1 Salient Features of the Indian Constitution

LEARNING OBJECTIVES

- To understand the salient features of the Indian Constitution with emphasis on the Preamble.
- To describe the nature and value of the postulates like the Fundamental Rights, Fundamental Duties, and the Directive Principles of State Policy.
- To explain the imperatives for the adoption of Parliamentary Democracy in India.
- To evaluate the amendment procedure stipulated in the Constitution.

It is truly a tribute to the everlasting visionary provisions of the Indian Constitution that, in a survey[1] on the eve of the sixtieth Independence day of the country, an overwhelming majority of the Indians voted for democracy, both a cause and effect of the Constitution, to be the greatest pride of India. In fact, the experimentation of the constitutional democratic government in most of the post-colonial societies was taken to be a litmus test by the rest of the world to see whether these newly independent Afro-Asian nations would be able to secure and preserve those values of humanity and governance for which they had waged such long and stupendous national movements. Though majority of the countries in these continents appear to have failed on the core issue of sustaining a constitutional democratic government, India stands out to be one of the few fortunate nations to rival the classical democratic societies in the world and be branded as the biggest democracy on the globe.

The deep-rooting of the ethos and functional vibrancy of democratic life in India may arguably be taken to be the fruition of the

long cherished endeavour of the fathers of the Constitution who not only envisioned India to be a modern nation based on the norms of rule of law, secular character of the society, democratic nature of the polity and, ordinarily, primacy of the people's fundamental rights over other imperatives of the state; but also made comprehensive and mostly, precise provisions in the Constitution to facilitate the march of the nation in the desired direction. The chapter attempts to figure out the salient features of the Indian Constitution encompassing the whole spectrum of vital issues ranging from the spirit of the Constitution as expressed in the provision on the Preamble, the Fundamental Rights and Duties, and the Directive Principles of State Policy, to the broader functional arena of political system like the federalism, the Parliamentary System, and the amending procedures of the Constitution.

FOUNDING FETTERS OF THE CONSTITUTION

For several reasons, the framing of an acceptable-to-all Constitution for free India was an extremely arduous task, which the Constituent Assembly shouldered efficiently to produce the longest democratic Constitution in the world. First, the partition of the country and the subsequent mayhem in Punjab and Bengal led to a shocking state of nervousness among the leaders who immediately set on to devise ways and means to instil in the people the confidence in the governability of the country. Moreover, the onerous task of ensuring the integration of over 500 princely states in the Indian Union appeared quite challenging in view of the ambivalent, if not totally defiant, positions taken by the rulers of the states like Junagadh, Hyderabad, and Jammu and Kashmir.

Second, the carving out of Pakistan did not mean the conversion of India into a homogenous country as more than 10 per cent of the total Muslim population of the country was left in India whose religious and cultural identities needed to be protected. At the same time, India itself was home to numerous communities speaking different languages, professing different faiths, practicing different customs, following different traditions, and emphasizing different cultures. In the face of such a diverse cultural base of the people, it was really a stupendous task to provide for sufficient constitutional provisions to protect the distinct religious-cultural

identities of the citizens, without compromising the unity and integrity of the country.

Third, the tone and tenor of the national movement had aroused a high level of expectation among the common people in general and the hitherto marginalized sections of the society, like the Scheduled Castes, Scheduled Tribes, and the other backward people in particular, to experience a new dawn with the inauguration of the Constitution of independent India.

Last, the spirit of liberal democratic traditions were so strong among the majority of national leaders, particularly Nehru, that independent India was bound to usher in a full blown democracy, irrespective of its preparedness to experience the mass scale of democracy based on universal adult franchise on the one hand, and the lurking dangers to the unity and integrity of the nascent nation from the dynamics of electoral politics on the other. Combined together, these riddles of constitution-making in independent India acted both as challenges as well as opportunities for the Constitution-makers to show their fullest constitutional acumen and innovativeness.

Faced with the complex conundrum of meeting scores of seemingly mutually competing and sometimes contradictory claims on the Constitution of independent India, the Constitution-makers had to adopt a policy of drafting a lengthy and all-encompassing document that contained not only the classical tenets of a constitution—like the provisions defining the powers and functions of the various organs of government at both the Union and the state levels, the fundamental rights guaranteed to the people, and so on—but also a number of unconventional provisions like the Directive Principles of State Policy to make the Constitution an instrument of socio-economic change in the country. The Constitution-makers, therefore, had to draw on all the available constitutions and other legislative documents to provide for the building blocks to erect the edifice called the Constitution of India. To be precise, the framers banked heavily upon the colonial construction, that is, the Government of India Act, 1935, to get the foundational base of the Constitution of India, which is an ironic epitome of the fact that the framers could not move much away from the system of governance devised by the British for India.

Thus, keeping the core drawn from the Act of 1935, the framers looked upon other constitutions, like the American and the Irish

Constitutions, to provide for the operational dynamics of not only the democratic system of government in the country through the provisions of fundamental rights but also that of the visions of new India, marching on the path of rapid socio-economic transformation through the guiding force of the Directive Principles of State Policy. However, the physical structure of the Constitution of India, as drawn from the earlier mentioned sources, would have remained hollow and infertile, had the breathing spirit to it not been provided by the Objective Resolution,[2] drafted by Nehru himself, and approved by the Constituent Assembly on 22 January 1947. Finding its manifestation through the Preamble of the Constitution—which declared the pious goals of the Constitution to 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—this resolution put into black and white the very *raison d'être* for which the Constitution of India is supposed to come into existence.

With the broad structure and essence of the future polity of the country being obvious, the Constituent Assembly arrived at seven basic decisions pertaining to the nature of the new state, namely, written constitution, federal structure of the polity, republic form of state, parliamentary democracy, membership of the Commonwealth of Nations, secular nature of state, and welfare character of the state.[3] These decisions were, in fact, the cherished dreams of the leadership of the national movement whose fulfilment was sought to be attained through the mechanism of the new Constitution. The various provisions of the Constitution of India appear, in a way, nothing more than the bricks and mortars to facilitate the construction of the structure of a constitutional polity in the country.

Analyzing the inherent philosophical moorings of the Indian Constitution, Austin discerns a 'seamless web', consisting of three strands namely, protecting and enhancing national unity and integrity, establishing the institutions and spirit of democracy, and fostering a social revolution to better the lot of the mass of Indians.[4] Bestowing equal weightage and significance to all the three strands in time and space, Austin asserted the mutual dependence and inextricable intertwinedness of these strands and warns that undue strain on, and slackness in any one strand would distort the web and risk its destruction, and with it, the destruction of the nation.[5]

However, despite the mutual dependence and inextricable intertwinedness of the three strands, as stressed by Austin, it may be argued that there appears a certain degree of prioritization among the three strands and the framers seemed to be fairly clear on the first things first in the Indian Constitution. Framed with much painstaking perseverance and imbued with the long cherished dreams of the national leaders, the Constitution of India reflected the wisdom of the framers in not only meeting out the challenges at hand, like preserving the unity and integrity of the nation threatened by the communal violence but also a prophetic vision of heralding in an era of what Gandhi called '*Ram Rajya*'.

