

CHAPTER – VI
THE CONSTITUENT ASSEMBLY, MAKING OF INDIAN
CONSTITUTION AND BASIC PRINCIPLES

INTRODUCTION

A modern state without a constitution is unimaginable. A constitution is a vital necessity as it determines the Power-relationship between the citizens of a country and between the governors and the governed. Hence Jellinek observed: “A state without a constitution would not be a State but a regime of anarchy”. The people of every country have the democratic right to determine the form of government under which they are to live. For the purpose of determining the form and nature of government and the nature of power-relationship, the people set up a Constitution Assembly. The Assembly frames the Constitution for the country. Thus the establishment of a representative body for framing of a constitution is implicit in the very concept of democracy. However, the constitution may also have an automatic growth and may be mainly grounded in the conventions, e.g, the British Constitution.

It is interesting to note that in the sphere of enacted constitutions the Americans broke the ice. They frame their own constitution by the Federal Convention in 1787. This example was followed by France during the great French Revolution in the years 1789-91. They called it the National Constituent Assembly. “Since the latter development, it has been a powerful slogan in popular movements for freedom in Europe”².

Indian Demand for Constituent Assembly:

As early as 1922, Gandhiji demanded that the future of the country must be decided by the chosen representatives of the people. The failure of the Round Table Conference to solve the constitutional deadlock of India provided further strength to the idea of the Constituent Assembly. It was thought that Indians must be left unto themselves to solve their own problem by means of a representative body. In May 1934 the Congress officially adopted the programme of a Constituent Assembly. The Faizpur Congress, 1936, while rejecting the Constitution Act of 1935, proposed the Constituent Assembly as a constructive alternative.

The Second World War gave further impetus to the idea of India's freedom and the setting up a Constituent Assembly for framing a constitution. The Congress Working Committee in a resolution of September 14, 1939 said: "The people of India must have the right of self-determination by framing their own constitution". The Working Committee reiterated these demands in November in a resolution which stated: "A Constituent Assembly is the only democratic method of determining the constitution of a free country. No one who believes in democracy and freedom can possibly take exception to it." It was proposed in the resolution that the Constituent Assembly should be composed on the basis of adult franchise. Each community was to be represented in proportion to its numerical strength.

Gandhiji sincerely believed that, "the Constituent Assembly alone can provide a constitution indigenous to the country and truly representing the people³". Pandit Nehru was rightly assertive about having a Constituent Assembly for framing a constitution for independent India. He said, "We are

not asking for a gift. We are stating that we are proposing to have and are going to have it sometime or the other. We shall have it when we are strong enough for it, no sooner and probably after a struggle”⁴.

The British could not have ignored such a forceful claim of the Indians for the setting up of a Constituent Assembly. The British policy in her dependencies was brought under fire by many countries of the world. For the first time, therefore, the British Government was forced to accept the Indian demand for a Constituent Assembly in its August Offer (1940). In this offer Britain half-heartedly admitted that, “the framing a constitutional scheme should be primarily the responsibility of the Indians themselves and should originate from Indian conceptions of the social, economic and political structure of Indian life”⁵. But the August offer was not acceptable to India. Japan’s dramatic entry into the War and its quick victory over some of the Asian countries compelled Britain to change its policy of indifference towards Indian demand for a Constituent Assembly.

The Cripps Mission, for the first time, gave a concrete scheme for the composition of an elected constitution making body, after the end of the War, to frame a new constitution. The scheme of the Constituent Assembly was rejected because the representatives of the Indian Princes would have constituted a reactionary force and would have opposed the progressive constitutional development in the country. The appointment of the Cabinet Mission made significant contribution to India’s history of constitutional development. The British Government’s sincerity to transfer power to responsible Indian hands was evident. The Cabinet Mission Plan for the Constituent Assembly was based the Cripps proposals. It was some sort of

compromise between the extremely divergent views of the Congress and the Muslim League.

Meeting of the Constituent Assembly

In accordance with the provisions of the Cabinet Mission Plan, election to the Constituent Assembly was held in July 1946. Out of the 296 seats allotted the provinces, the Congress bagged as many as 211, the Muslim League 73 and the remaining 12 seats were captured by the other political parties, including a few independents. The Indian Princes did not participate in the election to the Constituent Assembly as a mark of protest. The overwhelming majority of the Congress frustrated all the sinister and nefarious plans of Jinnah who knew that the Constituent Assembly could no longer be utilised by him as the cat's paw. He, therefore, decided to withdraw his support for the Cabinet Mission Plan. Hence, the Muslim League decided to boycott the Constituent Assembly which was scheduled to meet for its preliminary session at New Delhi on December 9. The leaders of the Congress and the British Government tried to persuade the members of the League to participate in the Constituent Assembly. But all their attempts resulted in failure. The Constituent Assembly, however, met in session as scheduled, but in the absence of representatives of the Muslim League, there was no prospect of success. It did not want to take any controversial decisions and, while confining its discussions to the limits of the Cabinet Mission proposals, all the time expected the Muslim League to join. The first session of the Constituent Assembly came to close on 23 December 1946.

The acceptance of the Mountbatten Plan of partitioning the country into two Dominions, namely, India and Pakistan, and providing a separate

Constituent Assembly for Pakistan cleared the path of the Constituent Assembly of India. The limitations imposed upon the Constituent Assembly were waived and it became a sovereign body free to frame a constitution in any manner it liked. This sovereign authority of the Constituent Assembly was recognised by the Indian Independence Act, 1947. The final session of the Constituent Assembly met from 14th November to 26th November, 1949. After the consideration of the Draft Constitution clause by clause, the Constituent Assembly adopted and enacted the Constitution of India on November 26, 1949. The New Constitution of India, which emerged after the prolonged labour of 2 years, 11 months and 18 days by the Constituent Assembly, comprised 395 Articles and 29 Schedules. The Constitution of 1950 came into force on January 26, 1950 and on this day, India became a Sovereign Democratic Republic.

Constituent Assembly at Work

Though the Constituent Assembly was constituted through indirect election, yet it can be emphatically said that its membership included almost all the distinguished personalities with the only exception of Mahatma Gandhi who preferred to stay out. It consisted of eminent jurists, lawyers, scholars, social workers, administrators and experienced statesmen. Its members consisted of distinguished persons like Pandit Nehru, Sardar Patel, C.Rajagopalachari, Dr.Rajendra Prasad, Dr. B.R Ambedkar, Professor K.T Shah, Archarya Kripalani, K.M Munshi, B.N Rau, Purushottamdas Tandon, Maulana Azad, Govind Ballabh Pant and Alladi Krishnaswami Iyer. People from all parts of the country and from different walks of life became its members.

The representatives of the Princely states, who had stayed away from the Constituent Assembly, gradually joined it after the acceptance of the plan of June 3 to partition the country. The representatives of the states of Baroda, Bikaner, Udaipur, Jaipur, Rewa and Patiala entered the Assembly on April 28, 1947. The representatives of Jammu and Kashmir and Hyderabad took their seats in the Constituent Assembly after their accession to India in October 1947 and November 1948 respectively. Thus the Constituent Assembly, in course of time, became a representative body and assumed its sovereign status to frame the constitution.

On Monday, December 9, 1946 the Constituent Assembly, met in the Legislative Assembly Chamber under the temporary chairmanship of Dr. Sachidannada Sinha. On 11th December Dr. Rajendra Prasad was elected as permanent president. On 13th December, Pandit Nehru moved the Resolution on Aims and Objectives. It was adopted by the Constituent Assembly on January 22. The resolution started with the sentence that, “The Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution. The Resolution contained the following important features:

- a) The Indian Union shall consist of the territories of British India, Indian States and such other parts of India as are outside British India and the States as well as such other territories which are willing to be constituted into the independent sovereign India.
- b) All power and authority of the sovereign independent India, its constituent parts and organs of government, are derived from the people.

