

Constitution and the law. In other words, it exercises a sort of 'judicial review' power over the decisions and rules made by the State Council.

(9) Power relating to the implementation of the Constitution and the Laws. To supervise the implementation of the Constitution and the laws is the power of the National People's Congress. However in practice, it is mostly exercised by the Standing Committee because the NPC meets only after long intervals and only for small sessions.

(10) Role in respect of Development Plans. Finally, the NPC has the power to approve the socio-economic developmental plans and the budget. The Standing Committee can examine and approve partial amendments and adjustments in these plans and the budget when the NPC is not in session.

In addition to all these functions, the Standing Committee performs all such functions as may be assigned to it by the National People's Congress.

Position of the Standing Committee of the NPC

The Standing Committee of the NPC is a powerful body. It virtually exercises all the functions of the National People's Congress. It plays a leading role in the working of the NPC. It has powers in almost all spheres of state activity. It has legislative, financial, executive, judicial amendment-making and protection powers. Previously, the Chairman of the Standing Committee used to perform the functions of the Head of the State. Now these functions are performed by the President of the People's Republic of China. However, this has not adversely affected the position and role of the Standing Committee. The President of the PRC performs several of his functions on the recommendations made by the Standing Committee of the NPC.

The Standing Committee is a creation of the NPC, yet it dominates the working of NPC and performs its all powers and functions. Its power to interpret the Constitution as well as the power to supervise the functioning of all other state organs further makes it a powerful body. It serves as a small and manageable group performing the important function of giving the necessary legal form and authority to the acts of the State which are in reality the decisions of the top leadership of the Communist Party. It is a creation of the National Peoples Congress which, however, dominates its creator.

In the actual operation of the Chinese Political System, the real centre of power is the Communist Party of China, particularly its top leadership. The Standing Committee really works as an agency used by the Communist Party to get its decisions legalised. That is why, despite being a committee of National Peoples Congress, the Standing committee enjoys a large amount of powers and functions. The Standing Committee acts as a legitimising agency of the Communist Party of China. In reality the position and role of the Standing Committee depends upon the position that its chairman and vice-chairmen enjoy in the hierarchy of the Communist Party and their closeness with the leader at the top of the party hierarchy.



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Republic of China suggests the name for the office of the Premier. If the National People's Congress approves the Presidential recommendation, the President appoints the Premier. However, it is only a formality. In reality, the Communist Party decides who is to be the Premier. The choice usually falls upon the second most important leader of the Communist Party, because the leader at the top usually likes to control the Communist Party as its Chairman or General Secretary.

On 15th March 2013, the National People's Congress elected the second most powerful leader of the Communist Party, Mr. Li Keqiang as the new Chinese Premier.

(B) Tenure of the Premier. The Premier holds office for a term of five years. The Constitution further states that no person can remain Premier for more than two consecutive terms. In other words, like the US President, the Chinese Premier can enjoy only two consecutive terms. However, the Chinese Constitution is silent whether a person who has served as premier for ten years can again become the Premier after a gap of few years or not. Implicitly, it appears he can. In the USA however, no person can ever remain President for more than two full terms. The National People's Congress has the power to remove the Premier before the expiry of his term. In practice, such a decision is always made by the top leaders of the Communist Party of China.

Powers and Functions of the Chinese Premier

The Chinese Premier performs several important functions in the Chinese constitutional system which makes his position a pivotal one. The account of his powers and functions is as follows :

- (1) It is upon the recommendations of the Premier that the National People's Congress, or the Standing Committee in the absence of the NPC, appoints the Vice-Premiers, State Councilors, Ministers and the Secretary General of the State Council.
- (2) The Premier heads the State Council. He directs and coordinates the work of the councilors and the Vice-Premiers. The Vice-Premiers, the State Councilors and the Secretary General always assist the Premier.
- (3) The Premier convenes, presides over and controls the proceedings of the both the Plenary and the Executive meetings of the State Council.
- (4) The Premier has the overall responsibility in respect of the effective working of the State Council. He guides, directs, coordinates and controls the working of all the ministries and commissions.
- (5) As head of the real government (State Council) and the real executive, the Premier plays an active role in formulating the policies of the state. He conducts the foreign relations of China and represents China in the international conferences he attends.

