

**CONSTITUTIONAL ALTERNATIVES TO
PARLIAMENTARY GOVERNMENT :
THE DEBATE ON SYSTEMIC CHANGE
IN INDIA**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfilment of the requirements
for the award of the Degree of*
MASTER OF PHILOSOPHY

RAGHAB PRASAD DASH

**CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067
INDIA
1992**



CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES

JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067, INDIA

CERTIFICATE

Certified that the dissertation entitled "CONSTITUTIONAL ALTERNATIVES TO PARLIAMENTARY GOVERNMENT : THE DEBATE ON SYSTEMIC CHANGE IN INDIA" which is being submitted by RAGHAB PRASAD DASH for the award of the DEGREE OF MASTER OF PHILOSOPHY is his own work. It may be placed before the examiners for evaluation. The dissertation has not been submitted for the award of any other degree of this University or elsewhere.

(PROF. C.P. BHAMBHRI)
CHAIRPERSON

Chairperson
Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi-110067

(PROF. BALVEER ARORA)
SUPERVISOR

CENTRE FOR POLITICAL STUDIES
School of Social Sciences-II
JAWAHARLAL NEHRU UNIVERSITY
New Delhi-110067

A C K N O W L E D G E M E N T
.....

I am extremely grateful to Prof. Balveer Arora, my supervisor for giving me his scholastic and inspiring guidance. But for his searching criticisms, competent suggestions and constant inspirations, this work could never have acquired its present form.

My gratitude goes to my family members who have stood by me through thick and thin.

My personal appreciations and acknowledgements are also due to many of my friends who have helped in completing this dissertation. In this regard I gratefully acknowledge the help and cooperation of Pratap Bhai, Ashok Bhai, Mirza, Amlan, Harish (Mintoo), Ramesh, Narendra, Jaang, Deepika, Lopa and Subhashree.

Though, I deem it a privilege to acknowledge the assistance I have received from all these quarters, yet needless to mention, the responsibilities for errors are mine alone.

Raghab Prasad Dash.
(RAGHAB PRASAD DASH)

C O N T E N T S

	<u>PAGE</u>
PREFACE	1 - 11
CHAPTER - I PARLIAMENTARY Vs PRESIDENTIAL FORMS OF GOVERNMENT : THEORETICAL AND CONCEPTUAL ISSUES.	1 - 29
A. Parliamentary Vs Presidential Government: Strengths and Weaknesses.	3 - 18
B. Parliamentary System in Republics.	18 - 23
C. Executive Stability : A Criterion of Government Performance of Democratic Regimes.	23 - 29
CHAPTER - II ADOPTION OF THE PARLIAMENTARY FORM OF GOVERNMENT : CONSTITUENT ASSEMBLY AND THE NEHRU PHASE.	30 - 55
A. Establishing Parliamentary System in India.	31 - 34
B. Reasons for the Adoption of Parliamentary System.	34 - 39
C. The Nature of Executive.	39 - 49
D. The Formative Years of the Nehru Phase.	49 - 55
CHAPTER - III THE DEBATE ON AN ALTERNATIVE REGIME DURING THE EMERGENCY (1975-76).	56 - 78
A. The Context.	56 - 68
a. The first phase : Till the Crisis of 1969.	58 - 62
b. The second phase : The Crisis of 1969.	62 - 66
c. The third phase : The 1975-77 Crisis.	66 - 68
B. The Question of Constitutional Change.	68 - 78
a. Motivation for Change.	68 - 70
b. Alternatives Suggested.	70 - 71

	<u>PAGE</u>
c. Swaran Singh Committee (SSC) on Constitutional Reforms.	71 - 74
d. The Reactions to the SSC Report.	74 - 78
CHAPTER - IV THE DEBATE SINCE 1980's.	79 - 102
A. A Pause in the Debate.	79 - 81
B. The Contrasting View points in the Debate since 1980's.	81 - 97
C. Political Instability and the Proposal for the National Governments.	97 - 102
CONCLUSION	103 - 110
APPENDICES	111 - 132
Appendix-I. The Relevant Excerpts of Nehru and Ambedkar's Speech in the Constituent Assembly.	111 - 115
Appendix-II. The Text of the Document in favour of Presidential System circulated during Emergency.	116 - 121
Appendix-III. The Text of the Paper "Why not a Prime Minister elected by the People?", Written by Rajni Patel.	122 - 132
BIBLIOGRAPHY	133 - 143

PREFACE

"For forms of government, let fools contest:
whatever is best administered is best"

- Alexander Pope.

A meaningful national debate on the issue of systemic change has been raging in the country since mid 70's. A ruling party engineered debate has started to which many Constitutional and Political experts have joined the issue. Irrespective of the motive of the inspirer of the debate it has given an opportunity to evaluate ourselves and think for bright future.

The idea of switch over of the system poses some questions : Does the Presidential form respond better to the political, administrative and other issues before the state? If this is so, why should the Nation not examine the merits of a different system rather than the present cabinet system in the Constituent Assembly? Is the Cabinet system less democratic or conversely is the Presidential system more representative and responsive? Are there overwhelming advantages in one system against the other? Also in the present Indian context does the federal polity get better attended by the Presidential than the Cabinet system?

These related questions are the subject of this study. First chapter attempts to locate the key difference between the Parliamentary and the Presidential system at the theoretical and conceptual

level. It also focuses upon the major tenets of the intermediate levels of government with a subsequent elaboration on the concept of 'Political stability' in pluralistic democratic societies.

The IIInd Chapter spells out the reasons as to why in the Constituent Assembly the founding fathers have opted for the Parliamentary system. It deals with the nature of executive, the relationship between President and the Prime Minister and the powers of the President vis-a-vis the Prime Minister and seeks to analyze them.

Chapter IIIrd deals with the analysis of the political context proceeding the year of emergency and attempts to focus on the specific question of constitutional change during the Emergency.

Chapter IV attempts to examine the contrasting view points to have a deeper understanding of the different alternatives thrown in the debate. It also deals with proposal for the National government to suit the uncertain and unstable political climate of the country in the recent time.

In the concluding chapter a summary observation of the finding of the previous chapters is attempted and a case for the revitalization of the existing parliamentary system is put forth.

CHAPTER I

PARLIAMENTARY Vs PRESIDENTIAL FORMS OF GOVERNMENT:
THEORETICAL AND CONCEPTUAL ISSUES

Out of endless conjunctures and under changing circumstances, specific system of government emerged and found historical embodiment. Sometimes these systems stabilised themselves for a spell but always they were subject to new forces and underwent transformation. No specific form of government endures. In the words of Austin Ranney, "Every political system operates in an environment and certain characteristics of its particular environment contribute materially towards determining both its form of government and its policy outputs".¹ This observation bears truth as the different countries have adopted different forms of government.

