CHAPTER - III

Historical Background of the Making of the Amendment Provisions in the Indian Constitution.

I

The Indian Constitution as a Dynamic Instrument.

The founding fathers of the Indian Constitution were, right from the beginning, aware of incorporating an amending mechanism in the body of the Constitution. The deliberations of the Constituent Assembly will clearly reveal that the framers laid great stress on the concept of constitutional dynamics while framing the amending clause.

In India, the Constitution has been regarded as "a symbol of social aspirations rather that as the formalized rules for the exercise and control of political power."(1) But it must be conceeded at the out set that the political system as has been specified in the Constitution appears to be "more evolutionary than revolutionary."(2) Consequently, the framers tried to add elements of dynamism and modernism by specifying the "goals and objectives of the State in the shape of the Preamble and The Directive Principles of State Policy, and by the establishment of the processes and instruments necessary for the attainment of such goals."(3) The Constitution is, thus, expected to be, to use 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 ideas "seek to provide for the creation of a modern society and a modern political system through democratic institutions."(6)

Indian Constitution as a living instrument of modernisation.

Considering the variety in the material circumstances, emerging after the achievement of independence, the Constitution tried "to effect curious compromise between contradictory principles."(7) In spite of the fact that the Constitution of India has been elaborately drafted, it is full of anomalies, which until the mid-sixties, did not cause much trouble by endangering the stability of the political system itself because of the charismistic leadership of the late Prime Minister Nehru. During the mid-sixties, with the emergence of some kind of political polarisation on the national scene, "some of the explosive ~~is~~ issues assumed the proportions of a serious confrontation between ideologically differentiated political forces."(8) It may not be out of place here to mention that even in the face of these challenges, "the Constitution has been able to keep itself in working with a surprising degree of adaptability to changing circumstances."(9) This has been possible because of the operation of the flexible amending process that combines "the virtues of stability and change, order and progress."(10) The drafting of the amending provision, as will be revealed from the following discussion, clearly establishes the fact that the Members of the Constituent Assembly wanted to make the Constitution a vehicle for social change by using the built-in-mechanism in different periods.

Adaptability of the Indian Constitution.

II

The Constituent Assembly and the Drafting of the Amending Clause:

The drafting of the amending provision started in June 1947, when the Union Constitution Committee (hereinafter referred as UCC) began its meetings. 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 be ratified 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 pleaded for inserting such a clause in the Constitution because he realised that it would have been more usual and it corresponded to that Sec. 310 of the Government of India Act 1935. He pointed out that this clause was borrowed from Art 51 of the Irish Constitution.(13)

K. M. Munshi, while supporting this stand, 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)

Although the Drafting Committee rejected the idea of easy amendment of the whole Constitution as proposed by Mr. B. N. Rau, the principle was adopted in regard to amending certain clauses of the Constitution by a simple majority in the Parliament. Granville Austin, while commenting on this aspect, observed inter-alia: "It appears that Rau was stretching the customary meaning of a 'removal of difficulties' clause into a device for the easy amendment of the Constitution -- the need for which he strongly believed."(15)

History of the amending article.

The history of the amending article (art 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 did not stick to this principle and instead urged for introducing a system in which one-half of the majorities will be required. The Sub-Committee of the UCC recommended that the ratification should be by legislatures representing one-half of the total population of 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)

The Drafting Committee, while piloting the scheme,

introduced significant changes in the amending provision. For a proper understanding of the scheme, it may be quoted in full. Art. 304 of the Draft Constitution provided -

"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 amendment 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 that one-third of the States, for the time being specified in Part III of that Schedule.

(2) 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 assent, 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)

Analysis of the article.

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 entrenched provisions: all legislative lists were included within this 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

The Amending Article and the Constituent Assembly Debates:

The members of the Constituent Assembly began 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 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)

Dr. Ambedkar's amendments.

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

Dr. Ambedkar'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 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; or

(b) the representation of the States in Parliament;

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 moved amendment No. 207 in the following way:

"That in amendment No. 118 of List III 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 resolutions to that effect passed by those legislatures before the Bill making provision for such amendment is presented to the President for assent."(23)

Moving these amendments, Dr. Ambedkar declined to make any remark about these changes in anticipation of 'considerable debate' on the issue. He, however, proposed to explain 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 request and insistence fell flat as Dr. Ambedkar categorically refused to initiate any debate on his own amendment.(26)

Debate that followed

Mr. T.T. Krishnamachari, another member of the Constituent Assembly, refused to move his amendment (No. 119) holding that his contention were widely covered by the amendments already moved by Dr. Ambedkar.(27)

Dr. P.S. Deshmukh, participating in the debate, moved:

"That in amendment No. 118 of the List III (Eighth week), for the substantive part of the proposed article 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

assented to by the President."(28)

In his amendment No. 210, he proposed 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)

Not being satisfied with these amendments, he liked to insert a new clause, art. 304-A in order to protect 'individual rights .... with respect to property'(30) in the following language:

"Notwithstanding anything contained in this Constitution to the contrary, no amendment which is calculated to 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)

Regarding the nature of his amendments, Dr. Deshmukh categorised them to be 'alternative to one another'.(32) These were proposed with a view to making the amending procedure easier. In explaining his stand on the easy process of amendment, he argued.

