe upon those regulations. The councils ensure the realization of central, state and local objectives of the independent discharge of functions assigned to their competence, of the enforcement of rules of law. According to the direction of the state national economic plan and the state budget, they draw up their plans and budgets direct and supervise the execution of the plans and manage their material resources independently.

The council supervises local agricultural and industrial production, controls local trade and traffic, animal husbandry, promotes the expansion of the agricultural cooperatives. The council is in charge of the proper management and exploitation of national property under its

control, further of the supervision of the activities of its subordinate enterprises and other agencies. It attends social and cultural problems and of public health.

Apart from drawing up the local plan and the local estimates, the councils draw up a the development plan of the rural or urban community.

In the course of discharging its functions the council supervises the operations of economic and other agencies not subordinate to the council and extends its assistance to them. It cooperates in the strengthening of the political and social system, in the development and reinforcement of the defence of the country safeguards socialist with latest legislation and educates it to the observance of law. It safeguards the civic rights, discusses problems of national significance and puts forward appropriate proposals to superior organs of the sovereign powers.

To this end the council have been vested with authority in particular with their executive committees, order those committees to report back and recall them to organise specialised agencies, order those agencies to report back, and to settle personal problems arising in connection with the function of the members of the

council in this capacity.

THE JUDICIARY AND SOCIALIST LEGALITY

Chapter V of the constitution of the Hungarian People's Republic deals with the provisions regarding administration and functions of the Judiciary. In conformity with the constitution the Judiciary consists of the supreme court of the Hungarian People's Republic, the court of the capital, the county courts, as well as the local courts. Under the constitution the legislation may decree the creation of special courts for a specified group of cases. In practice the military tribunals function as the courts of specified group of cases. It may be noticed that the judicial organization almost entirely is based on the ordinary (general) courts of law which have jurisdiction in all civil or criminal cases except military matters where the military tribunals have jurisdiction. This system of the structural build up of the judiciary is one of the indirect, yet extremely important guarantees of civic equality.

The local courts act in both criminal and civil cases always as courts of first instance. The county courts adjudge as courts of second instance applications for legal remedy lodged against the judgement of the local

courts, except in cases referred to by the law to their jurisdiction, where it administer justice as courts of first instance. The court of the capital can be placed on the court of third instance. Finally the supreme court determines in appellate procedure, appeals from decisions of the capital court and the military tribunals. In exceptional cases the supreme court proceeds as court of first instance in cases referred to its jurisdiction.

According to Article 46 of the Hungarian constitution "courts administer justice in divisions formed of professional judges and lay assessors. Legislation may authorise exceptions to this rule".²³ Within the court the legal position of the lay assessors is identical with that of the professional judge. The professional judge has to encourage the lay assessors to cooperate in the deliberations of the court. To this end he supplies the necessary information. The lay assessors have access to documentary evidence and the court documents, they are invited to take part in preparing the judgement. The cooperation of the lay assessor in the administration of justice contributes also to the educational effects of the judgements on the population and so to the advancement of socialist consciousness of law. It is an essential form of the manifestation of socialist

23. Ibid., Article-46.

democra-tism in Hungary, because under this system the broad masses are made a factor^{of} judicial authority.

Article 48 of the constitution lays down the principle of the election of the members of judiciary. Accordingly, the judicial offices in the Hungarian People's Republic are filled by election. The President of the Supreme Court is elected at the first sitting of the Parliament for a term lasting till the first sitting of the next Parliament. The Professional judges are elected by the Presidential Council of the Hungarian People's Republic in the manner determined by a special act of Parliament.

Article 48 also deals with the provision of recall of elected judges. Accordingly, elected judges may be recalled for reasons determined by Act of Parliament. The right to recall a judge lies with the agency electing him or appointing him. The right to recall is an institution of the democratic administration of justice which should be appraised together with the principle of election.