Position and Role of the Premier

The office of the Chinese Premier is a powerful office both because of his headship of the real government—the State Council as well as due to the pivotal position that the holder of this office always occupies in the leadership hierarchy of the Communist Party of China.

The 1982 Constitution has restored his position, which had got eroded during the period of the Cultural Revolution. It has made the Premier powerful by giving it the headship of the real executive and by vesting it with the overall responsibility regarding the effective working of the State Council. Now, the Premier is appointed by the President after his nominee's

are appointed by the Standing Committee of the NPC.

- (vi) The National People's Congress elects its Standing Committee which regularly performs the assigned law-making functions, and all other functions of the NPC when it is not in session. All the decisions of the Standing Committee require the approval of the NPC. But it is only a formality. In practice, the NPC always endorses the decisions of the Standing Committee.

Thus, the NPC performs several important electoral functions.

(4) Power of Removal. The officials of the State —the President and the Vice-President of the People's Republic of China, the Premier, the members of the State Council, the members of the Standing Committee, the chairman and members of the Military Commission etc., in fact all officials who are elected/appointed by the NPC, can also be removed by it. However, the real power of appointment and removal rests with the top brass of the hierarchy of the Communist leadership of China.

(5) Power to create Provinces. The National People's Congress has the power to approve the establishment of provinces, autonomous regions and municipalities directly under the Central Government. The NPC alone can alter or fix their boundaries. Special administrative regions can be established only by it.

(6) Power to make War and Peace. The National People's Congress has the power to take all decisions on questions of war and peace. In other words, like the U.S. Congress, China's National People's Congress has the right to declare war and to conclude peace. All such decisions require its approval.

(7) Financial and Planning Functions. All economic and social planning in China is controlled by the National People's Congress. It examines and gives approval to all development plans. All reports on the implementation of the development plans are reviewed by the NPC. The budget of the government is passed by the NPC. The reports on the implementation of the Budget are also reviewed by the NPC.

(8) Power to establish several Commissions and Committees. The National People's

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Standing Committee exercises all the powers of the NPC. The 1982 Constitution has assigned some law-making powers directly and independently to the Standing Committee. It has further strengthened its position.

Constitutionally, the Standing Committee is an organ created by and responsible to the NPC. However in actual practice, the Standing Committee dominates the NPC. The NPC has come to be merely a registering and legalising agency responsible for putting the stamp of legality on the acts and decisions of the Standing Committee.

(A) Composition of NPC. According to **Article 65**, the Standing Committee of the NPC consists of one Chairman, several Vice-Chairmen, the Secretary General and some other members. In all, it consists of some 200 members. All its members are elected by the NPC. Minority nationalities are given appropriate representation in the Standing Committee. However, no member of the Standing Committee can hold any administrative or judicial office.

(B) Tenure. The Standing Committee holds a tenure of 5 years. The rule is that the Standing Committee continues to exercise its powers and functions until a new Standing Committee is elected by the newly elected National People's Congress. The NPC has the power to recall any member of the Standing Committee at any time.

No serving member of the Standing Committee can hold any post in any administrative, judicial or procuratorial organ of the state.

(C) Chairman and Vice-Chairmen of the Standing Committee. The Standing Committee works under its Chairman who is assisted by a team of Vice-Chairmen and a Secretary General. The Chairman convenes its meetings and presides over them. The executive meetings, involving the Chairman, the Vice-Chairmen and the Secretary General, handle the important day-to-day work of the Standing Committee. Previously, the Chairman of the Standing Committee used to perform the functions of the head of the State of China. However, this function is no longer exercised by him because now the office of the President of the Republic has been restored. Further, in order to eliminate long tenures for the offices of the Chairman and Vice-Chairmen, the 1982 Constitution specifically states in its Article 66 that "the Chairman and the Vice-Chairmen of the Standing Committee cannot serve for more than two consecutive terms."

