THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA'S FEDERAL GOVERNANCE SINCE 1967

A THESIS SUBMITTED TO THE UNIVERSITY OF NORTH BENGAL FOR THE AWARD OF DOCTOR OF PHILOSOPHY IN POLITICAL SCIENCE

BY

TABESUM BEGAM

UNDER THE SUPERVISION OF

PROFESSOR PRADIP KUMAR SENGUPTA

DEPARTMENT OF POLITICAL SCIENCE
UNIVERSITY OF NORTH BENGAL
DARJEELING, INDIA-734013

NOVEMBER, 2014

THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA'S FEDERAL GOVERNANCE SINCE 1967

DECLARATION

I, Tabesum Begam hereby declare that the work embodied in my thesis entitled **"THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA'S FEDERAL GOVERNANCE SINCE 1967"** has been carried out by me under the supervision of Prof. Pradip Kumar Sengupta, Department of Political Science, University of North Bengal for the award of the degree of Doctor of Philosophy in Political Science. I also declare that this thesis or any part thereof has not been submitted for any other degree/diploma either to this or other University.

Tabesum Begam.

Tabesum Begam
Department of Political Science,
University of North Bengal

Date : 12.09.2014

Dr. Pradip Kumar Sengupta
Professor
DEPARTMENT OF POLITICAL SCIENCE
UNIVERSITY OF NORTH BENGAL

P.O. North Bengal University
Dt. Darjeeling, (W.B.), Pin - 734013
☎: (0353) 2776 349 (O)
Cell - 94344 64858

C E R T I F I C A T E

This is to certify that the Ph.D. thesis under the title **"THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA'S FEDERAL GOVERNANCE SINCE 1967"** has been done by **Tabesum Begam** under my supervision. The work is an original one and has not been submitted elsewhere for any such similar degree by the candidate.

Pradip Kumar Sengupta.

(Professor Pradip Kumar Sengupta)
Supervisor

Date : 12/09/2014

A B S T R A C T

THEORY AND PRACTICE OF CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS – A STUDY IN THE CONTEXT OF INDIA'S FEDERAL GOVERNANCE SINCE 1967

SUBMITTED BY : TABESUM BEGAM

Studies on constitution and its functioning have been central theme since the time of Aristotle. It is true that constitutions vary in content and structure from country to country, depending upon the nature of historical setting, social structure, economic foundations and political processes of each country. It may be stated that studies on constitutions in earlier period have been mostly formal, legal and structural in nature. In this frame of analysis constitutions are looked upon simply as structural mechanism which provides for foundations for administering the country.

That constitutions are not merely a legal document but reflects the ideas, aspirations, attitudes and goals of the nations – have been realized in contemporary analysis. Constitution is considered to be the supreme law of the land and contains within itself the basic philosophy of the nation concerned. It may not be out of place here to mention that in every written constitution, the Preamble embodies the basic philosophy and ideals of the nation. At the sametime it is important to note that from a strict legal point of view a Preamble is not a part of the constitution. But that does not minimize the importance of Preamble and in many recent cases, judiciary, while deciding upon a case, refers to the ideals contained in the Preamble. This has added new importance to this section of the constitution.

The notion of constitutionalism can be viewed from this perspective. A constitution contains the basic ideas and philosophy of

the nation. These ideals and philosophies are more or less eternal in nature and each nation tries to achieve those goals.

Closely following this, comes another concept of equal importance and implications – constitutional dynamics. A constitution is considered to be a 'living organism' and it should have the capacities to respond to the out world changes that take place because of interactions between environment and political process. Karl Lowsteins', Ontological classification of constitution into normative, nominal and semantic appears to be appropriate. To him most of the constitutions fall into the category of 'nominal' nature because in this type of constitution here may be gaps between the declared objectives and the achievements made through the constitution. Again it is said that a constitution should have three basic features or capabilities as extractive capability, regulative capability and symbolic capability. All these taken together suggest that a constitution should have dynamism of its own and should be oriented towards the achievements of goals.

The present study, with this theoretical and conceptual framework, has sought to examine both constitutionalism as the basic foundation of the Indian constitution against the overall background political process in the country with in a federal setup.

A look into the history of constitutional framing and its practice since independence, or more specifically since the framing of the constitution by the Constituent Assembly shows that the Founding Fathers, right from the beginning, paid adequate attention to these aspects. The constitution has made elaborate arrangements not only for the formal structures of the constitution but also added mechanism for changing the constitution to make it adaptable to changing circumstances. Art.368 which provides for amending mechanism is so wide as to ensure participation not only of the two Houses of the Parliament but also of the state legislatures in specific cases. This was

done to include the state administration in this process in order to strengthen the federal governance.

The history of constitutional amendments reveals that since inception the constitution has been subjected to changes many times. But not all the formal amendments are significant because many changes have affected minor issues in the governing process. But there are two major areas that is nature and extent of fundamental rights and the issues of federal governance have been subjected to several amendments with far reaching implications.

Of all these amendments, the first, fourth, seventeenth, twenty-fourth, twenty-fifth, twenty-sixth and the forty-second amendment acts have far reaching impact not only on the Constitutional arrangements but also on the wider perspective of Indian polity. It is equally interesting to note that all these amendments are directly related with the power of the Parliament in amending the Constitution vis-à-vis the enjoyment of liberty by the individuals. In this connection, one may recall the verdict given by the Supreme Court in the Golaknath case way back in 1967. It not only declared the earlier verdicts of the Court in Shankari Prasad and Sajjan Singh case as wrong but also put a formal check on the power of the parliament to amend the chapter on Fundamental Rights on the place that the word "Law" used in Art.13(2) only refers to ordinary law and the constituent law which is amendment.

This judgement once again brought the Parliament and the judiciary face to face on a warpath. It affected not only the constitutional arrangement but exerted tremendous influence on the political process of the country. The history of 1971 mid-term poll and the return of the Congress Party with a very comfortable majority and subsequent constitutional amendments will suggest the mutual interactions between constitutional practice and the nature and course of the political process. It may not be an exaggeration to say that this process reached the culmination with the passing of the Forty-second Amendment Act. It

was called a “mini Constitution” as it sought to bring about major changes in the vital parts of the Constitutional structure and arrangements. A part of these changes were corrected by the Forty-Fourth Amendment Act.

The present work while making an analysis of the political aspect of constitutional governance has sought to examine their impact on the federal nature of the country. India’s federal arrangement as detailed in the Constitution itself has a close link with the party-structure and constitutional dynamics. The study has shown that the number of amendments went high when there had been political dominance by a party. It is easy to understand that the support base as reflected in the Parliament was responsible for easy passage for a constitutional amendment. Since a Constitutional amendment needs to be passed by both the Houses of Parliament, no government with poor support in the parliament can push on amendment through both the Houses. The emergence of coalition politics further complicated this position. Even after a landslide victory of the NDA and with absolute majority of the BJP in the Lok Sabha, the present government is facing the same problem as it does not majority in the Rajya Sabha.

In the present study, all these aspects have been analysed in details. Looking the problem form a theoretical perspective, attempts have been made to integrate the theme with the nature of federal dynamics of the country. As such, the present study has taken into consideration many other related forces and factors which have their direct bearing on both the constitutional practices and the nature and direction of federal dynamics in contemporary India.

PREFACE

Studies on Constitutional structure, setting and functions have alternated the attention of the scholars over a long period. It may not be an exaggeration to say that it was Aristotle who paid great attention on the study of Constitution and that two, in a comparative perspective. Since then, many studies have been done but it is interesting to note that most of these studies remained confined within the analysis of the structural aspect of the constitution. These were mainly institutional in nature highlighting the formal structure and content of the Constitution. Such studies have their limitations – these cannot go beyond the formal and legal interpretation of the Constitution.

The state of such studies in India has been the same. One may notice the nature of earlier works on Constitution which were essentially legal, formal and in some cases, institutional. But a radical change in perception on constitutional studies has taken place since it was admitted that mere formal/institutional studies cannot reveal the real nature of the functioning of the constitution of a country. It is equally believed that the nature and direction of the functions of a constitution largely depend on the nature and course of the political process at a particular point of time. It is always changing and has its own dynamism.

This realization has led to the opening up a series of constitutional studies in a different way. Instead of emphasizing only the formal nature of the constitution, emphasis has been placed on two vital elements – constitutionalism and constitutional dynamics. While the former deals with the philosophical/ideological foundations of the constitution, the latter explains the nature of interactions between the constitutional structure and constitutional dynamics, against the general backdrop of the socio-political environment of the country.

The present study, while following this course of analysis, seeks to understand, on the one hand, the formal structure of the Indian Constitution, the history of the making of the Constitution, the nature of constitutional provisions with their scope of coverage and on the other hand, the issues and forces which have been influencing the nature and extent of constitutional dynamics in India. One way, for the purpose of general understanding of the problem, seek to correlate it with the nature of political process in post-independent India which shows many ups and downs, challenges, conflicts and contradictions. But the nature of the Indian Constitution, as designed by the makers of the Constitution has been so wide and flexible that it has been able to withstand all such challenges with a remarkable degree of success.

In the preparation of this thesis, I have been helped by many persons without whose active support, the work would not have been possible.

The preparation of this study would not have been possible without the active support and co-operation of my Sir, Professor, Pradip Kumar Sengupta, former Dean, Faculty of Arts, Commerce and Law, North Bengal University. I am indebted to him for providing me every intellectual insight and valuable suggestions to understand the area of study both conceptually and operationally. His sense of humour has always given me the energy to move ahead. I also express my gratitude to Dr. Shipra Sengupta (Mrs. of Prof. Pradip Kumar Sengupta) for her ever smiling affection, hospitality and generosity.

I am greatly indebted to respected teachers of my Department for their support and encouragement.

My thanks also due to the staffs of the Library, N.B.U., for their active co-operation and tireless support by providing related literature.

My words of gratitude extend to the eminent authors whose work I had the privilege to quote. I am also grateful to Mr. Subir Das Mahanta who despite tremendous pressure of his work computed my work with in an unimaginable short time-frame.

I sincerely thank my family, especially my 'Baba' and 'Dada' whose blessings indirectly help and inspire to complete my work. At the same time, my words of gratitude are also for my 'Maa', 'Didi' and 'Bhai'. I also like to thank my teacher Kajal Nag and friend Tirtha for their tremendous support and encouragement.

The limitations, however if any are of mine.

Tabesum Begam

LIST OF TABLES

Page No.

Table No.1	The party competition in the some main states	:	178
Table No.2	Regional Parties Principal of functions in some states	:	180
Table No.3	Performance of the Left Parties in different States	:	185
Table No.4	Fluctuations of BJP and INC in some states	:	188

C O N T E N T S

Page No.

List of Tables

Preface **(iv) – (viii)**

CHAPTER - I **01 - 14**

Introduction – The Problem – Theoretical Framework

CHAPTER - II **15 - 38**

Constitutionalism and Constitutional Dynamics – Concept and Theory

CHAPTER - III **39 – 88**

Federal Governance in India – Nature and Course

CHAPTER - IV **89 – 171**

Constitutional Dynamics, Federal Governance in India and Constitutionalism: A Study

CHAPTER - V **172 – 194**

Constitutional Dynamics and Federal Governance – Tentative Periodisations

CHAPTER - VI **195 – 271**

Changing Nature of Federal Governance and Constitutional Responses

CHAPTER - VII **272 – 275**

Concluding Observations

Select Bibliography **276 – 279**

CHAPTER - I

INTRODUCTION – THE PROBLEM – CONCEPTUAL FRAMEWORK

I

It has been very correctly observed by William G. Andrews that the basic instinct which acts as the driving force is his quest for his own freedom – freedom which is secured by the rule of the law and which no authority can destroy without any sanction of law. It is true that a man accepts some kind of modest restrictions in this respect but he accepts those limitations only to see that others also accept those and that for the purpose of having an ordered and disciplined society. In the words of Andrews:

> "Man's unending search for the widest freedom to pursue his own ends within ordered society explains his acceptance of government."[1]

Such acceptance by man can be taken as the basic foundation of a political system in general and that of the state in particular. To quote Andrews further:

> "He (i.e. man) tolerates gentle fetters from the State to escape the heavy chains of anarchic chaos and to gain the opportunities for collective action and division of labour that, in the modern world, area available only within the state."[2]

This is the actual relationship between a man and the state. Both these components should be dependent on one another and a proper balance is to be maintained between them.

That is why it is universally believed that consensus is among the people is essential for the maintenance of this balanced relationship between the man and the state. In case of any failure on the court, serious consequences leading to the breakdown of the state machinery might follow. History has provided a number of such instances in

France in 1789, in America in 1776 and in Russia in 1917. It has been seen that attempts have been made to retain the old system through the application of physical force also. What is important to note is the fact that for the survival of the system, substantial support is necessary from the larger part of the community.

It is true that "in most of political communities consensus covers much more than the bare minimum of agreement that the State should survive."[3] It covers both formal institutional structure and informal psychological factors. It may include issues like policy-goals, distribution of wealth, national unity and freedom of the individuals in socio-economic and political spheres. It has been very correctly observed: "The greater the number of questions on which there is accord and the broader its popular base, the more quickly and efficiently government can move to resolve the questions on which there is no consensus."[4]

Such a position also includes the role and importance of qualitative factors in providing support for the survival of the political system. Agreement on procedure and agreement on the possible outcome of a policy adopted are equally important in this regard. If there is a common goal, people may support that without even caring for the procedure for the implementation of the policy.

Thus, it is held that the issue of consensus is an important foundation of constitutionalism. It is true that discipline or order in a society may be established through the use of force, violence or arbitrary action. But such a condition can be long lasting as it lacks popular support behind it. Agreement or consensus must exist as a precondition for the stability of the political system. In other words, support mobilization for the ordered social order becomes necessary if the system is to maintain itself without any threat to it.

Again, consensus should be achieved for reaching the goals set by the political system. There should be element of general acceptance of the philosophy on which the political system is built. It has been correctly observed: ".....as long as consensus prevails on procedure and on the acceptance of constitutionalism, adjustment and accommodation of goals can be negotiated. On the other hand, the absence of agreement on goals produces strains and tensions that may endanger the concord in other areas. A final element is concurrence in lesser goals and on specific policy questions."[5]

Constitutionalism in its broader sense denotes two types of limitations which have been described as: Power is prescribed and procedure prescribed.[6] It suggests that there are two types of limitations – libertarian and procedural. The state reserves certain areas for individual freedom where infringement is not allowed. The first ten amendments to the Constitution of the United States provide one such example. The chapter on Fundamental Rights (Part III) of the Indian Constitution has also outlined this idea. In such a situation, freedom of the individual is protected and its enjoyment guaranteed, subject to certain restrictions for the greater interest of the society.

Thus conceived, constitutionalism is concerned with two types of inter related relationship: the relationship between the state and the individual and relationship of one government authority with another type of authority. There two types of relationship are not mutually exclusive but interdependent in nature.

In this connection, a brief reference to the concept of natural law appears to be relevant for this present discussion; the relationship between natural law and constitutionalism. It is admitted that the theory of natural law has provided a solid foundation of individual liberty in different schools of thought. The notion of natural law has served as the mechanism for restricting the arbitrary power of the state and also for protecting individual freedom to the greatest extent

possible. Key concept so natural law, as George H. Sebine has very aptly observed "were built solidly into moral consciousness of European peoples"[7] He has further observed that both natural law and natural rights served in the initial phase as the major source of creating sound consciousness of constitutionalism in a big way. It is held that "natural law became increasingly just a platform on which natural rights and ultimately, the libertarian aspects of modern constitutionalism were rested."[8]

A brief reference to the evolution and growth of constitutionalism may be made here to substantiate the points. Although the procedural aspect of constitutionalism was developed by the Greeks, its subsequent developments demonstrate that through democratic practices, attempts were made towards its institulization.[9]

Thus it is seen that the concept of constitutionalism has been viewed by scholars from a number of perspectives. Constitutionalism can be viewed as the philosophical/ideological foundations of the constitution. It sets the goals and provides the direction through which these goals are to be achieved.

It is admitted that the nature and extent of federal governance of a political system is closely connected with the changing perspectives of political dynamics. In other words, the manner in which the governing process is institutionalized in the basic document, i.e., the Constitution of a country may not be at all consistent with the changes that take place over some periods. Changes are bound to occur as there might be changes in the nature, working and direction of the political system. Such changes take place as the political system encounters new situations, new demands, new compulsions and consequently, the political system has to find new ways of responding to those outward changes.

Such a problem becomes very important in view of the fact that only structural adjustments may not be sufficient to deal with these situations. Structural adjustments or better readjustments may be one of the ways to keep the political mechanism working for a particular period of time. But it cannot be taken as the only method for such dynamism. Several other non-formal forces do take place in this process which may be both political and non-political in nature. It is a complex phenomenon which demands thorough investigation of the changes and consequences of such dynamics and its impact of the governing process in a general way.

The proposed work seeks to examine the issue both from its theoretical and operational perspectives. So far as the concept of constitutional dynamics is concerned, the study should begin with the understanding of the nature of constitutional response to the changing of socio-economic and political environment. The very nature of "setting" determines, to a large extent, the course of political dynamics of a country. In a word, the primary task of such a study calls for proper contextualizing the problem in a given perspective.

It is believed that the Constitution of a country should not be viewed from a strict formal or legal perspective as the Constitution is 'a living document' which not only regulates the power relations among various political organs but establishes inter-connectivities among them. It reflects the ideals and aspirations of the nation concerned and that is why, a constitution is regarded as a vehicle for social advancement which Austin described in the Indian context, as 'a vehicle for social revolution'.

The elements of dynamism in human society calls for a responsible and responsive constitution. The fundamental rules in a constitution serve, in the first place, as the fountain-head of authority for the exercise of state-powers. Secondly, they provide the state with

an institutional framework, 'a container within which the dynamic process of government and politics can operate'.

Thus, the constitution of a country must adjust itself with the ongoing political process reflecting the aspirations of the country to produce optimum results. Given this general background, attempts will be made to examine the theoretical perspective of constitutional change in a general way and its relevance in the study of federal governance in the Indian context.

It has been observed: "A continuous erosion of the federal process in India in the name of national unity and development imperatives has been discernible after the mid-sixties."[10] Side by side, there have been growing demands for greater autonomy and more decentralization of powers. It has further been held: "Dynamic interaction between these two opposite tendencies resulted in a shifting equilibrium which has been extremely unstable, depending upon the unpredictable variables of the balance of power in the political system."[11]

According to some observers, the strength of the centre was expected not to sub-rest the federal equation in the normal functioning of the constitutional framework but to work in the line of the spirit and aspirations as expressed through the provisions of the constitution. By an elaborate distribution of legislative, administrative and financial powers and a systematic institutionalization of inter governmental cooperation, sufficient ground has been provided by the Constitution for a smooth working of the federal system.

But a look into the working of the constitutional mechanism and the federal governance, one may notice that there have been cases where the nature and course of federal process in India, at any points, assumed new character which called for substantial constitutional adjustments. Such changes are the results of changing perspectives of

the political dynamics in India. This is an area where there are instances of interactions between constitutional dynamics and federal process which demands proper understanding of the nature of the political process, the reasons behind such changes and their resultant consequences.

II. Objectives of the Proposed Study

The proposed study seeks to examine the theoretical foundations of constitutionalism as a principle as well as a philosophy and the notion of constitutional dynamics as a functional mechanism. It seeks to go beyond this theoretical aspect to find the areas of interactions between these two concepts and the nature and trend of federal governance in India. It may not be out of place here to mention that the ideals on which a Constitution is built, gets sometimes challenged by a set of newer forces which emerge out of the interactions between the constitutional practice and the political process. This is a very important area which not such study can ignore. The stability of the political system depends, to a large extent, upon the ability of the system to respond to and adopt itself with, the changing circumstances. So far as India's position is concerned, one may notice the nature of surprising degree of flexibility of the constitutional arrangement which enables itself to accommodate various kinds of demands within it. One may also argue that in India, the political system has so far confronted many non-systemic issue conflicts which have their impact on the peripheral region. Had there been any systemic conflict, the political system would have to confront the real danger. It may be equally true to suggest that the foundation of the constitutional norms and values are so deeply rooted in the minds of the people of India that even a slightest change at the central point might be rejected by the people at large. The developments that followed after the proclamation of national emergency justifies this.

Given this perspective, the proposed study would highlight the nature of basic philosophy of the constitution, reflect upon the course of its dynamics and examine their impact on India's federal process. It may be submitted that the proposed study, first of its nature, would open up new areas for further investigation which would provide the researcher a wider scope to view the operational dynamics of the political system in a much more comprehensive manner.

III. Overview of the Existing Literature

Many important works have been done by scholars of eminence on the philosophy of the Indian Constitution on the one hand and the nature of federal governance on the other. But no specific work has been done specifying the nature of interactions between constitutional philosophy, its dynamics and their relationship with the nature, trend and perspective of federal dynamics in India. So from that perspective, the proposed work, a modest one, would throw sufficient light on this vital but not so discussed subject. The present section will, thus examine some of the leading works on these aspects in an illustrative manner. The section dealing with the Select Bibliography would contain a detailed reference on such discussion.

So far as theoretical aspect of the proposed study is concerned, the work by Granville Austin under the title *The Indian Constitution: Cornerstone of a Nation* deserves special mentioning. Needless to mention, for any study relating to the making of the Indian Constitution, its nature, basic philosophy, this work serves the purpose of a source book.

An Economic Interpretation of the Constitution of the United States by Charles A Beard is another work which has set the method of studying the economic foundation of the Constitution. The work helps a researcher to identity the economic parametres for analyzing the

economic aspect of the Constitution. The reference point is, of course, the American Constitution.

On the nature of Constitutional dynamics, D. George Kousoulas's 'On Government and Politics' appears to be of enormous help from theoretical and operational perspectives.

Modern Constitutions is a classic one which provides many insights into the nature and working of constitutions and the basic philosophy on which constitutions are based.

Peter Merkl in his *Modern Comparative Politics* has dealt with different aspect of constitutional process on a cross national basis.

In a similar way, Jean Blondel (ed.) Comparative Government: A Reader provides the researcher with sufficient ideas about the working of the constitutional systems on a comparative basis.

M.S. Rajan in his edited volume 'Studies in Politics' has dealt with the Indian perspective of constitutional and political dimensions of India's democratic practices.

In 'The Crisis of India' Renold Segal has discussed the multi dimensional nature of crises that the Indian political system has been facing over these decades.

Alan Gledhill's book, 'The Republic of India: The Development of its Law and Constitution' is also considered to be a basic book for understanding the nature of the Constitution of India.

Political Development and Constitutional Change by Amal Ray et.al., discusses the nature and impact of Constitutional change on the political process in India.

S.N. Ray's *Judicial Review and Fundamental Rights* is one of the leading works dealing with the nature of judicial process in protecting the basic rights as guaranteed by the Constitution. This works deals

with both the Constitutional arrangements and the nature and extent of the scope of enjoyment of these rights by the individuals.

On federal governance, some illustrative examples may be cited.

Ashok Chanda's *Federalism in India: A study of Union-State Relations* is an authoritative discussion on the nature of federalism in India with a focus on constitutional arrangements relating to centre-state relations.

It may be stated that initially the study on federalism centred round formal/Constitutional aspect and an analysis of the Constitutional arrangements as provided for in the Constitution. But over the year, there has been shift from mere constitutional/legal discussion to move on the discussion of the actual working of the federal process and a new multi-dimensional analysis has appeared making such studies for functional both in content and structure.

Broadly, studies on federal governance in India have sought to highlight the following aspects:

a) Political process and the Centre-State Relations.

b) Changing Dimensions of the Party system.

c) Language Politics and its impact on the federal governance.

d) President's Rule and the balance between the Centre and States.

e) Coalition-Politics and Centre-State Relations.

f) Inter-State and Centre-State Disputes.

Amal Ray in his *Tension Areas in India's Federal System* has highlighted the changing political process and the interplay of various forces. He has rightly pointed out that the breakdown of one party dominances has substantially altered the political setting of federal governance in India.

'State Politics in India', as edited volume by Iqbal Narain is considered to be the very first attempt on a comprehensive basis to understand the nature and trend of state politics in India covering issues like course of state politics in the light of changing party position and federal dynamics in India.

'India's Static Power Structure' by J.D. Sethi, *The Politics of Defection: A Study of State Politics in India* by S.C. Kashyap, *Party Politics in an Indian State* by K.L. Kamal set the trend of discussing the nature and dimension of federal politics from the perspective of party structure and party positions.

Another significant contribution in this area is by Saez Lawrence under the title "*Federalism without a Centre: Impact of Political and Economic Reforms on India's Federal system"*. It touches upon the working of federal governance in India in the post-globalization scenario.

Tarun Chandra Bose is his edited volume "*Indian Federalism: Problems and Issues"* seeks to identify the problems and issues of India's federation.

The New Federalism by Michael D. Reagan is a significant contribution in the field of federal studies. It highlights and identities different forces that have emerged in controlling and directing the course of federal governance in the contemporary world.

M.C.J. Vile's two works deal with constitutionalism and federal process in the light of the American experience. These are: *The Structure of American Federalism and Constitutionalism and the Separation of Powers.*

Mention should be made of K.C. Wheare's two books which are still regarded as the classics in the study of federalism. These are, *Federal Government and Modern Constitution.*

On the Study of amending process, K.C. Markandan's book under the title *The Amending Process and Constitutional Amendments in the Indian Constitution* deserves special mentioning. It is a comprehensive study of the amending mechanism of the Indian Constitution with a comparative focus.

Another work by Paras Diwan and Peeyush Diwan, Amending Powers and Constitutional Amendment deals with the legal Constitutional aspect of the amending mechanism in India. Though essentially a formal constitutional study, the book provides insights into the nature and scope of amending provision of the Indian Constitution as contained in Art.368.

In *Politics and Government: How People Decide Their Fate,* Karl W. Deutsch has analysed the inter-relationship between the individual and the political system both from theoretical and functional perspectives.

M.G. Andrews in *Constitutions and Constitutionalism* provides a theoretical perspective of the concept of constitutionalism in the making and sustaining the constitutional system. The book serves as the source book for theory – building in any study of this nature.

The foregoing review of literature is by no means, an exhaustive one. It is merely representative in its essence. Only those works have been identified which might serve as the basic source for the proposed study. The section on Select Bibliography contains the detailed list of books and other sources that will be needed for the present study. Since a work of this nature would call for an analysis of theoretical and functional aspects of constitutional systems, reference will be made to other related works as and when it will be necessary.

IV. Methodology

The proposed study will be essentially based on historical analytical method. The study would examine the notion of constitutionalism and constitutional dynamics from the theoretical

perspective and would try to examine these phenomena in the context of India's federal governance. Needless to mention, the theoretical part would call for detailed discussion of these phenomena on a cross cultural basis taking into account the process of emergence and development of these concepts in the western constitutional practices. References will be made to the practices that developed in the west, both in parliamentary systems and non-parliamentary systems. This cross-national perspective would call for a method of comparative analysis. So on the whole, besides being a historical analytical one, the study would be based on the method of comparative political analysis.

V. Research Questions

The proposed study would seek to answer the following questions:

a) What are the theoretical/conceptual issues involved in the concepts of constitutionalism? Can there be any grand theorization on the notion?

b) What are basic tenets of constitutional dynamics? In which way, can the study of constitutional dynamics be a pre-condition for the study of constitutionalism? What are the areas of their mutual interactions?

c) Can constitutionalism and constitutional dynamics be used to unfold the nature and dynamics of federal governance in a study of Indian situation? If so, what are the theoretical postulates in this regard?

d) What are the basic forces that have been at work in influencing the nature and trend of federal governance in India since 1967?

e) What will be the nature of federal governance in the era of coalition politics? Can there be any equation in the relationship between constitutional practices and federal governance in India?

Notes and References

1. William G. Andrews, Constitutions and Constitutionalism, D. Van Nostrand Co. Princeton, 1963, p.9.
2. Ibid.
3. Ibid., p.10
4. Ibid., p.11
5. Ibid., p.13
6. Ibid.
7. George H. Sabine, A History of Political Theory, Heking Holt & Co., New York, 1955, p.144
8. William G. Andrews, Constitutions and Constitutionalism, op.cit., p.17.
9. Further details of this aspect can be had from the following works:

   Francis D. Warmouth, The Origins of Modern Constitutionalism, Harper, New York, 1949.

   Andrew C. Mc Langlin, The Foundations of American Cosntitutionalism, New York University Press, 1932.

   Mary Moris, The Growth of Philosophic Radicalism, Boston, 1955.
10. M. Yasin and P.K. Sengupta, Indian Politics, Processes, Issues and Trends, Kanishka Publishers, New Delhi, 2004, p.47
11. Ibid

CHAPTER- II

CONSTITUTIONALISM AND CONSTITUTIONAL DYNAMICS - CONCEPT AND THEORY

Since the beginning, the framers of Indian Constitution were conscious of introducing the amending technique/process in the Indian Constitution. The prudence of the Constituent Assembly will clearly make known that the Constitution Founding fathers gave great emphasis on the constitutional dynamics while making the amending part.

The Indian Constitution is regarded as "a symbol of social aspirations rather than as the formalized rules for the exercise and control of political power."[1] But it should be admitted to be true that the political system which is described in Indian Constitution seems to be more evolutionary than revolutionary."[2] Hence the framers attempted to add a component part of dynamism and modernism by specifying the "goals and objectives of the state in the Preamble and The Directive Principles of State Policy, and by the establishment of the process and instruments necessary for the attainment of such goals."[3] Then, the Constitution is supposed to be, to apply Granville Austin's famous phrase, a "vehicle for social revolution".[4] These should under no circumstances, be seen as merely normal aspirations of a civilized society.[5] These thoughts "seeks to provide for the creation of a modern society and a modern political system through democratic institutions."[6]

Taking into account the variety in the essential circumstances, presenting after the gain of independence, the Constitution tried "to effect curious compromise between contradictory principles."[7] The Indian Constitution has been drafted which is full of deviations. These deviations until mid-sixties, failed to endanger the stability of the political system itself due to the charismatic leadership of the late Prime Minister Nehru. After the emergence of National Political

Centralisation during the Mid-sixties, "some of the explosive issues assumed the proportions of a serious confrontation between ideologically differentiated political forces."[8] It also may be noticed that due to these challenges, "the constitution has been able to keep itself in working with a surprising degree of adaptability to changing circumstances."[9] For the introducing of the flexible amending process which takes together "the virtues of stability and change, order and progress."[10] From the following discussion, the drafting of the amending provision clearly indicates that the members of Constituent Assembly wanted to form the Constitution as a vehicle for social change using built in mechanism in different periods.

II

While the Union Constitution Committee (hereinafter referred to as UCC) started its meetings, the drafting of the amendment clause began in June 1947. According to the Draft Constitution of K.T. Shah provided that amendments should first be passed by a two-thirds majority in each House of parliament and then be ratified by a similar majority of provincial legislatures and approved by a majority of the population in a referendum.[11] K.M. Munshi's Draft Constitution required a two-thirds majority in each House of Parliament and ratification by one-half of the provinces.

Mr. B.N. Rau, the Constitutional Adviser to the Government of India, thought that an amending Bill should be passed in each House of Parliament by a majority of not less than two-thirds of the total number of members of that House and will have to ratify by the legislatures of not less than two thirds of the units of the Union, excluding the Chief Commissioners' Provinces. But he wanted to insert a 'removal of difficulties' clause in the Constitution so that Parliament might make adaptations and modifications in the Constitution by amending it through an ordinary act of legislation. This 'removal of difficulties' clause was to remain in force for three years from the

commencement of the Constitution.[12] He strongly argued in support to insert such a clause in the Constitution. To him, it would have more usual and it corresponded to Sec.310 of the Government of India Act 1935. He indicated about the borrowing this clause from Art.51 of the Irish Constitution.[13]

When K.M. Munshi supported this side, he argued: "In framing a constitution as we are doing under great pressure, there are likely to be left several defects, and it is not necessary that we should have a very elaborate and rigid scheme for amending these provisions in the first three years."[14]

The proposal of early amendment of the whole Constitution by Mr. B.N. Rau was rejected by the Drafting Committee. Then, the principle was adopted in regard to amending certain clauses of the Constitution by a simple majority in the Parliament. While remarking on this aspect, Grenville Austin observed inter-alia: "It appears that Rau was stretching the customary meaning of a 'removal of the difficulties' clause into a device for the easy amendment of the constitution - the need for which he strongly believed."[15]

The history of the amending (article 368 under the present Constitution) will reveal that the UCC favoured the amending Bill to be passed by a two thirds majority in Parliament and ratified by a like majority of provincial legislatures. But the committee didn't trust into this Principle and instead urged for introducing a system in which one-half of the majority will be required. The sub-committee of the UCC recommended that the ratification should be by legislatures representing one-half of the total population or the Princely States.[16]

But the sub-committee of the UCC decided that certain provisions relating to the Union Legislative List, Representation of the Units in Parliament and the powers of the Supreme Court could be amended simply by a two-thirds majority in Parliament. This decision

was incorporated in a supplementary report drafted on 13th July. This change was, perhaps, possible because of Mr. Nehru who insisted on effecting an amendment by Parliament alone by a simple majority.[17]

When guiding the scheme, the Drafting Committee brought in important changes in the amending provision. It may be cited in full, Art.304 of the Draft constitution provided for a proper understanding of the scheme.

"An amendment of this Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Provided that if such amendment seeks to make any change in-

a) Any of the Lists in the Seventh Schedule

b) The representation of the states in Parliament,

c) The powers of the Supreme Court, the amending shall require to be ratified by the Legislatures of not less than one half of the states for the time being specified in Part I of the First Schedule and the Legislatures of not less than one third of the states, for the time being specified in Part III of the schedule.

d) Notwithstanding anything in the last. Preceding clause, an amendment of the constitution seeking to make any change in the provisions of this constitution relating to the ... method of choosing a Governor or the number of Houses of the Legislature in any state for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the

purpose in the Legislative Assembly of the State or where the state has a Legislative Council, in either House of the Legislature of the state, and when the Bill is passed by the Legislative Assembly or where the state has a Legislative Council, by both Houses of the Legislature of the state, by a majority of the total membership of the Assembly or each House as the case may be, it shall be submitted to parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House, it shall be presented to the President for ascend, and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Explanation - where a group of states is for the time being specified in Part III of the First Schedule, the entire group shall be deemed to be a single state for the purpose of the proviso to clause 1 of this article."[18]

An analysis of this Article reveals that the Drafting Committee were of the opinion that in case of ratification, along with one half of the Provinces, concurrence of one third of the former Princely States should be necessary. Moreover, the Drafting Committee expanded the scope of limit. The last but not the least was the provision empowering the Legislative Assemblies to initiate an amendment Bill for choosing a Governor or fixing the number of Houses of the Legislature.

In this regard, the Committee made special provision for the reservation of seats for the minorities.[19] It provided:

"Notwithstanding anything contained in Art.304 of this Constitution relating to the reservation of seats for the Muslims, the Scheduled Castes, the Scheduled Tribes or the Indian Christians either in Parliament or in the Legislature of any state for the time being specified in Part I of the First Schedule shall not be amended during a period of ten years from the commencement of this Constitution and

shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution."

III

On 17th September, 1949, "in the relative calm following the stormy controversies on the question of compensation preventive detention and language, that had occupied the previous weeks"[20] the members of the Constituent Assembly started their debate on the amending article (Art.304) of the Draft Constitution which was later renumbered as Art.368 in the Present Constitution of India.

On the starting of the debate on the amending article, Dr. B.R. Ambedkar, the Chairman of the Drafting Committee discussed two amendments which resulted in an increase m the entrenched articles (Amendments No.118 and 207).[21]

Dr. Amebedkar's two amendments were meant to substitute Art. 304 in the following way:

"An amendment of the Constitution may be initiated by the introduction of a bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of not less than two thirds of the members of that House present and voting, it shall be presented to the President for his assent, and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bills:

Provided that if such amendment seeks to make any change in-

a) Any of the lists in the Seventh Schedule; or

b) The representation of the States in Parliaments; or

c) Chapter IV of Part V; Chapter VII of Part VI and Article 213A of this Constitution, the amendment shall also, require to be ratified by the Legislatures of not less than one half of the states

for the time being specified in Parts I and III of the First Schedule."[22]

He then turned to the amendment No.207 in the following way:

"That in amendment no.118 of list 111 for the proviso to the proposed article, the following proviso may be substituted: Provided that if such amendment seeks to make any change in-

a) Article 43, Article 44, Article 60, Article 142 or Article 213A of this Constitution or

b) Chapter IV of Part V, Chapter VII of Part VI or Chapter I of Part IX of this Constitution; or

c) Any of the Lists in the Seventh Schedule; or

d) The representation of the States in Parliament, or

e) The provisions of this article, the amendment shall also require to be ratified by the Legislatures of not less than one half of the States for the time being in parts I and III of the First Schedule by resolution to that effect passed by those legislatures before the Bill making provisions for such amendment is presented to the President for assent."[23]

Changing position of these amendments, Dr. Ambedkar drew to an end to do any comment about these changes in anticipation of 'considerable debate' on the issue. He however suggested expounding his position at the end of the debate.[24] But one member[25] insisted on his giving explanation as it would enable the Assembly to avoid any further debate altogether. But his plea and insistence fell flat as Dr. Ambedkar categorically refused to initiate any debate on his own amendment.[26]

One of the members of the Constituent Assembly Mr. T.T. Krishnamachari rejected to turn to his amendment (No.119) holding

that his contention were widely covered by the amendments already moved by Dr. Ambedkar.[27]

Being a part of the debate, Dr. P.S. Deshmukh, moved:

"That in amendment No.118 of the List 111 (Eighth week), for the substantive part of the proposed Art.304; the following be substituted:

This constitution may be added to or amended by the introduction of a Bill for this purpose in either House of Parliament by a clear majority of the total membership of each House. The provisions of the Bill shall not, however, come into force until asserted to by the President."[28]

In his amendment no.210, he suggested a proviso to be added to Art. 304 in the following way:

“Provided that for a period of three years from the commencement of this constitution, any amendment of this Constitution certified by the President to be not one of substance may be made by a Bill for the purpose of being passed by both Houses of Parliament by a simple majority. This will, among other things, include any formal amendment recommended by the majority of judges of the Supreme Court for the ground of removing difficulties in the administration of the Constitution or for the purpose of carrying out the Constitution in public interest and certified by the President to be necessary and desirable."[29]

Being dissatisfied with these amendments, he wanted to include a new clause, Art.304A in order to protect 'individual rights ------ with respect to property'[30] in the following language:

"Notwithstanding anything contained m this constitution to the contrary, no amendment which is calculated for infringe or restrict or diminish the scope of any individual rights, any rights of a person or persons with respect to property or otherwise, shall be permissible

under this Constitution and any amendment which is or is likely to have such an effect shall be void or 'Ultra-Vires' of any Legislature".[31]

According the nature of his amendments, Dr. Deshmukh classified them to be 'alternative to one another.'[32] These were supposed to make the amending process easier. In explain his view on the easy process of amendment, he argued:

"This main reason for any suggestion to make it easier for the amendment of the Constitution is that, in spite of the fact that we may have spent more than two and half years in framing this Constitution, we are conscious that there are many provisions which are likely to create difficulties when the constitution actually starts functioning".[33]

Refuting the charges made by some pressmen that the framers wasted much time and huge among of money on framing the Constitution he advocated that every member should be given sufficient time to participate in the debate because 'Parliamentary democracy is known to be and shall always be a talking shop and ----- it is intended that even the meanest amongst us should have something and positive to contribute and it is, therefore, incumbent upon us to give him a chance to have a say ….. "[34]

For the necessity of incorporating the clause protecting Fundamental Rights, he argued, "the apprehension in the minds of the people that the liberty of the people is not safe and that as we get more and more freedom, they are not allowed them."[35] In his opinion, the inclusion of Art.340-A was necessary as it would remove 'apprehension' from the minds of the people.[36]

In his final determination, he repeated the importance of easy amendment for the preserving the constitution and glossy running of future administration. He considered that "there are contradictory provision in some places" of the Constitution; "which will be more and more apparent when the provisions are interpreted."[37] In his view, in

the absence of any such exists, there is the possibility of the whole constitution being rejected by the future Parliaments.[38] In his own words: "If we do not allow them chances to mould the future of this country in their own ways, by simplifying the procedure by amendments, they will have no alternative but to go to the whole hog and reject the Constitution as a whole?"[39] Finally he liked to make the amending clause in such a way as not to allow "complaints and dissatisfaction to grow to such a pitch as will result in dislocating the administration of the state."[40]

When going through his amendments; Mr. Borjeswar Prasad argued that to him, the Legislatures of the States should not be kept company with the amending process. Pointing to the Australian Constitution, he argued:

"A proviso exists in the Australian Constitution to the effect that if there is a conflict between the two Houses of Parliament or if either. House does not pass the amending Bill of the other, then the whole matter will have to be referred to the electorate. It would be beneficial if we incorporate that provision of the Australian Constitution. In our Constitution ..... I do not want to associate the state Legislature m the process of amending the Constitution."[41]

When making good the introduction of the device of referendum, he observed:

"Referendum is democratic as it is only an appeal to the people, and no democratic government can have any objection to resorting to referendum in order to resolve a dead-lock, when there is a conflict between the Parliament and the provincial governments."[42] He favoured referendum because "if cures patent defects in party government."[43] The device conservative in nature since "it ensures the maintenance of any law or institution which the majority of the electors effectively wish to preserve."[44] Lastly, he suggested referendum to be a "strong weapon

for curbing the absolutism of a party possessed of a parliamentary majority."[45]

In support of his controversy, Mr. Prasad cited a lengthy paragraph from Prof. Decey's celebrated work "Law of the Constitution" where to Decey, referendum would promote 'a kind of intellectual honesty' among the electors.[46]

He did not like the concept that the powers of the parliament should be banded. The process introducing in Art.304, was to him to be "totally detestable, totally repugnant,"[47] due to the mechanism of two-thirds majority "will act as a break".[48] To him if it cleaved to, it would function as 'a brave to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country.' [49] For this due, as least for the time of ten years from the commencement of this constitution "these safeguards must be removed."[50]

He also mentioned the international situation that might emerge in Asia in near future along with making his observation and argument for 'a flexible constitution'. He understood that a revolutionary Asia would come out and 'in order to meet, that situation, the Government of India should not be fettered in any way whatsoever.'[51] Since India was coming through 'a period of decadence',[52] a flexible, Constitution was the need of the hour to enable the future. Legislators, to sense the needs of the coming century.'[53]

In carrying all his discussion for enacting a flexible constitution, he citing from Prof. Decey's book, indicated to European Constitutions. These constitutions failed to carry on due to their rigidity in the amending process. Like the twelve unchangeable constitutions of France averagely carried out for less than ten years. The best plea for the coup-d'-etat of 1851 was that while the French people unshed for the re-election of the President the article of the constitution requiring a majority of three-fourths of the legislative assembly in order to alter the

law which made the President's reelection impossible, thwarted the will of the sovereign people.[54]

Mr. H.V. Kamath wanted to define the meaning of amendment through the article. He liked to insert the words 'by way of variation addition or repeal' along with the word 'to amend.'[55] To him, Presidential assent to an amending Bill should be made mandatory and not discretionary.[57]

Remarking on the 'Proviso' as described by Dr. Ambedkar to be summed up after Article 304, he maintained that there were some chapters, particularly those concerning the relations between the Union and the States the amendments of which had been made rather difficult. To him an easy-method should have been given direction for in connection with those relations so that the unifying forces might be defended.[58] He pleaded Dr. Ambedkar to make different his suggested proviso so that the amendment Bill, even if it is passed by Legislatures of not less than half of the states and sent back to the parliament and again passed by it, the amendment should become wide-spread.[59] Otherwise parliament's supreme authority will be at a disadvantage and the 'centrifugal or disruptive forces of the country might again ascendency.'[60] He observed that unless the Constitution provides for easy process of amendment 'it will pave the way for revolution.'[61]

Mr. Naziruddin Ahmed totally expressed sympathy with Mr. Deshmukh on the aim and regarded as true that many troubles may arisen in future. To him, 'the rigidity which has been given to the Constitution by Art. 304 is very proper.'[62] For examples, the English and other Constitutions are not suitable, 'because they had long experience and they have gone through centuries of apprenticeship'[63] and are in a position to know exactly what changes are to be made. He appealed to the members to accept Dr. Deshmukh's proposal so that anomalies, anachronisms and difficulties' might be removed. [64]

Dr. Ambedkar's two amendments were agreed by Mr. S.K. Sidhwa. When accepting Dr. Ambedkar's amendments, Acharya Dugal Kishore proposed that the Constitution should be kept easier to amend for five years and afterwards be made amendable in the way already suggested by Dr. Ambedkar.[65] He made a plea to Dr. Ambedkar to take his suggestion for constitutional amendments during the next five years 'by simple majority'.[66]

Mr. Mahavir Tyagi argued that 'the earth belongs in usufructs to all the living equally and the dead have neither the powers nor the rights cover it."[67] He believed that a generation divided morally of bind its succeeding generations either by inflicting on them a debt or a constitution which is not alterable.[68] He summed up that 'a Constitution which is unalterable is practically a violence committed on the coming generations."[69] But to him, the Constituent Assembly had done "a service to the coming generations with a view to facilitate their administration and their smooth running of governments by giving all the possible details"[70] in the Constitution.

While remarking on the amending procedure as described for in the Draft Constitution, he pointed out to the British Parliamentary system and pleaded the members to feel that "the British Parliamentary system is successful not only because it is a parliamentary system but because there is perpetual flexibility in the Constitution which is all unwritten."[71] For this, they can eagerly/readily accept their constitution to the changing circumstances that may arise along with changes both in time and space.[72] His observation was that the present constitution under discussion does not allow "that flexibility."[73]

On the representative feature of the Constituent Assembly, the observations of Mr. Tyagi are value-mentioning. To him, the members of the constituent Assembly to be 'de-facto' representatives and not 'de-jure' as they liked to have been.[74] In his discussion, he commented:

"We have assumed that we are all the representatives of the nation. Well, all of us have come through an indirect electorate - through the Legislative Assemblies of provinces, which had been elected when we were not free, when the British were here. Those Assemblies were elected in 1946. And we are making this constitution in the hope and the claim that we are the accredited representatives of India. It am afraid technically we are not the representatives of India- 'de-jure' we might claim to be, but 'de-jure' we are not …."[75]

Another member, Babu Ramnarayan Singh, held that "too many restrictions and conditions" were being imposed with regard to the amendment of the Constitution under the apprehension that 'radical amendments' might be made by the future generations acting under rash and irrational impulses.[76] He failed to see the reason behind the proposition that the Constitution could be amended in future only by an absolute majority of the total members present and voting.[77] It appears from his speech that he favoured some easy method of constitutional amendment and thereby a flexible constitution.[78]

Finally, Dr. Ambedkar started to answer the question of his opponents and gave great emphasis on the importance of the procedure of amendment in federal Constitutions. Indicating to the constitution of Canada, he observed: "The Canadian Constitution does not contain any provision for the amendment …… Although Canada to-day is a Dominion, is a sovereign state with all the attributes of sovereignty and the power to alter the constitution, the Canadians have not though it fit to introduce a clause even now permitting the Canadian Parliament to amend their Constitution …[79] Although there were discontent over this issue and even after the Privy Council's interpretation of the provisions of the Canadian Constitution, the Canadian people have not thought fit to embody any clause relating to the amendment of Constitution.[80]

Describing the procedure of amendment of the Swiss Constitution, he analysed:

"In that Constitution, too, the legislature may pass an amendment Bill but that amendment does not have any operative force unless two conditions are satisfied - one is that the majority of the Cantons accept the amendment, and secondly there is a referendum also in the referendum the majority of the people accept the amendment. The mere passing of a Bill by the Legislature in Switzerland has no effect as far as changing the constitution is concerned."[81]

Making a point to the Constitution of Australia, he said the Assembly that the amendment must be passed by an absolute majority of the parliament of Australia. After that it has been passed so, it must be presented to the approval of persons who are qualified to elect representatives of the Lower House of the Australian Parliament. Then, it has to be presented again to a referendum of the people or the electors. It must be approved by a majority of the states and also by a majority of the electors.[82]

The Constitution of the United States supports that an amendment must be taken by two-thirds majority of both the House in reference that the decision of both Houses by two-thirds majority of the states for the amendment. By saying he summed up that in any country the constitution had not been permitted to be amended by a simple majority.[83]

Tuning to the amending provision of the Indian Constitution, Dr. Ambedkar observed that the Assembly had proposed to divide the various articles into three categories. In one category, certain articles which would be open to amendment by the parliament by simple majority had been included. He explained that this fact had not been noticed by the members because there was no mention of it in Art.304.