Article 48, para second of the Hungarian constitution indicates that the president of the Supreme Court is bound to render account of the activity of the supreme court to Parliament. However, the principle of the independence of

judiciary involves a prohibition to instruct the judge and at the same time a prohibition imposed on any forum to influence the judge, directly or indirectly in the formulation of the judgement. Influencing the judges in any form is under the Hungarian criminal code an indicatable offence.

"According to a definition current in the literature on law, the function of the courts of law is the administration of justice. In the opinion of socialist jurisprudence in Hungary this definition is not quite accurate. The definition will not pass an Analysis partly because rightousness or equitableness is a claim laid not exclusively to judicial activity but also to legislation and the application of law outside courts, partly because the sphere of judicial functions cannot be confined exclusively to the administration of justice". 24

As stated by the constitution of the Hungarian People's Republic "The courts of the Hungarian People's Republic protect and guarantee the political, economic and social order of the state, the rights and lawful interests of the citizens, and inflict punishment on the perpetrators of criminal acts".²⁵ The courts in Hungary - protect and

24. Szamel, "n. 12, p.142.

25. n.1, Article-50, para-1.

safeguard the government, economic and social order, the institutions of the people's democracy and social property. It also educates the citizens to a devotion to the cause of their country and socialism.

Socialist legality is one of the fundamental laws of socialist countries. It is the governing principle of functions of the socialist state and an indispensable tool of the exercise of the sovereign power of the working people.

"The principle of socialist legality implies the strict and unswerving observance of laws and other juridical measures based upon them, by all government bodies, mass organisations and citizens".²⁶

The essence of socialist legality may be summed up in that it implies the observance of the rules of conduct established by the socialist state for the benefit of the workers by both the people and the agencies of the state creating and enforcing the law. This thesis also implies that the normative and concrete measures of the organs of the government must rely on the constitution and the Acts or statutes and also that the citizens are bound to obey these statutory and legal measures.

26. A. KH. Makhnenko, "The State law of the Socialist countries" (Moscow: Progress, 1976), p.264.

Hungarian constitution, being a socialist constitution declares in its closing provisions that "The constitutions and the constitutional rules of law are equally binding on all organs of the sovereign power and every citizen of the state".²⁷ This article shows that the fundamental principle of socialist legality has received its statutory formulation in closing provisions of the constitution of the Hungarian People's Republic.

From this understanding of the socialist legality it is clear that legality does not only mean a subjection to rules or law, moreover, it is within the essence of legality that not any and all rules of law command loyalty or obedience, i.e. the fundamental principle of socialist legality has to permit the legislative activities of the organs of the sovereign powers as organs of the sovereign powers as well as their law applying activities.

"The law and order of the activities of the organs of the sovereign powers may be defined as the realization of the principle of socialist legality in the sphere of legislation and the application of law".²⁸

27. n.1, Article-77, para-2.

28. Szamel - n.12, p.197.

On the basis of above description it is evident that socialist legality is an essential component of socialist democracy. A violation of socialist law is a violation of the will and interests of the people as expressed in those laws and hence a violation of socialist democracy.

On the basis of the above interpretation we may conclude that the Parliament is the supreme body of the state power and the popular representative body of the Hungarian People's Republic. The competence of the Parliament is very broad. It enacts constitutional laws, ratifies, treaties with foreign countries, draws up a national economic plan, prepares the state budget and decides on the declaration of a state of war. Hence, the constitution of Hungary gives all those powers to Parliament which is derived from the sovereignty of the people.

As far as the Presidential Council is concerned, it has also very important place in the constitution. Presidential Council discharges functions as collective head of the state, it acts as a substitute for the Parliament during its sessional interims. It has power of constitutional supervision. It can annul or modify

any rule or measure contrary to the constitution. It has also right to the constitutional supervision over the council.