- c) It guaranteed to all the people of India, justice – social, economic and political; equality of status, of opportunity, before the law; freedom of thought, expression, belief faith, workship, vocation, association and action, subject to law and public morality.
- d) It assured that adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes.
- e) The Constituent Assembly must frame a constitution that would enable the country to attain its right and honored place in the world and make its full and willing contribution to the promotion of world peace and welfare of mankind⁶.

The resolution aimed at incorporating all the ideals for which the people of India had struggled. Hence, it was in the nature of a declaration and a pledge. The fundamental principles which were to be followed by the Constituent Assembly were incorporated in the Resolution.

A number of committees were set up such as the Union Committee, Provincial Committee etc., the Drafting Committee was set up on August 19, 1947 with Dr.Ambedkar as its chairman. The Draft Constitution was introduced in the Constituent Assembly on November 4, 1948, although it had been published eight months ago. This long interval allowed sufficient time for a nation-wide discussion of the provisions of the Constitution. Consequently, many changes were introduced in the original draft.

Discussions on the Constitution began on 4th November and continued till 9th November. Members had the freedom to suggest amendments during the consideration stage. During this stage, as many as 7653 amendments were tabled and 2473 of these were actually discussed in the Constituent Assembly. The consideration stage continued for 114 days. The third reading of the Constitution Bill began on 14 November and concluded on November 26 and on this day the constitution was adopted by the Constituent Assembly. With this signature of the President, the Bill became an Act.

On January 24, 1949 the final session of the Assembly was held and Dr.Rajendra Prasad was unanimously elected as the first President of the Indian Republic. The Draft Constitution as passed by the Assembly was signed by the members. On January 26, Dr.Rajendra Prasad assumed office as President of the Republic of India under the new Constitution.

Salient Principles of the Constitution of India:

The Constitution of India is remarkable for many outstanding principles, which will distinguish it from other constitutions even though it has been prepared after “ransacking all the known constitution of the world, they are:

1. A DETAILED CONSTITUTION:

Like the constitutions of the great states of the world, Great Britain being an exception, the Indian constitution is a written one. It is embodied in a comprehensive constitutional document consisting of 395 articles grouped in 22 parts and 9 schedules. Thirty one amendments have already been effected in the original document. Dr. Ivor Jennings remarks, "The Indian constitution is

the longest and most detailed in the world."⁷ In fact, size of the Indian constitution is more than five times that of the U.S.A.

Why Indian Constitution is bulky?

The bulkiness of the constitution is mainly due to a number of causes:

- (i) The constitution does not contain only the broad principles but also the details of administration,
- (ii) It provides not only for the administrative machinery at the centre, but also of the units. Since the units of the Indian Federation were of four distinct types, i.e., Part A, Part B, Part C and Part D states of the first schedule, provision had to be made for each of them separately. This four-fold classification of the units was, however, abolished by the 7th Amendment and States Reorganisation Act, 1956.
- (iii) The federal character of the Indian constitution adds to the length of the constitution, in another way also. The relations between the Union and the State are dealt with in most elaborate and even complicated details,
- (iv) The incorporation of Fundamental Rights and detailed restrictions imposed upon them, further add to its bulk⁸,
- (v) A complete chapter is devoted to nonjusticiable Directive Principles of State Policy.⁹
- (vi) The constitutional pandits thought it necessary to make a special mention in the constitution of the safeguards for the minorities and special classes like the Anglo-Indians, Scheduled Castes and Scheduled Tribes.¹⁰

- (vii) In order to cope with abnormal circumstances and tempestuous eventualities likely to occur in an infant democracy, nine articles were provided in the constitution dealing with Emergency provisions¹¹.
- (viii) Provisions regarding Citizenship, National Language and Regional Languages, Elections, the Services, Contracts and Suits, Trade and intercourse within the territory of India, are also made in the constitution.

Our constitution is a legacy of the past. The Government of India Act 1935, from which many of its provisions were copied almost textually, was itself the longest statute ever enacted by the British Parliament. It was mainly concerned with the purpose of transferring power, subject to a variety of safeguards, and had therefore been drawn up to include not only matters of constitutional order, but also those of mere administrative or judicial character. Our constitution followed the same pattern. In the words of Srinivasan, the Constitution of India is "not merely a constitution but also a detailed legal code dealing with all important aspects of the constitutional and administrative system of the country."¹²

The complexity of the conditions in our country and the comparative political immaturity of the Indian people also induced the constitution makers, not to take risks and leave structural details to conventions or regulations by the Legislature. They incorporated them in the constitution.

Dr. Ambedkar, the chairman of the Drafting Committee of our constitution, has very nicely justified the above fact in these words, "The form

of administration had a close connection with the form of the constitution. There was also the possibility of perverting the constitutional morality. That morality was not a natural sentiment but had to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top dressing on the Indian soil which is essentially undemocratic. In these circumstances, it is wiser not to trust the Legislatures to prescribe forms of administration. This is the justification for incorporating them in the constitution". Even the basic assumptions of the parliamentary system, e.g., that the President should act with the aid and advice of the ministry and the ministers shall be jointly responsible to the House of the People (Lok Sabha) have been expressly stated in the constitution, rather than left to the conventions.

Dr. Sharma while explaining this feature of the Indian constitution has very well said, "...Many of these matters relate to the details of the administration and, strictly speaking, should have no place in a constitution. The more of such details there are in a constitution, the less of room there is for flexibility in it."¹³

2. A SOVEREIGN DEMOCRATIC REPUBLIC:

The Preamble to the Constitution declares India to be a sovereign democratic republic. 'Sovereignty' of India is reflected from the fact that India is not subject to external control in its domestic or foreign policy. She is the master of her own destiny. The sovereignty of an independent country does not debar it from embracing the membership of other states or 'association' of other states, with a view to promote the mutual interests and further the cause of peace. Hence India sought the membership of the U.N.O. and Commonwealth of Nations.

India's membership of the Commonwealth is the victim of the perennial shafts of the critics. They maintain that India's membership of the Commonwealth and her acceptance of the Queen as the symbol of free association of its independent member-nations, and as such the Head of the Commonwealth, is incompatible with her sovereign Republican status. In the words of Professor D.N. Banerji the Commonwealth Agreement of 1949 was "a kind of improvised political device intended to reconcile two apparently inconsistent factors, namely, India's decision to adopt, as a sovereign independent state, a Republican form of constitution and her desire to continue her membership of the Commonwealth." Robert G. Menzies observed in April, 1949 : "How a nation can become Republic by abolishing allegiance to the Crown and at the same time retain full membership of the United Commonwealth which is and must be basically a Crown Commonwealth, is a complete mystery." General Smuts also once emphasised that there was no middle course between the Crown and the Commonwealth. There may be some logic in the above observations, but they seem to be rather exaggerations. The critics forget that the Agreement of 1949 has no value in the eyes of law and is an "extra-constitutional contractual agreement entered into at will and terminable at will." We can any moment break away from the Commonwealth. Its membership is purely on voluntary basis, Pt. Jawaharlal Nehru, made this fact crystal clear in a broadcast from New Delhi, on 10th May, 1949. "We took pledge long ago to achieve 'Purna Swiraf. We have achieved it. Does a nation lose its independence by an alliance with another country? Alliance normally means mutual commitments. The free association of sovereign commonwealth nations does not involve such commitments. Its very strength lies in its

flexibility and its complete freedom. It is well-known that it is open to any member-nation to go out of the Commonwealth, if it so chooses."

