

# THE REPUBLICAN MODEL OF MAURITIUS A SHORT COMPARATIVE STUDY

By  
Raj Mathur

## 1. Introduction

The tiny, French-speaking, former French, then British colony of Mauritius acceded to Republican status on 12th March 1992, twenty-four years exactly after her Independence<sup>1</sup> from Britain. The Republic of Mauritius, a multi-ethnic, multi-religious and multi-lingual society of 1.1 million inhabitants is made up of four communities, namely Hindus (50.3%), Christians - mostly Catholics (30.7%), Muslims (16.1%) and Chinese (2.9%).<sup>2</sup>

While the *lingua franca* of Mauritius is, par excellence, Creole, a French-based patois spoken by the overwhelming majority of the population and understood by every single inhabitant of the island, and the second language in importance is a Hindusthani -based dialect, the Bhojpuri, which is widely spoken in the rural villages by the Indian community, it is the English language, the mother-tongue of only a minute section of the population (less than one per cent), which is the official language of the Republic. The peopling of Mauritius (the country did not have an indigenous population) by immigrants from the Indian subcontinent whose descendants -Hindus and Muslims - constitute today 66 per cent<sup>3</sup> of the total population,<sup>4</sup> along with her colonial history (French 1715 - 1810, then British 1810 - 1968) mean that the country has been profoundly influenced by both Eastern and Western civilisations.

It follows, therefore, that the Government and Politics of the Republic of Mauritius - the behaviour of the political elite and the political institutions - inevitably reflect both Western and Eastern political values. A period of more than 150 years of British Colonial experience have ensured that at the time of Independence the political elite and the people of Mauritius have become strongly attached to the values of a Parliamentary Democracy based on the Westminster model.<sup>5</sup> After all Mauritius, like most former British colonies, including British occupied India, had to serve, prior to Independence, an apprenticeship period<sup>6</sup> on the British Parliamentary system. From Independence in 1968 to her accession to Republican status in 1992, Mauritius was a constitutional monarchy with the British sovereign as Head of State, represented in Mauritius by a Governor General. During that period, notwithstanding the fact that the British Queen was the formal Head of State, the country did experience a form of Parliamentary Democracy based on the British model. The model was far from being the 'perfect' Westminster model. In the 1970s the 'Mauritian model' was

characterised by a permanent State of Emergency, coupled with press censorship, the suspension of the Fundamental Rights and the postponement of General Elections, while the 1980s and early 1990s saw sporadic attempts at muzzling the press, undermining the respective roles of Parliament and of the opposition and the trespassing by the Executive on the spheres of the Judiciary.

It must be acknowledged, however, that despite these temporary setbacks attributable mainly to the trying times and vicissitudes of the 70s, 80s and 90s, Mauritius along with India are, perhaps two of the rare former British possessions<sup>7</sup> which have managed to preserve 'their' Westminster model.

At the time of the accession of Mauritius to the status of a Republic in March 1992, the country was completely sovereign. For the first time in her history, she could freely choose a model of Government and Politics which, in the opinion of her then ruling political elite, was best suited to the needs of the country, bearing in mind her political and cultural heritage. Given the strong links which had been forged with the Indian sub-continent and the common attachments of the two countries to the values of the Westminster model, India offered Mauritius the spectacle of an ideal Republic model. Mauritius was also fortunate, like other Republics of the Commonwealth, in that in 1950 the then Indian Prime Minister, Pandit Jawaharlal Nehru devised an ingenious formula to allow a country to become a Republic<sup>8</sup> while at the same time continuing her membership of the Commonwealth. The Republic of India was to have an Indian national as Head of the Indian State, while at the same time recognising the British Monarch as Head of the Commonwealth. Mauritius, just like the Indian sub-continent, wanted to accede to Republic status with a Mauritian national as Head of State, while staying in the Commonwealth and retaining the Westminster model of Parliamentary Democracy. Thus, it would seem that the Indian Republican style was admirably suited to Mauritius.

This paper purports to explain the choice of the Republican model for Mauritius by briefly comparing three ideal-type Republican models prevailing in the democratic world and analysing the functioning of Mauritian model with reference to the role of President of the Republic of Mauritius.

## 2. DEMOCRATIC REPUBLICAN MODELS

The word 'Republic' is associated with FREEDOM and DEMOCRACY. A Republican form of government means a government where sovereignty lies with the people, where there exists profound respect for individual rights and liberties, where the doctrine of Separation of Powers is enshrined and the Independence of the Judiciary is guaranteed, where the people have the right to criticise the Government, where

there is public participation in the affairs of the country, where exists a multiparty system and the freedom of the people to choose their government at regular intervals. Most of these principles have been incorporated in the Constitutions of the Republic which took birth in France after the great French Revolution of 1789<sup>9</sup> and in the USA after the American War of the Independence, 1776-1783.

In the free world, there is a great variety of models which could be adapted in countries with strong attachments to democratic values. It is without dispute, however, that there are three ideal models, namely the American, the French and the Indian. All of them have served as torch-bearers of freedom and democracy in the world. Each of the three ideal types could have been seriously considered for adaptation to the Mauritian context.

The collapse of the economies of Eastern Europe coupled with the human tragedies caused by the denial of basic rights to the citizens of these countries led to the fall of the Berlin Wall and the subsequent dismantling of the communist Empire in the early 1990s. These memorable events marked a watershed in world history. They served to convince all the nations of the planet of the great merits of the American Model based on the values of freedom and democracy and their economic concomitants - free enterprise and market economies. Moreover, the American model became particularly attractive as it offered the possibility of a strong executive while ensuring a system of checks and balances coupled with a profound respect for human rights. It was also of special interest to Mauritius considering the uninterrupted 200 year-old consular relationship that she has entertained with the United States,<sup>10</sup> notwithstanding her subordination to British and French colonisation.

Of greater interest, however, was the French Republican model in view of the country's historical and cultural ties with France. A foreign observer of the Mauritian scene would be baffled by the buoyancy of the French language, the use of French laws in the Judiciary and the preponderance of French culture after 160 years of British colonisation! The Treaty of Capitulation, signed on 3rd December 1810, by the French - the vanquished race, contained a very important clause which has remained effective to this day - namely that Mauritius would keep her religion, laws and customs<sup>11</sup>.

The French-based patois which is currently used by the population is so close to the French language that everyone can understand French and the majority of the population can express themselves in French. Both the written and the spoken press is primarily in French. The system of laws in Mauritius, relating to crime and punishment, is based on the Napoleonic code. The overwhelming majority of the Christians are of catholic faith, the religion of the French colonisers. Mauritius takes great pride in the fact that she belongs to the French-speaking group of nations.

In 1993, she hosted the Francophone summit which was attended by the then French President, Francois Mitterand and most of the world's French speaking Heads of State. Thus the French Republican model could have been a serious contender for adaptation by Mauritius.

However, there are more compelling factors which could have prompted Mauritius to adopt the Indian Republican model as opposed to the French or the American. The inescapable fact that 66 percent of the population is of Indian stock means that Indian culture, civilisation and ways of life have completely permeated the fibres of the Mauritian society. In the towns as well as in most of the villages, there are numerous Indian temples and cultural societies. Indian religious rites and Indian festivals are celebrated all over Mauritius. Unlike the situation obtaining in the West Indian islands, Indian culture is very much alive in Mauritius. This is due to the fact that two-thirds of the population has been Indian ever since 1881<sup>12</sup> and also because the British, although they did not encourage Indian culture, did not seek to repress it.