To put it differently, the first and foremost priority of the framers at the time of Independence, and probably afterwards, appeared to be jealously guarding the unity and integrity of the country, for which they were willing to afford so much of unfettered powers to the Central Government even at the risk of rendering the federal set-up of the polity meaningless. Apparently, it appears paradoxical that though very few mentions have been made in the Constitution with regard to the unity and integrity of the country, such sweeping powers and unwritten discretion have been provided [in addition to the retention of the colonial constructions like the All India Services—the Indian Administrative Service (formerly Indian Civil Service) and Indian Police Service (formerly Indian Police, and so on)] to the Central Government that it would not be impertinent to argue that the preservation of the unity and integrity of country is the running consideration pervading from the first to the last word of the Constitution.

Having been reassured of the indestructibility of India as a nation, the framers set on to infuse the ethos and spirit of democratic governance in the country, within the broad spectrum of the parliamentary system, based on the sanctitude of universal adult franchise. Banking heavily, if not exclusively, on the periodic elections conducted by an independent constitutional body, the framers' trump card, with regard to democracy, turned out to be the classical negative rights of Western mould. This ensured for the common people the basic minimum constitutional guarantees through which they could feel as being the citizens of an independent country and enjoy the freedom of not only choosing their rulers but also live a life of their volition, notwithstanding the traditional character of Indian society and the socio-economic backwardness of the mass of the people. Thus, unlike the absolute

value of unity and integrity, democracy did not become an absolute value for the framers who, nonetheless, wished it to underpin the Indian polity and evolve in the course of time.

The value of social revolution, as referred to by Austin, appears only at the last stage of contemplation by the framers, after ingraining fully the other two values of unity and integrity as well as democracy in the Constitution. Though fully aware of the indispensability and unavoidability of a subtle social revolution in the country in order to make democracy meaningful and sustainable, the framers seem to be convinced of the primacy and pivotal position of the other two values, which were bound to become the substructure over which the superstructure of social revolution could be erected.

In sum, undoubtedly, the Indian Constitution appears to be a seamless web characterized by the three strands of the unity and integrity of the country, institutions and spirit of democracy, and social revolutionary fervour, yet, the shape of the web does not appear to be circular where it is not possible to figure out the sequence and placing of the particular value. Rather, it may be argued that the shape of the web would probably be pyramidal in which the three values are arranged in the ascending order with the base position occupied by the value of unity and integrity of the nation, the next position accorded to the value of the democracy, and finally comes the value of social revolution, in order of their indispensability from top to bottom. In other words, it demonstrates the Venn diagrammatic nature of the Indian Constitution wherein by one value resides in the hard shell of the other, paving the way for the realization of the other value only once assured of its own durable existence.

Now, we turn to analyze the salient features of the Indian Constitution.

THE PREAMBLE

The Preamble is often referred to as the soul of the Indian Constitution, affording a key to its letter and spirit. Delineating the core concerns of the polity in independent India, the Preamble seeks to express a solemn resolve that becomes the guiding light for the posterity in the country. Though the framers of the Constitution

were sagacious enough to ingrain all the vital values underpinning the Indian polity in the Preamble, the government of Indira Gandhi, for obvious political considerations, effected an unnecessary amendment in the original Preamble to the Constitution by inserting the words 'Socialist' and 'Secular' along with the original 'Sovereign, Democratic, Republic' as well as 'Integrity' along with the original 'unity of the nation', through the Forty-second Amendment on 18 December 1976.

Arguably, the insertion of these words appears unnecessary and unwarranted due to the futility of the purposes they were supposed to serve. Undoubtedly, the dominant faction of the leadership during the national movement, led by Jawaharlal Nehru, was overwhelmingly intoxicated by the mesmerizing characteristics of socialism and would have in all probability gone for steering India on the socialist path of development. If there were any doubts on this count, the matter was finally settled at the Avadi Session of Congress in 1954 by professing India to follow the socialistic pattern of society. Above all, the policy of centralized planned economic development through successive Five Year Plans, initiated by the government of Nehru, as well as the unbridled nationalization of the financial institutions by Indira Gandhi, left not even an iota of doubt that India is totally on the socialistic path of economic development.

Similarly, the idea of secularism was probably as deep rooted in the mindset of the Indian leadership as well as the masses as the idea of democracy. Significantly, as the Indians fought the colonial rulers for Independence, they also became well-versed with certain values which though appeared Western, became synonymous with the value system of the Indians—two such values being that of democracy and secularism. At the same time, vehemently opposed to the two-nation theory of Muslim League and wary of the creation of a theocratic state of Pakistan in their neighbourhood, the framers of the Constitution were probably so dead sure of secularism being an indestructible characteristic of the Indian socio-political life that they found it absurd to ingrain it in an formalistic sense in the Preamble to the Constitution.

As regards the insertion of the word integrity in the Preamble, it seems obvious that the original phrase—unity of the nation—would have been taken as all-inclusive, encompassing the term integrity in its ambit. Alternatively, after passing through the horrifying

reality of the partition of the country, the framers appeared to be sufficiently assured that whatever remained of India would, for the times to come, remain integral part of the country, provided it remains united. Yet, in view of the centrifugal tendencies which emerged in the country after a few years of Independence, it would not seem impertinent, if not undesirable, to insert the word 'Integrity' in the Preamble to the Constitution. Crucially, the only point of dispute appears to be that the motive behind these insertions was more political, than idealistic or constitutional.

As amended in 1976, the Preamble, unambiguously exemplifies the broad contours of the Indian political life and serves a number of useful purposes, for, the expressions used in it connote certain fundamental aspects of the polity from which there is no escape for the various stakeholders in the political life of the nation. First, though the use of the phrase, 'We, the people of India', may appear customary, its implications are far reaching for a nascent and fragile nation like India, marching on the unchartered path of democratic governance with competing hopes and aspirations from diverse quarters of the society.

Thus, by establishing the sovereignty of the people, the Preamble reduces all other units of governance in the country to a secondary position, robbing from them any possibility of usurping the powers of other units as well as organs of government. At the same time, it also implies that the powers which are given to the government in India, are sourced not from the states or any section of society or the former rulers of the Indian states but from the people at large, as a result of which no section of the people can challenge its authority and contend that it is not bound by the authority of the state because it has not accorded its consent to it. More importantly, since the states of the Union were not parties to the creation of the Union, which was created by the people of India, they cannot claim a right of secession from the Union. Therefore, the Preamble not only affords a stable democratic polity for the nation but also solidifies the unity and integrity of the nation.

Second, the Preamble puts in black and white the nature of polity in the country which must conform to the hard-earned ideals of sovereign, socialist, secular, democratic republic. Needless to say, the nature of the Indian polity would not have been different from what it is today, had the words socialist and secular not been added to the original Preamble. While sovereignty affords a respectful place of pride to India in the comity of nations, the ideal

of democratic republic manifests the basic outline of the nature of polity, guaranteeing the people the fundamental right of choosing their representatives to foster democratic governance in the country. Unavoidably, the mention of India becoming a republic becomes a compulsive requirement in view of the previous incarnation of India as a British Dominion whose Head of State would have been the British monarch. Hence, by making India a republic, the framers of the Constitution carried out a crucial, if not total, break from the British suzerainty, even if nominal in practical terms.