Moreover, unlike other dominions, India does not owe allegiance to the British Crown. The Queen is accepted as the symbol of the free association of the independent member-states constituting the Commonwealth. The use of the word 'British' before the word 'Commonwealth', suggested supremacy of Britain in the organization and the need of formal allegiance to the Crown meant that no member could be a Republic. Both these limitations were removed by a common agreement, at a meeting of the Commonwealth Prime Ministers, held in London, in October, 1948. The name of this Association is no longer British Commonwealth of Nations. The member-states need recognize the British Monarch as the symbol of Commonwealth unity. The only obligation devolved on a member is to consult the other members of the Commonwealth about matters of common or international importance before adopting its own line of policy. In his broadcast on May 10, 1949, Pt. Nehru said, "We have agreed to consider the king as the symbolic head of the free association but the King has no functions attached to that status in the Commonwealth. So far as the constitution of India is concerned, the King has no place and we owe no allegiance to him." The same point was emphasized by late Sardar Patel, on 20th April, 1949, in these words: "India's status of a sovereign, independent Republic is by no means affected because there is no question of allegiance to His Majesty, the King, who will merely remain a symbol of our free association as he would be like all other members"

From the above statements of two top Indian leaders, who held very responsible positions in the Central Cabinet, we can safely conclude that

Commonwealth is not a super-state, impinging on the sovereignty of our state. No binding decision is taken at Commonwealth conferences. There is no provision for obligatory joint action by members of the Commonwealth in peace or in war. India's policy of neutrality has not been obstructed so far by the Commonwealth, nor is it going to be hindered in the times to come. In fact, the freedom and flexibility of the Commonwealth provides the member-states a common forum where they meet to solve their common problems of varied nature, without impairing their independence of action.

The 'Republican' form of the Indian constitution implies that no monarch can be its head. Its head is an elected President.

The word 'Democratic' implies that the Governmental authority is derived from the people, is exercised by a Government constituted on the basis of universal adult franchise.

3. SINGLE CITIZENSHIP:

Generally, a federal form of polity caters to double citizenship— (i) Citizenship of the Federation as a whole and (ii) Citizenship of each component state. The constitutions of the U.S.A. and Switzerland allow double citizenship. The American States discriminate in favour of their own citizens in political matters, as right to vote and right to hold appointments in the State Government. The constitution of India on the other hand unlike that of U.S.A. and like that of Canada and Burma introduces single citizenship. There is no such thing as the citizenship of a state. Every Indian is entitled to the same rights, wherever he may live in India. Dr. Ambedkar pointed out in the Constituent Assembly, "There is only one citizenship for the whole of India. It

is Indian citizenship. There is no state citizenship. Every Indian has the same right of citizenship, no matter in what state he resides. The State does not deny to any person equality before the law or equal protection of the laws within the territory of India."¹⁴ The constitution provides that the state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth or any of them. Equality of opportunity for citizens in matters relating to employment or appointment to any office under the state is assured. Moreover, no citizen, on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them is ineligible or is discriminated against in respect of any employment or office under the state.¹⁵ Not only their rights, even their obligations are identical.

4. PARLIAMENTARY DEMOCRACY:

The constitution provides for a parliamentary type of government at the Centre and in the constituent states. There are three distinct characteristics of parliamentary form of government, as construed in the English Constitution— (i) Responsibility of the Executive to the Popular House, (ii) Democratic basis of the Popular House, (iii) The ultimate control of the Lower House in matters, legislative and financial.

The President of India like the King of England is a mere constitutional head. He is not vested with discretionary powers or Special Responsibilities, which enabled the Governor-General of India prior to the attainment of independence to act in his individual judgment. "The constitution provides that there shall be a Council of Ministers "with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The Prime Minister is to be appointed by the President and the other ministers are appointed by the

President on the advice of the Prime Minister. It is also stated that the Council of Ministers shall be collectively responsible to the Lok Sabha (House of the People). The Council of Ministers, therefore, constitutes a parliamentary executive. It can remain in office so long as it commands the confidence of the Lower House. While all Executive action is taken in the name of the President, on the advice of the Council of Ministers, in actual fact the role of the President is very insignificant. The advice of the Prime Minister is not supposed to be flouted. The provisions of the constitution are rather vague and even contradictory on this point. On the one hand, the constitution provides that the Council of Ministers will be collectively responsible to the Lok Sabha, it also lays down that the "Ministers shall hold office during the pleasure of the President."¹⁶ Can the President legally dismiss a Council of Ministers, even if it enjoys the confidence of the 'Lok Sabha'—is a moot question. The constitution further says that "There shall be a Council of Ministers, with the Prime Minister at the head to aid and advise the President in the exercise of his functions."¹⁷ Does it mean that the President can act contrary to the advice of the Prime Minister ? The constitution is silent about it. Nowhere it is written that the President "must" accept the advice of the Prime Minister. An ambitious President may flout the advice of the Prime Minister without abrogating the letter of the constitution. The constitution makers, in fact, left the working of the Parliamentary Government to the suitable conventions which is rather a hazardous step. Their keenness to establish a parliamentary form of Government, however, is obvious from the words of Dr. Ambedkar, "Under the parliamentary system there is daily and periodic assessment of the responsibility of the Government."¹⁸ They did not opt for Presidential form of Government, as they apprehended, in a poor country like India inhabited by

illiterate and unenlightened masses, the President may assume dictatorial powers. According to Dr. Ambedkar, they aimed at a combination of 'stability' and 'responsibility'. Despite all these assertions in the Constituent Assembly Debates, we still feel the necessity of inclusion of one short provision, "The relations between the President and the Prime Minister and the other ministers are practically the same as those between the Monarch and the Cabinet in Britain."

Coming to the second point, the popular House is decidedly constituted on democratic basis. The Union Parliament is a bicameral legislature, consisting of Lok Sabha and Rajya Sabha. The Lok Sabha is a popular chamber, directly elected by the people on the basis of universal adult franchise. The Rajya Sabha, though popular in composition, is an indirectly elected house. Twelve of its members are nominated by the President to represent letters, art, science and social sciences and the remaining are elected by the M.L.As. of the states, composing the Indian Union, in accordance with the system of proportional representation by means of single transferable vote.

Regarding ultimate legislative and financial control in the hands of the Lower House, a bill other than money bill normally requires approval of both the Houses separately but in the case of deadlock, it is referred by the President to the joint session of the Parliament. Since the membership of the Lower House is approximately double than that of Rajya Sabha, the former usually scores the point. A 'Money Bill' can be initiated only in the Lower House. The Rajya Sabha may discuss it and even make recommendations for its amendment. If, however, the Lower House does not accept the recommendations, it shall be deemed to have been passed by the Parliament in the form in which it

was passed by it. Thus the dominant role of the Lower House, both in the legislative and financial domains, is quite evident.

5. RIGIDITY-CUM-FLEXIBILITY:

The Indian constitution is a unique combination of rigidity and flexibility. The framers of the constitution were judicious enough to avoid making the constitution so flexible as to become a tool in the hands of a ruling party or so rigid, as to be incapable of adapting itself to the changing conditions. The Indian constitution, in fact, is less flexible than that of Britain and less rigid than that of the United States.

A constitution is called flexible when it makes no distinction between the constitutional and the ordinary law of the land and is amendable by the Legislature, through an ordinary procedure. The British constitution is an example. The Indian constitution could not be made so flexible without jeopardising its federal character and placing the individual states composing the Indian Federation at the mercy of Union Legislature.