Indian films, classical and light music and dance are most popular amongst the various sections of the Mauritian people, regardless of ancestral origin. Almost every day an Indian film is projected on one of the National TV channels, coupled also with daily radio and TV programmes of music and dance. It is not unusual to catch a Mauritian of non-indian origin, a franco-Mauritian white, or a Sino-Mauritian humming the tune of popular Indian song, from a film he happened to have watched on TV the previous night, while going about his business. We have already seen that Bhojpuri is widely spoken in all the rural areas of Mauritius. There are many cultural, economic and educational exchanges between India and Mauritius. Indian experts abound in the various parastatal bodies and Indian Professors lecture at the University of Mauritius. These experts have played, and are still playing, a very crucial role in the country's economic and industrial development by providing the professional skills and know-how in areas where Mauritius does not have the required competence.

It would have been most irrational, however, for any country to have adopted political model on account of purely historical, cultural and sentimental ties. Prudence and caution would counsel otherwise. In a multi-racial country whose descendents came not only from India but also from Africa, Europe and China, it would have been wrong for a particular ethnic group - be it the majority - to be perceived as having imposed a political model, dictated by the group's own sentiments, over the whole country. To better understand the choice of a Republican model for Mauritius, we have first to analyse briefly the three beacon-light models namely, the American, the French and the Indian.

### (i) The American Model

The main characteristic of the American model is that it is a full-fledged Presidential model. The President of the United States is vested with executive powers<sup>13</sup>. He is elected by universal suffrage<sup>14</sup> for a fixed term of office (four years) and is virtually irremovable during the period<sup>15</sup>. The focal point of decision-taking is not the Cabinet but the White House, that is, the President aided by his advisers. The Cabinet plays a 'secondary' role. The Executive, unlike the British and the Mauritian Systems, is not responsible to the legislature and cannot be overthrown by the successful passing of a motion of no confidence. In fact a motion of no confidence is alien to American political tradition. Irrespective of whether the same party or rival parties control the Presidency and Congress, a presidential majority normally emerges to help the President pass his legislative measures through Congress. The system is profoundly influenced by the doctrine of Separation of Powers.

The American President, unless he chooses to resign or is impeached by Congress, cannot be unseated by his Cabinet colleagues or by the defeat of his major proposals in Congress. Unlike the situation prevailing in Parliamentary Democracies - India, UK and Mauritius - the President cannot dissolve Congress and call for fresh legislative elections. Both Houses of Congress are elected for fixed terms of office<sup>16</sup> which differ from those of the President. What is, therefore, the outcome whenever one party controls the Presidency while another party has the majority in Congress? Under the Mauritian, Indian or British Parliamentary systems, the Government can only stay in power as long as it commands the support of the majority in Parliament. In these Parliamentary Democracies party discipline ensures that the legislative proposals of the government are approved by Parliament.

Surprisingly, the American system of Government is not characterised by constitutional crises and deadlocks. The Presidential system functions more or less smoothly in the USA mainly because American political parties are loosely organised and pragmatic<sup>17</sup>. They are not as rigid and ideological as the Indian, British and Mauritian Political parties. In fact, there are no national parties in the United States but rather loose associations of state parties. The two major parties - the Democratic Party and the Republican Party - do not present any programme to the electorate. Parties are not centralised and consequently, there is no party discipline. The pragmatic nature of the American political parties makes it possible for any President to have a Presidential majority in Congress. At any rate, it is unlikely that he would be faced with recurrent hostile majorities on all major issues in the event that the rival party has a majority in Congress. He would certainly be involved in much horse trading with congressional leaders<sup>18</sup> but he would finally obtain the support of Congress for most of his legislative proposals. A coalition of Liberal-Republicans and Democrats

would, most of the time, ensure a Democratic President, a majority in Congress. Equally, the Conservative Democrats would be willing to collaborate with the Republicans to pass the legislative measures of a Republican President.

The philosophy which profoundly influenced the Founding Fathers of the American Constitution is that of the Separation of Powers<sup>19</sup>. The three branches of Government - the Legislative, the Executive and the Judiciary - should be kept separate and distinct. Power would, therefore, not be concentrated in a single branch. The Separation of Powers, the Founding Fathers believed was the key to limited and constitutional government. Each one of these branches would be in a position to control and check the other two branches. This would preclude arbitrariness and dictatorship. In the United States, the President (Executive) checks Congress<sup>20</sup> (Legislature). A Bill passed by Congress must be assented to by the President. Under a constitutional Head (Britain and Mauritius), the Head of State has no choice but to give his assent to Bills passed by Parliament. In the United States, the President can veto the Bill<sup>21</sup>. Congress too can check the Executive. If the same Bill is reintroduced and passed by a two-third majority, it overrides the veto of the President<sup>22</sup>. The Supreme Court (Judiciary) checks both the Executive and the Legislature. It can declare unconstitutional a law duly passed by Congress and assented to by the President.<sup>23</sup>

The application of the doctrine of the separation of powers along with its system of checks and balances have not, in the past, provoked serious governmental deadlocks in the United States. There are indications, however, that in future the relationship between the Presidency and the Congress controlled by a rival party may deteriorate so much as to pose a threat to the ability of the President to fully play his constitutional role of the Head of the Executive.

The victory of the Democratic party's candidate, Bill Clinton in the 1992 Presidential election was followed two years later by mid-term Congressional elections in November 1994 which saw the Republicans gaining control - after a spell of forty years - of both the House of Representatives and Senate. Under the strong leadership of both Mr. Newt Gingrich, Speaker and Leader of the House of Representatives and Robert E Dole, the Republican leader in Senate, Congress adopted a hostile attitude to President Clinton's demand for increased expenditure on welfare and foreign policy. It was a serious attempt to shift the centre of gravity in American politics from the White House to the Republican dominated congress<sup>24</sup>.

Be that as it may, such hostile attitude between Congress and the Presidency is rare in American history. American politics is normally characterised by compromises, give and take attitudes and mutual backscratching. There's no doubt that Congress

would drastically review its attitude should President Clinton obtain a second mandate in November 1996 election. It must be emphasized that the President is the only dignitary of the land who is elected on a nation - wide basis, by Universal Adult Suffrage. He is, in a sense, the only representative of the whole American people. The direct election of the President invests the holder with tremendous moral authority to govern the nation. The centre of gravity in American politics lies with the Presidency provided that the holder shows strong leadership. As Professor Wayne of Georgetown University puts it, 'A President should be perceived as someone providing strong leadership'<sup>25</sup>. Still under the American Constitution such leadership cannot be transferred to Congress. By conferring on the President of the United States the executive power<sup>26</sup> for the Government of the United States, the American Founding Fathers wanted to ensure that power would lie firmly with the President, notwithstanding the checks and balances that Congress may impose on the exercise of that power.

The American model does not suit the political traditions of Mauritius. Under the rigid, centralized, and disciplined party system of Mauritius, the American model would inevitably lead to recurrent constitutional crises and deadlocks. Further more the Westminster model, whose implementation is a direct result of 160 years of British colonization, presupposes the fusion of powers between the Legislature and the Executive. Under that model, the Executive must depend on the support of a majority in the legislature to stay in office.

## (ii) The French Model

The Constitution of the Fifth French Republic, as enacted in 1958, established basically a Parliamentary regime.<sup>27</sup> The President was entrusted with rather formal powers, just like the President in India and the monarch in Britain. It was De Gaulle's conception of the office and the fact that he decided to play a determining role as President of the Republic which had, to some extent, presidentialised the system. The Reform of 1962 - the election of the President by direct universal suffrage - completely transformed the nature of the regime<sup>28</sup>. As we have already observed above, the election of the Head of State by the popular vote indisputably invests the holder with considerable moral and Political authority. He becomes the representative of the nation, on the other hand, is made up of 577 members each representing a small locality. Thus no Members of Parliament can claim to represent the whole nation.