Referring to Articles 2 and 3 which deal with the states, he pointed out that so far as the creation of new states or reconstitution of existing states are concerned, it could be clone by the parliament by a simple majority. Again by Art. 145A, dealing with the Upper Chambers of the Provinces, Parliament had been given 'perfect freedom' either to abolish the Upper Chambers or to create new Second Chambers by a simple majority. In a similar way, Schedules V and VI and Art.255, relating to grants and financial provisions, could be amended by the Parliament by a simple majority.[84]

Pointing to the clause 'until Parliament otherwise provides', he beg for the member to quote a solid case where Parliament should have been provided more powers relating to amendment.[85] Providing so much powers to parliament or making the total Constitution "flexible" in the purest sense of the term, would be so "extravagant" and "too tall an order to be accepted by people responsible for drafting the Constitution."[86]

Setting aside from those articles, there is a second category that provides two-third majority for its amendment. Dr. Ambedkar also included if the future Parliament likes to amend any specified article that is not in Part III or in Article 304, all which is important for them is to have two-thirds majority.[87]

As to the part that demanded provincial ratification in case of amendment, Dr. Ambedkar told the Assembly: "We cannot forget the fact that while we have in a large number of cases invaded provincial autonomy, we still intend and have as a matter of fact seen to it, that the federal structure of the constitution remains fundamentality unalterable ..... "[88] He pointed to Art.60 and Art.142, Art.60 is with the space of the executive authority of the state. "We have", he uttered the Assembly, "laid down in our Constitution the fundamental proposition that the executive authority shall be co-existensive with legislative authority."[89] The notification of Provinces will be absolutely

necessary in securing the provincial autonomy from the grasping hands of Parliament's power to amend. Being all the same to the line of discussions were also made progress by Dr. Ambedkar with regard to Chapter IV of Part V, Chapter VII of Part VI and Chapter I of Part IX.[90]

From the time of being the Constitution 'a fundamental document",[91] it explains the position and powers of the three organs that are the Executive, the Legislature and the Judiciary of the state, it should provide so some restrictions/limitations on these three organ's authorities. If not, then to Dr. Ambedkar, there will be "complete tyranny and complete oppression."[92]

Dr. Ambedkar made a plea to the members for choosing either a parliamentary form of govt. or a totalitarian/dictatorial form of govt. "If we agree", he noticed, "that our constitution must not be dictatorship but must be a Constitution in which there is a parliamentary democracy ..... responsible to the people, responsible to the judiciary, then I have no hesitation in saying that the principles embodied in this constitution are as good as, if no better than, the principles embodied in any other parliamentary Constitution."[93] Through this long debate, a new article as Art.368 in Indian Constitution was introduced on behalf of Dr. Ambedkar's two amendments.

The silence of Shri Jawaharlal Nehru was the significant aspect of the debate taking place in the Constituent Assembly. The cause of Nehru's silence has not been described anywhere of the history of Constitution making. "Perhaps he has changed his mind and had come to believe that the amending process was sufficiently easy in such cases as the language provisions and the creation of new states, and that the other mechanisms were necessary in inspiring confidence in the performance of federal structure. If his silence indicates dissent, it is perhaps also a measure of the opposition facing him. Even if Nehru held to his earlier view, it is extremely doubtful if the members of provincial governments in the Assembly would have agreed to an

amending process that would have put them at the mercy of the Union Parliament.[94]

IV

The debate in the Constituent Assembly relating to the drafting of the amending article conclusively proves that from the very beginning the framers were determined to make a compromise between the two opposite view points - one favouring flexibility, the other advocating rigidity.[95] In addition to them, in the federal constitution the clause of amendment must be so schemed as to make able the future legislators to answer to the necessities of the time by amending the Constitution. Fitting without weakening the basic federal characteristics. It has been noticed that the amendment provisions for correction/amendment "were quite evidently a compromise between the view that Parliament should be empowered to amend any part of the Constitution and the more traditional concept of amendment in federations."[96]

Maintaining it, the makers of our Constitution were aware of the pleasing of adjusting the plea for variety with the necessity of continuity which meant progress. When the framers of the Constitution drafted the clause of amendment, they were directed by the deliberation that no progeny has a monopoly of liberty nor the right to place fetters on future generations to shape the machines in general of govt. and the laws as to their guidelines. From the describing the debates to the nature of amending article one character is that they refused the referendum method most likely due to diverse religious and linguistic minorities. To the leaders of the Minority communities, their judgement might not get sufficient value in a popular referendum when there would be rising up strong emotion with regard to a special matter.

The conclusion of mixing together different demands into one article was came to a decision by the makers of the constitution later considering the national need, the historical background, condition

prevailing in the country and other matters of national or special importance. They were aware that the amendment power of constitution was a power of higher grab and of more dormant necessity than any other power preparing for in the constitution.

The piece of conduct of the constituent Assembly distinctly exhibit that the total Constitution was accepted in a larger perspective and the amendments felt into three categories preparing for simple majority or two-thirds majority and ratification by the states - all relying upon the satisfied of the article to be amended and the impact of amendment upon the political process of the country. A separation into parts of the argument discloses three features. Firstly, the members were not liked to incorporate the device like referendum, convention and so on. Secondly, some articles can only be amended by the ratification of the state legislatures. The rest of articles are to be amended by parliament by two thirds majority of the parliament. Thirdly, the provisions of amendment of the constitution had been provided easy when compared with the provisions of the American, Swiss or Australian Constitutions. Observing the intension of the framers of Indian Constitution "were less determined than their American predecessors to impose rigidity on their Constitution. The Indian Constitution assigns different degrees of rigidity to its different parts, but any part of it can be more easily amended than the American Constitution."[97]

Notes and References:

1. Constitutional Dynamics and the Political Process in India : A Note on the interaction between Constitutional amended and Judicial review" (Paper presented in the National Seminar, Calcutta, March, 1975, Organised by the Council for Political Studies), p.2
2. N.R. Deshpande - "Nationalism and Political Development in India", in M.S. Rajan (ed.)- Studies in Politics; Vikas, 1971, Ch.2, p.17
3. S.R. Ray- op.cit., p.3
4. Graville Austin - The Indian Constitution - Cornerstone of a Nation, OUP, 1976, Ch.2
5. Renold Segal- The Crisis of India, Jaico, Ch.5
6. Ibid
7. Ibid
8. Ibid
9. Ibid
10. Ibid
11. Shah - Draft Constitution : INA
12. B.N. Rau- India's Constitution in the Making, pp.96 & 169
13. B.N. Rau- Draft Constitution, Ch.238
14. Constituent Assembly Debates, Vol.IV, p.546
15. Granville Austin- op.cit., p.258
16. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.53
17. Ibid

18. Draft Constitution of India : Art. 304(1) and (2) (Prepared by the Drafting Committee: Printed by the Manager, Government of India Press, New Delhi).
19. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.55
20. Austin- op.cit., p.262
21. CAD, Vol.IX, p.1642-43
22. Ibid, p.1643
23. Ibid, pp.1644
24. Ibid, p. 1644
25. Mr. Naziruddin Ahmed, Ibid., p. 1644
26. Ibid
27. Ibid
28. Ibid, p.1644
29. Ibid, p.1644
30. Ibid
31. Ibid
32. Ibid
33. Ibid
34. Ibid, p.1644-45
35. Ibid,p.1645
36. Ibid
37. Ibid
38. Ibid
39. Ibid

40. Ibid
41. Ibid,p.1646
42. Ibid
43. Ibid
44. Ibid
45. Ibid
46. Ibid, p.1647
47. Ibid
48. Ibid
49. Ibid
50. Ibid
51. Ibid
52. Ibid
53. Ibid
54. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.60
55. Mr. Naziruddin Ahmed, p.l649
56. Ibid
57. Ibid
58. Ibid, p.1653
59. Ibid
60. P.K. Sengupta - India: Constitutional Dynamics in a Changing Polity, p.60
61. Mr. Naziruddin Ahmed, p.1653
62. Ibid

63. Ibid
64. P.K. Sengupta - India: Constitutional Dynamics in a changing Polity, p.60
65. Mr. Naziruddin Ahmed, Ibid., p.l658
66. Ibid
67. Ibid
68. P.K. Sengupta - India: Constitutional Dynamics in a Changing Polity, p.61
69. Mr. Naziruddin Ahmed, Ibid., p.l658
70. Ibid
71. Ibid
72. Ibid
73. Ibid
74. Ibid, p.1656
75. Ibid
76. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.62
77. Ibid
78. Ibid
79. Mr. Naziruddin Ahmed, Ibid., p.l659
80. P.K. Sengupta- India: Constitutional Dynamics m a Changing Polity; p.62
81. Mr. Naziruddin Ahmed., Ibid., p.1660
82. Ibid. p.1660
83. Ibid

84. P.K. Sengupta- India : Constitutional Dynamics in a Changing Polity; p.63
85. Mr. Naziruddin Ahmed, Ibid., p. 1660
86. Ibid
87. Ibid., p.1661
88. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.64
89. Mr. Naziruddin Ahmed, Ibid., p.1661
90. Ibid
91. Ibid
92. Ibid., p.1662
93. Ibid
94. Granville Austin- op.cit., p.264
95. P.K. Sengupta - India : Constitutional Dynamics in a Changing Polity, p.65
96. Granville Austin- op.cit., p.264
97. Allen Gledhill - The Republic of India : The Development of its laws and Constitution, Stevens & Sons, 1964, pp.74-75

CHAPTER - III

FEDERAL GOVERNANCE IN INDIA- NATURE AND COURSE

I

The federal system of India is the parts of a subject of the historical interest. In contemporary India, the final outcome of federal system has unraveled through a long developmental process. A concise survey of different form of government with a monarch as the Supreme ruler or government of state affairs of earlier India had some convinced features which made easy their change into the polity of federalism. It can be observed interestingly that nearly most of the important periods of Indian history were indicated by a three types of frames which are as central, regional and local. But unmixed demarcation of these three types of frames do not form them federal. It may be employed for these types the descent of powers through a series of changes frame the centre to the regions. This devolution of powers is placed on the jurisdiction which are contractually demarcated. Never the less the decentralization may be degrees unfold into a federal decentralization.

For the first time the Mauryan combined into a number of kingdoms and between 321 and 185 B.C. in Magadh. It might be the first great portion of a continent. To Romila Thapar perceived:

"The economic condition of the time and its own requirements gave to the Mauryan Government the form of a centralized bureaucracy. The nuclear of the Mauryan system was the king whose powers had by now increased tremendously."[1] Once mare time Romila Thapar has perceived that "the geographical extent of the Mauryan state can be inferred from the fact that Ahsok an inscriptions have been found as for and wide as Kandhar and Shah Bazgarhi in the north west, Kalsi and Nigali Sagar in the north, Mahasthan and Kalinga in the east, Girhar and Sopara in the West and Jatinga Rameshwar in the south. It, therefore, appears that the entire subcontinent, with the role exception of the Southern Peninsular tip, was ruled by the Mauryan."[2]

Two renowned British historians, Percival spear and Wolsely Haig, have made out the elements of federal administration in India as to a great extent behind as the Mughals, starting with the system of land revenue of Sher Shah and picking out the figure with Akbar's process of dividing his empire into 12 Subahs or Provinces.[3] They both agreed that Mughal rule changed between local positiveness and stout central dominance, in this manner being located in the way of finally centralized or decentralized administrative frame.

But, V.R. Dikshitar proposed that the idea of federal frame of India was created by Muryan. He observed the state of Mauryan as a federal state[4] J.C. Heesterman on the basis of Arthashastra discussed, that its writer may have meant to create a preliminary plan for a centralized bureaucratic monarchy, but did not actually followed in this respect, as the considering and official system directed in it exhibits that the king and the mahamattas were co-shares in power.[5]

The development of feudalism in India came through a very complex system. It is witnessed by the part Mauryan period. Viewing Indian feudalism D.D. Kasambi suggested two related aspect a) feudalism from above which refers to a state in which the king collected a tribute from subordinates who independently ruled in their own territories, and b) feudalism from below denotes the second stage where a class of land owners was interposed in the village between the state and the peasants.[6]

A short view of the systems of state in the history of India proposed that the feudalism may be considered as the historical forefather of federalism. The basic distinction between feudalism and federalism is that the former was importantly a traditional pattern of authority whereas the latter implies a structure of democratic authority.[7] The example of such kind of system was the Mughal Empire in which Mughal administration was indispensably feudal rather than federal. John F. Richards added that "The division of functions

established at the Centre was duplicated in the Provinces. At each Provincial capital a governor, responsible directly to the emperor, shared power with a fiscal officer or diwan reporting to a wazir; military pay master and intelligence officer or bakshi, reporting to the central inspector general of the army; and a Sadr, reporting to the minister for religious and charitable patronage. The governor was responsible for the overall peace, security, and tranquility of his province. In this capacity, he supervised the military intendants or faujdars and the commanders of military check points (thanas) who were deployed with contingents of heavy cavalry and musketeers throughout each province, the provincial diwan managed imperial revenues, expenditures, and the provincial treasuries. The separation of powers between the governor and diwan was especially significant[8] operating principle of imperial administration.

The last stage of the Mughal Empire has been made in a special way as the stage of a large administrative system; A gradual progress of disintegration began during this period. This sow the figure of a member of small influences of Sikhs, Marathas and Afgans. All these small state considered almost the administrative pattern of Mughal Empire which is very interesting to note. The administrative system was more feudal in nature than the federal.

Actually this is time which is known as the turning point of the gradual progress of federal system in India. The arrival of the British rule fetched a number of alternations with it which provided for reaching results. It must be noted here that the advent of the East India Company in 1600 indicated the starting of the western absolute authority in the administrative system of India. Actually from the political and administrative view point, the 1857 year seems to be most necessary due to the taking over the Indian administration by the British crown under the proclamation by the British Queen. From this time, the British Crown began the direct rule and the British

administrative authority brought all Indian states under its rule. The England political authority became success to form a centralized process of bureaucratic administration. It was controlled by both the British Cabinet and the British Parliament.

The progress of administrative institutions in India with the character of federal system will begin with the spread of British rule after 1857 after taking over the duties and treaty responsibility of the East India Company by the British Crown and adopting sincere obligations for India's protected states.[9] The Indian intricacy was needed a federal type of government which was realized by the British in 1861. Since 1773 till 1947, India was unitarily ruled. The total Indian administration strongly favoured to the central government.

To white British authority over India, since 1857, this government had received a number of paces, through consecutive Acts. The accumulation of this system can be found in the establishment of the Government of India Act, 1935. It was for the Strengthen of the administrative frame. Ultimately this was transformed into a federal political system. The pursuing notice likes to be presented as:

Sovereignty in Indian history was crystallized in the main but was also partly diffused. Strong states were appreciably centralized but with some decentralising features in parts. This pattern of sovereignty not only allowed appreciably autonomies to groups and regions within the state but also visualized a complex interstate alliance system in the subcontinent in which the allies were the constituents of the sub-continental state. This was true of even strong sub-continental states like the Maurayas, the Mughals and the British. Feudal autonomies of the past as well as the earlier tradition of ganasanghas may be seen as precursors of the autonomy of state governments under the parliamentary federal constitutional system in India to day.[10]

In this system, the British Government took an important step which was the passing of the Indian councils Act, 1861. Through this act, British Government could feel about the necessity of the decentralization policy which seems to be fit for India. Actually the Indian Councils Act of 1861 emphasised on two valuable aspects of any federal governance. Regional differences and local specificities. It can be seemed that by maintaining regional demands along with the sense of national unity, any legislative method becomes to satisfy the aspirations of local area. It was understood that the devolution of the powers of the legislature became the only answer for the better governmental system in India. This Act provided some chance of Indian representatives whom the administration nominated for that purpose. Evidently the rule of nomination unfilled in to any process of election but provided the state, this restrained area of the act of associating of the Indian with the process of administration was seemed very critical. It created a chance of a communicational channel between the people of India and the administration. Although most of the Indian people disliked this nomination system. The Governor General also was provided the authority for creating new provinces and also the power for appointing lieutenant Governors. The Indian Council Act, 1861 was also important because it was done instantly after the Sepoy Mutiny of 1857 which influenced the method of passing this Act.

The implication of the Government of India Act, 1909 which was known as Morley-Minto Reforms became the latter landmark in this process. This act advanced the spreading of the nature of the Councils for the Central as well as the provinces. It also provided some aspects of representation but on the religion based and separate electorate for the Muslims. People in this subject criticized lots. It became an attempt to create a feeling for separating people on the religious basis.

This Act strengthened the legislative councils along with the maximum number of additional members of 60. These members were

from official and non official categories. The nominated officials and the ex-officio members of the councils were the members of the officials. At the same time, the elected and nominated members because of the non official. Then it can be seen that, the general, class and special electorates created by the Act for the first time of the principle of communal electorates for Muslims. For the first time, these made the attempt for official position of separate identity of the Muslim community Actually this demand was made by Muslims this Act clearly assured the Muslims in both the representation of local bodies or legislative councils as a separate community.

The 1909 Act expanded the functions of the councils. Which took place in three subjects as the discuss of the Annual statement of Finance, on any topic of common public interest and the questioning. But this was not in practically. The decisions of the council were not fastened the government. It failed to provide any constitutional duty for the government. In fact this act did to separate the community of Indian on the basis of communalism. A strong attempt was created separation within the Indian society by the England Government. For this, Nehru observed, "A political barrier was created round them (Muslims) isolating them from the rest of India and amalgamating process which had been going on for centuries".[11] This act actually emphasized on a method of concessions. This was accepted by the moderates of congress though they did not like any kind of extremism. Moreover every reform failed to give a responsible government and mainly focused to discourage the devolution policy. The 1909 Act was limited which became visible very quickly for the Indians. Between 1909 to 1917, the repression policy, the Indians disappointment, the Indian National Congress agitation and during the First World War, the political situations gave a chance of a series of important development. The Indian people were inspired by some type of hope at that time. To Indians, British authority would have to come before some crucial

threats. Samely British power had to pace the increasing internal and external pressures Due to what their Divide and Rule policy failed to work in a proper way. As a result British authority had compelled to take out another reform. This reform was come out through the government of India Act 1919. Through this act, the 'Diarchy' was introduced in which the subject of the provinces were separated into Reserved and Transferred categories. The matters which provided great chance for the social service and local knowledge were the part of transferred category. On the other hand the subjects as like finance, law and order, land revenue were included in the reserved category. The public health, education, agriculture, industrial development, local government, medical administration, public works etc also were included in the transferred category. Sir Friedrich Whyte described this type category as reserved and transferred subjects as "Federation in embryo."[12]

The Government of India Act, 1935 was also the result of the Indians demand of further constitutional reforms. This Act provided the space of creation of federal governance in India and demarcated the jurisdictions between the units and centre. M.V. Pylee observed as "The federal system which the Act of 1935 and to establish was perhaps the most complex ever known in the history of federalism."[13] This act was centralized in nature. It gave the authority to the centre to take over the provincial administration under certain situations. Through this act, the legislative powers were divided in to central, provincial and concurrent lists. It assigned to demarcated sources of revenue to the provinces and the centre. Through this act, a federal political system which was highly centralized in nature was liked to form the Indian continual policy. The Governor, the representative of the British crown had given the executive power and power of the federation. He chose the ministers from the federal legislative members who remained in offices until enjoying the Governor General's confidence. He through

this act also was given the extra ordinary powers of legislation. He had the authority to announce the breakdown of the constitutional machinery if he was assured that the federal Government failed to carry on according to this act. He had some discretionary powers. He was compelled to take the suggestion of the council of Ministers. At the same time, the abolition of the autonomy of the provinces was also introduced.

A federal court consisting of chief justice and hot more than six other judges were created by the Government of India Act 1935. The Judges could carry on their office till the age of 65.

Then it can be suggested that the Government of Indian Act 1935 considered the federalizing system in India. Though it mainly gave wider scope to the British authority in the central intervention. So Indian people's common hope was not satisfied. Then the Quit India Movement as well as the Cripps Mission provided the sphere of the transformation of power to the Indians through another reform which was known as the Indian Independence Act. 1947.

After this the Constituent Assembly played an important role in the process of making Indian constitution. The objectives Resolution which was moved by Nehru on December 13, 1946 considered a confederation of states. The states in this confederation "shall process and retain the status of autonomous units, together with residuary power and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from."[14]

Nehru in One of the meetings of the Union Constitution committee on June 6, 1947, announced about the constitutional federal system with highly centralized in nature. Pannikker stated in a different note in May, 1947 to the Union Constitution Committee that

"the Declaration of Union and provincial powers which federalism involves, is, to my mind a dead issue, and the idea which has gained prevalence that the Indian Constitution must be of a federal type is definitely dangerous, to the strength, prosperity and welfare of India. Federalism is a fair weather constitution and in the circumstances of India it is likely to be a dangerous experiment leaving the national government with but limited powers weak and consequently incapable of dealing with national problems.[16] Many members of the Constituent Assembly favoured the greater degree of state autonomy which would accommodate the interests of different regions and communities. It was mainly on the matter of governance and also the federal structure. To them, though India is a vast country comprising diverse interests demands, the federal arrangement was only fit for India to achieve those interest. In that case, Ismail Sahib, being the Prominent Muslims members stated. Ours is a vast country of a great distances and huge population. However much the centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be drawbacks and shortcomings. This will naturally lead to content and conflict ..... a federal type of government is more suitable than any things else for such a country as ours.[17]

II

India after a long struggle was able to achieve its independence which 1s known to all. So, a number of historical, economic, socio-cultural and political forces conditioned the drafting of Indian constitution. The debates which happened in the Constituent Assembly disclose the adjustment and compromise that took place is any central discussion. To the members, the constitution which was proposed should provide enough property of suitability and responsiveness to the threats which come from outside. Along this the constitutional framers emphasized on the importance of the disrupting forces which were not

highlighted during the critical process of history. In this matter, Paul Brass stated:

"Indians constitution maker thought that they had good reasons to be fearful of disorder, even chaos, in the subcontinent as a consequence of the actions of a multiplicity of dangerous forces arising out of political movements associated with Muslim communalism, secessionism and revolutionary communism. Moreover, some of those forces were associated with acts of violence, revolutionary insurrection, extensive communal killings and war. The response of India's constitution makers to these threats and dangerous was to use them as a basis for framing a constitution with numerous provisions designed to deal effectively with the threat of disorder through the creation of a strong centralized state".[18] From the starting time, the constitutional framers were busy to provide clear guideline to make India as strong Republican, Generally they emphasized on state and nation building why they felt about the importance of having a federal arrangement, they compelled to keep India as unified and strong. For this, the centre has been given more powers with sharing of powers between the states and the centre. The prevalent political, social and economic circumstances of India right from the Indian independence can be focused too. The political situations were full of suspicious and despondency. The social relations endured vigorous changes. The governing systems of states were fully shattered. To solve of these situation, the constitutional makers emphasized on the creation of the situations of belief, hope, faith and commitment on which the Indian people always are in favour of democratic principles and ethos. Actually it seemed to be same to all the countries who got independent after a long struggle process.

The Indian federal settlement has been framed on the basis of the Government of India Act, 1935. For what in the matter of legislative relations, the states have been made less powerful. The centre on the

other hand has been setup as in the directing place of the sphere of administrative relations. The state's most of the areas always depend on the centre excepting few members of states. The federal arrangement India has also become the witness of qualitative and quantitative changes while, the political aspects undergo changes with the time.

Since the Fourth General Elections, the improvements can be quoted as the starting of a system of additional decentralization of powers which has gone beyond the frame of the India constitution. Like India's constitution, a constitution like to get the features of what Austin has rightly said, "A vehicle for Social Revolution". Whether it is the goal of Indian constitution, then, it has to be flexible along with ready to respond with the changes.

Despite this, the states are becoming very important and playing critical roles immediately after the beginning of coalition Politics in India. For this reason, there seems the important again to restructure the federal relations. The end of one dominant party system "which is described by Rajni Kothari as "Congress System", a new area of power sharing has emerged where the regional and local forces are in a greater position. To demand the resources of the nation.

The India's federal system has come through the different phases of the history. A system of centralized powers can be seen at the earlier time of independence that it was shaped as federal. Till 1966, this phase of dominance by the centre lasted and after that there had been changed in the matters of electoral verdict in some of the states. Then Politics of bargaining emerged between the centre and the States. It is very interesting to note that the phase of coalition politics causes to exist the feeling of co operation between the centre and the States what is known as 'Co-operative federalism'. The present day era provides the regional governments holding the directing power to a large extent.

Again a new area of culmination of powers also in the local level has emerged.

In conclusion, the history of the amount of the process in India presents some important characters of its own. Though Indian federal system based on the pattern of west Minister, it neglect the unitary process of ruling. The federal system of India has been mostly based on the model of Canadian and to some extent of the American System. But it should keep in mind that every country has its own history and on the basis of these historical aspects the government are formed. Taken those stipulations, Indian's federal system is importantly India pacific.

III

A continuous erosion of the federal process in India in the name of national unity and development imperatives has been discernible after the mid-sixties. At the same time countervailing political and constitutional pressures shored up demands for greater decentralization and state autonomy. Dynamic interaction between these two opposite tendencies resulted in a shifting equilibrium which has been extremely unstable, depending upon the unpredictable variables of the balance of power in the political system.

Chief Minister Jyoti Basu of West Bengal in early 1982 stated that the unity of the country could be strengthened only by sharing powers between the centre and the states, and that a strong centre was possible only when states were strong and viable. This called for a change in the existing power balance between the centre and the states.[19] At the meeting of the National development Council in New Delhi held on 14 March 1982, the Chief minister was critical of the central government for bypassing the council in respect of the massive IMF Loan, pointing out that the decision making process in the country was passing into jeopardy.[20]

Ever since 1978 West Bengals Left Front government passed through a series of confrontations with the centre over various issues. Two particular situations arose after the assembly elections in 1982 one relating to overdrafts and the other concerning the size of, and the allocations to, the annual plan for 1982. The states overdrafts had reached Rs.403 crores at the middle of the year. Restrictions imposed by the Reserve Bank of India on overdrafts drove the administration to a quandary on resource mobilization. With the present structure of centre-state finances, and the expanding state role in social development, the West Bengal government contended that overdrafts were unavoidable. It also claimed parity with the central government to incur such debts which the Reserve Bank would finance.

Some economists considered the claim to be unrealistic, while conceding that the strain on West Bengal's economy will be severe, and "inflationary forces have emerged … more from central deficits than from the net total deficits of the states."[21] The wrangle over the size of the 1982 state plan took a serious turn with the prospect of a total stalemate, and only the prime minister's intervention and grant of additional funds saved the situation from degenerating into an open confrontation. This last minute 'positive attitude' has been appreciated by the chief minister, but the whole episode exposes the near-crisis situation that might further endanger the federal process so delicately poised on the brink. Some way must, therefore, be found for making the federal process work according to the accepted principles and norms as applied to differing political and economic cultures.

Balance of power

Broadly speaking, there are two currents of thought of the delicate but potentially explosive subject of federalism and centre-state relations in India today. One school holds that the issue is more political than legal-institutional, and the solution to the problem raised by the rise of diverse political forces after the 1967 and the 1977

elections lies not merely in constitutional and administrative readjustment and restructuring, but in devising sound and healthy political conventions and practices.

The second line of thinking assumes that many of the persistent maladies within the Indian body politic, especially in the working of the Indian federal policy, can be removed by judicious and conscious rearrangement of the institutional structure by formal alterations or revisions in the governing rules, so that greater legitimacy is brought to bear on those structures which have to respond to the challenges and the systemic crises. The West Bengal government's Memorandum on Centre-State Relations, which sought to initiate a fresh debate on this issue in the changed political climate, is predicated on the second line of reasoning, which adopted the 'institutional' approach. It has pleaded for far-reaching constitutional amendments, albeit within the framework of the existing state structure, in order that the "federal principles" could be "correctly understood and applied".[22]

According to the 'political' line of thinking, the strength of the centre was not expected to subvert the federal equation in the normal functioning of the constitutional framework. If the constitutional provisions, supposed to be well meaning, had not been worked according to the intentions of the framers, and the centre and the states had failed in developing a pattern of relationship based on mutual cooperation, broad understanding and satisfactory working arrangement, the fault did not lie with the constitutional system: By an elaborate distribution of legislative, administrative and financial powers, and a systematic institutionalization of inter-governmental cooperation, ground should be prepared for harmonious working. For example, in the sphere of financial relations, it was believed that the provisions of the constitution were designed with great care and circumspection so as to forestall the difficulties in securing closer correspondence between resources and functions,[23] and if there were

signs of dissatisfaction in the actual conduct of financial affairs, these could be traced to the stresses and strains in the national economy and the spirit in which the constitution had been worked, rather than in the "well-conceived provisions" themselves.

Fiscal Federalism

The provision for a Finance Commission under Article 280 was intended to institutionalize federal fiscal harmonization, more specifically to consider the shares of income tax and central excise proceeds that should go to the states, and lay down the principles for giving grants-in-aid of the revenues to states in need of assistance. But the emergence of planning and the nature of the planning process upset the constitutional scheme in a way not really envisaged by the constitution-makers because successful execution of economic development plans necessitated larger financial capacity of the states which involved in its turn a persistent demand for larger allocations, growing use of central loans and grants especially the matching, discretionary, 'plan' grants under Article 282 which has become the "backbone of federal planning finance",[24] increasing dependence of the states on central subventions and a substantial modification of the original balance of power.

In the present discussion on centre-state relations, financial relations in general and the mechanism of grants-in-aid in particular, need to be re examined in the light of the changed political context. It has been stated that "basically the working of centre state financial relations can be seen from the overall result of financial operations on state finances."[25] A careful analysis of the various elements of fiscal federalism in the forms of sharing of taxes, statutory and discretionary grants in aid, central loans to the states and performance under Articles 268 and 269 conclusively proves that the dependence of the states on the central resources has been on the increase since the beginning of the first five year plan. Over the first plan period, the

dependence on the centre was nearly 38 percent which became 57 percent during the fourth plan.[26]

Grants in aid as a fiscal instrument are used "to strengthen the declining resources-base of the constituent units of a federation".[27] The operation of the mechanism of grants-in-aid can be found in all leading federal constitutions of the world, like the USA, Canada and Australia.[28] The experiences in the fiscal relations in these countries influenced to a very great extent the framers of our constitution in evolving the mechanism of grants-in-aid.

Finance Commission

With a view to making periodic assessment of the needs of financial help to the states, the framers provided for the establishment of an institution in the form of a Finance Commission which, by its very nature, is "a quasi-judicial body".[29] It has been categorically stated that the functions of the Finance Commission are to make recommendations to the president in respect of:

(1) The distribution of net proceeds of taxes to be shared between the union and the states and the allocation of shares of such proceeds among the states;

(2) The principles which should govern the payment of the union grants-in-aid of the revenues of the states;

(3) Any other matter concerning financial relations between the union and the states.[30]

Finance commission have worked under different terms of reference which are drafted by the central ministry of finance. So far as the composition of the finance commissions are concerned, it is important to note there is no scope for representation of the states, and the state governments are never consulted on the terms of reference.

The Second Finance Commission was asked to recommend the principles of distributing the net yield from taxes levied under Article 269 such as estate duty the tax on railway fares which are levied and collected by the central government but the proceeds of which would be made over the states.[31] While the Third Finance Commission was not asked to examine any additional matter, the Fourth Finance Commission was asked to examine the desirability of using the state's share of estate duty for the repayment of the central loans to the states; to estimate any additional burden of debt–servicing expenditure that would devolve on the states; and also to examine the combined incidence of sales tax and union excise duties on production and conusmtion.[32] The Fifth Finance Commission was asked to recommend ways and means for discouraging the states resorting to unauthorized overdrafts.[33] The Sixth Finance Commission was asked to examine the states' debt position vis-à-vis their non plan capital requirement.[34] The Seventh Finance Commission advocated a full-fledged Finance Commission and an agency with watching and advisory roles with regard to centre-state financial relations generally and the proper implementation of the accepted recommendations of the commission.[35]

Of the many problems with which a federal polity like India is confronted, the important one is: How can the country formulate a national development plan which tries to obtain the maximum advantage from having a large area under the government but which, at the same time, is sufficiently firmly rooted in the diverse regions and areas of the country, taking note of both their potentialities and the needs and aspirations of the people belonging to them. In other words, like the problem of reconciling economic growth with reduction in inequalities among different classes of citizens there is also the problem of ensuring a rapid rate of economic growth and at the same time, preventing an accentuation of inequalities among different regions and states.

Constitutional Limits

Planning in India lacks specific constitutional sanction and basis. Matters pertaining to planning can be inferred from a rational and judicious reading of (a) the Preamble ("Justice – Social, Economic and Political" and "Socialist" Republic); (b) Part III dealing with Fundamental Rights ("Equality of Opportunity" and taking away of private property for public purposes in Article 31, abolished in 1979); (c) Part IV dealing with Directive Principles of State Policy, especially Article 38; (d) Part XI dealing with relations between the union and the states, especially Articles 245, 246 and the Seventh Schedule, List I, items 23, 24, 52, 56 and 66, List II, items 6, 9, 11, 14, 17, 18, 19, 21, 23, 24, 26, 27 and List III, item 20 dealing with social and economic planning, and items 21, 22, 23, 24, 27 and 33; Articles 200, 201, 249, 257, 263, 280 and 281; (e) relevant constitutional amendments like, first, fourth, seventeenth, twenty fourth, twenty fifth, forty second and forty fourth; and (f) extra-constitutional efforts like parliament's adoption of the 'Socialistic Pattern of Society'. Social and economic planning is included in the concurrent list. Most of the subjects concerned with planning fall either in the union or in the state list. Important in the union list are large industry, railways, national highways, civil aviation, major ports, shipping, communications, banking, all kinds of insurance managed by the centre, overall monetary and credit policy, foreign loans, and inter-state and foreign trade. The principal sources of revenue allotted to the centre include taxes on income other than agricultural income, corporation tax, excise and customs. Subjects appearing in the state list include agriculture, forests, fisheries, irrigation, roads and road transport, minor ports, medium and small industry and social services like education and health. The principal sources of revenue allotted to the states include revenue, agricultural income tax, stamps and registration duties and taxes on commodities, especially the sales tax. Power is a concurrent

subject. So are price control and trade and commerce in the production, supply and distribution of food-stuffs, edible oils, raw cotton and raw jute.

The Constitution authorises the central government to regulate and control certain subjects in the state list such as roads, inland waterways and mines if found expedient in public interest. The union further has the power to coordinate and lay down standards in specified spheres like higher education and research.

Inter-State Council

As already noted, the constitution provides for the establishment of quinquennial Finance Commission to distribute between the union and the states the proceeds of taxes which fall in the divisible pool, to determine the principles which should govern the grants-in-aid to the states out of the Consolidated Fund of India, and advise on any other matter referred to the commission by the president in the interest of sound finance (Articles 270, 272, 275 and 280). In practice, the functions of the Finance Commission have been restricted to ascertaining and covering the revenue gaps of the states. Plan assistance has been kept outside the purview of the successive finance commissions. Such assistance to the states has been provided under Article 282, a miscellaneous financial provision under which the union or a state may make grants for any public purposes. The states are authorized to raise internal loans, except that if any central loan to a state is outstanding, prior permission of the union government is necessary before floating a new loan (Article 293). This, in the financial circumstances prevailing in India means in practice that the centre's approval is necessary for the loan programmes of all states.

The Constitution of India, in Article 263 also provides for the setting up of an Inter-State Council for the purpose of ensuring coordination among the states. The Administrative Reforms

Commission, in its Report on Centre-State Relationship submitted in 1969, recommended such a course of action: The proposed council should have broad terms of reference and should be free to discuss and resolve both inter-state and centre-state differences. While its proceedings are to be treated as secret, the decisions are advisory though these "must be able to carry weight with the centre and the state governments".[36] The Centre State Relations Enquiry Committee, appointed by the Tamil Nadu government in 1969 under the chairmanship of P.V. Rajamannar, recommended the immediate constitution of an Inter-State Council to be consulted on all matters of national importance or those affecting one or more states. Its recommendations were to be binding on both the centre and the states.[37] It is regrettable that such a council has not yet been set up by the Government of India.

Planning Commission

Though the subject of social and economic planning figures in the concurrent list, the Government of India decided in 1950 to set up the Planning Commission by an executive order and in that sense made it a body subservient to the central government. The powers, functions, as well as the procedures of the Planning Commission have evolve since 1950 as the result of working conventions, especially regarding the relationship between the commission and the states. The commission has no statutory authority over them.

When the commission was first appointed, the resolution setting it up indicated that in framing recommendations, the commission would act "in close understanding and consultation with the ministries of the central government and the government of the states. The responsibility for taking and implementing decisions will rest with the central and state governments".[38] The resolution expressed the hope that the state would give the fullest measure of help to the commission so as to ensure maximum coordination in policy and unity in effort.

Since Jawaharlal Nehru regarded the Planning Commission's role as critical for India's transformation into an industrially developed, modernized nation, it was idle to expect that this non statutory body would remain content with a merely advisory role that was originally intended. Although lacking any constitutional basis, the commissions virtual transformation into a "super economic cabinet, brushing aside even the authority of the constitutional Finance Commission,"[39] was not surprising, because Nehru purposely invested it with tremendous authority, status, powers and prestige. The consequence was startling. The states felt that their autonomy was being unduly frustrated by the national plans, in the shaping of which they had no hand.[40] "A combination of political influence, superior expertise, and control over formulae for central financial assistance to the states ensured that the economic and social priorities set down by the Planning Commission were adopted in the plans."[41] After Nehru, the influence of the commission and its policy making role gradually declined.

During Prime Minister Shastri's leadership, the balance of power between the Planning Commission and the ministries shifted to the disadvantage of the former. The commission's structure and functioning came in for sharp criticism, and the government asked the Administrative Reforms Commission to make a detailed study of the "planning organization and procedures of the centre and the states and the relationship of the Planning Commission at the centre and planning agencies in the states with other agencies."[42] In its final report in 1968, the ARC recommended a series of changes that would reduce the mechanisms of central control over allocation of investment outlays at the state level and transfer effective decision making powers over the content of plan programmes from the centre to the states. The commission was to be an expert advisory body, and the membership of cabinet ministers was to end.[43]

National Development Council

The reconstitution of the commission saw the prime minister continuing as chairman, and the finance minister continuing as member. Some prominent economists were appointed as full time members, but mostly these were political appointments. The trend continued in 1973 and 1977 until Indira Gandhi recently reconstituted it along the old lines, abandoning most of the ARC recommendations, and inducting the ministers of defence, planning and home affairs as ex-officio members. The cycle has now turned a full circle, and as the recent encounter of the West Bengal government with the planning commission reveals, the balance of power has once again swung in favour of the centre. All this calls for a revision of the entire basis of planning, by imparting a constitutional sanction to the Planning Commission along with National Development Council. An extra-constitutional authority cannot be allowed to dictate policies to the states for long.

It was on the suggestion of the Planning Commission itself that the National Development Council (NDC) was constituted in August 1952, to serve as the highest reviewing and advisory body in matters of planning.[44] The NDC was expected not only to promote common economic policies in vital spheres and ensure balanced and rapid development of all parts of the country, but also to review the working of the national plans from time to time and recommend measures for the achievement of the aims and targets set out in them.

The council's membership included the prime minister, chief ministers of all the states and members of the Planning Commission. Other central and state ministers were invited to attend the Council's meetings when considered necessary. Over the years, a practice developed according to which most of the central cabinet ministers as well as some ministers in the states, especially those holding the finance portfolio, were invited almost invariably to attend NDC

meetings. The council occasionally formed subcommittees to go into questions calling for special attention. The NDC was thus clearly conceived of as a federal body, an experiment in cooperative federalism, though no statutory in character, to give the states a greater sense of participation in the formulation of national plans and in bringing about a national consensus regarding plan policies. The council used to meet frequently at the time of formulating five year plans, and not so often in other years.

Following the recommendations of the Administrative Reforms Commission the NDC was reconstituted to include as members all central cabinet ministers in addition to the prime minister, chief ministers of the states, and members of the Planning Commission. Its functions have also been redefined. The most important change is that the NDC is now definitely charged with the responsibility of laying down guidelines for the formulation of the national plan.[45]

Planning Process

Between 1967 and 1971, after 1977 and especially during the last few years, the NDC served as a platform for ventilating grievances especially of the non-Congress state governments in respect of the planning process, and also as a forum for conflict resolution. In the logic of things, its mediating and policy making roles should be preserved and strengthened. But the pity is that like the Planning Commission, it also lacks a constitutional sanction, and that it has not been frequently utilized. There is a need for constitutional revision along this line, too.

Another instrument created by the Planning Commission for the purpose of developing close liaison with the states was the institution of programme advisers. The programme advisers were expected to function as “the eyes and the ears” of the Planning Commission vis-à-vis the state falling in their jurisdiction. Three senior officers were

appointed in 1952 to these positions. The idea was that they would be persons sufficiently knowledge about the problems, prospects and actual developments in the states and therefore, be in a position to advise the commission on the state governments' proposals and at the same time, to help the states in their planning effort.

The process of planning and the pattern of centre-state relations relating to it has been evolving since 1950. Broadly speaking, the process, as outlined by the ARC Report on Machinery of Planning, consists of a series of steps, commencing with plan formulation which is the most important stage, plan implementation, and progress reporting and evaluation.[46] Without going into the whole history of the evolution of the planning process, the principal features of the process as it worked during this period may be indicated. After formulating the overall macro-framework for the national plan and broadly indicating the quantitative magnitudes as well as major policies involved in the adoption of the framework, the Planning Commission attempts to indicate to each state, both financial magnitudes of the outlay for the state plans and guidelines on the formulation of the sectoral proposals. The states then formulate their plan proposals and send them to the planning commission. The difficulty has been that the suggested financial magnitudes are exceeded by most of the states in their plan proposals. Similar has been the case regarding the plan proposals prepared by various departments as well as districts in states. In many cases, the plan outlays propose by different departments and districts put together add upto an outlay which is much in excess of the plan ceiling suggested by the Planning Commission for the states.

Central Allocations

The NDC is consulted by the Planning Commission at various stages of plan formulation. The initial 'macro-economic framework' as well as policy proposals is placed before the council, discussed and its general approval obtained. However, the Planning Commission has not

been able to obtain any clear guidelines or firm commitments from the council. The discussions in the council, while approving of the goals in general terms, have not led to commitments in terms of acceptance of the discipline required by way of policies, regulations or mobilization of additional resources. It is generally held that the state representatives on the council use the platform of the NDC mainly to ventilate the grievances of their own states. Chief Ministers are by and large content to point out the importance of providing more central assistance and more schemes. At the same time, they are reluctant to make any clear commitments about their share in the proposed mobilization of resources. The central government also has generally found it difficult in the early stages of the formulation of the five-year plan to take decisions regarding the magnitude of the financial mobilization that it would undertake. The tug-of-war between the Planning Commission and the finance ministry about the contemplated size of public sector outlay has many times continued almost till the beginning of the five year plan period, thus keeping the question of the size of public sector outlay undecided till a very late stage of plan formulation.

Resource – Outlay Gap

Many other factors also contribute to unrealistic plan formulation. The system of central assistance that was gradually evolved, emphasized the distinction between plan expenditure and non-plan expenditure, the later including what came to be known as 'committed' expenditure on development schemes which were already under implementation in the previous plan period. While central assistance provided by the Planning Commission was expected to meet the states deficit on account of plan expenditure, assistance provided on the basis of the award of the Finance Commission was expected to bridge the gap in the state finances due to non plan expenditure. The award of the Finance Commission normally followed the finalization of the plan. In order to ensure that the Finance Commission should be

more sympathetic in awarding assistance, each state thought it appropriate to show that it has to cover a large gap, the assumption being that the larger the gap, the larger would be the assistance recommended. The attitude regarding plan assistance was somewhat less clear. On the one hand it was assumed that the larger the gap between approved outlay for the plan and the expected financial resources that the states can mobilize, the larger would be the plan assistance.

At the same time, the states were also aware that the Planning Commission frowned upon very large gaps and many times insisted on reducing plan outlay if the state's own resource mobilization was expected to be inadequate. The assumption in this respect has therefore, not been clear. In the past, state governments found that having secured the Planning Commission's approval for a large plan outlay, and having initiated a number of schemes and programmes on that basis, it was easier subsequently to bargain for larger plan assistance at the time of annual plan discussions. In any case, the result was that the states put forward estimates of plan outlay far in excess of what could be financed from their own resources, almost assuming that there was no limit to central assistance.

Apart from regional pressures, sectoral pressures tended to inflate the size of the state plans. In subjects like community development, education, health and social welfare, the concerned central ministries suggested programmes and schemes to the states which tended to unduly inflate the proposed state outlays in these sectors. The fact that plan formulation in the case of the first three plans coincided with the general election was another factor leading the state governments to include a number of schemes which had been properly formulated. All these factors contributed to inflating state plan proposals in financial terms, and also to including in them projects and programmes which were not ready for implementation.

Discussion and Decision

An elaborate system of discussions between the Planning Commission and the state governments has evolved over the years. As already mentioned, the state proposals were usually far in excess of what was considered practicable and included schemes and programmes the details of which had not been worked out. The examination of these proposals, therefore, created considerable difficulty. Even though attempts were sometimes made to persuade the state governments to modify their proposals at an early stage, such attempts mostly failed and all these issues remained open till the last stages of plan formulation. All the matters had then to be decided within a comparatively short period of time – two or three days. The sectoral working groups representing the ministries at the centre and the departments in the state failed to bring about any significant streamlining or rationalization of the state proposals. The task of reducing proposed outlays to some realistic levels was thus left largely to the Planning Commission. The programme adviser would formulate his proposals with the informal understanding, if not approval, of the state finance and planning officers and these were finally considered in a meeting between the Planning Commission and the state government. Till recently, as no clear previous decisions were available about the magnitude of central assistance, each state government considered it appropriate to go on bargaining for maximum assistance right up to the last stage. The decisions tended to become lopsided, too much emphasis being placed on needs and too little on resource availability, resource mobilization and scrutiny of programme proposals.

The result of this process of decision making regarding state plans was that up to the beginning of the five year plan or sometimes even afterwards, it was not quite clear what the size of outlay would be for the state as a whole and therefore, for each department and for individual schemes and programmes. Large scale cuts at the minute or

keeping certain matters pending, also led to considerable uncertainty. The result of including projects which had not been properly formulated was that actual implementation of these could not be taken up for a sometime; at the same time, funds were earmarked for them.

Partly as a result of the failure in the formulation of five year plans in operational terms and partly because of the need for flexibility in development planning, annual plans came to be emphasized from 1957-58. The hope that annual plans would be formulated in a more realistic manner was belied. Yearly plan proposals suffered from defects similar to those experienced by five year plans, though somewhat to a smaller degree. The process of discussion and the problems that had to be sorted out were also similar. The annual plan is not generally finalized till January or February of the year and large cuts are then made in the proposals put forward by the states and by various departments in a state. This created operational difficulties.

As a consequence, plan expenditure was not phased appropriately and the cost effectiveness of outlays in physical terms turned out to be worse than anticipated. It was alleged in many quarters that a principal reason for distortion in the system was the manner in which central assistance for state plans was organized.[47]

[2]

Development planning in India since 1950 gave rise to a number of controversies between the central government and the states. Controversy was somewhat mute before 1961 when planning was comparatively new and the states were politically and administratively under the total sway of the centre. The points of dispute began to be aired more openly from the third five year plan and acquired louder tones after Jawaharlal Nehru's death in 1964; the economic difficulties of 1965 and 1966, interruption in planning (plan holiday) and the

changing political situation that followed the general elections of 1967 and 1977.