THE STANDING COMMITTEE OF NPC: POWERS & FUNCTIONS

The Standing Committee of the NPC is a unique institution which exercises all the powers during the intervals between the sessions of the National People's Congress. The 1982 Constitution even directly grants to it some law-making powers. Since the NPC is the highest organ of state power with vast legislative, financial, constituent and electoral powers, the Standing Committee exercises all these powers for most of the time as the NPC meets in short sessions and that too after long intervals. We can discuss the powers and functions of the Standing Committee as follows :

(1) Standing Committee and Law-Making. With the exception of the law-making powers solely entrusted to the NPC (the enactment and amendment of the Basic Statutes), the Standing Committee is competent to make laws on all other subjects. The members of the Standing Committee, along with the Deputies of the NPC, participate actively in the law-making process. They can propose in the NPC any measure for legislation or for constitutional amendment. The Standing Committee performs a leadership role in the law-

name is approved by the National People's Congress. The Premier is neither chosen nor removed by the Standing Committee. All other members of the State Council are appointed by the NPC or the Standing Committee upon the recommendations of the Premier. The special method of his appointment gives him higher status in the State Council. His position as the head of the State Council further makes his role very powerful and active in the working of the Chinese Government.

Despite all this, the position of the Chinese Premier is not as powerful as the position of the Prime Minister in a parliamentary system like the one which is at work in India. In China, the Premier is powerful not because of the powers and functions assigned to him by the Constitution but because of the fact of being a powerful leader, rather one of the two or three most powerful leaders of the Communist Party. The Premiership in China has been a powerful institution not because of the constitutional provisions but because of the fact that it has been held by powerful leaders like Chou En-Lai and Li Peng, who were strong leaders of the CPC. The success with which he implemented his Martial Law decision in June 1989 demonstrated Li Peng's strong position in the Chinese political system.

To sum up, we can say that whereas the Indian and British Prime Ministers are powerful largely because of their pivotal constitutional positions, the Chinese Premier is powerful largely because of his powerful position in the Communist Party. The Chinese Premier is the most important person in the State Council and one of the two or three most powerful communist leaders of the Chinese political system.



Powers and Functions of the President of the PRC

The President of the People's Republic of China performs all the ceremonial functions as the head of the state. He also performs several other functions which the Constitution has allocated to him.

In pursuance of the decisions and recommendations of the National People's Congress, the President of the PRC, promulgates statutes, appoints and removes the Premier, Vice-Premiers, State Councilors, Ministers in charge of Ministries and Commissions, the Auditor General and the Secretary General of the State Council.

Upon the recommendations of the Standing Committee of the NPC, the President confers state medals and titles of honour on the people as well as grants special pardons to the criminals.

Acting on the basis of the decisions of the National People's Congress or its Standing Committee, the President proclaims martial law, a state of war and issues mobilisation orders. All such orders are issued by the President in accordance with the decisions of the National People's Congress or its Standing Committee.

As Head of the State, the President appoints and recalls Chinese ambassadors and other diplomatic agents in foreign countries. He receives the ambassadors of foreign countries in China. All these functions are performed by him upon the recommendations of the Standing Committee of the NPC.

All the treaties concluded by the government with the foreign countries are ratified by the President. He has the power to abrogate any treaty if the circumstances so demand. These functions are again performed by the President under the advice of the Standing Committee.

In discharging his functions, the President can seek the assistance of the Vice-President. **Article 82** of the Constitution states that "**the Vice-President may exercise such parts of the functions and powers of the President as may be deputed by the President.**" As such, he can be assigned any work by the President.

A primary responsibility of the President is to recommend the name of the person who is to be appointed as the Premier of China. The National People's Congress can appoint the Premier only upon the recommendation made by the President of the PRC.

Position of the President of the PRC

The office of the President of the Republic is a ceremonial office. His powers and functions are formal and ceremonial. He performs all his functions, with a few exceptions, upon the recommendations of the National People's Congress or its Standing Committee. Even the decisions of the State Council are neither announced nor implemented in the name of the President. The 1982-Constitution, while restoring the office of the President, has not restored to him all the functions which he used to perform under the 1954-constitution. For example, he has not been assigned the power to command the armed forces, he has not been made Chairman of the National Defence Council, and his power to convene a meeting of the Supreme State Conference has been also not restored.