The view was accordingly expressed that only the President could be entrusted with sovereign power. Most observers argued that the direct election of the French President had tilted the balance completely towards a Presidential regime as opposed to the

Parliamentary regime which some of the Founding Fathers had in mind.<sup>29</sup> However, despite the drastic transformation brought about by the Reform of 1962 the Constitution of the French Fifth Republic has proved that it could also accommodate a Parliamentary regime. It would seem that the regime can only be presidential if the President holds a majority in the Assembly or if his party has the control of the National Assembly. The moment that the President does not control the Assembly, the regime, it would appear, becomes 'Parliamentary' and, therefore, to some extent, Prime ministerial.

Under the fifth French Republic, the President is elected for a fixed term of office of seven years<sup>30</sup> and is, therefore, irremovable<sup>31</sup> during that period. He can appeal over the head of the National Assembly direct to the people through a referendum!<sup>32</sup> If he is faced with a hostile majority he can dissolve the National Assembly, which he is entitled to do in conformity with the Constitution.<sup>33</sup> In times of emergency he can assume special powers in accordance with article 11 of the Constitution.<sup>34</sup>

It is the President who appoints the Prime Minister.<sup>35</sup> While choosing a Prime Minister the President need not appoint the leader of the majority in the Assembly. He may appoint as Prime Minister a man of his choice, whose job it is to carry out his policies. The President, acting upon the recommendation of the Prime Minister, appoints the other ministers.<sup>36</sup> The President is, therefore, in a position to ensure that appointments to the key ministerial posts are made with his concurrence. The President chairs the Council of Ministers.<sup>37</sup>

Executive power for the Government of France under a 'Presidential' regime is shared between the President and the Prime Minister, with the latter playing a subordinate role. It is the President who formulates the broad policies of the Government.<sup>38</sup> The Prime Minister's role is to implement and execute these policies<sup>39</sup> as defined by the President. According to Georges Pompidou, President of the Republic (1969-1974), the President conducts the affairs of France with the help of the Prime Minister and the government he has appointed.<sup>40</sup> Georges Pompidou succinctly defined the relationship between the President and the Prime Minister under a Presidential regime in the following words:

"To the President of the Republic the major policy decisions, to the Prime Minister the price of milk."<sup>41</sup>

Thus it is clear that under a full presidential regime the President's role is to decide the major policy options, leaving the detailed implementations of the policies and the resulting unpopularity to the Prime Minister, while the credit, if any, goes to the President.

However, the 1958 Constitution did not mean to establish a full-presidential regime since it provided for confidence and censure motions.<sup>42</sup> It sets up rather a hybrid system: half Parliamentary, half Presidential. It is Parliamentary in the sense that the Government depends on the support of the National Assembly. However, the Founding Fathers did not wish to see a return to the Regime d'Assemblée of the Third and Fourth Republics with its recurrent political and constitutional crises<sup>43</sup>. Certain procedural hurdles governing confidence and censure motions were, therefore, inserted in the 1958 Constitution with a view to ensuring some form of political and governmental stability. Thus while the Constitution lays down that the government, especially a newly-appointed government, may decide to ask for a vote of confidence from the Assembly in conformity with article 49 of the Constitution, only a simple majority of those voting is sufficient for the motion to be carried.<sup>44</sup> Thus the Members of the National Assembly, who are against the program of the Government but who, at the same time, are not prepared to precipitate its fall, may abstain from voting. Should the confidence be refused, the Government has no alternative but to resign. The National assembly can also defeat the Government on a motion of censure. However, such a motion can only be successful if it receives a majority of the vote of the effective membership of the Assembly<sup>45</sup>. The abstentions are counted as if they were votes for the Government. If the motion is carried, the Government would have no choice but to submit its resignation.<sup>46</sup> In a proper Parliamentary Democracy such as Britain, India and Mauritius, the Government must have an absolute majority in Parliament. In France the Government need not have an absolute majority in the National Assembly, rather it must not have majority against it. It should be noted that unlike the practice in Britain and in Mauritius, legislative elections do not automatically follow the defeat and resignation of the Government in France. The President would appoint a new Prime Minister, or reappoint the same Prime Minister and carry out probably a reshuffling of the Cabinet. It is an aberration that rejection of the policies of the Government and therefore of the President, whenever the regime is presidential, does not entail the latter's resignation, notwithstanding that he presides over the deliberations of the Council of Ministers. The real head of the Government, the President, is not responsible to the National Assembly! Rather it is the Prime Minister, a close associate of the President, who is accountable both to the National Assembly and to the President.

As has already been pointed out, a full presidential regime can only be operational when the same party controls both the presidency and the National Assembly. Should a rival party control the National Assembly, then the regime becomes Parliamentary with the Prime Minister playing a more important role than the President. Recent experience in the working of the 38-year-old Fifth Republic constitution has shown that the Presidential regime established by its first holder, President De Gaulle and reasserted by his successors,<sup>47</sup> has had to be adjusted to a Parliamentary Democracy

<sup>48</sup> should the balance of political force in the Assembly so require. Under such a Parliamentary Democracy, executive authority on most issues would lie in practice with the Prime Minister, the man controlling a parliamentary majority in the National Assembly, leaving the President with mostly the formal trappings of power, except in areas like Foreign Affairs and Defence where the Constitution<sup>49</sup> clearly assigns the responsibilities to the President. The 'Presidential' regime of the Fifth French Republic, therefore, rests on a gamble that the same party or party alliance would control both the Presidency and the National Assembly.

From 1958 the date of the inception of the Fifth Republic to 1986, there was a happy political coincidence. During that long period the same political alliance controlled both the Presidency and the National Assembly. From 1958 to 1981 during the presidencies of Charles de Gaulle (1958-1969), Georges Pompidou (1969-1974) and Valéry Giscard d'Estaing (1974-1981), both institutions were under the control of a centre right coalition - The Gaullists. When the socialist President François Mitterand was elected in May 1981 he dissolved the pro-Gaullist National Assembly. Legislative Elections soon followed and the socialists and their allies, the communists won a resounding success. It can safely be stated that during the whole period 1958 to 1986 when the same political family controlled both the National Assembly and the Presidency the French regime was presidential.

However, during the periods 1986 to 1988 and 1993 to May 1995 covering both President François Mitterand first (1981-88) and second (1988-1995)<sup>50</sup> terms, it was the centre-right which controlled the National Assembly. During the first period (1986-1988) when President Mitterand did not command a majority he was forced to appoint as Prime Minister his arch-rival, Jacques Chirac, as the latter's party - (RPR)<sup>51</sup> commanded a majority in the Assembly. Again after the March 1993 legislative elections, the President had no alternative, after the landslide victory of the RPR-UDF,<sup>52</sup> but to appoint as Prime Minister, Edouard Balladur, the man designated by the leader of the RPR, Mr. Jacques Chirac. During these two intervals when the President did not command a majority in the Legislature the regime became Parliamentary. The President was no longer free to designate as Prime Minister a man of his choice although he could still exert some control over key appointments in areas like foreign affairs and defence where, as we have seen already, he has specific constitutional responsibilities. During these periods he could not define the broad lines of government policies. Thus during the two intervals he had had to accept the policies of his Prime Minister. Under such circumstances the Prime Minister is not only concerned with the detailed implementations but also with broad policy formulations. The President has no choice. He has, in the words of Gambetta,<sup>53</sup> either to submit or to resign. He has no other alternative. It is inevitable that under such cases it is the Prime Minister, the man who controls a majority in Parliament,

who wields executive power. The regime, therefore, becomes to a large extent Parliamentary but the role of the President is not completely reduced to that of a constitutional head since the Constitution entrusts him with certain prerogatives.<sup>54</sup> However, it is clear that whether France would be moving towards a presidential or a parliamentary form of government depends very much on the balance of political forces prevailing in the Assembly and, in particular, whether the President controls a majority or not.