A rigid constitution, however, is amendable only either by the joint action of the Central and the State legislatures, or by an independent third authority. Dr. Jennings considers Indian constitution rigid in character. "What makes the Indian constitution so rigid is that in addition to somewhat complicated process of amendments, it is so detailed and covers so vast a field of law that the problem of constitutional validity must often arise."¹⁹ However, the Indian constitution is not so rigid, as it seems. Its method of amendment is not so complicated. It prescribes three different methods for amending its different provisions.

- (a) A good many provisions of the constitution can be amended or repealed by Parliament, acting by simple majority of the members present and voting. Thus acting on the recommendations of the President, Parliament may by law
- (i) form a new state,
 - (ii) increase the area 'of any state,
 - (iii) change the name of any state,
 - (iv) alter the boundaries of any state,
 - (v) establish or abolish the Legislative Council of any state provided the Legislative Assembly thereof recommends such action to the Parliament by a resolution passed by a majority of the total membership and a two-thirds majority of the members present and voting²,
 - (vi) change the qualifications of Indian citizenship²⁰,
 - (vii) alter the provisions for the administration of Scheduled Areas and Scheduled Tribes²¹,
 - (viii) make or amend any act dealing with salaries and allowances of members, rules of procedure, parliamentary privileges and quorum, etc.,
 - (ix) alter the number of maximum judges of the Supreme Court etc.²²

Though the above matters deal with some of the important provisions of the constitution, yet they are not to be treated as amendments-to the constitution.

- (b) Article 368 is the main amending clause. Art. 368 lays down that if an amendment seeks to make a change in

- (i) any of the legislative lists in the seventh schedule;
 - (ii) the representation of states in Parliament;
 - (iii) the provision relating to the amendment of the constitution;
 - (iv) election and manner of the election of President;
 - (v) extent of the Executive power of the Union and of the States;
 - (iv) constitution of High Courts in the states;
 - (vii) legislative relations between the Union and the States, the bill embodying it is not only to be passed by each House of the Parliament by a majority of the total membership of that House and by majority of not less than two-thirds of the members present and voting, but it is to be ratified by majority of the members of not less than one half of the state legislatures.
- (c) The remaining provisions of the constitution can be amended by
- (i) a majority of the total membership in each House of Parliament, and
 - (ii) a majority of not less than two-thirds of the members present and voting in each House of Parliament.

The amending procedure is not confined to Article 368 only. In fact, it is scattered over many other parts of the constitution. Certain provisions of the constitution can be amended by the President or the Governor of a state. The President may nominate two members of the Anglo-Indian community, if he is of the opinion that the community is not adequately represented in the Lok Sabha. The Governor of a state may take similar step in respect of the state Legislative Assembly.²³ This action on the part of the President or Governor amounts to increasing of membership of Lok Sabha and state Legislative

Assembly respectively. Thus the exercise of this power smells the effect of amending the constitution.

To take another example, the Rajya Sabha can amend the distribution of Legislative powers laid down by the constitution. If by a resolution passed by a two-thirds majority of the members present and voting, the Rajya Sabha declares that it is necessary or expedient in the national interest, that the Parliament should make laws as regards a state subject enumerated in the state list, it becomes lawful for Parliament to legislate on the said matter for the whole or any part of the territory of India. Such a resolution remains in force for a period not exceeding one year.²⁴

The above two examples reflect the elements of flexibility in the Indian constitution. In the words of Dr. M.P. Sharma, "We call that constitution flexible, the provisions of which can be varied or twisted to suit special circumstances without resorting to formal amendment." Bryce compares such a constitution to the supple twigs of a tree, which move away from their place temporarily to let a huge carriage pass from under them and then resume their place quietly.

Thus among the federal constitutions, the Indian constitution must be said to be the least rigid; it strikes a balance between extreme rigidity on the one hand and extreme flexibility on the other. Thirty one amendments have been effected in the Indian constitution during the last 23 years or so. That supports our contention that it is neither too flexible nor too rigid.

6. A SECULAR STATE:

Another distinctive feature of the new constitution is its secular character. In fact this is a remarkable departure from the primitive Indian polity, the theocratic state of the Muslim period and the communal polity fostered by British Imperialists particularly on the eve of their withdrawal from India. The framers of the Indian constitution were aware of the nasty role played by fanaticism and orthodox/ in the past in their motherland. They did not like to wreck the national unity by allowing a particular religion to play a dominant role. They did not like to undermine the confidence of the religious minorities and thus strike at the roots of their infant democracy. Moreover, Mahatma Gandhi's opposition to religious state weighed heavily on their mind. Hence they opted for a 'secular state.'

According to Mahatma Gandhi Father of the Nation, "The state should undoubtedly be secular. Everyone living in it should be entitled to profess his religion without let or hindrance so long as the citizen obeyed the common law of land. There should be no interference with missionary effort but no mission could enjoy the patronage of the state as it did during the foreign regime."¹ In the words of Venkataraman, the secular state is "neither religious, nor anti-religious, but is wholly detached from religious dogmas and activities and thus neutral in religious matters." A secular state maintains complete religious neutrality and refuses to recognize man-made barriers such as those of race, colour, creed, etc. It believes in freedom, toleration, equality and the oneness of all the individuals. It is concerned with the relation between man and man and not those between man and his creator. In the words of Shri Laxmi Kant Mahita, a member of the Indian Constituent Assembly, "by a secular state, as I

understand it, is meant that the state is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any 'particular form of religious faith. This means in essence that no particular religion in the state will receive any patronage whatsoever..."²⁵

Shri H.V. Kamath, another member of the Constituent Assembly, emphasised the same fact more clearly. He said, "When I say that a state should not identify itself with any particular religion, I do not mean to say that a state should be anti-religious or irreligious. We have certainly declared India to be a secular state. But to my mind a secular state is neither a Godless state nor an irreligious nor an anti-religious state."¹ While speaking on the Hindu Code Bill in Parliament in 1951, Dr. Ambedkar threw light on the concept of secularism as follows:

"It (secular state) does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular state means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the constitution recognizes."²⁶ C.Rajagopalachari. First Indian Governor-General of free India, also made similar remarks. "It has been repeatedly affirmed that when the Indian constitution laid down that India shall be a secular state, it was intended that the state should not discourage or be hostile towards religion but that what was intended was impartiality towards all creeds and denominations. It was a refusal to accept the theory that different religions make different nations or that the state should belong to one religion more than another."

From the above observations of Indian leaders and parliamentarians of repute, it can be concluded that secular state is neither anti-religious nor indifferent to religion but is one which practices an attitude of complete impartiality towards all religions. The State guarantees to everyone the right to profess whatever religion one chooses to follow. It does not show any discrimination against any person on account of his religion or faith.

The constitution of India in its very preamble granted to every citizen liberty of belief, faith and worship. In other words religion was to be treated purely as a personal matter. Article 15 (1) grants religious equality and assures the citizens of India of non-discrimination on religious grounds. It states, "the state shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them." Article 15 (2) states that no citizen of India shall be debarred from entering any shops, public restaurants, hotels, places of public entertainment, use of wells, tanks, bathing ghats, roads and places of public worship maintained totally or partly out of state funds or dedicated to the use of general public on grounds of religion, race, caste, sex or place of birth. Article 17 abolishes untouchability—relic of the past injustice to a section of Hindus, engaged in menial work. Article 25 grants complete religious freedom subject to public order, morality and health. Article 25 (1) states that "subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and have the right, freely to profess, practice and propagate religion." Keeping in view these articles Prof. Alexandrowics remarks, "India as a secular state guarantees constitutionally freedom of religion to all persons and does not assign a special position to any particular religion."²⁷

The cultural and educational rights guarantee to the minorities the right to maintain their own language and establish educational institutions of their choice. Thus culture of every minority is preserved.