There has been no unanimity as to the classification of form of government. Many people have classified the government either as democracy, oligarchy, dictatorship or monarchy. It is notable that democracy is preferred over other forms of government as in it decisions are ultimately controlled by all the adult members of the society rather than by some specially privileged sub-group or one all powerful member. In forcible terminology of Abraham Lincoln, "democracy is a government of the people for the people and by the people", or what Daniel Webster argued, "the peoples' government made for the people made by the people and answerable to the people".² Such complete responsiveness

1 Austin Ranney, The Governing of Men, Hindsale: The Dryden Press, 1975, p.288.

2 Quoted in Anirudh Prasad, Presidential Government or Parliamentary Democracy, New Delhi: Deep and Deep Publications, 1981, p.14.

in government has never existed and may never be achieved, but it can serve as an ideal to which democratic regimes should aspire. It can also be regarded as the end of a scale on which the degree of democratic responsiveness of different regimes may be measured. But the actual operation of democracies approximate the ideal relatively closely and that Robert Dahl calls these regimes as "Polyarchies".³ In the words of Sartori "A democratic political system is one that makes government responsive and accountable and its effectiveness depends first and foremost on the efficiency and skill of its leadership."⁴

The literal meaning of democracy - government by the people - is usually a representative democracy: government by the freely elected representatives of the people.

Representative democracy may function either through Parliamentary executive or Presidential executive - a kind of arrangement in which the difference is based on the principles governing the relations between the executive and legislative branches of government. The former is traditionally associated with the government of Great Britain while the United States of America offers the classic example of the latter.

3 Robert A. Dahl, Polyarchy: Participation and Opposition, New Haven: Yale University Press, 1971.

4 G. Sartori, "Democracy" in International Encyclopaedia of Social Sciences, vol.4, pp.112-20.

A

PARLIAMENTARY VS PRESIDENTIAL GOVERNMENT : Strengths
and Weaknesses⁵

Parliamentary government can be concisely defined as "the form of constitutional democracy in which executive authority is responsible to legislative authority".⁶ The two crucially important characteristics of parliamentary government which distinguish it from Presidential Government can be discerned from the above definition. First, in a Parliamentary system, the real executive and his or her cabinet are responsible to and removable by the legislature. Under the Presidential system the real executive is non-parliamentary or fixed in the sense that it is not subject to removal by Parliamentary action. Thus, broadly speaking, cabinet government is founded on a fusion of executive and legislative powers, and Presidential Government on a separation of these powers.

The second difference between Presidential and Parliamentary Governments is that Presidents are popularly elected either directly or via an electoral college, and that Prime Ministers are selected by the legislatures. The process of selection may take a variety of forms. For instance, the West German Chancellor and the Japanese Prime Minister are formally elected by the

5 Parliamentary Government is also expressed as "Ministerial", "Cabinet" and "Responsible" Government.

6 Leon D. Epstein, "Parliamentary Government", in David L. Sills, ed., International Encyclopedia of Social Sciences, New York: Macmillan, 1968, vol. II, p.419.

Bundestage and the Japanese House of Representatives respectively.⁷

Douglas Verney has argued that in addition to the two crucial differences between Parliamentary and Presidential systems discussed above, there are several other differences.⁸

1. The concept of fusion of power suggests not only that the executive is dependent on the legislatures confidence but also that the same persons are or may be members of both Parliament and the Cabinet. Similarly, separation of powers, as in the U.S., means the independence of the executive and the legislative branches as well as the rule that the same person can not simultaneously serve in both. Most of the democracies classified as Parliamentary or Presidential interms of the two crucial characteristics also fit this additional criterion, but there are exceptions. In the United States and France - and also in Switzerland⁹ legislatures can not be members of the executive.
2. A logical corollary of the legislature's power to dismiss the cabinet in a Parliamentary system is the Prime Minister's right to dissolve parliament and call new elections. In a Presidential system, similarly, the inability of the legislature to dismiss the President is matched by the President's inability to dissolve the legislature.

7 Arend Lijphart., Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries, New Haven and London: Yale University Press, 1984, p.68.

8 See Douglas V. Verney, The Analysis of Political Systems, London: Routledge and Kegan Paul, 1959, pp.17-56; Herbert M. Levine, Political Issues Debated: An Introduction to Politics: New Jersey: Prentice Hall, Inc, 1987, pp.219-239.

9 Arend Lijihart, op.cit., p.71.

3. All Parliamentary Governments have divided executives: a symbolic and ceremonial head of state (a monarch or President) who has little power, and a Prime Minister who is the head of the government and exercises most executive power. In Presidential system, the President is simultaneously the head of the state and the head of the government.

4. The final difference between the Parliamentary and the Presidential systems that is frequently mentioned is that the President is the sole executive whereas the Prime Minister and the cabinet form a collective executive body. This characterization fits the existing form of governments well, although, in the Parliamentary systems, the position of the Prime Minister in the cabinet varies between one of preeminence and one of virtual equality with the other ministers. It is not necessarily true, however, that executive power in the Presidential systems has to be concentrated in one person, and that the cabinet has to consist of the President's appointees and subordinates. The seven member Swiss Presidential executive can be a perfect example.

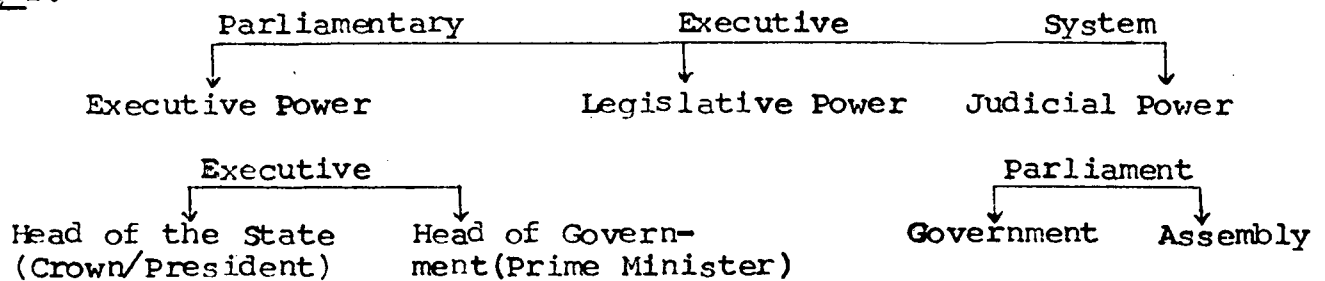
a) Strengths of Parliamentary System :

The scholarly discussion of the relative strengths and weaknesses of Parliamentary and Presidential governments has concentrated on a number of factors. They are :-

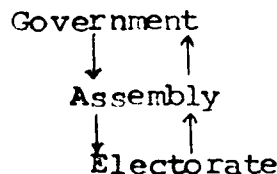
Firstly, an intimate relationship between the executive and the legislative branches of government is the essence of the Parliamentary system. Hence, Bagehot described the cabinet

in Great Britain as "a hyphen that joins, a buckle that fastens, the executive and legislative departments together"¹⁰ "it secures," to quote Laski "an essential co-ordination between bodies whose creative interplay is the condition of effective government".¹¹ As the parliamentary leaders are also the heads of the executive, this harmonious co-operation between legislature and executive ensures efficiency. Modern legislatures have to deal with a mass of statutes. Without some sort of leadership, therefore, everything would be in a mess. The cabinet system provides such leadership. As Laski writes, "the Executive as a committee of the legislature has an opportunity to drive a stream of tendency through affairs".¹² The following figure may clarify the position:-

fig-1:



Indirect Relationship Between the Government
and Electorate :



Source: Douglas V. Verney - The Analysis of Political Systems (1959), p.38.