It is an indisputable fact that the Constitution of the Fifth Republic has provided France with the political and governmental stability so sadly lacking under the Third and Fourth Republics. However, the stability of the regime rests on the fallacious assumption that the National Assembly and the Presidency would always be held by the same party or party alliance.<sup>55</sup> If the President is faced with a hostile majority in Parliament - the Opposition Parties command a majority - then it follows that the National Assembly would pass a motion of censure. A new Prime Minister may be appointed or new legislative elections may be held. If the President dissolves the legislature and calls for fresh legislative elections, there is no guarantee that he would not again have a majority against him in the new Parliament. Faced with such a situation it would be impossible for the President to have his major legislative programs approved by Parliament. He would have no alternative but to play the role of constitutional Head of State in most matters except in certain areas which fall under his prerogatives. He would have to bide his time waiting for the politically opportune moment when his party has reasonable chances to win the election, the to dissolve the Assembly. During the interim period a cohabitation, albeit conflictual or tenuous may be worked out between Parliament, that is, the Prime Minister and the President. It is worth noting that during the two periods when President Mitterand did not control a parliamentary majority, cohabitation, although difficult and painful, was the order of the day with the President taking a back seat. However, Francois Mitterand never become a lame-duck President even during the March 1993 to May 1995 period. His powers were, admittedly, severely curtailed by a strong gaullist majority in Parliament. He maintained nonetheless, a significant foreign policy role and worked courteously with the conservative Prime Minister, Edouard Balladur. This has avoided a stalemate situation. It has, to a certain extent, turned the regime into a Parliamentary Democracy. But for his specific constitutional responsibilities the President would have assumed the role of a constitutional Head of State.

The election of the leader of the RPR, Mr. Jacques Chirac, to the Presidency in May 1995 and the subsequent appointment of Mr Alain Juppe, one of the President's closest allies as Prime Minister, has put an end to the difficult cohabitation under Mitterand. It will be recalled that the National Assembly is under the control of the RPR - UDF group,<sup>56</sup> with the RPR as the major partner ever since their landslide

victory in the March 1993 elections. There is no doubt, therefore, that the tandem Chirac-Juppe, aided by a huge and loyal parliamentary majority, will tilt the Fifth Republic once more towards a Presidential regime in the years to come.

It is undeniable, however, that a presidential regime of the French model contains the seeds of instability and political crises. To be successful such a regime requires as fundamental conditions that the parties and the majorities are fluid and undisciplined. Only these conditions can enable a presidential majority to evolve. Unfortunately the French political parties are ideologically distant, well disciplined and programmatic. Although the French Fifth Republic has functioned quite smoothly for 38 years and cohabitation has even been possible between a Socialist President and a National Assembly dominated by centre-right parties, the regime has the potential to give to serious constitutional and political crises. The French Fifth Republic model is alien to the Mauritian political culture and would, given the ideological and programmatic divide of the political parties of Mauritius, provoke political and constitutional deadlocks.

### The Indian Model

On January 26, 1950 when the Indian Republican Constitution came into force, the British Crown ceased to have any legal or constitutional authority over India. The citizen of independent India was not to owe any allegiance to the British monarch. However, India was to recognise the British monarch as the Head of the Commonwealth but she would no longer be the Queen of India and, therefore, Head of the Indian State. Instead there would be an Indian national as Head of State in India.

The President of India is invested formally with considerable powers. Article 53 (1) of the Indian Constitution states:

"The Executive power of the Union shall be invested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

He is therefore the formal Head of the Executive and also the Supreme Commander of the Defence Forces<sup>57</sup> of the Union. Elected by an electoral college<sup>58</sup> for five years, he is practically irremovable during his term of office<sup>59</sup>. In times of emergency, he is vested with vast powers and can, if he interprets his powers literally, act as a dictator.<sup>60</sup>

However, it was implicit in the Constitution that India was instituting a Parliamentary Democracy based on the Westminster model, and that the form of Government would not be presidential. It was to be a Parliament any Democracy with a constitutional

Head of State. During the debates in the Constituent Assembly the Chairman, Dr Ambedkar clearly stated that the President would be a figure head and not the effective head of the executive:

"At the head of the Indian Union, there is a functionary called the President of the Union. The title of this functionary reminds one of the Presidents of the United States. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government envisaged under the Indian constitution. The American form of government is called the Presidential system of Government, while under the Indian Constitution it is the Parliamentary form. The two are fundamentally different. Under the Indian Constitution the President occupies the same place as the King under the English Constitution".<sup>61</sup>

The system has functioned as intended by the framers, that is, effective executive power has been wielded by the Prime Minister and his Ministers while the President has been merely a figure head, a symbol, and the formal head of the administration.

However serious doubts were expressed as to whether the President, in all circumstances, would be bound to act in accordance with the advice of his Ministers. The controversy as to whether, at all times, the President should act as a constitutional head was sparked off by a speech made in November 1969 by Dr. Rajendra Prasad the then President of India, in which he expressed certain misgivings as to the relationship between the President and the Council of Ministers. Dr. R. Prasad observed:

'There is no provision in the Constitution which in so many words lays down that the President shall be bound to act in accordance with the advice of his Council of Ministers.'<sup>62</sup>

Although the Indian Supreme Court, the guardian of the Constitution had, on several occasions, given its ruling<sup>63</sup> to the effect that the President is the normal head of the executive and that effective executive power lies with the Prime Minister and his Cabinet the debate did not stop. Finally in 1976, the Indira Gandhi Government put the matter beyond controversy by amending the Constitution itself. The constitutional amendment - the 42nd amendment - made explicit what was already implicit in the spirit of the Constitution, namely that the President is bound to act in accordance with the advice of his ministers. Article 74 (1) was amended to read:

'There shall be a Council of Ministers with the Prime minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.'

Finally in 1978 the Janata Government salvaged the position for the President by amending the Constitution to give him the power to refer the advice tendered to the Council of Ministers for reconsideration.

Article 74 (1) as it presently stands, that is, after the 44th amendment made by the Janata Government, reads:

'There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.'

However should the Council of Ministers maintain their advice, the President has no choice but to act in accordance with such advice. It is now crystal clear in the exercise of his duties under the Constitution of India, the Indian President is bound to act in accordance with the advice of the Prime Minister and the Council of Ministers.

In accordance with the provisions of the Indian Constitution the Council of Ministers is collectively responsible to the Lower House for any advice tendered to the President in the Government of the country. Section 75 (3) reads:

"The Council of Ministers shall be collectively responsible to the House of the people."

The Government stays in office as long as it retains the confidence of the Lower House (Lok Sabha). Should a motion of censure be carried, the Prime Minister and the Council of Ministers would have either to resign or to dissolve Parliament and call for fresh elections. The Prime Minister would most probably choose dissolution<sup>64</sup> followed by General Elections. It is to be noted that in India, as in all Parliamentary Democracies, it is the prerogative of the Prime Minister to advise a dissolution of Parliament. Thus Parliament Democracy in India functions on the same line as the British and Mauritian systems.

### 3. The Mauritian Republic Model

Mauritius opted for the Indian model primarily because it satisfied the political aspirations of the whole of its people. The model had a compelling appeal to both the people and the political elite, regardless of ancestral origin. The attractions of the model stemmed from the fact that India and Mauritius shared common political aspirations. Just like India Mauritius wanted to do away with the vestige of British colonialism by replacing the English monarch with a Mauritian national as Head of State.

Both India and Mauritius recognised the importance of belonging to the Commonwealth of Nations, an association of sovereign and independent states grouping the former British Colonies. How would the idea of a Republic reconcile itself with membership of the Commonwealth? Again India has shown the way as far back as 1950. Mauritius would, therefore, follow suit. She would recognise the Queen as Head of the Commonwealth but not as the Queen of Mauritius!

