

CHAPTER - X

C O N C L U S I O N

I. Constitutional Dynamics and the Indian Political Process : Constitutional Amendments to overcome the challenges before the Indian Political system.

The foregoing discussion leads us to conclude that "in a world of changing patterns and dynamic relationships, the stability of a political system may, for all practical purposes, depend on its capacity to recognize and accept the need for change, and institutionalize such change by suitable alterations, adaptations and adjustments to the basic framework of the political system." ⁽¹⁾ The working of the Indian political process has involved the use of many extra-constitutional devices, institutions and practices, ⁽²⁾ and, because of its inherent dynamism, it "has successfully withstood the recurring stresses and strains" ⁽³⁾ generated very frequently within the Indian political system.

Although the Indian Constitution appears to be more "derivative" and "adventitious" than typically "indigenous" and "original", ⁽⁴⁾ it has peculiarly been successful not only in responding to periodical challenges but also in overcoming them with a remarkable degree of flexibility.

Following Loewenstein's classifications ⁽⁵⁾ it may conveniently be concluded that the in India formal constitutional amendments have been used to bridge the gap between the 'nominal' and the much desired 'normative' Constitution. It has been rightly observed that many of the present maladies within the Indian political system can be removed by conscious re-arrangement of institutional structure by formal revisions of the governing rules of the Constitution. ⁽⁶⁾

There can be no two opinions about the fact the Indian political system is passing through a crisis of un-precedented nature and it is standing at the cross-roads of its destiny. (7) It is to be admitted that the Indian Constitution has failed to transform itself from the 'nominal' to the 'normative' category because the accomplishment within the Indian political system has lagged far behind the aspirations --- a gulf still exists between aspirations and achievements.

It has been noticed from the working of the Indian political system that the political process itself has failed to adjust itself to the norms of the Constitution mainly due to failure of the political leadership and inter-organ tensions and conflicts within the power-process. (3)

Although the Constitution-makers tried to draft the Constitution in a very elaborate fashion, there are many sensitive areas which remained untouched during the period of Constitution-making. The constitutional document was exposed to serious pulls and pressures when it was actually put into operation. With the emergence of serious disagreements on some vital issues like Centre-State relations, role of the judiciary vis-a-vis the Parliament, right to property vis-a-vis the socio-economic development, special privileges of the minorities, etc., the necessity of amending the Constitution to effect a certain amount of compromise was felt.

In the foregoing chapters, we have seen how frequently the Constitution has been amended with a remarkable degree flexibility. This has raised serious doubts about the very stability of the politi-

cal system itself. It is true that during 1967-77, the Indian political system witnessed a decade of problems and prospects, a period of vagueness and uncertainty, an age of challenges and systemic conflicts within the political process. These moves and counter-moves made many observers sceptic about the very existence of the system. But it is to be remembered in connection with any study of a political system that elements of stability do not stand in the way of basic changes since stability and change are the twin elements that make the political system both responsible and responsive in nature. The element of change or transformation can never be interpreted as an anti-thesis of stability. That is why, political stability is often regarded as an indispensable and a basic factor for radical transformation of economy and society.

The Indian political system has passed and is passing through the period of readjustment and reformations. With the emergence of the era of coalition politics, continuous instability in the form of defections and shifting alliances may be witnessed. One cannot rule out the possibilities of "either prolonged instability and stagnation or an ideological polarization that would lead to chaos." (9)

II. Constitutional amendments as stabilizing and corrective measures: Move towards elimination of symptoms of tensions, instability and systemic conflicts within the Indian political system.

In conclusion, it is to be noted that amendments have a stabilizing, regulative and corrective value in a changing political system. It has been apprehended in some quarters that in India, frequency of constitutional amendments has been so high as to eliminate, both vertically and horizontally, the vestiges of limitations on the

governing process. This may, it is said, go a long way to destabilize the political system and vitiate its basic character. Frequent and half-hearted changes have, very often, eroded the sanctity of the basic framework so heavily as to bring it down to the level of a 'subordinate' document. (10)

In the name of elimination of tensions, a number of amendments, particularly the Forty Second Amendment, have altered the basic document in a way that could not be envisaged by the Fathers of the Constitution. The inevitable result has been the necessity of bringing further moves for constitutional amendments.