The constitution protects collective freedom of religion as well by giving every religious denomination the right to establish and maintain institutions for religious and charitable purposes; to own and acquire movable and immovable property and to administer such property according to law.²⁸

In recruitment to public services, equal opportunities are accorded to all citizens. Of course, some special provisions for the advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes do exist.

The above quoted articles constitute the constitutional framework of the secular state in India. If we make a critical appraisal of these articles, we will come to the conclusion that the concept of secular state which has been adopted in India, is not a negative concept of non-interference in religious affairs, but a positive concept of tolerance, impartiality and equal protection of the interests of all religions. Dr. Radhakrishnan, Ex-President of India, has well explained the significance of secularism in India, in the following words:

"When India is said to be a secular state, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or the State assumes divine prerogatives. Though faith in the supreme being is the basic principle of the Indian tradition, the Indian state will not identify itself with or be controlled by, any particular religion. We hold that no one religion

be given preferential status or unique distinction, that no one religion should be accorded special privileges in national life or international relations for that would be violation of the basic principles of democracy and contrary to the best interests of religion and Government. This view of religious impartiality, of comprehension and forbearance has a prophetic role to play within the national and international life. No group of citizens shall arrogate to itself rights and privileges which it denies to others. No person should suffer any form of disability or discrimination because of his religion but all alike should be free to share to the fullest degree in the common life secularism as here defined is in accordance with the ancient religious traditions of India. It tries to build up a fellowship of believers not by subordinating individual qualities to the group mind but by bringing them into harmony with each other."²⁹

Opposition to Secularism:

The secular character of the state has aroused a suspicion in the mind of orthodox Hindus, that, on the one hand, our state offers no guarantee to their religion against the encroachments of the state in the name of social welfare and reform while, on the other, it does not patronise Hindu culture, so inextricably woven up with the Hindu religion. Measures like Hindu Code Bill are quoted as disquieting examples of state interference with the vital principles of their religion.

The apologists of Hindu culture however forget that secularity or religious neutrality is an essential mark of a progressive state. In a vast country like India inhabited by diverse races, professing varied faiths and embracing different religions, secularity is the only reasonable attitude of the state. Secularity may not be a cause of embarrassment for the majority. One of the

main reasons why Pakistani propaganda has failed to disrupt India's friendly relations with other Muslim countries is the fact that religious minorities in India have felt perfectly secure and that they have not been subjected to any discrimination at the hands of the State. The election of Dr. Zakir Hussain as the President of India and appointment of Shri Hidayatullah as our Chief Justice, Swaran Singh as our Defence Minister and Shri M.C. Chagla as our chief representative in the Security Council to defend our claims over Kashmir stand witness to the fact that the Government has never believed in discrimination on the basis of religion. Conferring of Param Vir Chakra on Abdul Hamid (Posthumous Award) for his bold and courageous fight against his co-religionists—the Pakistani invaders—is another glaring proof of India's strongly upholding the concept of secularism. A theocratic state as an alternative to a secular state is a historical anachronism. It is out of date and out of place. It fosters conservatism and undermines national unity. Our past history bears ample testimony to the fact. Hence we do not want history to repeat itself.

7. JUDICIAL REVIEW:

The doctrine of Judicial Review is as a matter of fact implicit in our constitution. If the union or a state government transgresses the limitations imposed upon it by the constitution through any law, the Supreme Court can declare such a law void.

For instance, Article 13 of our constitution declares that any law of the Legislature or act of the Executive, which contravenes any of the provisions of the Fundamental Rights, shall be void. "Legislation, impinging on the Fundamental Rights can be valid only if it imposes reasonable restrictions on

the exercise of these rights and the question of reasonableness would in the last resort be a matter for the determination by the courts. The determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive: it is subject to the supervision by the court." Thus the judiciary reviews the acts of the Union and State Governments and safeguards and protects the rights and liberties of the people. As such, it serves as a guardian of the rights of the people, as well as a custodian of the constitution. Its declaring Zamindari abolition act and 'nationalization of banks legislation' as unconstitutional and presidential order 'abolishing privy purses of former rulers' as ultra vires establish the extent, the judicial review authority of the Supreme Court can be exercised.

8. INTEGRATION AND DEMOCRATISATION OF THE STATES:

Another noteworthy feature of the Indian constitution is the Integration of the Indian states with the rest of India and as a consequence their democratization. During the British regime, India was composed of (i) British Indian Provinces wherein some sort of democratic form of Government existed and (ii) the Indian States, wherein the autocratic form of Government was prevalent. With the passage of Independence Act 1947, paramountcy of the Britishers over the 'Rulers' also lapsed. Hence they were free to join India or Pakistan: or remain independent. The existence of independent, sovereign states would have been a constant threat to the integrity of India. Fortunately Sardar Patel, the iron man of India, happened to be our Home Minister. His practical sagacity, political acumen and shrewd statesmanship, coupled with the patriotic attitude of some of the Indian, princes enabled us to achieve political unity of India, by following a policy of merger and integration.

Establishment of popular ministries, in these states followed the integration. In fact, this is an achievement: almost unparalleled in the history of the world.

9. UNIVERSAL ADULT FRANCHISE:

The boldest step the constitution took was the introduction of universal adult franchise in the land of illiterate millions. The 'separate electorate system' which sowed the seeds of dissensions amongst Hindus and Muslims and ultimately resulted in the partition of the country, was abolished. Property qualification, which enabled only 14% of our people to cast votes during the Britishers' Rule, was substituted by universal suffrage. In the words of Prof. Srinivasan, "the introduction of adult suffrage without any qualification of any kind is the boldest step taken by the Constituent Assembly and is an Act of Faith".³⁰ All adults of 21 years of age (unless otherwise disqualified) have been vested with the right to vote. Thus about 180 million people out of a population of 360 millions were enfranchised. In the General Elections held in 1967 and mid-term elections in March, 1971 the number of electorates were 25 and 27 crores respectively.

10. FUNDAMENTAL RIGHTS:

The incorporation of a formal Bill of Rights in the Indian constitution is deemed to be a distinguishing feature of a democratic state. One of the outstanding characteristics of the Indian constitution is the elaborate enumeration of the rights of the citizens in chapter III. They are justiciable. Judiciary is their guardian. Of course, they are not absolute and can be suspended during emergencies, in the larger interests of the state. Moreover, they can be abrogated through an amendment in the constitution. The 24th and the 25th amendments in the Indian Constitution which abridged right to private

property were upheld by Supreme Court in its recent-most decision. These rights are embodied in Articles 12 to 35 of the constitution. They comprise right to equality; right to freedom; right against exploitation; right to freedom of religion; cultural and educational rights; right to property; and right to constitutional remedies.

The object of framers of our constitution was to establish a welfare state by ensuring justice, freedom and equality and fraternity to their fellow citizens. By the abolition of untouchability, the dignity of the individual has been restored. The abolition of titles has removed a man-made inequality. All discriminations have ceased to exist. Exploitation has been made difficult. In *Moti Lal vs. Uttar Pradesh Government*, Justice Saprú rightly observed, "The object of these Fundamental Rights as far as I can gather from a reading of the constitution itself, was not merely to provide security to and equality of citizenship of the people living in this land and thereby helping the process of nation-building, but also to provide certain standards of conduct, citizenship, justice and fair-play. In the background of the Indian constitution, they intended to make all citizens and persons appreciate that the paramount law of the land has swept away privileges and has laid down that there is to be perfect equality between one section of the community and another in the matter of all those rights which are essential for the material and moral perfection of man."