10 See Walter Bagehot., The English Constitution, London: Oxford University Press, 1968, Ch.II, pp.63-66.

11 H.J. Laski, A Grammar of Politics, London: Allen & Unwin, 1960, p.299.

12 Ibid, p.299.

Secondly, a great merit of the cabinet system is that it makes the executive responsible. Under this system the legislature keeps an eye on the cabinet, and in case the legislature loses confidence in the cabinet, the latter may be turned out of office. Besides this system ensures the responsibility of the cabinet to the electorate. As Bryce observed, "Being in constant contact with members of the opposition party as well as in still closer contact with those of their own they have opportunities of feeling the pulse of the assembly and through it "the pulse of public opinion".¹³ Thus, in case of deadlock between the cabinet and the legislature, the former may dissolve the latter and appeal directly to the people. The cabinet's right to dissolve the legislature makes it clear that it is ultimately responsible to the electorate.

Thirdly, another merit claimed for the parliamentary system is its flexibility and elasticity. Bagehot highly eulogised this aspect and pointed out that people can under this system of government, "choose a ruler for the occasion" who may be especially qualified to successfully pilot the ship of the state through national crisis. Since the cabinet system does not involve a fixed tenure of the executive it makes room for the choice of suitable leaders in moments of crisis. Under the American system, on the otherhand, the President enjoys fixed tenure. "There is"

14 James Bryce, Modern Democracies, vol.II, London: Macmillan, 1929, p.464.

as Bagehot remarked, "no elastic element; everything is rigid, specified, stated. Come what may, you quicken nothing and can retard nothing. You have bespoken your government in advance and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it".¹⁴ Voicing a similar criticism, Linz says that replacing a President who has lost the confidence of his party or the people is an extremely difficult proposition and a stubborn incumbent may remain in office even when polarisation had intensified to the point of violence and illegality.¹⁵

Fourthly, Parliamentary system can claim a high educative value. It can not function without well organised political parties. "The purpose of the party is parliament", says W. Ivor Jennings, "is to support the government in carrying out the party policy; or, if the party is in opposition, criticise the government in so far as it fails to carry out the policy of the party in opposition."¹⁶ The object of every political party is to win elections and to capture government. To win elections means that the party should be in a position to secure the majority of votes and the electorate should approve its programme. But, if the verdict of the people had not been obtained by the party in

14 See Walter Bagehot, Op.cit., Chapter 2, Section 9.

15 Juan, J. Linz, The Perils of Presidentialism, Journal of Democracy, vol.1, no.1-4, 1990, p.64.

16 W. Ivor Jennings, The British Constitution, Cambridge: Cambridge University Press, 1971, p.51.

power, the legislature may be dissolved and an appeal made to the electorate. In the authentic form of Parliamentary government dissolution is the democratic fulcrum of the entire process of adjusting power conflicts by making the electorate the ultimate policy determining factor. Moreover, by-elections, which are so frequent during the life of parliament, serve as a barometer of public opinion and the government. All this democratic process has immense educative value. It makes the people politically **conscious** of their rights and responsibilities, and vigilance is the true price of democracy.

Fifthly, parliamentary system has succeeded in democratizing governmental machinery in all civilized countries, particularly where exists the institutions of hereditary monarchy. If Britain is called the citadel of democracy, it is because the constitutional machinery and the king does not actively govern. He reigns but does not rule. The latter is the function of his responsible Ministers. In explaining this aspect, Bryce says, "As the actual working executive has necessarily a party character it is a merit of this systems that the National Executive, be he king or president, should be outside party, and represent that permanent machinery of administration which goes on steadily irrespective of party changes.... when a cabinet fails, the transfer of power to another is a comparatively short and simple affair"¹⁷

17 James Bryce, Op.cit., pp. 511-12.

Lastly, the cabinet system affords the executive an initiative in legislation and the continuous presence of the executive inside the legislature enables the former to be thoroughly conversant with the work it has to perform. As Laski observes, "The average American President represents, at the best, a leap in the dark; his average cabinet rarely represents anything at all. But the average member of an English cabinet has been tried and tested over a long period in the public view. He has the "feel" of his task long before he comes to that task".¹⁸

b) Weaknesses of Parliamentary System:

The parliamentary system as its critics point out, violates the sacred principle of separation of powers by establishing intimate contact between the executive and the legislature. Combination of executive and legislative functions in the same set of individuals leads to tyranny. Sidgwick, while admitting the undeniable gain of harmony between these two chief organs of government, maintains that it is "to be purchased by serious drawbacks".¹⁹ Indeed, nothing has been more fatal to parliamentary influence than principle of fusion of powers. Confining the selection of ministers to parliament drastically restricts the pool of talent available to government. It substitutes an irrelevant standard - ability in policy and administration - as the prerequisite for appointment.²⁰

18 H.J. Laski, Op.cit., p.300.

19 H.Sidgwick, Elements of Politics, London: Macmillan, 1951, p.444.

20 Quoted in Arthur, Jr., Schelesinger, "Parliamentary Government", The New Republic, August 31, 1974, p.15.

Secondly, it is alleged that since political homogeneity is a characteristic of the cabinet, the control of affairs by men belonging to a single party lends of a partisan complexion to administration.

Thirdly, the cabinet system of government is supposed to be the breeding ground of nasty party conflicts. As Bryce observed it "intensifies the spirit of party and keeps it always on the boil. Even if there are no important issues of policy before the nation there are always the offices to be fought for. One party holds them, the other desires them, and the conflict is unending - "It is like the incessant battle described as going on in the blood vessels between the red corpuscles and the invading microbes".²¹

Fourthly, it is pointed out that the cabinet type of executive can hardly adopt and implement a long term plan for development. As the executive has no fixed term and lives instead at the mercy of the legislature, it does not venture to embark upon any durable projects.

Fifthly, the charge of 'cabinet dictatorship' has been levelled against this system. It is alleged that a small body of men with the backing of a solid majority in the legislature

21 James Bryce, Modern Democracies,
vol. II, London: Macmillan, 1929,
pp. 466-68.

care little for the will of the legislators and the wishes of the electorate. In its essence says Lowell, it is "an informal but permanent caucus of the parliamentary chiefs of the party in power".²² Moreover, the firm control of the cabinet over the legislature enables the former to pass a law of its own choice and obstruct the passage of a measures which it does not like. Public opinion has no opportunity or power to bring its effective pressure to bear on legislation. "Thus it is sometimes charged that Great Britain practises a form of 'plebiscitary democracy' in which people vote 'yes' or 'no' on the record of the government in general but are deprived of any share in the formulation of individual policies".²³

The charge of cabinet dictatorship is not without foundation. But there's a redeeming feature too. As Lowell writes, "if the parliamentary system has made the cabinet of the day autocratic, it is an autocracy exerted with the utmost publicity, under a constant fire of criticism".²⁴ Cabinet government provides its own safeguards and accountability to the electorate is the primary constitutional safeguard. An unrestrained cabinet is apt to be a despot, but public awarness of this danger may well arrest such

22 Quoted in J.W. Garner, Political Science and Government, New York: American Book Company, 1932, p.324.

23 Carter, Herz and Ranney, The Government of Great-Britain, Cambridge: Cambridge University Press, 1975, p.180.

24 A.L. Lowell, The Government of England, vol.I, Boston: Houghton Mifflin, 1901, p.326.

a development.

Another point related to this aspect is the Prime Ministerial pre-eminence. The unique position of the Prime Minister is secured due to his being -

- (i) Spokesman for the representative of the nation;
- (ii) Leader of a national party; (iii) Leader of the Parliamentary party; and (iv) Leader of the cabinet.