One of the major complaints was about over centralisation in this as in other fields of governmental activity. The Administrative Reforms Commission (ARC) laid the responsibility for this situation at the door of the central government and noted that-

> as a result of planning, the three horizontal layers of administration represented by the lists of central, concurrent and state subjects, have been vertically partitioned into plan and non plan sectors and within the plan world, the compulsions and consequences of planning have tended to unite the three horizontal pieces into a single near-monolithic chunk controlled from the centre.[48]

For long, one of the principal points of criticism was allocation of central plan assistance. Not only had size of the plan outlay at the centre been increasing more rapidly than that of all the states taken together, but the manner in which the states should undertake development efforts came to be dictated from New Delhi. The advantage of more flexible financial resources under the constitution and of increased foreign funds at its disposal was said to be responsible for central domination. The result was alleged to be that states, in spite of their being in charge of some of the most crucial sectors of national life such as agriculture, education and health, were starved of developmental finance.

Even in regard to subjects which was constitutionally the responsibility of the states, the centre was in a position, through conditional financial assistance, to impose its own policies and programmes irrespective of the relevance or priority of the proposal to a particular state. As a result, not only was the essence of the federal system as envisaged in the constitution subverted but genuine

development, properly related to specific resource potential and felt requirements of each state, could not take place.[49] Imposition of superficial uniformity was in effect a waste of resources. Moreover, undertaking schemes and projects to which the state administration did not feel adequately committed accounted for projects not being properly implemented. Instances are known of programmes discontinued as soon as specific central assistance ceased.

At the same time, it was pointed out that one of the possible advantages to come out of such centralization, namely balanced development of the country as a whole, had not been achieved; in the case of regions and states, the rich had grown richer and the poor poorer. Many states held that development imbalance in the pre-independence period had not been corrected through planning. Uneven distribution of central projects, ineffectiveness of industrial licensing for ensuring location of industries in less industrialized regions and states, concentration of financial assistance infavour of already developed states, and inadequate central assistance for less developed states, were all mentioned as factors contributing to the continuance of such imbalance.

Teething Troubles

On their part, the central authorities complained that state planning and development efforts continued to remain at comparatively rudimentary levels. States had failed to develop proper machinery, far sightedness in plan formulation, discipline, political courage and administrative competence to implement necessary measures. More projects were taken up than could be financed, thinly spreading investment over a number of projects of long gestation periods and insufficient returns. It was said that states had merely made the centre "a whipping boy for their own failure".

With the allocation of financial resources being what it is, there is no doubt that Delhi has all along been at an advantage. While, to some extent, financial devolution is effected on the award of the Finance Commission, an increasing share of funds flow to the states on the advice of the Planning Commission. This invariably has given the centre and the Planning Commission considerable leverage in state plans and programmes. The centre's impact on state planning is exemplified by the fact that the pattern of state plan outlays under successive five year plans increasingly came to be uniform.[50] Because of the system of schematic matching assistance, states had been almost compelled to accept not only particular schemes but even details such as patterns of staffing suggested by central ministries. Not that the latter always had enough and effective information about the situation in individual states so as to be in a better position to work out what was good and suitable. Not surprisingly the states resented the fact that financial strength put central authorities in a position practically dictating development plans and progammes to them.

The inadequacy of central and state planning organizations combined with superficial consultation in the formulation process was mainly responsible for what happened.[51] The National Development Council (NDC) though established in the early years of the first five year plan, never developed well informed and full scale consultation at professional, administrative and political levels, ensuring state and central plan formulation in step with each other. Because of the high political status of the NDC members, it was not possible to have frequent meetings of that body. The result was that no real discussion of specific problems was possible and no clear guidelines were worked out. The fact that, unlike at the centre, in most states no special expertise in planning was developed and maintained in readiness, also contributed to the lack of a proper and sustained dialogue at the professional level. The institution of programme advisers, though well

conceived, in practice failed to provide an effective instrument for liaison.[52]

Fiscal Unitarianism

With the three major and expanding sources of revenue-customs, excise and income tax – in the union list, the financial structure is heavily weighted in favour of the centre. It appears that the Indian Constitution ignored the principle that financial resources allotted to a government must, by and large, correspond with its executive responsibilities. With the advent of planning, the position worsened as foreign aid and deficit financing, the two vital sources of financial power, lay with the centre.

The constitution had anticipated the imbalance between the state's revenues and responsibilities by the division of income tax proceeds between the centre and the states and allocation to states of the whole or part of specified excise duty revenues. Article 275 further provides the balance of the needs of each state to be met by grants-in-aid, which will be a charge on the Consolidated Fund of India. That is why, every five years are president is required to set up a Finance Commission to determine the states' share of divisible taxes, duties, and grants-in-aid and to devise norms for the division of the sums so payable.

There is no gainsaying the fact that in India, the superior financial position of the union government in a centre oriented federal structure of government and compulsions of planning have given birth to grave imbalances of power resulting in perpetual dependence of the states on the centre for more and more financial assistance. In this background, federal grants instead of working as a corrective measure for removing imbalances, function as a lever for the furtherance of the central dominance vertically and maintenance of disparities among the units horizontally.[53]

Central transfers to the states for the plans (grants and loans) had risen from Rs.880 crores at the end of the first plan (1951-52 to 1955-56) to Rs.10,353 crores at the close of the fifth plan period (1974-75 to 1978-79). While statutory grants of an unconditional nature had been Rs.859 crores at the end of the fourth plan and Rs.2,831 crores at the end of the fifth, conditional plan grants amounted to Rs.2,046 crores and Rs.4,772 crores respectively. Article 282 has been used also for non-plan purposes in recent years, thus further accentuating the imbalance. Substantial funds are transferred behind the back of both the Finance Commission and the Planning Commission which are not yet subjected to public scrutiny.[54] The abject dependence of the states on central assistance has undermined the federal process and has reduced the system to what may be called fiscal Unitarianism.[55]

The Finance Commission derives its authority from the constitution, while the Planning Commission is the creation of the administration. The working of these commissions sometimes covers some common areas. Both make estimates of the revenue resources and expenditures of the states to work out budgetary surpluses but the objectives of the two are different. The Finance Commission examines the needs of the states to determine a formula for fixing grants in aid. The Planning Commission is primarily concerned with the task of discovering what surpluses could be diverted from the non-plan sector for the development of plan size. Thus the estimates of the revenue surpluses by the Finance Commission and the Planning Commission have in the past varied, creating legitimate doubt about their correctness.

Overlap and Duality

Successive finance commissions have earned a reputation for efficient and impartial working. Any transfer of functions now discharged by the Finance Commission to the Planning Commission is likely to arouse suspicions and add to centre-state tensions. The

Finance Commission must therefore retain its present functions but submit its recommendations well in advance of the finalization of the next plan.

On the question of overlapping and confusing jurisdictions of the two commissions, the observations of Justice P V Rajamannar made in 1965 sound appropriate and realistic. He was evidently not satisfied with the bifurcated responsibility. In this opinion, compared to a statutory body like the Finance Commission, the Planning Commission could be described as a quasi-political body. Although he did not find it easy to describe its status vis-à-vis the government inspite of its importance, "it remains to this day a body without any constitutional or legislative sanction". Since the entire plan, both as regards policy and programme, comes within the purview of the Planning Commission and also since the assistance for plan projects by way of grants or loans was practically dependent on its recommendations, it was obvious that these two bodies could not operate in the same field.

Rajamannar was, therefore, of the opinion that "the relative scope and functions of the two commissions should be clearly defined by amending the constitution, and the Planning Commission should be made a statutory body independent of the Government."[56] Later, the Committee on Centre-State Relations headed by him pleaded that the Finance Commission should be made a permanent body and after annual adjustments are made to the plan by the Planning Commission, both plan and non plan grants should be determined by the Finance Commission which would imply that the scope of the Planning Commission should be limited to the formulation of the size and pattern of outlay of the five year and annual plans and that it should be divested of its power to disburse discretionary financial assistance.[57]

The ARC Study Team on Centre-State Relations had also considered various alternative models for overcoming the duality and the overlap between the two commissions which make divergent

assessments and apply different yardsticks and in consequence, fail to secure the best possible distribution of resources. While the debate goes on, the unsatisfactory operation of the two bodies as well as the importance of Article 275 and 282 in moulding the balance of power point to the compelling necessity of some kind of institutional readjustment in the fiscal federalism of the country.

Participation in Decision-Making

The concept of planning involves not only a coordinated development of economic and social activities of the nation but also removal of regional disparities. The policies, strategy and mechanism of planning must be delicately adjusted so as to promote the national objective and at the same time encourage local initiative. In a country of vast dimensions like India, the planning of programmes must of necessity be done at the union and state levels. If the peoples involvement in the process of planning is to be purposeful, the plan for the state and its implementation must conform to the stage of development and the wishes of the people of the region. Of late, involvement of the states in the planning process has improved and their representatives are associated in draft formulation and subsequent consultations. Chief Ministers are given the opportunity to discuss state plans with the Planning commission. All the same, states are not able to play an effective role in the decision making process.

The perfectly legitimate desire to be deeply involved in the process of planning cannot be satisfied by mere consultations, but only by active participation in decision making. It is therefore necessary that after decisions on the broad aspects of state programmes and resource allocation are completed, state plans should be finalized for representation to the National Development Council or an enlarged Planning Commission with a number of state planning ministers participating as full members. For this purpose, states should be divided into suitable groups to sit with the commission when the

concerned state plans come up. Without making it too unwieldy, this proposal should significantly add to the states own responsibility in implementation.

The need for developing a sense of responsibility and for avoiding centre-state conflicts cannot be overstated. Where the constitution has assigned a subject to the state, it is, in principle, objectionable for the centre to interfere with the states power. In brief, division of planning programmes between the centre and the states should follow the pattern of distribution of powers in the constitution, that is, schemes relating to subjects enumerated in the union list with the centre; those in the state list exclusively with the states and those in the concurrent list to be shared with the states. The power of "economic and social planning" in the concurrent list (entry 20) should not be used as a device for encroaching upon the powers which the constitution-makers desired to vest in the states, nor should the financial powers of the centre be allowed to become instruments of coercion for making the states accept schemes which would not have been included in their plan otherwise.

Institutional Readjustment

It has to be remembered that the federal process is basically a cooperative process in a spirit of partnership which concedes the maximum possible autonomy and freedom of action to the states and the local self governing units in the urban and rural areas for successfully implementing development programmes. In the planning process as understood and accepted by all, the responsibility for implementation of policies, programmes, projects and activities pertaining to development has been squarely laid on the states. Any failure will have to be accounted for by the leadership in the states who face the electorate every five years or so. This calls for rationalization of the entire scheme of resource distribution keeping in view the socio-economic conditions of the different states. If the involvement of the

states has to be assured, readjustment in fiscal federalism ought to be accepted as a necessary prerequisite.

It is an unfortunate commentary on the Indian federal system that on all vital matters relating to the minimum demands of the states for development and welfare, the states are helplessly dependent on the small mercies and reluctant favours of the centre. They have little power to do much on their own, except perhaps to tighten up expenditures on items that have political significance and observe a more rigorous fiscal discipline. The experience of the states has so far been frustrating, because the centres long arm of cooperation and assistance has not been extended quality and impartially to them in times of genuine distress. West Bengal's experience in respect of the erstwhile Food for Work Programme and the present NREP, as well as in tiding over food short ages, drought or flood is an instance in point.[58]

A suggestion is frequently made that the constitution be amended to provide a better balance of financial powers between the centre and the states. Champions of statutory devolution of revenues need substantial modification. It has also been suggested that grants under Article 282 have become predominant even though these are non-statutory and entirely within the discretion of the centre. This is objected to as making the states over dependent on the centre.

As against this, it is pointed out that the states have not effectively been able to utilize all the tax powers allotted to them, agricultural income-tax being the best example. The centre has been frequently urged to provide a lead in coordinating the tax policies of groups of states and to some extent this has been attempted. It has even been suggested that if no distinction had been made in the constitution for tax purposes between income from agriculture and from other sources, the present anomalies in income taxation and the hesitation felt in imposing taxation on agriculture would not have existed.

Another contention that has sometimes been raised in this context is that too much emphasis in the grant of assistance has come to be placed on Article 282. As a matter of fact, plan assistance provided under it has tended to become far more important than grants provided under other Articles, though the latter are subject to determination by a semi-judicial body like the Finance Commission. It is, therefore, suggested that grants of this magnitude should either be made subject to the purview of another semi-judicial authority, or the Finance Commission.

Constitutional Changes

While it is only appropriate that the states should obtain a substantial part of central assistance by a system of statutory devolution, and even some proportion of the plan requirements should be automatically available, it would neither be desirable from the point of view of the requirements of national finance nor in the interest of national development that the bulk of the plan assistance should be obtainable unconditionally as a matter of right. While it is obvious that the centre should not arrogate to itself the authority to decide all manner or details regarding the development effort of the states, the National Plan as a whole cannot be properly carried though unless the centre can at least partially use the level of financial assistance to ensure the state's compliance with certain basic directions given in the interest of the development of the country as a whole. A proper coordination between the Planning Commission and the Finance Commission is of prime necessity for achieving these ends.

Admitting that it is more a matter of habit and practice born out of political and economic culture and social structure, fiscal discipline for both the states and the centre is the prime need for the moment, and adequate institutional arrangements for ensuring it must be made in the constitution through formal amendments:

The main thrust of a restructuring of fiscal federalism ..... in India must aim at minimizing the financial dependence of the states on the centre in respect of their revenue and capital requirements curtailing the discretionary element in the central transfers and ensuring a degree of equalisation which would progressively reduce inter-state imbalance in development.[59]

One significant step in this direction will be to augment the resource capabilities of the states by transferring some potential tax-heads from the union list to the state list in the Seventh Schedule. But the greatest urgency must be given to the modification of Article 282. The entire question of the role of Planning Commission and the National Development Council as well as the relative role of the Planning Commission and the Finance Commission will also need a fresh look in the light of the experience of the last three decades and the persistent demands made by political leadership in the states and knowledgeable scholars and practitioners in the field.

In the changed objective socio-economic milieu of the late twentieth century, federalism can never be conceived of as an inflexible model of unchanging categories. All federal systems, whether classical or modern, have experienced a systematic and persistent retrogression under the compulsive pressures of economic imperatives and technological advances. Pressures and counter pressures between the centre and the units in modern governments have been very common and frequent, and the issues of centralization versus decentralization need to be looked at and resolved pragmatically, even when they arise within the overall framework of an ideology or state structure.

Class Character

A federal system being basically a response to social stimuli and objective social realities which are always changing, centre-state relations must tend to adjust to prevailing demands that arise within

the political system and process, whatever the constitutional design or the political structure. However, useful the fiction that federal unions solve the problems of diversity, "we should not overlook the fact that it is fiction."[60] Any attempt to maintain the original constitutional design, therefore, could be interpreted as either moving against the spirit of the times or perpetuating the vested interests of the ruling class that had carefully built and nurtured this superstructure. We should not lose sight of the fact that the Indian Constitution at its inception was largely divorced from the mainstream of Indian Political culture, values and attitudes, traditions experience and needs of the people; it had sought to institutionalize and rationalize the dominant political values of the ruling elite.

In this characterization of the Indian federal system as a leading example on the "New Federations" that are flexible, pragmatic and reversible and that have responded to the spirit of the post-Second World War world situation, R.L. Watts[61] overlooked the fact that the federal process did not really operate in India except in very brief interludes of the 1967-71 period, even when momentous and far reaching changes had taken place in such vital spheres as the nature of the party system, position of the prime minister and the style of functioning of the successive incumbents, role of the bureaucracy, making of public policy, style of decision making and so on. Since the basic character of the Indian society and economy has not changed and the entrenched position of the dominant classes has shown no signs of decline, it was perhaps logical to assume that the federal process would not genuinely work in response to superficial changes in the superstructure. The result has been generally disastrous for the all round development of the political system and for the intended congruence of growth and equity that is the cure of the Indian problem.

The 'Emergency' experience and its aftermath, including the forty second amendment of 1975, has conclusively demonstrated that a

highly centralized leadership and decision making structure cannot adequately meet the challenges of development, especially in view of the large size of the country, regional linguistic and cultural diversities, and the magnitude of the problems. The social and political realities are fast changing, and these are not being adequately articulated and reflected in the present constitutional and institutional arrangements. Although it is idle to expect any maximal consensus on a comprehensive structural and institutional readjustment in the present phase, especially in the context of the bewildering variety and volatile nature of local situations there is a slowly emerging awareness, particularly in the eastern and southern regions, for a decentralized, regional development process that will require for greater autonomy in administrative and financial matters than at present.[62]

West Bengal Experience

West Bengal, with its regional personality, political culture, leadership pattern and social class structure, has already given the initial lead to the drive for political, administrative and financial decentralization in the present centralized federal set up in India, and this lead is being more and more appreciated and recognized in other parts of the country. Whatever success has so far been achieved by the New Panchayati Raj experiment in West Bengal during the last five years will go immensely to consolidate and confirm the growing belief that the planning process towards development can be leavened only by active popular participation at the regional level by utilizing the instrumentalities of local self government and ensuring the active leadership of the state-level administration. A prominent scholar has admitted that the West Bengal experiment, if successful, could be a precursor for a New India, a grand design for social transformation and a path-setting psychological break through that could have far reaching consequences for the rest of the country.[63] It has been hailed as an "alternative strategy for structural change." There are signs of durable

changes in West Bengal rural areas through a genuine system of democratic decentralization that has opened up a new vista for other states.

Centralization of authority and resources cannot be the answer to India's gigantic problems. Political decentralizations is an absolute necessity. Since the constituent states are charged with heavy responsibilities for plan implementation and development administration, their willing partnership and autonomous enterprise, rather than a paramount, paternalistic position of the centre, should be the condition precedent for such discharge of responsibilities. Like the Swiss cantons and the Soviet republics, but unlike the American states, the states in India are historical entities. Keeping in mind their linguistic and cultural diversities, and the stark reality that despite the built-in and externally augmental centralization, regional disparity has only been heightened in respect of urbanization, industrialization, economic development, educational attainments and administrative efficiency, a new pattern of decentralized, even non-centralized federation is called for.

Learning from Others

It is not only the left parties which believe that a broad autonomy will conform to the democratic development of the country and of its constituent units, and that a much stronger political and economic basis for this autonomy should be provided in the shape of a redistribution of powers, spheres of competence and functions, a greater share of revenues and the right to pursue a more independent economic policy in conformity to their local needs, situations, infrastructural limitations and capabilities. The new pattern is, of course, yet to crystallize into a viable structural alternative, but there are clear signs of awakening central authority – even after the 1980 elections and the growing regional strength converging in a new kind of federal process tilted in favour of the states and the local authorities.

There can be no doubt that the federal system is very much on trial and is now in a critical stage of transition to a new phase whose contours and character would probably become clearer in the days ahead.

This 'new federalism', following the American terminological practice, will be predicated upon the sovereign equality of the autonomous and linguistically culturally homogenous states and wide dispersal of power in the rural areas. It has come as a reaction against the long trend toward centralization of authority in the federal government in the US that accelerated enormously during the Depression and again during Johnson's 'Great Society' of the 1960's. The underlying idea at the present moment is that the federal government in Washington has no special wisdom in dealing with many of the social and educational issues faced at state and local levels. One has to remember that under the impact of the dynamic forces in American economics and technology, there has been a growth of a new regionally oriented political response involving a readjustment of inter-governmental relationships. Federal state local relations have re-emerged as a topic of public concern after a hiatus of generation or more, and in the current mood of 'revival of federalism', the states are becoming bold and vigorous in their initiative, and the present wave of decentralizing tendencies may produce a different form of American federalism in the decades to come.[64]

Coming to the Soviet experience, the new constitution of the USSR (1977) does not introduce any fundamental modifications in the system of the Soviet socialist federation, for its basic features have been found to have justified themselves. It preserves and reinforces the principles of complete quality, free self-determination of nations, and socialist federalism. Centralism in respect of leadership and economy and defence and socio-political and cultural development operates hand in hand with democracy and broad independence of the republics

and unhindered development of their initiative.[65] The viability of the Soviet federal system has been proved by the experience of four decades and has belied the fears and criticisms of the Western Scholars.

Without drawing any far-fetched resemblance of the states in India with those in the USA or with the republics in the USSR, the relevance of the American and Soviet experience for the emerging centre-state relations in India need not be overlooked or ignored. Autonomy for the states and wider dispersion of powers among the regions and local authorities need not imply a weak centre or political fragmentation. Autonomy could generate greater consciousness and initiative and responsibility for a competitive and cooperative functioning of the system as a whole. If the evils of uneven capitalist development are to be overcome, the initiative has to be taken by the villages and then passed on to towns and cities and the consciousness of the toiling masses has to be aroused. Disposal of power centres is the needed antidote to the over centralization of political and economic power necessitated by capitalist development in industry and agriculture during the last three decades.

Notes and References:

1. Romila Thapar, A History of India, Vol.1, Penguin: Harmondsworth, 1966, P.82
2. Ibid., PP. 80-81
3. Wolseley Haig, The Cambridge History of India, Vol. IV, S. Chand and Company Ltd: New Delhi, 1979. Percival Spear, A History of India, Vol. II, Penguin Books: Baltimore, Maryland, 1965, PP. 40-52
4. V.R. Dikshitar, Mauryan Polity, University of Madras: Madras. 1932, cited in Rekha Sexena, Situating Federalism: Mechanisms of Intergovernmental Relations in Canada and India, Monohar: New Delhi, 2006, P.99.
5. J. C. Heesterman, The Inner conflict of Tradition: Essays m Indian Ritual, Kingship and society, OUP: Delhi 1985.
6. Hermann Kulke, ed., The State in India 1000-1700, Oxford University press: Delhi, 1995, P.7.
7. Cited in Rekha Saxena, Situating Federalism Mechanisms of Intergovernmental Relations in Canada and India, Monohar: New Delhi, 2006, P.100.
8. John F. Richards, The Mughal Empire: The New Cambridge History of India, Foundation Books: Delhi, 1993, P. 58
9. Cited in Lawrence S'aez, Federalism without a centre: The Impact of Political and Economic Reform on India's federal systems, Sage: New Delhi, 2002, P. 22.
10. M.P. Singh, Indian State: Historical context and changed, The Indian Historical Review, Vol. a. XXI, Nos. 1-2, January 1995, P. 52.
11. Jawaharlal Nehru, The Discovery of India, PP. 2950296.

12. Cited in K.R. Bombwall, Foundations of Indian Federalism, Asian publishing House: Bombay, 1967, P. 120.

13. M. V. Pylee, Constitutional History of India (1600-1950), S. Chand: Delhi, 1984, P. 82

14. Constituent Assembly Debate, Vols. I-VI, Lok Sabha Secretariat, 1999, P. 59.

15. B. Shiva Rao, ed., The Framing of India's Constitution: select Document, Indian Institute of Public Administration, New Delhi, Vol. 2, 1967, P. 553.

16. Cited in B. Shiva Rao, ed. , Ibid, P. 534

17. Constituent Assembly Debates, Vol. VII, P. 330.

18. Paul R. Brass, ' The strong state and The Fear of Disorder', paper presented at the conference on Democracy and transformation: Inida50 years of Independence, New Delhi, November 16-19, 1997, cited m Rekha Saxena, situating Federalism: Mechanisms of Intergovernmental relations in Canada and India, Monohar: New Delhi, 2006, P. 110.

19. *The Statesman,* Calcutta, 21 August 1982.

20. *The Statesman,* Calcutta, 15 March 1982.

21. *'Overdrafts and Deficits',* The Statesman, *Calcutta, August 1982.*

22. Text of the Memorandum on Centre-States Relations published by the Information and Cultural Affairs Department, Government of West Bengal.

23. *Report of the Sixth Finance Commission, 1973*, p.5

24. *W H Morris Jones,* Government and Politics in India, *B.I. Publications, 1979, p.153.*

25. M J K Thavaraj, “An Assessment of Centre-States Financial Relations,” paper presented at the All India Seminar on Centre-State Relations, organized by the Department of Political Science, North Bengal University on 29 and 30, April 1978, p.1
26. Ibid.
27. S.N. Ray, “Grants-in-aid and Inter-governmental Balance of Power in the Indian Federal System: A Comparative Assessment” paper presented at the All India Seminar on Problems of Federal Policy, organized by the Indian School of Social Sciences, Calcutta, 20-23 January 1978; also *Indian Journal of Political Science,* July September 1978, p.8
28. Detailed discussions on this aspect can be had from the following books: Ogg and Ray, *Essentials of American Government,* Oxford, IBH, 1967; Dawson, *The Government of Canada,* University of Toronto Press, 1963; and JDB Miller, *Australian Government and Politics,* Gerald Duckworth & Co, London 1964.
29. M J K Thavaraj, “An Assessment of Centre-States Financial Relations, op. cit., p.6.
30. Ibid
31. Ibid
32. Ibid
33. Ibid
34. Ibid
35. Report of the Finance Commission 1978, para 4.
36. ARC, *Report on Centre-States Relationships,* Government of India, 1969, p.23.
37. *Report of the Centre-States Relations Enquiry Committee,* Madras, Government of Tamil Nadu, 1971, p.24.

38. *Government of India Resolution (Cabinet Secretariat), No.1-P (c)/50 dated 15 March 1950.*

39. Asok Chandra, *Federalism in India; A Study of Union-State Relations,* George Allen & Unwin, London 1965, ch VIII. See also, Chandra, *Indian Administration,* ch. III, Sec.I, pp.92-93; Norman D Palmer, *Indian Political System,* Boston 1961, pp.170-72, V T Krishnamachari, *Fundamentals of Planning in India,* 49-68, 69-113; H K Paranjbe, *Planning Commission,* and 'Centre-State Relations in Planning' in Jain, Kashyap and Srinivasan (eds), *The Union and the States,* ICPS, New Delhi, p.211; A H Hanson, *The Process of Planning*, OUP, 1966.

40. Ibid

41. Francine R Frankel, *India's Political Economy 1947-77; The Gradual Revolution,* OUP, 1978, Ch.IV, p.113.

42. ARC *Report of the Study Team on Machinery of Planning,* Introduction.

43. Ibid.

44. Government of India Resolution (Cabinet Secretariat) No.62/CF/50 August 1952.

45. Government of India Resolution (Cabinet Secretariat) No.65/15/CF-67, 7 October 1967.

46. ARC, op.cit.

47. Three study teams of the ARC, on 'Machinery for Planning, Financial Administration and Centre-State Relationships, all reached a similar conclusion: *Report of the Study Team on the Machinery for Planning paras* 10.47 & 10.48; *Report of the Study Team on Financial Administration* para 14.5 and *Report of the Study Team on Centre State Relationships* para 7.10.

48. Administrative Reforms Commission 9ARC), *Report of the Study Team on Centre-State Relationships,* 1968, vol.I, p.95.

49. ARC: *Report of the Study Team on Financial Administration, op.cit.,* paras 14.2 to 14.5, pp.77-78. ARC *Report of the Study Team on Centre-State Relationships, op.cit.,* Paras 5.1, 5.2, 8.7 and 8.8.

50. ARC, *Report of the Study Team on the Machinery for Planning,* para 7.11 (p.17). Also in para 14.5 (p.79) of ARC, *Report of the Study Team on Financial Administration.*

51. Ibid., p.11.

52. Ibid., paras 10.62 to 10.66, pp. 135-136.

53. S N Ray, "Grants-in-Aid and Inter-governmental Balance of Power in the Indian Federal System", paper presented at the 5th All India Conference of the Indian School of Social Sciences, Calcutta, 20-23 January 1978, p.29.

54. K K George, "Centre-State Budgetary Transfers in India – Non-Statutory, Non-Plan Transfers, 1956-77," paper presented at the 5th All India Conference of the Indian School of Social Sciences, Calcutta, 20-23 January 1978, p.1.

55. S P Bhattacharya, *Grants-in-Aid in India: A Study of their Overall Impact on Inter governmental Balance of Power within the Indian Federal System* (Unpublished Ph.D. thesis of the University of North Bengal), p.454.

56. *Report of the Finance Commission,* 1965.

57. *Report of the Centre-State Relations Enquiry Committee, op. cit.,* Also MJK Thavaraj, "An Assessment of Centre-State Finance Relations", paper submitted to the All India Seminar on Centre-State Relations in India organized by the Department of Political Science, University of North Bengal, 29-30 April 1978, p.19.

58. S.N. Ray, "Inter-Governmental Balance of Power in the Indian Federal System", in *The Indian Journal of Political Science,* July September, 1978, p.410.

59. S.P. Bhattacharya, *op.cit.,* p.455

60. William Riker, review article in *Comparative Politics,* November 1969, pp.135-46.

61. R L Watts, *New Federations—Experiments in the Commonwealth,* Oxford, 1965.

62. See, in this connection, Amal Ray, *Federal Politics and Government,* Macmillan 1979, Chs. 1 and 2.

63. Marcus Franda, *India's Rural Development: An Assessment of Alternatives,* Indiana University Press, Bloomington & London, 1979, pp.133, 141, 246.

64. Daniel J Elazar, "Constitutionalism, Federalism and the Post-Industrial American Policy", in Seymour Marin Lipset (Ed) *The Third Century-America as a Post-Industrial Society,* Kalyani Publishers, New Delhi, 1979, p.107. Useful information may also be found in Anthony King (Ed)., *The New American Political System,* Washington, 1978, chs. 9 and 10; C Herman Pritchertt, *The American Constitution,* Third Edition, Tata-McGraw Hill, New Delhi 1977; Ebenstein, Pritchett, Turnes, Mann and Merkl, *American Democracy in World Perspective, Harper & Row, 1980.*

65. N Ferberov, "Leninist Principles of National-State Organisation of the USSR", in *Constitution of the USSR: Theory and Policy,* USSR Academy of Sciences, Moscow 1978, pp. 159-168.

CHAPTER-IV

CONSTITUTIONAL DYNAMICS, FEDERAL GOVERNANCE IN INDIA AND CONSTITUTIONALISM: A STUDY

I

Since the beginning of the Indian Constitution on January 26, 1950 upto the breaking up of the Lok Sabha in 1979 for the mid-term voting list for January 1980 as many as forty-four Amendment Acts have been passed with the purpose to enable the Constitution 'to respond to the needs' of the altered socio-political matrix of the Indian Political System.

The amendments of the Indian Constitution within sixty three years of the working of the present Constitution, creates conflicts among the general public and Constitutional lawyers alike. An observation has been as: "While they have caused consternation among the political purists who find little sanctity left in the Constitution as a result of the supposedly arbitrary changes .... much debate is still going on as to the probable impact of these changes on the Constitutional evolution, socio-economic progress and the general transformation of the Indian Society."[1]

It has already been seen[2] that the Indian Constitution provides a novel amending provision in Art.368 by which the Constitution can be amended in more than one manner. While some of the provisions of a 'tentative nature' can be altered by the Parliament by the ordinary legislative process, without being called amendment process, and some others relating to the federal character of the Constitution, being entrenched, need a difficult additional requirement of consent by one half of the State Legislatures, the large bulk of the Articles of the Constitution can be amended after the Bill for such purpose is approved by an absolute majority of the total membership of each

House of Parliament as well as a two thirds majority of the members present and voting in terms of Art. 368.

It can also be mentioned that since the very commencement, the political system of India "has been passing through ..... periodical crises and conditions of instability".[3] During and after 1967, these problems became more critical due to some sure factors which were like first in the conflict of institutions in the Golaknath judgement of 1967; Secondly, after the fourth general election in 1967, the political change in the country; thirdly, in the 'historic' split in the Congress party in 1969; and fourthly, the gradual change in the economic setting, started as result of the failure of developmental efforts on the part of the Govt.[4] With the others, all these factors, "brought the societal goals face to face with serious and crippling constraints, and instability resulted in unforeseen political conflict within the system."[5] But it is still to be decided "Whether the conflict that occurred is s systemic conflict involving the very nature and operation of the political system itself, or an issue conflict involving specific issues and problems not certaining round the basic institutions."[6] It is apprehended that any failure to deal effectively with systemic conflict brings disaster and disintegration to the political system...."[7] Like India, for a political system is not exposed to violence 'as a means of resolving systemic conflict', the amendments of Constitution might go a long way in removing the constraints to stability and other systemic goals."[8]

According to form constitutional amendments are important not only to supply the 'safe-valve' for the political system but also to help to bring about "to an increased and more effective 'regulative' and distributive capability of the political system by introducing the much needed structural and institutional adjustments within the basic framework."[9]

The conflict between the ‘justiciable' Fundamental Rights and the 'non-justiciable' Directive Principles, compelled the party in power to

get hold to recourse to the way of formal constitutional amendment. The effect was the incorporation of the First Amendment Act 1951 that was required to take off the assertion that the ideals contained in the constitution wanted the attribute of 'existential reality'. It is true that the Indian Constitution is a 'derivative' and 'adventitious' document, "divorced from the mainsprings of Indian culture or heritage, and conveniently accommodating the accepted principle of Western Constitutionalism."[10]

Due to 'a surprising degree of adaptability', the fundamental framework, although disclosed to such inner conflicts and denials, has not informed. Willing to make the Constitution more responsive and adaptable, since 1951 it has been ensalved to strong changes. It is good to note which in India most of the amendment of Constitution search to remove "the serious spectre of systemic conflict involving either the nature and working of the political system or its basic institutional components."[11]

Importantly notable, though formal amendments of constitution are important to do the constitution responsive to the socio-political environment, the importance should not be kept on the 'procedure' of change, 'but on the relative case and frequency of actual change."[12] The necessity of the drafting skill comes in order to "ensure the stability of the fundamental constitutional norms whilst avoiding the rigidity that would make evolution, adaptation to changing circumstance, and the growth of consensual opinion for peaceful change difficult to achieve."[13]

Preserving the aspects of dynamism of the political system of India, the constitution has been basically amended on 94 times. These amendment may be kept into five main groups which in a proper way help us to understand the nature and impact of these Constitutional amendments including the forty second; forty third, forty fourth.

In the first group, the First, the Fourth, the Sixteenth, the Seventeenth, the Twenty-fourth, the Twenty-fifth, the Twenty-ninth and the Thirty-forth amendments are the most important but controversial group. The substance and quantity of fundamental rights, mostly the right to property vis-à-vis the growing needs of the community are narrated directly with these amendments.

The second group consists the Third, the Fifth, the Sixth, the Seventh, the Thirteenth, the Eighteenth, the Twenty Second and the Twenty Seventh amendments.

These are related with the nature and character to the federal structure and contributions along with the progress of federal power and authority and to the rationalization of the federal structure.

The Seventh, the Eighth and the Thirty third amendments are comprised in the third group which tries to give greater protection and defences to the Minorities and Scheduled Castes and from the point of view of the effect and activities of the democratic society these should be obeyed as important.

The fourth group, mingled group, combining the second, the Eleventh, the Fourteenth, the Fifteenth, the Nineteenth, the Twentieth, the Twenty sixth, the Thirtieth and Thirty first, is shaped to fetch about agreeable developments in the organization and working of the administrative and governmental parts.

The fifth group of amendments is of miscellaneous nature which includes 45th, 52nd, 59th, 61st, 62nd, 71st, 73rd, 74th, 76th, 77th, 79th, 81st, 84th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd and 94th amendment acts relating to reservation, defection, lowing the voting age, inclusion of state language in the Eight Schedule, local self governments, delimitation of constituencies right to education, census, taxes on services, creation of separate commission for Schedule Castes, provision regarding the Bodoland Territorial Areas, Provision for

strengthening of council of ministry, special provisions for the advancement of SCs and STs.

Among all these groups, the first claims weighty emphasis and analysis, since all the amendments being in this group were designed, as is obvious/evident from their asserted objectives to nourish and advance the socio-economic improvement of the country by delegating the hindrances to advancing land reform measure and social prosperity legislation.[14] The right to property has been adequately amended through most of these amendments for that without any type of constitutional restriction, the uniform land reform measure can be introduced throughout the country by the legislature. Most of all these amendments, either Art.19 or Art.31 of the Constitution related with fundamental right to property has been sought to be amended which must be noted.

II

By the time in question, it has attended to these amendments being casted importantly to melt the issue and foundational (institutional) struggle in the Indian political system. According to that, it has been exactly noticed that "in considering the problem about the genesis of the amendments by the Indian Parliament in several provisions of the Indian Constitution, affecting fundamental rights, the relevance of the challenge which Indian democracy was determined to meet, cannot be overlooked or underestimated."[15]

Through the First Constitutional Amendment Act, 1951 which was passed on June 18, 1951, articles 15, 19 and 31 by sections 2,3,4 and 5 of the Amendment Act were amended. The necessity for doing this amendment act can be observed from the "Statement of Objects and Reasons" of the Bill which observed inter-alia.

"During the last fifteen months of the working of the Constitution, certain difficulties have been brought to light by judicial

decisions pronouncements, specially in regard to the Chapter on Fundamental Rights. The citizen's right to freedom of speech and expression, guaranteed by Art.19(1)(a) has been held by the Courts so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written Constitutions, freedom of speech and the press is not regarded as barring the state from punishing or preventing abuse of this freedom. The citizen's right to practice any profession or to carry on any occupation, trade or business conferred by Art.19(1)(g) is subject to reasonable restrictions which the laws of any State may impose 'in the interests of the general public'. While the words cited are comprehensive enough to cover any scheme of nationalization which the State may undertake it is desirable to place the matter beyond doubt by clarificatory addition to Art. 19(6). Another Article in regard to which unanticipated difficulties have arisen, is Art.31. The validity of agrarian reform measures passed by the State Legislature in the last three years has, in spite of the provisions of clauses (4) and (6) of Art.31, formed the subject matter of dilatory litigation, as a result of which the implementation of these important measures, affecting large number of peoples has been held up."[16]

Therefore, the First Amendment (Bill), sought "to amend Art.18 for the purpose indicated above and to insert provisions fully securing the constitutional validity of zamindary abolition laws in general and certain specific State Acts in particular."[17] In the Bill, it was intended that a few minor amendments to other relevant Articles would be made.[18]

In addition, it was noticed: "In order that any special provision that the state may make for the economic or special advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed that Art.l5(3) should be suitably amplified. Certain amendments in respect of articles dealing with the

convening and proroguing of the sessions of Parliament have been found necessary and are also incorporated in this bill. So also a few minor amendments in respect of Articles 341, 342, 372 and 376."[19]

To start with, through this Amendment Act, some changes were brought in Art.l5. Section 2 of the Amendment Act included the following clause as Clause (4) in Art.15:[20]

"(4) Nothing in this Article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes."

Art.15 restricts discrimination on grounds only of religion, caste, race, sex or place of birth. Before this clause (4) was included by the Amendment Act, it ran as follows:[21]

"Art.l5(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them; (2) No citizens shall on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to –

a) Access to shops, public restaurants, hotels and places of public entertainment; or

b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

c) Nothing in this article shall prevent the State from making any special provision for women and children."

It is also here to indicate Art.14 of the Constitution related to right to equality. Art.14 is as follows:

Art. 14 "The state shall not deny to any persons equality before the law or the equal protection of the laws within the territory of India."

Art.29(2) which can be mentioned provides:

29(2), "No citizen shall be denied admission into any educational institution maintained by the State or receiving and out of state funds on grounds only of religion, race, caste, language or any of them."

To welcome the importance of taking about this amendment Act, a necessary look must take into the decision of the Madras High Court in Champakam Dorairajan and Others Vs. The State of Madras.[22] It comes into sight that the Notification Govt. Order No.l254 Education, dated 17th May, 1948, commonly known as the communal Government Order was came out for the aim of restricting the number of seats in certain Government Colleges for certain castes. It was compelled with the purpose of providing opportunities relating to admission in colleges to students of the socially and economically weaker sections of the community.

Claiming the soundness of this Govt. order till it transferred into Articles 15(1) and 29(2), Srimati Champakam Dorairajan made a request to the Madras High Court on June 7, 1950. The learned Chief Justice Rajamanner held that as effect of this Govt. order that provided certain seats which have been kept in deposit for certain students of the backward classes, by disowning the right to students belonging to Brahmin Community, a fixed case of discrimination has been made. By nature, it opposed Art. 15(1). The Chief Justice noticed, Inter alia: "what the article says is that no person of a particular religion or caste shall be treated unfavourably when compared with persons of other religious and castes merely on the ground that they belong to a particular religion or caste." He asked the question in regard of the purpose of sending out the Communal Govt. Order. The govt. Order strongly went against Art.15 (1) and Art.29(2) since it limited number of seats for a particular caste.

The Advocate General, appearing on behalf of the State, drew his argument from the provision of Art.46. Art.46 provides that the state shall promote with special case the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. But the argument advanced by the Advocate General did not stand in view of Art.37 which has categorically declared the non Justiciable character of the Directive Principles in the Courts of Law. In this connection, the Chief Justice observed inter alia, "Granting that one of the objectives of the Constitution is to provide for the uplift of the backward and weaker sections of the people which inter alia, is embodied in Art.46, can be held that the state is at liberty to do anything to achieve that object? The obvious answer is "yes", so long as no provision of the Constitution is contravened and no fundamental right declared by the Constitution is infringed or impaired." By way of conclusion, the Chief Justice observed inter alia, "In our opinion, Art.46 cannot override the provisions of these two Articles or justify any law or Act of the State contravening their provisions."[23]

Though, the decision Uudgement of the Madras High Court was generally challenged in the Supreme Court, this Court supported the Madras High Court's decision by observing, inter alia, that "the Directive Principles of State Policy have to confirm and run subsidiary to the Chapter on Fundamental Rights" and in view of their non-justiciable character, they "cannot override the provisions found in Part III" that are "sacrosanct."[24]

On the basis of this decision, Parliament felt that the state legislatures were unable to take effective steps to increase the economic, social and educational welfare of the people of backward classes when facing the challenge posed by the judgement of the Supreme Court. Then there was only option for the parliament to

amend Art.15 by including a new clause that is clause (4). On the basis of earlier decision of the Supreme Court,[25] a study will put on the fact that in view of the categorical provision which was made in Art.37 of the constitution, it had no other option.

Appreciating the amendment of Section 3 of the Constitution (First Amendment) Act, it is important to indicate Art. 19(2) which was really inserted in the Constitution. It read as :

"(2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the state from making any law relating to, libel, slander, defamation, contempt of court on the exercise of the right conferred by the said sub-clause in the interests of the security of the state, friendly relations with foreign states, public order, defency or morality or in relation to contempt of court, defamation or incitement to an offence."

An investigation into the present motive behind the decree of this amendment act of referring will have to execute to some judicial conclusions in connection with the description of Art. 19(2) as it really was located.

The legal strength of Section 9(1-A) of the Madras Maintenance of public order Act XXIII of 1949 was objected to in Romesh Thapar Vs. The State of Madras.[26] The earnest humble prayer placed a complaining that the mentioned order, whereby a prohibition was laid on upon the right of entering and circulation of a journal in the state, opposes the fundamental right of the earnest humble prayer to freedom of speech and expression compared on him by Art.19 (1) (a) of the Constitution and he objected the soundness of Section 9(1-A) of the Act as being quit under Art. 13(1) of the Constitution by its being irreconcilable with his fundamental right already remarked. The Section empowered the Government of the religion "for the purpose of securing public safety or the maintenance of public order, to prohibit or regulate the entry into,

or the circulation, sale or distribution in the provinces of Madras or any part there of any documents or class of documents." Clearly one of the causes due to the power compared by this section could be summoned by the Government of the State was to secure public protection, and the enquiry which was grown up before the Supreme Court was that the deliberation of public security or 'public order', that was related in functioning the power compared by the impinged section, was the exterior the limit of Art.19(2) as it at that time stood.

The justness of the discussion chiefly located around the question as to whether 'the security of the state' that was noticed briefly in Art. 19(2) comprised or was same with 'public order' or 'public safety'.

The Supreme Court held that by prohibiting the entry into Madras of a weekly Journal in English called "Cross road" printed and published in Bombay under Section 9(1-A) of the impugned Act the freedom of speech and expression of the petitioner Romesh Thapper had been adversely affected in as much as the said freedom is ensured by the freedom of circulation and was prohibited by the impugned order so far as Madras state was concerned. In their decision the court held, with Justice Fazl Ali dissenting, that the concept of public order or public safety was not exactly synonymous with the concept of security of the State. The court further held that since Art.19(2) did not refer to public order or public safety, the impugned section was constitutionally invalid and the impugned order was therefore illegal. Justice Patanjali Sastri observed inter alia; "public safety ordinarily means security of the public or their freedom from danger. In that sense, anything which tends to prevent danger to public health may also be regarded as securing public safety. The meaning to the expression must, however, vary according to the context." After examining some of the provisions of the Indian Penal Code, he observed: "whatever ends the impugned section may have intended to

deserve, and whatever aims its framer may have had in view, its application and scope cannot, in the absence of limiting words in the statute itself, be restricted to those aggravated forms of prejudicial activity which are calculated to endanger the security of the state. Nor is there any guarantee that those authorized to exercise the powers under the Act will in using them discriminate between those who Act prejudicially to the security of the state and those who do not."[27]

Even if a process of reasoning was come forward the Supreme Court that the impunged section could not be regarded as totally invalid as under Art. 13(1), a living law, in so far as it is contradictory with the Fundamental Rights, is invalid to the extent of the incongruity and no more. The controversy was as the saving of the public security or the defence of public order would add the safety of the public security or the defence of public order would add the safety of the state, the impugned region, as referred to the earlier intention, was over spreaded by Clause (2) of Art.19 and should be maintained valid. When denying this process of reasoning, Justice Patanjali Sastri noticed: "So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void. In other words, clause (2) of Art 19 having allowed the imposition of restrictions on the freedom of speech and expression only in cases where danger to the State is involved, an enactment, which is capable of being applied to cases where no such danger could arise, cannot be held to be constitutionally valid to any extent."

A same case in Brij Bhushan and other Vs. The State of Delhi was also held to deal with by the Supreme Court.[28] It is a petition under Article 32 of the Constitution entreating for the matter of writs of 'certiorari' and 'prohibition' to the defendant, with the chief Commissioner of Delhi taking to the purpose to examine the lawfulness of and annual the order which is made by him in an English Weekly of

Delhi, the Organiser of that the first petitioner is which publisher and printer, and the second is the editor. The defender on 2nd March, in trial of powers of given on him by section 7(1) (c) of the East Punjab Public Safety Act, 1949, being extended to the Delhi region, given the following order."[29]

"Whereas the Chief Commissioner, Delhi, is satisfied that Organiser, an English weekly of Delhi, has been publishing highly objectionable matter constituting of threat to public law and order and the action as is hereinafter mentioned IS necessary for the purpose of preventing or combating activities prejudicial to the public safety or the maintenance of public order.

No, therefore, in exercise of the powers conferred by section 7(1) (c) of the East Punjab Public Safety Act, 1949, as extended to the Delhi Province, I, Shankar Prasad, Chief Commission, Delhi do by this order require you Shri Brij Bhushan, Printer and Publisher and Shri H.R. Halkani, Editor of the aforesaid paper to submit for scrutiny; in duplicate, before publication, till further orders, all communal matter and news and views about Pakistan including photographs and cartoons other than those derived from official sources and supplied by the news agencies, viz., Press Trust of India, United Press of Indian and United Press of America to the Provincial Press Officer on in his absence, to Superintendent of Press Branch at his office at 5, Alipur Road, Civil Lines, Delhi, between hours 10 a.m. and 5 p.m. on working days."

On behalf of Kania C.J., Mahajan, Mukherjee and Das, J.J., the greater number of judgement, made by Sastri J. that was as:

"The petitioners claim that this provision infringes the fundamental rights to the freedom and speech and expression conferred upon them by Art.19(1)(a) of the Constitution in as much as

it authorizes the imposition of a restriction on the publication of the journal which is not justified under clause (2) of the Article.

There can be title doubt that the imposition of pre-censorship on a journal is a restriction on the liberty of the press which is an essential part of the right to freedom of speech and expression declared by Art.19(1)(a)."[30]

But still Mr. Justice Fazl Ali did not consent with the most of the views and gave a distinct opinion about the judgement. To him, for the effect of a far reaching channel of legislative practice, the meaning 'public safety' got a well-acknowledged expression and it may be taken to mark out protection of the state. The judge in detail had managed with the different expression of "public order", 'public tranquility', 'public safety' and 'security of the state'.