The Council of Ministers is another significant institution of the country. It is the supreme organ of state administration. It consists of a President, the Vice-president, the ministers of the state, ministers heading the ministries, President of the national planning commission and the President of the Central People's control Committee. The Council of Ministers has many important functions. First, it safeguards the social order of the state, enforcement of the laws and law-decrees. It performs all functions which rule of law refers to its competence.

The constitution provides for the appropriate recognition of more or less divergent functions of the municipalities, communal and county councils in their further development. The communal and municipal councils are elected by the population by direct vote, whereas the members of the counties are elected by the municipal and the communal councils. This is said to safeguard the interest of the communal and the municipal councils in the operation of the county and district administration.

Justice in Hungary is administered by the Supreme court and county and district courts. The highest tribunal

supervises the judicial activities of all of the lower ones. The National Assembly elects the Supreme Court Chief Justice from among the candidates, proposed by the presidential council. The court protects and guarantees the political, economic and social order of the state, the rights, lawful interests of the citizens and inflicts punishment on the perpetration of criminal acts.

CHAPTER- FOUR

FUNDAMENTAL RIGHTS AND DUTIES
OF CITIZENS

Fundamental rights and duties constitute a very important part of the constitution in general. This has a greater importance in socialist countries which provide to the people many of those rights not available in non-socialist constitutions. For example, right to work and right to rest is such a provision which identify the specific character of a socialist constitution. Another very important aspect of socialist constitution, is that fundamental rights are in separately linked with fundamental duties.

Keeping the above facts into account it is necessary to study as to how the Hungarian constitution deals with different aspect of this subject. Therefore, in this chapter we will discuss the provisions of fundamental rights and duties instituted in the Hungarian constitution. We will discuss the development of the provisions of the fundamental rights since 1949 and their roots in the social system. The following basic questions are sought to be answered herein:

What type of social relations are emerging and how the interests of the various strata of the society

is fulfilled by the fundamental rights and what is the guarantee of using those rights which are given by the constitution.

Provisions of the Fundamental Rights and Duties in the constitution of the Hungarian People's Republic is based on the principle of the unity of the citizens' rights and duties in accordance with the requirements of the development of the specific stage of socialist society in Hungary. The regulation of the whole system of fundamental rights and their guarantees has been affected by the fact that the exploiting classes have ceased to exist. This has opened the path to the regulation of each of the fundamental rights of a general nature as such. This is unlike the earlier regulation which had formulated some of the rights of the working people only. This shows that as the stage of a socialist society develops, the special provisions of rights and duties for a particular class changes its content and character and turns towards a general character of those rights. That is why in the process of socialist development the majority of the rights and duties became general in practice in the Hungarian constitution. The thorough

amendments of the Hungarian constitution in 1972 gave the expression of the changing nature of class relations and their homogenous adjustment. Instead of pleading the interests of the working people the present constitution pleads the interests of citizens as a whole. As a Hungarian author has rightly said about the amendment of 1972:

"The proposed amendment proceeding from the fact that there is no longer the class subsisting on an income without labour, and the differentiation between the constitution adopted in 1949 the expression "working people" still had a well defined significance, because in our society the non-workers, the capitalists were still present, even if in diminishing numbers and significance. Today it is more true and correct to use the expression citizen, all the more so as this concept also include those who have retired after their well performed work, as well as young people, studying without an independent income as yet but already possessing rights as citizens, whose numbers are gratifyingly increating every year".¹

1. The People's Front Movement in Hungary,
Gyula Kallia (Carvina Kiado, Budapest 1979), pp.220-21.

The use of the expression "citizen" can be justified on the ground that the human attitude to socialist society finds expression through this term which is increasingly manifested with regard to mothers rearing their children, housewives, the sick, the aged and the disabled enjoying the right of citizenship. At the same time equal rights and ensurance of employments for women by the constitution expresses the true implication of using the term "citizen".