Therefore, the current thesis is that "cabinet Government" has given way to "Prime Ministerial" government.²⁵

Finally, the parliamentary system takes pride in the provision of "daily assessment" by questioning the ministers in the floor of the legislature. The 'Question Hour' is, infact, an overstated institution of check on the executive. As James L. Sundquist notes : "one of the first things learned by a rising politician in the democracy is how to artfully avoid giving informations he does not want to give".²⁶

c) Strengths of Presidential System:

To put it sharply and objectively, "what has been called "Presidential" Government as contradistinguished from cabinet

25 S.E. Finer, Comparative Government, Allen Lane: The Penguin Press, 1970, p.171.

26 James L. Sundquist, "Parliamentary Government and Ours", The New Republic, October 26, 1979, p.14.

or parliamentary government, is that system in which the executive is constitutionally independent of the legislature in respect to the duration of his or their tenure and irresponsible to it for his or their political policies".²⁷ The system is not presidential because president is the real executive who does not owe his office to the legislature nor can he be removed from office. The following are the merits of the Presidential system :

The Presidential system, as it involves an almost complete separation of the executive and the legislative branches of government, faithfully conforms to the principle of separation of powers. Thus it safeguards the liberty of the people. Corollary to the doctrine of separation of powers, the doctrine of checks and balances represents the other feature of the Presidential system like America where each branch of government is given a number of "checks" with which it can keep the others in proper "balance".

In the second place, the fixed tenure of the executive gives it a greater sense of stability. This element of stability encourages the executive to launch a long term plan which can be easily carried through without the danger of being upset by a sudden change of government. Thus, the executive, without being distracted by a prying legislature, may devote attention to its

27 J.W. Garner, Op.cit., p.340.

specific function and gain administrative efficiency.

In the third place, owing to the concentration of executive authority in a few hands, negligible legislative workload with the cabinet ministers etc., unity of control, quickness in decision, concerted policy and speedy execution of policies, which emergency of any kind may demand, can best be obtained in the Presidential system.

In the fourth place, since the executive is not responsible to congress and its adverse vote does not bring about a crisis in the government, the tumult of the party spirit is less in advance. As Bryce maintained "legislatures are less dominated by party spirit under the presidential system than under the cabinet system".²⁸

d) Weaknesses of Presidential System :

1. The critics of the presidential systems are numerous and they urge that it divides government into watertight compartments, as it is based on separation of powers, it is, as if, the forcible disjunction of things naturally connected. Much time is consumed in struggles among the various branches of government to determine the extent of their respective powers. Also, the very stability of the system verges on inflexibility. By establishing the

28 James Bryce, Op.cit., pp.468-471.

the presidential system, Finer says, the fathers of the American constitution "separated the executive sources of knowledge from the legislative centre of their application".²⁹ This separation of the executive from the legislature introduces occasional deadlock in the system. This inevitably results in loss of governmental efficiency. In the words of Lloyd Cutler, "The separation of powers between the legislative and executive branches has become a structure that almost guarantees stalemate today".³⁰

2. The presidential system is characterized to be "autocratic, irresponsible and dangerous". Once the president has been elected the nation must continue with him, whether they like and approve of his policy or not. This makes the Presidential system an extremely rigid one. The executive office goes by calendar and no danger and no crisis can melt the inflexible constitutional rules. Consideration of this sort, as Linz points out, loom especially large during periods of regime transition and consolidation,³¹ when the rigidities of a Presidential constitution must seem in-auspicious indeed compared to the prospect of adaptability that Parliamentarism offers. Moreover, he may become autocratic and even degenerate into a dictator subject to the provisions of the constitution. The legislature has no constitutional power to withdraw the mandate which the electorate gave him at the time of

30 Lloyd Cutler, "To Form a Government", Foreign Affairs, 59, Fall 1980, p.127.

31 Juan J. Linz, The Perils of Presidentialism, Journal of Democracy, Vol.1, no. 1-4, 1990, p.55.

election. The security of tenure combined with the freedom from responsibility provides enough encouragement to override legislative and popular wills; for after all, the executive knows it well that the commission of an irresponsible act would leave it untouched.

3. Representative democracy must in some way be accountable to the people who elect them. But the Presidential system clearly misses it. In the United States; power and authority are dispersed. "The splitting of sovereignty into many parts amounts to there being no sovereign", as observed Walter Bagehot.³²

e) Appraisal:

From the above analysis it becomes clear that no effective form of government is perfect. Infact, oberrations are intrinsic to any kind of constitutional arrangement. Nevertheless, the American Presidential and the British Parliamentary system of government constitute two of the oldest democracies in the world. Each has survived wars and depressions. Each, moreover, has its champions arguing the virtues of the one or the other system. To quote Blondel, "While British governments were described as "prime Ministerial" or near Presidential in many quarters, the

32 Walter Bagehot, The English Constitution, 2nd ed., London: Oxford University Press, 1952, p.201.

American government was ceasing to be Presidential in strict sense of the word: it seemed on the contrary increasingly characterized by the presence of a number of Semi-independent units which the President had difficulty in co-ordinating.³³ As a matter of fact, when the subject matter of institutional reform arises it often centres on the question of whether the United State should learn from British experience and the viceversa. But no serious attempt has been made by any one of these two countries in this regard.

Nevertheless, Britain and United States of America as the model of parliamentary and Presidential government respectively have influenced a number of West-European and Third World countries in their bid to evolve one form of government or the other, of course with certain variation. To clarify this point an analysis would follow under two headings : Parliamentary system in Republics and Presidential system without checks and Balances.

B

PARLIAMENTARY SYSTEM IN REPUBLICS

Parliamentary system in countries having elected presidency marks other face of British system. This type of Parliamentary democracy was found to be working in West Germany, France (3rd and 4th Republics), Burma, Ceylon under 1972 constitution. Such

33 Jean Blondel, The Organization of Governments:
A comparative Analysis of Governmental Structures,
London: Sage Publications, 1982, p.54.

countries adopt the idea of responsible government but not the monarchy. There is division between the Head of the State—the President and head of the executive—the Prime Minister, but the head of the state is not hereditary but elected by the central legislature. In parliamentary systems with presidency there is less reticence about making the duties of the divided executive explicit, Presumably because the President is elected by Parliament.

One of the major differences, between the Parliamentary systems with monarchy and Parliamentary system with Presidency is that in the former the King can not be held personally responsible and so his ministers must bear responsibility for him, no such inhibition seems to affect republics, when the President is elected.³⁴ As a result when the President oversteps his position he may be impeached, for high treasons in France, for unconstitutional activity in the Federal German Republic and for both in Italy.³⁵ In monarchical democracies like Britain, the relations between the Crown and Council of ministers have been left to be evolved by the countries, but in others, there has been constitutional demarcation between the powers of the two. The head of the states in all parliamentary democracies are ceremonial and the points of personal irresponsibility of the head of the state

34 Douglas V., Verney, The Analysis of Political System, London: Routledge and Kegan Paul, 1959, p.24.

35 Ibid, p.25.

has been fused in both monarchical democracies and republican cabinet systems.

Semi-Presidential Systems:

The traditional Presidential system as operating in the USA is based on the well founded idea of checks and balances and that is reason why presidential system without checks and balances presents a peculiar system. The Fifth French Republic of 1958 shows a peculiar switch over from weak presidency to strong presidency - from parliamentary democracy to presidential democracy. It proves a form of government which does not fit easily into either the 'Presidential' or a 'Parliamentary' categories. It may be treated as a hybrid or a "pseudo Presidential"³⁶ regime. The fifth French Republic of 1958 was formed in peculiar "Circumstances of political uncertainty" when the need of the day was political stability.