"The main reason for my 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."(38)

Refuting the charges made by some pressmen that the framers wasted much time and huge amount 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)

With regard to the necessity of incorporating the clause protecting Fundamental Rights, he pointed out, '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 even that much freedom that the foreigner 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 concluding speech, he reiterated the necessity of easy amendment for the sake of preserving the Constitution and smooth running of future administration. He thought 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 opinion, in the absence of any such

outlets, there is the possibility of the whole Constitution being rejected by the future Parliaments.(38) In his own words: "If we donot 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) Lastly, he wanted to frame 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)

Mr. Brojeswar Prasad, while moving his amendments, held that in his opinion, the Legislatures of the States should not be associated with the amending process. Referring 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 in the process of amending the Constitution."(41)

While supporting 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 was in favour of referendum because "it cures patent defects in party government".(43) The device is conservative in nature since "it ensures the maintenance of any law or institution which the majority of the electors effectively wish to preserve." Finally, he considered referendum to be a "strong weapon for curbing the absolutism of a party possessed of a parliamentary majority."(45)

In support of his contention, Mr. Prasad quoted a lengthy paragraph from Prof. Dicey's celebrated work "Law of the Constitution" where Dicey held the view that referendum would promote 'a kind of intellectual honesty' among the electors.(46)

He did not favour the idea that the powers of the Parliament should be fettered. The method, sought to be introduced by art. 304, appeared to him to be "totally detestable, totally repugnant,"(47) because in his opinion, the mechanism of two-thirds majority 'will act as a brake'.(48) He pointed out that this mechanism, if adhered to, would act as 'a brake to any progressive legislation and even pave the way for revolutionary and anarchist forces in the country.'(49) That is why, at least for a period of ten years from the commencement of this Constitution, 'these safeguards must be removed.'(50)

By way of making his observation and argument for 'a flexible Constitution', he did not forget to mention the international situation that might emerge in Asia in near future. He apprehended that a revolutionary Asia would emerge and 'in order to meet, that situation, the Government of India should not be fettered in any way whatsoever.'(51) Since India was passing 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 supporting his arguments for enacting a flexible Constitution, he, quoting from Prof. Dicey's book, referred to European Constitutions which did not last long because of their rigidity in the amending process. For example, the twelve unchangeable Constitutions of France lasted on an averaged for less than ten years. The best plea for the coup-d'-etat of 1851 was that while the French people wished 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 re-election impossible, thwarted the will of the sovereign people. (54)

Mr. H.V. Kamath wanted the article, first of all, to define what an amendment is. He wished to insert the words 'by way of variation, addition or repeal' along with the word 'to amend'. (55) He also moved an amendment to the effect that Presidential assent to an amending Bill should be made mandatory and not discretionary. (57)

Commenting on the 'proviso' as proposed by Dr. Ambedkar to be added after article 304, he held 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. He was of the opinion that an easy method should have been prescribed in connection with those relations so that the unifying forces might be preserved. (58) He requested Dr. Ambedkar to change his proposed proviso so that the amendment Bill, even if it is passed by

Legislatures of not less than half of the States and goes back to the Parliament and again passed by it, the amendment should prevail.(59) Otherwise, Parliament's supreme authority will be at a disadvantage and the 'centrifugal or disruptive forces of the country might gain ascendency.'(60) He concluded that unless the Constitution provides for easy method of amendment 'it will pave the way for revolution'.(61)

Mr. Naziruddin Ahmed fully sympathized with Mr. Deshmukh on the point and believed that many difficulties may arise in future. He thought that 'the rigidity which has been given to the Constitution by art. 304 is very proper'.(62) The examples of the English and other Constitutions are not appropriate, '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)

Mr. S. K. Sidhwa supported Dr. Ambedkar's two amendments. Acharya Jugal Kishore, while accepting Dr. Ambedkar's amendments, suggested 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 requested Dr. Ambedkar to consider his suggestion for constitutional amendments during the next five years 'by simple majority.'(66)

Mr. Mahavir Tyagi based his argument on the maxim that "the earth belongs in usufructs to all the living equally and the dead have neither the powers nor the rights over it".(67) He believed that a generation is divided morally to bind its succeeding generations

either by inflicting on them a debt or a Constitution which is not alterable.[68] He concluded that 'a Constitution which is unalterable is practically a violence committed on the coming generations'.[69] But he believed that 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 commenting on the amending procedure as provided for in the Draft Constitution, he referred to the British Parliamentary system and urged the members to realise 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] That is why they can readily adapt 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 character of the Constituent Assembly, Mr. Tyagi's observations are worth-mentioning. He considered the members of the Constituent Assembly to be 'de-facto' representatives and not 'de-jure' as they were supposed to have been.[74] In his observations, he remarked:

"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. I 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 this 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 membership of the House and a two-thirds majority of the 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)

Last of all, Dr. Ambedkar began to answer the question of his opponents and laid great emphasis on the importance of the amending procedure in federal Constitutions. Referring to the Canadian Constitution, 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 thought 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 the Constitution.(80)

Dr. Ambedkar's reply to the Debate.