To sum up, we can say that the office of the President of the People's Republic of China is a ceremonial office. He acts as the constitutional and nominal head of the State. However, when this office is held by a strong party leader, it works as a powerful office.

On 15 March 2013 Mr. Xi Jinping, the General Secretary of CPC became the

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Structure Of Government

The President Of PRC, The State Council & The Premier Of China

THE PRESIDENT OF THE PEOPLES REPUBLIC OF CHINA

The offices of the President and the Vice-President of the People's Republic of China were abolished by the Constitution of 1975. Their responsibilities and powers were transferred to the Chairman of the Standing Committee. He was made responsible for the discharge of the functions of the Head of the State of the Chinese Republic. The 1982 Constitution however restores the two offices and gives to the President of PRC the status of the Head of the State. On 15th March 2013 Xi Jinping took over as the President of the PRC.

Qualifications. The following qualifications have been prescribed for the office of the President of PRC.

- (a) He should be a citizen of China
- (b) He must not be of less than 45 years of age
- (c) He should be a duly eligible and registered voter

Method of Election and Tenure. The President of the PRC is elected by the National People's Congress for a term of five years. Any citizen of China who is above 45 years of age, is a registered voter and is eligible to seek election, can be elected as the President of the PRC. The 1982 Constitution lays down that no person can serve or remain President for more than two consecutive terms.

The leadership of the Communist party selects one of its top leaders as the candidate for the office of the President of PRC and he is later on formally elected as such by the National People's Congress (NPC) of China. On 15th March 2013, the NPC elected Xi Jinping as the new President of China.

Along with the President, a Vice-President is also similarly elected by the NPC. If the office of the President falls vacant, the Vice-President becomes the President. In case the office of the Vice-President falls vacant, the National People's Congress elects a new Vice-President. In the event of simultaneous vacation of the two offices, the Chairman of the Standing Committee becomes the acting-President and carries out the duties of the Head of the State until the election of a new President and Vice-President by the National People's Congress.

making that the NPC undertakes. The Standing Committee independently makes laws on the subjects not exclusively reserved for the NPC.

(2) The power of the NPC to change the Laws of the NPC : When the NPC is not in session, the Standing Committee exercises all the law-making powers. It can even modify any statute provided the modifications do not contravene the basic principles of the statute. Here again, the Standing Committee has an upper hand in so far as it has the power to interpret the statutes. By the exercise of its 'interpreting power', the Standing Committee virtually determines the nature of the statute. This power considerably strengthens the role of the Standing Committee in the legislative sphere.

(3) Appointment-making and Electoral Functions of Standing Committee. (i) When the NPC is not in session, the Standing Committee fills up the vacancies in the State Council. All electoral or appointment-making functions of the NPC are performed by the Standing Committee when the NPC is not in session. In other words, during the absence of the NPC, the Standing Committee appoints, upon the recommendations of the Premier, Ministers and Secretary General of the State Council and the Auditor General.

(ii) Similarly, the Standing Committee exercises the power to appoint Vice-Presidents and Judges of the Supreme People's Court, members of the Military Commissions and the Procurators of the Supreme People's Procuratorate. However, the appointments of the Premier, the Chief Justice, and the Procurator General are the exclusive prerogatives of the NPC.

(4) Power to guide the Foreign Relations of China. (i) The Standing Committee decides upon the appointment and recall of Chinese ambassadors and other diplomatic representatives abroad. All such appointments are made by the President of the Peoples Republic of China (PRC) on the basis of the decisions made by the Standing Committee of the NPC.

(ii) The Standing Committee decides on the ratification and abrogation of all treaties of China with foreign countries. This is done by the President of the PRC in accordance with the decisions of the Standing Committee.

(iii) The NPC has the power to take all decisions regarding war and peace. However, when the NPC is not in session these functions are performed by the Standing Committee. The Standing Committee has the responsibility to take decisions regarding general mobilisation. It also decides on the issue of the enforcement of martial law in the whole of China or any part thereof.