Like the United States Presidential system, the President of the fifth French Republic is directly elected by the People for a fixed period of seven year. The President enjoys the pre-eminent position and the principle of separation of powers as regards personnel make the French system more of a Presidential type. Like British system, the Head of the state appoints the head of the government, the Prime Minister is responsible for

36 See Shriram Maheshwari, Indian Parliamentary System, Agra: Laxshmi Narain Agarwal Educational Publishers, 1981, pp. 27-32.



appointment and dismissal of his colleagues and to the legislature and the Head of the state may dissolve the National Legislative Assembly.³⁷ To conclude, it can be said that the French Presidential regime is extra-ordinarily powerful for it compounds the strength of the executives of the U.S.A. and Britain while being subject to the limitations and constraints neither. As Neustadt remarks, the office of the French President is so designed by the constitution that he is more powerful than the chief executive in the U.S.A. He says, "White House centrality is of a lesser order than de Gaulle's supremacy".³⁸

56
TH-4193-411

Like the Fifth French Republic, Ceylon's experimentation of 1977 presents a new adventure for democratic setup. The two systems have many resemblance. French Presidential system was conversion of parliamentary system which had failed due to political immaturity and consequent-governmental instability. Likewise the idea of governmental stability encouraged to throw out the five years old constitution and adopt Presidential system in Sri Lanka. The second point of similarity between French and Sri Lanka experience is that like de Gaulle in France Mr. Jayewardene played vital role as Prime Minister to bring about the Presidential system.³⁹

37 See Shriram Maheshwari, Indian Parliamentary System, Agra: Lakshmi Narain Agarwal Educational Publishers, 1981, pp.27-32.

38 Richard, E. Neustadt, "Presidential Government", International Encyclopedia of Social Sciences, vol.XII, New York: Macmillan, 1968, p.455.

39 For details See S.R. Maheshwari, Op.cit, pp.39-43.



115
Vj 114 7
N2

Thirdly, like French President, President of Sri Lanka is head of the Executive and also head of the cabinet of ministers.

The 1977 constitution of Sri Lanka represents Presidential system without checks and balances. The most disturbing element is that President is placed above law and courts. In contrast to British parliamentary sovereignty, President of Sri Lanka may claim Presidential sovereignty.

Appraisal :

In true sense of the term the presidential system of government has been in operation only in the U.S.A. Other countries claiming this model are, in the words of Richard E. Neustadt, examples of "oligarchic bargaining, of military guidance or personal dictatorship or some combination of these."⁴⁰ Indeed, a more detailed study of the political systems of many such countries seems to disclose that the presidential form of government has become either a surrogate for authoritarianism or its precondition. The Latin American countries have provided the best example in this regard.

In spite of the experiments of the French Fifth Republic, Sri Lanka under 1977 constitution, the substantial form of government

40 Richard E. Neustadt, Op.cit, p.455.

in the world at large has remained that of parliamentary democracy, though modified. However, a fundamental change in the direction of a presidential system seems outside of all possibilities.⁴¹

0

EXECUTIVE STABILITY : A CRITERION OF GOVERNMENT
PERFORMANCE OF DEMOCRATIC REGIMES

The principal factor for the breakdown of democratic regimes and more specifically the switch over from the parliamentary to presidential government or the viceversa is the lack of governmental stability a point which has been explicitly focussed in the above analysis. The stability of a regime refers to the "system's ability to survive intact."⁴² Two measures of government stability are commonly found in the literature of democratic systems: "the duration of government" and the degree of "executive control"⁴³. The former measures the stability of governments by their length of stay in office; the latter indicates whether the government has majority or minority status in the legislature. Both measures have important implications for governmental stability and accountability. A variety of typologies were proposed that have stimulated

41 Roy, C. Macridis and B.E. Brown, ed., Op.cit., p.328.

42 Arend Lijphart, "Typologies of Democratic System", Comparative Political Studies, April 1968, p.3.

43 Howard, J. Wiarda, ed., New Directions in Comparative Politics, Boulder: West View Press, 1985, p.102.

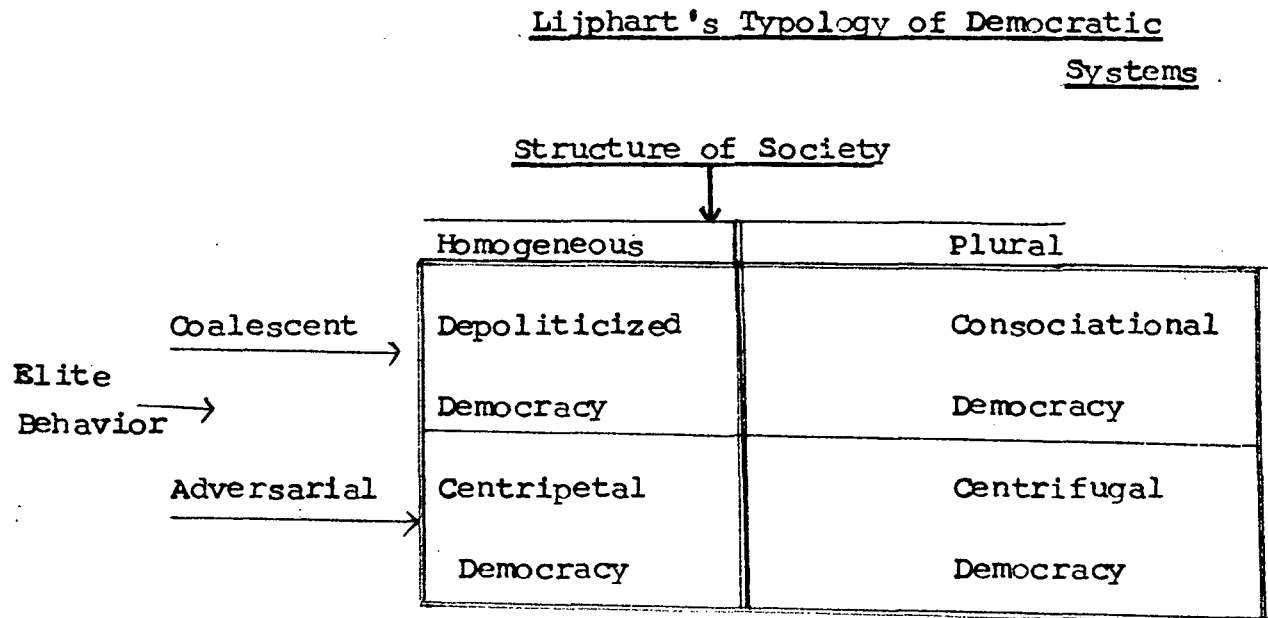
substantial speculative analysis and some rigorous theory construction. The primary normative concern of the typologies have been democratic stability. Some of the typologies are given below :

a) Lijphart's Typology :

Arend Lijphart has given emphasis on the concept of democratic stability in the plural societies with segmented cultures and low role differentiation. This led him to hypothesize that "segmented or subcultural cleavages at the mass level"⁴⁴ could be overcome by elite co-operation that reduce the potentially destabilizing effects of societal divisions. On the basis of this analysis, Lijphart proposed a typology based on the structure of society-homogeneous or plural - and the behaviour of elites - coalescent or adversarial. The resulting four fold scheme is depicted in the figure given below which employs the names Lijphart assigned to each of the types

44 Arend Lijphart, Democracy in Plural Societies: A comparative Exploration, New Haven: Yale University Press, 1977, p.16.