The Indian Parliament, after the March 1977 elections, set itself to the task of restoring the institutional balances that were severely disturbed by the Forty Second Amendment. An analysis of the already passed Fortyfourth and Forty fifth Amendment Acts will establish the fact.

The Constitution (Forty-fourth Amendment) Act was passed on December 20, 1977 by the Lok Sabha. The bill was supported by 318 members while only one member voted against it.

The Act which contains 10 clauses removes a small part of the imbalance created by the Forty Second Amendment. It restored to the Supreme Court and High Courts the power to consider the constitutional validity of any piece of legislation - Central or State. (11) It may be recalled that the Forty Second Amendment had taken away the right of the Supreme Court to consider State-laws unless they impinged on Central laws, and of High Courts to consider Central Laws. The Fortythird Amendment, again, deleted the provision for a minimum of

seven Supreme Court judges (five High Court judges in the case of a State Law) hearing any case involving the constitutional validity of any legislation. Only by a two-thirds majority could a statute be declared by the Supreme Court or a High Court to be invalid. The needless strain caused by this provision compelled the Janata Government at the centre to rush through the Fortythird Amendment. The sweeping provisions on anti-national activity were also deleted because of the apprehension that any party in power could use this authority to harass or victimize other political parties according to their own will.

Sharp reactions of the members were noticed during the debate of the said Bill. Mr. S. N. Misra was reported to have observed that the Bill did not cover the promises made during the elections. Mr. P. Mavalankar, Mr. Misra and Mr. Somnath Chatterjee objected primarily on the ground that the measure was not comprehensive enough.

Mr. Mavalankar thought that the whole Bill (Fortysecond Amendment) ought to have been repealed, considering the obnoxious provisions and the 'cavalier manner' in which it had been brought. Mr. Misra was reported to have observed that the Government was "slowly walking into the trap" set by Mrs. Gandhi's party which might, in the end, decide not to extend their support to it at all. Mr. Chatterjee, on the other hand, wanted that the Fortysecond Amendment should be repealed 'lock, stock and barrel.'

Mr. Shanti Bhushan, the then Law Minister, categorically declared that there was no question of the Janata Party and the Government going back on their commitments. Regarding the statement

in the manifesto that the Constitution had been amended to 'sanctify total concentration of power in the hands of a single individual' and that the amendments would be rescinded, Mr. Shanti Bhushan said that the statement "did not apply to each individual clause but to most of the clauses." (17)

Supporting his contention, the Law Minister observed that the Article on legal aid to the poor could not be construed as a provision to sanctify the concentration of power and there was no point in first repealing all the provisions and then, through another exercise restoring some of the very provisions in the Constitution.

The Government, he observed, wanted 'discussions and consultations' to precede any changes in the Constitution, "something that had not been done on the last occasion by the previous Government." (18) He strongly refuted the charge that this was only "a piecemeal measure." As a result of such consultations, the Constitution (43rd Amendment) Bill was introduced unanimously which contained certain provisions, including altering the terms of the Lok Sabha and the State Assemblies.

III. The Constitution (Forty-fourth Amendment) Act, 1979: measures to bring the system to a point of equilibrium.

The Forty-fourth Amendment Act which came into effect from June 19, 1979, contains as many as 43 clauses mainly directed at the task of removing the bottlenecks already set in by the Constitution (Forty-second Amendment) Act.

The major changes brought about by this Act include, inter-alia, (a) deletion of the right to property from the chapter on

fundamental rights; (b) constitutional immunity of the Indian Press against legal action for publication of proceedings of Parliament and State Legislatures; (c) modification of the preventive detention provisions of Art. 22; (d) restoration of the terms of the Parliament and the State Assemblies to five years; (e) provision for the President to act in accordance with the advice of the Council of Ministers once he has asked for reconsideration of such advice; (f) omission of reference to the British House of Commons in the provisions for parliamentary privileges in Arts. 105 and 194; (g) power of the President and the Governor to promulgate Ordinances during the recess of the legislature; (h) several safeguards against proclamation of Emergency in future; (i) appointment and conditions of office of High Court Judges; and (j) renovation of provisions for deployment of armed forces by the Centre for assistance to States. (19) But the Rajya Sabha voted out five important clauses of the Forty-Fifth Amendment Bill relating to the primacy of the Directive Principles over the Fundamental Rights, ouster of judicial review of the validity of constitutional amendments, fundamental duties of the citizens, power to transfer High Court Judges, and the position of the President vis-à-vis the Council of Ministers. It is thus clear from the provisions of the Act that the status quo ante has yet to be restored.