Interestingly, despite the urge to make India a socialist country, the subtle and somewhat irreversible departure of the policies of the government from socialism, beginning in early 1990s with the adoption of Structural Adjustment Programmes (SAPs) under the dictates of the international financial institutions, has become most profound today, whereas the ideal of secularism has been so deeply ingrained in the ethos and mindset of the one and all that it is now professed both formally as well as informally that the demise of secularism in the country may prove to be the demise of India as a nation as well. Thus, it appears to be a story in contrast for the two equally plausible notions of socialism and secularism, inserted into the Preamble with equal vigour, whereby, while socialism, appearing as an alien transplant in the Indian constitutional framework, fell in disfavour with the rulers of the day, without any rescue efforts by the other organs of the government, the notion of secularism, a long enduring value of Indian socio-cultural life, not only found commanding heights through the judicial pronouncements but also by delving deep into the psyche of the people as well as the government alike.

Third, the Preamble presents a wish list outlining the aspirations of the people which they expect the Government of India to secure for them. Spelt out in terms of justice, equality, and fraternity, these ideals act as the benchmark to guide the policies and programmes of the government in future to cast India into the mould of a welfare state. Leaving no room for ambiguity on the dimensions of justice, the Preamble demarcates that justice needs to be in terms of social, economic, and political, to be construed in the broadest sense of the term so that the nature of state in India does not become lopsided.

The framers were quick enough to supplement the ideal of justice with that of the ideal of equality of status and opportunity to provide for the holistic framework of an egalitarian society in India.

In the meanwhile, the Preamble does emphasize the promotion of fraternity amongst the citizens by assuring the dignity of the individual in society. Aware of the propensity of certain sections of society to advocate the subordination of individual dignity to the cause of farcical societal interests, the framers did not mince words to clarify that societal good could be ascertained only by ensuring the individual good in the society. Thus, the framers wished to create a social democracy in India, which, as Ambedkar elaborates:

> [Social democracy] means a way of life which recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.[6]

Fourth, the Preamble makes it amply clear that the unity and integrity of the country is a precondition for the other cherished ideals to become reality in the scheme of things in an independent India. Discounting any scope for tampering with the unity and integrity of the nation, the essence of the letter and spirit of the Preamble conclusively bars all the stakeholders in the nation, be it the individuals, group of people, the state or any other entity, from casting aspersions on the unity and integrity of the country, in case of which the people of India and/or the Government of India are enjoined to safeguard the unity and integrity of the nation.

Last, the utility of the Preamble is discerned in its serving as a beacon light to the higher courts in the country that are called upon to discharge the grand duty of interpreting the Constitution. At the times of interpreting a controversial law or constitutional provisions, where the meaning of the law in point is not clear or ambiguity or uncertainty prevails in the minds of the constitutional lawyers or the judges, the only reference point left to the court is the language of the Preamble through which they persevere to mark out real intention of the framers of the Constitution. It is argued that the Preamble is the repository of the spirit of the Constitution and hence, the only reference point for those engaged in interpreting the constitutional provisions should be the ideals embodied in it.

Looking at the vitality of the Preamble in the Constitution of India, it would be pertinent to analyze the position and sustenance of the Preamble. On the question whether the Preamble forms the part of the Constitution or not, the incontrovertible position of the Supreme Court, since the Keshvanand Bharti case, has been that the Preamble is very much a part and parcel of the Constitution.[7] Further as the former Chief Justice of India, M. Hidayatullah points out:

> Preamble resembles the Declaration of Independence of the United States of America, but is more than a declaration. It is the soul of our Constitution which lays down the pattern of our political society which it states is sovereign, democratic republic. It contains a solemn resolve which nothing but a revolution can alter.[8]

FUNDAMENTAL RIGHTS

The inclusion of a detailed scheme of fundamental rights in the Constitution marks the culmination of a long and sustained desire of the Indians to be bestowed with the basic liberties of free and happy life. Indeed, the formation of the Indian National Congress in 1885 was, among other things, aimed at ensuring the same rights and privileges for Indians that the British enjoyed in their own country.[9] But the first systematic demand for fundamental rights came in the form of the Constitution of India Bill, 1895.[10] Thereafter, numerous resolutions were passed and committees were appointed to put forth the perspectives of Indians on the nature and scope of the fundamental rights, aspired by the people of India.[11] The final shape to the fundamental rights was given by the Advisory Committee for reporting on minorities, fundamental rights, and on the tribal and excluded areas, under the chairmanship of Sardar Patel, which the Constituent Assembly accepted and adopted to make it Part III of the Constitution.

Originally, the Constitution contained seven fundamental rights. But the right to property was repealed in 1978 by the Forty-fourth Constitutional Amendment during the rule of the Janata government, reducing these rights to six only, which are Right to Equality (Articles 14–18), Right to Freedom (Articles 19–22), Right against Exploitation (Articles 23 and 24), Right to Freedom of Religion (Articles 25–28), Cultural and Educational Rights

(Articles 29 and 30), and the Right to Constitutional Remedies (Article 32). These rights have been protected against undue infringement by the state excepting certain specific circumstances provided under the Constitution though their amendability has been upheld by the Supreme Court under Article 368 of the Constitution in the Keshvanand Bharti case.

Described by Austin, along with the Directive Principles of State Policy, as the conscience of the Constitution, the fundamental rights arguably constitute the soul of the Constitution. However, in material terms, as pointed out by N.A. Palkhiwala, they constitute the anchor of the Constitution and provide it with the dimension of permanence. The Constitution envisages the fundamental rights as the common platform on which divergent political ideologies and practices may meet. They provide the iron framework within which experiments in social and economic changes may be tried out.[12]

These rights, therefore, have been given a very esteemed position in the constitutional law of the country, for, all laws in force in the territory of India immediately before 26 January 1950, and all legislations enacted thereafter, have to conform to the provisions of Part III of the Constitution.

Moreover, the scope of the fundamental rights are wide enough to encompass practically all those rights which human ingenuity has found to be essential for the development and growth of the personalities of the citizens of the country. Significantly, the focus of attention of the framers in this regard was on the citizens mainly, if not exclusively, as many of these rights are not guaranteed to the aliens. For instance, the rights contained in Article 15 (prohibition of discrimination on the basis of religion, race, caste, sex, place of birth, or any of them), Article 16 (equality of opportunity in the matters of public employment), Article 19 (right to freedom), and Article 29 (cultural and educational rights) are available to the citizens only. Nevertheless, the best part of the provisions on fundamental rights is the fine-tuned machinery to guarantee these rights in practice: under Article 32, the Supreme Court is given the original jurisdiction to entertain the petition of a person whose fundamental right has been infringed, and is empowered with various writs which can be issued to secure the enjoyment of these rights.

Despite being taken as the bedrock of democratic life in the country, the fundamental rights have not been made absolute since

several reasonable restrictions have been placed on their enjoyment. Set to secure the public good on the one hand and the unity and integrity of the nation on the other, the reasonable restrictions can be imposed specifically in the interests of the sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency, morality, health, and so on, and for the protection of the interests of any Scheduled Tribes. Though these restrictions, no doubt, appear to be an attempt on the part of the framers to strike a balance between individual liberty and the social good, in the course of the functioning of the Constitution, it was rightly apprehended that the state might, under the garb of reasonable restrictions, put undue infringement on the enjoyment of these rights. Consequently, the endeavour of the courts in the country has been to do a rigorous check on the reasonableness of the restriction, as and when they are imposed to curtail the rights of the people. Proclamation of a state of emergency provides another circumstance when the enjoyment of fundamental freedoms guaranteed under Article 19 may be suspended. Similarly, Article 33 empowers the Parliament not to grant some of the fundamental rights to the persons employed in the armed forces.