Regarding the signification of the meaning of 'public order', to him, in common perception, this expression may be interpreted to have allusion to the defence of what in common is acknowledged as law and order in the region. To him, the affecting public quietness along with the influence on public order and the State legislature were then the aspects to make laws for the subjects which are related with both the public order and calm.

According to the learned judge, though the 'public order' and 'public safety' are related but it likes to be best to give our attention to the adverse aspects that we may for suitableness of allusion, in the order named label as 'public disorder' and 'public unsafety'. When 'public safety' seems to be alike of the 'security of the state', to me then, 'public unsafety' may be seemed as same to 'insecurity of the state'. Like this, it may be noted that while 'public disorder' is sufficient to overspread a small riot or other cases when peace is interrupted by or acts on, a little group of people, 'public unsafety' generally related with

the serious inside disorders and such disorder of public calm as endanger the safety of the state.

Perceiving the scope of the Act, it seems importance to note that 'maintenance of public order' in the act always creates in contiguity with 'public safety' and the act as 'The East Punjab Public Safety Act.' Then it can be found that, the act was liked to deal with serious cases in that having arisen some type of emergency or a serious situation. The act purposes to provide "special measures to ensure public safety and maintenance of public order."

However the court opined, inter alia, that it must be recognized that freedom of speech and expression is one of the most valuable rights guaranteed to a citizen by the Constitution and should be jealously guarded by the Courts. It is also recognized that free political discussion is essential for the proper functioning of a democratic government and the tendency of modern jurists is to deprecate censorship though they all agree that "liberty of the Press" is not to be confused with its "licentiousness". In Amarnath Bali V. The State of Punjab the majority view expressed by Justices Khosla and Harnam Singh of the Punjab High Court, struck down section 4(1) (h) of the Press (Emergency Powers) Act. 1931, and their conclusion was also based entirely upon the observations of Patanjali Sastri, J. In Romesh Thapper's case.[31]

Whereas, the parliament took into account the question of summing up the meaning 'incitement of an offence' in clause (2) of Art.19, before it, it had all these conclusions wherein, various type statutory regions had been pulled down. It is about the origin about the Parliament thinking important to sum up this meaning clause (2) of Art. 19. When distributing the Tagore Law Lectures at Calcutta University, "This addition illustrates", noticed Ganjendragadkar,[32] "That sometimes an erroneous judicial decision may create a situation where Parliament would feel justified in resolving the difficulty by making of

suitable amendment in the relevant provisions of the constitution. It is true, as I have already mentioned, that the view taken by the Patna High Court was reversed by the Supreme Court, but sometimes, as in this case, parliament may feel that it is not desirable to await the decision of the Supreme Court which would take time and it is necessary in the Public interest to clarify the correct position by making an amendment which would clearly bring out the correct position by making an amendment which would clearly bring out Parliament's intention in the matters."

Now, there is the importance to examine the Clause (6) of Art.19. In originally stand, Art.19(6) read as:

"(6) Nothing in sub-clause (g) of the said Clause [Clause (1) of Art.19] shall affect the operation of any existing law in so far as it imposes, or prevent the state from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to-

(i) The professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) The carrying on by the state, or by a corporation owned or controlled by the state, or any trade, business, industry or service, whatever to the exclusion, complete or partial of citizens or otherwise."

The origin of this amendment may be followed in the case of Motilal and others Vs. The Government of the State of Uttar Pradesh and others.[33] The total Bench of the Allahabad High Court searched into the enquiry of an executive order about the nationalization of bus-routes by the State Government. The result of this proceedings was to declare invalid about the nationalization of bus routes. The Judges

concluded that the nationalization of bus-routes cannot be empowered even by legislation. Though this type of step certainly would opposed the underlying provisions of Art. 19(1)(g).

According to the Parliament while facing boldly with this problem, to remove the constitutional barriers already set by the court in Motilal's case it is sagacious to amend Art.19(6).

Regarding as the sphere for action, result and importance of Art.19(6) in its real and amended shapes, an significance judgement was given by the Indian Supreme Court in Akadashi Pradhan Vs. State of Orissa.[34] Gajendragadkar, J., in this made the following notices:

"In attempting to construe Art. 19(6) it must be borne in mind that a literal construction may not be quite appropriate. The task of construing important constitutional provisions like Art. 19(6) can not always be accomplished by treating the said problem as a mere exercise in grammar. In interpreting such a provision it is essential to bear in mind the political or economic philosophy underlying the provision in question, and that would necessarily involve the adoption of a liberal and not a literal and mechanical approach to the problem."

Thereafter the court when it commented on the sphere for acting and result of the philosophy underlying the amendment, maintained inter alia "the amendment made by the legislature in Art. 19(6) shows that according to the Legislature, a law relating to the creation of State monopoly should be presumed to be in the interests of the general public. Art.19(6)(ii) clearly shows that there is no limit placed on the power of the State in respect of the creation of State monopoly. The width of the power conferred on the state can easily be assessed if we look at the words used in the clause which cover trade, business, industry or service. It is true that the State may, according to the exigencies of the case and consistently with the requirements of any trade, business, industry or service, exclude the citizens either wholly

or partially. In other words, the theory underlying the amendment in so far as it relates to the concept of state monopoly, does not appear to be based on the pragmatic approach, but on the doctrinaire approach which socialism accepts. That is why we feel no difficulty in rejecting Mr. Pathank's argument that the creation of a state monopoly must be justified by showing that the restrictions imposed by it are reasonable and are in the interests of the general public. In our opinion, the amendment clearly indicates that state monopoly in respect of any trade or business must be presumed to be reasonable and in the interests of the general public, so far as Art.19(1)(g) is concerned.

The amendment made in Art. 19(6) shows that it is open to the state to make laws for creating state monopolies, either partial or complete, in respect of any trade, business, as a monopolist either for administrative reasons, or with the object of mitigating the evils flowing from competition, or with a view to regulate prices, or improve the quality of goods, or even for the purpose of making profits in order to enrich the state exchequer. The Constitution makers had apparently assumed that the state monopoly or schemes of nationalization would fall under, be projected by Art. 19(6) (6) as it originally stood, but when judicial observations rendered the said assumption invalid, it was though necessary to clarify the intention of the Constitution by making the amendment. It is because the amendment was made for the purpose of clarification that it begins with the words "in particular". These words indicate that restrictions imposed on the fundamental rights guaranteed by Art. 19(1)(g) which are reasonable and which are in the interests of the general public, are save by Art. 19(6) as it originally stood, the subject matter covered by the said provision being justiciable, and the amendment adds that the state monopolies of nationalization schemes which may be introduced by legislation, are an illustration of reasonable restrictions imposed in the interests of the general public and must be treated as such. That is why the question

about the validity of the laws covered by the amendment is no longer left to be tried in Courts. This brings out the doctrinaire approach adopted by the amendment in respect of a state monopoly as such."

Now it may be regarded as the birth of Sections 4 and 5 of the Constitution (First Amendment). Art. 31A by section 4 was included and it was prepared that it shall be considered always to have been included in the Constitution Art.31 (A) is as:

"31A saving of laws providing for acquisition of estates etc. (1) Notwithstanding anything in the foregoing provisions of this part, no law providing for the acquisition by the state of any estate or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that, it is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this part. Provided that where such law is a law made by the legislature of a state, the provisions of this Article shall not apply thereto, unless such law, having been reserved for the consideration of the President, has received his assent.

(2) In this Article:

a) the expression 'estate' shall, in relation to any local area have the same meaning as that expression or its local equivalent that has in the existing law relating to land tenures in force in that area, and shall also include any *jagir, inam* or *muafi* or other similar grant,

b) the expression 'rights', in relation to an estate shall include any rights vesting in a proprietor, sub-proprietor, under proprietor, tenure holder or other intermediary and any rights of privileges in respect of land revenue."

The obliged grounds at the back of this amendment are capable of being traced inter-alia, to two judicial decisions. Instantly after the beginning of the Constitution, the unavoidableness of enactive some agrarian amendments was affected by some of the State Governments.

But the Patna High Court in Kameswar Singh and other Vs. the State of Bihar and others[35] beat down the Bihar Land Reforms Act No.XII of 1950 as opposing Art.14 of the Constitution in the very same pertinent conditions of the opposed Act awarded separated gradations of the act of compensating to distinct classes of land owners.

Once more, in the West Bengal Settlement Kanungoo Cooperative Credit Society Ltd., Vs. Mrs. Bela Banerjee and Others,[36] the challenge was made for the justness of the West Bengal Land Development and Planning Act III of 1948. The Calcutta High Court maintained that the impugned Act was not "Ultra vires" in its completeness; but the stipulation that in the case of land owned under the Act, the greatest amount payable as the act of compensating is according to market price of the land on 31st December, 1946 as indicated in the proviso (b) to Section 5 of the Act was Ultra-Vires. Having relations with this proviso, Chief Justice propounded the subject of discussion in these words:

"Is compensation assessed in accordance with proviso (b) of Section 8 determined according to a principle and in a manner which would result in a just or reasonable equivalent being paid for the land." And atlast he noticed: "The answer, I think, must be in the negative."[37] The court maintained that the compensation that would be payable must be the same value or the market value of property.

In the history of judicial decisions on right to property in India, the 'Bela Banerjee' case may be looked as watershed. The Indian Parliament and the Government which liked to fulfill their economic and social programmes for the share of public good, were challenged by this case's judgements. Sastri, C.J. on behalf of major people, maintained: "While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner of the property appropriate, such principles must ensure that what is

determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of."[38]

But antagonistically, the Allahabad High Court in Raja Suryapal Singh and other Vs. The Uttar Pradesh Government maintained that the Uttar Pradesh Zamindari Abolition and Land Reforms Act., 1950 (UP Act No.1 of 1951) did not oppose any of the conditions of the Constitution and from this time was legal. From the decisions of the first two cases, Parliament understood that judicial decisions would be for the successful application of social welfare programmes. Due to this, the First Amendment Act of Constitution was passed. Art. 31A was included by Section 4 and Section 5 which made it easy for the inserting of Art. 31 B after 31A.

Now the genesis of the Constitution (Fourth Amendment) Act, 1955 may be traced. As has already been pointed out that sections 2 and 3 of this Amendment Act made changes in Art. 31 and Art. 31A respectively, whereas Section 5 made certain additions to the Ninth Schedule which had already been inserted in the Constitution by Section 14 of the Constitution (First Amendment) Act. "Right to Property" has been guaranteed by the Constitution in Art. 19(1) (f) which provides that all citizens shall have the right to acquire, hold and dispose of property, subject, of course, to certain limitations prescribed by clause (5) of Art.19. the scheme underlying Art.19 with necessary conditions attached thereto strictly conforms to the Principle that rights can never be absolute. Under stricted and unfettered rights are no rights as all.[39]

Thereafter preparing commonly for the citizens fundamental rights to acquire, hold and dispose of property by Art.19(1) (f), Art.31 goes on more distant to manage with the question of obligatory acquisition of property. Primarily Art.31 composing of six clauses of which the following two are related with our aims. The pertinent Articles are as:[40]

“31(1) No person shall be deprived of his property save by authority of law. (2) No property, movable or immovable including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given."

The above named article with two clauses, m the very first examination disclosed that clause (1) of Art.31 stick fast to the principle of democracy that any person cannot be bereaved of any right except the authority of law. Clause (2) of Art.31 has been included with a purpose to lay on convinced other restraints. Generally there may be two conditions which have to be pleased under Art.31(2) before a citizen can be legally bereaved of his property. According to the first condition, under the stipulation of the law, the deprivation has to be for the purpose of the people. The second one is that remarked law must prepare for compensation for the property, taken the act of possessing of, or earned and either make firm the sum total of the compensation or mention particularly the principles on which and the method in which compensation is to be resolved and bestow. In sight of clashing judicial explanations that finally led to the enactment of the constitution (Fourth Amendment) Act, the term 'compensation' m Art.31(2) becomes the subject-matter of solemn disputation.

Before engaging in the discussion on the events preceding to the reasoning of the Constitution (Fourth Amendment) Act, a hasty flash at the arguments of the constituent assembly would be so much help. Clashing opinions were made known by the members on the specifying manner of the determination of the compensation. Generally it was argued that once the right to property of Indian citizen are guaranteed

by the constitution, it will not be democratic, if not then unlawful, so it is important to take some steps for those citizens who are deprived of their fundamental rights paying any provision for payment of compensation. There were two important opinions. First one is represented by Munshi holding the reason of lawful and sufficient compensation. Another one represented by K.T. Shah who argued that compensation should be needed to be given only when property took by a religious body. That sought to be held over and even in this type of matter, the sum total of compensation may be analysed to be such as may be considered, reasonable and suitable. After a very healthy warmth and defended argument, a settlement of difference by mutual promise was envolved. It is made known in Art.31, Clauses (1) and (2), as they were taken.

When the representatives of the Constituent Assembly came to the consensus on the drafting of Art.31(1) and (2), they argued that after deeming the political and historical background of the law's philosophy, the judiciary might provide their verdict with a view to increase the speed of welfare plans if laws were approved to get private property for public aims. But this hope proved itself as wrong in realty. The judgement of judiciary on the right of property, mainly on the meaning of the word 'compensation' propounded on insuperable blockade in the way of social welfare programmes. The parliament deemed the role of the judiciary and the act.

In the court in Mrs. Bela Banerjee's case[41] the asking about the meaning of the word 'compension' had generally come up. The court in Saghir Ahmed Vs. State of Uttar Pradesh[42] argued that the real act of depriving of property amounts to acquisition and compensation is to be provided. For this, the parliament had to face the problems regarding the payment of 'compensation' and implementation of social welfare programmes, is distinct from the statement of Objects and Reasons,

attached to the Constitution (Fourth Amendment) Bill, 1954. The statements declared inter-alia.

"Recent decisions of the Supreme Court have g1ven a very wide meaning to clauses (1) and (2) of Art.31. Despite the in the wording of the two clauses, they are regarded as dealing with the same subject. The deprivation of properly referred to in clause (1) is to be construed in the widest sense as including any curtailment of a right to property. Even where it is caused a purely regulatory provision of law and is not accompanied by an acquisition or taking possession of that or any other property right by the state, the law, in order to be valid according to these decisions, has to provide for compensation under clause (2) of the Article. It is considered necessary therefore, to re-state more precisely the State's power of compulsory acquisition and requisitioning of private property and distinguish it from cases where the operation of regulatory, or prohibitory laws of the state results in "deprivation of property."[43]

The same 'Objects and Reasons' again said it categorically that "it will be recalled that the Zamindari abolition laws which came first in our programme of social welfare legislation were attacked by the interests affected mainly with reference to Articles 14, 19, 31 and that in order to put an end to the dilatory and wasteful litigation and place laws above challenge in the Courts, Articles 31A and 318 and the Ninth Schedule were enacted by the Constitution (First Amendment) Act. Subsequent judicial decisions interpreting articles 14, 19 and 31 have raised serious difficulties in the way of the Union and the States putting through other and equally important social welfare legislation on the desired lines, e.g. the following:

(i) While the abolition of Zamindaries and the numerous intermediates between the state and the tiller of the soil has been achieved for the most part, our next objectives in land reforms are the fixing of limits to the extent of agricultural land held in excess of the

prescribed maximum and the further modification of the rights of land owners and tenants in agricultural holdings.

(ii) The proper planning of urban and rural areas requires the beneficial utilization of vacant and waste lands and the clearance of slum areas.

(iii) In the interests of national economy the state should have full control over the mineral and oil resources of the country, including, in particular, the power to cancel or modify the terms and conditions of prospecting licenses, mining leases and similar agreements. This is also necessary in relation to public utility undertakings which supply power, light or water to the public under licences granted by the state.

(iv) It is often necessary to take over under state management for a temporary period a commercial or industrial undertaking or other property in the public interest or in order to secure the better management of the undertaking or property. Laws providing for such transference to State management should be permissible under the Constitution.

(v) The reforms in company law under contemplation, like the progressive elimination of the managing agency system, provision for the compulsory amalgamation of two or more companies in the national interest, the transfer of an undertaking from one company to another, etc., require to be placed above change."[44]

Generally it is offered in clause 3 of the Bill to enlarge the scope of Article 31A so as to fake all these categories of important welfare legislation.

4) As a natural consequence to the offered amendment of Art. 31A, it is offered in clause 5 of the Bill to include in the Ninth Schedule to the Constitution four central Acts and two more State Acts that come within the scope of sub-clauses (d) and (f) of Clause (1) of the revised

Art. 31A. The result will be their finished, referring to the past validation under the condition of Art. 31B.

5) The decision of the Supreme Court in Saghir Ahmed V. The State of Uttar Pradesh[45] has asked the question if an act preparing for a state monopoly in a special business or trade contests with the freedom of trade and commerce guaranteed by Art. 301, but the question remained unanswered. Clause (6) of Art. 19 was amended by the Constitution (First Amendment) Act with a view to take such state monopolies out of the limit of sub-clause (g) of Clause (1) of that Article; but no adequating stipulation was made in Part XIII of the Constitution with the relation to the opening words of Art. 301. It arrives from the decisions of the Supreme Court that in spite of the clear legal power of parliament or of a State Legislature to bring in state monopoly in a special sphere of commerce and trade, the law might have to be vindicated before the Courts as being "in the public interest" under Art. 301 or as adding up to a "reasonable restriction" under Art. 304(b). It is regarded as that any such question supposed to be left to the last decision of the Legislature. Clause (4) of the Bill accordingly offered an amendment of Art. 305 to make this clear.

In the State of West Bengal Vs. Mrs. Bela Banerjee and others,[46] already has been said that, the Supreme Court was prayed to regard as inter alia, the question about the satisfied and interpreting of the word "compensation" which was used in Art. 31 (2). The only important plea was made before the Supreme Court about the real interpreting of the word 'compensation'. The Attorney General granted that the word "compensation" by itself must understand as a full and fair money equal in meaning but he requested that in the discourse of Art. 31 (2) read with Entry 42 of List III of the Seventh Schedule, the term was not employed in any inflexible sense signifying equivalence in value but had aluvion to what the legislature might consider was a right punishment for the loss suffered by the owner.

In the impugned Act, the provision composed of matter had prepared that in resolving the amount of compensation to be awarded for land gained in consequence of the Act, the market value pointed out to in the first clause of sub-section (1) of Section 23 of the said Act shall be considered to be the market value of the land on the publication of the notifications date under sub section (1) of Section 4 for the informed area in that the land was enlisted matters to the following circumstances, which is as, "if such market value exceeds by any amount the market value of the land on 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it is fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration. This provision was struck down by the Supreme Court as being unconstitutional."

Referring to again the process of reasoning impelled by the Attorney General before the Court, Chief Justice Patanjali Sastri, speaking for the unanimous court, followed:

"While it is true that the legislature is given the discretionary power of laying down the principles which should govern the determination of the amount to be given to the owner for the property appropriated, such principles must ensure that what is determined as payable must be compensation, that is, a just equivalent of what the owner has been deprived of. Within the limits of this basic requirement of full indemnification of the expropriated owner, the constitution allows free play to the legislative judgement as to what principles should guide the determination of the amount payable. Whether such principles take into account all the elements which make up the true value of property appropriated and exclude matters which are to be neglected, is a justiciable issue to be adjudicated by the Court."

As a result, the authority compared by Art.31 (2) upon the legislature to submit the principles for settling the price of

compensation was the subject matter to judicial minute search, it was distinct from the comment of Chief Justice Patanjali Sastri; in every case would administer the test whether being resolved as ought to be paid by the means of compensation to the public for the deprivation of his property, the price would be justified as same legal in the sense of supplying him total securing compensation for the property lost.

Dictatorially, by itself, this decision expounded the interpretation of the word "compensation" in Art.31(2) and to parliament by amending Art.31 (2) by the Constitution (Fourth Amendment) Act; it is important to make the intention clear.

Substituting the following Clauses (2) and (2A) in Art.31 for the real Clause (2), Section 2 of the said Amendment:

"(2) In Art.31 of the Constitution, for Clause (2), the following clauses shall be substituted, namely:-

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which and the manner in which; the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate.

(2A) where a law does not provide for the transfer of ownership or right to possession of any property to the state or to a Corporation owned or controlled by the state, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

In brief, the result of this amendment was that the question as to whether compensation directed to be paid by the relevant statute or which became payable under the principles laid down by the statute

was a just equivalent of what the owner has been deprived of portion of amended Art. 31 (2) expressly provided that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. Here a few other cases may be cited with a view to showing how, despite the clear provisions of Art. 31 (2), as amended by the Constitution (Fourth Amendment) Act, the Supreme Court has from time to time; taken somewhat different and conflicting views on the question about the effect of the said amendment. [47]

Chief Justice Subba Rao in P. Vajravelu Madaliar Vs. Special Deputy Collector, Madras and others[48] propounded the question: "What is the effect of the ouster of jurisdiction of the court to question the law on the ground that the "compensation" provided by that law is not adequate".

In the following words, the learned Chief Justice tried to give the answer:

"It will be noticed that the law of acquisition or requisition is not wholly immune from scrutiny by the Court. But what is excluded from the court's jurisdiction is that the said law cannot be questioned on the ground that the compensation provided by that law is not adequate. It will further be noticed that the clause excluding the jurisdiction of the court also used the word "compensation" indicating thereby that what is excluded from the court's jurisdiction is the adequacy of the compensation fixed by the Legislature. The argument that the word 'compensation' means a just equivalent for the property acquired and, therefore, the court can ascertain whether it is a just equivalent' or not makes the amendment of the constitution nugatory. It will be arguing in a circle. Therefore, a more reasonable interpretation is that neither the principles prescribing the "just equivalent" nor the "just equivalent" can be questioned by the court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles. To illustrate a law is made to acquire a house; there are many modes of

valuation, namely, estimate by a engineer, value reflected on comparable sales, capitalization of rent and similar others. The adoption of one principle may give a higher value and the adoption of another principle may give a lesser value. But nonetheless they are principles on which and the manner in which compensation is determined. The court cannot obviously say that the law should have adopted one principle and not the other, for it relates only to the question of adequacy. On the other hand, if a law lays down principles which are not relevant to the property acquired or to the value of the property at or about the time it is acquired, it may be said that they are not principles contemplated by Art. 31 (2) of the constitution. If a law says that though a house is acquired it shall be valued as an agricultural land or that though it is acquired in 1950 is value in 1930 should be given, or though 100 acres are acquired, compensation shall be given only for 50 acres, the principles do not pertain to the domain of adequacy but are principles unconnected to the value of the property acquired. In such cases, the validity of the principles can be scrutinized. The law may also prescribe a compensation which is illusory; it may provide for the acquisition of a property worth lakhs of rupees for a paltry sum of Rs.100. The question is that context does not relate to the adequacy of the compensation, for it is no compensation at all. The illustration given by us are not exhaustive. There may be many others falling on either side of the line. But this much is clear. If the compensation is illusory, or if the principles prescribed are irrelevant to the value of the property at or about the time of its compensation, it can be said that the legislatures committed a fraud on power, and therefore, the law is bad. It is abuse of the protection of Art. 31 in a manner which the Article hardly intended.[49]

In this case, the conclusion attempted to spread the scope of investigation and much pared down the impact of the amendment which is made known in Art.31 (2) by the constitution (Fourth

Amendment) Act. When the Metal Corporation of India (Acquisition of understandings) Act. No.44 of 1965 as ultra vires in the Union of India Vs. The Metal Corporation of India Ltd. And Another[50] the court did the meaning of Art. 31 (2) in the way:

"Under Art.31 (2) of the Constitution, no property shall be compulsorily acquired except under a law which provides for compensation of the property acquired and either fixes the amount of compensation or specifies the principle on which and the manner in which compensation is to be determined and given. The second limb of the provision says that no such law shall be called in question in any court on the ground that the compensation provided by the law is not adequate. If the two concepts, namely, 'compensation' and the jurisdiction of the court are kept apart, the meaning of the provision is clear. The law to justify itself has to provide for the payment of a "just equivalent" to the land acquired or lay down principles which will read to that result. If the principles laid down are relevant to the fixation of compensation and are not arbitrary, the adequacy of the resultant product cannot be questioned in a court of law. The validity of the principles judged by the above tests, falls within judicial scrutiny, and if they stand the tests, the adequacy of the product falls outside its jurisdiction. Judged by the said tests, it is manifest that the two principles laid down in clause (b) of paragraph 11 of the Schedule to the Act, namely, (i) compensation, and (ii) written down value as understood in the Income tax law as the value of used machinery, are irrelevant to the fixation of the value of the said machinery as on the date of acquisition. It follows that the impugned Act has not provided for 'compensation' within the meaning of Art. 31(2) of the Constitution and, therefore, it is void."[51]

In the State of Gujarat Vs. Shantilal Mangaldas and others[52] the Supreme Court on the other hand, looked the comments of Chief

Justice Subba Rao in the case of P.V. Mudaliar as 'orbiter and not binding'. Speaking for the court, Mr. Justice Shah observed the view:

"In our view, Art.31(2) as amended is clear in its purport. If what is fixed or is determined by the application of specified principles in compensation for compulsory acquisition of property, the courts cannot be invited to determine whether it is a just equivalent of the value of the property expropriated. In P. Vajravelu Mudaliar's case (Supra) the Court held that the principles laid down by the impugned statue were not open to question. That was sufficient for the purpose of the decision of the case and the other observations were not necessary for deciding that case, and cannot be regarded as a binding decision."

Being agreed with the comments of Justice Shah, Chief Justice Hidayatullah held:

"The Amendment (Fourth) was expressly made to get over the effect of the earlier cases which had defined compensation as a just equivalent. Such a question could not arise after the amendment. I am in agreement that the remarks in P. Vajravelul's case must be treated as orbiter and not binding on us."

He also held the observation in the same case:

"I am also of the opinion that the Metal Corporation's Case wrongly decided and should be over-ruled."

The famous case popularly known as 'the Bank Nationalisation Case, the B.C. Cooper Vs. Union of India and others[53] here must be made of reference. A parliamentary enactment was struck down by it with a view to "serve better the needs of development of the economy in conformity with national policy and objectives."[54] It "exhibited once again the confusing and bewildering pattern of judicial decision in the field of property rights by reversing the trend established by the Shantilal Mangaldas' Case and adopting instead the path followed by the 'Vajravelu' and 'Metal Corporation' Cases."[55]

When Mr. Justice Shah delivered the majority judgement of the court, he maintained all the relevant discussions carrying out the meaning of Art. 31 (2) and concluded the impugned ordinance 8 of 1969 and the Banking Companies Act., 22 of 1969, that situated the said ordinance with certain changes, were not valid. He made the observation m the Bank Nationalisatiion case which was as :

"The broad object underlying the principle of valuation is to award to the owner the equivalent of his property with its existing advantages and its potentialities. Where there is an established market for the property acquired, the problem of valuation presents little difficulty. Where there is no established market for the property, the object of the principle of valuation must be to pay to the owner for what he has lost, including the benefit of advantages present as well as future, without taking into account the urgency of acquisition, the disinclination of the owner to part with the property, and the benefit which the acquirer is likely to obtain by the acquisition. Under the Land Acquisition Acts, compensation paid is the value to the owner together with all its potentialities and its special adaptability if the land is peculiarly suitable for a particular use, if it gives an enhanced value at the date of acquisition."

Another important deliberation is to be noted along with the contemplation of the judgement of the Bank Nationalisation case. This important contemplation was disputed before the court in this case which in deliberating the justness of the impugned Act, the examination gave direction by Clause (5) of Art. 19 can also be summoned and this urge was taken by the majority of the court. Considering this question, Mr. Justice Shah concluded that it would be wrong to exclude the implication of Art.l9(1)(g) and Art.19(5) in opinions of the soundness of the Constitutional impugned Act. He held, inter-alia:

"Limitations prescribed for ensuring due exercise of the authority of the state to deprive a person of his property and of the power to compulsorily acquire his property are, therefore, specified classes of limitations on the right to property falling within Art. 19(1)(f). Property may be compulsory acquired only for a public purpose. Where the law provides for compulsory acquisition of property for a public purpose, it may be presumed that the acquisition or the law relating thereto imposes a reasonable restriction in the interest of the general public. If there is no public purpose to sustain compulsory acquisition, the law violates Art.31(2). If the acquisition is for a public purpose, substantive reasonableness of the restriction which includes deprivation may, unless otherwise established be presumed, but enquiry into reasonableness of the procedural provisions will not be excluded. For instance if a tribunal is authorized by the Act to determine compensation for property compulsorily acquired, without hearing the owner of the property, the Act would be liable to be struck down under Art. 19(1) (f).”

Then to the learned Judge: "Art. 19(5) is a broad generalization dealing with the nature of limitations which may be placed by law on the right to property. The guarantees under Art. 31(1) and (2) arise out of the limitations imposed on the authority of the state by law to take over the individuals property. The true character of the limitations under the two provisions is not different Clause (5) of Art. 19 and clauses (1) and (2) of Art. 31 are post of a single pattern; Art. 19(1) (f) enunciates the basic right to property of the citizens and Art. 19(5) and clauses (1) and (2) of Art. 31 deal with limitations which may be placed by law, subject to which the rights may be exercised."

But something opposed v1ew point was taken in the state of West Bengal Vs. Subodh Gopal Bose and others.[56] When there was the rejection of the argument as Art. 19(1) (f) and Art. 19(5) are applicable to a party treating the justness of any statutory provision that

empowered the acquisition of property for public aims. The following is the observation made by the Chief Justice Patanjali Sastri: "Both by the Preamble and the Directive Principles of State Policy in Part IV, our Constitution has set the goal of a social welfare state and this must involve the exercise of a large measure of social control and regulation of the enjoyment of private property. If concrete rights of property are brought within the purview of Art. 19(1)(f), the judicial review under clause (5) as to the reasonableness of such control and regulation might have an unduly hampering effect on legislation in that behalf, and the markers of our constitution may well have intended to leave the legislature free to exercise such control and regulation in relation to the enjoyment of rights to property, providing only that if such regulation reaches the point of deprivation of property, the owners should be indemnified under Clause (2) of Art. 31 subject to the exceptions specified in paragraph (ii) of sub-clause (b) of Clause (5) of Art. 31."

The justness of section 7 of the West Bengal Revenue Sales (West Bengal Amendment) Act, No.VII of 1950 in this case was objected to on the basis of disputing the fundamental right guaranteed under Art. 19(1)(f) and Art.31 of the Constitution. Even if the Calcutta High Court sustained the request, but this assumption was reserved by the Supreme Court in a plea by the state of West Bengal. Chief Justice Patanjali Sastri viewed that Art. 19(1)(f) in this case had no application. It is basically dealt with the abstract rights not with solid rights of the people with regard to the property so earned and owned by them. The solid rights also are dealt with the Right to Property (Art. 31).

The learned Chief Justice Observed inter-alia: "Under the scheme of the Constitution, all those broad and basic freedoms inherent in the status of a citizen as a free man are embodied and protected from invasion by the State under Clause (1) of Art. 19, the powers of State regulation of those freedoms in public interest being defined in relation

to each of those freedoms by Clauses (2) to (6) of that article, while rights of private property are separately dealt with and their protection provided for in Art.31, the cases where social control and regulation could extent to the deprivation of such rights being indicated in the paragraph (11) of sub-clause (b) of Clause (5) of Art.31 and exempted from liability to pay compensation under Clauses (2)."

According to the observation of an eminent jurist[57] this "inconsistent view" that was taken by the Supreme Court has arisen to two essential 1ssues:

1) Has Art.19(1)(5) read with Art. 19(5) any applicability in regarding the cases which fall under Art.21 (2)?

2) What is the character and scope of jurisdiction of the court in regarding questions of compensation after Art.31 (2) has been amended by Fourth (Constitution Amendment) Act?

On the recommendations which were made by the Committee on National Integration and Regionalism, the Constitution (Sixteenth Amendment) Act was passed that is the prove from the expression of objects and Reasons in words began when the said Amendment Act was introduced. The following observation is made by the statement:

"The Committee on National Integration and Regionalism appointed by the national Integration Council recommended that Art.19 of the Constitution be so amended that adequate powers become available for the preservation and maintenance of the integrity and sovereignty of the Union. The Committee were of the view that every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and that forms of oath in the Third Schedule to the Constitution should be suitably amended for the purpose. It is proposed to give effect to these recommendations by amending clauses

(2), (3) and (4) of Art.19 for enabling the State to make any law imposing reasonable restrictions on the exercise of the rights conferred by sub-clauses (a), (b), (c) of Clause (1) of that article in the interests of the sovereignty and integrity of India. It is also proposed to amend articles 84 and 173 and forms of oath in the Third Schedule to the Constitution so as to provide that every candidate for the membership of parliament, or state legislature, Union or State Ministers, Members of Parliament or State Legislatures, Judges of the Supreme Court and High Courts and the Comptroller and Auditor General of India should take an oath to uphold the sovereignty and integrity of India."

The two out of the five sections of the Amendment Act seem to be very evaluable and suitable for our aim. It is like as:

"2. In Art. 19 of the Constitution - (a) in clause (2), after the words "in the interests of' the words "the sovereignty and integrity' of India or", shall be inserted; (b) in clauses (3) and (4) of the words "the sovereignty and integrity of India or shall be inserted."

As a reaction to the judgement of the Supreme Court in Karimbal Kunhikoman and others Vs. The State of Kerala,[58] the Constitution (Seventeenth Amendment) Act was passed. The validity of the Kerala Agrarian Relation Act IV of 1961 in this matter was objected to and Supreme Court made to cause of the Act relating to its implication to the *ryotwari* lands. These *ryotwari* lands had come to the state of Kerala from the State of Madras. On the little breadth basis which related to the interpretation of the word 'estate' relating to the impugned provisions of the Act, the decision was taken which cleared from the observation made by the Supreme Court. This is as follows:

"As the definition of the word 'estate' came into the Constitution from January 26, 1950, and it based on existing on January 26, 1950 for the purpose of finding out the meaning of the word 'estate' in Art. 31A. Madras Estate Land Act of 1908 was a law relating to land

tenures. In that Act which was in force in the State of Madras, including South Canara district when the Constitution come into force the word 'estate' was specifically defined. The Act of 1908 however, did not apply to lands held on *ryotwari* settlement. There could be no question of seeking for a local equivalent so far as South Canara district of the State of Kerala which had come to it from the former State of Madras was concerned. Hence lands held by *ryotwari pattadars* in this part which had come to the state of Kerala by virtue of the States Reorganisation Act from the State of Madras are not estates within the meaning of Art. 31A(2) (a) of the Constitution and therefore the Act was not protected under Art. 31(a)(1) from the attack under articles 14, 19 and 31 of the Constitution."

Parliament passed out an amendment in 31A as included by section 4 of the Constitution (First Amendment) Act to take off the double meaning of the word "estate". In the statement of objects and Reasons for introducing the Constitution (Seventeenth Amendment) Act, 1964, it observed:

"The Kerala Agrarian Relations Act, 1961 was struck down by the Supreme Court in its application to *ryotwari* lands transferred from the State of Madras to Kerala. The Act was further struck down by the High Court of Kerala in its application to lands other than estates in Malabar and Travancore. It was held that the prov1s10ns of the Act were violative of articles 14, 19 and 31 of the Constitution and that the protection of Art. 31A of the Constitution was not available to those lands, as they were not estates.

2. "The protection of Art. 31A is available only in respect of such tenures as were estates on 26th January 1950, when the Constitution came into force. The expression "estate" has been defined differently in different states and, as a result of the transfer of lands from one state to another on account of the recognisation of states, the expression has come to be defined differently in different parts of the same state.

Moreover, many of the land reform enactments relate to lands which are not included in an "estate". It is, therefore, proposed to amend the definition of "Estate" in Art. 31(a) of the constitution by including therein lands held under *ryotwari* settlement and also other lands in respect of which provisions are normally made in land reform enactments. It is also proposed to amend the Ninth Schedule by including therein the State enactments relating to land reform in order to remove any uncertainty or doubt that may arise in regard to their validity."[59]

3. These purposes are seek to get by this Bill : "Provided further that where any law makes any provision for the acquisition by the state of any estate and where any land comprised there is held by a person under his personal cultivation, it shall not be lawful for the state to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a fate which shall not be less than the market value thereof." One more proviso was existed from the Constitution (Seventeenth Amendment) Act amended Articles 31A by including in Clause (1) of that Article.

This sub-clause (a) was taken with effect for sub-clause (a) of clause (2) of Art. 31A.

"(a) the expression 'estate' shall, in relation to any local area; have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -

i) Any jagir, inam or moufi or other similar grant and in the state of Madras and Kerala, any janmam right;

ii) Any land held under *ryotwari* settlement;

iii) Any land lend or let for purposes of agriculture or for purpose ancillary thereto, including waste land, forest land, land for pasture or sites for buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans."

Before, going through the Constitution (Twenty fifth Amendment) Act, the Constitution (Twenty fourth) Amendment Act must be referred. The statement of Objects and Reasons, attached to the Act, provides the causes for making known the Bill. It is as like:

"The Supreme Court in the well-known Golaknath case (1967, 2 S.C.R. 762) reversed, by a narrow majority, its own earlier decisions upholding the power of parliament to amend all parts of the constitution including Part 111 relating to Fundamental Rights. The result of the judgement is that Parliament is considered to have no power to take away or curtail any of the Fundamental Rights guaranteed by Part III of the Constitution even if it becomes necessary to do so for giving effect to the Directive Principles of State Policy or for the attainment of the objective set out in the Preamble to the Constitution. It is therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the Constitution so as to include the provisions of Part III within the scope of the amending power.

The Bill seeks to amend Art. 368 suitably for the purpose and makes it clear that Art. 368 provides for the amendment of the Constitution as well as procedure to the President for his assent he should gave his assent thereto. The Bill also seeks to amend Art. 13 of the Constitution to make it inapplicable to any amendment of the Constitution under Art.368."

In the earlier chapter, though a elaborate discussion regarding the question to amend the Fundamental Rights, the next adding details to it looks like superfluous. On the other hand yet, a contradiction that

placed in the passing this Bill, finally aims that an over powering majority decision in the Golak Nath's case would like to endanger in future all the socioeconomic development of the country due to the authority of the parliament to amend constitution in next times/future so as to shorten in terms of Fundamental Rights were rejected by the decision of the said majority.

The answer of the Bank Nationalisation case was the Constitution (Twenty fifth Amendment) Act 1971. It also will be the prove from the statement of objects and Reasons, attached to the said Bill which is as like:

"Art. 31 of the Constitution as it stands specifically provides that no law providing for the compulsory acquisition or requisitioning of property which either fixes the amount of compensation or specifies the principle on which and the manner in which the compensation is to be determined and given shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

In the Bank Nationalisation Case (1970, 3 S.C.R. 530), the Supreme Court has held that the Constitution guarantees right to compensation, that is equivalent in money of the property compulsory acquired. Thus, is effect, the adequacy of compensation and the relevancy of the principles laid down by the legislature for determining the amount of compensation have virtually become justiciable in as much as the court can go into the question whether the amount paid to the owner of the property is what may be regarded reasonably as compensation for the loss of property. In the same case, the court has also held that a law which seeks to acquire or requisition property for a public purpose should also satisfy the requirements of Art. 19(1)(f).

(2) The Bill seeks to surmount the difficulties placed in the way of giving effect to the Directive Principles of state policy by the aforesaid interpretation. The word 'compensation' is sought to be omitted from

Art. 31 (2) and replaced by the word 'amount'. It is being clarified that the said amount may be given otherwise than in cash. It is also propose3d to provide that Art.19(1)(f) shall not apply to any law relating to the acquisition or requisitioning of property for a public purpose.

3) The Bill further seeks to introduce a new Art.31C which provides that if any law is purred is given effect to the Directive Principles contained in clause (b) and (c) of Art.39 and contains a declaration to that effect, such law shall not be deemed to be void on the ground that it takes away or abridges any of the rights contained in Articles 14, 19 or 31 and shall not be questioned on the ground that it does not give effect to those principles. For this provision to apply in the case of law made by the state legislatures, it is necessary that the relevant Act should be reserved for the consideration of the President and receive his assent."

On the floor of the Lok Sabha, the Union Law Minister Shri H.R. Gokhale, expressed same thoughts as like "in the ..... Bank Nationalisation case, the continued use of the word 'compensation' led to the interpretation that the money equivalent of the property acquired must be given for any property taken by the state for a public purpose .... This interpretation ... completely renders nugatory the provisions of the Fourth Amendment which made the adequacy of compassion fully non justiciable . . . what is now sought to be done in this amendments is to restore the 'Status quanta' which prevailed after Shantilal Mangaldas's case and before the judgement in the Bank Nationalisation case was delivered."[60] It is necessary to mention here that, the Amendment sought to "provide for the exclusion of the applicability of Art. 19(1) (f) in property which is covered by Art.31."[61]

More significantly relating to the Right to property, the 25th Amendment Act tried to change in the area of Fundamental Rights. Firstly, by exchanging the word 'amount' for the expression 'compensation', it amended Art.31(2). This became important for the

contradicting meanings of the expression 'compensation' by the Supreme Court. A new Clause (2) was placed in the old Clause (2). This new clause held that 'No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of allow which provides for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash.' In the second place A new clause 2(b) after clause 2(a) was included by the 25th Amendment Act. It was with a view to exclude the implication of Art. 19(1) (f) which was in the matter of acquisition or requisitioning of property under Art. 31(2). Positively, it held that "Nothing in sub-clause (f) of Clause (1) of Art. 19 shall affect any such law as is referred to in clause (2)." It was inserted in order to take out the defects regarding the property rights that saw their highest point in the decisions in the Bank Nationalisation case. The impact of this amendment is the minimization of the authority of judicial review mostly to the point of elimination. Thirdly, a new Clause 31C after Art. 318 was included by the 25th Amendment Act. This mainly tried to match up the due necessary to the Directive Principles of State Policy with a view to dissolve a far reaching contradiction between the Fundamental Rights and the Directive Principles of state policy.

The significant of this clause is as live: "It is plain that substantive provision introduced by the first part of Art. 31C marks the beginning of a new era in the Constitutional and Political history of our country. It recognizes the primacy of two important economic principles enshrined in Art.39(b) and (c), and enables the legislatures to give effect to them by appropriate legislation and in doing so, it provides that, even if the implementation of these two principles 1s not consistent

with the fundamental rights guaranteed by articles 14, 19 and 31, it will not be struck down as constitutionally invalid."[62] A rough review has been created against this part of Art. 31 C at the time, it has been said, "it seeks to destroy the basic structure of the existing constitution by making Fundamental Rights, which are justiciable, subservient to Directive Principles, which expressly are not enforceable in a court of law."[63] The amendment did not compose any deviation from the fundamental skeleton of the constitution was positively told by the Prime Minister herself.[64] On the authority of judicial scrutiny, the 'blanket ban' composes a radical deviation. The observation is made as like.[65] "Art.31C, however, makes a radical departure and precludes the jurisdiction of the courts from considering the question whether or not impugned legislative enactment is really intended to give effect to the economic principles enshrined in Clauses (b) and (c) of Art. 39. If Art. 31 C had provided that it would not be compliant to courts to consider whether the impugned legislation is adequate to bring about the implementation of the two economic principles, it would have been another matter; but the clause is so wide there is any national nexus between the provisions of the impugned law and the economic principles intended to be achieved by it. I am inclined to think that such a blanket ban on the jurisdiction of the court need not have been imposed by Art. 31C." It is dreaded with the taking of the Clause that "Parliament has attempted to take the first step to claim complete sovereignty, almost similar to the sovereignty of the British Parliament."[66]

III

The high expectation of the people about the 25th amendment act with the 24th amendment act was objected to in the court of law. The popular case, the Fundamental Rights case, 1972, totally changed the relationship which came out of Golaknath Case in 1967, between the Judiciary and the parliament, within the skeleton of the

Constitution of the country. In this case, challenges were made for the 24th, 25th and 29th Constitutional Amendments. Through the 24th Amendment Act, the Parliament got the power to amend any part of the Constitution, along with the Chapter of Fundamental Rights which was rejected by the decision of the Golaknath Case. Since the decision of the case has been dealt with more elaborately in an earlier chapter,[67] a brief analysis of the judgement appears to be sufficient for the present purpose. In this case, by a 7-6 majority, the court held that the constitution has empowered the Parliament to alter, abridge or abrogate the Fundamental Rights guaranteed by the Constitution and hence the Judgement of the Golaknath case of 1967 is incorrect. The first part of Sec.3 of the 25th Amendment was announced legally just. But, the second part, that is "no such law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy'' was held to the unconstitutional and void. The 25th Amendment, as has already been said, substituted the word "Compensation" in Art. 31 (2) by the word "amount" and provided, in categorical terms, that no law fixing the amount or specifying the principles determining the amount so fixed on determined is not adequate or that the whole or any part of such amount is to be given otherwise that in cash." It again also included a new provision which is Art. 31 C that held which, "notwithstanding anything contained in Art.13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Art. 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Art.14, Art.19 or Art.31". In declaring these amendments valid, Sikri, C.J., had his own reservations. In his opinion, the substance of the fundamental right to property under Art.31 includes at least three conditions, that is, in the first place, the property shall be acquired by or under a valid law; secondly, it shall be

acquired for a public purpose and thirdly, the person whose property has been acquired shall be given an amount in lieu thereof, which is not arbitrary, illusory or shocking to the judicial conscience or the conscience of mankind.[68]

Fundamentally, the small opinion of A.N. Ray, J., (Later C.J.) was not same. To him, Art. 31 (c) failed to delegate any authority on the State legislatures which is to amend the constitution. It purely took off the confinements of the Part III from any legislation providing impact to the Directive Principles of State Policy under Art.39(b) and (c). When Reddy, J., considered Sec 3 of the 25th Amendment as legally sound, they made known the belief of deniability as put to Art.31 (c) and noticed that "the new Art.31(c) is valid only, if the words 'inconsistent with or takes away or', the words 'Art. 14' and the declaratory portion 'and no law containing a declaration that it is for giving effect to such policy be called in question in any court on the ground that it does not give effect to such policy, is served."[69] But to Justice Beg, the legal authority of the Court has not been the beginning as a effect of this amendment. This similar reason was also followed by Justice Dwivedi. As according to the 29th Amendment, the Full Court sustained its validity. The Thirty-fourth Constitutional Amendment Act. 1974 in addition enlarged the scope of the Ninth Schedule by including 20 Land Reforms Acts of various States and adding items 67-86 to the Ninth Schedule. In July 1972, in a conference of the Chief Ministers of the States, some suggestions were mooted with regard to reduction in the level of ceiling on land holdings, application of ceiling on the basis of land held by a family consisting of husband wife and three minor children and withdrawing of exemptions. The twenty laws passed by 11 states Government (Andhra Pradesh, Bihar, Gujrat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Karnataka, Punjab, Rajasthan and West Bengal) for prescribing lower land ceilings and for abolishing intermediary tenures. Apprehensive of the possibility of the Courts

holding up the pace of taking over surplus land and redistributing it among the tillers and the landless, the Union Government sought to provide constitutional protection of these laws by enacting the Constitution (Thirty fourth Amendment) Act. It was a natural and logical continuation of the process initiated by the Constitution (First Amendment) and Constitution (Seventeenth Amendment) Acts of 1951 and 1964 respectively.[70]

IV

The second group comprising the Third, the Fifth, the Sixth, the Seventh, the Second and the Twenty Seventh amendments is dealt with the federal nature of the country. The true character of the federal system of India has created the starting to serious argument. A odd connection of the Canadian and the American types is agreed on al hands. Some of them would want to say it a 'flexible federation." Considering the real features of the Indian Government, an in detail debate has been done in the next chapter. In this section, we try to provide exclusively with those amendments. Which particularly are for the nature of federal system as like.

Firstly, the Third Constitutional Amendment Act, 1955 was passed to make able the parliament to engage its government over the composition, supply and dispensation of sure merchandises. This was prove from the line of objects and reasons, pointed to this amendment. It holds:

"Entry 33 of the concurrent list enables Parliament to legislate in respect of products of industries declared to be Under Union Control. In addition, Parliament was empowered by Art. 369, for a period of five years, to legislate in respect of certain specified essential commodities. The Bill sought to amplify entry 33 of the concurrent list accordingly."

Through this amendment, an entrance 33 of the concurrent list has been put again by a new one which comprises:

"33. Trade and Commerce in, and the production, supply and distribution of-

a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the Public interest, and imported goods of the some kind as such products;

b) Foodstuffs, including edible oil seeds and oils;

c) Cattle fodder, including oilcakes and other concentrates;

d) Raw cotton, whether ginned or un-ginned, and cotton sees; and

e) Raw jute."