Fig-2:



Source : A, Lijphart, Democracy in Plural Societies (1977), p.106.

Lijphart remarked that in systems with homogeneous political cultures, democracy was likely to be stable whether elites were coalescent or adversarial. In systems with heterogeneous and segmented cultures, however, the cultural divisions were assigned a double valence. They were sources of potential dissent and even system breakdown, but they could also help in the process of stabilization, if the elites of subcultures chose to co-operate. This view is reflected in his summation of the consociational

democracy type - the key-stone to his entire classificatory scheme.

"Consociational democracy entails the co-operation by segmental leaders in spite of the deep cleavages separating the segments. This requires that the leaders feel at least some commitment to the maintenance of the unity of the country as well as a commitment to democratic practices...."⁴⁵

Lijphart attempts to link the independent variables of the plural or the non-plural character of society and of elite behaviour to the dependent variable of political stability.

b) Sartori's Typology:

Sartori focuses on political parties and the party system with democratic stability as his ultimate concern. In contrast to Lijphart's approach, Sartori is fundamentally concerned with the institutions (political parties) that he views as critical to the political stability. Sartori's focus is on how the structure of the party system and the dynamics of party competition, affect

45 Ibid, p.53.

a democratic context in which the competition for votes is necessarily paramount.⁴⁶ Moreover, Sartori is interested in those values that are institutionally embedded in political parties in the form of political ideology.

Sartori has employed an independent-variable-"fragmentation of the party system" indicated by the number of politically relevant parties. His main hypothesis is that "the larger the number of parties the greater the ideological distance". This explains that the number of parties is the defining characteristic of his typology. He argues that the parties those have "coalition potential" should be counted as parts of the party system.⁴⁷ By this typology Sartori seeks to explain the "Direction of competition"⁴⁸ among the parties.

c) Powell's Typology:

Powell's typology is explicitly designed to explore the relationship between the "strength of the party system" and the performance of the political system. He assumes that the input factors are the most in determining how well the system performs.

46 Giovanni Sartori, Parties and Party System: A Framework for Analysis, Cambridge: Cambridge University Press, 1976, pp.290-292.

47 Ibid, pp.122-23.

48 Ibid, p.293.

Further more Powell incorporates aspects of both the "number of Parties" and societal cleavages argument into his framework.⁴⁹ His approach, however, emphasises not the number of parties but rather whether or not majorities are produced. It also incorporates the long standing debate in democratic theory about the possible trade off between the representativeness of the party systems and the effectiveness of government.

Powell looks at the role of parties from two major perspectives. First, the system of political parties constitutes an important "Linkage" between the social, economic and constitutional setting and political performance patterns on the other. Second, political party systems have autonomous influence of their own. The configurations of memory, organization, and perception that they represent have independent effects once they established.⁵⁰ Moreover, he thinks of parties as having a dual set of objectives: on the one hand parties struggle for participation in and control of the policy making process, through which leaders can realize their office holding aspirations and policy objectives and can fulfil their commitments to democracy. To put it in a line,

49 See for details G. Bingham Powell, Contemporary Democracies: Participation, stability and violence, Cambridge: Harvard University Press, 1982, pp.75-110.

50 Ibid, pp.7-8.

Powell projects the party system in the overall framework of executive stability and government performance.

d) Appraisal:

The above analysis examines the models of democratic stability" - a central feature of almost all democratic regimes. Infact, the newly emerging states are increasingly facing the problem of political stability which need to be tackled before thinking to **switch** over from one form of government to another. It is this very concept which forced many democracies including India to initiate a debate regarding the efficacy of one form of government or the other.

CHAPTER - II .

ADOPTION OF THE PARLIAMENTARY FORM OF GOVERNMENT :
CONSTITUENT ASSEMBLY AND THE NEHRU PHASE .

"A student of Constitutional law, if a copy of Constitution is placed in his hands is sure to ask two questions. Firstly, what is the form of Government that is envisaged in the Constitution; and secondly, what is the form of Constitution? For these are the two crucial matters which every Constitution has to deal with".

- B.R. Ambedkar.

A Constitution is what it does, not what it professes. Realism lies in a viable blend of principle and practice. The Constitutional goals are clear but the journey has been zigzag. The movement towards the Constitutional goals has been painfully slow and sluggish. It is in this context that the performance of our parliamentary form of Government came under scathing attack from various quarters. For, sometime now, a controversy has also been going on in the country as to whether parliamentary form of Government is suited to the needs of this country or it should be replaced by the presidential form of Government. A host of eminent jurists, Constitutionalists and Politicians have highlighted on this controversy. It is, therefore, necessary to consider objectively and dispassionately whether Parliamentary Government, as established by the Constitution and as it has been

working in the country over the years, should be replaced by the presidential form of Government.

The present chapter is proposed to be confined to a critical examination of various sheds of views on the suitability of one form of Government or the other in the Constituent Assembly so as to enable us to trace the origin of the present debate. As a corollary to this, an attempt is also made to focus upon the working of the Indian Parliamentary System under Nehru era.

A

Establishing Parliamentary System in India

One of the first acts of the Constituent Assembly was to appoint two Committees - one to report on the main principles of the union constitution and the other, to report on the main principles of a modes provincial constitution. Shri B.N. Rau, the Constitutional Adviser to the Constituent Assembly, circulated a questionnaire, bearing on the salient features of the constitution, to all members of the Central and Provincial legislatures and invited their views there on.¹

1. B.N. Rau, India's Constitution in the making, Calcutta : Orient Longmans, 1960, P. 16-41.

Only five members of the Union Constitution Committee (UCC) and six members of the Provincial Constitution Committee (PCC) submitted replies to the questionnaire. Of these, except for Prof. K.T. Shah and Dr. K.N. Katju respectively from UCC and PCC, all had favoured parliamentary system of Government.² Rau's memorandum on the Union Constitution states that he himself favoured Cabinet Government in India.³ His memorandum also provided for a president with the powers of Constitutional head of state who has to exercise executive authority of the union with the aid and advice of the council of ministers.⁴

It appears that no serious discussion has taken place in the Committees on which form of Government - Parliamentary, Presidential or mixed would be most suitable for India. It was generally assumed that since people were familiar with the working of the Parliamentary System of Government, it was the most suitable for India. Even when the reports of the Committees came before the Constituent Assembly, no serious discussion took place on this issue. Some members at this stage, no doubt, tried to get incorporated amendments, the effect of

2. K.F.Singh, "Presidential System in the Constituent Assembly", in V.Grover, ed., Political System in India, Vol.10, New Delhi : Deep & Deep Publications, 1989, p.597.