After more than 150 years of British rule, Mauritius is closely wedded to the value of a Parliamentary Democracy based on the Westminster model. Just like in India the Westminster model is widely accepted by the major political parties of Mauritius. Unlike most of the former British colonies who discarded the Westminster model soon after obtaining Independence and subsequently became prone to Army coups and counter-coups, India managed to maintain successfully, for roughly half a century, the reputation of being the largest democracy on the globe, thus winning the respect of the whole world. Mauritius too has successfully withstood the challenges to her Parliamentary Democracy and has been able against all odds, to maintain, however imperfect at times, the Westminster model ever since her Independence.

Mauritius, therefore, had no alternative, given her political aspirations, but to adopt the Indian style Westminster model. The Mauritian Republic, just like the Indian Republic, is accordingly based on the Westminster model. The accession of Mauritius to the status of a Republic has not brought any fundamental change in her system of government and politics. Under that model, Parliament is sovereign. It can even amend the Constitution,<sup>65</sup> the Supreme Law of the Land. The President of the Republic of Mauritius is a constitutional Head of State. He is elected by an electoral college, consisting only of MPs<sup>66</sup> for a fixed term of office of five years<sup>67</sup> during which he is practically irremovable.<sup>68</sup> He does not exercise any real power. Executive power is wielded by the Prime Minister and the Cabinet. The Government must, at all times, command the support of the majority of the members of the National Assembly to stay in office. Parliament, that is, the National Assembly, can vote the government out of office by passing a motion of no confidence.<sup>69</sup>

Unlike the American, French, British and Indian models, Parliament in Mauritius is unicameral. The National Assembly consists of a maximum of 70 members.<sup>70</sup> The island of Mauritius is divided into 20 three-member constituencies and Rodrigues, which is a small island dependency of Mauritius, elects two members to the legislature.<sup>71</sup> Over and above these 62 directly elected members, the Constitution provides for the election of a maximum of 8 best losers.<sup>72</sup> The best losers are designated soon after the General Elections to correct any imbalance in the communal representation resulting from the direct elections. The philosophy behind the designation of best losers is to ensure a fair and adequate<sup>73</sup> representation of each

section of the Mauritian population. Officially Mauritius is made up of four communal groups namely Hindu, Muslim, Chinese and General Population.<sup>74</sup> General Elections must be held compulsorily every five years,<sup>75</sup> but normally elections are held well within the statutory limit of five years. Elections are contested by a sizeable number of political parties,<sup>76</sup> notwithstanding the fact that politics in Mauritius is increasingly becoming bipolar. Thus, the real struggle is between the major political blocs.

After the elections, the President calls for the man who, according to him, is best able to command a majority in the Legislature and entrusts him with the formation of a Government.<sup>77</sup> He is, therefore, appointed Prime Minister. He, in turn, chooses the other ministers and the Council of Ministers is formed. The Council of Ministers is responsible to the National Assembly. This accountability is ensured by the fact that (1) Government periodically may face motions of censure<sup>78</sup> (2) Ministers have to answer Parliamentary Questions set by their own backbenchers and by the Opposition (3) Government must defend its policies whenever legislation or motions are presented to the Assembly (4) the National Assembly must approve the budget of the various ministries. In Mauritius, political parties are well organised, disciplined, ideologically based and programmatic. In Parliament the Chief Whip of the Government ensures that vote discipline prevails and consequently, rank and file government MPs toe the line behind Ministerial legislations. Since Government has a majority, it does not suffer Parliamentary defeat. However, if there are serious splits in the ruling party followed by the desertion of some of its supporters, Government may be out voted. Under the Mauritian, British and Indian systems if the Government is defeated over a censure motion, the Prime Minister will have either to resign or recommend the dissolution and the subsequent calling of fresh legislative elections.<sup>79</sup> The role of the National Assembly is to check the executive, to scrutinize all legislations presented for its approval, and to control public expenditure. Unlike the French and the American models, the Indian and Mauritian models based on Westminster's practices provide for a Leader of the Opposition<sup>80</sup> whose role is to criticise the government and to present alternative policies to that of the latter's. The leader of the Opposition is the alternate Prime Minister. He is paid a special salary and has the status of a Minister.

Under the Westminster model, unlike that of the United States, there is strictly no Separation of Powers between the Legislature and the Executive. Notwithstanding the control that the legislature, in particular the Parliamentary Opposition, exerts on the executive through its scrutiny of public expenditure, its batteries of embarrassing Parliamentary questions and its motions of censure, there is a fusion of the two powers. The legislature and the political executive are interdependent. If the life of the Government depends on majority support in the legislature, the life of the latter depends on the Head of the Government, that is, the Prime Minister. Under the Mauritian system, as in the case under all Westminster model, the Prime Minister



can request a dissolution of the legislature at any time within the statutory five-year period if he is of opinion that the moment is opportune for him and his party to hold fresh general elections.

Although there is no Separation of Powers between the Legislature and the Executive, the Judiciary in Mauritius, in Britain and in India is completely separated from both the other two branches of government. The Supreme Court and other courts of Justice are independent. The Judiciary is headed by the Chief Justice. The latter, together with all other judges of the Supreme Court, have security of tenure and are practically irremovable.<sup>81</sup> Unlike Britain, Mauritius has a written Constitution which is the Supreme Law of the Land. As in the USA, India and many other democracies, it is the Supreme Court which acts as the guardian of the Constitution.<sup>82</sup> The Supreme Court is empowered to strike down any law or any decision which it deems to be 'unconstitutional'.<sup>83</sup>

The Mauritian model, as in all other democracies in the world - England, France, Germany, the United States and India - emphasises the Fundamental Rights and Freedoms of the Individual. These are enshrined in Chapter 2 of the Constitution of Mauritius. The rights of the citizens of the Republic of Mauritius to life, freedom of conscience and of worship, freedom of expression, of thought and, by extension, freedom of the Press, freedom of movement, freedom of association and freedom to establish schools, the right to own private property and the right to a fair trial by an independent court, are all guaranteed by the Constitution of Mauritius.

We have already analysed the role of a Head of State with reference to the American, French and the Indian systems. What is the role of the President of the Republic of Mauritius? Under a full-fledged presidential regime executive power is vested in the President of the Republic whereas under a Parliamentary regime the role of the Head of State is that of a constitutional head, that is, one who must act in accordance with the advice of the Prime Minister and of the Cabinet.<sup>84</sup> Is the highest personality of Mauritius the Head of State, a mere constitutional head, whose role is reduced to merely rubber stamping the decisions of the Council of Ministers and giving his automatic assent to Bills passed by the Assembly?

The President of the Republic of Mauritius is elected by a simple majority of all the members of the National Assembly on a proposition of the Prime Minister.<sup>85</sup> The election of the President by an electoral college consisting solely of MPs has been preferred to direct election by adult universal suffrage. The election of the President by direct universal suffrage, that is, by the vote of all the adult population would, in my opinion, have had serious repercussions on a system of Government and Politics, based on the Westminster model. According to that model, the Head of State is a

Constitutional Head without any executive power. We have already seen in the case of France and that of the United States how the election by the popular vote of the adult population confers great moral and political authority on the Head of State. He would then become the 'Representative of the whole nation.' It would, in such circumstances, be morally impossible not to consider a sharing of power between the Prime Minister and the President. Such sharing of power is alien to the Westminster model of Government and Politics.

Further, if the President of the Republic is elected by popular vote, a party other than the ruling party may have its candidate elected to the Presidency. Under these circumstances, the Westminster model will not function smoothly for the President, who has been elected nationally, may refuse to play the role of a constitutional Head of State. Cohabitation in the style of the French Fifth Republic, for example, Mitterand, a socialist President with Chirac, a centre right Gaullist Prime Minister may not always be possible. There may be serious divergence of views based on ideology, programmes and priorities between the Prime Minister and the President which may provoke deadlocks and constitutional crises.