Analysing the amending procedure of the Swiss Constitution, he explained:

"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 so far as changing the Constitution is concerned."(81)

Pointing to the Australian Constitution, he told the Assembly that there the amendment must be passed by an absolute majority of the Australian Parliament. Then after it has been so passed, it must be submitted to the approval of persons who are entitled to elect representatives of the Lower House of the Australian Parliament. Again, it has to be submitted to a referendum of the people or the electors. It must be accepted by a majority of the States and also by a majority of the electors.(82)

In the United States, the Constitution provides that an amendment must be accepted by two-thirds majority of both the Houses subject to the condition that the decision of both the Houses by two-thirds majority must be ratified by the decision of two-thirds majority of the States in favour of the amendment. He concluded by saying that in no country the Constitution had been allowed to be amended by a simple majority.(83)

Turning 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 done by the Parliament by a simple majority. Again by art. 148-A, 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)

Referring to the clause 'until Parliament otherwise provides', he asked the member to cite a concrete case where Parliament should have been given more powers relating to amendment.(85) Giving too much wide powers in the hands of the Parliament or making the whole Constitution 'flexible' in the truest sense of the term, would be too "extravagant" and "too tall an order to be accepted by people responsible for drafting the Constitution."(86)

Apart from those articles, there is a second category which requires two-thirds majority for its amendment. If the future Parliament, Dr. Ambedkar added, wishes to amend any particular article which is not mentioned in Part III or in article 304, all that is necessary 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 fundamentally unalterable ...." (88) He referred to Art. 60 and Art. 142. Art. 60 deals with the extent of the executive authority of the Union and Art. 142 deals with the extent of the executive authority of the State. "We have", he told the Assembly, "laid down in our Constitution the fundamental proposition that the executive authority shall be co-extensive with legislative authority." (89) Provincial ratification will be indispensable in protecting provincial autonomy from the clutches of Parliament's amending power. The same line of arguments were also advanced by Dr. Ambedkar with regard to Chapter IV of Part V, Chapter VII of Part VI and Chapter I of Part IX. (90)

Since the Constitution is "a fundamental document" (91) which defines the position and powers of the three organs of the State -- the Executive, the Legislature and the Judiciary, it must prescribe so some limitations on the authorities of these organs. If no such limitation is imposed on the authority of these organs, in the opinion of Dr. Ambedkar, there will be "complete tyranny and complete oppression". (92)

Before concluding his speech, Dr. Ambedkar requested the members to choose between a parliamentary system of government or a totalitarian or dictatorial system of government. "If we agree", he

observed, "that our Constitution must not be a 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) In the end of this long debate, Dr. Ambedkar's two amendments were embodied in a new article numbered as Art. 368 in the Constitution of India.

One of the significant aspects of the debate that took place in the Constituent Assembly was the silence of Shri Jawaharlal Nehru. It has been observed that no where in the history of Constitution-making, the reason for Nehru's silence has been explained. "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 inspire 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)

Silence of Nehru

IV

Observation and Conclusion: Unique example of compromise and accommodation:

Significance of the Debate

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. Moreover, they were moved by the fact that the amending clause in a federal Constitution should be so devised as to enable the future legislators to respond to the needs of the time by amending the Constitution suitably without impairing or damaging the basic federal characteristics. It has been observed that the provisions for 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."(95)

Keeping this in mind, the framers of our Constitution were conscious of the desirability of reconciling the urge for change with the need of continuity. They were of the opinion that change with continuity meant progress. While drafting the amending clause, the framers of the Constitution were guided by the consideration that no generation has a monopoly of wisdom nor the right to place fetters on future generations to mould the machinery of government and the laws according to their guidelines.

Another feature which can be noticed by way of analysing the debates of the framers regarding the nature of the amending article is that they rejected the method of referendum probably because of diverse religious and linguistic minorities. The leaders of the minority communities apprehended that their opinion might not get adequate importance in a popular referendum when there would be mounting passion with regard to a particular issue.

The decision of blending various demands into one article was arrived at by the framers of the Constitution after taking into account the national requirements, the historical background, condition prevailing in the country and other factors of special or national importance. They were conscious of the fact that the power to amend the Constitution was a power of higher grade and of more potential importance than any other power provided for in the Constitution.

The proceedings of the Constituent Assembly clearly show that the whole Constitution was taken in a broader perspective and the amendments fell into three categories providing for simple majority or two-thirds majority and ratification by the states -- all depending upon the content of the article to be amended and the effect of amendment upon the political process of the country. An analysis of the debate reveals three characteristics. In the first place, the members were not in favour of incorporating the devise like Convention or referendum; secondly, some of the articles can only be amended by the ratification of the State Legislatures. All other articles are left to be amended by Parliament by two-thirds

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majority of the Parliament. Thirdly, the provisions for amendment of the Constitution had been made simple when compared with the provisions of the American, Swiss or Australian Constitutions. It has been rightly observed that the Founding Fathers of the 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."(96)

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