IV. Summing up:

In this section, an attempt is being made to look into two fundamental issues around which our whole discussion has resolved. These are: (1) The very nature of the amending process

prescribed in the Indian Constitution itself and (2) the over-all impact of these constitutional amendments done so far in the Indian Constitution.

It is true that the 'wise-variety' in the amending article has helped the political system to adapt itself with the fast changing socio-economic landscape of the country ever since it attained independence from colonial rule. But the frequency with which the basic document has been changed, has made many minds sceptic about the very nature of the Constitution. But it will not be out of place here to mention that it is not the amending process which alone can determine the flexibility or otherwise of a Constitution. This is dependent upon certain situational variables which direct the course of the political process. This can be easily illustrated from the working of the Indian political system right from 1950 -- the year when the basic framework was first set into operation. It has been clear from the foregoing analysis that whenever there was stability as well as one-party dominance, the rate of constitutional amendments was very high. This is evident from the number of amendments done from 1951 to 1967, 21 in 17 years. But during the period between 1967 to 1971, when the situation was somewhat fluid, the rate of constitutional change suddenly came down, and only 2 amendments were effected in about 4 years.

There was again a rising tendency after the 1971 mid-term poll when the Congress Party under the leadership of Mrs. Gandhi came to power with a thumping majority. As many as 18 amendments came about in 6 years. It is in this phase that important amend-

ments like the 24th, 25th and the 26th were effected. This trend continued upto 1976-77 when in 1976 the Constitution (Forty Second Amendment) Act was passed. This amendment may be taken as a culmination in so far as it has virtually made a major, if not a total, revision of the Constitution.

The 1977 election may be regarded as a major breakthrough in this regard when the long-established Congress hegemony was completely shattered. The Janata regime in its short span, stretching over a period of roughly two years, represented, so to say, a 'period of consensus', since in this phase the Janata Govt. tried to undo the evils of the 42nd Amendment Act through discussion and consensus among the opposition parties. This was necessary because of the lack of their majority support in the Rajya Sabha.

But this situation could not last long and the 1979 election again saw the return of one-party dominance. This present phase may be regarded as a more or less secured one.

Thus, the conclusion that can be safely drawn from the above analysis is that in India, the interaction between the amending process and the political process has never been a one-way traffic; rather it has always been a two-way process since the very beginning of the working of the political system itself. The foregoing discussion establishes the fact beyond doubt that in the initial phase, that is the period covered from 1951 to 1967, it is the nature of the political process which influenced the amending mechanism to a great extent, while subsequently, it is the formal amendments themselves which played a major role in effecting significant changes in the political process itself which once again, as a feedback effect, influenced

the subsequent character of formal amendments, thus creating a circular and cyclical process of mutual interaction. It is interesting to note that during this period at least three vital constitutional amendments, namely the First, the Fourth and the Seventeenth, were passed which affected substantially the rights of the individual, especially his right to property. It is equally fascinating to observe that in spite of the very rigid attitude of the judiciary, the political leadership as expressed through the institution of the Government-Parliament, was successful in carrying through the wills and aspiration of the people by way of constitutional amendments. This was supplemented by the charismatic leadership of Nehru and the dominance of the then Congress Party virtually all over the country. Thus, it will not be incorrect to say that in India, as in Switzerland and Australia and unlike in the U.S.A., the political leadership has been able to implement the wills of the people whenever they thought proper by constitutional amendments even in the face of the challenge posed by the judiciary. The situational variables since 1950 which were responsible for such changes, may roughly be outlined as follows:

(a) Single party dominance and the charismatic leadership of Nehru coupled with the prevailing political situation from 1950 to 1967 contributed to bring about such a huge number of constitutional amendments.