Reasonable restrictions notwithstanding, the fundamental rights appear to be big restrictions on the legislative, executive, and to some extent, judicial powers of the state. In making a law, the legislatures must see to it that such a law does not, in any way, infringe any of the fundamental rights guaranteed to the people, for, if such a law as a whole or any part of it is found inconsistent with any of the fundamental rights, it would be declared null and void by the competent court. More precarious is the position of the executive authorities who bear the brunt of the court when they are found to be acting in an unconstitutional manner. The recent case of the Soharabuddin fake encounter case of Gujarat has proved to be the undoing of several senior Indian Police Service (IPS) officers of the state. The same canon of constitutional propriety applies to the judiciary also, as no decision which is in contravention of the provisions of fundamental rights can be pronounced by any court in the country, for, if such a decision is delivered, it is bound to be set aside by the higher courts. More importantly, the restrictions on the fundamental rights do not apply only on the state agencies but also on private individuals and organizations. For instance, Article 17 stands for the abolition untouchability, Article 15(2) prohibits the disability of

any citizen in the use of shops, restaurants, wells, roads and other public places on account of his religion, race, sex, or of birth, and Article 23 bars the practice of begging or forced labour in any form. Thus, the state, in addition to obeying the Constitution's negative injunctions to not interfere with certain of citizen's liberties, must fulfil its positive obligation to protect the citizen's rights from encroachment by society.[13]

FUNDAMENTAL DUTIES

Impregnating the high sounding and zealously guarded domain of fundamental rights with a moderate dose of ethical citizenship responsibilities, the fundamental duties were inserted in the Constitution in 1976 through the Constitution's Forty-second Amendment. Drawn from the Constitution of former Soviet Union and placed in Part IV-A of the Constitution under Article 51-A, the set of ten fundamental duties is supposed to be only moral exhortation to the citizens of the country to inculcate a sense of patriotic and sensible citizenship, without any legal justiciability.

Though not justiciable and therefore, with little consequence in practical terms, the provision of fundamental duties was opposed by many people who also brought out several inconsistencies in these duties. For instance, one of the fundamental duties asks every citizen of the country to develop a scientific temper and spirit of enquiry. But with bulk of the people still illiterate, how is it possible to imbibe the habit of thinking with clarity and precision if they are unable to get the basic inputs of such a thinking. Nevertheless, the fundamental duties have become a part of the Constitution and despite their non-justiciability, they continue to exercise some sort of social and collective restriction on those who are fond of enjoying unfettered rights without discharging even an iota of duty to the society and the nation.

DIRECTIVE PRINCIPLES OF STATE POLICY

The provision of the Directive Principles of State Policy in the Constitution was the culmination of the humanitarian and socialist ideas nurtured by a majority of the leaders of the national

movement who aspired for not only a political democracy for India but also a socio-economic democracy. Crystallizing in the 1931 Karachi resolution of the Indian National Congress, the leaders made a constitutional declaration of social and economic policy in the recognition of the vision of a welfare state in place of a regulatory state in the colonial mould. Ideally, the Karachi resolution must have led to the incorporation of the declaration of social and economic policy in the form of justiciable fundamental rights, but the stark reality of insufficiency of economic resources and overbearing prevalence of conservatism in the society at the time of framing the Constitution appeared to have dissuaded the framers from making the social and economic ideals the justiciable fundamental rights. The way out, therefore, seemed to place the social and economic ideals in the form of directive principles, which though non-justiciable, would remain fundamental in guiding the state policy. Borrowed from and patterned on the Irish Directive Principles of Social Policy, these directive principles also sounded attractive to the framers due to their long-standing proximity with the Irish nationalist movement. Later on, when it came to fine-tuning the various directive principles, other shades of cherished ideals like the Hindu mythological beliefs and the Gandhian ideas of social and economic reconstruction along with secular socialist perspectives on Indian society also found adequate reflection in the final list of the directive principles.

Placed in Part IV of the Constitution (Articles 35–51), the directive principles signify the positive obligations of the state towards its citizens, for, as Article 37 envisages that though not enforceable by the courts, they are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making the laws. Thus, the two fundamental issues arising on the nature of the directive principles relate to their legal status in the Constitution as well their position vis-à-vis the fundamental rights. As regards the legal status of these principles, the vision of the framers was crystal clear that these principles would not be justiciable in the sense that the fundamental rights are, at the same time they would not be mere proclamation or the pious wish list only. As K.C. Markandan argues:

> Far from being a proclamation or promulgation of principles, the directive principles constitute a pledge by the framers of the Constitution to the people of India and a failure to implement them

> would constitute not only a breach of faith with the people but would also render a vital [feature] of the Constitution practically a dead letter.[14]

However, the real test of the vitality of the directive principles in the Constitution came through their recurring clash with the fundamental rights, in which the Supreme Court tried to clear the air in various landmark judgements. The root cause of the conflict between the directive principles and the fundamental rights lies mainly, if not exclusively, in the provisions contained in Clause 2 of Article 13 which envisaged that the state shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and any law made in contravention of this clause shall, to the extent of contravention, be void. Accordingly, the first case of clash between the two arose in the case of *Champakam Dorairajan vs State of Madras* in which the Supreme Court held that the directive principles cannot override the fundamental rights though it did accept that the fundamental rights can be amended under the provisions of Article 368, relying on the doctrine of harmonious construction of various provisions of the Constitution. Thereafter, the accepted position was that though ordinarily the directives principles could not override the fundamental rights, certain reasonable restrictions could be put on the fundamental rights in order to implement the directive principles by way of due amendment in the Constitution.

A climb down on the part of the Supreme Court appeared in 1967 in the case of *Golak Nath vs State of Punjab*, when the Court denigrating the value of the doctrine of harmonious construction held, *inter alia*, that Parliament has no power to amend any of the provisions of Part III of the Constitution so as to take away or abridge the fundamental rights enumerated therein, making the fundamental rights unamendable in any situation. Finding itself in a piquant situation, the government got the Twenty-fourth and Twenty-fifth Amendments made in the Constitution, which came for the scrutiny of the Supreme Court in the case of *Keshvanand Bharti vs State of Kerala*. Falling back again on the doctrine of harmonious construction, the Court, propounding the doctrine of basic structure of the Constitution, held the primacy of the directive principles over the fundamental rights in respect of certain articles but rejected the rights of legislature and the executive

to make laws or issue orders amounting to amending the 'basic structure' of the Constitution. Later, in the case of *Minerva Mills Ltd. vs Government of India*, the Supreme Court stuck to the position that the primacy of the directive principles over fundamental rights cannot be claimed to be unqualified and any amendment to the Constitution that alters its basics structure is bound to be void.

Notwithstanding the long-drawn controversy on the constitutional status of the directive principles, a perusal of various principles reveal interesting features regarding the scope and diversity of the directive principles. As pointed out earlier, provision of directive principles afforded various shades of perspectives an opportunity to provide their ideals a place in the Constitution, which are three in the main. First, the substantive numbers of directive principles are aimed at the establishment of a welfare state by bringing about a subtle socio-economic transformation in the country. For instance, Article 38, broadly defining the core content of the directive principles, envisages that the state shall strive to promote the welfare of the people by effectively ensuring a social order in which justice—social, economic, and political—shall pervade all the national institutions in the country.