Article 54 para-I of the constitution declares that "The Hungarian People's Republic respects human rights".² This important right was generally refrained to be used by the socialist constitutions but the thorough amendment of Hungarian constitution in 1972 mentioned this right in the top of the provisions dealing with fundamental rights and duties. According to the idea of the makers of the constitution the concept of the human rights is well-defined group of fundamental rights which sets up definite system of postulates as the basis

2. Constitution of the Hungarian People's Republic
Article-54, para-I.

of legal system of particular states, without, however, giving the term of human rights a hue of natural law. Accordingly, this new thesis of the constitution is but the declaration of the voluntary undertaking of the Hungarian People's Republic to respect and recognize this standard of the community of nations.

Rights and duties in the Hungarian People's Republic are inter-related. According to the constitution "In the Hungarian People's Republic, civic rights have to be exercised in harmony with the interest of the socialist society; the exercise of rights is inseparable from the performance of civic duties"³. The harmonious co-ordination of the rights and duties of the citizen with the interests of the socialist society and state is eloquently formulated in almost all socialist constitution. In a socialist society where the exploitation of man by man is eliminated, the development and interests of each of its members correspond to the development and interests of society as a whole. The dialectical relationship between

3. Ibid., Article-54, para-III.

rights and duties are helpful to contribute to alround development of the individual and society both. That is why socialist constitutions in general and Hungarian constitution in particular has not confined itself to setting down only the rights of the citizens but at the same time it also declares duties of every citizen. Further, it can be observed that every socialist constitution not only provides to the people their rights and duties by law but it also attaches decisive importance to providing guarantees for those rights and material guarantees to use them.

According to the constitution "The Hungarian People's Republic guarantees the right of its citizen to work, as well as their remuneration according to the quantity and quality of work performed".⁴ Right to work is the most important right given to the people by the Hungarian constitution. In fact, it is an unique creation of socialist constitution. Because of this right people in socialist countries are free from unemployment and insecurity for future. Having got this right the Hungarian people are

4. Ibid., Article-55, para-I.

assured of stable living standards and a fair wage without any discrimination. The government of Hungarian provide all these rights on the basis of its economic development which could be possible only because of the planned national economy. Having nationalised the key branches of the national economy and systematically building the socialist economy the Hungarian constitution could be in a position to provide this right to its people.

Right to rest is another very important right given by the Hungarian constitution to its people. This right is inseparable with the right to work. This right is guaranteed by the limitation of working hours, provision for holidays, annual paid leave, etc. As Hungarian constitution declares - "The Hungarian People's Republic enforces their right by the statutory establishment of the working day, by guaranteeing paid holidays, by supporting the organization of rest and recreation".⁵

The constitution of the Hungarian People's Republic guarantees the citizens right to protection of their life, corporal integrity and health. This right is enforced by

5. Ibid., Article-56, para-II

the organization of labour safely, health institutions and medical services, by the protection of human environment. Any body in case of sickness is entitled to medical care and assistance.

At the same time every citizen of the Hungarian People's Republic has right to financial support of old age, disease and disability. This right is guaranteed by the social insurance scheme and by a system of social institutions.

Citizens of Hungary have the right to education. The constitution provides material guarantees for the exercise of this right. The right to education is guaranteed by the provision of universal, free and compulsory education. Primary, secondary and higher education is free in Hungary. Primary education is obligatory. Extension courses for adults and financial support for those receiving education is another very important guaranter of education.

Creative activities are protected and guaranteed by every socialist constitution. According to Article 60 of the Hungarian constitution "The Hungarian People's Republic guarantees the freedom of scientific and artistic

creative activity".⁶ Every citizen in Hungary is free to utilize his creative capabilities in scientific and artistic area. It is the duty of state to strengthen their creative capability. This right of constructive activities is regarded as a great contribution to the nation and hence this is ensured by the all-out support and encouragement given to the people engaged in these areas by the provisions of the constitution.

Every citizen of the Hungarian People's Republic have equal position before law according to the constitution. Equal rights are enjoyed by the people and any prejudicial discrimination of the citizen by sex, religious affiliation or nationality is severely punished by law.