3. B.N. Rau, Op.cit, p.93, Note.

4. Ibid., p.96.

which would have been to have the ministers elected by the legislatures on the basis of proportional representation and to have their term fixed on the Swiss model.⁵ The main arguments advanced in favour of these amendments were : (1) Parliamentary System which had been working in India in the Provinces and the local bodies had not been successful as it had brought about unstable executives and favouritism and nepotism, with ministers always trying to please their supporters in the Assembly. The Swiss System, therefore, would be more successful as it would lead to stable executives and free the ministers from the constant worry of keeping their supporters in the Assembly in good humour; (2) it would give representation to various sections and thus would be more democratic.⁶ Surprisingly, the grounds on which the swiss model was opposed were also the same : (i) we were familiar with the British Parliamentary System and if it had not worked successfully so far, it was because we have not had the opportunity to try it properly due to foreign rule; (ii) Election of ministers by the legislatures through the Proportional representation would lead to feeble ministries.⁷

Although references were made at this stage to the virtues of the Presidential form of Government by the various speakers, no amendment was moved to have it in India. Thus, upto the stage of the first reading, when the Principles of the Constitution were being

5. C.A.D., Vol.4, p.632-635.

6. Ibid., P.642-650.

7. Ibid., P.651-654.

settled, practically no discussion took place either in the committee or in the Assembly whether presidential form of Government would be more suited to the needs of this country. The only discussion was on whether it should be the pure parliamentary form on the British Pattern or it should be the mixed type as in Switzerland. For reasons stated below, it was decided to have the Parliamentary form of Government on the British Pattern.

B

Reasons for the Adoption of Parliamentary System

Some discussion on the suitability of the Presidential System of Government for India took place in the Assembly at the second reading stage. Prof. K.T.Shah, who had hardly any support, moved a series of amendments at this stage to have instead the Presidential form of Government in India on the American Pattern.⁸ Also some other members pleaded for the non-parliamentary form of Government. These gave an occasion to the members of the Drafting Committee to express their views on this basic issue and we can gather from their speeches the reasons why they felt the Presidential form of Government would not suit India.

The first reason was the familiarity with the Parliamentary form of Government. The decisions of the Constituent Assembly on the form of Government in India was perhaps inevitably considerably influenced by the political background in India and the practice and tradition

8. C.A.D. Vol.7, P.959-981.

evolved during the British rule. K.M. Munshi expressed this clearly when he said in the Constituent Assembly :

"We must not forget a very important fact that during the last one hundred years Indian Public life has largely drawn upon the traditions of the British constitutional law. Most of us; and during the last several generations before us, Public men in India, have looked upto the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become Parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full fledged Parliamentary Government. Why should we go back upon the tradition that has been built for over a hundred years and try a novel experiment framed 150 years ago and found wanting even in America."

It was assumed that the "British model" had been proved by everyone including leading American Constitutional experts as really better fitted for modern conditions. The system of Government in India has been on the British model and it would be unwise 'to try a novel experiment". Sardar Patel emphasizing on this point said : "The joint meeting of the PCC and UCC decided that it would suit the conditions of this country better to adopt the Parliamentary System, the British type of Constitution with which we are familiar".¹⁰

The second reason was the need to accommodate the Rulers of the former Indian states in the Indian Union is a democratic set up. It

9. Ibid., P.984-985.

10. C.A.D., Vol.4, P.580.

Parliamentary form was adopted the transition from autocracy in the states would become easier with rulers becoming constitutional heads and real authority transferred to people's representatives, i.e., Cabinets responsible to legislatures. If, however, Presidential form was adopted, the transition could not be effected without effacing the Rulers. As at that time, it was not Practical Politics to efface the rulers at that time, it was best to have the Parliamentary form of Government. This line of argument was advanced by the noted jurist, Sir Alladi Krishna Swami Ayyar*.

Thirdly, it was said that the Parliamentary form of Government would serve better the needs of a country like India than the Presidential form as it ensured close relation of intimacy and interdependence between the Executive and the Legislature. The American System, it was pointed out, was prone to produce deadlocks as there was no guarantee that both wings would work in co-operation. As independent India was to embark on planned economic development the co-operation between the Executive and the Legislature was more essential here for the execution of Programmes. As was pointed out by Shri K. Santhanam :

*Unless this co-operation is forthcoming, atleast in the formative period of Indian freedom, then our Progress, which has already been delayed by the foreign rule, will be further delayed and popular impatience at the delay of economic reconstruction will break all bounds and ordered democracy may become impossible" 12

Emphasizing on this point, Sir Alladi said :

An infant democracy cannot afford under modern conditions to take the risk of a perpetual cleavage, feud or conflict between the legislature and Executive. 13

12. C.A.D., Vol.7, p.985.

12. Ibid., Vol.7, P.967.

13. Ibid., P.985

It was argued that in Parliamentary Government the Prime Minister and the whole cabinet are members of the legislature and the conflict between the authority wielding the executive power and the legislature is reduced to a minimum; really there is none at all, because, at every moment of time, the cabinet carries with it the support of the majority in parliament. It is that character of the British Constitution that has enabled the British Government to tide over the many difficulties which it has had to face during the last 150 years.

The makers of our Constitution favoured the British model as it is "elastic under all circumstances" vis-a-vis the American type of Presidential System characterized by rigid separation of Powers.

Lastly, it was stated that although both the Presidential and the Parliamentary form of Governments were responsible Governments, the former offered greater stability while the latter, greater responsibility. While introducing the Draft Constitution, Dr. Ambedkar said :

".... You can have a System which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and Swiss Systems give more stability but less responsibility. The British System on the otherhand, gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon the majority with Congress, while the British System is a Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign

the moment it loses the confidence of the members of Parliament. Looking at it from the point of view of responsibility, a non-parliamentary executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being dependent upon a majority in Parliament becomes more responsible. Under the non-Parliamentary System of American type, the assessment of responsibility of the Executive is periodic. It is done by the electorate. In England where the Parliamentary System prevails, the assessment of the responsibility is both daily and periodic - daily assessment is done by members of parliament and periodic by the electorate. The daily assessment of responsibility which is not available under the American System is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary System of executive has preferred more responsibility to more stability."¹⁴

In fact, the architects were going to combine in the Indian Presidency, the stability of the American Executive with the responsibility of the British cabinet. Thus, it was to be repository of stability and responsibility.

There were, however, some dissentients in the Constituent Assembly. Kazi Syed Karimuddin argued that the Parliamentary System as it was functioning in India created favouritism and nepotism and asked for a strong executive to deal with the disturbed states of our country.¹⁵ Another ardent critic of Parliamentary Executive,

14. Ibid., P.32-33.

15. See B.S. Rao, The Framing of India's Constitution, Vol.5, Nasik: 11PA, Government of India Press, 1968, P.334-340.

Ram Narayan Singh, speaking somewhat bitterly from experience, said, "People form parties and manipulate votes and get a majority in the legislatures and form the Government". He was therefore in favour of all powerful presidents "who will be responsible for the work done and who will choose their ministers or secretaries".¹⁶ Supporting this view, Shioban Lal Saxena said, "the stability of the Government was the first need of the nation as the fissiparous tendencies already at work in the country."¹⁷

Notwithstanding this opposition, the overwhelming weight of opinion was in favour of the Drafting Committee's Proposal and accordingly in the constitution, a parliamentary executive of the British type was adopted. And in the whole course of debate, India's familiarity with the British System of Cabinet Government tilted the balance in favour of Parliamentary Government.