Thus the Third Amendment has been compelled by the truth that the duration of Central Control over this area was felt to be agreeable for the interest of the economy of the nation when the concurrent power gave on the Union by Art. 369 in respect of convinced merchandises was for a temporary time period concluding with the 25th January, 1955.

Fully 26 and 27 of Schedule II of the Constitution provide, exclusive authority to the state in regard to 'trade and commerce within the state' and 'production, supply and distribution of goods'- 'subject to the provisions of Entry 33 of list III.'

Considering the intra-state trade and commerce, and merchandises, supply and dispensation of things belongs to the state legislature, the effect is which the exclusive authority hoping only such affairs are inserted in Entry 33 of List III under the concurrent power.

The only condition including in the real Entry 33 of List III, was -

"Trade and commerce in and the production, supply and distribution of the products of any industry where the control of such

industry by the Union is declared by Parliament by law to be expedient in the public interest."

The Entry 52 of List I which gives the Parliament to declare controlling of any industry by the Union is fit for the interest of the people.[71] Though by the real Entry 33 of List III the products of only those industries being indicated in Acts of Parliament made under Entry 52 of List I were hoped from the exclusive areas of the State Legislature and included in the concurrent list.

But, Art. 369 of the Constitution provided a further abridgment of the exclusive authority of the State and made to Parliament concurrent authority over some located merchandises for a temporary term of five years only from the enactment of the constitution. The impact of this stipulation was that other merchandises indicating in Art. 368 were to be considered as if counted in Entry 33 of list III for the tenure of 5 years that is till 25.1.55 only. With regarding these commodities, the cause of providing the concurrent power to the Parliament was analysed by the Drafting Committee this is as-

"The Committee is of the opinion that is view of the present conditions regarding the production, supply and distribution of foodstuffs and certain other commodities and special problem of the relief and rehabilitation of refugees, power should be provided for parliament to make laws with respect to these matters fell in the State List. Similar power was conferred for a limited period by the Indian (Central Government and Legislature) Act, 1946."

Before the expiry of the period of five years, the Government appointed a Committee on Commodities Control to examine the question of control exercised by the Govt. of India in exercise of its existing powers and the need for the exercise of such powers in future. The Committee recommended that continuance of Central control over the commodities specified in Art. 369 was necessary for an indefinite

period not only in the interests of proper distribution and supply of these essential commodities but also in the interest of the maintenance of the industries themselves which produced these commodities. The committee, accordingly, recommended that the power conferred by Art. 369 in respect of the commodities specified therein should be incorporated in Entry 33 of List III. So that parliament would get encurrent power over these commodities whether or not the industries producing those commodities were subject to control of the Union by reason of being specified in an Act passed under Entry 52 of List I.[72]

As has already been sated, the object of the amendment is to perpetuate the concurrent power conferred by Art. 369 by transferring the contents of that Article to Entry 33 of list 111. But in making the amendment, the Act has made certain other changes. Thus- (i) Some of the Commodities Specified in Art. 369 (a) are not sought to be reproduced in Entry 33 of the List III. These are-

Cotton and Woolen textiles paper (including newsprint), Coal (including coke and derivatives of coal), iron and steel mica.

The reason for non-inclusion of these commodities in Entry 33 of List III is that the industries producing these commodities were already specified in the Industries (Development and Regulation) Act, 1951 (as amended) as industries the control of which by the Union was expedient in the public interest, under power conferred by Entry 52 of List I. Hence under the general power conferred by the existing Entry 33 of List III, Parliament already possesses concurrent power would not be affected by the expiry of Art. 369. It was, accordingly unnecessary to specify these commodities in Entry 33 of List III.

(ii) A new commodity, viz., 'raw jute' which was not in Art. 369(a), has been included in Entry 33. The reason for extending control of the Union over this commodity has already been given in the statement of objects and Reasons in the following words-

"Since Jute goods are the most important item in our export trade, it is desirable that the centre should have the power to control the production, supply and distribution of raw Jute." It may be mentioned here that such control had also been recommended by the Jute Commission.[73] The Amendment Act thus, gives to the Union the power of control over a new commodity which it did not so far posses and to that extent, the exclusive state sphere is narrowed down.

(iii) A more important respect in which the central power in enlarged by this Amendment is the inclusion 'imported goods' in part (a) of Entry 33 of List III. The object of this is 'to include also imported goods of the mass kind as the products of centralized industries, in order that the centre may be in a position to exercise full control over the development of such industries."[74]

The result is that the moment an industry is declared by Parliament to be an industry the control of which by the Union is expedient in the public interest, Parliament would have concurrent power under Entry 33 of List III to control the trade and commerce in and the supply and distribution of, all the products of such industry, whether produced in India or imported from abroad so that the national interests may be promoted or maintained by the exercise of such power.[75]

The Constitution (Fifth Amendment) Act, 1955 is also an important amendment of this group. The proviso to Art.3 was amended through this constitution Act. The Statement of Objects and Reasons was:

"Under the proviso to Art. 3 of the Constitution, as it stood before amendment, no bill for the purpose of forming a new state, increasing or diminishing the area of any State or altering the boundaries or name of any state could be introduced in Parliament, unless the views of the State Legislatures concerned with respect to the provisions of the Bill

has been ascertained by the President. It was considered desirable that when a reference was made to the State Legislatures for the said purpose, the President should be able to prescribe the period within which the States Convey their views and it should be open to the President to extend such period whenever he considered it necessary. It was also considered desirable to provide that the Bill would not be introduced until the expiry of such period. The Act amends the proviso to Art. 3 of the Constitution accordingly."

After appreciating the changes which were brought by the 5th Constitutional Amendment Act; the proviso to Art.3 is as like:

"2. In Art.3 of the Constitution, for the proviso, the following shall be substituted, namely:

Provided that no. Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference on within such further period as the President may allow and the period so specified or allowed has expired."

The Seventh Schedule, Art. 269 and Art. 286 were affected with the changes of the Sixth Amendment Act, 1956. The statement of Objects and Reasons declared:

"High Judicial authorities had found the interpretation of the original Art. 286 a difficult task and had expressed divergent views as to the scope and effect, in particular, of the explanation in Clause (1) and of Clause (2). The majority view of the Supreme Court in the State of Bombay Vs. The United Motors (India) Ltd.[76] was that sub-clause (1) prohibited the taxation of a sale involving inter-state elements by all

states except the State in which the goods were delivered for the purpose of consumption therein, and furthermore, that Clause (2) did not affect the power of that State to tax the inter-state sale even though Parliament had not made a law removing the ban imposed by that clause. This resulted in declares resident in one state being subjected to the sales tax jurisdiction and procedure of several other states with which they had dealings in the normal course of their business. Two and a half years later, the second part of this decision was reversed by the Supreme Court in the Bengal Immunity Company Ltd. Vs. The State of Bihar;[77] but here too, the Court was not unanimous."

In accordance with Clause (3) of that Article, Parliament passed an Act in 1952 which declared a number of goods to be important to the life of the community. Till this announcement which could not influence pre-existing State laws imposed on sales tax on these commodities, the effect was a broad inequality from state to state; both in the range and rates' of exempted goods.

The Taxation Enquiry Commission which examined the question for solution with great care and fullness framed convinced recommendations that the Governments of all State accepted generally.

The Act provides result to the recommendations of the Commission regarding the Constitutional amendmental provisions related to sales tax.

Mainly the Seventh Schedule of the Constitution was amended by the Sixty Amendment Act. The amendment made the following changes:

"2. In the Seventh Schedule to the Constitution-

(a) In the Union List, after Entry 92, the following entry shall be inserted, namely:

"92A: Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-state trade or commerce"' and

(b) For Entry 54 in the state list, the following entry shall be exchanged, namely-

"54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92A of List 1."

3. The sub Clause shall be included in the Art. 269 of the Constitution- (a) in Clause (1), after sub-clause (f) which is as follows:

(g) Other than newspapers, taxes on the sale or purchase of goods where such sale or purchase takes place in the course of inter-state trade or commerce; and

(h) the clause shall be placed after clause (2) which names as follows:

"(3) Parliament by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-state trade or commerce."

(4) In the constitutional Art. 286-

a) in Clause (1), the 'Explanation' shall be deleted; and

b) The following clauses shall be exchanged for clauses (2) and (3), namely:

"(2) Parliament may be law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so-far as it imposes, or authorizes the imposition of, a tax to be of special importance in inter-state trade or commerce, be subject to such restrictions and conditions in regard

to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

For the implementation of the recommendations of the States Reorganisation Commission, the Constitution (Seventh Amendment) Act was enacted. The Statement of Objects and Reasons declares:

"It was considered necessary to make numerous amendments in the Constitution in order to implement the scheme of States Re-organisation. The Act makes these amendment and also some other amendments to certain provisions of the Constitution relating to High Court and High Court Judges, the executive power of the Union and the States and a few entries in the legislative lists."

The Seventh Amendment Act 1s by far the biggest amendment and among the important changes introduced by it the following may be noted. It has abolished the different categories of states and placed them on a uniform level. Certain territories on the other hand have been placed under Union Control. So a total change has been effected in respect of the First Schedule to the Constitution. It also makes some consequential changes in the number of membership of the House of the people and in the allocation among the States and Union Territories of the seats in the council of states. Originally, the total membership of the House of the people was fixed at 500. Now, according to this amendment, the House of the people is to consist of not more than five hundred members from the States and not more than twenty members from the Union Territories. Provision has also been made to appoint the same person as Governor of two or more states. In the case of state Legislatures it drops the requirements of not more than one member per every 75000 of population though it retains the same upper and lower limits of membership (i.e. not more than 500 and not less than 60). The size of the Legislative councils has been enlarged from one fourth of the Strength of the legislative assemblies in the respective states to one third of that. An important addition has been made to the

Union State administrative relationship. Under Art. 258A, the Governor of a state may, with the consent of the Central Government entrust any state functions to the officers of the Central Government. Of course later on, this provision has been criticized as the erosion of State autonomy through the backdoor.[78]

The Act raised partially the bar against performing by an ex High Court Judge. According to the amended Art. 220, a High Court Judge can request or act in the Supreme Court and in the High Court's other than of which he formerly was a Judge.

Under this amendment, the centre and the states were given the authority to carry on any business or trade along with the respective field not mentioning in legislative jurisdiction. The another essential addition is to provide the provision of opportunities for instruction in mother tongue at the primary stage. The President may also give the directions to the state for stipulation of such cases and in such a case, he is to choose a special officer to attend to the protections given in the constitution for linguistic minorities. The President has been made able to trust upon the special obligations to the Governor of Bombay for the set up of development boards and development of education of techniques in the state. Here, as special obligation, provides a scope for the Union Control. It may interpret that the Governor will do in his discretion and then the control of the President will be provided on the Governor.

It also provides that until Parliament otherwise provides, the function of administering a Union Territory, whether through an administrator or through a Governor of an adjacent state independently of his council of Minister is the responsibility of the President. It may be noted that the Bill received a reification from the State Legislatures within a very short time. [79]

Through the Thirteenth Amendment Act. 1962, a new Art. 371A with a view to make a separate state of Nagaland inserted in the Constitution. By means of this amendment, the influence of the federal system of India increased to the eastern region which was possible due to the agreement between the Government of India and the leaders of the Naga People's Convention in July, 1960, in order to form a separate state. According to this agreement the Government of Nagaland would be obligation for (1) the capitals to be made possible to get to the new state by the Govt. of India, (ii) law and order so long as the condition in the State prolonged to stay disturbed on account of the inimical functions inside the area; (iii) the government of public affairs of Thensang district for the time of ten years. It was also mentioned that the Acts of Parliament regarding of some sure indicated subjects would not be applicable to Nagaland unless so decided by the Nagaland Legislature.

Through amending the Art.3, the Constitution (Eighteenth Amendment) Act, 1966 widened its scope and provide a categorical meaning of the idea of "Union Territories". The Statement of Objects and Reasons attached to this amendment proclaimed:

"Art. 3 of the Constitution provides for the formation of new States and alternation of areas, boundaries or names of existing states. Before the Constitution (Seventh Amendment) Act, 1956 was enacted, the expression "States" occurring in that Article meant Part-A States, Part-B States and also Part-C States. By the Seventh Amendment of the Constitution in 1956, the concept of "Union Territories" was introduced in our Constitution but Art.3 was not amended to include in terms "Union Territories'. It 1s considered proper to amend this article to make it clear that "State" in clause (a) to (c) of that article (but not in the proviso) includes "Union Territories." It is also considered proper to make it clear that power under clauses (a) of Art.3 includes power to

form a new state or Union Territory by uniting a part of a State or Union Territory to another State or Union Territory."

By the Constitution (Twenty Second Amendment) Act, 1969, a few major changes were brought about. It added at least three new Articles with a view to making certain new arrangements within the State of Assam. The following are the changes effected by the Amendment:

244A:(1) Notwithstanding anything in this Constitution, Parliament may, by law, form within the State of Assam an autonomous State comprising (whether wholly or in part) all or any of the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule and create therefore-

a) A body, whether elected or partly nominated and partly elected, to function as a Legislature for the autonomous state, or

b) A council of Ministers; or both with such Constitution, powers and functions, in each case as may be specified in the law.

(2) Any such law as in referred to in Clause (1) may in particular,

a) Specify the matters enumerated in the state list or the concurrent list with respect to make laws for the whole or any part thereof, whether to the exclusion of the legislature of the state of Assam or otherwise;

b) Define the matters with respect to which the executive power of the autonomous state shall extend;

c) Provide that any tax levied by the state of Assam shall be assigned to the autonomous state in so far as the proceeds thereof are attributable to the autonomous state;

d) Provide that any reference to a state in any Article of this Constitution shall be construed as including a reference to the autonomous states; and

e) Make such supplemental, incidental and consequential provision as may be deemed necessary.

3) An amendment of any such law as aforesaid is so far as such amendment relates to any of the matters specified in sub-clause (a) or sub clause (b) of Clause (2) shall have no effect unless the amendment is passed in each House of parliament by not less than two thirds of the members present and voting.

4) Any such law as is referred to in this Article shall not be deemed to be an amendment of this constitution for the purpose of Art.368 notwithstanding that it contains any provision which amends or has the effect of amending this constitution."

The following clause has been included in Art.275 of the Constitution which name is:

"(1A) On and from the formation of the autonomous State under Art. 244A-

(i) Any sums payable under Clause (a) of the second proviso to clause (1) shall, if the autonomous State comprises all the tribal autonomous state comprises only some of those tribal areas, be apportioned between the state of Assam and the autonomous states as the President may by order, specify;

(ii) There shall be paid out of the consolidated Fund of India as grants-in-aid of the revenues of the autonomous state sums capital and recurring, equivalent to the costs of such schemes of development as may be undertaken by the autonomous state with the approval of Government of India for the purpose of raising the level of administration of the rest of the state of Assam."

Once more, after Art.371 A of the Constitution, the article was included which is as like:

"371B. Notwithstanding anything m this constitution, the President may, by order made with respect to the State of Assam, provide for the Constitution and functions of a committee of the Legislative Assembly of the State consisting of members of that Assembly elected from the tribal areas specified in Part A of the table appended to paragraph 20 of the Sixth Schedule and such number of other members of that Assembly as may be specified in the order and for the modifications to be made in the rule of procedure of that Assembly for the Constitution and proper functioning of such committee."

The Twenty Seventh Amendment Act, 1971 brought a few changes; By these changes with a view to include 'Mizoram' within it, Art. 239 a was amended adequately. Once again the article has been included after Alter, 239A of the Constitution which is as :-

"239B. (1) If at any time, except when the Legislature of a Union territory referred to in Clouse (1) of Art. 239A is in session, the administrator thereof is satisfied that circumstances exist which reminder it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:

Provided that no such Ordinance shall be promulgated by the administrator after obtaining instructions from the President in that behalf:

Provided further that whenever they said Legislature is dissolved, or its functioning remains suspended on account of any action taken under any such laws as is referred to in Clause (1) of Art. 239A, the administrator shall not promulgate any ordinance during the period of such dissolution or suspension.

(2) An ordinance promulgated under this Article in pursuance of instruction from the President shall be deemed to be an Act of the

legislature of the Union territory which has been duly enacted in any such law as is referred to in Clause (1) of Art. 239, but every such Ordinance-

(a) Shall be laid before the Legislature of the Union territory and shall cease to operate at the expiration of six weeks from the reassembly of the legislature or if, before the expiration of that period, a resolution disapproving it, is passed by the legislature, upon the passing of the resolution; and

(b) May be withdrawn at any time by the administrator after obtaining instructions from the Parliament in that behalf.

(3) If and so far as an Ordinance under this Article makes any provision which would not be valid if enacted in an Act of the Legislature of the Union territory made after complying with the provisions in that behalf contained in any such law as is referred to in Clause (1) of Art. 239A, it shall be void, further in Art. 240, the following changes were effected-

(a) in Clause (1),

(i) after entry (e), the following entries shall be inserted, namely :-

(f) Mizoram

(g) Arunachal Pradesh;

(ii) In the proviso, for the words "Union territory of Goa, Daman and Diu or Pondicherry; or Mizoram" shall be substituted;

(iii) after the proviso as so amended, the following further proviso shall be inserted, namely:-

Provided further that whatever the body functioning as a legislature for the Union territory of Goa, Daman and Diu, Pondicherry or Mizoram is dissolved, or the functioning of that body as such legislature remains suspended on account of any action taken under any such law as is referred to in Clause (1) of Art. 239A, the President

may, during the period of such dissolution or suspension, make regulations for the peace, progress and goods government of that Union territory."

(b)For the words "any existing law", the words "any other law" in Clause(2) shall be exchanged.

The articles which shall be included after Art.371B of the Constitution are as follows:-

371C. (1) Notwithstanding anything in this Constitution the President may, by order made with respect to the State of Manipur, Provide for the constitution and functions of a Committee of the Legislative Assembly of the State consisting of members of that Assembly elected from Hill areas of that State, for the modifications to be made in the rules of business of the Government and in that rules of procedure of the Legislative Assembly of the State and for any special responsibility of the Governor in order to secure the proper functioning of such committee.

(2) The Governor shall annually, or whenever so required by the President, make a report to the President regarding the administration of the Hill Areas in the State of Manipur and the executive power of the Union shall extend to the giving of directions to the state as to the administration of the said areas.

Explanation - In this Article, the expression "Hill Areas" means such areas as the President may, by order declare to be Hill Areas. The area of the Indian federal structure was once more enlarged by way of inserting Sikkim within its ambit by the Thirty-Sixth Amendment Act.

V

Another category of constitution amendments apart from the two broad categories is less essential. This group signifies the interest of the community from the larger perspective. For the equal Socio-economic development, these were important. Being an egalitarian society on the basis of equality, India cannot carry on the special attention for the luxury and development of a small part of the population.

If where development is to be gathered, then the hardships of the people of weaker community must be leaded to an improvement. Some amendments become necessary for the development of the condition of the Scheduled Castes and Scheduled Tribes along with other people being in really down trodden. Among these constitutional amendment acts, the Eighth Amendment Act, 1960 and the Twenty third Amendment Act, 1969 specially mentioned.

In its statement of Objects and Reasons, the Eighth Amendment Act, 1960 stated:

The reasons which weighed with the constituent Assembly of India in marking provision for the reservation of seats for the Scheduled Castes and Scheduled Tribes and the Anglo-Indian community in the House of the People and the State Legislative Assemblies have not closed to exist. The Act, therefore, makes the aforesaid reservation and nomination continue for another few years."

The reservation of seats for the SCs, STs and representation by nomination of the Anglo-Indian Community in Lok Sabha and State Legislative Assemblies for a time of the commencement of the constitution were enacted and provided in Art. 334. The Eighth Amendment Act has exchanged "Twenty-years" for ten years as it was thought about the special safeguards of the state of these communities for an important time of period.

The twenty-third amendment Act, 1969 tried to enlarge the profit of representation to the SCs and STs. The following Statement of Objects and Reasons is evident which included to the amendment Act.

"Art. 334 of the Constitution lays down that the provisions of the Constitution relating to the reservation of seats for the Scheduled Castes and Scheduled Tribes and the representation of the Anglo-Indian Community by nomination in the House of the People and the Legislative Assemblies of the States shall cease to have effect on the expiration of a period of twenty years from the commencement of the Constitution. Although the Scheduled Casts and Scheduled Tribes have made considerable progress in the last twenty years, the reasons which weighed. With the Constituted Assembly in making provision with regard to the aforesaid reservation of seats and nominations of members have ceased to exist. It is, therefore, proposed to continue the reservation for the Scheduled Castes and the Scheduled Tribes and the representation of Anglo-Indians by nomination for a further period of ten years.

2. More than ninety percent population of the State of Nagaland, which came into being in 1963 is tribal. It would be anomalous to make provisions for reservation for Scheduled Carte and Scheduled Tribes in legislatures in the States where they are in a majority. It is, therefore, proposed, as desired by the Government of Nagaland, not to make any reservation for the Scheduled Tribes in Nagaland either in the House of the people or in the State legislative Assembly Articles 330 and 332 of the constitution are being amended for this purpose.

3. Under Art. 333 of the Constitution, the number of Anglo-Indians, who may be nominated in the State Legislative Assembly, it is left to the discretion of the Governor. It is now proposed to amend that Article so as to provide that not more than one Anglo-Indian should be nominated by the Governor to any State Legislative Assembly. This

amendment will not however affect representation of the Anglo-Indian community in the existing Legislative Assembly until their dissolution."

Thus, Art. 330 Art. 332, Art. 333 and Art. 334 were amended by the Constitution (Twenty third Amendment) Act. The words "except the Scheduled Tribes in the tribal areas of Assam" was in Art. 330 of the Constitution, in sub-clause (b) of Clause (1). The words "except the Scheduled Tribes in the tribal areas of Assam and in Nagaland" had been exchanged. In Art. 332 of the Constitution, in Clause (1), for the words except the Scheduled Tribes in the Tribal areas of Assam the words "except the Scheduled Tribes in the Tribal areas of Assam and in Nagaland" has been substituted. In Art. 333 of the Constitution for the words Nominate such number of members of the Community to the Assembly as he considers appropriate" the words, "nominate one member of that Community to the Assembly", has been substituted. Again it has been provided by clauses (2) of the articles that nothing contained in sub-section (1) shall affect any representation of the Anglo-Indian Community in the Legislative Assembly of any State existing at the commencement of this act until the dissolution, for the words twenty years", the words "thirty years" has been substituted.[80]

VI

The miscellaneous category seams not to be of more importance from the point of our present discussion. This category will be for that they were draw to bring about pleasing developments for the functions and organization of the administrative and governmental organs.

Art. 81 of the Constitution was amended by the Second Amendment Act, 1952. The view was to relax the limits (of number of population) prescribed therein "so as to avoid a constitutional irregularity in delimiting the Constituencies for the purpose of readjustment of representation in the House of the People as required under Art. 81 (3) of the Constitution."[81]

Once more, the Eleventh Amendment Act, 1961, amended Art. 66 and Art.71. the words "members of an electoral college, consisting of members of both Houses of Parliament" were exchanged for the words "members of both Houses of Parliament assembled at a joint sitting" in Act. 66 Clause(1).

The following Clause was inserted in Art. 71 after Clause (3) namely:"(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

Art. 81 further by exchanging the words "twenty members" in sub-clause (b) of Clause (1) by the words "twenty five members" was amended by the Fourteenth Amendment Act. 1962.

Pondicherry was inserted under the heading Union territories through the amendment of First Schedule. In addition with a view to accommodate Pondicherry within the federal structure of the country, Art. 240 and the Fourth Schedule were amended.

Art. 124, Art. 128 Art. 217, Art. 222, Art. 224, Art. 226, Art. 297, Art. 311, Art. 316 and the Seventh Schedule were amended through the fifteenth amendment Act. 1963. This total amendment was for removing the obstacles relating to the working of the High Court Judges. On the recommendations which the Election Commission made in its report of the Third General Elections, 1962 in India, the nineteenth Amendment Act. 1966 was passed.

With the acceptance of the recommendations, the Government amended Art. 324. It was to abolish election tribunals and trial of election positions by High Courts.

For the legality of appointments of and judgment etc provided by certain distinct Judges, a new Art. 233A was inserted through the Twentieth Amendment Act. 1966.

Articles 291 and 362 were left out by the Twenty - sixth Amendment Act, 1971, It also included a new Art. 363A and amended Art. 366. It narrated to Privy Purse. The institutions of Privy Purse were done away with an acknowledgement of granted to the rulers of Indian States was taken away by inserting a new Art. 363A.

The Thirteenth Amendment Act, 1972 amended Art. 133 of the constitution. The appellate Jurisdiction of the Supreme Court in regard to civil cases in appeals from the High Court is dealt with this Article.

Previous to this amendment under sub-Clauses A and B, as appeal lay as a matter of right to the Supreme Court from any judgment, decree or final order in civil proceedings of the High Court if the amount or value of the subject matter was not less than Rs. 20,000. But if the judgment was one of affirmance, there could be no appeal unless the High Court certified that it involved some substantial question of law. Sub-Clause(c) of Clause (1) of Art. 133, however, provided that an appeal was possible if the High Court certified that the case was qualified for appeal. [82]

The trial of resolving if a question of law lifted up was actually existing, in the words of the Supreme Court in Chunilal V. Century Spinning Co., [83] was "whether it is of general public importance or whether if directly and substantially affects the rights of the parties ..... But if the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles, the question would not be a substantial question of law."

Sub-Clause (c) has been held to apply in special cases in which the point in dispute was not measurable by money though it might be of great public and private importance. It is strictly correct, therefore, to state that prior to the amendment if a party of modest means wanted to file an appeal, a certificate would have been refused because of a low valuation if the question involved was of a great public importance.

Except in the eventuality of the judgment of variation and the amount being more than Rs. 20,000, in the first instance, all the litigants were treated alike. But this was a serious drawback as a certificate from the High Court needed to be obtained in causes which had been dismissed summarily as it involved a valuation of more than Rs. 20,000. This was indeed, an anomaly and also resulted in creating unnecessary arrears. That is why the Law Commission recommended the amended of Art. 133.[84]

Clause (1) of Art. 133 of the Constitution was exchanged by this amendment. At present, appeals will be situated only whether the High Court provides the Certificate that the case is in a substantial question of law of common value and that in the opinion of the High Court, the question seems to be decided by the Supreme Court. Valuation has now discontinued to be a yardstick.

The amendment has generally contracted the scope of the certificate. The High Court gave this certificate. It is at present important to found that the substantial question of law of common value is rolled up. Again importantly the High Court must give the certificate to be decided by the Supreme Court.

Even if a question of 'private importance' involves with, the certificate cannot be given. So it is criticized that in most of the cases, the amendment acts on the poorer part of the public more than the richer. Since in most of the cases, the private grievance is being sought to be lifted up, it will be impossible to get a certificate from the High Court. In reality, the rich who simply object to the constitutionality of the Act and the different types of executive decisions may still be able to get a certificate due the question lifted by them would be of 'general importance'.

It is however, curious that instead of taking the stand that the amendment has been deemed necessary to reduce the backlog in the

Supreme Court, the impression has been given that it is a measure to reduce the disparity between the rich and the poor. The amendment has, however, saved the appeals which had earlier been certified by the High Court. But after this amendment Act, no appeal shall lie to the Supreme Court under Clause (1) of Art. 133 of the Constitutions unless such an appeal satisfies the provisions of the Clauses as amended. Thus a certificate now has to be given under the amended Art. 133 of the Constitution even if the appeal had been decided by the High Court earlier. This, of course, is a wholesome provision. Otherwise, hundreds of appeals now qualified would have to be certified.[85]

The Thirty - first Amendment Act, 1973 amended Art. 81, Art.330 and Art. 332. The question of representation in the House of the people concerns all the amendments.

VII

The last group, a miscellaneous group appears to be significance in our discussion. This category is composed of the Forty. Fifth, the Fifty Second, the Fifty nine, the Sixty one, the Sixty second, the Seventy one, the Seventy third, the Seventy fourth, the Seventy sixth, the Seventy seven, the Seventy nine, the Eighty one, the Eighty four, the Eighty sixth, and Ninety first, Ninety second, Ninety third Amendment Acts. These amendments were designed to bring about desirable developments in the organization and working of the governmental and administrative organs.

The constitution (Forty fifth Amendment) Act, 1980 extended the reservation of seats for SCs and STs (Articles-330 and Articles-332) and representation of Anglo India's in the house of the people (Article-337) for a further period of 10 years that was upto 1990. The fifty second amendment act 1985 put a restriction on detections from one political party to another and it also provided for the first time legal recognition to political parties. This act added a new schedule -Tenth Schedule, to

the Constitution which was entitled provision as to disqualification on ground of defection.

The constitution (Fifty nine Amendment) Act, 1988, stated that the government was empowered to extend President's rule and to impose the emergency along with suspending operation of Article 21 in Punjab. Along this, it also reintroduced that the internal disturbance in any part of the Country on grounds for the application of emergency now stands repealed though it had been removed by the 44th Amendment Act. The Sixty first Amendment Act, 1989 reduced the voting age from 21 years to 18 years for the house of the people and Assembly elections. Now all men and women of 18 years or of above age and whose names appears in the electoral lists can vote in the election.

With a view to safeguard the interests of SCs, STs in Parliament and State Assemblies, Once more after the Forty fifth amendment act, 1980, a new amendment Sixty two Amendment Act, 1989 was passed. It also provided for reservation for another ten years to the members of the SCs, STs and it also argued for reservation for the Anglo-Indian Community by nomination. This act extended the time upto 2000 years. Again through the Seventy nine Amendment Act, the reservation for SCs and STs (Art. 330 and 332) and the representation of the Anglo-Indian community (Art. 337) by nomination in the Lok Sabha and the State Assemblies were extended to another ten years that is till January, 2010.'

The Constitution (Seventy first Amendment) Act, 1992 included Kankani, Manipuri and Nepalese Languages in the Eighth Schedule. It thus raised the member of languages in the Schedule from 15 to 18.

The Seventy third amendment act, 1992 got Presidential assent on April 25, 1993 after ratification of the required number of states, provided constitutional of guarantee for formation of Panchayats. This act has added a new Part- IX to the Constitution which is entitled as

'The Panchayats' and consist of provisions from Articles 243 to 243O: It also added a new. Eleventh Schedule to the Constitution which contains 29 functional items of the Panchayats. This act has given a practical shape to article 40 of the Constitution which is that "The state shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self government". This article form a part of the directive Principles of State Policy. The act gives a constitutional status to the Panchyati raj institution.

The Constitution (Seventy fourth Amendment) Act, 1992 has added a new Part- IX-A to the Indian Constitution entitled as "The Municipalities" and contains Articles 243 P to 243ZG. It also inserted a new twelfth Schedule containing eighteen functional items. Through this act the state governments are under constitutional obligation to adopt the new system of municipalities in accordance with the provisions of the act. The act provides for the constitution of three types of municipalities in every state. The three types are as (i) A Nagar Panchayat rural transitional area, (ii) A municipal council for a smaller urban area and (iii) A municipal corporation for a lager urban area.

The Constitution (Seventy sixth Amendment) Act, 1994, tried to include the Tamil Nadu Reservation Act which provides for 69% reservation for educational institutions and jobs in the State. It also was included in the Ninth Schedule, so that it will be outside judicial review.

The Seventy Seventh Amendment Act, 1995 made a provisions for the reservation for SCs, STs in the promotions in Public Services. It added a new Clause 4(a) to Article 16 of the constitution. This act provided that the State is empowered to make provisions for reservation in promotions in Government jobs in favour of Schedule Castes and Schedule Tribes.

The institution (Eighty first Amendment) Act, 2000 stated that the unfilled vacancies of a year reserved for SCs and STs for being filled up in that year in accordance with any provision for the reservation under Art. 16 was to be regarded a special class of vacancies to be filled up in any succeeding year. It removed limitation of 50% reservation on total reservation which I imposed by the Supreme Court.

Through the Eighty four constitutional amendments Act, 2002, the new States of Chhattisgarh, Uttaranchal and Jharkhand were created. It also raised the free fee on the delimitation of constituencies which was imposed by the 42nd Amendment. It allowed delimitation within states on the basis of the 1991 census.

In 2002, the Eighty Sixth amendment act amended article 21. It included a new article 21 (A) which is that State shall provide free and compulsory education to all chidden of the age of Six to fourteen in such a manner as the State may determine. Thus act is la major milestone in the country's aim to achieve "Education for All" This step is described by the Government as "the down of the second revolution in the chapter of citizens might's". The act also tries to compel parents to provide opportunities for education to his child or ward between the ages of Six to fourteen years. It is the Eleventh Fundamental Duties of Indian Citizens, in Art. 51(A) Part- IV. This act amends Article 45 of the Directive Principles of State Policy (Part-IV, Art-36 to 51) to make the state Endeavour to provide early childhood care and education for all children until they complete Six years of age.

The Eighty eight Amendment Act, 2003 provided taxes on services including the Union list. Provisions for creation for separate Commission for Schedule Castes also made by the Eighty Ninth Amendment Act.

The Ninetieth Amendment Act, 2003, made the Provisions through these provisions, STs and non STs in the Boroland Territorial

Areas District, so notified and existing prior to the Constitution of the Boroland Territorial Areas District were be maintained.

To strength of the Council of ministers in Union as well stage to 15% of the total member of house of the people or concerned Vidhan Sabha respectively the Ninety first amendment act made provisions. The Bodo, Dogri, Maithilli and Santhali were added in the Eight Schedule of Constitution which now came to have 22 languages were added through the Ninety second amendment act, 2003. 52nd Amendment Act. for providing more teeth to the Anti Defection Law, the 91 St Amendment was incorporated in the constitution. The Constitution Ninety first Amendment Act, 2002, aims at putting an end to the defection from one political party to another.

The Constitution (Ninety third Amendment) Act Amended Art. 15 and 19. In these Articles anything was not to prevent the state from creating special provisions for the advancement of any backward classes mainly socially and educationally of citizens or for the advancement of Schedule Castes and Schedule Tribes in so far as such special provisions relate to their admission to educational institutions containing private institutions if aided or unaided by the state, other than minority institutions accordance Art. 30.

VIII

The total influence of all these amendments on Indian Political system is tremendous which clears from the above discussion. These amendments had great impact in the relationship between the executive and the Legislature and also between the Legislature and the Judiciary. Through these acts, it was aimed at to achieve a social stipulation where in the liberty of individual could be mixed with the interest of the community to increase socio-economic development.

It hardly calls for any explanation to establish the fact that of all these amendments, the first group, dealing with the nature and

quantum of Fundamental Rights, occupies a very crucial position in any discussion of constitutional amendments. Three amendments have got a direct relevance in an egalitarian society, sought to be brought about by the makers of the constitution. The Statement of Objects and Reasons, appended to each of three amendments reveals that these were aimed at fostering and promoting socio-economic development by extirpating the obstacles to progressive land reform measures and social welfare legislation. In almost all these amendments, the property right has been suitably amended so that any future legislature may not have to face any constitutional barrier in introducing a uniform land reform measures throughout the country. It may be noted that almost all these amendments have sought either to amend Art. 19 or Art. 31 the articles directly related with properly signed. The First, Fourth, Seventeenth, Twenty Fourth and Twenty constitutional amendments were brought about only to resolve the long standing conflict between the legislature and the judiciary. This is evident from the statement of Objects and reasons appended to the Twenty fourth Amendment Act. The Government made no pretension in hiding its motive. It clearly declared that the verdict in the Golak Nath case of 1967 posed a challenge before the legislative competence with respect to constitutional amendment, by holding the view that Parliament had no authority to amend the chapter on Fundamental Rights which are "Sacrosanct and not liable to be abridged" by legislative action. It is therefore, considered necessary to provide expressly that Parliament has power to amend any provision of the constitution so as to include the provisions of Part-III within the scope of the amending power. Thus the Act had substantially changed Art. 13 and Art.368 with a view to removing the long standing points of contradiction between these two articles. The Act directly vests the Parliament with constituent power to amend any portion of the Constitution and made it obligatory or the part of the President to give his assent to such an amendment Bill.[86]

In a close manner understanding the meaning of the 24th Amendment Act which came to the 25th Amendment Act that was designed to get over the objections set in the way of providing result to the Directive principles of State Policy and with this final in view, put again the word “Compensation” by the word “amount”. In addition the Bill made known a new Art. 310 to give that, whether any law is approved to provide result to the Directive principles, comprising in Clauses (b) and (c) of Art. 39 and comprised announcement to that result, such law shall not been seemed to be quit on the basis that it abridges the rights comprised in articles 14, 19 or 31 and shall be unquestioned on the basis it does not effect to those principles. It has once more mentioned that should be reserved for the deliberation of the President along with his assent for this condition to put to the purpose. To indicate it effect on the political system of India, the main stipulation of this amendment may be as like-

(a) For amending the Constitution, the Parliament directly is empowered by Art, 368.

(b) It gives a process following for the amendment of the Constitution.

(c) If the Bill that had been passed by the Parliament is placed to President for his assent, He is compelled.

(d) The amendment also removes the petition of Art, 13 to any amendment which made to the Constitution under Art, 368.

The main conditions regarding article 25 may be as follows-

(a) The word 'amount' has inserted of the term 'compensation' in Art.31 (2) of the Constitution. For that, the Legislature may resolve the compensation which is to given to property holder after gaining by the State. It also clearly mention that the judiciary has been disowned the authority to enter into these questions and the said amount may be provided in cash or in another way.

(b) In only law which related to the act of acquiring or supplying of property for public goal, Art 19 (f) shall not administer.

(c) A new Clause Art, 82 (c) has been introduced by the Act. It gives that whether any law is made to provide effect to the Directive Principles of State Policy comprised in Clause (b) and (c) of art, 39 and includes a proclamation to that effect, such type law shall not be considered to invalid on the basis that it abridges the rights included in articles 14, 19 or 31 and no questions will be placed on the basis that those principles are not affected.

(d) Without the assent of the President to such a Bill, no law shall apply which is made by the State Legislature or these articles conditions.

These amendments together with subsequent ones have been hailed as the manifestation of the victory of the people. The Parliament or for that matter the executive being a Cabinet form of government where there is close co-operation between the cabinet and the largest majority has drastic powers to make changes in the property clause of the Constitution so as to facilitate speedy socio-economic reforms in the country besides the Directive principles of State Policy have been given precedence over the Fundamental Rights with a view to bringing about, to removing K. Santhanam's famous idea, a social revolution in the country.[87]

The constitutional and reasonable enlargement of the pledge which was made by the National Congress in their Election Manifesto of 1971 that assured to "seek such further constitutional remedies and amendment as are necessary to overcome the impediments in the path of social justice," Are come from the twenty fourth, twenty five and the other amendments.

The total effect of these amendments of the Constitution seems to be astounding and for reaching. Without destroying the basic

characteristic of the Constitution, 'a social revolution' is brought about through the way of fashion which are made by these amendments. The effect of the amendments has been sum up as like-

(i) The idea of Parliamentary supremacy firmly has settled down which finished the long existing contest between the legislature and the judiciary in the constitution;

(ii) The amendments have removed the evident conflict between the Fundamental Rights and the Directive Principles, by providing due value to the Directive Principles, regarding their "fundamentalness" in the governance of the country";

(iii) These acts have tried to elevate the fate of the oppressed community by soothing their hardship through constitutional intermediate steps with a goal to setting up an egalitarian society along the outlines provided in the preamble and the Directive Principles; and

(iv) Through these acts, the principles as constitution should not be a finish in itself but a way to the finish are adhered. These also repeated that the idea of Welfare State of Gandhiji can be gained within the structural framework of the today's constitution, even not changing its basic characteristics.

To provide a conclusion to this present discussion, it can be narrated with some measures of surely that the acts have made able the Parliament to come out with larger solidity. These acts were generally the starting of a method that created their highest point in the recommendations of the Swaran Singh Committee. The adjustment of power between the Legislature and the judiciary has been formed to cause in favour of the former. [The power adjustment' in the organization of the government of India has endured solemn alterations will be additional obvious when we suggest to argue the 42nd Amendment act of the Constitution].

Notes and References:

1. S. N. Ray - " Constitutional Amendment in India : Their Nature, Significance and Impact on Indian Government and Society" – An article published in the North Bengal University Magazine, 1971
2. P. K. Sengupta- India: Constitutional Dynamics in a changing polity; P-142
3. S.N. Ray- "Constitutional Amendments and the Indian Political System: Response to a challenge or a symptom of system i.e. conflict" Paper presented at the 36th Indian Political Science Conference, Jodhpur, 1976. Reference has already been made to these crises born lout of systemic and issue conflicts, Chapter-I, Sections A.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid. This has been analysed in Chapter- I, Section-A.
10. Ibid.
11. Ibid.
12. S. N. Ray- Constitutional Dynamics and the political process in India: a note on the interaction between constitutional amendments and judicial review. (Paper presented in the National Seminar, Calcutta, March, 1975, organized by the country for political studies).

13. Leslie Wolf- Philips-Comparative Constitutions, Macmillan, 1972, P.34.
14. Reference are:
    - Lok Sabha Debates, Vol, II, NO. 16;
    - Keesing's contemporary Archives, 1955, 14268A;
    - Lok Sabha Debates, Vol. 8, 1955, 4834;
    - Lok Sabha Debates, Third Series, 1964, P. 638 and Fifth Series, Vol. IX No. 12, 1971, PP. 220 and 232-236.
15. P. B. Gajendragadkar- The Indian Parliament and the Fundamental Rights, Eastern law House, Calcutta, 1972, P. 70.
16. Statement of Objects and Reasons, appended to the Constitution (First Amendment) Act, 1951.
17. Ibid.
18. Ibid
19. Ibid.
20. Test of the Constitution (First Amendment) Act, 1951
21. Ibid.
22. A.I.R. 1951 S.C. 226: 1951 S.C.R. 525.
23. P. K. Sengupta- India: Constitutional Dynamics in a changing Polity, P. 148.
24. A.I.R. 1951 S.C. 226: 1951 S.C.R. 525.
25. M.H. Quareshi V. The State of Bihar, A.I.R. 1958, S.C. 731: 1959 S.C.R. 629.
    - State of Bihar V. Kamesswar, A.I.R. 1952. S.C. 252: 1952 S.C.R. 889

- State of Bombay V. F.N. Balsara A.I.R. 1951. S.C. 318: 1951 S.C.R. 682.
- Bijoy cotton Mills V. State of Ajmer, A.I.R. 1955. S.C. 33: Kerala Education Bill, 1957, A.I.R. 1958; S.C. 956:1959. Crown Aluminium Works V. Their Women, A.I.R. 1958. S.C. 30: 1958 S.C.R. 651
- I.C. Golaknath V. the State of Punjab; A.I.R. 1967. S.C. 1643: (1967) 2 S.C.R. 762

26. A.I.R. 1950 S.C. 124.
27. P. K. Sengupta-India: Constitutional Dynamics in a Changing Polity, P. 150
28. A.I.R. 1950 S.C. 129: 1950 S.C.R. 605.
29. Cited in D.D. Basu's Cases on the Constitution of India (1950-1951); Calcutta, 1955, P.46.
30. Ibid, PP. 46-47.
31. P. K. Sengupta -India: Constitutional Dynamics in a Changing Polity, P.-153
32. Gajendragadkar-The Indian Parliament and the Fundamental Rights (Tagore Law lectures, Calcutta, 1972) P. 71
33. A.I.R. 1951 All. 257
34. A.I.R. 1963. S.C. 1047: 1963. Supp.2. S.C.R. 691
35. A.I.R. 1951, Patna 91.
36. A.I.R. 1951. Cal. 111.
37. Ibid.
38. A.I.R. 1951. Cal.111
39. P. K. Sengupta: India: Constitutional Dynamics in a Changing Polity. P.-158

40. A.I.R. 1951. All. 674.

41. A.I.R. 1951, Cal. 111

42. A.I.R. 1954 S.C. 728, 1955 S.C.R.

43. Statement of Objects and Reasons, appended to the Constitution [4th Amendment] Act, 1955

44. P. K. Sengupta: India: Constitutional Dynamics in a Changing Polity. P.-161-162

45. A.I.R. 1954. S.C. 728

46. A.I.R. 1951. Cal. 111

47. P. K. Sengupta: India: Constitutional Dynamics in a Changing Polity. P.-164-165

48. A.I.R. 1965. S.C. 1017: (1965)1, S.C.R. 614.

49. Ibid.

50. A.I.R. 1967. S.C. 637: (1967), S.C.R. 255.

51. Op. Cit, PP. 264-265

52. A.I.R. 1969 S.C. 634: (1969) 3 S.C.R. 341

53. A.I.R. 1970 S.C. 564: (1970) 3 S.C.R. 531

54. Quoted from the little of the Ordinance 8 of 1969 the Banking Companies {Acquisition and Transfer of Undertaking) Ordinance.

55. S. N. Ray: Judicial Review and Fundamental Rights. Eastern Law House, Calcutta, 1974, P. 239

56. A.I.R. 1954 S.C.R. 587.

57. P.B. Gajendragadkar: OP. cit, P. 99

58. A.I.R. 1962. S.C. 723: 1962 Supp. I.S.C. R.829

59. P. K. Sengupta: India: Constitutional Dynamics m a Changing Polity. P.-172-173

60. Lok Sabha Debates, Fifth Series, Vol. IX, No. 12, 1971, P. 220
61. Ibid.
62. P. B. Gajendragadkar: Op. cit., P. 199.
63. Soli. J. Sorabjee in the Statement, Nov, 30, 1971
64. The Statement, December 2, 1971; Lok Sabha Debates, Fifth Series, Vol. IX, December1, 1971
65. P. G. Gajendragadkar: Op. cit., P. 200
66. Ibid, P. 201.
67. P. K. Sengupta - India: Constitutional Dynamics m a Changing Polity. P.-177 -178
68. Ibid. P-1 78.
69. Per Reddy., J.
70. P. K. Sengupta - India: Constitutional Dynamics m a Changing Polity. P.-179
71. In exercise of the power conferred by this entry, Parliament enacted the industries [Development and Regulation] Act. (LXV of 1951) declaring that the control of certain industries, specified therein, was expedient in the Public interest.
72. P. K. Sengupta: India: Constitutional Dynamics m a Changing Polity. P.-181-182.
73. Ibid. P. 182-183
74. Statement of Objects and Reasons.
75. P. K. Sengupta: India - Constitutional Dynamics in a Changing Polity. P.-183
76. A.I.R. 1958, S.C.R. 1069
77. A.I.R. 1955, S.C.R. 1140.

78. P. K. Sengupta: India - Constitutional Dynamics m a Changing Polity. P.-186-187

79. Ibid.

80. Ibid. P. 194-195.

81. Statement of Objects and Reasons, appended to the constitution (second Amendment) Act, 1952

82. P. K. Sengupta: India - Constitutional Dynamics m a Changing Polity. P.-1996-1997.

83. A.I.R. 1962, S.C. 1314.

84. P. K. Sengupta: India - Constitutional Dynamics in a Changing Polity. P.-197

85. Ibid. P. 198.

86. Ibid. P. 199.

87. K. Santhanan: Thought in terms of three revolutions:-the political Social and the economic. For a detailed study see Austin-Indian constitution: cornerstone of a Nation. O.U.P, 1966, PP-26-27.

CHEPTER - V

CONSTITUTIONAL DYNAMICS AND FEDERAL GOVERNANCE - TENTATIVE PERIODISATIONS

The period of one party dominance by the centre has lasted till 1966. Since 1967, after the fourth General Elections, the qualitative changes took place in the nature of Indian political process. There had been changes in the electoral verdict in some of the states of Indian Federal System. In those states, non-Congress governments came to exist. This opportunity provides the task to take care of a number of issues of relating socio-economic and political arrangements which were ignored earlier. At the same time, it focused on the external form of power and new equipoise in the Indian political System.

It is very important to mention about the impact of it on the Congress System which Rajni Kothari stated as 'One dominant Party system". A system of regionalization started to appear in Indian politics when some non-Congress parties formed the governments in some states. These non-Congress governments started to demand for larger part from the political and economic resources of the nation. These preferred the quick restructuring of the centre and state relations. It was mainly in the financial matters.