The election of the President, on a proposition of the Prime Minister, by a majority of the members of the National Assembly ensures that the two men share the same political ideals and that there is an identity of views between the President on one hand and the Prime Minister and the ruling party on the other hand. After all, the President will be elected on a proposition of the Prime Minister. It is a guarantee that he will be a man with whom both the Prime Minister and the ruling party can share a harmonious working relationship.

The President of the Republic is the Head of State. Like the Queen under constitutional monarchy, the President is a constitutional Head, that is, in the exercise of his functions under the Constitution, he is bound to act in accordance with the advice of the Prime Minister and of the Cabinet in conformity with Article 64(1) of the Constitution. Unlike the original text of the Indian Constitution, the Mauritius Constitution drafted by the former colonial power which came into force in 1968, and the constitution of the Republic of Mauritius operational as from 12 March 1992, ensured that there would be no ambiguity regarding the powers of the Head of State. Section 64(1) of the 1968 Constitution reads:

"In the exercise of his functions under this Constitution or any other law, the Governor-General shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, after consultation with, any person or authority other than the Cabinet or in his own deliberate judgement."<sup>86</sup>

Section 64(1) of the 1992 Constitution merely substitutes the word 'President' for 'Governor General.'<sup>87</sup> It is, therefore, abundantly clear that the President does not hold any real power in the Government and Politics of the Republic of Mauritius.

However, with a view to enhancing the prestige of his office, the President of the Republic of Mauritius has just as his Indian counterpart been invested with two additional rights, namely the right to request the Assembly to reconsider a Bill<sup>88</sup> which has been presented to him for his Assent and the right to refer back a decision of the Government<sup>89</sup> to the Cabinet for reconsideration. Moreover, the President, just like his predecessor the Governor General, must be kept fully informed by the Prime Minister, as per Section 65 of the Constitution, of all things pertaining to the running of the affairs of the country.

The President's right to request a reconsideration of a Bill has been borrowed from the Indian Constitution.<sup>90</sup> To become an Act of Parliament, a Bill must first be duly passed by the National Assembly and then submitted to the Head of State for his Assent.<sup>91</sup> Under the regime of constitutional monarchy prevailing in Mauritius from 1968 to 1992, the Assent of the Governor-General to Bills presented to him had been almost automatic.<sup>92</sup> After all, Bills are presented to Parliament by Ministers after having been approved by the Cabinet and the Governor-General of former days could not do otherwise but to give his Assent to such Bills in conformity with Section 64(1) of the Constitution. He was in no position to refuse his assent on grounds of policy. With the advent of the Republic, the President is vested with the right to refer a Bill, presented for his Assent back to the Assembly for reconsideration. According to Section 46 (2) of the Constitution, the President of the Republic can withhold his Assent to a Bill (other than Money Bills and Bills relating to Constitutional Amendments passed in compliance with Section 47 of the Constitution) and submit same with his proposed amendment(s) and suggestion(s) for reconsideration by the National Assembly. In practice, it means that the President is vested with the right to refuse his Assent to a Bill on grounds of principles and political philosophy. However, after the reconsideration of the Bill by the National Assembly, the President is bound to give his Assent to a Bill passed with or without amendment, as per Section 46 (2) (d) of the Constitution of the Republic of Mauritius.

In August 1995 the President of the Republic made constitutional history when for the first time, the State House refused to give the Presidential assent to Bill duly passed by the National Assembly. The Bill- the Dangerous Drug (Amendment) Bill - aimed at substituting a 20-year imprisonment *in lieu* of the Death Penalty on convicted Drug traffickers. The President argued that the sentence was too light as a substitution for the Death penalty and called instead for a harsher term of imprisonment for those found guilty of such heinous offences. The initiative of the

President was widely acclaimed by the whole population. It demonstrates clearly that as President, Mr Uteem intends to play fully his role as guardian of the Constitution. Henceforth his actions would no longer be confined to giving blind approval to the decisions of the political executive or to legislations passed in the National Assembly. As can be expected the move of the President received immense publicity in the written press. The National Assembly was impelled to have second thoughts and after reconsiderations amended the Bill on the lines suggested by the President. Thus in the uni-cameral Parliamentary system of Mauritius the President may occasionally - when he deems it absolutely essential in the public interest - fulfil the role of a one-man second chamber, imposing important checks on the Legislative powers of the National Assembly.

Although the President is bound as per Section 64 (1) of the constitution to act in accordance with advice of the Prime Minister and the Cabinet in the exercise of his functions, he has the right to request the Cabinet (a) to reconsider any advice tendered by it,<sup>93</sup> (b) to consider a policy decision, taken by a Minister, which has not been previously considered by the Cabinet.<sup>94</sup> The President would, nevertheless, be bound to act in accordance with the advice tendered after the reconsideration by the Cabinet or, in the case of a ministerial decision, after the Cabinet has considered the decision.

Thus, the Head of State remains a Constitutional Head but he has the right to ask Parliament and the Cabinet to 'reconsider' certain decisions. These two rights cannot but invest the President of the Republic with enormous prestige and authority.

I am of opinion that despite the fact that the constitution basically enjoins the President to play the role of the Constitutional Head of State, the first two Presidents of the Republic of Mauritius, Sir Veerasamy Ringadoo<sup>95</sup> and His Excellency Mr Cassam Uteem (1992-), by virtue of their personalities and their great experience of public affairs<sup>96</sup> have both played an influential role in our system of Government and Politics. I hasten to add that this influence does not derive from the President's constitutional rights of requesting the National Assembly and the Council of Ministers to reconsider their decisions. Instead, I hold that the influence of President resides in the rights that Walter Bagehot gave to the English monarch in his celebrated work "The English Constitution,"<sup>97</sup> namely:

- (i) the right to be consulted
- (ii) the right to encourage
- (iii) the right to warn

and, as rightly pointed out by Bagehot, "a King of great sense and sagacity would want no others."<sup>98</sup>

Walter Bagehot's three rights are enshrined in Section 65 of the Mauritian Constitution, through the Presidential right to be informed. The right of the President of the Republic of Mauritius to be informed is scrupulously observed. The Prime Minister of the Republic goes to State House every week to apprise the President of all matters pertaining to the Government of Mauritius, in particular, the agenda of the next Cabinet meeting. It is not purely a briefing session. Rather it is an exchange of views and ideas between the Prime Minister and the President.

The President too takes the opportunity of these weekly meetings to broach any matter which may appear to him to be of national interest.

Thus the meeting between the top personalities at State House is not just a one-way traffic from the Prime Minister to the President. Rather it is a two-way traffic. The Prime Minister briefing the President, who in turn, informs the Prime Minister of what he knows - it must be realised that the President also has his own independent sources of information - and in the process each one influencing the other. It follows, therefore, that the President is not merely kept "informed" but rather, he is consulted and in the process of that consultation, he can express his views. If he believes that a proposed decision of the Government would not be in the superior interest of the country he can, perhaps, successfully dissuade the Prime Minister from going ahead with the proposal.<sup>99</sup> In the final analysis, everything depends on the personalities of the two men, the mutual respect and confidence they have for each other. It goes without saying that the spirit of confidence that prevails in their "*tete a tete*" is conducive to the smooth running of the Parliamentary Democracy based on the Westminster model.

The President of the Republic of Mauritius, although elected by a Parliamentary majority on a proposition of the Prime Minister, is above party politics once he assumes office. He discharges his functions as an impartial Head of State. This impartiality is widely acclaimed by the Mauritian people and there seems to have emerged amongst all political parties - government and opposition - a consensus that the first two Presidents of the Republic of Mauritius have played their role with great distinction. The impartiality of the Head of State has gone a long way towards facilitating the cohabitation of a President, elected by a previous legislature, with a new legislature of different political orientations. President Cassam Uteem who was elected by the National Assembly in 1992 is coping admirably well with the new Government elected in December 1995.