The other directive principles of this sort pertains to the equitable distribution of material resources in society, welfare of women and children, equal pay for equal work, improving conditions of work, and free and compulsory education for children up to the age of fourteen, and so on.

Second, a large number of directive principles aspire to implement the Gandhian principles of social life, such as, the establishment of village panchayats and cottage industries, upliftment of the conditions of the Scheduled Castes and Scheduled Tribes, prohibition, improvement in the breeds of cattle, and stopping the slaughter of cows and calves, and so on.

Last, certain directive principles deal with the streamlining of governance in the country and promotion of international peace. Thus, while the directive principle on the separation of judiciary from the executive is aimed at streamlining the governance in the country, the directive principles relating to the securing of international peace and security, maintaining good and honourable relations with nations, fostering respect for international law and

treaty obligations, and settlement of international disputes by arbitration and other peaceful means are meant for global peace and tranquility.

The efforts at operationalizing the lofty ideals, enshrined in the Constitution in the form of directive principles portray a picture of belied promises. Though reduced to a secondary position by the framers themselves by not making them justiciable, albeit with stipulations of time and resources, the directive principles were supposed to be the fundamental guiding spirit behind the programmes and policies of the government. However, the governments at various points of time were more keen to look for alibis to neutralize the execution of the directive principles than to pool economic resources, secure social sanction, and muster political will to put them into practice. Hence, in the early years of independence, the argument of judicial impediments was advanced to explain the negligible progress in the implementation of the directive principles. When the judicial impediments were ultimately warded off, the bogie of the insufficiency of resources was raised. In the aftermath of liberalization, the successive governments seemed to have paid scanty attention to the Directive Principles of State Policy while devising policies. Even those directive principles which have been implemented, like the one relating to the panchayats and free and compulsory education to the children up to the age of fourteen, appear to have been implemented more to score a point over the opposition than with the true spirit of bringing about a socio-economic transformation in the country. In such scenario, the only plausible way out to get the directive principles implemented in letter and spirit is through the waging of a mass movement, pioneered by the concerned people of society.

FEDERALISM

Quite evidently, it seems that a number of the basic formulations pertaining to the Constitution of India would be preordained by the circumstantial imperatives of the country. Hence, federalism as the defining concept of the body politic of the country became some sort of *fait accompli* for independent India as no other prevalent system of organizing the various units of a nation would have served

the purpose for the nascent nation. However, the peculiarities of the Indian situation were so varied that an existing ready-made political arrangement, such as federalism, itself would not have fulfilled the diverse requirements of the country. Therefore, despite accepting federalism as the basic idea in the body politic of the country, the framers were sure in their minds that necessary modifications needed to be made in the classical form of federalism so as to make it comprehensively suitable to the dynamic political realities of the country at various times.

Thus, the federal structure as obtained by the fathers of the Constitution for the country happens to be a uniquely creative construct. Despite essentially being federal in soul, it also combines a number of provisions that may facilitate its conversion into a patently unitary structure in accordance with the needs of the time without causing any permanent dent to the original federal system when it is reverted to the federal one. The uniqueness of the Indian federal system is reflected in the distinct nomenclatures invented by eminent scholars in the field to label it. Finding the simple term 'federalism' inadequate to articulate the distinguished features of the Indian federal system, various distinct labels like 'quasi-federal', 'federal state with subsidiary unitary features', 'paramountcy federation', and so on, are used to discern the basic underlying features of the Indian federal system. The fundamental reason behind such descriptions of the Indian federal system is the fact that the ingraining of several unitary provisions in the Constitution robs it of its rigidity in remaining federal irrespective of the exigencies arising at particular times.

The distinctive characteristics of the Indian federal system in terms of having both the federal as well as the unitary features are eloquently exhibited in the provisions governing the Centre-state relations in the country. Constitutionally, the Centre-state relations in India are governed by the provisions of the Seventh Schedule of the Constitution wherein the operational domains of the two have been defined by way of the three lists—Union, State, and Concurrent, with ninety-seven, sixty-six, and forty-seven items respectively to begin with. Despite being vested with the residuary powers also, the Central Government over the years brought about numerous amendments in the Seventh Schedule in order to transfer the subjects from the State List to either the

Union List or the Concurrent List. Thus, the concentration of powers in the hands of the Central Government was not only provided for in the Constitution but also the successive Central governments appear to have gone a step ahead in centralizing powers in their own hands. Moreover, a number of overt provisions have been made in the Constitution to strengthen the hands of the Central Government in the legislative domain by giving overriding powers to it. For instance, under Article 249, if the Rajya Sabha resolves by two-third majority that it would be prudent for the Parliament to legislate on a subject of the State List in national interest, the Parliament is authorized to legislate on the said subject. In such a situation, 'national interest' becomes the catch-phrase to cover any subject having a bearing on the country as a whole to empower the Parliament to legislate on such subjects.[15] Thus, the Centre-state legislative relations are ordained in such a way in the Constitution that the functional domain of the state governments seems to depend on the sweet will of the Central Government.

The administrative relations between the Central and state governments also present an apparently disbalanced picture in which the former enjoys overwhelming leverage over the latter. Patterned essentially on the basis of the legislative relations between the two, the two levels of governments are empowered to exercise their administrative powers on the subjects allotted to them for legislative purposes. However, under the provisions of Article 256 of the Constitution, a general commandment has been issued to the states that their administrative powers need to be exercised in such a way as to ensure compliance with the laws made by the Parliament and the existing laws. Moreover, in this regard also, the Central Government has been given exceptional powers to lord over the state governments in both normal as well as extraordinary circumstances. For instance, according to Article 257, it has been provided that the executive power of the Central Government also extends to the giving of such directions to the states as they may appear to the Government of India to be necessary for the purpose. In view of the sweeping powers given to the Central Government in the administrative domain accompanied with the apparently partisan governors occupying the Raj Bhawans in the state capitals, it becomes really difficult for the not-so-friendly state governments to carry on with their

normal activities of governance in a fearless and autonomous manner.

The lopsidedness of the federal system in India is most pinching to the state governments in no other sector than the Centre-state financial relations. While the Constitution provides for the exhaustive and mutually exclusive powers of taxation to both the Central as well as the state governments as per the items included in the Union and the State Lists, the value and amount of resources generated by the given provisions go overwhelmingly in favour of the Central Government. Interestingly, the paradox of the Centre-state financial relations is that while the states have been bestowed with the responsibility of carrying out developmental functions having huge expenses, the most extensive resources of revenues are vested with the Central Government.[16] Moreover, under the garb of the plan outlays, the Central Government has been seen to be allocating exorbitant resources to the politically-friendly states and just pay the bare minimum to the states not in its good books. It is in such circumstances that voices of protest have been raised by various state governments from time to time, the height of which was reached in the demand of the Gujarat Chief Minister Narendra Modi that for some time the Central Government stopped collecting taxes from his state and Gujarat stopped taking any financial assistance from the Central Government.[17]

If the Centre-state relations in India are abjectly in disfavour of the state governments in the normal times as described previously, the condition of things during the times of emergency can be imagined. Of the three types of emergency provided for in the Constitution, what concerns the states most is Article 356, which lays down that if the President is satisfied, on the basis of the report of the Governor or otherwise, that a situation has arisen in which the government of a state cannot be carried out in accordance with the provisions of the Constitution, he/she may, by proclamation, impose a state of emergency resulting in the imposition of President's rule in that state. Though this provision has been placed in the Constitution to act only as a safety valve, it turned out to be one of such provisions in the Constitution that has been grossly misused for the maximum number of times till 1994. A brake of sorts was placed on the misuse of this Article in 1994 by the judgement of the Supreme Court in the case of *S.R. Bommai vs Union of India,* when the Court held that the majority by a state

government must be tested on the floor of the House, on the one hand, and the decision of the President regarding the imposition of President's rule in a state is open to scrutiny by the Court, on the other.