(b) The institutional conflict generated by the Golaknath decision of 1967 and the changed political landscape after the Fourth General Elections.

(c) The historic split of the Congress Party and return of the era of one-party dominance after the mid-term poll of

1971;

(d) a major break-through after the 1977 Lok Sabha poll with the installation of the Janata Govt. at the Centre;

(e) the 1979 General Election and restoration of singleparty dominance.

(f) The mounting economic crisis caused by the failure of development efforts in the face of population-explosion.

Again, from the point of view of the inter-governmental relationship, it may be said that because of the inherent contradictions in out look of the Parliament and the Judiciary, the latter has failed to act as an instrument for change in India. In the U. S. A., constitutional changes have been effected mainly through informal devices and judicial interpretations have definitely contributed, to a great extent, in this regard. In India, the judiciary has taken many a time 'activist' and 'doctrinaire' attitude towards property rights as a result of which the expected and anticipated coordination between these two institutions never materialised. This is also a factor which contributed to such frequent constitutional changes in India through legislative initiative, ⁱⁿinformal amendment.

The over-all impact of these formal constitutional amendments on the nature and working of the Indian political system may be summed up in this way;

(a) these amendments have tilted the constitutional balance squarely and positively in favour of the Parliament, and have virtually established the supremacy of the Parliament;

(b) these amendments, in a bid to remove the

dichotomy and 'inherent' conflict between the 'justiciable' and 'enforceable' fundamental rights and the 'non-enforceable' but nevertheless 'fundamental' directive principles, have virtually tilted the balance in favour of the latter.

(e) these amendments have by and large, contributed significantly to the augmentation of the federal (central) power in a political structure that is already characterised by in-built centralizing mechanisms.

(d) There is a distinct tendency to remove the inter-organ control mechanism within the power structure and to obliterate the underlying checks and balances which constitute the hall-mark of Western constitutionalism that has inspired and moulded the Indian political system at its inception. If the vestiges of government by limitations are removed, both vertically and horizontally, fresh symptoms of tension, instability and systemic conflict might be induced in the near or distant future, and this might very well destabilize the political system and vitiate its basic character.

Thus, it may be safely concluded that very nature of the Indian political system has produced a number of peculiarities which are purely indigenous in character. It has been able to face successfully the crises that were generated because of the interaction between the environment and the political process. Constitutional amendments have played a very 'significant', it not a 'decisive' role in this process.

R E F E R E N C E S.

1. S. N. Ray - "Constitutional Amendments and the Indian Political System: Response to a Challenge or a Symptom of Systemic Conflict?"--
Paper present in the 36th Indian Political Science Conference, Jodhpur, 29-31 December, 1976.
2. N. R. Deshpande - "Nationalism and Political Development in India," in M.S. Rajen (ed): Studies in Politics, Vikas, 1971, Ch. 2, P.17.
3. 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 Council for Political Studies.
4. This classification is based on the observation made by Leslie Wolf - Phillips in his book Comparative Constitutions, Macmillan, 1972, Ch.4.
5. See Chapter 1 of the present study.
6. S. N. Ray - Constitutional Amendments and the Indian Political System: Response to a Challenge or a Symptom of Systemic conflict?---
op. cit.
7. Dalip Singh - "Challenge of Poverty and Socio - Economic change in India -- a Search for Alternate Model" -- Paper present in the 36th Indian Political Science Conference, Jodhpur, 29-31 Dec. 1976.
8. S. N. Ray - "Constitutional Dynamics and the Political Process in India: a note on the interaction between Constitutional amendments and judicial review" -- op. cit.
9. Rajni Kothari - Politics in India, Boston, 1970, P. 190.
10. S. N. Ray - Constitutional Amendments and the Indian Political System, op. cit. P. 13
11. Text of the Constitution (Forty-third Amendment) Act, 1977.
12. The Statesman, December, 17, 1977.
13. Ibid.
14. Ibid.
15. Ibid.
16. Ibid.

17. Ibid.

18. Ibid.

19. The Statesman, June 20, 1979.