The question of nationality has been very important in every socialist country. Their method to solve these problems and to create a harmonious relationship between various nationalities have been one of the most important attractive part of the socialist constitution. Hungarian constitution clearly lays down in its provision that

6. Ibid., Article-60

"The Hungarian People's Republic guarantees the equality of rights to all nationalities living in its territory, the use of their mother tongue, education in their mother tongue, preservation and cultivation of their own culture".⁷

The national questions are resolved in accordance with the principle of complete equality of nations. In every socialist country :

"The genuine equality of all the nations and nationalities of a socialist state is achieved through a wide range of political, economic, social and cultural measures. The law, and state law in particular, plays an important part in the system of these measures".⁸

Keeping this view into account it can be states that Hungary being a socialist country solves the nationality question on the basis of the principle of complete equality of nations and accordingly the Hungarian constitution emphasises the equality of rights to all nationalities.

7. Ibid., Article-61, para-3.

8. A. KH. MOKHNENKO - The State Law of the Socialist Countires, p.206

Women's position in the Hungarian constitution and their rights are clearly mentioned in Article 62 of the constitution. Accordingly "The equality of women is served by the guarantee of opportunity of employment and conditions of employment in the appropriate manner, by paid leave in the event of pregnancy and child birth, increased legal protection of maternity and children, and by a system of institutions for maternity and children's welfare".⁹ In establishing the condition for the genuine equality of women and its real availability government in Hungary initiates many large scale constitution of creches and kinder gartens, catering and other facilities to free women from housework. In Hungary in 1938 there were only 37 creches for 1,000 children and in 1971 there were 1052 for 44749 children.

The liberty of conscience and the freedom of worship to all citizens is guaranteed by the Hungarian constitution. It is clearly mentioned in the constitution that "As a protection of the liberty of conscience the Hungarian People's Republic separates the church from the state".¹⁰ As all other socialist countries the

9. n.2, Article-62, para-2.

10. Ibid., Art.-63, para-2.

Hungarian constitution prohibits all acts limiting or restricting freedom of conscience and religions belief. The separation of church and state is an essential prerequisite for freedom of conscience. Any attempt to take advantage of the freedom of conscience and religions belief contrary to the interests of the people is strictly prohibited and considered as a crime against the society as a whole.

Every citizen of Hungary has been given the right to freedom of speech, the freedom of press, and the freedom of assembly. But according to the constitutional provision these rights are used in a manner which might serve the interests of socialism and the people.

Further, right to association is another very important right given to the people. The right of association is regulated by the act of Parliament.

According to the constitution the working people call into being mass organisations and mass movements for the protection of the order and achievements of socialism for increased participation in socialist construction work and public life, for the expansion of cultural-educational

work for the implementation of the rights and obligations of the people and for the cultivation of international solidarity.

Personal freedom and inviolability of the citizen is granted to the Hungarian people in the same way as in the other socialist countries. Article of the constitution says "The Hungarian People's Republic ensures the personal freedom and inviolability of the citizens, the privacy of correspondence and of the home".¹¹ A citizen may be deprived of his freedom only when the law so provides.

The right of political asylum occupies a special place in the constitution of Hungary. The constitution clearly defines the categories to whom the state may grant a system. Accordingly, it is given to any body who is persecuted for his democratic attitude, for activity displayed in the interest of social progress, liberation of peoples, and the protection of peace.

Every citizen in Hungary has the right to take part in the management of the public affairs. They have right to bring forward proposal of public interests

11. Ibid., Article-66

to political and social organisations.



FUNDAMENTAL DUTIES

In a socialist state the citizens' rights are inseparable from their duties. The unbreakable link between basic rights and duties arises from the natural co-ordination of the interests of the socialist state and the personal interests of the individual workers, which is the conscious creation of socialism because of non-antagonistic interest of various strata of the society.