(5) Power to grant Ranks and Titles. The Standing Committee institutes titles and ranks for military and diplomatic personnel. It institutes state medals and titles of honour and decides on their conferment. The medals and titles are, however, conferred by the President of the PRC.

(6) Power to grant Pardons. The Standings Committee decides all cases for the grant of special pardons to the criminals. All pardons are, in practice granted by the President of the PRC in accordance with the decisions of the Standing Committee.

(7) Supervisory Powers. The Standing Committee supervises the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate.

(8) Power to Review Decisions, Rules and Orders. The Standing Committee can reject all decisions, orders and rules made by the State Council in case it finds them against of the

responsibility of the State Council is not collective. It is at best individual responsibility of its members.

(D) Premier as Head of the State Council. The State Council is headed by the Premier. It is on the recommendations of the Premier that the NPC approves the names of the persons for various offices of the State Council, and the President of the PRC formally appoints them. The State Council works under the direction of the Premier. He coordinates the working of all the ministries and the commissions. He presides over both the plenary meetings which are attended by all the members and the executive meetings which are attended only by the Vice-Premiers, the State Councilors and the Secretary General of the State Council. His position is comparable to the office of the Prime Minister in a parliamentary system like the one which prevails in India. The Chinese Premier is always one of the top leaders of the Communist Party and this fact determines his position in the State Council.

The State Council : Powers and Functions

The State Council is the executive — the Council of Ministers of China. It exercises a large amount of administrative and executive powers. **Article 89** of the 1982 Constitution lists the following as the functions of the State Council :

1. The State Council adopts administrative measures, enacts administrative rules and regulations and issues decisions and orders in accordance with the Constitution and the laws.
2. The State Council takes policy decisions according to the Constitution and issues orders for their implementation.
3. The State Council formulates and submits various proposals for law-making to the NPC and when the NPC is not in session, to its Standing Committee.
4. The State Council allocates tasks and responsibilities to the ministries and commissions. It exercises unified leadership over the ministries and commissions. Further, it directs the national administration and coordinates and supervises the activities of ministries and commissions.
5. It exercises unified leadership over the work of the local organs of the state administration working at different levels throughout the country. It determines the responsibilities of the administration of provinces, autonomous regions and municipalities directly under the central government, and supervises their working.
6. The State Council can change or reject inappropriate orders, directives and regulations issued by ministers, commissions and local organs of State administration at different levels.
7. The State Council approves the geographic divisions of provinces, autonomous regions and municipalities directly under the central government. Further, it approves the establishment of geographic divisions of all these areas.
8. As the 'executive body of the highest organ of state power' the State Council conducts foreign affairs, formulates the foreign policy of China and negotiates and concludes treaties with foreign countries. However, the treaties become operative only when the President of the PRC ratifies these after securing the approval of the Standing Committee of the NPC.

Committee supervises the work of the State Council in promulgating administrative rules and regulations, decisions or orders which conform with the Constitution and the laws. The Deputies of the NPC have the right to put questions to the ministers and they are required to answer these in a responsible manner. The power to interpret and apply the Constitution belongs to the Standing Committee. The National People's Congress alone can amend the Constitution. This appears to make the State Council subordinate to the NPC and its Standing Committee.

However, it is not always the case in the reality. If the State Council has powerful communist leaders as its members and the Premier is the top leader of the Communist Party, it works as a very powerful organ of state power. Usually the State Council works as a powerful body because the person who holds the office of Premier is a very powerful, if not the most powerful, leader of China. Li Peng, a powerful top level leader of China acted as a strong Premier during his tenure of 10 years. His position remained strong as a result of his strong hold over the party machinery and the support that he enjoyed from the party leaders. The power of the personality and the party status of the person who holds the office of the Premier, always acts as a big source of power for the State Council. The State Council then acts as a powerful institution. However, its power-position is not as great as is of the