11. DIRECTIVE PRINCIPLES OF STATE POLICY:

Following the patterns of the Spanish and Irish constitutions, the Indian constitution incorporated a chapter on 'Directive Principles of State Policy' in part IV.³¹ Dr. B.R. Ambedkar aptly described them as a "novel feature" of the constitution of India. They are the ideals, which the Union and State

Governments must keep in mind, while they formulate policy or pass a law. They lay down certain social, economic and administrative principles, suitable to peculiar conditions prevailing in India. In the words of G.N. Joshi, "They constitute a very comprehensive political, social and economic programme for a modern democratic state."³²

They, in fact, inscribe the objectives of a welfare state. The Directive Principles, unlike the Fundamental Rights, are not justiciable. Nevertheless the constitution declares that they are fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. "They include the right to work, education and public assistance in cases of unemployment, old age, sickness etc., just and humane conditions of work, maternity relief as well as living wage, leisure and social and cultural opportunities for all workers; the enforcement of a uniform civil code throughout the country; a provision of free and compulsory education for all children below 14 years of age; the organisation of agriculture and animal husbandry on modern scientific lines; improvement of public health; prohibition of intoxicating drinks and drugs and of the slaughter of cows; the preservation of ancient monuments of artistic or historic interest; the organisation and improvement of village panchayats; the separation of the judiciary from the Executive and the promotion of international peace and security. Obviously, some of these principles are socialistic, some are Gandhian and some are liberal intellectualistic. Their importance vis-a-vis fundamental rights has enhanced considerably due to the recent-most decision of the Supreme Court regarding 24th and 25th amendments of the Constitution.

The right to private property was in a way abrogated to implement a Directive Principle pertaining to Socialism.

In fact, the Directive Principles provide the key to the understanding of the constitution, whenever the latter is ambiguous or is silent. They constitute, in the words of K. C. Wheare, "manifesto of aims and aspirations."

12. CENTRALISED FEDERATION:

The constitution creates a Federal State even though the term federation has not been used anywhere in the document. In a vast country like India, inhabited by diverse races, speaking different languages and claiming varied cultures, federation was rather inevitable. All the normal features of a federal polity are therefore embodied in the constitution, viz., distribution of powers between the Centre and the constituent units; a written constitution and its supremacy; the existence of a Supreme Court to act as the interpreter and guardian of the constitution; and rigid character of the constitution etc. But at the same time, the centrifugal forces at work within our country indicated the need of a strong central government. A weak centre had been the cause of our humiliation in the past and we did not like history to repeat itself. The Centre was therefore deliberately kept strong. The Centre was allowed to interfere with the administration of the states. The appointment of the Governors by the President; the appointment of I.A.S. and other all-India services by the U.P.S.C.; the provision of an Election Commission empowered to control central and state elections; a single unified judiciary; single citizenship (unlike that of U.S.A. where there is double citizenship); the authority of the Parliament to amend the constitution save in certain specified matters; reservation of certain bills by the state legislature for the final sanction of the

President; provision of procuring President's-prior sanction before their introduction in the state legislature; vesting of residuary powers with the Centre; permission to the Parliament to make laws regarding a subject originally provided in the State list if Rajya Sabha passed resolution by majority of total and two-thirds of the members present and voting that it is expedient in the national interests; vesting authority with the Government of India to issue necessary 'administrative directions to the states in certain matters; a common fundamental law, civil and criminal, for the whole country; empowering the Parliament to change the name, alter the boundaries and areas of the states—reflect that our's is a federal constitution with unitary bias. According to Dr. Wheare, "The Indian Constitution establishes a system of Government which is at the most quasi-federal almost devolutionary in character; a unitary state with subsidiary federal features rather than federal state with unitary features.", Even Dr. Ambedkar, the chairman of the drafting committee, was of the view, "the constitution has not been set in a tight mould of federalism." In the words of D.D. Basu, "the constitution of India is neither purely federal nor unitary but is a combination of both. It is a union or composite of a novel type". In fact, our constitution is a centralised federation. There was no alternative before the framers of constitution, since they were conscious of the inherent weakness of a weak Centre.

13. A WELFARE STATE:

The preamble to the Indian constitution embodied the highest and the noblest ideals of justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; fraternity, assuring the dignity of the individual and the unity of the nation.

These lofty ideals are the cornerstones of a welfare state. Indian constitution launches a campaign against artificial barriers and man-made inequalities. Pt.Nehru remarked on the floor of Constituent Assembly, "The first task of this Assembly is to free India through a new Constitution to feed the starving people and to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity."³³ Abolition of untouchability and titles is a witness to this fact. The constitution not only prohibits discrimination on grounds of birth, religion, caste or creed but also provides for the promotion of the interests of backward classes. It seeks to remove all inequalities by providing just and humane conditions of work, maternity relief, leisure and cultural opportunity to every individual, prevention of exploitation in labour and industry and free education for all.³⁴ Equality of reward for equal work ; the distribution of ownership and control of the material resources of the community, so as to subserve the common good; avoidance of concentration of wealth and means of production, to the common detriment,³⁵ usher in an era of economic justice. The provision of Fundamental Rights and liberties for the individual citizen is another significant step aiming at individual's welfare. Of course, these rights are not absolute. They are hedged with certain restrictions. But that does not mean that in the name of common interest, the state can curtail the individual's liberties to an extent of hampering his development.

A welfare state stands eclipsed if interests of minorities and weaker sections of the population remain at stake. Our constitutional pandits were fully alive to this danger. The principle of equality has in some matters been so modified as to permit protective discrimination in favour of backward classes.

Article 46 specifies that the state "should promote with special care the educational and economic interests of the weaker sections of the people." A new clause added to Article 15 (in 1951) authorises the state to make any special provision for the advancement of any socially and educationally backward class of citizens or for Scheduled Castes and the Scheduled Tribes. Article 29 was also amended to empower the state to reserve seats in state colleges for socially or educationally backward classes of citizens or for the Scheduled Tribes and the Scheduled Castes. Article 16 (clause 4) of the constitution empowers the states to make "any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, "is not adequately represented in the services under the state." Article 29 and 30 confer upon the minorities the right to preserve their languages, scripts and cultures and to establish and administer educational institutions of their choice. Seats for the backward classes were reserved in the Parliament and the State legislatures. The President and the Governors of the States were authorized to nominate representatives of the Anglo-Indian community to the Lok Sabha and the state legislative assemblies respectively if, in their opinion, the community was not adequately represented.

Thus it is evident that the minorities in our country cannot be suppressed by arrogant majorities. They are as secure as the majority community. Rather, they have been given more privileges than the majority community. In the words of K.M. Munshi, "the constitution was an instrument not only of ensuring material betterment and maintaining a democratic set-up but that it recognized that the personality of every individual is sacred."³⁶ Keeping in view the above facts, it can be rightly claimed that our's is a welfare state.