"The citizen's precise and conscientious fulfilment of his duties is an essential prerequisite for the strengthening of the socialist state and for success in the building of socialism and therefore for the improvement of the material and cultural well-being of the working people and the strengthening of the material and legal guarantees of the citizen's rights".¹²

Because of this reason every citizen of a socialist country has to carry out his duties voluntarily. On

12. MABKHENKO, n.8, p.202.

the basis of duties fulfilled by the population, socialist countries could create an indestructible stability in their system. It is the duty of the citizen to observe the laws of their countries in order to strengthen the legal guarantees for the rights of citizens.

It should be mentioned that the constitution of a socialist country while laying down the basic duties of the citizen takes this fact into account that laws and other normative act cannot embrace all aspects of life, and that in addition to the norms of law there are also norms of morality which regulate people's behaviour. That is why the citizens of a socialist country are required to respect the norms of socialist morality.

According to the Hungarian constitution it is the duty of the citizen to protect the people, to consolidate social ownership, to increase the economic strength of the Hungarian People's Republic, to enrich their education, to protect the natural and cultural treasures of the country, to consolidate the order of society.

The defence of the country is one of the most important duties of every citizen of the Hungarian People's

Republic . Defence of the country is considered as a matter of honour in Hungary. Military service is the honorary duty of the citizen. The citizen renders military service on the basis of the universal obligation to take part in the national defence.

The law severely punishes treason to the cause of the country and of the people, the breaking of the military oath, desertion to the enemy, espionage, any damage of the military power of the state.

Proceeding from the foregoing discussion certain important conclusion can be drawn. Accordingly, it may be observed that constitution of the Hungarian People's Republic raises the principle of the unity of the citizens' rights and duties to a higher constitutional level in accordance with the requirements of the social development. According to the constitutional provision it is clear that every citizen in Hungary exercises his rights in harmony with the interest of society and common masses. It is because of this reason that the exercise of the rights of the people is inseparable from the fulfilment of civic duties.

Like other socialist constitutions the Hungarian

constitution also provides all those rights to the people which are very important in order to develop the personality of the people. Right to work and rest is one of the most significant rights which reflects the socialist character of the constitution. At the same time education in Hungary is free and compulsory for all. The state protects matrimony, the family and all personal freedom and inviolability of citizens. Human rights are protected and guaranteed by the constitution. All these and also many other rights are clearly given to the people by the Hungarian constitution. Their rights are used by the citizens according to the social interests and are strongly linked with their civic duties. The constitution makes it clear that every citizen has to work for the completion of the building of socialism to the best of his knowledge and abilities.

CHAPTER - FIVE

CONCLUSION

This study begins with a discussion of the theoretical exposition of the idea of constitutionalism. In the course of this discussion two different and sharply contrasting approaches - liberal and Marxist to constitutionalism was analysed as a theoretical background to study of the Hungarian constitution.

While discussing the liberal view of constitutionalism we observed that liberal tradition, which initiated the early constitutionalism, was originally designed to serve the interest of a particular class although it pretended to invoke the "rights of man" in general. Locke's famous list of natural rights including the right to life, right to liberty and right to property can be placed as the basis of liberal constitutionalism which ultimately regarded property as a symbol of political wisdom. This thinking ultimately insisted that those who had acquired property through the new avenues of commerce and industry should also be given equal political rights. According to this view, in a free society any man could acquire property by dint of his talents and enterprising spirit which would entitle him to political rights. Only the social conditions of feudalism had been responsible for artificial barriers in the progress of mankind because they had created a

rigid and unalterable pattern of ownership of landed property which prevented the talented and enterprising men from achieving fuller self-development. According to his view the new field of commerce and industry had removed those barriers and how men could find ample opportunities of self development if they were given complete freedom to pursue their self appointed goals. Acquisition of private property was recognized as a noble goal which entitled men to political rights. This implied exclusion of lower classes or havenots from equal political rights.