II

It is necessary to look in to the nature of tensions and problems which may help is to understand the course of Indian federal system. The stresses had influenced the activities of the federal system. The tensions or stresses can be separated into as the political stresses along within the governing party and between the ruling and other non ruling parties; and on the other hand, the economic stresses which arose out economic authority and the behaviour of political parties towards this authority. Regarding the economic tension, it is broadly for the stipulations of unevenness, leading to instability of the social base.[1] When changes took place in economic matters, the focus was

transferred in economic priorities. For this reason, movements and displacement of the working class had been seen from labour concentrated and capital concentrated composition. This influenced mostly the enlargement of workers both in the arranged, un-arranged and marginal areas which caused to weak the basis of work force. During these periods, all the impact of this change has been stated as an intensification of the horizontal contradiction within the dominant class.[2] It is still presented the conflict between the rising rich, middle peasant classes and the industrial bourgeoisie which started earlier. It is also interesting to note the rising of conflict between the poor and landless labours, on the other hand among the middle and reach peasants.

The Indian federal system not only was influenced by the political and economic matters, but the rising of cultural and linguistic differences also influenced. There was also tensions between the Hindu belt areas and the non-hindi-belt area. The stresses were complex in nature and also influenced the Indian federal System. To protect the political system from further tensions, the three language Formula was also introduced. The another important issue about Indian coalition politics is to discuss about the position of the smaller states in the federal governance. They play significant role in the manipulation of powers. The states which reorganized on the language basis failed to solve the problems. But day by day new demands like demand for autonomy, a new state are creating by the regional demands which highly can be located in the North-Eastern region and also in some areas of India may rise due to some important reasons. All the demands not for the existing of new state but sometimes through the creation of new state try to satisfy the local importance.

Before the emergence of coalition government in India which the local parties failed to enjoy any important authority in the governing system due to the dominant position of the Congress Party. But

significant changes also took place. Since 1967, the system of bargaining politics came forward and the local and regional political parties started to play important role with their demands.

An experimental periodisation can also be made for understanding the nature of Indian federal System. It can be as such after following T.V. Sathyamurthy,

i) the phase of linguistic cultural differentiation within a framework of unchallenged unity and integrity of the Indian state (1947-67);

ii) the phase of centralization following the threats from the states (1967-77).

iii) A brief interregnum of attempts to redress the balance of influence in favour of the centre (1977-84); and

iv) The phase of coalition and coexistence between the centre and the states (from 1985)[3]

III

It should be understood that the real functioning of the federal authority influences by different aspects whose impact also can be seen in the political process of the country. Among these aspects, the political party's role becomes important and inspires to examine the extension of the role of political parties in Indian political system. The Art.1 of Indian constitution which is as 'Union of States' emphasized that the idea of power is one directional and one dimensional' the total concept focused on the understanding of power in 'capability' sense. But it now is to take the common tendency of the federal governance in India which is proved by the workings of the India's federal system over last some times. The 'dispositional' and 'control over systemic outcome' also are two major areas for further analyzing. These were understood to end the socio-political crisis. The problems from different parts of

India like the entire North East, Assam and Kashmir may help to explain this point in these areas, when the central government failed to fulfill the local or regional demands, people of these areas take the option of their regional and local political authorities. Some social matters like language, ethnic considerations can be studied. These matters directly pressurize on the activities of the federal process totally. It has been stated as:

"It is no wonder that controversy on this point has often absorbed the passionate interest and energy of a developing nation more than any other aspect of nation building and modernization."[4]

Similarly, some scholars emphasized on the other matters as like consideration of states and social mobilization. To Karlw Deutsch:

"The stage of rapid social mobilization may be expected, therefore, to promote the consolidation not states whose peoples already share same language ..... while the same process may tend to strain or destroy the unity of state whose population is already divided several groups with different languages or cultures or basic way of life".[5] The states Reorganization Commission in its report also remarked same:

"Linguistic homogeneity provides the only rational basis for reconstructing the states, for it reflects the social and cultural pattern of living obtaining[6] is well-defined regions of the country."

Historically it may be stated that Nehru observed that such "provincial expansionism' might ruin the national unity.[7] On this matter, one scholars has stated that "the effect of re-organisation was to give state politics a more intensely regional character and to make the states a much more important level of power."[8]

The kind of the dominant allocation of the states also provides crucial contradiction in the country as it has some time been declared that the Planning commission becomes contributory in making worse

than building the distinction among states. It also can be given priority to the achievement in economic areas which become responded needs and demands of states to some extent.[9]

Regarding this, one of the leading authorities on federalism likes to be suitable:

"Invariably in the area of economic policy the finders of the federation have found it impossible to devide the function of general and regional governments into two isolated compartments and have been forced to recognize the independence of governments. Generally, as a result of the placing of major fiscal instruments for economic policy in central hands, the regional governments have become heavily dependent upon the former for their financial resources. At the same time, however, the central government tended to be heavily depended for the implementation of national economic and social programmes upon autonomous regional ministers and legislatures directly responsible to their electorates. This situation of mutual dependence of each level of government upon the other has characteristically produced a proliferation of institutions and arrangements for consultation and co-operation in a wide variety of economic fields."[10]

The real form of centre states relations in India is one of or "Coalition administration", or a high degree of 'Collaborative Partnership" both in political decision making and in implementing the operation of plan projects.[11]

Dr. Ambedkar in the Constituent Assembly stated the quite same concept when he noticed:

"The basic principle of federation is that the legislative and executive and states not by any law to be made by the centre but by the constitution itself. This is what the constitution does. The states in our constitution are in no way dependent upon the centre and states are co-equal in this matter."[12]

The both strong centralizing and decentralizing tendencies offer by the different conditions of India, Here American federalism seems to be easy to understand the conditions of India:

"However, every where it basically means a new form of federal state district municipal sharing in revenues and administration of national progremmes..... such a federation is called 'co-operative', 'interdependent', or 'marble cake'.[13]

To broadly explain:

"A far more accurate image is the rainbow or marble cake, characterized by an inseparable mingling of differently coloured ingredients, the colours appearing in vertical and diagonal strands ..... As colours are mixed in the marble cake, so functions are mixed .....[14]

In Indian federalism, the dependence of the states over the centre create obstacles in the functions of participatory federation. The existence of view local forces provides the chance of decentralization of power in wider perspective. It also focuses on the better position for the states in the federal system. The new power configuration has changed the balance of power between the centre and the states. It emphasizes on the partnership system of federal relations.

Actually the functions of a federal process in any country are based on the common legal structure along with the impact of political parties. So, it seems to be important to analyse the influence of political parties on the Indian federal system the Congress party favoured a strong centralized system with the controlling powers over the states. This party constructed the socio-economic matters with a goal to create a socialist society which actually favoured the centralized federal system.

Here a chart which states the party competition in the some main states.

State	Major Parties
Andhra Pradesh	Telegu Desam, Congress
Assam	Asam Gano Parishad, Congress.
Bihar	Janata Dal, BJP, Congress
Gujrat	BJP, Congress
Hariyana	Hariyana Vikas Party, BJP, Congress
Karnataka	Janata Dal, BJP, Congress
Kerala	United Front, Left Front
Madhya Pradesh	Congress, BJP
Maharastra	BJP, Shiv Sena, Congress
Orissa	Congress, Janata Dal, Biju Janata Dal
Punjub	Akali Dal, BJP, Congress
Rajasthan	BJP, Congress
Tamil Nadu	Dravida Munnetra Kazhagam, All India Dravida Munnentra Kazhagam, Tamil Maanila Congress
Uttar Pradesh	BJP, Samajbadi Party, Bahujan Samaj Party
West Bengal	Communist Party of India (Marxist), Congress

Cited in Democracy without Associations: Transformation of the party system and social cleavages in India- Pradeep Kr. Chhibber, Vistaar Publications New Delhi, 1999.

B.J.P. which earlier was known as Jana Sangh has also favoured the centralised federalism for the national interest and unity. On the other side, the left Political Parties has stood for the substantial autonomy to the states. Among the regional parties, D.M.K, A.I.A.D.M.K, AGP, the Akali Dal favoured regional devolution of power since 1967, there have been radical changes in the party position over

the country. The rising of the Non-Congress government after the 1967 General Elections minimized the strength of the Congress party. On the other hand the role and position of States in the parliament became stronger. But it was got again sellback when in 1971 Lok Sabha Elections the Congress achieved success and established its dominance of the union.

The policy of the Congress Party after independence was to gain a "socialist India" and "a socialistic pattern of society through the constitutional methods." To achieve these goals, it took plans for the development of country's economic position. Planning in one way helped the process of centralization and "super seeded the federation and our country is functioning almost like a unitary system in many respect".[15] The central government dominated the Planning Commission along with the National Development Council. As a result states had to be always dependent on the centre for their economic resources. "As the states were heavily indebted to the Union, they lost their independence so for as borrowing was concerned; they lost their financial autonomy substantially."[16]

Theoretically speaking, the National Congress was in the position to unite India for this, the writ which is to the centre is formed for the running of the states so that "the matrix is strong enough to withstand the occasional squalls and tempests,"[17] The Indian National Congress believed in the controlling of the centre to the different forces in the country by the methods of the constitution.[18]

The Communist party of India in 1968 was for "changes in the federal constitution of the country so as to divest the union government of its overriding powers to interfere in the affairs of the states and in order to widen the autonomy of the states specially in the matter of finance and state economy."[19] It was in favour of the official abolition of the governor and formed the autonomous[20] districts and regions within the states. The CPI(M) liked to favour "widest autonomy for the various

states comprising the Indian federation."[21] One the other hand, the socialists kept belief in the decentralized policy "accompanied with co ordination to ensure a national unity, harmony and progress".[22] The main parties of the nation were bury to restructure the relations between the states and centre. The Akali Dal at that time favoured the constitution "to be made federal in content" and the states to be given "more autonomy and more power particularly in the field of finance and legislation."[23] To DMK, "States rights without infringement" by the centre and the transfer of "unspecified or residuary powers which are vested in the center to the states."[24]

Regional Parties Principal of functions in some states

State	Year	1989			1991			1996			1998			1999		
	Party	C/W	F	%	C/W	F	%	C/W	F	%	C/W	F	%	C/W	F	%
Andhra Pradesh	TDP	35/2	0	34.5	35/13	1	32.3	36/16	2	32.6	35/1	1	38.0	34/29	0	39.9
Assam	AGP	-	-	-	14/1	6	17.6	11/5	0	27.2	10/0	.	12.7	8/0	3	11.9
Bihar	JD	37/31	2	36.4	36/3	1	34.1	44/22	0	31.8	35/1	27	8.7	-	-	-
	RJD	-	-	-	-	-	-	-	-	-	38/17	2	26.6	36.7	1	28.3
Haryana	JD	8/6	0	38.9	7/0	0	37.2	-	-	-	-	-	-	-	-	-
	HVP	-	-	-	-	-	-	4/3	0	15.2	4/1	0	11.6	2/0	0	2.7
	HLD(R)	-	-	-	-	-	-	-	-	-	7/4	0	25.9	-	-	-
		-	-	-	-	-	-	-	-	-	-	-	-	5/5	0	28.7
J&K	JD	2/0	0	30.0	-	-	-	5/1	2	17.6	1/0	1	0.5	1/0	5	0.14
	JKN	3/3	0	6.8	-	-	-	-	-	-	6/3	10	21.7	6/4	0	28.9
Karnataka	JD	21/13	3	28.3	21/0	4	16.8	27/16	1	34.9	28/3	10	21.7	10/3	0	13.3
Kerala	CPM	10/02	0	22.9	9/3	0	20.7	9/5	0	21.2	9/6	0	21.0	12/8	0	27.9
	CPI	3/0	0	6.2	4/0	0	8.1	4/2	0	8.2	4/2	0	8.3	4/0	0	7.6
	MUL	2/2	0	5.2	2/2	0	5.2	2/2	0	5.1	2/2	0	5.0	2/2	0	5.3
Maharashtra	SIIS	3/1	1	1.2	17/4		9.5	20/15	0	16.8	22/6	0	19.7	22/15	1	16.9
	NCP	-	-	-	-	-	-	-	-	-	-	-	-	38/6	7	21.6
Orissa	JD	19/10		0	19/6	0	34.6	19/4	2	30.1	16/0	15	4.9	-	-	-
	BJD	-	-	49.5	-	-	-	-	-	-	12/9	0	27.5	12/10	0	33.0
Punjab	SAD	4/0	0	1.3	9/8	0	28.7	9/8	0	7.8	8/8	0	32.9	9/2	0	28.6
Tamil Nadu	DMR	31/0	-	0	29/0	0	22.7	18/17	1	25.8	17/5	0	20.1	19/21	0	23.1
	ADMK	26/1	-	-	11/14	0	18.1	10/0	0	7.8	22/18	0	25.9	24/10	0	25.7
		11/11	0	-	-	-	-	-	-	-	-	-	-	-	-	-
		17/1	-	-	-	-	-	-	-	-	-	-	-	-	-	-
U.P.	BSP	75/2	57	9.9	67.1	52	8.7	85/6	24	20.6	85/4	25	20.9	85/14	2	22.1
	SP	-	-	-	-	-	-	64/16	7	20.8	81/20	9	28.7	84.26	24	24.1
W.B.	WBTC	-	-	-	-	-	-	-	-	-	29/7	3	24.4	22/8	2	26.0

Note: C/W : Seats contested/won
F: Seats deposits forfeited
% : Percentage of vote share in the state
* : JD(U) in 1999 elections
**: Jammu and Kashmir National Conference
#: Trinomool Congress was WBTC in 1998 and AITC in 1999.
Cited in Ravi Bhatia "A decade of Parliamentary Elections in Indian Mapping of Trends, The Indian Journal of Political Science, Vol.62, No.4, Dec. 2001.

The role of Administrative Reform Commission which is on the centre states relations is necessary to observe: "Where a single party has controlled over affairs at the centre as well as in the states in alternative and extra constitutional channel becomes available for the operation of center state relationships. In practice the channel has been very active during Congress Party rule and has governed the tenor the center state relationships.'[25]

It is interesting to observe about the 1967 and onwards developments which have brought many changes in the Indian federal system. It states: "The Political, Ice-berg in India has melted and the real political evolution of the country has began in earnest."[26] The Post 1967 developments are the decline of the one-party dominance; providing different aspects in voters' choices, shifting from the national to regional political parties, the awareness of regional demands and beginning of the evils of defection.[27] The relations between the non-Congress government and the center turns to a new changes. The non-Congress authorities lined to settle the disputes through the constitutional means. They did not favoured the consensus technique. Then the tensions raised around the deployment of central Reserve Police, the appointment of governor, allocation of financial resources, the formation of the council of Ministers. Besides this, to the non-Congress authorities, the application of Art. 356 is used by the centre to maintain the Congress dominance, stop the other political parties in the different states and provide the status of Congress ruling party which will come next. But since 1977, the center state gradually have changed. Recently, the NDA and also UPA governments always depend on the support of regional parties. In this case remaining outside of government, the left parties maintained very significant role.

IV

In the beginning, Indian Constitutional framers emphasized on the word 'Union' rather than the term 'Federation'. To them, it was important to unite India, not to separate because in India, there was vastness, different aspects. They also gave important to form the social structure, open the processes of politics to all, develop the economic mattes and mostly provide the scope to multi party process. Moreover the creation of centralized federal system was also important reform.

When the Congress party was in the dominating position, the other parties revolved around the Congress Party. But it failed to maintain its central position. The qualitative and quantitative changes began to create new support base. These grass root support level emphasised their own local demands. The regional political parties realized the necessity of these grass root support level to carry on their activities and agenda. These local demands were not fulfilled properly by the Congress Party. Due to what the Congress party lost its power. This fail to Congress party gave the regional parties to play important role in the governing process. It is also to be noticed that this was not formed all over the country. The differences of people's demands may be the reason of this variations. Theories of dissatisfaction and relative deprivation may be cause of this political change. To understand it, one may go through the socio-economic and political aspects. These aspects are overlapping in feature. Thus it is not justified to conclude by the segmented examination. It should keep in mind that on the basis of these circumstances, the results are compelled to be tentative and not permanent.

The development of political situation since the First General elections may justify its position. In the first general election, no other party except the Congress party was able to gain majority and even failed to play an alternative role beside the Congress Party. Since the Telengana Movement, the demand of re-organisation of states

generated all over the country. As a result, some new states like, Gujrat, Maharastra, Karnataka, Andhra Pradesh were brought into existence by the states Re-organisation Commission with a purpose to full restructure of Indian Federal System. The emergence of some new states brought huge changes regarding the powers among the centre and the states. At the same time, it also created some new aspects in the arrangement of the inner boundaries of multilingual India in few important matters. For this reason, the States Re-organisation Commission ignored the separation of Uttar Pradesh into two small states.

On the other hand, the case of total North East and Assam become critical and complex. The two main communities as Bengalis and Assamese were the main matters. Later on, some other issues like cultural identity or linguistic identity also added with this. The migration of Muslims from outside the state was also crucial matters. Actually, the geographical situation mainly of Assam and other areas of North East became the centre point. During the time between 194 7 to 1966, due to the one party dominance, the federal government of India did not face any serious threat from the functional as well as structural points. In this phase, continuous industrialization was taken through the announcement of important economic programmes. For this, the youth generation got more chances to be employed. It is interesting to observe these economic programmes or policies controlled by the bourgeoisie of Indian national industries were favoured by them because it gave them the chances to accumulate capital, expand industries and production-diversification.[28]

V

The Congress Party during the Fourth General Election became the eye-witness of forming the non-Congress Government in local or regional area. Then it can be said that the concept of regionalization in India had been started during the fourth General Elections. New socio-

economic middle class emerged. They started to influence the policy making process for their own interest. The State Governments came to the surface of the national federal system and started to bargain about their demands. All the regional parties failed to provide equal amount of influence on the national political system. Among them some had great influence like DMK in Tamil Nadu came as the strongest political party. In the state level politics, it played very significant role. But split also took within this party and as a result AIDMK emerged as a new party. DMK opposed the imposing Hindi as a National Language. Then it easily could win the love of the people of Tamil Speaking.

Besides this, West Bengal, Tripura, Kerala had not the same picture. In these states the left political parties have played the significant role. Congress party defeated in these states for many reasons like the party factionalism, weak economic policies, ignorance in the matters of land reforms, rural development. These neglected subjects of the Congress party were highlighted by the left political parties. Though in 1964, Communist Party of India (Marxist) became stronger than the CPI. In the West Bengal's political history, left politics had not been uniform. Naxalite Movement became the turning point in this system. Though the Naxalite Movement failed to continue its significant role. The Radical left politics emphasized on the restructuring of agriculture of the rural economy. But some internal contradictions also took place within the left political parties in West Bengal for what this era became unable to provide the important goods to the people of West Bengal.

Performance of the Left Parties in different States.

Party	Year	1989			1991			1996			1998			1999		
	State	C/W	F	%	C/W	F	%	C/W	F	%	C/W	F	%	C/W	F	%
CPI	Andhra Pradesh	2/0	0	1.96	2/1	0	1.87	3/2	0	2.4	3/2	0	2.6	6/0	4	1.3
	Bihar	12/4	0	7.93	8/8	0	7.55	7/3	0	5.1	15/0	11	3.1	9/0	7	2.7
	Kerala	3/0	0		4/0	0	8.12		0	8.2	4/2	0	1.1	1/0	0	7.6
	Tamil Nadu	2/1	0	2.04	2/0	0	2.04	4/2	0	2.3	2/1	0	1.1	1/0	0	2.6
	Punjab	4/0	1						3	1.6	1/0	0	3.4	1/1	0	3.7
	West Bengal	3/3	0	3.9	3/3	0	3.9	2/2	0	3.8	3/3	0	3.6	3/3	0	3.5
	Total	49/12	20	2.37	42/14	16	2.43	3/0	12	2.0	58/9	40	1.75	54/4	39	1.5
CPM	Andhra	2/0	0	2.4	2/1	0	2.43	3/3	0	2.9	3/0	0	2.9	7/0	6	1.4
	Assam				2/1	0	4.73	43/12	0	3.9	2/0	1	0.4	2/0	1	1.8
	Bihar	3/1	1	1.4	1/1	0	1.41	3/1	2	0.8	4/0	4	2.1	2/1	1	1.0
	Kerala	10/2	0	22.9	9/3	0	20.7	2/1	0	21.2	9/6	0	0.6	12/8	0	27.9
	Tamil Nadu	4/0	0	3.66	3/0	0	2.48	3/0	7	1.82	2/0	1		2/1	0	2.4
	Tripura	2/0	0	41.7	3/0	3	6.54	9/5	0	52.4	2/2	0	48.8	2/2	5	56.2
	West Bengal	31/27	0	39.4	30/27	0	34.2	7/0	0	36.7	32/24	0		32/20	0	35.6
	Punjab	3/0	1	3.0		0		7/2	2	1.8	3/0	1	35.4	1/0	0	2.2
	Total	64/35	5	6.51	60.35	7	6.1	2/2			71.32	20		72.33	20	5.4
FBL	Bihar				4/0	0	0.1	31/23			1/0	1	1.1	3/0	3	0.03
	Punjab							3/0					5.2	1/0	1	0.01
	Tamil Nadu							75.32					0.02	8/0	8	0.23
	West Bengal	3/3	0	3.95	3/3	0	3.65		0	3.42	3/2			3/2	0	0.45
	Total	8/3	5	0.41	19/3	16	0.41		0	0.03	4/2	1		15/2	12	0.35
RSP	Bihar												3.3	1/0	1	0
	West Bengal	4/4	0	4.96	4/4	0	4.5	3/3	0	4.76	4/4	0	0.33	4/3	0	4.25
	Kerala	1/0	0	2.41	1/0	0		3/3			1/1	0				
	Total	6/4	1	0.62	9/4	4	0.63		0	0.5	5/1		4.48	5/3	1	0.41

Note: C/W : Seats contested/won

F: Seats deposits forfeited

% : Percentage of vote share in the state

Cited in Ravi Bhatia "A decade of Parliamentary Elections in Indian" The Indian Journal of Political Science, Vol. 62, No. 4, Dec 2001

During this era, Indian National Congress had to face problems to establish a progressive socialist Political Platform. In 1969 the important split within Congress took placed. For this Mrs. Indira Gandhi introduced some significant steps as like social, economic and radical transformation. During the mid-term poll in 1971, the congress had tried to complete the promises which were made in the manifesto of election. At the same time, many constitutional amendments also

were passed which indirectly helped the ruling party. The Congress (R) introduced some groups like syndicalist.

The changes at the national level also influenced to a large extent the politics of the states. Like the national level split of Congress, in the state politics, the congress party had to face split. Then by changing the leadership format, the congress party sought to get again the supreme political powers in the states. The Rajamanner Commission by the Tamil Nadu Government under DMK also one step ahead of the development. This commission was form to restructure the relations between the states and the centre. But nothing solid efforts came out from its recommendations. At the same time it is noted that attempts were made for the development of political, economic and financial aspects between the centre states relations.

VI

Another development took place when the National Emergency was declared during the time 1975-77. It may be regarded as an important step from the political view point. The discontent among the agitations on national scale and the constituent units of Indian federal system was result of such situation. Theoretically speaking, the congress party when faced its decline came to make out serious threats to form again its authority. Indirectly this event helped to make strong the other political parties role. The Emergency declaration came out with many issues. The success of the Green Revolution in India. Provided the sphere to emerge the powerful political forces. These powerful forces like rural rich part started to pressure tremendously on the power sharing matter. Though the Congress tried its best to satisfy these segments but failed. On the other side, the industrialization on the basis of agricultural surplus. Indirectly the agricultural capital and industrial capital segments demanded a new balance because they both became important in the economy of India.

The opposition politics also added a new aspect of development. The Congress believed on the secular belief and became success to utilize the Muslim votes in several elections. But the poor and the Muslim community had been started to oppress by religious, economic forces. They looked upon to congress as their protector, but the party failed to fill up their hopes due to internal conflicts. It could be happened both in the congress and non left local parties. There events may help to understand the ups and downs of the lift politics in West Bengal, Kerala and Tripura. Thus the declaration of emergency became the witness of further development of Indian federal system. This emergency period provided the chance to the other parties to come together against the congress authority in the centre. As a result the congress defeated in 1977 elections where people also gave the other political parties to form the government. Through these changes, a great demand raised in respect to develop the centre state relation.

VII

The Janata Government as the first non-Congress government is the Indian history became the important turning point. It may be suggested, the impact of 1967 political process also influenced the process of development in 1977. In this year, anti-Congress government was formed and broke down the 'congress system'. In the national level, the coalition politics was welcomed along with some states. The regional parties became the controlling factors in the mainstream politics. It is also interesting to notice that the congress party in 1980 became able to regain its authority. But at the same time, the support level of congress party also came to decline. The party failed to maintained its authority. Moreover the local political parties demanded more power in the financial subjects.

Fluctuations of BJP and INC in some states

State	Year	1989		1991		1996		1998		1999	
	Party	C/W	%	C/W	%	C/W	%	C/W	%	C/W	%
Andhra Pradesh	BJP	2/0	2.0	41/1	9.6	39/0	4.0	38/0	18.3	8/7	9.9
	INC	42/35	51.0	42/25	45.5	42/22	39.7	42/12	38.5	42/5	42.8
Assam	BJP	-	-	8/2	8.6	14/1	15.0	14/1	24.5	12/2	29.8
	INC	-	-	14/8	28.5	14/5	31.6	13/10	39.0	14/10	38.4
Bihar	BJP	25/9	13.0	51/5	16.0	32/18	20.5	32/20	24.0	29/23	23.0
	INC	54/4	28.0	52/1	24.2	54/2	11.3	21/5	7.3	16/4	8.8
Delhi	BJP	5/4	26.2	7/5	40.2	7/5	49.7	7/6	50.8	7/7	51.8
	INC	7/2	43.4	7/2	39.6	7/2	37.3	7/1	42.6	7/0	42.0
Gujrat	BJP	12/12	30.5	26/20	50.4	26/16		26/19	48.3	26/20	52.5
	INC	26/3	37.2	16/5	29.0	26/10	48.5	25/7	36.5	26/6	45.4
Haryana	BJP	2/0	8.3	10/0	10.2	6/4	38.7	6/11	18.9	5/5	29.2
	INC	10/4	46.2	10/9	37.2	10/2	19.7	10/3	26.0	10/0	34.9
Arunachal Pradesh	BJP	4/3	45.3	4/2	42.8	4/0	21.9	4/3	51.4	3/3	46.3
	INC	4/1	42.0	4/2	46.2	4/4	39.6	4/1	41.9	4/0	39.5
J&K	BJP	2/0	7.2	-	-	5/1	54.3	6/2	28.6	6/2	31.6
	INC	3/2	39.0	-	-	6/4	18.8	6/1	19.2	5/0	17.8
Karnataka	BJP	5/0	2.6	28/4	28.8	28/6	27.5	18/13	27.0	19/7	27.2
	INC	28/27	48.9	28/23	42.1	28/5	24.6	28/9	36.2	28/18	45.4
Kerala	BJP	20/0	4.5	19/0	4.6	18/0	30.3	20/0	8.0	14/0	6.6
	INC	17/14	41.7	16/13	38.8	17/7	1.2	17/8	38.7	17/8	27.9
Madhya Pradesh	BJP	33/27	39.7	10/12	41.9	39/27	38.0	40/30	45.7	40/29	46.6
	INC	40/8	37.7	40/27	45.1	33/8	41.3	40/10	39.4	40/11	43.9
Maharashtra	BJP	33/10	23.7	48/38	10.1	25/18	30.9	25/4	22.5	26/13	21.2
	INC	48/28	45.4	31/5	14.4	48/15	21.4	41/33	43.6	42/10	29.7
Orissa	BJP	6/0	1.3	21/0	0.5	20/0	34.4	9/7	11.2	9/9	24.6
	INC	21/3	38.4	21/13	44.1	21/16	11.7	21/5	11.11	20/2	36.9
Punjab	BJP	3/0	4.2	10	-	6/0	44.9	3/3	11.7	3/1	9.2
	INC	13/2	26.5	0/11	-	13/2	6.0	8/0	25.9	11/8	38.4
Rajasthan	BJP	17/13	29.7	25/12	40.9	25/12	35.1	25/5	41.1	11/16	47.2
	INC	25/0	37.0	25/13	44.0	25/12	42.4	25/18	44.5	11/4	45.1
Tamil Nadu	BJP	3/0	0.3	15/0	1.7	37/0	40.5	5/3	6.9	11/1	7.1
	INC	28/27	39.9	28/28	43.6	29/0	0.9	35/0	4.8	11/2	11.1
U.P.	BJP	31/8	7.9	84/51	32.8	83/52	18.3	43/57	26.5	11/20	27.6
	INC	84/15	31.8	82/5	18.9	85/5	33.5	76/0	6.0	11/10	14.7
W.B.	BJP	19/0	1.7	42/0	11.7	42/0	5.8	14/1	10.2	11/12	11.1
	INC	41/4	41.4	41/5	36.2	42/9	2.6	39/1	15.2	11/3	13.3

Cited in Ravi Bhatia "A decade of Parliamentary Elections m Ind1a Mapping of trends The India Journal of Political Science, Vol. 62 No-4, December, 2001

Along with this event, the Planning Commission and the National Development Council also started to play serious role in the formulation of plan, mobilization and distribution of resources. Through the chief Ministers in the National Development council, the states started to perform decisive role. Then the demand raised to evaluate and restructure totally the centre state relations.

Many units of state administration began to demand the political autonomy which can be seen in Punjab, Jammu and Kashmir and in

the North Eastern States. During these development the terrorist and insurgent movements also have speared in many parts of India. The short time of Janata government brought about news forces like foreign and multinational capital which basically empowered the interest of national capitalist segments. They started to play significant role in industrial sector. They believed that through these rectors, the national industrial and agricultural sectors. Were developed by the foreign capital.

Moreover, one new dimensions was added in Indian Politics when under the leadership of Mrs. Indira Gandhi, the Congress Party again gained it power. Generally problems raised within the economic system. It can be described as a matter for direct controlling of the authority. As a result, attempts were made to search the stability on the political and social fronts. These attempts relations. It is right to say that the coalition between the industrial and agricultural segments was not understood by the congress. Though Rajib Gandhi Government tried to some extent to do better relationship between centre and states but failed.

It may not be wrong to suggest that the problems of agricultural bourgeoisie were same as earlier ware. The agricultural bourgeoisie along with the industrial bourgeoisie started to spread their impact which become the reason for the government to take a new approach to solve these serious problems. During the government of Mr. Rajib Gandhi, attempts were adopted to work the crisis which was originated from the states having non congress government. The congress initially also made strategies to regain their electoral supremacy. But these tailed to regime. The Dalit Majdoor Kisan Party (D.M.K.P) already emerged as a threat to the established political system. Maharashtra and Punjab, these two states also become the witness of more or less same picture. In Punjab to manage these issues, Rajib Gandhi and the religious leader Longowal came to a place accord which was liked by all

the people. But it become enable to full fill the interest of Punjab's people or the central government.

On the other side, the problem of total north east states seemed more complex the problems were ethnic in nature an its solutions were in the political aspects. Moreover, the students of Assam made the movements more critically. Assam Gana Parisad, the local party could use this situation for their own interest. Under its leadership, a government was made. Indirectly the federal balance had been suffered many times due to the failure of the central government understanding and correctly assessing their demands. In India which is a vast country with socio-economic diverse, these challenges can't be solved only through the structural readjustment. There are also necessary to take approaches to carry on these multi to carry on these multi dimensional issues. These events can provide greater position to analysis of the dynamics of Indian political process.

VIII

Thus the total discussion can be put in the understanding of the interaction between local on regional organizational mechanism and structures under the constitutional frame and the extra political challenges. It also focused the qualitative changes in the inner aspects of local and national political parties. The nature of leadership matters are regarded as the primary source of authority in the politics of India. As the head of the government, Nehru, Indira Gandhi, Lal Bahadur Shastri even Rajib Gandhi Provided their own styles of governing. On the weak leadership people replace the governmental frame in many cases.

These events can help to understand the dynamics of Indian federal system. Through the end of the one party dominance many issues come to the surface. There is one matter like as to provide opportunity to the other political parties in the formation of the

governments in the centre as well as regional levels. The 1967 Fourth General Election may be regarded as the first step to decline the congress authority. Indirectly it emerges as the starting of the coalition politics in India. It is also importance to note the role of different forces playing significant role in the coalition government which could not see earlier.

Which opportunity is gained by the regional political parties, is fully utilized by them to achieve their own interests. They for the first time started to perform significant role in both the national as well as regional politics. The interaction of different forces became the cause of the growth of regional parties. So, it is wrong and also hard to describe about only one force which totally was responsible for this. This development must be noted "merely as a consequence or a by product of regionalism rather as a phenomenon in its own right."[29]

Notes and References:

1) For details the following studies may be referred: Ashok Mitra, Terms of Trade in India's Economic Development (London: F. Cass, 1976); A.K. Bagchi, Private Investment in India: 1900-1939 (Cambridge: Cambridge University Press, 1972); and Finance Frankel; India's Political Economy 194 7-1977 (Princeton: Princeton University Press, 1977).

2) T.V. Sathyamurthy, 'State Power and Social Conflicts in India', Mainstream, Vol.21, No.38, 23 June 1983, pp.l-8; 'Piloting a Nation into the Twenty First Century: The Changing Context of State Power and Class Contradiction in India', Economic and Political Weekly, 20 July 1985): 29, pp.1218-22; 'India Since Independence: A Research Note on the Development of the Power of the Indian State', South Asia Research, Vo1.6, No.1, May 1986, pp.39-50.

3) Sathyamurthy, T.V., 'Centre-State Relations: Southern Chief Minister Meeting', EPW, No.l8, 1983, pp.756-79

4) Duchacek, Comparative Federalism. The Territorial Dimension of Politics, Holt, Rinehard and Winston, New York, 1970, p.304.

5) Karl W. Deutsch, 'Social Mobilisation and Political Development', American Political Science Review, September 1961, p.501.

6) States Reorganisation Commission Reports, 1955.

7) This point has been further elaborated in Sandeep Shastri, 'Indian Federalism and National Integration: a Critique', The Indian Journal of Political Science, April-June, 1990, Page-176.

8) H. Tinker, India and Pakistan, Praeger, New York, 1962, Page-134. In this connection, See N.D. Palmer, The Indian Political System, Boston, 1961, p.l 08 who has remarked that

reorganization of States was "The Strength of regional as against national loyalties."

9) For details, See W.H. Morris-Jones, India, London; 1964, p.141.

10) R.L. Watts, 'Recent Trends in Federal Economic Policy and Finance in the Commonwealth', paper presented at the Sixth World Congress of the International Political Science Association, Geneva, 1964, p.22.

11) For details, see, Ashok Chanda, Federalism in India, George Allen and Unwin, London, 1965, p.289 and also Hanson A.H. and D. Janet, India's Democracy, Vikash, Delhi, 1972, p.116.

12) Constituent Assembly Debates, Vol.XI, No.II, Page-976. Also see M.J.C. Vile, The Structure of American Federalism, London, 1961, p.197 and A.H. Birch, Federalism, Finance and Social Legislation, Oxford, 1955, pp.290-91.

13) Duchaeek, op.cit., pp.317-318.

14) G. Morton, 'The Federal System in the American Assembly: Goals for Americans, Prentice Hall, N.J., 1960, p.265.

15) K. Santhanam, Union-State Relations in India, Delhi; 1960, p.56.

16) A.R.C. Report of the Study Team on Centre - State Relationships, 1968, Vol.1, p.16.

17) S.G. Barve, "Why Congress" in R.G. Bhatkal, ed., Political Alternatives in India, Delhi, 1966, p.26.

18) Election Manifesto, 1971.

19) C.P.I.: Six Point Programme, 8th Party Congress, 1968.

20) Election Manifesto, 1971.

21) E.M.S. Namboodiripad, India under the Congress Rule, New Delhi, 1967, p.204.

22) Policy Statement adopted by the Second National Conference of the Praja Socialist Party held at Gaya, 26-30 December, 1955.

23) Election Manifesto, 1971.

24) Ibid.

25) Report of the Study Team on Centre State Relationships, ARC, 1968, p.1

26) K. Santhanam, 'Melting the Ice Berg', in Anjon Kumar Banerjee, ed., The Fourth General Elections in India; An Analysis, Delhi, 1967, p.14.

27) On the point of Defection it was stated: "While it is difficult to really establish any one cogent pattern in the part 1967 political defection, it may be noted that their sources have more often been situational and motivational rather than ideological and structural" - S.C. Kashyap, Politics and Defection; a study of state politics in India, 1969, p.35.

28) Pramit Chaudhuri, The Indian Economy: Poverty and Development (London: Crosby Lockwood Staples, 1979), especially pp.1 7-7 5.

29) K.R. Bombwall "Regional Political Parties in India" in Bhatnagar S. and Kumar P. (ed.) Regional Political Parties in India. Ess Ess Publications, New Delhi, 1988.

CHAPTER – VI

CHANGING NATURE OF FEDERAL GOVERNANCE AND CONSTITUTIONAL RESPONSES

I

The initial studies on Indian federalism has been largely shaped by the ideas of A.V. Dicey and K.C. Wheare. It may be noted that both them scholars analysed the issue of federal structure from institutional and juridical perspectives. The Indian federal system has been examined under different names such a horizontal arrangement of powers, a new contrivance designed to meet special requirements of the Indian society. Bomberal in his Foundations of Indian Federalism has raised doubts about the very nature of Indian federalism.[1]

David Nice defines federalism as a system where two levels of governance can function simultaneously – the national level and the 'sub-national' level.[2]

Whatever may be the types of description, there is a common belief that federalism all over the world is undergoing changes both structurally and functionally. It is now a matter of debate whether the nature of Indian federalism can be fitted into K.C. Wheare's description of it being 'a quasi federal' in nature where the centre is more powerful than the states. Structurally, from the constitutional perspective, it might be correct but functionally from the perspectives of contemporary political process, it exhibits somewhat different picture.

Historically viewed, India's adoption of federalism at the time of independence was conditioned by several factors. The legacy of the Government Act., 1935 had been there. Even in the Act 1919, the idea of provincialism found a dominant place. Moreover, the vast and complex nature of the Indian polity convinced the national leaders that only under a federal scheme, different sections of people could live together. It was not administratively possible for one central government to administer the whole country.

It is rightly held that a federal system cannot be understood without a reference to the values which forms the core of constitutionalism. It may be mentioned that the Constitution embodies those cherished values which guided the freedom fighters. Indian nationalist spirit has been largely shaped by the feeling of anti-colonial power; the aim was to achieve freedom in all senses. The central point of analysis, in this connection, should be is there any conflict between national values (ends) and sub-national values (ends). If there is any, what will be the method of making reconciliation between these two? To what extent, constitutional arrangements can be useful in doing the best?

Thus, it will not be proper to find fault only with the federal arrangements. The constitution provides, as has been discussed in the preceding chapters enough scope for adjusting or altering the present scheme of things so that unity and harmony can be made to prevail.

One may refer to the prevailing federal system of the USA which is the result of development and expansion of federal authority over two centuries. The primary forces behind such a long process of evolution have been the effect of a number of crises. It may not be wrong to suggest that the enormous power of federal authority in the USA is the result of the changes in the nature of international politics – emergence of the USA as the only super-power, creating a uni-polar system. Political realities, both at the domestic and international front have contributed to this growth of federal authority. Quite naturally, mere text book type discussion and description of federal arrangements will not be sufficient to understand the interactions of inner forces well below the surface level political process.

So far as the Indian perspective in concerned, the nature of Indian federalism can be examined against the backdrop of national integration. It is admitted that the integrity and sovereignty of India must emerge from a conscious effort towards harmonization of the

distinct linguistic, ethnic and cultural entities which constitute the nation. Thus, national integration is -

"..... the breakdown of fragmented group existence based on particularistic loyalties and its suppression by generalist loyalties to the total aggregation of the political community in a nation."[3]

Thus national integration can be achieved, it is believed, through a system where all segments of the society can take part in the governing process, based on decentralization of power at all levels. Thus, national integration signifies:

"....cohesion but no fusion, unity but not uniformity, reconciliation but not merger, agglomeration but not assimilation, solidarity but no regimentation of the discrete segments of the people constituting a political community/state."[4]

One can find the same feeling in the words of Dr. B.R. Ambedkar in which he laid stress on national unity:

"...though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation not being the result of an agreement, no state has a right to secede from it. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source..... The Drafting Committee thought that it is better to make it clear at the outset rather than leave it to speculation."[5]

II

It has been correctly observed that the study of Indian federalism has been basically shaped by the juridical approach adopted by scholars like A.V. Dicey and K.C. Wheare. In many cases, primary attention has been placed on the structural aspects of the federal system. But to understand the nature and content of federal dynamics,

one should go beyond such examination to find out the forces and factors that operate at the level of federal functioning scheme. Scholars have tried to express the nature of federalism in India in different terms. While D.D. Basu holds that the Indian Constitution is neither federal nor purely unitary but a combination of both. Bosbwak expressed in Foundations of Federation doubts about the federal character of the Indian federation. Some members of the Constituent Assembly, drawing examples from other political systems, opined that federalism involves division of sovereign power between the central and local governments.

David Nice defines federalism as a system of governance that includes a national government and at least one level of sub-national governments.[6] There is mutual relationship between these levels of governance and hence, the power of decision-making cannot be absolute. One segment may be influenced by the other. But in practice, a federal system gives each level the ability to make decisions without the approval (formal or informal) of the other level.[7]

Besides this, the concept of cooperative federalism (or popularly known as marble cake federalism) proceeds on the assumption that cooperation between the central and constitutional units is an essential factor for smooth functioning of the federation. On the other hand, is competitive model of federation holds that there will always be some form of competition for power-sharing between the central and provincial units.

At this point, a new concept of federalism demands detailed discussion. The term “creative federalism” convinced by President Johnson of the USA exhibits a different made of federal dynamics. It may be recalled that with the help of the Congress, he passed the Inter-governmental Cooperation Act, 1968 as well as the Civil Rights Acvts. He also signed more than sixty bills on education providing educational group even though education had not been a federal responsibility. The

expansion of the role of the federal government has also witnessed a corresponding expansion of the role of the state governments as most of the federal programmes have to be implemented by the states.[8]

It may not be wrong to suggest that India opted for federal system in consideration of three reasons:

1) The basic reference to such model can be traced in the Government of India Act, 1935.
2) There was federal character of the leading federal organization organized into legitimate units.
3) The large size of the country demanded some form of decentralized system of governance.

From a different perspective, contemporary literature on Indian federalism points to the fact that the nature of Indian Federalism cannot be properly appreciated unless the difference between nationalism and sub-nationalism is properly understood. Thus, a federal system cannot be analysed unless the values underlying the system are analysed. India's national values have been shaped by the anti-colonial struggle which may be outlined as follows:

1. In the first place, there is the recognition of national integration as the basic ingredient of the federal governance.
2. There is the urgent need for the rapid economic development of the country which calls for a nation-wide participation of all the stake holders.
3. The need for science and technology along with the spread of higher education is well recognized.
4. There should be a relentless fight against poverty and social injustice.
5. There is the deep appreciation that India is not a mere country but a great civilization with deep rooted values of democracy and egalitarianism.

6. There is the faith the state should follow the principle of regional toleration – a basic foundational principle of secularism.
7. There is a belief that national integration can best be achieved through a sound linguistic policy which would satisfy all languages in a greater way.[9]

It is generally believed that in majority of cases, sub-national values do not conflict with national values. There may be instances of regional demands all over the country but most of these demands can be accommodated within the broad national framework. It is true that there are imbalances in development and disputes do occur over these inner.[9]

At this point, it may be mentioned that the American federal experience is different from that of the India's because language is not a issue in that system. Again religion is also not the major issue but race plays an important role in it. In India, then issues have been resolved through the broad concept of secularism both as an idea and a practical means for achieving national integration.

III

In order to situate the problem of India's federal governance within a broad frame, attempts have been made by the scholars to develop an acceptable and working model for the same. The slogan "locals know the best and choice be left to them' seems to be basic principle behind the creation of a federal arrangement. It is held that centralization in the matter of governance in public affairs has been an over-assertive tendency. At the same time, too much importance on economic dimension of both centralization and decentralization may not be an adequate those of explanation of the federal arrangement. Thus, the issue can be analysed from different perspectives.

1. Nature and categories of Federal states.
2. Reasons behind historical drift towards decentralization.

3. Advantages and Disadvantages of both centralization and centralization.

In this connection, a reference may be made to an article under the title "Installation of Federal authority within the Indian Political System"[11] by S.L. Verma in which he has tried to locate the federal authority within a general backdrop of both constitutional frame and the on-going political process. His main argument begins with the concept of a negative aspect of the Indian federation which he calls "betrayal of federalism". It is true that the scheme of federalism in India does not conform to the ideal type of federation and has within it a number of features which are not, strictly speaking, federal in nature. But the entire idea of federalism as a pattern and a mechanism of governance should be contextualized within the fixed time. Frame when such an experiement was undertaken. Considering the geographical, economic, political and social formation, it was thought to be the only method through which the whole country could be brought under a common administrative framework.

Verma's arguments in this paper touches upon issues like dominating parliamentary system, the nature and extent of the emergency provisions under the Constitution, the issue of over centralization, areas of conflict between the centre and the states and over all, the nature and dimensions of India's party system.[12]

From another perspective the nature and working of the Indian federal system has been analysed by Md. Murtaza Khan in his paper "Structural Stability in Indian Constitutionalism: A study of Judicial Review.[13] He has tried to point out a number of issues involved in the power of judicial review which have their far reaching impact on the working of the Indian federal system. He has identified as many as seven factors in this respect.[14] In this paper, he has explained the issue of judicial review in the context of constitutional amendments.

He begins his analysis with a reference to the Constitution (First Amendment) Act, 1951 which was passed to do away with the decisions of the Patna High Court which declared the Zamindary Abolition and the Land Reforms Act as unconstitutional. The First Amendment Act introduced Clause 4 in Article 15 enabling the state to make special provision for the benefits of the socially and economically backward classes to overrule the decisions of the Supreme Court in the State of Madras Vs. Champakam (1951, SCR 525).

The Fourth Amendment Act 1955 was passed to negate the Supreme Court's decision in Bela Banerjee's case wherein it was held that the term 'compensation' indicates fall and equivalent of cash for the property deprived and the question of compensation was justiciable.[15] The Act inserted clause 2 in Art.31 to set aside the Supreme Court judgement in Subodh Gopal Vs. The State of West Bengal (1954, SCR 589). It also referred to the case of Saghir Ahmed in this context.[16] In this connection, references can be made to Kerala Agrarian Reforms Act and the Madras Land Reforms Act which were challenged before the Supreme Court. In a similar context, the Seventh Amendment Act of 1964 was challenged in Sajjan Singh case and the Supreme Court upheld the Act.

It may be recalled that until the Golaknath decision in 1967, the Supreme Court was of the opinion that Parliament can amend any portion of the Constitution by following the procedure laid down in Art. 368 and Art.13(2) has the coverage of this power of amendment. But the interpretation of Art.13(2) in the Golaknath case altered this power equation as the judgement clearly state that the word "law" used in Art.13(2) indicates only 'ordinary law' and not the "constituent law" that is amendment.

This decision stood in the way of Parliament's power to amend Fundamental Rights, especially those Fundamental Rights to Property and as a result, a spate of constitutional amendments with far reaching

consequences were passed. Of all these amendments, the 24th, 25th and 29th Amendment Acts deserve special mentioning. The nature and scope of Art. 368 came under amendments. In clear terms, it stood as an amendment under Art. 368 will not come under the narrow scope of Art. 13(2). The validity or otherwise of a Constitution Amendment Act shall not be open to question on the ground that it takes away or affects the fundamental right. The 25th Amendment Act was passed in the wake of the decision by the Supreme Court in R.C. Cooper case when it was held that the Banking Companies Act violated the guarantee of compensation under Art.31.

These Amendments Acts were challenged is Keshavanand Bharati case (Popularly known as the Fundamental Rights case). It was held that an amendment passed by the Parliament is not law writing the meaning of Art.13.