The constitutionally ordained structure of the Centre-state relations in India, as shown previously, no doubt gives preeminence to the position of the Central Government. But in the post-1967 times, a number of state governments came out openly against the preponderant position of the Central Government and sought some sort of course correction on certain issues they found most thorny in the Centre-state relations in the country. For instance, the issues of the role of Governor, the misuse of the provisions under Article 356, reservation of bills by the Governor for the consideration of the President, equitable sharing of the finances between the Centre and states, and so on,[18] are some of the issues raised by the opposition state governments seeking suitable remedial measures regarding them. However, most of the review committees and commissions on the issue of Centre-state relations have advocated the retention of such provisions though minor operational corrective measures have been suggested in order to check the misuse of these provisions.

PARLIAMENTARY SYSTEM

The system of parliamentary democracy, which informs all the institutions of governance in the country, did not become the crowning glory of the Constitution all of sudden or without serious debate and discussion in the Constituent Assembly. Indeed, the roots of the demand for a parliamentary system of governance in the country may, arguably, be traced back to the early twentieth century when the Indians persistently demanded the establishment of parliamentary institutions on the pattern of British polity to afford an opportunity to them to associate themselves with the governmental activities in the country. Though the colonial rulers had consistently refused to accede to the wishes of the natives on the ground of the unsuitability of the Indians to run such kinds of institutions on the one hand, and undesirability of parliamentary institutions, as such, for India, on the other, the resolve of the enlightened Indians for some sort of parliamentary

system to be established in the country became progressively hardened with every refusal of the British India Government for the same. Afterwards, in most, if not all of the documents, proposing the model of political set-up for independent India, like the Nehru Committee Report, the Sapru Report, the Draft Constitution of Free India published by the Socialist Party and the Hindu Mahasabha, as well as by individuals like M.N. Roy, the argument for a parliamentary system of government figured prominently as the ideal model of governance for India after Independence.

However, when the Constituent Assembly set on to decide the kind of political institution for the governance of the country, more than the lust, if not infatuation, with the parliamentary system, the urge to devise a mechanism which would foster a rapid socio-economic revolution weighed on the minds of the framers more dominantly. Having decided in favour of a rapid evolution, as against violent revolution, as K. Santhanam put it, the obvious question before the framers, as Austin reveals, was: what form of political institutions would foster or at least permit a social revolution? As Austin informs further, two competing systems of political institutions were available to the framers to opt for: first, looking back into the nation's rich heritage and finding indigenous institutions capable of meeting the country's needs, the framers would base the Constitution on the village and its panchayats and erect upon them a superstructure of indirect, decentralized government in the Gandhian manner; and second, opting for the Euro-American constitutional traditions, reflected in the form of parliamentary system, though, it meant continuing in the direction the country had taken during the colonial period.[19] Reminiscent of the old liking of the Indians for the parliamentary institutions, the Constituent Assembly's decision in favour of the latter option was arrived at with overwhelming majority, with only one member raising a voice in favour of the village panchayats, though the broad contours of his scheme of things also appeared to be in the mould of representative democratic governance.

Explaining the rationale behind the choice for the parliamentary system, Jawaharlal Nehru, speaking in Lok Sabha on 28 March 1957, said:

> We chose this system of parliamentary democracy deliberately; we chose it not only because, to some extent, we had always thought on those lines previously, but because we thought it in keeping

> with our own old traditions, not the old traditions as they were, but adjusted to the new conditions and new surroundings. We chose it—let us give credit where the credit is due—because we approved of it's functioning in other countries, more especially in the United Kingdom.[20]

Further, providing a more deep-seated account for the adoption of parliamentary system by the Constituent Assembly, Austin points out four compelling reasons.[21] First, the alternative of panchayat based system of governance, rooted in the Gandhian frame of analysis, did not find favour with the framers as 'the Congress had never been Gandhian' on the one hand, and near universal acceptance of the parliamentary system as the *fait accompli* for the country by all sections of Indian society on the other.

Second, the commitment of many members of the Constituent Assembly to 'Socialism' also emboldened the pursuits to go for a parliamentary system, for, socialism and democratic government were taken as supplementary to each other. Holding that democratic constitution could not survive without a subtle move to secure social and economic equality, majority of the Indians, with the probable exception of the Communists, held the view that 'there could be no socialism without democracy', which could be ordained only by the parliamentary system of governance.

Third, the immediate challenges, posed to the well-being of the people on the one hand, and the unity and integrity of the country, on the other, also tilted the balance in favour of the parliamentary system. At the time of the inauguration of the Interim Government in September 1946, the livelihood of the people was threatened due to famine-like conditions in many parts of the country, rising food prices, precarious grain reserves, and a clash of interests between the surplus and scarcity provinces. Similarly, the threat to the unity of the nascent nation came from rising communal passions in the wake of Direct Action Day call by Jinnah, the reluctance of a few princely states to join the Indian Union, and the Communist rebellion in the regions like Telangana. The cure to these ills was considered to be lying in the parliamentary system, as only it could afford a fair degree of centralization of powers in the hands of the Central Government without compromising with the structure and functioning of democracy in the country.

Last, the unflinching faith of the members of Assembly in the need for universal adult franchise as the basic factor to herald

the social revolution in the country also weighed decisively in favour of parliamentary democracy, as the Parliament so elected was construed to represent the people as a whole, ensuring representation to all sections of society and fostering the socio-economic revolution to usher in a true democratic governance in the country.

The somewhat, if not absolute, successful functioning of the parliamentary democracy for the last five decades of post-Independence period in India has fulfilled the dreams of the framers to have a system of governance capable of meeting all sorts of challenges to the welfare of both the people, as well as the nation, without compromising the democratic ethos and spirit of institutions of governance. Embedded with the virtues of both responsibility and responsiveness, it has ensured a daily as well as periodic assessment of the functioning of government. Significantly, the parliamentary system has facilitated the successful meeting of challenges to the social, economic, and political life of the nation expeditiously due to the absence of working at cross-purposes between the executive and legislative branches of the government. Above all, the parliamentary system has afforded the people from all parts of the country, following various socio-cultural customs and traditions and following distinct political ideologies, to find a voice in the governance of the country through their representation in the Parliament. This goes a long way in strengthening the national spirit and belongingness in them.