In this way it is clear that with the emergence of industrial revolution a new production relation prevailed in Europe. A new merchant class came into being. This new class on the basis of its growing economic power, advanced its claim for a share in political power also. The early constitutionalism of the seventeenth and eighteenth centuries largely sought to win the same right and privileges for the new industrial, commercial class which were enjoyed by the landed aristocracy in the feudal age.

In the economic sphere, the early liberation upheld

the principle of laissez faire, and envisaged the pattern of free market society. Hence the liberal constitutionalism was strongly tilted in favour of capitalism.

In the later phase of liberal constitutionalism the battle has largely centred around proper limitations of the freedom of contract and right to property. There two things have created unfavourable condition to the large majority of the population. The twentieth century has largely witnessed momentous changes in this direction and therefore the liberal constitutional theory and practice needs a solution for proper safeguards for the protection of the vast majority of which is under privileged.

Marxist view of constitutionalism in contrast to the liberal view regards constitution as a tool in the hands of the dictatorship of the proletariat to establish a classless society. The constitution is in this view, not an end in itself as it is in the case of liberal constitutionalism. It is simply a programme of action to implement the ideology of scientific socialism. The aim of this constitution is to legitimise the destruction of the enemies of socialism and to ensure justice for all. The theoretical basis of this thinking is the

principle of Marxism - Leninism and its theory of state.

According to the Marxist - Leninist theory the liberal constitutionalism is nothing but a device for legitimization of an exploitative capitalist system. It is an instrument to serve the interests of capitalist class.

The socialist constitution is the fundamental law of a state which emerges as a result of the revolutionary seizure of power by the proletariat from the bourgeoisie. This is a new state with entirely different character, purpose, role and instrumentalities of governance. In such a state obviously, the constitution has to symbolize a new set of ideology and philosophy which may enable it to attain its aims and objectives. The constitution in this state expresses the aspirations of the majority of erstwhile exploited people who now constitute the ruling class. Hence, socialist constitutionalism in this sense reflects a historical departure from liberal constitutionalism.

The primary objective of the socialist constitution is to establish the basic rights, freedoms and duties of the citizens and to define the manner of their exercise. It proclaims the main objectives and aims of state

organisations. The socialist constitution clearly mentions the fundamental rights and duties of the citizens and regulations regarding the relations between the state and individuals. It gives the people their right to work and implement the policy of "from each according to his ability and to each according to his work.

In the foregoing chapters the constitution of the Hungarian People's Republic has been analysed with this perspective in mind. Apart from explaining and analysing the basic contents of the constitution an effort has been made to relate constitutional provisions with the main trends of social development. In this sense, it is also a study of constitutional development in Hungary.

In chapters II and III we have discussed the constitutional development mainly in the period 1949-72 and also about the present state structure & state institutions of the Hungarian People's Republic. On the basis of this discussion it may be observed that during the period 1949-72 the Hungarian state underwent considerable development. In a span of more than two decades Hungarian People's Republic assumed the fuller dimensions

of a socialist state. The state power in Hungary is exercised by the working class, allied with the peasantry organised into cooperatives, together with the intelligentsia and the rest of the working strata of society. Hungary continues to fulfil the function of the dictatorship of the proletariat. The considerable change consists of the fact that the social base of the working class power has widened to a large degree. Today the working class already regards the entire people as its loyal ally in exercising power and in the building of socialism.

The Parliament in Hungary is not only an organ of state power, but also a representing organ elected by the people and an expression of popular sovereignty. It is, therefore, more correct to describe Parliament as the supreme organ of state power and popular representation. Being a supreme organ of state power it guarantees the constitutional order of society, supervises the observance of the constitution, and annuls measures of state organs conflicting with the constitution or violating the interests of society.