With a view to overcoming the problem created in the decision of the Keshavananda Bharati Case, clauses 4 and 5 were inserted in Art. 368 by Forty Second Amendment Act, 1976. But these were struck down by the Supreme Court in Minerva Mills Case. The supreme Court held: “Since the Constitution has conferred a limited power on the Parliament, the Parliament cannot under the exercise of that limited power enlarge that very power into an absolute power. Indeed a limited amending power is one of the basic features of our Constitution and therefore the limitations on that power cannot be destroyed. Parliament cannot under Article 368 expand the power so as to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features.”[17]

The process which started with the passing of the Constitution (First Amendment) Act, 1951 found its culmination in the Constitution (Forty-second Amendment) Act, 1976 which has been described as "a product of a strange political situation".[18]

It may be recalled that the Congress President, on February 26, 1976, appointed a Committee to have a second look at the Constitution and to find out the important loopholes which had to be plugged through constitutional amendment. The Committee which was composed of twelve members, included, among others, Sardar Swaran Singh (Chairman), H. R. Gokhale and S. S. Ray. It has been observed that the operation of internal emergency and the imprisonment of a number of opposition leaders', provided "an excellent opportunity for the ruling party to push through the wide ranging 42nd Amendment, perhaps in the shortest time that was possible."[19]

On November 2, 1976, the Lok Sabha, by 336 to 4, passed the Constitution (44th, renumbered 42nd Amendment) Bill.

The Constitution (Forty-second Amendment) Act is so comprehensive and wide-ranging that it has been called "a mini-Constitution".[20] The Constitution (42nd Amendment) Act, 1976, has amended the Indian Constitution in some important areas. The Act contains as many as 59 clauses. In the first place, the Preamble has been amended. Secondly, the Union Government has been given wide powers to deal with 'anti-national activities'. Thirdly, the Directive Principles have been accorded a higher position than the Fundamental Rights. Fourthly, Art. 368 has been further amended to keep amendments outside the purview of judicial scrutiny. Fifthly, it has been laid down that the central laws can be declared unconstitutional only by the Supreme Court and the State Laws by the respective High Courts, and for invalidating a law, two-thirds majority of the Constitution Bench will be necessary. The Constitution Bench of the Supreme Court must consist of not less than seven Judges and the High Court Bench of not less than five Judges. In case a High Court has less than five Judges, the verdict must be unanimous Sixthly, High Courts 'power of issuing writs has been severely curtailed. Seventhly, the entire jurisdiction of the Civil Court, including the High Courts and

the Supreme Court has been proposed to be taken away and conferred on the administrative tribunals. Eighthly, the High Courts' supervisory jurisdiction under Arr. 227 over the administrative tribunals has been taken away. Lastly, "education" has been transferred to the list from the State List.

Since the Constitution (Forty-second Amendment) Act, 1976, amended a number of articles of the Constitution, it is proposed to divide the entire amended Act into several sections to find out the nature and implications of the changes brought about by the Act.

II. Changes in the Preamble: their implications.

In this section, before a discussion is made of the importance of incorporating a Preamble to a Constitution, reference should be made to the observation of Prof. Ernest Barker who, in his Principles of Social and Political Theory, has included the Preamble to the Indian Constitution after the Table of Contents. Regarding this inclusion, he has observed, ''It seemed to me, when I read it, to state in a brief and pithy form, the argument of much of the book, and it may accordingly, serve as a key-note. I am the more moved to quote it because I am proud that the People of India should begin their independent life by subscribing to the Principles of a political tradition which we, in the west, call Western; but which is now something more than Western."

It is very often asked; what is the importance of the Preamble to a Constitution in so far as it is agreed that the Preamble cannel be treated as a part of the Constitution? It has been observed by an authority[21] on the subject that the Preamble of a Statute "has been said to be a good means of finding out its meaning, and as it were, a key to the understanding of it; and, as it usually states, or professes to state, the general object and intention of the legislature in passing the enactment, it may legitimately be consulted to solve any ambiguity or to the meaning of words, which have more than one, or to keep the effect

of the Act within its real scope, whenever the enacting part is, in any of these respects open to doubt." He also added that the Preamble ''cannot either restrict or extend the enacting part (of a Statute), when the language and the object and the scope of the Act are open to doubt."[22]

In a similar way, Justice Story observed *'Inter alia'* :[23]

"The Importance of examining the Preamble, for the purpose of expounding the language of a Statute, has been long felt and universally conceded in all juridical discussions. It is an admitted maxim in the ordinary course of the administration of justice, that the Preamble of a Statute is a key to open the mind of the makers, as to the mischiefs which are to be remedied and the objects which are to be accomplished by the provisions of the Statute .... It is properly resorted to where doubts or ambiguities arise upon the words of the enacting part; for If they are clear and unambiguous, there seems little room for interpretation, except in cases leading to an obvious absurdity, or to a direct overthrow of the intention expressed in the Preamble.

''There does not seem any reason why in a fundamental law or constitution of government, an equal attention should not be given to the attention of the framers, as stated in the Preamble. And, accordingly, we find that it has been constantly referred to by statesmen and jurists to aid them in the exposition of its provisions."

On the question whether the Preamble to a Statute can confer any power on any part of the government, he further observed[24] in the context of the American Constitution, that "the preamble never can be resorted to enlarge the powers confided to the general government or any of its departments ..... It cannot confer any power per se; it can never amount, by implication, to an enlargement of any power expressly given. It can never be the legitimate source of any implied power, when otherwise withdrawn from the Constitution. Its true office is to expound the nature and extent and application of the powers

actually conferred by the Constitution, and not substantively to create them."

The Preamble to the Constitution of India, as it stands today, is founded on the Objectives Resolution which was moved in the Constituent Assembly by Jawaharlal Nehru on 13th December, 1946 and adopted by it on 22nd January, 1947 which embodied the following principles :

"(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance of Constitution ;

(2) wherein 1 the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be c0nst1tuted into the Independent Sovereign India shall be a Union of them all; and

(3) wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the· Constitution, shall possess and retain the status of autonomous units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are Inherent or implied in the Union or resulting therefrom ; and

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

(5) wherein shall be guaranteed and secured to all the people of India justice, social, economic and political ; equality of status, of opportunity, and before the law ; freedom of thought, expression, belief,

faith, worship, vocation, association and action, subject to law and public morality ; and

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

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

(8) this ancient land attain its rightful and honoured place in the world peace and the welfare of mankind."

It is Interesting to note that nowhere in the Resolution stated above, the words like ''Socialist" or "Secular" have been used. Equally interesting is to note that the final shape of the Preamble adopted in the present constitution, has dropped the word "integrity" originally included in the Resolution.

The roots of shifting change of attitude of the leaders towards socialism and secularism could well be noticed as early as in 1945. Nehru wrote in that year : "In the context of society to-day, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy, and much less, economic democracy. Between these two conceptions conflict is inherent and only of them can survlve."[25]

The Congress Socialist Party's statement[26] that "there could be no socialism without democracy" was further strengthened by the observation of Jawaharlal Nehru in 1951 when he held:

"After all, the whole purpose of the Constitution, as proclaimed in the Directive Principles, is to move towards what I may call a *casteless*

and classless society. It may not have been said precisely in that way; but that is, I take it, its purpose, and anything that perpetuates the present social and economic inequalities is bad."[27] With regard to secularism, the Indian National Congress in 1931 Karachi Resolution made it clear that "the State shall observe neutrality in regard to all religion."

That the Government was keen in introducing a socialist society was clear in the statement made by Nehru in the National Development Council in 1954 when he said that he was aiming to frame a "socialistic picture of society." This was reflected in the Industrial Policy Resolution of the Government. The Cabinet, while reviewing the Industrial Policy Resolution 1948, decided that it "had to be· interpreted in terms of the socialistic objectives."[28] In late December, after two days of debate, the Lok Sabha passed a resolution which made the "socialist pattern" the official policy of the Government and a guide to the Planning Commission in drawing up the Second Plan.[29]

In conformity with declaration of the objective of "socialist pattern of society" in the Lok Sabha, the Congress, at its Avadi Session at Madras in January, 1955 passed a resolution which stated that "in order to realise the object of the Congress Constitution and to further the objectives stated in the Preamble and the Directive Principles of State Policy in the Constitution of India, planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of national wealth."[30]

With the adoption of the principle of 'Socialist Pattern of Society', public sector industries began to play dominant role. On April 30, 1956, just before the presentation of the Second Plan, the government brought before the Parliament an industrial policy resolution to modify already existing 1948 Industrial Resolution. The new Industrial Policy

Resolution, while expanding the scope of the public sector, increased 'the number of industries to be included in this category, from six to seventeen. Included in this industry such as iron and steel, machine tools and heavy electricals as well as mining fell under the jurisdiction of the public sector.

Though Congress· Party's commitment to socialism was welcomed in general, it did not escape criticism. The orthodox followers of Gandhi viewed the stand of the Congress as a radical departure from Gandhian concepts. To this criticism, Shriman Narayan was quoted to have replied:

'"Is not Gandhianism, socialism of a type? In the contents of the economic policy resolution, it has been made clear what socialism is. That means full employment, more production and economic and social justice for all. We have laid emphasis on small scale and cottage industries in order to provide fuller employment. According to our ideal the State will be encouraged on a co-operative basis. Therefore, the contents of the Economic Policy Resolution are in no way opposed or inconsistent with the Gandhian conception. On the other hand, we are moving close to the same ideal. Gandhiji's socialism was of the Sarvodaya type and that is what we are aiming at ours is not of the Western type."[31]

But in spite of the Government declaration for achieving socialistic pattern of society, sharp differences arose between the supporters of large-scale industry and those of cottage industry. To resolve the dispute, Prof. P. C. Mahalanobis, the then Chairman of the Indian Statistical Institute and adviser to the Planning Commission, drew up a "plan frame" which proposed the creation of a large basic industries sector as the foundation for further economic development and decentralized cottage industry sector to eradicate the problem of unemployment and provide a satisfactory flow of consumers goods.

The National Development Council approved the proposal in the first week of May, 1955, while the Working Committee of the Congress endorsed it only a few days later, in its meeting at Berhampur, Orissa. It was, for the first time; that the village and cottage industries secured an important place in the Congress Policy and accordingly, it found its place in the policy of the Second Plan.

The Second Plan may be taken as a synthesis between socialism and Sarvodaya - a compromise between the traditionalists and the modernists in the Congress Party. Although the Plan's emphasis was clearly on the development of large scale heavy industry, the decentralised sector was given sufficient encouragement to provide a workable consensus on the objectives of planning as exemplified in the Second Plan. That the Congress Party, while adopting this important decision, had ambivalent attitude and that it had to depend upon the government leadership, was clear from the observation made by the then Congress President, U. N. Dhebar. He said.[32] "Some of us are not clear. And we argue whether the social revolution should precede the economic revolution or the latter the former. Similarly, we are not clear about the methodology and the technique of the new struggle ... . And because we are not clear we turn to the Government and ultimately to Panditji."

A study of the Constituent Assembly Debates will make it abundantly clear that the Constitution was the result of a combined influence of Patel's conservation and Nehru's inclination towards socialism, though it was Fabianism. But It should be noted that over the year leading to the Constituent Assembly he changed from Marxist or a Laski style socialist to an empirical gradualist.[33] It was, perhaps, Patel's conservation that prevented Nehru from putting the "Socialism" in the objective Resolution. A beautiful summary has been given by a scholar on this issue when he says.[34] "The difference between Nehru and the other three members of the Oligarchy was one of approach, not

of basic belief. Nehru felt an emotional and intellectual obligation to attack India's social problems. Patel, Prasad and Azad, somewhat more conservative than Nehru, were committed only to effective government. Yet the attitudes of all four were rooted in humanitarian outlook. If the good of the many demanded the sacrifice of the few-as in Zamindari abolition it would be done."

To what extent, the Assembly members were really in favour of including socialism in the Constitution, has been summed in the following words :[35]

"What was of greatest importance to most Assembly members, however, was not that socialism be embodied in the Constitution, but that a democratic Constitution with a socialist bias be framed so as to allow the nation in the future to become as socialist as its citizens desired as its needs demanded. Being, in general, imbued with the goals the humanitarian bases, and some of the techniques of social democratic thought, such was the type of Constitution that Constituent Assembly members created."

With regard to the inclusion of the concept of secularism in the Preamble, it may be stated that the secular state is important to the future of Indian democracy itself. "The secular state is thus a fundamental aspect of India's democratic experiment, an experiment which might conceivably break down as much by establishing Hinduism as the state religion as by eliminating freedom of the press."[36]

The problem of India as a secular state is as complex as anything. The existence of a number of religions, dominant place of Hinduism, communalism and vigorous impact of the West - all these factors have directly *or* indirectly contributed to the complexity of the problem. Again, the political set-up of different neighbouring countries Pakistan and Burma with their leaning on Islam and Buddhism respectively, just

immediately after the attainment of independence exerted no less influence upon the Indian political setting. "Despite the very different policies of India's immediate neighbours, the significance of India 'as a secular state must also be gauged in terms of the very considerable prestige and influence of India among other Asian countries .... As the largest and most populous non-communist country, and with a stable government and democratic leadership, it would be surprising if India did not exert considerable influence in South and South-east Asia. From this point of view, any major experiment undertaken in India, whether be it land reforms, five-year plans, general elections with universal adult sufferage, or the development of a secular state, will have far reaching implications for the rest of this region."[37]

Like many other concepts of Political Science, the word "secularism" has also varied definitions. An agreed and all comprehensive working definition seems to be like this :

"The secular state is a state which guarantees individual and corporate freedom of religion, deals with the Individual as a citizen irrespective of his religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion."[38] From this definition, it follows that under the conception of secularism, three sets of relationships, viz., religion and the individual, the state and the individual and the state and religion, can be studied.

III. Constitutional framework and the concept of secularism

It should be noted that nowhere in the Constitution, the word "secular State" has been used. A careful reading of the debates in the Constituent Assembly with show that Prof. K. T. Shah tried to include the word "secular'' in the Constitution. He brought the proposal in the form of a new article which provided:

"The state in India being secular shall have no concern with any religion, creed or profession of faith."[39] But he failed to get his proposal

adopted in the Constituent Assembly since it was decided that had the proposal been included in the Constitution, it would result in a conflict with Art. 25 which has permitted the State to intervene in matters connected with region in the interest of social reform.

The Constitution of India in Part III, from Art. 25 to Art. 28, guarantees freedom of religion. Art. 25 (1) provides : "Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice.

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. The wearing and carrying of 'Kirpans' shall be deemed to be included in the profession of Sikh religion.

Explanation II. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious Institutions shall be construed accordingly."

In search of the origin of this provision a reference is always made to a similar provision contained in the 1937 Constitution of Eire which says : ''Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen".[40] But the language used in the Article of the Indian Constitution is very similar to that of the resolution on fundamental rights adopted at the Karachi Congress in 1931 which proclaimed :

"Every citizen shall enjoy freedom of conscience and the right freely *to* profess arid practise his religion, subject to public order and morality."[41]

It is interesting to note in this connection, the Constitution of the Kingdom of Nepal, while stipulating that the monarch must be an "adherent of Aryan culture and Hindu Religion, guarantees freedom of religion to all citizens In the following provision :[42]

"Every citizen, subject to the current traditions, shall practise and profess his own religion as handed down from ancient times. Provided that no person shall be entitled to convert another person to his religion."

Similar guarantee of freedom of religion can also be seen in the U.S. Constitution. The First Amendment to the Constitution (1791) proclaims : "Congress shall make no law respecting an establishment of religion or ..... prohibiting the free exercise thereof."[43]

In the Constitution of Switzerland in Paragraphs 1 and 2 of Art. 50, it has been provided : "The free exercise ·of religion is guaranteed within limits compatible with public *order* and morality. The Cantons and Confederations may take measures necessary to maintain public order and peace between the members of the different religious communities and to prevent encroachments by ecclesiastical authorities upon the rights of citizens and of the State."[44]

Section 116 of the Commonwealth of Australia Act, 1900 proclaims: "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as qualification for any office or public trust under the Commonwealfh."[45]

Art. 124, of the Constitution of the U.S.S.R. (1936) states :

"In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. shall be separated from the State, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda shall be recognised for all citizens."[46]

Under Art. 20, the Constitution of Japan, 1946 provides :

"Freedom of religion is guaranteed to all. No religious Organization shall receive privileges from the state, nor exercise any political authority. No person shall be compelled to take part in any religious act, celebration, rite or practice. The state and its organs shall refrain from religious education or any other religious activlty."[47]

In the Universal Declaration of Human Rights, 1948, under Art. 28, it has been declared :

"Everyone has the right to freedom of thought, conscience and religion, his right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."[48]

Art. 4 of the Constitution of the West German Republic, 1949 states :

''Freedom of faith and conscience and freedom of religious and ideological profession shall be inviolable. Undisturbed practice of religion shall be granted. No one may be compelled against his conscience to perform War service as a combatant. Details shall be regulated by a Federal law."[49]

Similarly, Section 2 of the Canadian Bill of Rights, 1960[50] recognises the freedom of religion in the following provision :

"It is hereby recognized and declared that in Canada there have always existed and shall continue to exist the following human rights and fundamental freedoms, namely ..... (e) freedom of religion"[51]

On an examination of the above provisions relating to right to religion, it will be seen that all of the provisions are based on at least three distinct principles. In the first place, the doctrine of secularisation of the State has been the· underlying principle of all these Constitutions, secondly, rule of religious equality has become the cardinal principle while acknowledging the right to religion; and thirdly, in all these declarations, freedom of conscience has been sought to be guaranteed.

Under Art. 25 (1), concepts like freedom of 'conscience', 'profession', 'practice' and 'propagation' have been used, making the implications of the provision much more Important.

By using the words "all persons", the Constitution-makers intended to widen the scope of the freedom so that all persons including aliens can enjoy the right. In *Ratilal* v, *State of Bombay,*[52] Chagla, C. J., in course of delivering his judgement held that "the religious freedom which has been safeguarded by the Constitution is religious freedom in the context of a secular State." A similar opinion was expressed In *Saifuddin Saheb* v. *The State of Bombay*[53] when Ayyanger, J., held that provisions of the Indian Constitution relating to freedom of rel1gion "emphasize the secular nature of Indian democracy which the founding fathers considered should be the very basis of the Constitution."

But the judgment suffers from a flaw. Neither Art. 25 nor Art. 26 prohibits the State from recognizing any religion as the State religion. On the other hand, these two articles cannot, in any way be construed to confer the State to recognize any religion as State religion. Since the

Constitution refers to various communities, it can be inferred that the Constitution gives indirect recognition to these religions.

Again Art. 27 of the Constitution declared that ''no person should be compelled to pay any taxes, the proceeds of which are specifically appropriated In payment of expenses for the promotion or maintenance of any particular religion or religious denomination.''

Similar provisions are found in the Constitutions of Switzerland and Japan. Art. 40 of the Swiss Constitution, 1874 provides :[54]

"No person may be compelled to pay taxes the proceeds of which are specifically appropriate in payment of the purely religious expenses in any religious community of which he is not a member."

Again, Art.22 of the Constitution of Japan proclaims" ..... No religious organisation shall receive any privileges from the State, nor exercise any political authority .... "[55]

The present article of the Indian Constitution, i.e., Art. 27 embodies the principle arrived at in the U.S.A. in a judicial decision which said :[56]

''No tax in any amount, large or small can be levied to support any religious activities or Institutions, whatever they may be called, or whatever form they adopt' to teach or practise religion. Neither a State nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa."

With regard to the nature of Art. 27 of the Constitution, it has been observed by Basu:

"It is to be noted that what the present article of our Constitution prohibits is taxation or the specific appropriation of the proceeds of any tax for the promotion of any particular religion or religious denomination. It would not bar any provision by which religious institutions are benefited along with secular ones, without any

discrimination, or by which all religious institutions are benefited alike."[57]

Art. 28 of the Indian Constitution is concerned with freedom as to attendance at religious instruction or religious worship in certain educational institutions. It provides:

(1) "No religious instruction shall be provided in any educational institution wholly maintained out of state funds.

(2) Nothing in Clause (1) shall apply to an educational institution which is administered by the state but has been established under any endowment or trust which requires that religious instruction shall be imparted in such Institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of the State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is minor, his guardian has given his assent thereto."

Similar provisions may be found in the Constitutions of the U.S.A., Eire, Japan and West Germany.

In the United States, it has been followed from the First Amendment that the principle "establishment of any religion" would mean that classrooms in a public school cannot be used for religious instruction, nor can the public school use its power to further: religious programme by releasing its students on condition that they attend the religious classes.[58] But if any public school extends opportunity to the students to join the religious classes without force or coercion, there shall be no unconstitutionality.[59]

Art. 44 (2) of the Constitution of Eire provides :[60]

"Legislation providing State aid for schools shall not ... be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction In that school."

The Japanese Constitution of 1946 in its Art. 20 says-

" ..... The State and its organs shall refrain from religious education or any other religious activity."

Art. 7 in its Clauses (2) and (3) of the West German Constitution (1948) provides :[61]

"(2) Those entitled to bring up a child shall have the right to decide whether it shall receive religious instruction.

(3) Religious instruction shall form a part of the curriculum in state schools with the exception of non-confessional schools. Religious instruction shall, without prejudice to the state's right .of supervision, be given according to principle of religious societies. No teacher may be obliged against his will to give religious instruction."

Coming back to Art. 28 of our Constitution, it will be noticed that this Article is confined to educational institutions maintained, aided, or recognised by the State. It does not relate to institutions other than these, which have no connection with the State, Clause (1) of Art. 28 relates to institutions wholly maintained by State funds, Clause (2) relates to educational institutions which are administered by the State under some endowment or trust and Clause (3) refers to institutions receiving aid out of State funds and institutions which are simply recognized by the State. No institution, maintained by State funds exclusively, shall impart religious instruction of any kind. But institutions which are maintained partly by public funds or are recognized by the State shall be free to impart religious instructions,

provided they do not compel members of other communities to follow or attend such courses without their consent.

Art. 28 of the Indian Constitution may be taken as an example of compromise between two opposite considerations. On the one hand, exploitation in the name of religion had dominated the scene for a long time thereby causing conflict among rigid religious dogmas. Since there were more than one religion, it was not possible on the part of the State to impart religious instructions. On the other hand, religion forms the central core of India's national life and considering its importance State could not ban religious instructions at all. Naturally, the Constitution of India follows the middle course. It totally bans religious instructions in State-owned educational institutions, but does not ban it in other denominational institutions. But even as regards those other institutions, it seeks to prevent the fostering of religious dogmas, by Art. 28 (3) and again by Art. 29(2).[62] On the other hand, in institutions which are not maintained either wholly or in part by the State but are merely administered by the State as a trustee under a trust or endowment created for the purpose of imparting religious instruction, there cannot reasonably be any bar to the provision of religious instruction, for the state does not thereby lose its secularity or impartlality.[63]

IV. Scheme under the Indian Constitution for the regulation of individual - State relationship - State guarantees rights and privileges to the citizens.

Apart from the individual and corporate freedom of religions, the Constitution of Indian makes elaborate provisions which regulate the relationship between the States on the one hand and the individuals on the other. In other words, specific provisions have been incorporated in the Constitution defining the rights and duties relating to religion of a citizen. After guaranteeing in Art.14, the right to equality before the law

and equal protection of the laws,[64] the Constitution goes on in Art. 15 (1) to provide :

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

The scope of this clause is very wide. It is leveled against any State action in relation to citizens' rights, whether political, civil or otherwise. Thus a provision for communal representation or election on the basis of separate electorates according to communities offends against this clause and any election held in pursuance of such a law, after the commencement of the Constitution, must be held to be void.[65]

On the question of effect on freedom of religion of legislation prohibiting Hindu polygamy, it was contended by some that the practice of polygamy was a part of Hindu religion. In this issue is involved the question whether such legislation does not discriminate against Hindus contrary to Art. 15 (1). This question was sought to be answered in *State of Bombay* v. *Narasu Appa.*[66] It was contended that the Bombay Prevention of Hindu Bigamous Marriages Act discriminated between of social reform to Hindus, restricting them to monogamy while allowing Muslims to continue the practice of polygamy. Moreover, the Hindus were discriminated against also in relation to Christians and Parsis, since severe penalties were provided in the impugned Act than in the Penal Code applicable to other two communities for whom monogamy was also the law.

The Bombay High Court felt the necessity of inflicting severe penalties to make the law socially effective. Considering Art.15 (1) exclusively, it held that the legislation did not single out the Hindus on the ground of religion only. The legislature had to take into account the social customs and beliefs of the Hindus and other relevant aspects before deciding whether it was necessary to provide special legislation making bigamous marriages illegal.

But what constitutes a discrimination was sought to be defined in *Kathi Raning* v. *Saurashtra,*[67] wherein Sastri C.J., observed-

"Discrimination involves an element of unfavourable bias ..... if such bias is disclosed and is based on any of the grounds mentioned in Arts. 15 and 16, it may well be that the Statute will, without move, incur condensation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those Articles. But the position under "Art. 14 in different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified."

What Art.15 (1) means is that no person of a particular religion, caste etc., shall be treated unfavourably by the State when compared with persons of other religions and castes merely on the ground that he belongs to a particular religion or caste etc.[68] The significance of the word 'only' is that other qualifications being equal, the race, religion etc., of a citizen shall not be a ground of preference or disability. If there is any other ground or considerations for the differential treatment besides those prohibited by Article, the discrimination will not be unconstitutional.[69]

V. Application of the non-discrimination principle in certain cases.

Art. 15 (1) of the Indian Constitution lays down the basic democratic principle that the State shall not discriminate against any citizen on grounds only of religion, caste etc. This general principle Is applicable specifically in three cases, namely, (1) public employment or office, (2) admission *to* State educational Institutions, and (3) voting and representation in legislatures.

With regard to employment, the guarantee has been provided both positively and negatively. Art. 16 (1) embodies the principle of equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. In a negative way, Art. 16 (2)

provides : "No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State."[70]

There are at least two exceptions to this principle. One is found is Art. 16 (4) which provides:

"Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the State."

Another exception to this democratic rule may be found in Art. 16 (5) which states :

"Nothing in this article shall affect the operation of any law which provides that the incumbent of an office is connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination." Thus the Commissioner and his subordinate officers in the Madras Hindu Religious Endowments Department must be Hindus. This imposition of religious qualification on officers appears to be incompatible with the principle of secularism.

Again, a close relationship can be found between Art. 16 (4) and Art. 335 of the Indian Constitution. Art. 335 of the Constitution which relates to the claims of Scheduled Castes and Scheduled Tribes to services and posts provides :

"The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State."

Art. 16(4) refers to "any backward class of citizens" which includes the Scheduled Castes and Tribes as well as others. In this connection, it should be mentioned that a peculiar situation arose in the case of *Vinkatramana* v. *State of* Madras.[71] The Madras Government had issued a Communal Government Order making reservation of posts for Harijans, backward Hindus, non-Brahmins, Brahmans, Muslims and Christians. As a result of this arrangement, a Brahman was refused a particular appointment without any regard to his qualifications simply because he belonged to the Brahman community and the number of posts reserved for his community had already been filled. The Supreme Court declared the Communal Government Order of the Madras Government void since it was repugnant to Art. 16 (1) and (2). The Central point on which the decision of the Court was based was that the order had gone beyond the reservation of posts for backward classes envisaged in Clause (4). It had established a distribution of posts among all communities according to fixed ratios, and this infringed on the petitioner's fundamental rights.[72]

But the definition as regards backward classes had different meaning in an Order of 1921, issued by the Mysore Government which stated "all communities other than Brahmanas who are not adequately represented in the services" are backward communities.

Subsequently in *Kesava Ayengar* v. *State of Mysore,*[73] the High Court upheld the order under which seven out of ten posts were reserved for the backward classes. Commenting on this decision, A. T. Markose asserted : "It is common knowledge in India that there are many groups or castes in the class 'Brahmans' who are very much backward educationally and unrepresented in government employment. A classification on such naked communal nomenclature is approved by the High Court. The battle for social integration could be lost before it was scarcely begun."[74]

The principle of non-discrimination is again applicable in relation to admission to state educational institutions. As has already been said,[75] Art. 29 (2) provides that "no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of state-funds on grounds only of religion, race, caste, language or any of them."

On the basis of the Communal Government Order, mentioned above, the Government denied admission to a lady candidate in a medical college. The candidate complained that she was denied admission to the medical college on the ground that she belonged to the Brahman community. As the Madras High Court gave judgment in her favour, the government appealed to the Supreme Court for final decision. In this famous case of *Champakom Dorairajan* v. *The State of* Madras,[76] the Supreme Court held the Government Order unconstitutional in as much as it distributed seats among the communities according to a fixed ratio. The Court found that the classification made in the Order was a clear violation of the fundamental right of the citizens guaranteed under Art. 29 (2).

This decision gave rise to a serious constitutional problem: how to reserve seats for the Scheduled Castes and Tribes and other backward classes in the light of the Non-discrimination principle of Art.29(2)? To fill the lacuna, the Constitution (First Amendment) Act, 1951, was passed which inserted a new Art. 15 (4). The new clause states that :

“Nothing in this Article or in Clause (2) of Art. 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes." Its Objects and Reasons,[77] it stated, while explaining the reason for amplifying Art. 15 (3) : "In order that any special provision that the State may make for the educational, economic or special advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed

that Art. 15 (3) should be suitably amplified." But it is important to note that the amendment does not validate the distribution of seats on communal lines as it was done in the Madras Government Order, but only validates reservation of seats for these weaker sections of the community.

VI. Application of the principles of non-discrimination in political functions -Basic issues and Judicial pronouncements.

The application of the principle of non-discrimination among the citizens in political functions, that is, voting and representation, has been dealt with In Art. 325 of the Indian Constitution. It states :

"There shall be one general electoral roll for every territorial Constituency for election to either House of Parliament or to the House or either House of the Legislature of a state and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, sex or any of them."

The notable feature of this provision is that the Constitution does not prescribe any religious or caste requirements for voting. Art. 326 simply states that elections shall be held on the basis of adult sufferage. It provides :

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult sufferage, that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered 'as a voter at any such election."

The second important feature to be noted in this connection that the Constitution, under Art. 325, only recognises "one general electoral roll for every territorial constituency." That is to say, the system of separate communal electorates has not been recognised by the Constitution. But under Arts. 330 and 332, the Constitution makes special provision for the reservation of seats for the Scheduled Castes and Scheduled Tribes in the Central and the State Legislatures. Special provision has also been incorporated in the Constitution under Art. 331 for the representation of the Anglo-Indian Community in the House of the People. According to the original Art. 334, this system of reservation of seats for these classes was to cease after a period of ten years from the commencement of the Constitution or in 1960. But the period of reservation of seats has been further extended.[78]

The special arrangement gave rise to serious problem, especially under the system of double - member constituencies (e.g., one reserved and one general seat). Such a problem came before the Supreme Court in the case of *V. V.* Girl v. *D. S. Dora,*[79] in which the Court upheld the election of Scheduled Tribes candidates to both the reserved and the general seats.[80] In 1961**,** Parliament enacted legislation providing for the division of two member Constituencies. Although it helped in eliminating certain problems, at the same time gave birth to others. "Thus a non-Scheduled Classes person residing in a constituency for which there is a reserved seat will be unable to stand for election to that seat. If he is a person of limited financial resources it will be difficult for him to conduct an effective election campaign in another constituency where he is less well known."[81]

The question whether a State law can provide for separate electorates for the members of various religious communities, in election to local legislative bodies was decided by the Supreme Court in *Nainsukh Das* v. *State of* U.P.,[82] in which the Court observed : "Now it cannot be seriously disputed that any law providing for elections on the

basis of separate electorates for members of different religious communities offends against Art. 15 (l) .... The Constitutional mandate to the state not to discriminate on the ground, *Inter alia,* of religion extends to political as well as to other rights."

In concluding this section, it may be mentioned here that the idea of granting special privileges to the weaker section of the Community is in conformity with India's aim to be a welfare state. The Founding Fathers realised that these weaker section of the society, long oppressed and exploited by the privileged classes, should be given protection, at least for a time-limit, so that they can come to the forefront of national life and compete with others on a basis of relative equality. But this scheme has an inherent defect which should not be overlooked. Not all the citizens belonging to this category are interested in utilising this protection for improving the condition of the class as a whole. On the contrary, there are few who under the protective umbrella of the Constitution are interested in augmenting their personal ambition, to the exclusion of others, belonging in the same class. So special care should be taken while ·granting privileges to these sections with a view to helping the deserved ones.

Separation of State and Religion.

Right from the days of Machiavelli, a prominent tendency has become visible in the realm of Political Science, that is, the cry for separation of State and religion. It is agreed that unless this separation is made in the Constitution, the way remains open for state interference in the individual's religious liberty. But the problem is to define what constitutes the key of the separation of the State and religion. In this connection a reference may be made to a United State Supreme Court decision in[83] which the Court defined separation of church and the State as follows :

"Neither a State nor the federal government can set up a church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another ..... No tax in any amount, large or small, can be levied to support any religious activities or institutions whatever they may be called, or whatever form they may adopt to teach or practise religion. Neither a State nor the federal government can, openly or participate In the affairs of any religious organizations or groups and vice-versa. In the words of Jefferson, the clause against establishment of religion by law was intended to enact a wall of separation between church and the State."[84]

Although the Indian Constitution does not contain any such declaration, there are at least three aspects which, taken together, are intended to support the principle of separation of State and religion. These principles are as follows :

(a) There is no provision regarding an official state-religion ;

(b) there can be no religious instruction in state-schools ; and

(c) there can be no taxes to support a particular religion.

VII. Concluding observation: How far India is a Secular State-Secularism in practice.

The foregoing discussion makes it clear that the Constitution of India strictly adheres to the principle of secularism without using the term in the body of the Constitution. The provisions relating to right to religion are so widely phrased that a correct interpretation of them shows that the underlying principle of the Constitution is the rejection of the demand of any religion to be superior to others. Moreover, the Indian National Congress, the political party which has a long tradition of non-communal nationalism, has always stood for secular character of the State. Moreover, the national leaders like Gandhi and Nehru, throughout their lifetime, supported this doctrine in their actions and speeches. The ideal of secularism was best expressed by some of the

members of the Constituent Assembly and the present scheme of the Constitution does really reflect the intentions of the founding fathers. In the Constituent Assembly, Pandit Lakshmi Kanta Maitra observed :[85]

"By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words, in the affairs of the State, the professing of any particular religion will not be taken into consideration at all. This, I consider, to be the essence of a secular State. At the same time, we must be careful to see that in this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion ... the Constitution has rightly provided for this not as a right but also as a fundamental right. In the exercise of this fundamental right, every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes with its religion provided (that) it does not clash with the conditions laid down there."

Again, Shri H. V. Kamath held the following opinion when he said:[86]

"It is clear to my mind that if a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people who live within the territories, and therefore, it cannot afford to identify itself with the religion of any particular section of the population."

Lastly, the observation of Shri Ananthasayanam Ayyangar will conclusively prove that the framers wanted to make India a secular State. He declared:[87]

"We are pledged to make the State a secular one. I don't by the word 'secular', mean that we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government cannot aid one religion or give preference to one religion as against another. Therefore, it is obliged to be absolutely secular in character."

Before concluding the present discussion, a few words in regard to Art. 17 of the Constitution (corresponding to Art. 11 of the Draft Constitution of India) are necessary. Art. 17 lays down:

"'Untouchability' in abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law."

This is a very important provision in so far as the intentions of the framers of the Constitution to abolish some iniquitous social customs and disabilities from our country are concerned. With an eye to this provision, the Parliament, on 8th May, 1955, passed the Untouchability (offences) Act, 1955 for prescribing, "punishment for the practice of 'untouchability' for the enforcement of any disability arising therefrom and for matters connected therewith." This Act was come into force since 1st June, 1955 and "extends to the whole of India." Moreover, it has declared in one section of the said Act[88] that where any act consisting an offence under the Untouchability (Offences) Act is committed in relation to a member of a Scheduled Caste as defined in Clause 24 of Art. 366 of 'the Constitution of India, "the Court (of Law) shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability." In conformity with this idea, the Constitution, under Arts. 330, 332 and 334 provides for the

reservation of seats for the Scheduled Castes and Tribes in both the Central and State Legislatures. Special adjustments in qualifications have been made in an effort to fill the quota of posts reserved for Harijans. Government employing authorities are required to submit annual reports on the number of Harijans appointed and the cause of default are dealt with by the Commissioner for the Scheduled Castes and Scheduled Tribes.[89] A reference may be made here to Art. 46 of the Constitution which affirms:

"The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and the Scheduled Tribes." Since the commencement of the Constitution in 1950, various active steps have been taken by the Central and State Governments for the Welfare of the Harijans. Here a peculiar case of contradiction can be noticed between the government's objective of a casteless society and its policy of granting special privilege on the basis of caste. This was revealed in the parliamentary debate in April 1955 when a private member's bill entitled the Caste Distinction Removal Bill was introduced.[90] Mr. Fulsinghji B. Dabhi wanted in his Bill to remove caste distinctions among Hindus for official and public purposes. But the Bill was opposed by Dr. Monomohan Das, parliamentary secretary for education and a Scheduled Caste member, on the ground that this removal of caste distinction would deprive the Scheduled Castes of their special privileges.

Despite such criticism, the Government has, in many times, attempted to ameliorate the grievances of the people belonging to this section of the community. One such attempt by the Government was the appointment of the Backward Classes Commission to determine the criteria by which any section of the people, besides those already belonging to Scheduled Castes and Tribes, could be treated as socially and educationally backward. The Commission listed as many as 2399

additional castes and recommended that these castes should be granted special privileges by the State as is done in the case of Scheduled Caste and Tribes.

In this section, having discussed the important aspects of secularism in India, the obvious conclusion one may derive is that India had already been following the path of secularism since the adoption of the Constitution in 1950. Even before the attainment of independence, the activities of the Indian National Congress will reveal that it had always stood for a classless, casteless society. The ideal of secularism is clearly embodied in the Constitution and it is being implemented in substantial measure. The inclusion of the words 'secularism' as well as 'socialist' in the Preamble is an attempt to make them more explicit. The fact that the Desai Government, during its tenure between 1977 and 1979, did not delete these words in the subsequent constitutional amendments to undo the effects of this amendment, points to the justification of their inclusion in the Preamble through the Constitution (Forty-second) Amendment Act. There have been very little critical reactions to them.

VIII. Changes brought about by the 42nd Amendment in the Directive Principles of State Policy: Directive Principles given precedence over Fundamental Rights - its implications.

The Constitution (Forty-second Amendment) Act, 1976, observed in the "Statement of Objects and Reasons" that ''the democratic institutions provided in the Constitution are basically sound.'' But "these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good."

The 42nd Amendment Act, therefore, sought "to amend the Constitution, to spell out expressly the high Ideals of socialism, secularism and the integrity of the nation, to make the directive

principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles."[91]

With this end in view, the Act amended Arts. 39, 43 and 48. In Art. 39, for Clause (F), the following clause has been inserted, namely:

(F) That children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."[92]

A new Art. 39-A was inserted which aims at giving all citizens opportunity in connection with legal aid. The article provides.[93] 'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities."

For better industrial atmosphere and more production, industrial peace is necessary. This is possible where there is scope for workers' participation in the management possible, a new Art. 43A was inserted which provides:[94]

"The State shall take steps, by suitable legislation or any other way, to secure the participation of workers in the management of undertakings, establishments or other organization engaged in any industry."

After Art. 48 of the Constitution, a new Art. 48A has been inserted. This new article is mainly concerned with the preservation and improvements of wild-life and forests of the country. It states : "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country."[95]

These changes in the Directive Principles will go a long way in accelerating the pace of country's development along the path set out in Art. 38 of the Constitution wherein it has been categorically stated that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of nationallife."[96]

It may be recalled here that Part IV of the Indian Constitution, dealing with the Directive Principles, is designed to bring about 'social and economic revolution', the imperative of which was felt immediately after the attainment of independence. The gravity and magnitude of the problems relating to the total upliftment of those people who had been suffering from social evils for last two centuries was pointed out by Prime Minister Nehru, when he observed[97] "if one cannot solve this problem soon, all our paper Constitution on will become useless and purposeless." In order to comprehend the importance of these Directives, a detailed study regarding their evolution and nature will be of immense help.

IX. Place of the Directive Principles as determined by the Judiciary conflicting attitude of the Court-Importance of the Directives acknowledged by the Judiciary.

The real nature and significance of the Directive can best be understood from the stand taken by the Judiciary in various cases. But here an observer is bound to be confronted with a delicate problem - the problem of reconciling the diametrically opposite views of the Judiciary. In some cases, the Judiciary, replying mainly on the non-Justiciable character of the Directives, took extremely rigid views and made the Directives subservient to Fundamental Rights; but in subsequent cases, the court, realising the importance of the Directives in the broader perspective of constitutional setting, attached due

importance to them. In the case of *The State of Madras* v. *Champakam Dorairajan,*[98] The Supreme Court held:

"The Directive Principles of State Policy which by Art. 37 are expressly made unenforceable by a Court cannot over-ride the provisions found in Part III which, notwithstanding other provisions, are expressly made enforceable by appropriate writs, orders or directions under Art.32. The Chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive act or order, except to the extent provided in the appropriate articles in Part III. The Directive Principles of State Policy have to conform to and run subsidiary to the chapter on Fundamental Rights. In our opinion that is the correct way in which the provisions found in Parts III and IV have to be understood. However, so long as there is no infringement of any Fundamental Rights, to the extent conferred by the provisions in Part III there can be no objection to the State acting in accordance with the Directive Principles set out in Part IV, but subject again to the Legislative and Executive powers and limitations conferred on the State under different provisions of the Constitution."

This stand taken by the Supreme Court influenced the decisions of the several High Courts in deciding several cases.[99] It may be pointed out in this connection that this rigid interpretation of the Supreme Court paved the way for passing the First and the Fourth Amendments to the Constitution in 1951 and 1955 respectively.

But the court did not stick to this decision for a long time. In the case of H. M. *Quareshi* v. *The State of Bihar,*[100] the Court, while commenting upon the relationship between Parts III and IV, that in view of the apparent conflict between the two regarding their incompatibility with one another, "a harmonious interpretation had to be placed upon the Constitution and so interpreted it means that the State should certainly implement the Directive Principles but must do in such a way that its laws do not take away or abridge the

Fundamental Rights, for otherwise the protecting provisions of Chapter III will be a mere rope of sand."

The Supreme Court laid great stress on the principle of "harmonious construction" while giving an advisory opinion regarding the Kerala Education Bill, 1957.[101] It was held :

"Although certain legislation may have been undertaken by a State in discharge of the obligations imposed on it by the Directive Principles enshrined in Part IV of the Constitution, it must, nevertheless, sub-serve and not override the Fundamental Rights conferred by the provisions of the Articles contained in Part III of the Constitution.

The Directive Principles have to conform to and run subsidiary to the Chapter on Fundamental Rights. Nevertheless, in determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body the Court may not entirely ignore these Directive Principles of State Policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible."

In a similar way, the Court stressed the importance of the Directive Principles in the case of *The State of West Bengal* v. *Subodh Gopal Bose*.[102] In this case, Justices S. R. Das and Jagannadhadas declared that the Court cannot ignore the importance of the Directive Principles in any way as having no hearing on the interpretation of constitutional problems. In the opinion or Jagannadhadas, J.:

"I am also of the view that the Courts may not ignore the directive principles, as having no hearing on the interpretation of constitutional problems since Art. 37 categorically states that 'It shall be the duty of the State (Including the legislature by virtue of the definition of “State” in Part III made applicable by Art. 36) to apply to these principles in making laws ..... "

Apart from these cases, in many cases[103] the Judiciary interpreted the real nature of the Directive Principles and their relationship with Fundamental Right. Even the famous case of *Golaknath* v. *State of Punjab,*[104] wherein the transcendental position of the Fundamental Rights was upheld, the Supreme Court referred to the Directive Principles of State Policy. According to Subba Rao, C. J., Parts III and IV constitute an integrated scheme forming a self contained code and the scheme being an elastic one, the Directive Principles can be implemented without coming into conflict with any of the Fundamental Rights contained in Part III of the Constitution.

The Supreme Court, again in the case of *Keshavananda Bharati* v. *The Union of India,* popularly known as the Fundamental Rights case, 1972, while declaring the second part of Art. 31 (c) which was inserted by the Section 3 of the 25th Constitution Amendment Act void, recognised the importance of the Directive Principles. In the opinion of the Court, the Directive Principles laid down the ends to be achieved while the Fundamental Rights should be taken to mean the means through which the goals are to be realized. It was also pointed out that the Indian Constitution "does not subscribe to the theory that the end justifies the means adopted."[105]

X. Executive-Legislative attitude towards the Directives.

Side by side with judicial attitude towards the Directive Principles of State Policy, it is necessary to find out the outlook of the Executive and the Legislature because, in the ultimate analysis, it will be seen that these two organs of the Government, in a parliamentary democracy, exercise real power in implementing the underlying policies of the Constitution.

That the government attaches importance to these Directives can be best understood from the fact that the Constitution had to be amended twice (First and Fourth Amendment) for implementing the

Directives. Introducing the motion for consideration of the Fourth Amendment to the Constitution in the Lok Sabha on March 14, the Prime Minister said:[106]

"I would like to draw the attention of the House to something that is not adequately stressed either in Parliament or in the country. We stress greatly and argue in the Courts of law about the Fundamental rights. Rightly so, but there is such a thing as also the Directive Principles of the Constitution. Even at the cost of repeating them, I wish to read them out .... These are, as the Constitution says, the fundamentals in the governance of the country. Now, I shall like the House to consider how you can give effect to these principles if the argument which is often used even, if I may so with all respect, by the Supreme Court's interpretation of the Constitution. They are wiser than we are in interpreting things. But I say, then if that is correct, there is an inherent contradiction in the Constitution between the Fundamental Rights and the Directive Principles of State Policy. Therefore, again it is upto this Parliament to remove the contradiction and make the Fundamental Rights subserve the Directive Principles of State Policy."

The Government, in the same spirit, defined the scope of the work of the Planning Commission, established on 15th March 1950. The Resolution of the Government of India declared:[107]

"The Constitution of India has guaranteed certain Fundamental Rights to the citizens of India and enunciated certain Directive Principles of State Policy, in particular, that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice -social, economic and political, shall inform all the Institutions of national life, and shall direct its policy towards securing, among other things ;

(a) that the citizens, men and women equally, have the right to an adequate of livelihood ;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment."

The Draft First Five-Year Plan, recognising the Importance of the Directives, observed *inter alia.*[108]

"The economic and social pattern to be attained through planning is indicated in the Directive Principles of State Policy enunciated in Arts. 36 to 51 of the Constitution. In terms of these Directive Principles, the State's to regard the raising of the level of nutrition and the standard of living of the people as its primary duties. The economic policy of the State must be governed by, the obligation placed upon it to secure that the citizens, man and women equally, have the right to adequate means of livelihood. The State has to endeavour, within the limits of its economic capacity and the stage of development reached, to make effective provision for securing the right to work, the right to education and the right to public assistance in cases of unemployment, old age, sickness, disablement, and in the cases of undeserved want. For attaining these ends, the Directive Principles enjoin that the ownership and control of the material resources of the country should be so distributed as best to sub-serve the common good and that the operation of the economic system should not result in the concentration of wealth and the means of production in a manner detrimental to the common good. Special stress is laid on the need to secure to all the workers-agricultural, industrial and others, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. In furtherance of these aims, the state is to endeavour to organise agriculture and animal husbandry on modem and scientific lines and to promote cottage industries on individual or co-operative lines.

Briefly, the Directive Principles visualise an economic and social order based on equality of opportunity, social justice, and the right to work the right to an adequate wage and a measure of social security for all citizens. They do not prescribe any rigid economic or social framework, but provide the guidelines of State Policy. Planning in India has to follow these guiding lines to initiate action which will, in due course, produce the desired economic and social pattern."

Similarly, the First Five-Year Plan further stated "[109]

"The Directive Principles of State Policy enunciated in Arts. 36 to 51 of the Constitution make it clear that for attainment of these ends, ownership and control of the material resources of the country should be so distributed as best to sub-serve the common good, and the operation of the economic system should not result in the concentration of wealth and economic power in the hands of a few. It is in this larger perspective that the task of planning has to be envisaged."