Despite the institutional soundness and having sustained the unity and integrity of the country and securing mental and material well-being of the people, the functional dynamics of parliamentary system in India have not been without their share of responsibilities for the ills plaguing the country today. Indian polity has undergone significant changes since it became politically free in 1947. The Nehruvian democratic government seemed to have received a serious jolt with the promulgation of the 1975 Emergency under the Indira Gandhi-led Congress government. The rise of coalition government is also equally dramatic. While the BJP-led National Democratic Alliance (NDA) was a majority coalition, the present United Progressive Alliance (UPA) under the leadership of the Congress party is a minority coalition. Hence its capacity to manoeuvre is highly restricted since the UPA government lacks a majority and without the support of the Left and other parties

on the floor of the Parliament the government will collapse in the face of a no-confidence motion. The role of emotive issues in garnering votes during the election has also been critical in India's parliamentary elections. For instance, Indira Gandhi's 'Garibi Hatao' (remove poverty) or V.P. Singh's Mandal gamble, and the Bharatiya Janata Party's *Ram Mandir* became very powerful issues in the national elections in 1971, 1989, and 1999, respectively. The contemporary phase of coalitional politics, accompanied with the formation of unstable, if not defying the formation of any government at all, governments at both the Centre and the states also appear to be the obvious consequence of an intense socio-economic and political churning taking place in the country, due to the dynamics of parliamentary system. Yet, these undesirable, if not pernicious, trends in the democratic politics of the country, may be taken as the transitional hiccups in the evolutionary phase of a nation from being a traditional, backward, divided, and politically inactive society to a progressive, developed, diversified, and mass democratized nation, to facilitate which the framers banked upon the parliamentary system of governance for the country.

AMENDING PROCEDURES

The issue of amending procedures of the Constitution happened to be one of the least debated and controversial issues dealt with by the Constituent Assembly due, probably, to the less importance attached to it by the members on the one hand, and the lack of adequate knowledge and 'immediate experience' amongst the average members of the Assembly, on the other. Barring a few customary references in the reports, like Nehru's and Sapru's, as well as in the draft Constitutions of K.M. Munshi, K.T. Shah, and K.M. Panikkar, and so on, a well thought-out scheme of amending procedures was not available to the framers till mid of 1947, when B.N. Rau presented his framework of amending procedure, providing for a two-fold procedures for amending the Constitution. First, the amendments should first be passed by a two-thirds majority in both Houses of Parliament and then ratified by a similar majority of provincial legislatures. Second, the transitional provisions may be amended by a simple majority in Parliament. However, the main dilemma before the framers was,

presumably, to reconcile between the competing allurements of amending the Constitution by simple majority to keep the Constitution dynamic, living, serving the needs of the society with the changing times and circumstances on the one hand, and making its amending procedure rigid enough to thwart any frivolous attempt to alter the basic framework of the federal polity of the country on the other. After due deliberations on the practices followed in the American, the Australian, and the Irish Constitutions, the Constituent Assembly agreed to provide for a three-fold methods of amending the Constitution under the provisions of Article 368, drawing appreciation from the experts like K.C. Wheare who complimented the framers for striking a balance by protecting the rights of the states while leaving the rest of the Constitution to be amended easily.[22]

Labelled as 'one of the most ably conceived aspects of the Constitution',[23] the provisions under Article 368 appear to be able to meet the aspirations of the framers to make the Constitution a living document while making it extremely difficult to rob it off its basic characteristics. Of the three methods of amending the Constitution, two have been specifically provided for in Article 368, whereas the third has been provided for in about twenty-two other articles. Thus, first, the Constitution can be amended by introducing an amending Bill in either House of Parliament, which needs to be passed by a majority in each house with two-thirds of the members present and voting, after which it is sent for the presidential assent, at the receipt of which it becomes an amendment.

The second method relates to the Articles enumerated under the proviso to Article 368 items from (a) to (e), dealing with the subjects of the method of election of the President of India; distribution of legislative powers between the Union and the states; extent of the executive power of the Union and the states; representation of the states in Parliament; provisions relating to the Supreme Court and the high courts; and the amendment of the Constitution itself. To amend any of these Articles, the amending Bill is not only to be passed by a majority of total membership in each house and majority of not less than two-thirds of the members present and voting in each House but also ratification by at least one-half of the state legislatures.

Third, the Constitution can be amended by a simple majority vote in the two Houses of Parliament, followed by the assent of

the President. The basic percepts, with which this provision deals with, like formation of new states, alteration of state boundaries, changing name of states, delimitation of constituencies, qualifications for citizenship, quorum in Parliament, and so on, to name a few, are to remain in force until the Parliament brings about changes in them. Though a formal amendment in all such cases is not effected, yet they have the effect of making changes in the constitutional law.

In view of the overt provisions made in Article 368 for the methods of amending the Constitution, a subtle debate emerged amongst the scholars regarding the scope and nature of Parliament's power to amend the Constitution. One school of thought, rooted in legal positivism, contended that owing to the elaborate provisions made in the Constitution, the Parliament must confine itself to what is provided for in this regard, without any attempt to derive implied powers of amendment. Responding, in a way, to the provisions of Article 13(2) which bars the state from making any law which takes away or abridges the fundamental rights, the other school of thought holds that the amendment of the Constitution should be viewed in the context of the requirements of socio-economic needs of the country instead of the strict legal provisions provided for in this regard. These two contrasting, if not conflicting, views on the amendability of the Constitution have found their reflection in the ongoing game of one-upmanship between the Parliament and the Supreme Court even today.

Though the questions on the limits of amending power of Parliament were raised very soon after the inauguration of the Constitution in 1951 in the case of *Sankari Prasad vs Union of India*, the Supreme Court took the position till 1967 that the Parliament has unfettered powers to amend the Constitution. This position was dramatically reversed by the Supreme Court in the case of *Golak Nath vs State of Punjab* in 1967, ruling that the Parliament has no power to amend the provisions on fundamental rights, leading to serious resentment in the political circles that started groping to find a way out of this all imposing judgement. Responding by way of the Twenty-fourth and Twenty-fifth Amendments, the government sought to turn the table on the Supreme Court by not only nullifying what the Court had provided for in the Golak Nath case but also by extending the whip to the office of the President by providing that when a constitutional amendment is presented to him for his assent, he shall give his assent and that he would not

have any discretion in this regard. Creating again an opportunity for a stand-off between the government and the Supreme Court, the Twenty-fourth and Twenty-fifth Amendments were challenged in the Supreme Court in the case of *Keshvanand Bharti vs State of Kerala* in 1973.

The historic judgement in the Keshvanand Bharti case tried to restore the precarious balance between the government and the judiciary on the issue of amendability of the Constitution by over-ruling Golak Nath, upholding the Twenty-fourth and Twenty-fifth Amendments and striking down the 'escape clause' in the Twenty-fifth Amendment's Article 31(C).The essence of the statement of the nine judges was that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution.[24] The court, thus, through the doctrine of implied limitations and doctrine of basic structure, tried to ensure the permanence of the basic constituent aspects of the Constitution, on the one hand, and give the maximum possible leverage to Parliament to amend the socio-economic provisions to usher in an era of welfare state in the country on the other.