#### 4. Conclusion

The advent of the Mauritian Republic on 12 March 1992 has not brought any fundamental change in the system of Government and Politics of the country. Basically the President of the Republic remains a constitutional Head of State, who must, at all times, act in accordance with the advice of the Prime Minister and the Cabinet as per Section 64(1) of the Constitution.

It is submitted that the Westminster model is alien to any sharing of power between the Prime Minister and the President. The model imposes on the President the role of a constitutional head. It must be conceded at the same time that he can play an influential role in the Politics and Government of Mauritius by making judicious use of the three rights that Bagehot gave to the monarch. The right to be informed, as per Section 65 of the Constitution of Mauritius, guarantees the President the enjoyment of Bagehot's rights, thus ensuring that he wields some influence and power over the affairs of State.

#### Notes

1. Mauritius obtained her Independence from Britain on 12th March, 1968.
2. The population figures, from which the percentages have been worked out, are based on the 1972 population census - the last census when the population was required to indicate their communal appurtenance. See Mauritius population census of 1972, Central Statistical office, Ministry of Economic Planning and Development, Mauritius.
3. The percentages of Muslims (16.1%) and Hindus (50.3%) are added up since both originally come from the Indian subcontinent.
4. Of the remaining 34 percent of the population, 3 percent are of Chinese descent while the remaining 31 percent belonged to the General Population - a term used to denote people of mixed origin - African and Indian, Indian and European and European and African. Also included in the General Population is a small community of Franco-Mauritian whites - roughly one percent of the total population. The whole General Population community of Christian faith, the great majority being Roman Catholics.
5. The pre-Independence political elite studied in British Universities and had, therefore, the opportunity to observe closely the workings of the Westminster model.
6. Unlike some colonial powers, the British prepared the elite and the people of the colonies for Independence. The transfer of power was gradual, starting with a partly elective legislature through the introduction of a Ministerial system to complete self-rule and finally Independence. For the evolution of Parliamentary democracy in Mauritius see Raj Mathur, *Parliament in Mauritius*, Indian Ocean edition, Mauritius, 1991.

7. The majority of the African colonies which were under British colonial rule achieved independence in the 1960s. Shortly afterwards they repudiated the Westminster model and chose a Republic with a fully executive President who also assumed dictatorial powers. This led to Coups and Counter Coups by the army. See Marion F. Doro and Newell M. Stultz, *Governing in Black Africa*, Prentice Hall, Inc., New Jersey, USA, 1970.
8. India became a Republic in 1950 less than three years after achieving Independence in 1947.
9. The Republic was not established immediately after the French revolution, although the 'Declaration of the Rights of Man and the Citizen' was adopted by the Revolutionary Assembly of 1789. See Jean Blondel, *The Government of France*, Methuen, London, 1974.
10. In spite of the fact that Mauritius was a colony, an American Consul was posted in Port-Louis as early as 1795. In March, 1995 the American Embassy in Port Louis organised a seminar to celebrate the bicentennial 'History, Trade and Culture' relationship between Mauritius and the USA.
11. For the text of the Treaty of Capitulation by which the French accepted defeat and the country became British, See D. Napal, *Les Constitutions de L'île Maurice*, Port Louis, Mauritius, 1962. Article 7 of the Treaty laid down that 'the inhabitants shall preserve their Religion, Laws and Customs'.
12. Indian immigration started in 1834 and by 1881 about two - thirds of the population were already of Indian stock. Out of a total population of 361,000 in 1881, there were 249,000 Indians. See *Census of Mauritius and its Dependencies*, April 1881, Mauritius, 1881.
13. Article II Section I of the Constitution of the United States, in Alpheus Thomas Mason and Donald Grier Stephenson Jr, *American Constitutional Law*, 10th Edition, Prentice Hall Inc.; Englewood Cliffs, New Jersey, 1993.
14. Note that in addition to his election by direct universal suffrage the President must also be elected by an electoral college.
15. The President can only be removed on 'Impeachment for, and conviction of, Treason, Bribery, or other high crimes and misdemeanors' as per article II of the Constitution of the United States.
16. Congress in the United States consists of two Houses - Senate and the House of Representatives. The Senators' term of office is 6 years, while the term of office of the Members of the House of Representatives is two years. See Article I, Sections 1 & 3 of the Constitution of the United States.
7. See Leon D. Eipstein, *Political Parties in Western Democracy*, Pall Mall Press, London, 1967.
8. President Bill Clinton, faced with a hostile Congress has tried to adopt the Republican program of a tax reduction and a reform of the public debt. See Reuter's News Service of 18 April, 1995.

19. Although the Doctrine of the Separation of Powers can be traced back to the writings of the Greek political philosopher Aristotle, it was first enunciated by the French Jurist, Baron de Montesquieu and the English political philosopher, John Locke in the 17th Century. M J C Vile, *Constitutionalism and the Separation of Powers*, Oxford University Press, London, 1967.
20. Section 7 of the Constitution of the United States.
21. Ibid.
22. Ibid.
23. Note that article III, section 2 of the Constitution of the United States merely vests judicial power in the Supreme Court of the US. The Power of Judicial review means the authority of the Court to set aside the actions of another branch of Government which, in the judges view, conflict with Constitution. The power of Judicial Review was first asserted by Chief Justice, Marshall in *Marbury v. Madison* in 1803. Mason and Stephenson Jr, *American Constitutional Law*, op. cit.
24. This account of recent events in American Politics has been based on the bulletins of Reuter's News Service of April/May, 1995.
25. Reuter News Service, 18 April, 1995.
26. Article II, Section I of the Constitution of the United States.
27. Most of the authorities on the Constitution of the French Fifth Republic concur that it was meant to establish a Parliamentary regime. See, B. Chantebout, *Droit Constitutionnel et Science Politique*, 8th Edition, Paris, 1988 and also Phillippe Ardant, *Institutions Politiques et Droit Constitutionnel*, Librairie generale de droit et de jurisprudence, EJA, Paris, 1992.
28. This view is held by practically all the authorities. The original Constitution provided for the election of the President by an electoral college. See for example, J. Hayward, *The One and Indivisible French Republic*, World University, Weidenfeld and Nicholson, London, 1973.
29. In his book '*Refaire La France*' which he wrote in 1943 Michel Debre, one of the leading Founding Fathers of the Fifth Republic concluded that the best political system for France would have been a Parliamentary Monarchy or a Republican Monarchy implying clearly that he viewed the Fifth Republic Constitution as setting up a parliamentary regime. B. Chantebout, op. cit, p. 450.
30. Article 6 of the Constitution of the French Fifth Republic. For a copy of the Constitution see J. Blondel and E.D. Godfrey Jr., *The Government of France*, Methuen & Co. Ltd. London, 1968.
31. Unless of course he resigned or is impeached in pursuant of Article 7 of the Constitution.
32. Article 11 of the Constitution.