Again, with the adoption of the principle of "Socialist Pattern of Society" in December 1954 as the economic goal, the Directive Principles of State Policy again found a place of prominence in the declaration of the second Five-Year Plan which stated *inter alia:*[110]

"Essentially, this (socialist pattern of society) means that the basic criterion for determining lines of advance must not be private profit, but social gain, and that the pattern of development and the structure of socio-economic relations should be so planned that they result not only in appreciable increase in national income and employment but also in greater equality in income and wealth. Major decisions regarding production, distribution, consumption and investment- and in fact all significant socio-economic relationships - must be made by agencies informed by social purpose. The benefits of economic development must accrue more and more to the relatively less

privileged classes of society, and there should be progressive reduction of the enumeration of incomes, wealth and economic power."

That the socialist pattern of society is a flexible concept, adjustable with the changing circumstances found vocal support in the following observation. [111]

"The socialist pattern of society is not to be regarded as some fixed or rigid pattern. It is not rooted in any doctrine or dogma. Each country has to develop according to its own genius and traditions. Economic and social policy has to be shaped from time to time in the light of historical circumstances. It is neither necessary nor desirable that the country should become a monolithic type of organization offering little play for experimentation either as to forms or as to modes of functioning.

... The account of the socialist pattern of society is on the attainment of positive goals, the raising of living standards, the enlargements of opportunities for all, the promotions of enterprise among the disadvantaged classes and the creation of a sense of partnership among all sections of the community. The Directive Principles of State Policy in the Constitution have indicated the approach in broad terms; the socialist pattern of society is a more concretised expression of this approach. Economic policy and Institutional changes have to be planned in a manner that would ensure economic advance along democratic and egalitarian lines, Democracy, it has been said, is a way of life rather than a particular set of institutional arrangements. The same could be of the socialist pattern."

It may not be out of place here to refer to the fact that even before the attainment of Independence, the Congress Party had declared in many occasion that it would work for the prevention of concentration of wealth and power in fewer hands and the abolition of vested interests

inimical to society and thus it would bring about a society based on egalitarianism. In its election manifesto issued in December, 1945, the Party stated *inter alia* :[112]

"The most vital and urgent of India's problems is how to remove the curse of poverty and raise the standard of the masses ..... For this purpose, it will be necessary to plan and coordinate social advance in all its many fields, to prevent the concentration of wealth and power in the hands of individuals and groups, to prevent vested interests inimical to society from growing, and to have social control of the mineral resources, means of transport and the principal method of production."

Since 1950, the Planning Commission has drawn up six plans of economic development of which five plans have so far been implemented. The first three plans covered the period from 1951 to 1966; but the final version of the Fourth Plan was formulated in 1969 with a lapse of three years. The Fifth Plan was formulated in 1972-74.

The net result of these Plan efforts has been satisfactory. The Third Plan, for example, wanted to establish progressively greater equality of opportunity and to bring about reduction in disparities in income and wealth and a more even distribution of economic power. It may well be noticed that these are the ideals already included in Art. 39 (b) and (c). Definite and calculated steps have been taken to fulfill the ideals contained in Arts. 39 (e) and (f), 41, 42 and 43 - all related to the economic and social of welfare of the all kinds of labour - agriculture, industrial or otherwise. It has been estimated that between 1951 and 1961, the total production of industry and agriculture increased by 42% in spite of the fact that the living condition of farm workers deteriorated during the period of the First Five Year Plan. Side by side with this aspect, it is to be mentioned that India's net national income increased by about 69% between 1951 and 1966, covering the period of first three five year plans.[113]

In the Fourth Plan, though the agricultural sector developed well, bringing about "green revolution" in some parts of the country, the industrial sector failed to keep pace with the former. Accordingly, the Fifth Plan puts emphasis on rapid industrial development. As regards the objectives of the Fifth Plan, it is stated: "Removal of poverty and attainment of self-reliance are the two major objectives that the country has set out to accomplish in the Fifth Plan. As necessary corollaries they require higher growth, better distribution of income and a very significant step up in the domestic rate of saving."[114]

The targets[115] of different sectors in the Fifth Plan, are ambitious. It has been estimated that food grains production would increase from 114 million tons in 1973-74 to 140 million tons in 1978-79. The manufacture of cotton cloth would increase from 9800 million metres to 10,000 million metres. Finished mild steel production rise from 5.44 million tonnes to 9.4 million tones. And electricity generation would grow from 72 billion Kilowatts hours to 130 billion Kilowatts hours during the Fifth Five-Year Plan period.

That the Fifth Five-Year Plan was directed to bring about an all round development of the country can be explained from the view point that it had the objective of minimising the country's dependence on foreign aid. The programmes were so arranged that the power sections of the community could be immensely benefited. Moreover, special programmes were undertaken for raising the standard of productivity in areas which were known to be suffering from adverse geographical conditions. Lastly, it was aimed at reducing regional imbalances through incentives and subsidies from the government side.

To conclude the present discussion, it may be submitted that the 42nd Constitution Amendment Act which contains the recommendations of the Swaran Singh Committee, in so far as it relates to the Directive Principles, will ultimately help in bringing about the desired egalitarian society visualised by the framers of the

Constitution in the Chapter on Directive Principles of State Policy. There cannot and should not be a conflict between the Fundamental Rights and the Directive Principles. As has been noticed whi1e discussing the proceedings of the Constituent Assembly that Part III and IV were intended to form an integrated part of the Constitution. The chapter on Fundamental Rights dealing with individual rights should give way to Directive Principles concerned with community interest. "The present Amendment Act (1) added a few more directions' to the existing ones and (2) gave directive principles precedence over fundamental rights. It has been contended by the critics that this addition of the Directives was un-called for and mere addition would not be helpful unless a time-period is fixed for their implementation. But it may be recalled that the fixing of time was against the wishes of the Makers of the Constitution since they hoped that these Directives should contain flexibility in all respects.

Art. 31C provides that no law giving effect to the Directive Principles specified in Clauses (b) or (c) of Art. 39 shall be deemed to be void on the ground that it contravenes articles 14, 19 and 31. It is proposed that the scope of the present Art 31C should be widened so as to cover legislation for the implementation of all or any of the Directive Principles. If there is any conflict between individual rights and the rights of the community, the former must way to the latter. *This is the underlying concept of the Constitution and the Fundamental Rights have, therefore, been defined not* in *absolute terms but subject to limitations in the interests of the community.* The amendment Act has only sought to remove the impediments from the path of socio-economic reforms for implementing directive principles.

XI. The Constitution (Forty-Second Amendment) Act: Changes with regard to the powers of the Executive and other Organs of the Government.

In this section, an attempt has been made to discuss the changes which are directly or indirectly concerned with the powers of the Executive on the one hand and the Judiciary, on the other.

The most significant change that is to be mentioned in this regard is in the position of the President. The 42nd Constitution Amendment Act amended Art.74 and provided that for clause (1), the following clause would be substituted :

"(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice."[116]

This appears to be an important addition in so far as it intended to make the position of the President clear as the constitutional head. Since the commencement of the Constitution, great debate arose regarding the actual position of the Indian President because of the existence of some constitutional loop-holes.

On the question of the actual position of the President, two opposite and conflicting expert opinions seemed to have dominated the political scene. These two schools are known as legalists and realists. This controversy over the issue found vigorious strength when no less a personality than Dr. Rajendra Prasad, while laying the foundation stone of the Indian Law Institute in New Delhi, on 28th November 1959, observed that 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."

This view was subsequently supported by K. M. Munshi who observed : "we did not make the President just a mere figure - head like the French President.... In adopting the relevant provisions, the

Constituent Assembly did not understand that they were creating a powerless President".[117] The central theme of Munshi's doctrine was to impress the President with his role as an independent officer to "defend the Constitution against inroads from whatever quarters it may come."[118]

These observations and expressions gave birth to the doctrine of independent President which found prominence during the time of the fourth Presidential election in 1967. Mr. K. Subba Rao, the then Chief Justice of India, who relinquished his assignment for offering himself as an opposition candidate, declared that, if elected, he would act like an independent and strong President.[119] But the election results proved otherwise. But, again after two years, during the time when Mr. V. V. Giri sought to contest the Presidential election, he declared that he would never like to be "a rubber stamp even of God" and he would be an active partner "within the four corners of the Constitution. "[120]

The doctrine of independent President did not escape the attention of Justice P. B. Mukherjee when he observed that the Indian President "is an independent institution with independent authority and independent functions."[121] But a close analysis of the proceedings of the Constituent Assembly will show that this doctrine of independent President is based on very misleading premises and dangerous presumptions. The debates in the Constituent Assembly will establish the fact that there was full agreement on the proposal of having a parliamentary form of government that would find in the President 'the Indian version of King George VI.[122] The office of the Independent President points to one dangerous conclusion : if the President throws himself in the quarrels between the Government and the opposition, the result "may be a grave constitutional crisis which may well culminate in the impeachment of the President and perhaps the amendment of the Constitution to set the President in his place."[123] Considering this dangerous aspect, a veteran statesmen like Pandit

Hriday Nath Kunzru warned that any idea of implementing such a doctrine would mean "the end of responsible govemment."[124]

Side by side with the idea of an independent President, runs the doctrine of active and critical President. The underlying philosophy of this doctrine is that the President should act like a 'friend philosopher and guide' of the Government. While explaining the position of the President of the Indian Republic. K. Santhanan observed.[125] "If at any time, the President feels that any particular decision of the Union Cabinet is likely to undermine seriously the Constitution, I think he is fully within his powers to reject the advice. Naturally, before such rejection, he will discuss the matter with the Prime Minister and refer it back to the Council of Ministers. If the latter persists in the advice, he will ascertain the opinion of the opposition parties in the Parliament through their leaders. Ultimately, if he is still convinced that, if he accepted the advice, he would be breaking his oath, he will reject it and take all the consequences."

It may not be out of place here to mention that the successive Presidents of India did not strictly adhere to the doctrine of independent President. Of course, it may be recalled that on very many occasions, sharp differences arose between Nehru and Prasad, but that did never lead to any constitutional crisis. This is evident from the high tributes paid to Prasad on the eve of his retirement. The address presented to him on 8th May, 1962 said: "By your qualities of unostentatious grace, your utter simplicity, clarity of outlook, deep humility and broad humanity, you invested a special meaning and significance in your choice as president. As the first President of India you have enriched and embellished the office and are leaving behind inspiring tradltions."[126]

But there are instances when the President at different times did not hesitate to warn the Government about any dangerous consequence. The most important instance of the active and critical

role of the President found place in the broadcast of Mr. Radhakrishnan on the eve of Republic Day in 1967 wherein he criticised the Union Government for "widespread incompetence and gross mismanagement of our resources." President Girl went a step further when, on the occasion of inaugurating the Gandhi Bhawan in Lucknow on July 28, 1973, he observed: 'To-day what is the position of this country? Corruption, nepotism, favouritism, communalism - these things are destroying the vitals of the country."[127]

Actual position of the Indian President in the Constitutional Framework.

The actual position of the Indian President as the nominal head of the state can best he explained with reference to the observations made by the framers of the Constitution in the Constituent Assembly. It became crystal clear when Dr. Ambedkar declared: "The President occupies the same position as the King in the British Constitution."[128] Even Shri K. M. Munshi, who later became a supporter of 'Independent President, 'observed in the Constituent Assembly that from the very beginning, it "was decided that the Central Government should be based on English mode1."[129] T. T. Krishnamachari held the view : "So far as the relationship between the President and the Cabinet is concerned, we have completely copied the system of responsible government that is functioning in Britain to-day."[130] In a similar way, Sir Alladi said: "After weighing the pros and cons of the Parliamentary Executives as they obtain in Great Britain and in some continental countries and the Presidential type of government as it obtains in the United States of America. The Indian Constitution has adopted the institution of Parliamentary executtve."[131] Commenting upon the whole approach of the Founding Fathers to this issue, Nehru said: "We did not give him any real powers, but we made his position one of authority and dignifity."[132]

Despite the declarations of the Founding Fathers regarding the actual position of the Indian President, there are at least three cases where the Indian pattern deviates from the English model. In the first place, the Constitution does not prescribe that the President shall be competent to act only upon the counter signature of a Minister responsible to the Parliament. Art. 66 (2) authorises the President himself to make rules as to the manner in which his orders shall be authentlcated.[133] Secondly, in India, the Ministers shall have no legal responsibility for acts of the President.[134] Thirdly, while under the English system the decision of the offices or the portfolios amongst other colleagues is the business of the Prime Minister including the task of choosing them, the India Constitution, under Art. 77 (3) provides that it is the President who shall make rules in this respect. "Of course, if he makes these rules or revises them under the advice of each new Prime Minister, this provision would not affect the position of the Prime Minister. So, this also does not necessarily imply that the President shall have absolute power in this respect."[135]

Some extra-ordinary important powers have been granted to the Legislature - balance of powers between the Executive, Legislature and the Judiciary affected to a great extent.

Thus, the 42nd Constitution Amendment Act seeks to remove any segment of ambiguity in the original Art. 74 with regard to the position of the President in relation to the Council of Ministers. But the Bill contains some other articles which seek to grant special power to the Legislature in certain circumstances. One such important clause under the proposed 44th Constitution Amendment Bill deals with the issue of presenting anti-national activities. 'It has been provided in section 5 of the Bill that –

After Art.31C of the Constitution and before the heading "Right to Constitutional Remedies", the following article shall be inserted, namely, Art. 31B. It provides:

"(1) Notwithstanding anything contained in Art. 13 no law providing for (A) the prevention or prohibition of anti-national activities or (B) the prevention or formation of or the prohibition of anti-national associations, shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Art. 14, Art. 19 or Art. 31.

(2) Notwithstanding anything in this Constitution, Parliament shall have and the legislature of a State shall not have, power to make laws with respect to any of the matters referred to in sub-clause (A) or Sub-clause (B) of Clause (1).

(3) Any law with respect to any matter referred to in sub-clause (A) or sub-clause (B) of Clause (l) which is in force immediately before the commencement of Section 5 of the Constitution (44th Amendment) Act, 1976, shall continue in force until altered or repealed or amended by Parliament.

(4) In this Article (A) "Association" means an association of persons; (B) "Anti-national activity" in relation to an individual or association, means any action taken by such individual or association—

(i) which is intended or which supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India or which incites any association to bring about such cession or secession.

(ii) which disclaims, questions, threatens, disrupts or is intended to threaten or disrupt the sovereignty and integrity of India or the security of the State or the unity of the nation ;

(iii) which is intended or which is a part of a scheme which is intended to overthrow by force the Government as by law established ;

(iv) which is intended, or which is a party of a scheme which is intended, to create internal disturbance or the disruption of public services :

(v) which is intended or which is a part of a scheme which is intended, to threaten or disrupt harmony between different religious, racial, language or regional groups or castes or communities ;

(c) "Anti-national association" means an association - (i) which has for its object any anti-national activity ; (ii) which encourages or aids persons to undertake or engage in any antinational activity ; (iii) the members whereof undertake or engage in any anti-national activity."[136]

This article[137] is so widely phrased that Parliament has been given the power for (a) the prevention or prohibition of anti-national activities or (b) the prevention of formation of anti-national association. Not only that, the new article proposed to be incorporated in the Constitution makes it explicit that no such prevention or prohibition "shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges the rights conferred by Art. 14, Art.19 or Art.31.

That the ambit of the Art. 31D has been extended to a very great extent can be seen from the definition of the "anti-national activities" embodied in this article. Anything “which is intended, or which is a part of a scheme which is intended to overthrow by force the Government as by law established" is anti-national activity. This definition is so wide and loosely phrased that any activity, even an election campaign can be brought under it. Of course, the words "by force" indicate the nature of activities to be included in this category. So the apprehension of some of the opposition parties that this power will be misused against them seems to be baseless.

Again, "which is intended, or which is part of a scheme which is intended to create internal disturbances or the disruption of public

services'' is an ''anti-national activity." Thus it can be safely concluded that a country-wide general strike of the employees of public services can be brought under this provision. The Amendment Act sought to empower the Parliament to interpret anti-national activities as defined in Art. 31D. For there is no authority which can interpret these concepts, superseding the power of the Parliament.

At this point, it is necessary to find out the reasons for incorporating such a provision in the Constitution. It is not a matter of the past that the democratic institutions provided in the Constitution have been subjected to "considerable stresses and strains" and it is equally true that "vested interests have been trying to promote their selfish ends to the great detriment of public good" as the Statement of Objects and Reasons explains. Here arise two questions the explanation of which will make things clear. The questions are :

(a) Why have the vested interests been able to try to promote their selfish ends?

(b) Where from have these stresses and strains arisen?

The foregoing chapters have been devoted to answer these questions and to repeat them in a nutshell, it is the longstanding conflict between the Executive - Legislature on the one hand and the Judiciary on the other which seems to be the root of all troubles. The Founding Fathers, while framing the Constitution, did not envisage such a conflict. But the course of our political and constitutional history has proved that it is because of the wavering attitude of the Judiciary which enabled the vested interests "to promote their selfish ends." Things came to such a height in the 1967 Golaknath case that the whole question of amendability of the Constitution came before the Judiciary; but the stand taken by the Judiciary, cannot, in ally measure, be termed as "progressive". Not only that it sought to explain the total constitutional scheme relating to Fundamental Rights from a

narrow, legalistic and restrictive sense, but it also sought to assume the role of a "third chamber."

That the Supreme Court Look a wrong step came to be understood when they changed their outlook in the Keshavananda Bharati case. But in this case also, the Supreme Court did not give blanket power to the Parliament to amend the Constitution. The Court in this case enunciated their own “basic structure theory” by which some sort of restriction was sought *to* be imposed upon the Parliament. This doctrine subsequently came to be vehemently criticised since the Constitution nowhere in the total scheme confers such powers on the Judiciary to explain such a theory of "basic structure" of the Constitution.

To remove such difficulties and to keep constitutional amendments outside the purview of judicial scrutiny, the 42nd Amendment Act suitably amended Art. 368 by inserting a new Clause (4).[138]

The 42nd Amendment Act, therefore, wanted to restrict the scope of judicial review by adopting two devices: (a) by excluding certain matter a 'from Court's jurisdiction and (b) by giving Directive Principles precedence over Fundamental Rights. Not only that the Act provided for the setting up of administrative tribunals to adjudicate upon dispute relating to certain specified matters, namely, service matters, labour disputes, import, export and foreign exchange, land reforms, ceiling on urban property and procurement and distribution of essential commodities.

One of the provisions of the Act authorised the President to remove any difficulty from the path of the implementation of the provisions of the Act. A time-limit of two-years was imposed on the exercise of such power by the President.

The Act empowered the President to declare a state of emergency even for a definite part of the territory of India. Clauses 48, 49 and 53 of the Act empowered the President to make a Proclamation of Emergency in respect of a part of the Country or as the case might be, to restrict a proclamation made in respect of the country as a whole to a part of the country.

Again, Clauses 50 and 51 of the Act made certain changes in Art. 356. Under Art. 356 in its original un-amended form, a Proclamation approved by the Parliament ceased to be in operation after a period of six months unless revoked earlier and could be renewed for a period of six months at a time but in no case beyond a total period of three years. Clause (2) of Art. 357 was substituted by a new clause to the effect that any law made by Parliament or any other authority in exercise of the powers of the State Legislature under Art. 356 would remain in force until altered, repealed or amended by the competent legislature or authority.

Curtailment of Judicial Authority

The 42nd Amendment Act curtailed the authority and powers of the judiciary to a great extent. The Act laid down that the Central laws could be declared unconstitutional only by the Supreme Court and the State laws by the respective High Courts, and for invalidating a law two-thirds majority of the Constitutional Bench was necessary. The Constitution Bench of the Supreme Court was to be constituted of not less than seven Judges and the High Court Bench, of not less than five Judges. In case a High Court had less than five Judges, then the verdict was to be unanimous.

Moreover, the High Court's power of issuing writs at the instance of an Individual 'for any other purpose' was taken away and after the amendment, it was necessary for the High Court to establish an ''injury by reason of any illegality in any proceedings'' when it wanted to issues

writs. Thus, the very wide jurisdiction of the High Courts to redress the grievances of the citizens against the excesses of legislature or the executive was severely curtailed. Again, the High Court's 'supervisory jurisdiction' under Art. 227 over the administrative tribunals was taken away, though the Supreme Court's special jurisdiction under Art. 136 over the tribunals was not touched.

Inclusion of a List of ten 'Duties' in the Constitution

The 42nd Amendment Act included a list of ten 'duties'. They are a 'mixed bag' containing as many as ten 'duties' covering a wide field from the sovereignty of India to the protection of wild life. The Act, by inserting a new clause 51A, provided that "it shall be the duty of every citizen of India-

(A) to abide by the Constitution and respect its ideals and institutions, the national flag and the national anthem;

(B) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(C) to uphold and protect the sovereignty, unity and integrity of India;

(D) to defend the country and render national service when called upon to do so;

(E) to promote harmony and the spirit of common brotherhood among the people of India, transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(F) to value and preserve the rich heritage of our composite culture;

(G) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(H) to develop the scientific temper, humanism and the spirit of enquiry and reform;

(I) to safeguard public property and to abjure violence;

(J) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

It may be recalled that even Gandhiji had such similar Ideas of fundamental duties of the cltizens.[139] He outlined the following essential fundamental duties of the citizens :[140]

(1) All citizens shall be faithfull to the State specially in times of national emergencies and foreign aggression.

(2) Every citizen shall promote public welfare by contributing to State funds in cash, kind or labour as required by law.

(3) Every citizen shall avoid, check and, if necessary, resist exploitation of man by man.

It is to be noted that in our contemporary world many nations have incorporated fundamental duties in their Constitution.[141] It was observed that the present Part IV should be replaced by another and should be renamed as "Fundamental Duties of the Citizens and the State." It has been suggested that the following duties of the citizens should be incorporated : (a) duty to work ; (b) duties to pay taxes, (c) maintain discipline at work and public order, (d) duty to participate in public life, (e) duty not to spread hatred, contempt or provoke strife on account of national, regional, lingual, racial and religious differences, (f) to be vigilant against the enemies of the State, (g) to discharge any public or social life vested in him conscientiously, and (h) duty to receive education.[142]

Besides this, the following important duties of the State may be incorporated : (a) duty to create conditions necessary to make the right

to work an effective one ; (b) to protect labour ; (c) to protect youth against exploitation and moral, intellectual and social abandonment ; (d) to organise free public education ; (e) to protect family ; (f) to ensure health, protection and material security to all, particularly to children, mothers and aged ; (g) to create welfare agencies for the physically handicapped and abandoned children.[143]

Other proposals for amendment of miscellaneous character

As had already been pointed out at the outset of the discussion that the 42nd Constitution Amendment Act may well be termed "a mixed bag".[144] Other amendments of miscellaneous character may be noticed as follows :-

(a) Extension of the term of the Legislature

The 42nd Amendment Act extended the term of the Legislature by one year, i.e., to six years instead of five year term as is prevalent at present. A consequential amendment is made in Art. 371F (c) relating to the Sikkim Legislative Assembly.[145] It may be noted that this change of duration of Legislature was not originally recommended by the Swaran Singh Committee.

(b) Changes in the formation of Quorum

It has been proposed that the matter of quorums for sessions of the Central and State Legislatures shall no longer be a concern of the Constitution. Quorums will be determined by the rules of business of the legislature concerned.[146]

(c) **Disqualification of members**[147]

Sub-clause (A) of Clause (1) of Art.102 provides that a person shall be disqualified from being chosen as, and for being, a Member of either House of Parliament, if he holds an office of profit under the Government of India or the Government of any state, other than an

office declared by Parliament by law not to disqualify its holder. The existing proposition had led to a great deal of uncertainty.

The amendment in Clause 20 enlarges the scope of Art. 103. The question as to whether a member has become subject to any disqualification mentioned in Clause (1) of Art. 102 as also the question whether a person is disqualified for being chosen as a member of either House of Parliament, etc., on the ground of being found guilty of a corrupt practice, including the question as to the period of disqualification or as to the removal or the reduction of the period of such disqualification, shall be decided by the President after consulting the Election Commission which is empowered to hold an enquiry in this behalf. Art. 192 has been amended on these lines.

(d) Investing the Supreme Court with exclusive powers in matters of judging validation of Central laws.[148]

Previously, the constitutional validity of a Central law could be questioned either before the Supreme Court or the High Court. This scheme has been sought to be altered as it is felt that if a member of High Courts give differing judgments as regards the validity of a Central Law, the implementation of the Central law will become difficult. It has, therefore, been proposed to invest the Supreme Court with exclusive jurisdiction as regards determination of the constitutional validity of Central laws. Where a case involves constitutional validity of both a Central and a State Law, the Supreme Court alone will have jurisdiction to determine the constitutional validity of such laws. Where cases involving the same questions of law of general importance are pending before the Supreme Court and, one or more High Courts or before two or more High Courts, the Attorney General can move the Supreme Court to withdraw the cases pending before the High Court or High Courts to itself and dispose of the same. Further, the Supreme Court has been empowered to transfer cases from one High Court if it is expedient for the ends of justice so to do.

It is also being provided that the minimum number of judges of the Supreme Court who shall sit for determining any question as to the constitutional validity of a Central law or on a Central or State law shall not be declared to be constitutionally invalid.

(e) Deployment of Central forces in States

The Act sought to empower the Centre to send any armed forces or other forces under its authority to deal with the law and order situation in any State. Such forces shall act under the direction of the Central Government and shall not be controlled by the State Government. Provision has been made to empower Parliament to define the powers, functions and liabilities of the members of such force.[149] Since all these changes have been critically analysed in the following chapter, a repetition here will be redundant.

Notes and References:

1. K.R. Bombwal, The Foundations of Indian Federalism, Bombay, 1967, p.18
2. David C. Nice, The Politics of Inter Governmental Relations, New York, 1987, p.2
3. Rasheeduddin Khan, "National Unity: Dimensions and Problems, Mainstream, Vol.24, No.21, Jan. 1986, p.50
4. Ibid
5. Constituent Assembly Debates, Vol.7, p.43
6. David. C. Nice, Federalism: The Politics of Inter-Governmental Relations, New York, 1987, p.2
7. Ibid
8. K.M. Rajasekhara, The Dynamics and Changing Contours of Federalism, The Indian Journal of Political Science, Vol.XI, 1986, pp.87-104
9. Wood John R., "Separatism in India and Canada: A Comparative View", The Indian Journal of Political Science, Vol.XLII, July-Sept. 1962
10. Ibid
11. The Indian Journal of Political Science, Vol.7 and 8, April-June, 1986
12. Ibid
13. Indian Journal of Politics, Vol.VII, No.1, 1981
14. Ibid
15. The State of West Bengal vs. Bella Banerjee and others, AIR 1954, SC 170
16. Saghir Ahmed Vs. the State of U.P., 1954 SCR 1218
17. Minerva Mills Vs. The Union of India, SCJ, 1991

18. Sunder Raman-Fundamental Rights and The 42nd Constitutional Amendment, Minerva Associates Publications, Calcutta, 1977, p. 30.

19. ibid.

20. Paras Diwan-Abrogation of 42nd Amendment-Does our Constitution need a Second Look ? Sterling Publishers, New Delhi, 1978, p. 2.

21. Maxwell on the Interpretation of Statutes, l0th, Edn., 1953, pp. 44-49 (cited in D. N. Banerjee's-Our Fundamental Rights : Their nature and extent, World Press, Calcutta, 1968, p. 3).

22. *Ibid.*

23. Commentaries on The Constitution of the United States 5th Edn., Vol. I, 1905, pp. 350-351 (quoted in D. N. Banerjee-Our Fundamental Rights, *op* cit., pp. 3-4).

24. Ibid.

25. Jawaharlal Nehru-The Discovery of India., New York, 1946, p. 254.

26. Resolution adopted 'at the Kanpur Conference, 28 Feb., 1947, Praja Socialist Party, PSP, A Brief Introduction, p. 99 (cited in Austin's "The Indian Constitution", p. 41).

27. Parliamentary Debates, 1951, Part 2, Vol. 12, Col. 9831.

28. Congress Party in Parliament, Unpublished Minutes of the General Body, Dec. 2, 1954 (cited in Stanley A. Kochnek - The Congress Party of India, 1968, p. 175).

29. Ibid.

30. Resolutions on Economic Policy and Programme, 1953-56, New Delhi : A.I.C.C. 1956, p. 1. (cited in Kochnek, *op.* cit., p. 176).

31. The Indian Express (New Delhi), January, 19, 1955 (quoted in Kochnek, op. *cit.,* p. 177).

32. Congress Bulletin, Nos. 10-11, Oct. -Nov., 1956, p. 465 (cited in Kochnek, op *cit.,* p. 180).

33. The phrase is that of Prof. M. H. Morris -Jones in 'The Exploration of Indian Political Life" - Pacific Affairs, Dec. 1959, p. 415 (quoted in Austin. *Ibid.,* p. 42).

34. Granville Austin - Indian Constitution : Cornerstone of a Nation, O.U.P., 1976, p. 43.

35. Austin, *Ibid.* p. 43.

36. D. E. Smith - India as a Secular State, Princeton University Press, 1963, Preface, p. VIII.

37. Ibid.

38. *Ibid.* p. 4.

39. Constitution Assembly Debates, Vol. VII, p. 815.

40. Article 44 (2).

41. Sadiq Ali, ed., Congress and the Problem of Minorities, Law Journal Press, Allahabad, 1947, pp. 119, 129 (quoted in Smith, op. *cit .,* p. 102).

42. Article 5 of the Constitution of the Kingdom of Nepal (1959).

43. Quoted in D. K. Sen -A Comparative Study of the Indian Constitution, Orient Longmans, 1967, p. 319.

44. *Ibid.,* p. 320.

45. Ibid.

46. *Ibid.,* pp. 320-321.

47. Ibid.

48. *Ibid.,* pp. 321-322.

49. *Ibid.*

50. *Ibid.*

51. *Ibid.*

52. A.J.R. (1953), Born. 242.

53. A.I.R. (1962) S.C. 863.

54. Quoted in D. Basu - Commentary on the Constitution of India, S. C. Sarkar & Sons, Calcutta, 5 Edn., p. 326.

55. *Ibid.*

56. Eversion *v.* Board of Education, 1 (1946) 330 U.S. 11 (cited in Basu, *Ibid.,* p. 326.)

57. Basu, *Ibid.,* p. 326.

58. Me Collum *v.* Board of Education, 1 (1948) 333 U.S. 203 (ref. to Basu, *Ibid.,* p. 327).

59. *Vide* Zorach *v.* Clauson, (1952) 343 U.S. 306 (ref. to Basu, *Ibid.)*

60. Basu, *Ibid.,* p. 327.

61. *Ibid.*

62. Art. 29 (2) of the Indian Constitution reads as follows : "(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only religion, race, caste language or any of them."

63. Basu - Commentary on the Constitution of India, op cit., p. 328.

64. Article 14 provides : "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

65. *Vide* Nain Sukh *v.* State of U. P., (1953) S.C.R. 1184 (ref. to Basu, *Ibid.,* p. 136).

66. A.I.R. 1952, Bombay, p. 84.

67. A.I.R. (1952), 435 (442) (cited in Basu, *Ibid.,* p. 136).

68. Champakam Dorairajan *v.* The State of Madras, A.I.R. 1951 S.C. 226: 1951 S.C.R. 525.

69. *Vide* State *v.* Vithal Maruthi, (1952) 54 Born. L. R. 626; Dattatraya u. Bombay State, (1953) 55 Born. L. R. 323; Anjali *v.* State of W. B., (1952) 56 C.W.N. 801 (cited in commentary on the Constitution of India, op. cit., p. 137).

70. A similar provision was incorporated in the Govt. of India Act, 1935 which provided : "No subject of His Majesty domiciled in India shall on grounds of religion, place of birth, descent, colour or any of them, be ineligible for office under the Crown in India."

71. A.I.R. 1951, S.C. p. 229.

72. Ibid.

73. A.I.R. 1956, Mysore p. 20.

74. A. T. Markose-"The First Decade of the Indian Constitution, "Journal of Indian Law Institute, 1960, Vol. 2, p. 160 XV. (quoted in Smith-Ibid., p. i21).

75. See of this chapter.

76. A.I.R. 1951 S.C. 224 ; 1951 S.C.R. 525.

77. Appended to the Constitution (First Amendment) Act; 1951.

78. The Constitution (Eighth Amendment) Act, 1959 and other related Amendment Acts.

79. A.I.R. 1959 S.C. p. 1318.

80. Ref. to S.S. Nigam-"Equality and the Representation of the Scheduled classes in Parliament"-Journal of Indian Law Institute, 1960, Vol. 2 pp. 297-320.

81. Smith-India as a Secular State, op. cit., p. 124.

82. A.I.R. 1953 S.C. p. 385.

83. Everson v. Board of Education, 330 U.S. I (1947)-cited in Smith, op. cit., p. 126.

84. Ibid.

85. C.A.D., Vol. VII, p. 831-832.

86. *Ibid.* p. 825.

87. *Ibid.* p. 881-882.

88. Section 12 of the Untouchability (Offences) Act, 1955, (cited in D. N. Banerjee-Our Fundamental Rights, 'Appendix D')

89. India: A Reference Annual 1957, Publications Divisions, Govt. of India, Delhi, 1957, pp. 157-159.

90. Lok Sabha Debates, 1955, Part 2, Vol. 3, Cols. 5324-5386.

91. Statement of Objects and Reasons appended to the Constitution (Forty-second Amendment) Act, 1976.

92. Text of the Constitution (Forty-Second Amendment) Act, 1976.

93. Ibid.

94. Ibid.

95. Op. cit.

96. Article 38 of the Constitution of India.

97. C.A.D., Vol. II, p. 316.

98. A.R.R. 1951 S.C. 326 : 1951 S.C.R. 525.

99. Jagwant Kaur *v.* The State of Bombay, A.I.R. 1952, Born. 461; Ajaib Singh *u.* The State of Punjab, A.I.R. 1952, Punj. 309; Biswambhar *v.* The State of Orissa, A.I.R. 1957, Orissa 247.

100. A.I.R. 1958 S.C. 731 : 1959 S.C.R. 629.

101. A.I.R. 1958 S.C. 956: 1959 S.C.R. 995.

102. A.I.R. 1954 S.C. 92 : 1954 S.C.R. 587.

103. Crown Aluminium Works v. Their workmen, A.I.R. 1958, S.C. 30 : 1958 S.C.R. 651. Express Newspapers Ltd. v. The Union of India, A.I.R. 1958 S.C. 578 : 1959 S.C.R. 12. Gulamchand v. The State of Bombay, A.I.R. 1962 : Bombay 97. Loknath Misra v. The State of Orissa, A.I.R. 1952 : Orissa 42.

104. A.I.R. 1967 S.C. 1643 : (1967) 2 S.C.R. 762.

105. Per Hegde and Mukherjee, JJ.

106. Parliamentary Debates (Lok Sabha), Pat II, March 14, 1955.

107. Resolution 15th, March 1950, Gazette of India Extraordinary March 15. 1950 (cited in Markandan : Directive Principles of State Policy in the Indian Constitution, pp. 268-269).

108. Draft Five-Year Plan (Planning Commission), p. 11.

109. The First Ave-Year Plan, p. 8, para 4.

110. Second Five-Year Plan (Planning Commission), pp. 22-24.

111. *Ibid* .

112. "Election Manifesto, Working Committee 1945 (Dec.) In Resolutions on Economic Policy, All India Congress Committee, New Delhi, 1954, p. 16 (cited by Surindar Suri in Politics and Society In India, p. 281), Naya Prakash, Calcutta, 1974.

113. Ref. to the Summary in Agricultural Labour in India, Labour Bureau Govt. of India, New Delhi, 1963 (cited in Suri, *Ibid.,* p. 285).

114. Planning Commission, Govt. of India, Fourth Five-Year Plan: A Draft Outline, New Delhi, 1966, p. 7.

115. Planning Commission, Govt. of India: New Delhi, 1974, p. 15.

116. *Ibid*.

117. Text of the Constitution (Forty-Second Amendment) Act, 1976.

118. K. M. Munshi-The President under the Indian Constitution, Bombay, 1963, p. 9.

119. Ibid.

120. The Times of India, New Delhi, April 12, 1967.

121. *Ibid.,* Aug. 13, 1969.

122. Mukherjee - The Critical Problems of the Indian Constitution, pp. 45-46.

123. H. M. Jain - The Union Executive, p. 133.

124. *Ibid.,* p. 140.

125. The Statesman (New Delhi), May 2, 1967.

126. K. Santhanam: "The President of India" In the Journal of Constitutional and Parliamentary Studies (New Delhi), Vol. III, No. 3, July-Sept., 1969, p. 1.

127. R.J. Venkateswaran-Cabinet Government of India, London, 1967,p. 106.

128. Full text of President Girl's address was published in National Herald (New Delhi), Aug. 3, 1973.

129. Constituent Assembly Debates, Vol. VII. p. 32.

130. *Ibid.,* p. 984.

131. C.A.D., Vol. X, p. 956.

132. C.A.D., Vol. VII, p. 896.

133. C.A.D., Vol. IV, p. 734.

134. Article 77. (2) provides : "Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in the rules to be made by the President and the validity of an order or instrument which is so

authenticated shall not be called in question on the ground that it is not an order or Instrument made or executed by the President."

135. Basu - Commentary on the Constitution of India, op. cit., Vol. I, p. 471.

136. *Ibid.,* p. 472.

137. Section 5 of the 42nd Amendment Act.

138. Ibid.

139. Details of the changes brought about in Art. 368 has been discussed in Chapter 4.

140. S. N. Agarwal-Gandhian Constitution for Free India, Kitabistan, Allahabad, 1946.

141. *Ibid.,* p. 79.

142. The Constitution of Dahomey (1964) ; the Constitution of Ethiopia (1955); the Constitution of Guinea (1958). The Constitution of Somalia (1960); the Constitution of U.A.R. (1964) ; the Constitution of Cambodia (1947, as amended to 1964); the Constitution of Peoples Republic of China (1954); the Constitution of the U.S.S.R. (1936, as amended to 1965 and 1977); the Constitution of Yugoslavia (1963); the Constitution of Czechoslovakia (1960).

143. Paras Diwan-Abrogation of 42nd Amendment-Does our Constitution need a second look ? - op. cit., p. 95.

144. *Ibid.,* pp. 95-96.

145. Dr. L. M. Singri is reported to have used the term while he was participating in the deliberations of the Bar Association of India, in New Delhi while examining the 44th Amendment Bill (Vide Statesmen, Oct. 22, 1976).

146. Clauses 17, 30 and 56 of the Act.

147. Clauses 18, 22 and 35 of the Act.

148. Clauses 19, 20, 22 and 23 of the Act.

149. Clauses 23 - 25 of the Act.

CHAPTER - VII

CONCLUDING OBSERVATIONS

The foregoing discussion conclusively proves that there is a direct relationship between constitutional dynamics and the nature of federal governance in India. Basically the notion of constitutional dynamics suggests that a constitution, to be workable, should have the capability respond to and make adjustment with the changing nature of socio-political environment. After all, a constitution is not a mere document which embodies certain rules and principles to be followed in the governance of the country. It is more than that- 'a living organism' as has been suggested by scholars who should have the power of transcending time and space. In other words, the classification by Karl Lowenstein of constitutions as normative, nominal and semantic seems very relevant for the present purpose. Such a functional categorization fits into the scheme of understanding the very element of constitutional dynamics in a very fast changing environment.

It is true that the very first constitutional change was effected to the constitution first immediately after one year since the Constitution was set into operation but that charge was necessary for providing detailed support to them right to property. But subsequently, a number of amendments were brought which had their direct and profound impact on the federal governance of the country.

At this point, one may recall that at different points of time, demands appeared on the surface for going to have a new Constitution, replacing the present one. One such incident took place with passing of the 42nd Constitutional Amendment Act. The Act has been described by many as "a mini Constitution", changes of which touched all, major aspects of the Constitution. But it was realized that the Constitution the nation adopted has a surprising degree of adaptability and

responsiveness and it has been working effectively in different circumstances and conditions.

Coming to the issue of federal governance, it may be stated that the federal design has categorically given a stronger hand to the centre as the scheme does not fit into any ideal type of federal arrangement. There were compulsions as the country needed to be well protected and to remain united such a centralization of power was deemed necessary. But with the passage of time, the emergence of newer and newer forces has altered the very nature of federal arrangement of the country. From a kind of domination federal politics, it passed into bargaining federation and subsequently cooperative federalism. It should be noted that these are not constitutional transformation but the results of functional necessities. The party configurations in India have passed through different stages from one dominant party system to coalition politics. Earlier, the national political parties used to control in a big way the course of political process of the country. But the emergence of coalition politics has altered this position and to-day, the regional political parties are controlling the national political process in an effective manner.

Such a qualitative change has affected the nature, contest and direction of federal governance in a substantial way. A new concept has emerged which calls it "a federalism with multiple centres."

Whether one agrees this or not, it is true that in India, the impact of regional demands and aspirations as well as assertions is being felt everywhere. The conflict between "national" and "local" (regional) politics has become manifest and it demands for further rearrangements of the federal set-up.

Regional movements in many parts of the country are taking the shape of autonomy movements and other forms demanding greater space in the national politics. National politics, in its turn, is making

room for the accommodation of these demands either by allowing autonomy in a limited sphere of governance or by creating separate states. But like any other element, flexibility of the political system has its own limit beyond which it can not expand itself. If such a situation comes, the political system might encounter a potent threat to its own survival.

Fortunately, the challenges met so far by the Indian political system are mainly peripheral as they do exist on the surface without touching the core areas. The challenges are mostly issue-based issue-conflict and not systemic-conflict. The big and wide nature of the political system enables it to withstand the 'jerks' that come out with the collision among different forces. This is the unique feature of the Indian political system which has enabled the system to transform itself from the position of centralized policymaking process to the level of decentralized policy-making and implementation process.

In fact, this is the very essence of participatory democratic process where space should be provided to all segments of the population for their effective and meaningful participation in the decision making process. This is the problem area of any participatory governing process because it is almost difficult to ensure participation of all in some measure and with same degree of effectiveness.

The federal arrangement is one of the many arrangements which makes wider area of participation by all segments of the polity. But scope of participation will not be sufficient unless backed by constitutional support. This is where the constitutional arrangements come in. the effectiveness of constitutional back up depends upon its dynamic nature which can provide same degree of assistance in the changed circumstances.

The history of political developments in India since 1950 offers a record of such mutual inter dependence between constitutionalism,

constitutional dynamism and federal governance. In the foregoing chapters, efforts have been made to identify the course of developments, locating the exact path through which changes have taken place and constructing a logic of analysis. But the conclusions drawn at the end are tentative and cannot be final as political process is dynamic in nature and today's position be replaced by a new one in future.

SELECT BIBLIOGRAPHY

PRIMARY SOURCES

Government Documents

- Government of India, Government of India Act, 1935 (26 Geo. 5 and 1 Edw. 8 ch.2). London: H.M. Stationary Office, 1935.
- Government of India, Constituent Assembly Debates: Official Report. 10 Vols., Ser.2. Delhi: Manager of Publications, 1949.
- Government of India, Administrative Reforms Commission: Report on Centre-State Relationships, Delhi: Manager of Publication, 1969.
- Lok Sabha, Lok Sabha Debates, 8th Lok Sabha, 13th Sess., 8th Ser., Vol.48, No.22-26 (1989).
- Lok Sabha, Lok Sabha Debates, 10th Lok Sabha, 1st Sess., 10th Ser., Vol.5, No.46 (1991).
- Lok Sabha, Lok Sabha Debates, 10th Lok Sabha, 2nd Sess., 10th Ser., Vol.7, No.24 (1991).
- Rajya Sabha, Debates, Rajya Sabha, Vol.148, No.12-14 (1988).

SECONDARY SOURCES

Books

- Alexandrowicz, C.H. Constitutional Development in India, London: Oxford University Press, 1957.
- Andrews, M.G. Constitutions and Constitutionalism, Prince-town Van Nostrand, 1968.
- Arora, Balveer and Douglas Verney. Eds. Multiple Identities in a Single State. Delhi. Konark Publishers, 1995.

- Bhatnagar, S. and Pradeep Kumar, Regional Political Parties in India, New Delhi: Ess and Ess Publications, 1988.
- Blondel, Jean, ed. Comparative Government: A Reader, Mac Millan, London, 1971.
- Brass, Paul, Politics of India Since Independence, Cambridge: Cambridge University Press, 1990.
- Das, H.H. and B.C. Choudhury, Federal and State Politics in India, New Delhi: Discovery Publishing House, 1990.
- Datta, Abhijit, Ed. Union-State Relations. New Delhi: Indian Institute of Public Administration, 1984.
- Dhawan, Rajeev and Alice Jacob. Eds. Indian Constitution: Trends and Issues, Bombay: Tripathi Publications, 1978.
- Eckstein, Harry and David E. Apter. Comparative Politics: A Reader, The Free Press, N.Y. 1963.
- Fadia, Babulal, State Relations in India, 2 Vols. New Delhi: Radiant Publishers, 1984.
- Finer, Herman. Theory and Practice of Modern Government, London, Methuen, 1965.
- Fadia, Babulal and Rajendra K. Menaria. Sarkaria Commission Report and Centre-State Relations. Agra: Sahitya Bhawan, 1990.
- Hardgrave, Robert and Stanley Kochanek, India: Government and Politics in a Developing Nation, 4th ed. New York: Harcourt Brace Jovannovich, 1986.
- Harrison, Selig. India: The Most Dangerous Decades, Princeton: Princeton University Press, 1960.
- Hasan, Zoya, S.N. Jha and Rasheeduddin Khan; eds. The State, Political Processes and Identity, New Delhi: Sage Publications, 1989.

- Kashyap, S.C., and Union State Relations in India, New Delhi: The Institute of Constitutional and Parliamentary Studies, 1969.
- Khan Rasheeduddin, Federal India: A Design For Change, New Delhi: Vikas Publishing House, 1992.
- Kochanek, Stanley, The Congress Party of India: The Dynamics of One Party Democracy. Princeton: Princeton University Press, 1968.
- Kohli, Atul, Democracy and Discontent: India's Growing Crises of Governability. Cambridge: Cambridge University Press, 1990.
- Maheshwari, Shriram, State Government in India. Delhi: The MacMillan Company of India Ltd., 1979.
- Mark, Fritz Morstein, Foreign Governments: The Dynamics of Politics Abroad. Prentice Hall, New York, 1952.
- Morris Jones, W.H. The Government and Politics in India, London: The Eothen Press, 1964.
- Morris Jones, W.H. Politics Mainly Indian, Bombay: Orient Longman, 1978.
- Mukharji, Nirmal and Balveer Arora, eds. Federalism in India: Origin and Development. New Delhi: Vikas Publishers, 1992.
- Raju, K.H. Cheluva, 'Indian Federalism and Integrity of the Nation', Indian Journal of Political Science 49 (1988): pp.1-13.
- Ray, Amal. 'New Economic Policy and Indian Federalism', Economic and Political Weekly 27 (1992): pp.147-50.
- Ray, Amal, The Sarkaria Commission's Perspective: An Appraisal'. Economic and Political Weekly 23 (1988): pp.1131-33.
- Ray, Amal. From Consensus to confrontation: Federal Politics in India', Economic and Political Weekly 17 (1982): pp.1619-24.

- Sathyamurthy, T.V. 'Centre-State Relations: Southern Chief Ministers Meeting.' Economic and Political Weekly 18 (1983): pp.576-79.
- Stahyamurthy, T.V., Centralised State Power and Decentralised Politics'. Economic and Political Weekly 31(1996): pp.835-43.
- Vile, M.J.C. Constitutionalism and the Separation of powers, O.U.P., 1967.
- Wheare, K.C. – Modern Constitution, D.U.P., London, 1966.

Journals

- Indian Journal of Political Science
- Journal of Constitutional and Parliamentary Studies.
- Asian Survey.
- Keesing's Contemporary Archives.
- Administrative Change.
- Supreme Court Journals.
- Comparative Politics.
- Journal of Indian Law Institute.
- Government and Opposition: A Journal of Comparative Politics.

News Papers

- The Statesman.
- The Hindu.
- Times of India.
- Hindustan Times.
- The Telegraph