14. SOVEREIGNTY RESIDES IN THE PEOPLE:

The preamble to the constitution proclaims that India is a land of our people and sovereignty resides in the people of India. The people are the authors of the constitutional law. It is they who have entrusted to the various organs of Government, their respective powers and functions. The Union Government cannot claim sovereignty because its authority is derived from the constitution which can by an amending process also deprive it of its powers. The same is the case with the governments of the individual states. The Supreme court seems to be the organ of the highest power as it can challenge the acts of the both, the legislative and executive branches of government. But the Supreme Court also like any other organ of government is ultimately controlled by the constitution. The constitution itself is not sovereign as its provisions can be amended by the constitutional process of amendments. In fact, sovereignty resides in the 'People of India.' The entire authority has emanated from the people. They have conferred powers on the organs of Governments. They themselves have enacted the constitution. They themselves can unmake it. The preamble speaks of the 'people of India'. India, according to the preamble, is the land of our people and sovereignty is vested in the people as a whole. Sovereignty resides in the united people of India and not in the people of individual states of India. The constitution was drafted and adopted by the people of India in their Constituent Assembly.

"The term 'people' is used not in the sense of total aggregate of individual citizens who form the nation, but the people as politically organized in the determinate form under the constitution."³⁷ While organized in the Constituent Assembly, they adopted the constitution. Organized in Parliament

and State Legislatures, they have been empowered to amend the constitution. The supreme political power resides in the constitutionally qualified electorate but the legal authority to amend the constitution has been vested with the electorates as organized through their representatives, in the determinate form in Parliament and Legislatures.

It is correct to conclude that our's is a constitution which is neither a socialistic constitution, nor a communistic constitution. It is a people's constitution and a constitution which gives free and ample scope to the people of India to make experiments in socialism or any other 'ism' which they believe would make this country prosperous.

15. CONTINUITY WITH THE PAST:

Though the independent status of country necessitated many-changes yet in framing the new polity, the Constituent Assembly did not proceed on doctrinaire lines. It made no abrupt break with the past. Reflection of the past is discernible in the following facts, (i) The conception of constitutional government was not a product of western influences but was well-recognized in the political theories of the ancient Hindus. Vedic as well as Epic Literature, works on Niti as well as in 'Smritis' or Codes of law bear ample testimony to this fact, (ii) Though monarchy was the prevailing type of Government, it was not the only form. The Republican states also existed. The existence of 'ganas' or self-governing communities in the Mahabharata; of notable clans like 'Licchavis', the 'Sakyas' and the 'Mallavas' transacting business of the state in public assemblies as given in the sacred Jain and Buddhist literature;³⁸ of non-regal states as discussed by Greek observers like G. W. M'crindle and Megasthenes throw enough light on the fact that Republican form of

Government is a relic of the past. (iii) The principle of Parliamentary Democracy is a product of British influences. The beginning of the Representative Government can be traced from the Indian Council Act of 1892, passed by the British Parliament. Of the additional 16 members of the Council of Governor-General, 10 were to be non-officials, four of whom were to be appointed on the recommendation made by the four Provincial Legislative Councils and one on the recommendation of the Calcutta Chamber of Commerce. The Indian Councils Act 1909 enlarged those Councils and added to their deliberative functions. The electoral principle was also introduced. Thus according to Acts of 1892 and 1909, some popular representatives were associated with the administration of the country.

The beginning of parliamentary institution, however, is found in the Government of India Act, 1919. Dyarchy was introduced in the Governors' provinces. The transferred departments were to be administered by the Governor on the advice of popular ministers, appointed from among the elected members of the Legislature. The Legislative Councils for the first time were given some control over legislation and budget. Franchise was widened. Seventy per cent of the members of the Council were to be elected. Though Dyarchy was not introduced at the Centre, yet the Central Legislature was given greater opportunity to influence the administration. The Act of 1935 further developed parliamentary democracy in provinces, by abolishing Dyarchy and introducing 'provincial autonomy', (i) The principle of Federalism was also contained in the Government of India Act, 1935, though due to certain reasons explained in the chapter on 1935 Act, it could not come into existence, (ii) Article 256 of the new constitution which provides that "the Executive

Power of every state shall be so exercised as to ensure compliance with the laws made by Parliament and the Executive Power of the Union shall extend to the giving of such directions to the states as may appear to the Government of India to be necessary for that purpose" follows the language of section 126 of the Act of 1935. (iii) Articles 352 and 353 of the new constitution, empowering the president to proclaim emergency, bear also verbal correspondence to section 102 of the Act of 1935. (iv) Article 356 of the constitution dealing with the breakdown of the constitutional machinery in the states, resembles section 93 of the 1935 Act. (v) The three lists, the constitutional relations between the Union Government and the states also seem to be a mere copy of the 1935 Act.

Dr. M. P. Sharma has very well summed up the close resemblance between the Act of 1935 and the present constitution in these words: "The whole of the existing administrative set up of the country has been accepted by the constitution expressly or by implication."

The earliest statute relating to the constitution of India which made provisions for a fundamental right was the Charter Act of 1833. Section 87 of that Act provided that no person by reason of his birth, creed or colour was to be disqualified from holding office, under the East India Company. Section 298 of the Government of India Act 1935 laid down, "No subject of His Majesty domiciled in India shall on the grounds only of religion, place of birth, descent, colour, or any of them be ineligible for office under the Crown in India or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British

India." Section 299 of the Act introduced a new provision for safeguarding private property against expropriation without compensation.

These provisions of the Act of 1935 appear in the chapter on "Fundamental Rights" of the Indian constitution.

Hence there is an ample justification in the remark that our constitution is rooted in the past.

16. MIXTURE OF ABSOLUTISM, LIBERALISM AND SOCIALISM:

Our constitution is not wedded to any particular economic order or theory. It is a curious blend of 16th century Absolutism, 19th century Liberalism and a lukewarm policy of Socialism. Preventive Detention Act, the authority of the President to suspend even the right to freedom and right to move the Supreme Court for a short period without the consent of the Parliament and imposition of taxes by ordinance are the relics of the 16th century absolutism. Equality before law, equal protection of the law and emphasis on other rights and liberties, provided in the chapter on Fundamental Rights constitute the legacy of the 19th century Liberalism advocated by Prof. Dicey. The authority of the Government to put restraints on the Fundamental Rights in the interest of general welfare and to regulate economic life, the Directive Principles of State Policy, the Constitution Amendment Act of 1956 empowering the States to acquire agricultural and industrial property and means of production at nominal market price, the recent 24th and 25th constitutional amendments amending the right to property to further the socialistic principles, reflect the love of the framers of the constitution for a

socialistic pattern of society. Thus, our constitution is a composite of all the three 'isms' : Absolutism, Liberalism and Socialism.

17. PREAMBLE:

The preamble to the constitution of India embodies the noblest ideals of Justice, Liberty, Equality and Fraternity. Like the preamble of the U.S. constitution, it is issued in the name of the 'People'. It runs as follows:

"We, the people of India, having solemnly resolved to constitute India into a Sovereign Democratic Republic and secure to all its citizens, Justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all Fraternity assuring the dignity of the individual and the unity of the nation :

In our Constituent Assembly, this 26th day of November, 1949 do hereby adopt, enact and give to ourselves this constitution."

Though the preamble is not an integral part of the constitution, and does not have any legal force behind it, yet it is very significant. It contains lofty ideals which the framers of the constitution have set before the future Governments of India. It indicates the source, the sanction, the pattern, the objects and the contents of the constitution. It emphasises the sovereignty of the people like the preambles of the constitutions of the U.S.A., Australia, France, Italy and that of Western Germany.

A critical appraisal of the features stated in the preceding paragraphs reflects that ours' is a unique document.