9. It protects the legitimate rights and interests of the Chinese nationals living abroad. It has the responsibility to protect the lawful rights and interests of overseas Chinese who return to China as well as of the family members of Chinese nationals living abroad.
10. The power to declare Martial Law in the country does not belong to the State Council. However, it shares with the Standing Committee the power to decide on the enforcement of Martial Law in parts of provinces, autonomous areas and municipalities directly under the Central Government.
11. The State Council draws up the national plans for socio-economic development. It prepares the budget. After getting these approved by the NPC or its Standing Committee, it implements and administers these. It directs and administers all economic affairs and urban and rural development activities. It is responsible for the administration of the affairs of education, science, culture, public health and family planning. These are national priorities.
12. The State Council examines and decides on the size of the administrative organs and, in accordance with the law, appoints removes and trains administrative officers, appraises their work and rewards and punishes them.
13. The State Council looks after public security and judicial administration.
14. Besides the above specific functions, the Constitution declares that the National People's Congress or its Standing Committee may assign to the State Council such other functions or powers as may be deemed necessary and expedient.

The Working of The State Council

The State Council works under the leadership, direction and over all responsibility of the Premier. It is directly responsible to the NPC and reports to the latter about all its activities and decisions. When the NPC is not in session, the State Council is responsible before the Standing Committee of the NPC. The members of the State Council have to answer all questions that are put to them by the Deputies of the NPC.

The ministers-in-charge of various ministries and commissions are responsible for the work of their respective departments. Each of them presides over the ministerial/commission meetings convened for discussing and deciding the major issues before the department.

On the basis of the policies, rules, regulations and orders issued by the State Council, the ministries and the commissions issue orders, directives and regulations for their effective implementation in their respective areas of jurisdiction.

In its working, the State Council (**Acting under Article 88**) holds two types of meetings : the Plenary meetings and the Executive meetings. The former are attended by all the members of the State Council and the latter only by the Vice-Premiers, State Councilors and the Secretary General. The Premier, however, presides over both types of meetings. Important policy matters are sought to be speedily handled by the executive meetings which, because of a limited membership, are capable of working more effectively.

Further, the State Council establishes an auditing body for supervising the revenue and expenditure of all departments of the State Council, local governments, financial organisations, enterprises and undertakings.

For carrying out the day-to-day administrative work, the State Council has a Secretary General. It works under the direction of the Secretary General of the Council.

(D) Sessions of the NPC

The NPC meets at least once in a year. Its sessions are convened by its Standing Committee. The power to convene the sessions does not belong to the President of the People's Republic of China. Further, its session can be convened at any time when the Standing Committee deems it necessary, or when more than 1/5th of the deputies so propose. The Constitution does not provide for the advancement or postponement of a session.

(E) Privileges and Duties of the Deputies of the NPC

The deputies of the NPC enjoy certain privileges. No deputy can be arrested or put on criminal trial without the consent of the Presidium of the current session of the NPC or when the NPC is not in session, without the consent of the Standing Committee of the NPC. Further, no deputy can be called to legal account for his speeches or vote in the meetings of the NPC.

Regarding the duties of the Deputies, the Constitution under its Article 76 provides that *"they must play an exemplary role in abiding by the Constitution and the law and keeping states secrets and, in production and other work and their public activities, assist in the enforcement of the constitution and the law."* They are required to maintain close contacts with their electors, listen to their views and convey to the appropriate organs their opinions and demands. They have the foremost duty to serve the people. Further, the deputies are under the supervision of the units which elect them. The electoral units can, through the procedures established by law, recall their deputies.

NPC : POWERS AND FUNCTIONS

The National Peoples Congress is the highest organ of state power which has been assigned several powers and functions.

(1) Legislative Powers. The Constitution places all law-making powers in the hands of the National People's Congress and its Standing Committee. Being a unicameral legislature of a unitary state, the National People's Congress can make laws on all subjects either by itself or as suggested by its Standing Committee. In effect, the NPC enacts and amends basic statutes relating to criminal offences, civil affairs, state organs and other matters which the Congress may deem it fit, necessary and expedient to legislate. On all other subjects, the 1982 Constitution gives legislative power to the Standing Committee. Previously all law-making powers were theoretically in the hands of the NPC but used to be really exercised by its Standing Committee. This informal arrangement has been formally recognised by the Constitution of 1982. Now the Standing Committee and the NPC share the law-making powers. All the law-making powers of the NPC are exercised by its Standing Committee when the former is not in session. Since its sessions are held for very short durations and after long gaps, the law-making powers are really exercised by the Standing Committee.