The sections on the spheres of authority of the Presidential Council, the Council of Ministers and the

Council of the Hungarian People's Republic are conceived in a similar spirit. The Presidential Council appoints the professional judges. In the event of war or a grave threat to the security of the state, a council of national defence can be brought into existence vested with extraordinary power and it is the Presidential Council which determines and proclaims a danger gravely menacing the security of the state, or the cessation of such a danger.

In the 1949 constitution it was mentioned in the constitution that the Council of Ministers is solely the supreme organ of state administration. But further it was felt that the role of the government is much more significant than this, hence council of ministers was regarded as also the supreme operative body in the management of the work of the state and the government. For this reason the role of the Council of Ministers or the task of the government was defined more broadly and clearly in the revised constitution of 1972.

A new law regulates the dispositions relating to the further development of the system of councils. The councils, as the tried and tested institutions of the Hungarian society, receive rights embodied in the

constitution for the independent and active shaping of further development. The newly revised constitution outlines the sphere of operation of the councils in harmony with the up-to-date principles of public administration. It also outlines the legal supervision of the councils, and of the fact that the government invalidates the provisions of law and decisions of the council that conflict with the interests of society, as government tasks.

The chapters on the judiciary and the prosecutor's office, also contain substantial amendments. In Hungary order based on law is firm, and the justified fundamental principle prevails that whoever violates the law must not go unpunished. At the same time, the law ensures a secure life without fear for law-abiding citizens. The aim of the development in the constitution regarding judiciary is the basic and appropriate principle should consistently prevail in the future.

The amended constitutional act on the organization of judiciary enforces the constitutional principle of "The administration of justice through the judiciary" in a by far more consistent manner than the earlier regulation.

In the chapter on the Prosecutor's office, the newly revised constitution reflects a significant change than the earlier one. The amended text reflects the changes in view point of theoretical significance and an evolved practice of the Hungarian society. According to the changed provisions it is the constitutional duty of all state, social and cooperative organs and of every citizen to observe the laws and ensure that others observe them. It is the duty of the prosecutor's office with its own means to investigate crimes, officiate as the prosecutor, and in other ways, ensure the observance of legality . The Prosecutor's office, an organ independent of all other state organs and responsible only to the supreme organ of the state power, has become the special organ of the control of legality. The Prosecutor organisation takes part in the judicial procedure. Apart from judicial function it also participates in the legislative functioning. The Chief Prosecutor at the behest of the ministers, the government departments, the administrative organs of all-national competence, initiates the promulgation of new provisions of law. The drafts of legislation as of higher category than decrees of government departments have to be commented on - from the point of view of legality - by the Chief Prosecutor beforehand.

Provisions of rights and duties of the Hungarian constitution has been affected very broadly by the thorough amendment of 1972. In 1949 when constitution was enacted there were many special rights for the working people. In fact, the whole regulations of fundamental rights and duties and their guarantees has been affected by the fact that the exploiting classes have ceased to exist. Because of this fundamental change the special provisions of rights and duties for a particular class has changed its mood and turned towards a general character of these rights. The 1972 amendment of the constitution expresses this truth when it pleads the interests of citizens as a whole and not only of working people. Because of using the term citizen instead of using working class only, the provision of the fundamental rights and duties finds a human attitude of socialist society in the Hungarian constitution.

Apart from using the term citizen the rights given by the Hungarian constitution to the general people also shows the maturity of the Hungary's socialist stage of development. Rights given to mothers rearing their child housewives, the sick, the aged and the disabled are manifestations of general character of fundamental rights. So far as other rights are concerned

right to work, right to rest, education and many other rights are given to the people as it is available in most of the socialist countries.

Regarding the duties it may be observed that in the Hungarian People's Republic rights and duties are inter-related. Civic rights are exercised in harmony with the interests of the socialist society and it is inseparable from the performance of civic duties. It may also be observed that like every socialist constitution the Hungarian one not only provides rights and duties to the people by law but it also attaches decisive importance to providing guarantees for those rights and material guarantees to use them.

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