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