(2) Amendment Powers. The National People's Congress has the power to amend the Constitution. An amendment to the Constitution can be proposed either by the Standing Committee or by at least 1/5th of the Deputies of the NPC. For incorporating an amendment, the NPC has to pass the proposal by a 2/3rd majority of all the Deputies.

Further, the NPC has the responsibility to supervise the enforcement of the Constitution. The Constitution is the supreme law and its dignity has to be upheld by all the state organs. Since the highest organ of state power is the NPC, it becomes its supreme responsibility to maintain the supremacy of the Law and the Constitution.

Seventh President of the Peoples Republic of China and for took place previously held by Hu Jintao. This change of guards made the office of the President more powerful and presently, Chinese political system revolves around the policies and decisions of President Xi Jinping.

Xi Jinping elected as President of Peoples Republic of China (March 2013)

In March 2013, Chinese new strong man and the top leader of the Communist Party of China, Xi Jintao got elected as the President of PRC for a term of 5 years. He was the only candidate for this office and, as such, polled 99.7% votes cast by the annual session of the China's Parliament—the National Peoples Congress.

THE STATE COUNCIL (THE CHINESE CABINET)

The State Council of the People's Republic of China is the executive body (Ministry) of the state. It has a position similar to the one enjoyed by the council of ministers in a parliamentary democracy, although with several structural and functional differences.

In its Chapter III Section III the Constitution of 1982 discusses the composition and junctions of the State Council and describes it as "the executive body of the highest organ of state power." Further, it is the highest organ of state administration and is headed by the Premier. It is the real executive and the President of the PRC is the nominal head of state.

Organisation of the State Council

The State Council consists of the Premier, some Vice-Premiers, the State Councillors, the Ministers in charge of ministries, the Ministers-in-charge of Commissions, the Auditor General and the Secretary General (Article 86). The membership of the State Council is not fixed. It is determined by the National People's Congress at the time of the election of the State Council.

(A) Appointment of Ministers. The President of the Republic recommends the name of the Premier. When it is approved by the NPC, the President then formally appoints the Premier. On the recommendations of the Premier, the National People's Congress appoints other members of the State Council. The formal appointments are made by the President of the PRC. In other words, upon the recommendations of the NPC, the President appoints and removes the members of the State Council. When the NPC is not in session, the decision regarding the removal of a member of the State Council is made by the Standing Committee of NPC, and the action is formally taken by the President of PRC. However, the real place where all the decisions are taken is the top leadership of the Communist Party.

(B) Tenure. The term of the State Council is five years *i.e.* equal to the term of the National People's Congress. Further, the 1982 Constitution specifies that the Premier, the Vice-Premiers and the State Councilors cannot hold office for more than two consecutive terms. This provision has been incorporated for eliminating the chances of life Premierships like the one PM Chou-en-lai held from 1949 till his death in 1975. The NPC has the power to remove any member of the State Council. In reality such action against any member of the State Council is taken only when the Communist Party so desires and decides.

(C) Responsibility of the State Council. Article 92 of the Constitution clearly states that *"the State Council is responsible and reports on its work to the National People's Congress or when the National People's Congress is not in session, to its Standing Committee."* This

NATIONAL PEOPLE'S CONGRESS (NPC)

The 1982 Constitution of the People's Republic of China makes the National People's Congress (NPC) the national legislature of China. The constitution describes it as the highest organ of state power in China. All authority of the People's Republic of China flows from it. As the legislature of a unitary state, the NPC exercises all legislative authority of the country. It and on its behalf Standing Committee is the custodian of all law-making and constitution amending powers.