33. Ibid., Article 12.
34. He can govern, it has been said, as a Roman dictator. He is empowered to take whatever measures are required by the circumstances. See J. Hayward op.cit.
35. Ibid., Article 8.
36. Ibid.
37. Ibid., Article 9.
38. Pierre Pactet, *Institutions Politiques et Droit Constitutionnel*, 9th Edition Masson, Paris, 1989 p. 382.
39. Ibid.
40. J. Hayward, *The one and indivisible French Republic*, op. cit., p. 82.
41. Ibid.
42. Article 49 of the Constitution.
43. Owing to the multiplicity of parties under the Third and Fourth Republics, governments were at the mercy of the National Assembly. No party could get a majority in the National Assembly. Accordingly coalitions became the norm. Governments were short-lived because of the ever-shifting alliance of the partners. In short regime d'Assemblée means the subordination of the Executive to the National Assembly. Phillip M. Williams, *Crisis and Compromise: Politics in the Fourth Republic*, Longman, London, 1964.
44. That is, the Government does not need to control a 50 per cent plus one seat in the National Assembly.
45. Ibid., the government is censured only if a majority of the total membership of the Assembly vote in favour of the motion.
46. Article 50 of the Constitution.
47. Including President Francois Mitterand who was one of the most virulent critics of the presidentialisation of the regime under President De Gaulle. According to Mitterand, De Gaulle staged a permanent coup D'etat and had arrogated to himself all the powers. He criticised what he called, the 'solitary exercise of power'. However, while in office, he was to do exactly what he reproached De Gaulle. Just as all his predecessors, he presidentialised the regime whenever he had a parliamentary majority.
48. It was also under Francois Mitterand that the regime for the first time became parliamentary.
49. Pierre Pactet, *Institutions Politiques et Droit Constitutionnel* op. cit., p. 383.
50. President Mitterand's second term came to an end in May 1995. He holds the record for the longest serving President in French history. He had presided over the destiny of France for 14 years (1981-1995).

51. The RPR - **Rassemblement Pour la Republique** - is the party of which Jacques Chirac is the leader. It is a pro-Gaullist party.
52. The UDF - *L'Union pour la Democratie Francaise* (UDF) - is the party of former French President, Valerie Giscard d'Estaing. The UDF is the junior partner in the alliance.
53. It was Gambetta, the leader of the Parliamentary majority, who in 1877 under the Third Republic, told President MacMahon that if the results of the elections to the National Assembly went against the President, the latter was compelled to resign or to submit to the wishes of the National Assembly, hence '*se demettre ou se soumettre*'. See Phillippe Adsant, op. cit., p. 402.
54. There are certain reserved areas which fall under the President's prerogatives - '*Les domaines reserves*'. See B. Chantebout, op. cit.
55. If cohabitations between the left and the right have been possible under Francois Mitterand, it does not necessarily follow that they will succeed with another President with a different personality, one who may have a 'presidential' conception of his role. The President may invoke his 'powers' under the Constitution. A newly-elected President, faced with a hostile majority in Parliament, may not always accept to play the role of a 'Republican' monarch.
56. The RPR - UDF group controls 450 out of the 577 seats of the French National Assembly following the legislative elections of March 1993.
57. Section 53(2) of the Indian Constitution. For a copy of the Indian constitution see Paras Diwan and Pam Rajput, *Constitution of India*, Sterling Publishers PVT Ltd, New Delhi, 1979.
58. Section 54 of the Indian constitution. The electoral college is made up of the elected members of both Houses of Parliament and the elected members of the legislative Assemblies of the States.
59. The Indian President may be removed from office by impeachment. Article 61 of the Indian Constitution provides a very laborious procedure for the impeachment of the President.
60. Articles 352 - 360 which cover the 'Emergency Provisions' of the Indian Constitution vest formally tremendous powers in the President of the Republic. However, being a constitutional Head of State, these powers can only be exercised in accordance with the advice of the Prime Minister and the Cabinet.
61. Constituent Assembly Debates, quoted from P Diwan and P Rajput, *The Constitution of India* op. cit., p. 122.
62. D D Basu, *Introduction to the Constitution of India*, 8th Edition, Prentice Hall of India, Private Ltd, New Delhi, 1980 p. 177.
63. D D Basu, *Introduction to the Constitution of India*, op. cit., p. 178.
64. Ibid Article 75 (3) lays down the principle of collective responsibility of the Council of Ministers to the House of the people. Thus the government is under an obligation to resign if

- it loses the confidence of the lower House. However, instead of resigning, the Prime Minister may request a dissolution of Parliament.
65. Section 47 of the Constitution of the Republic of Mauritius. See the Constitution of the Republic of Mauritius, a Consolidated Version, Mauritius, 1992.
  66. Ibid., Article 28 (2) (i).
  67. Ibid., Article 28 (2) (ii).
  68. However, the President can be removed, following the passing of a motion by a simple majority for (i) violation of the Constitution (ii) infirmity of mind (iii) failure to comply with section 46(2) of the Constitution. For other causes a majority of two-thirds of all the members of the Assembly is required, followed by investigation by a tribunal. See section 30 of the Constitution.
  69. Ibid., section 57 (1).
  70. Ibid., section 31 (2).
  71. Ibid., First schedule 1 (1).
  72. Ibid., First schedule 5 (1).
  73. Ibid.
  74. Ibid., First schedule 3 (4).
  75. Section 57 (2) of the Constitution. This particular clause of the Constitution can only be amended, that is, General Elections can be postponed only after first, a referendum has been held, approved by a three quarter majority, followed by a unanimous vote of the House.
  76. General Elections are normally contested by at least 10 political parties. However, only four of them can claim to have significant popular support; these parties normally formed two political alliance to fight the elections.
  77. Section 59 (3) of the Constitution.
  78. Ibid., Section 57 (1)
  79. Ibid.
  80. Section 73 (1) of the Constitution.
  81. The Constitutional provisions governing the removal of judges - a special tribunal, then referral of its report to the Privy Council in London - are so elaborate that in practice, judges are irremovable - see Section 78 of the Constitution.
  82. Sections 17 and 83 of the Constitution.
  83. Ibid, Section 2 of the Constitution reads:  
"This Constitution is the Supreme Law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void. " Sections 17 and 83 empower the Supreme Court to act as guardian of the Constitution.

84. Ibid, section 64(1) enjoins the President to act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet.
85. Ibid., section 28 (2) (a) (i).
86. Section 64 (I) of the 1968 Constitution.
87. Section 64 (I) of the Constitution of the Republic of Mauritius.
88. Ibid., section 46 (2) (c). However, the President cannot withhold his assent to a money bill or a bill amending the Constitution which has been passed in compliance with Section 47 of the Constitution.
89. Ibid., Section 64 (2).
90. According to article 111 of the Indian Constitution, the Indian President has the right to ask both Houses of Parliament to reconsider a Bill, other than a money bill, presented to him for his assent.
91. Section 46 (1) and (2) (b) of the Constitution of the Republic of Mauritius.
92. Note that Section 46 (2) of the 1968 Constitution of Mauritius laid down that 'the Governor General may signify that he assents or that he withholds assent'. In fact the Governor General did withhold his assent if he was of opinion that the Bill was technically faulty. However, he would not withhold his assent to a Bill duly passed on grounds of principle or political philosophy.
93. Section 64 (2) of the Constitution of the Republic of Mauritius.
94. Ibid., section 64 (3).
95. Sir Veerasamy Ringadoo, Minister of Finance in the 70s and No 2 in the government of Sir Seewoosagur Ramgoolam. Father of Independence and Prime Minister of Mauritius (1968-1982), was the first President of the Republic of Mauritius. It was agreed that he would serve for a short period of three months. He was succeeded by Mr Cassam Uteem in June 1992.
96. Mr Cassam Uteem served as a Minister in the government of Sir Anerood Jugnauth before he was elected by the National Assembly as President. He played a leading political role in his party, the *Mouvement Militant Mauricien* and was in the forefront of the political struggle in the post-independence period. For the role played by Sir Veerasamy Ringadoo see note 95 above.
97. Walter Bagehot, 'The English Constitution' with an introduction by RHS Crossman, MP Collins. The Fontana Library, London 1964, the book was first published in 1867.
98. Ibid., p. 111.
99. Speech of Raj Mathur, presenting his Excellency the President of the Republic of Mauritius for the conferment of the Degree of Doctor of Civil Law Honoris Causa of the University of Mauritius on 9 June, 1994. See the Mauritian daily L'EXPRESS of 13 June, 1994 for a copy of the speech.