18. A UNIQUE DOCUMENT:

The critics sometimes allege that the constitution of India lacks originality. It is a "hotch-potch constitution." It is a "bag of borrowing". They emphasise that it is the deliberate and cool-headed product of a group of eminent men who prepared its draft "after ransacking all the known constitutions of the world." Indeed a compendium of constitutional precedents in three volumes was distributed among all members of the Constituent Assembly, to enable them to embody some of the important precedents in their own constitution. Shridharani says that the only originality our constitution can claim, consists in the freedom of choice exercised by its authors in picking and choosing from every constitution in the world.

Undoubtedly, we banked upon British constitutional practices a great deal. The principle of representative responsible Government, providing for two heads, nominal and real, is essentially British. Rule of Law, privileges of Parliament and the establishment of several conventions are on the British pattern. The ideological part, dealing with Fundamental Rights, is inspired by the American constitution. The role assigned to the judiciary is also like that of U.S.A. Indian Federal system is largely modelled on that of Canada though some of its features are designed after Australian and South African constitutions. The Directive Principles of State Policy are on the pattern of Irish constitution. The election to the Upper House of Parliament and the procedure of amendment reflect the influence of South African constitution. The President's authority to suspend the right to freedom and constitutional remedy during emergency bears close resemblance to section 48 of the Weimer constitution of Germany.

Seventy five per cent of our constitution is based on the Government of India Act 1935 subject to certain modifications suiting our circumstances. Dr.Jennings remarks, "The constitution derives directly from the Government of India Act of 1935, from which in fact many of its provisions are copied almost textually." As already discussed in the foregoing pages. Articles 256, 251, 352, 353, 356 are mere copies of sections 126, 107, 102, 93 of 1935 Act. The federal mechanism of the government, the autonomy of the units in certain spheres, the powers of the Head of the State, the three legislative lists, the reservation of seats for backward classes, the constitutional relations between the States and the Union and the union judiciary, are borrowed from the Act of 1935. According to Srinivasan, "both in language and substance, it is a close copy of the Act of 1935"³⁹.

It is indeed correct to say that the constitution of India has been largely designed after the Government of India Act, 1935. The size, contents, arrangements of the provisions bears the stamp of its indebtedness to the Act of 1935. But the similarity between the 1935 Act passed by an alien Government and the constitution of free India—a masterpiece of draftsmanship, should not blind us to certain' important points of differences between the two.

19. WHEREIN LIES THE DIFFERENCE BETWEEN THE ACT OF 1935 AND THE PRESENT CONSTITUTION:

- (i) The Act of 1935 was the creation of a foreign Parliament and was virtually imposed upon unwilling masses, clamouring for 'Purna Swaraj'. The constitution of India on the other hand represents the voice of the

people's representatives and derives its authority from the will of the people of India.

- (ii) The Act of 1935 represented the grudging concession of limited self-government to a subject nation, by the foreign masters, the constitution of India is a fundamental law framed by a free nation to regulate its own affairs and shape its own destiny.
- (iii) The new constitution has swept away the nasty 'Separate Electorate system' which apart from hampering the growth of genuine democracy in India, sowed the seeds of dissensions amongst the various communities inhabiting our land. Instead 'Joint Electorates' with reservation of seats for the Scheduled Tribes and Scheduled Castes and special provisions for the Anglo-Indians, have been substituted.
- (iv) The Act of 1935 gave the right of franchise to only 14% of the population. The constitution of India on the other hand introduces a system of universal adult franchise, thus enfranchising about 50% of the population of India.
- (v) The Act of 1935 did not contain any declaration of Fundamental Rights. Only sections 298 and 299 of the Act made a mere mention of a few rights. The constitution of India devotes full one chapter to the enumeration of fundamental rights.
- (vi) The Act of 1935 did not make a mention of ideals to be followed by the then Government, The constitution of India has incorporated in chapter IV "Directive Principles of State Policy"—the ideals—which aim at the establishment of a welfare state in India.

- (vii) The Act of 1935 did not confer on the people of the "Indian India", i.e., former princely states, the right of self-government. They were groaning under the heels of the rulers of these states. The constitution pushed into the limbo of oblivion the distinction between the "British India" and the "Indian India," and brought the entire country under a single uniform polity. The five hundred former princely states ruled by autocratic rulers most of whom were boy-errands of the British Government, were reduced to a few units, by process of integration and merger and their people were granted right of self-government.
- (viii) The Act of 1935 envisaged the creation of a central ministry to aid and advise the Governor-General. But the Governor-General, who was the nominee of the British Crown, was equipped with discretionary powers in vital matters. The ministers had no right to advise him in these matters. He was vested with 'Special Responsibilities' in a large number of other matters. No doubt, the Governor-General was to seek their advice in these matters but he was empowered to exercise his 'individual judgment' even in these matters, i.e., he had to seek their advice, though it was not obligatory on him to act upon it. The constitution of India vests the executive authority in the hands of President who is indirectly elected by both the Houses of the Parliament and the Legislative Assemblies of the states. Since the constitution aims at the establishment of a Parliamentary Government in India, hence the real powers are to be exercised by the Council of Ministers, headed by the Prime Minister. The President is to be more or less like the constitutional monarch of Great Britain. Only in

exceptional circumstances, the President will have power to act independently on the advice of the Ministry.

- (ix) Under the Act, the Governors of the provinces, as well, were vested with discretionary powers and special responsibilities. Under the new constitution, the Governors, like the President, are mere nominal Heads of the states. They will have to act on the advice of the Council of Ministers, headed by the Chief Minister. The Legislatures in India, under the Act were not sovereign in character. The Governor-General at the Centre and the Governors in the provinces had discretionary powers to assent or withhold assent from bills passed by their respective Legislatures. Even the Crown possessed the power to disallow any Central or Provincial Act. The Act made a clear mention that the British Parliament had complete legislative sovereignty over British India. Under the constitution of India, the Parliament and the State legislatures cannot be obstructed by the President and the Governor respectively. Of course, the President and the Governors are vested with 'suspensive veto' power. They can send a bill back for reconsideration only once. If the Bill is again passed by the legislature concerned they cannot withhold their assent to it. Moreover, the Indian Parliament enjoys complete sovereignty in the sense that it is not dictated by any alien authority.
- (x) The Act of 1935 did not entrust to any of the legislatures, Central or Local, the power of amending the Act. This power was vested with the British Parliament. The constitution of India can, however, be amended by the Parliament. The legislatures of the states also share the 'amending authority' with the Parliament, regarding certain specified provisions.⁴⁰

(xi) The judiciary under the constitution enjoys far greater powers than it did under the 1935 Act. The Judicial Committee of the Privy Council according to 1935 Act was the final appellate authority. According to the constitution of India the Supreme Court of India itself enjoys the supreme position.

Thus we cannot afford to agree with Dr. Panjab Rao Deshmukh that "the constitution is essentially the Government of India Act, with only adult franchise added." The new constitution is certainly not "a glorified edition of the 1935 Act." There is a remarkable difference of spirit between the two.

A dispassionate appraisal of our constitution enables us to conclude that it represents an attitude of eclecticism par excellence. The framers of the constitution were not labouring under any misconception, like the critics. They were judicious enough to learn by the experience of others. They could not ignore the hoary past either. Hence they had no hesitation in borrowing from the past as well as from certain other countries, institutions, suiting their circumstances. They, however, modified some of these institutions to suit their needs and conditions prevailing in India. According to Dr. M.P. Sharma, "It was not the purpose of our constitution-makers to produce an original or unique constitution. What they wanted was a good and workable one."² Our constitution is indeed a unique document drawn from many sources. It is a product of our Indian genius. We have the supreme satisfaction that our constitution has been framed by our own great leaders taking into consideration the peculiar conditions and circumstances of India.

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