(A) Unicameral Legislature

The National People Congress (the NPC) is a uni-cameral legislature of a unitary state. It consists of nearly 3000 deputies who are elected by the provinces, autonomous regions, municipalities directly under the Central Government and the armed forces of China (In 1998, 2974 deputies constituted the NPC). All citizens of 18 years or above of age have the right to vote. Any voter can seek election regardless of nationality, race, sex, occupation, family background, religious belief, education, property, status or length of residence. Only persons who have been specifically denied the political right to vote cannot become its members or participate in its elections (**Article 34**). Under **Article 59**, all the minority nationalities are entitled to appropriate representation in the NPC. The number of the deputies and the manner of their election are prescribed by law.

(B) Method of Election of Deputies of NPC

There is nothing like an election commission in China for conducting elections. The responsibility of conducting the elections belongs to the Standing Committee of the NPC. The Constitution requires the Standing Committee to ensure the election of the deputies of the new NPC two months before the expiry of the term of the existing NPC. If in case of 'exceptional circumstances' (emergency), elections cannot be held, the Standing Committee can postpone these by taking a decision with a 2/3rd majority. In such an eventuality the existing NPC continues to remain in office and its term gets extended. However, elections to the new NPC have to be completed within one year of the end of such 'exceptional circumstances'. As such, the Standing Committee has the discretion to decide the 'existence of exceptional circumstances' warranting a postponement of elections for NPC.

(C) Tenure of NPC

The tenure of the NPC is five years. There is no provision for its mid-term dissolution. But in exceptional circumstances, when the Standing Committee decides to postpone elections, its term gets extended till the election of a new NPC.

Congress establishes several Commissions and Committees — the Nationalities Commission, a Law Committee, a Financial and Economic Committee, an Education Science, Cultural and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee, and all other such committees as are necessary for the state. These committees and commissions are responsible to the NPC. When the NPC is not in session, the Standing Committee supervises these and enforces their responsibility. Further, the NPC can appoint committees of inquiry for examining specific questions.

(9) **Power to enforce the responsibility of the State Council.** For all its activities, the State Council is responsible before the NPC. The Deputies of the NPC have the right (in accordance with the procedure established by law) to address questions to the State Council or the Ministers and Commissions. All such questions have to be answered in a responsible manner. However, there is no such thing as collective responsibility of the State Council to the NPC.

(10) **Other Powers.** The 1982 Constitution categorically states that the National People's Congress has the authority "to exercise such other functions and powers as the highest organ of state power should exercise". In other words, *the NPC enjoys a free hand in exercising power even in respect of matters not specifically given to it by the Constitution.*

Position of The National People's Congress

The above account of the powers and functions of the National People's Congress clearly reflects the high place that the 1982 Constitution of China gives to it as the 'Highest organ of State Power'. There is no such thing as separation of powers or functions in China and the NPC enjoys powers in all spheres of governmental activity. It is the supreme law-making agency, supreme electoral agency, and the supreme decision-approving body of the constitutional system. Above all, the NPC has the responsibility to supervise the implementation of the constitution. It alone can amend the constitution.

However, in reality the National People's Congress is not a strong and active organ of the constitutional system of China. There are several practical limitations on its working, which make it a weak legislature.

- (i) Like every other part of the Chinese political system, the National People's Congress is also dominated by the Communist Party of China, particularly by its top leadership.
- (ii) The Standing Committee really exercises the powers of the NPC.
- (iii) The unicameral character, the unwieldy size and short and infrequent sessions make it a weak legislature.
- (iv) Lack of opposition makes the meetings of the NPC a dull affair. It merely acts as a body giving formal approval to the acts and decisions of its Standing Committee.

Thus, the NPC is a powerful body and the highest organ of State power only in theory. In reality, it is a weak legislature responsible for legalising the orders and commands of the Communist Party or to be more true and realistic, the commands of the top leaders if not 'the leader' of the Communist Party.

THE STANDING COMMITTEE OF THE NPC

Article 57 describes the Standing Committee as the permanent body of the National People's Congress. The Standing Committee is the continuously working organ of the National People's Congress. During the interval between the two sessions of the NPC, the