The core of the decision in Keshvanand Bharti case was reiterated by the Supreme Court in the case of *Minerva Mills Ltd. vs Union of India*, thereby asserting the irreversibility of the doctrine of basic structure in relation to the amendability of the Constitution. However, an aberration, in the form of the Ninth Schedule of the Constitution, existing since 1951, which made certain laws and amendments immune from judicial review after they are placed in the said schedule by Parliament, created an anomalous situation in which Parliament was accorded an indirect escape route to amend the basic structure of the Constitution and shield it from the scrutiny of the Court. Removing this anomaly, the Supreme Court, in the case of *I.R. Coelho vs State of Tamil Nadu* held that the Ninth Schedule was created for a specific purpose and not to be used as a shield to keep certain laws and amendments out of the purview of judicial review,[25] which may even have the propensity of subverting the basic structure of the Constitution.

In the contemporary times, the issues regarding the amending procedure and ancillary questions appear to be settled in favour of a dominating position of the Supreme Court, which has progressively attained the position of commanding heights in the constitutional framework of governance in the country, partly due to the

pernicious acts of commission on the part of the government, on the one hand, and deplorable acts of omission by the government, on the other; in both cases the people have to move the Court to get the wrongful undone and the rightful done through the judicial pronouncements. This unsavoury predicament of the constitutional framework needs to be cleared in favour of the reasoned balance in the jurisdictions of various organs of government. Taking the doctrine of basic structure of Constitution as the reference point for amendments, both the Parliament as well as the Supreme Court should try to work the Constitution, insofar as amendments are concerned, rather than subverting it.

CONCLUDING OBSERVATIONS

Drafted to be the embodiment of numerous ideals cherished by the prominent leaders of the national movement regarding the shape of social, economic, political, cultural, and religious systems and parameters of life of a modern and forward-looking people, the Constitution of India represents the crux of what came out to be fairly acceptable scheme of things amongst the competing perspectives on the contours of future Indian polity. As pointed out earlier, the major problems before the framers of the Constitution seemingly arose at two levels: macro and micro. At the first level, the core concern of the framers related to the adoption of the macro-level institutions to manifest the foundational mechanism of the polity in terms of the parliamentary system of democracy, the federal nature of the polity, and so on. Though there existed a good deal of pointers on what needed to be the macro model of the polity in independent India, there, indeed, were certain alternative models which some members of the Constituent Assembly advocated for adoption by the Assembly. For instance, a few members of the Assembly argued for the superiority of the Swiss system of government in comparison to the British, ostensibly for the sake of better representation and protection of the interests of minorities and other sectional groups.

More deep-rooted issues came to the fore once the puzzle at the macro level was sorted out. As India was a mammoth country with innumerable diversities, broken political customs and conventions, wide social cleavages and widespread religious and cultural variations, the issue of fine-tuning the political system of

the country was not over just by adopting the parliamentary system, which was born and operationalized in a Western country whose circumstances and socio-economic milieu was drastically different from those of India. Hence, retaining the spirit of the parliamentary system of democracy, the fathers of the Constitution had to bring about suitable alterations in the classical parliamentary system, such as, having an elected Head of State in place of a monarchical system and providing for a powerful and independent judiciary in place of a subservient judiciary to the parliamentary supremacy in order to make it propitious to provide for a long-lasting system of governance for the country. Similarly, looking at the huge geographical size with multitudinal diversities, in addition to the political aspirations of the people at regional and local levels, the preference for a federal set-up for the country was obvious. The real issues, however, arose when the classical form of federalism was juxtaposed with the dear issue of safeguarding zealously the unity and integrity of the nation; as a result of which a number of modifications were introduced in the federal system of the country, prompting several scholars to call Indian federalism as a sub-federal order rather than a true federal one. Yet the sole concern of the framers of the Constitution appears exclusively with devising the most suitable form of political system for the country, rather than placing India into one or the other straight-jacket political systems prevailing in different countries of the world, irrespective of the academic evaluation and critique of the Indian system on the basis its departure from the norms of the classical form of the system.

The ingenuity of the fathers of the Constitution lies not only in providing for some sort of arrangement by innovating a fool-proof system of governance moulded in the parliamentary system of Britain and federal set-up of America but also in going miles ahead of these Western countries by ensuring to their people what these countries could not dream of. In other words, the claim to fame of these classical Western democracies have been the guaranteeing of certain political and civil fundamental rights to their people in the name of ensuring an equal and free life for them. But as has been argued by the Socialist thinkers, the political and civil rights turn out to be a farce in a society where the common person is not able to secure an adequate social and economic well-being for himself or herself. On this count, the framers of the Indian Constitution appeared to have scored over both the Western capitalist societies as well as the communist ones, by

affording the people not only the political and civil fundamental rights but also aspiring to ensure for them a reasonable level of equitable and satisfying social and economic life for the people through the provisions of the Directive Principles of State Policy, in due course of time, with the availability of resources in the country. Thus, the provisions on the fundamental rights and the Directive Principles of State Policy ensure the pith and substance to the skeleton of parliamentary democratic system ordained for the country. Combined together, the combination of political and civil rights ensured through the provisions of Part III and the social and economic rights enshrined in Part IV of the Constitution, places the Indian Constitution at such a high pedestal where neither the capitalist constitutions nor the socialist ones are able to graduate, thereby making the Indian Constitution as the model to be emulated by the newly democratizing countries of the world rather than looking for hitherto predominant Western constitutions.

In final analysis, the Constitution of India appears to be a unique construct bearing testimony to the pious vision and infallible wisdom of its framers. By way of the Preamble, the fathers have been able to put in black and white the purposes for which the Constitution exists. Though the enormous complexities of the Indian life compelled the framers to formulate the lengthiest Constitution in the world, its dynamism and resilience are brought to the fore by the fact that it has been amended more than 110 times in a life span of just fifty-seven years. Over the years, however, the soul of the Constitution came to be defined in terms of the basic structure whose inviolability has been declared by the Supreme Court time and again. Thus, by now, the Constitution seems to have braved all sorts of challenges coming either in the form of Forty-second Amendment or the review of its working by the NDA government, with the doctrine of basic structure acting as the impregnable shield against any attempt at subverting its very essence while leaving other parts of it amendable by the Parliament in order to make it propitious for the changing circumstances in the country.

NOTES

1. See *The Hindu* 2007.
2. For details on Objective Resolution, see Constituent Assembly 1947: 59.
3. See Kapur and Mishra 2001: 62.

4. See Austin 1999: 6.
5. Ibid.
6. Quoted in Agrawal 1998: 15.
7. See *Keshvnand Bharti vs State of Kerala*, (1973) 4 SCC, 225, paras 94–98, p. 324.
8. See Hidayatullah 1982: 51.
9. See Austin 1966: 52–53.
10. For details, see Rao 1965.
11. For a historical perspective on the evolution of the demands for fundamental rights in India, see Austin 1966: 52–75.
12. Cited in Mahajan 1984: 70.
13. See Austin 1966: 51.
14. See Markandan 1966: 147–48.
15. See Khan 2000.
16. See Thummala 1992.
17. See *The Statesman* 2008.
18. For an eloquent and informed analysis of the tension areas in the Centre-state relations in India, see Ray 1988.
19. See Austin 1966: 27–28.
20. This was Jawaharlal Nehru's statement in the Lok Sabha on 28 March 1957. See *The Statesman* 1957.
21. See Austin 1966: 39–49.
22. See Wheare 1988: 143.
23. Quoted in Austin 1999: 264.
24. See *The Statesman* 2007.
25. See *The Statesman* 2007.

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