C

The Nature of Executive

From the very beginning the idea of the makers had been to have an Executive based on the British model and to create in India a President who, like the English king, would be a mere "Constitutional head". While the object was clearly not to have a President as powerful as the American President, the intention was not also to create a mere figure head like the French President, Pandit Nehru told the constituent Assembly :

16. C.A.D., Vol.7, P.249-50.

17. Ibid., P.284.

"We want to emphasize the ministerial character of the Government, that Power really resided in the President as such. At the sametime, we didn't want to make the President just as a mere figure head like the French President. We did not give him any real power, but we have made his position one of authority and dignity.¹⁸

The constitution, therefore, wants to create neither a real executive nor a mere figure head, but a head that "neither reigns nor Governs" but would still have "great authority and dignity". "It wants to create", says K.V.Rao, "a great fogure head".¹⁹ It looks a paradox and an impossibility at first sight that a man with "authority and dignity" could still be without power, because the power is the basis of authority and dignity flows from both; but this is what Constitution aims at, what K.V. Rao says it to be "delightfully vague."²⁰ It is behind these ambiguities of constitutional text that we have to analyse the various aspects of our Executive Insitution.

1. Election of the President :

Nothing illustrates better than the question of Presidential mode of election, which determines the extent of the President's real powers, in relation to those of the Head of the Government, deemed responsible to the legislature. In our Context, the Prime Minister has not much to fear from a President elected indirectly, even if the

18. C.A.D. Vol.4, P.734.

19. K.V.Rao, Parliamentary Democracy of India, Calcutta : The world Press, 1965, P.28.

20. Ibid., P.27.

Constitution vests him, formally, with extensive Powers. In this case the President remains a formally dignitary, a figure head, or a 'Potiche'²¹ to use the French term. If he were to be the real political head, he might have to be directly elected by Universal adult franchise. If he were to be only the nominal head, he might be elected indirectly. The Constituent Assembly rejected an amendment of Prof. K.T.Shah who argued that in order to make the will of people supreme, the President of India should be elected "by the adult citizens of India...."²² Munshi while favouring the proposal for direct election pointed out that 'if the President were elected by Parliament he would be a creature of the majority in power and a pale replica of the Prime Minister, and therefore, no better than a figure head as in France or in Ireland'.²³ By pointing out the contradiction between the electoral source of the President's legitimacy and the extent of his powers, Nehru clearly expressed before the Constituent Assembly : "If the President was elected by adult franchise and yet (we) did not give him any real powers, it might become slightly anomalous" especially since "we wanted to emphasize the ministerial character of the Government"²⁴ Moreover, for avoiding the practical problems of sheer wastage of money, time, energy and

21. Max Jean Zins, Strains on Indian Democracy, New Delhi : ABC Publishing House, 1988, P.66.

22. C.A.D. Vol.7, P.991.

23. K.M. Munshi, India's Constitutional Document (Vol.1, Pilgrimage to Freedom 1902-1950), Bombay : Bharatiya Vidya Bhavan, 1967, P.257.

24. C.A.D. Vol.4, P.713.

administrative inconveniency, the indirect election of the President was emphasized upon in the constituent Assembly.

Further, a directly elected Chief Executive does not fit well in the system of Cabinet Government. When both the President and the Prime minister are directly elected, they may compete for power between themselves. Each one can claim to have derived authority directly from the People. Consequently, the tug of war that would have ensued between the two would have resulted in Constitutional deadlocks and ended in the subversion of the state.²⁵ Thus, after an intense debate, the members of the Constituent Assembly finally decided that the President be indirectly elected. The federal nature of our polity was also taken into account by our founding fathers. They said that electoral college was to be composed of the two houses of the Parliament and of the lower houses of the Provincial Assemblies, where the vote was to be calculated according to formula devised to give just weightage to the Provincial population.²⁶ Indeed, the composition of the Presidential electoral college satisfies the need of federal harmony by including the elected members of both the chamber of Union Parliament and elected members of the lower chamber of state legislatures. It has given the President a constituency which by all standards, has a national character and at the same time, does not create an alternative focus of Political Power. It is not as extensive as national electorate and yet, in Political

25. B.C. Das, The President of India, New Delhi: S. Chand & Company Ltd., 1977, P.125.

26. B.S. Rao, The Framing of India's Constitution, Vol.2, Nasik: 11FA, Government of India Press, 1967, P.559.

terms represents the nation in full sense of the term.²⁷ Thus our Constitution clearly provided for a "Constitutional President".

2. President and Prime Minister Relationship

Right from the very beginning, the essential debate centred around the famous Proposition of Article 74 of the Present Constitution which enjoins the council of ministers "to aid and advice" the President in the exercise of his functions. Should the President have the power to act at his discretion in certain cases, or is he bound, like the British monarch, by the advice of his Council of ministers? The terms of this crucial debate have changed with the adoption in 1976 of the 42nd Constitutional amendment²⁸ but the debate has not anated.

Dr. Ambedkar said in the Constituent Assembly that the President of Indian Union will be generally bound by the advice of his ministers. Neither he can do anything contrary to their advice nor can he do anything without their advice. It is argued by the Political Scientists that the words "aid and advise" are "Constitutional euphemism"²⁹ and that in reality the President has no choice but to act upon the advice of his ministers.

27. Z.M.Quralish, Struggle for Rastrapati Bhawan, New Delhi : Allied Publishers, 1973, p.25.

28. The Constitution (42nd Amendment) Act, 1976, adds as follows to Article 74(1) : "...the President who shall, in the exercise of his function, act in accordance with advice."

29. H.M.Jain, The Union Executive, Allahabad : Chaitanya Publishing House, 1969, P.126.

So a specific question, if in any particular case the President did not act upon the advice of his council of Ministers, would that be tantamount to a violation of the Constitution and would he be liable to impeachment? Dr. Ambedkar replied: "There is not the slightest doubt about it."³⁰

Shri Alladi Krishnaswami Ayyar stated this position more emphatically as follows:

....The point raised as to the necessity of a provision is entirely without substance. We have provided in Article 61(3) that the Council of ministers shall be collectively responsible to the House of the people. If the President stands in the way of the council of ministers discharging that responsibility to the House he will be guilty of violation of the constitution and he will be even liable to impeachment. Therefore, it is merely an emphatic way of saying that the President shall be guided by the advice of his ministers in the exercise of his functions.³¹

This line of thinking was advanced by K.Santhanam in an altogether different style. He said:

"...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. That does not mean that normally the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite or the reverse. It is thus the Prime Minister's business with the support

30. C.A.D., Vol.10, P.269.

31. Ibid., P.270-271.

of the Council of Ministers to rule the country and the President may be permitted now and then, to aid and advise the council of Ministers".³²

Indeed, the above analyses were the running theme of the Proceedings of the constituent Assembly and was lent support to at one time or the other by almost all the prominent members of the Constituent Assembly.

However, this debate was inconclusive. It must be said in fairness to Dr. Rajendra Prasad that even as President of the Constituent Assembly, he had been repeatedly drawing to the inadequacy of the expression "aid and advice" in binding the President to the advice of the ministers. His efforts were in vain and in his valedictory speech before the Assembly Dr. Rajendra Prasad said :

"Although there are no specific provisions in the Constitution itself making it binding on the President to accept the advice of his ministers, it is hoped that the convention under which in England the king acts always on the advice of his ministers will be established in this country, and, the President not so much on account of the written word in the constitution, but as the result of this very healthy convention, will become a constitutional President in all matters".³³

Holding this view, T.T. Krishnamachari pointed out :

"One of the chief defects of this constitution is that we have not anywhere mentioned that the President is a Constitutional head and the future of the President's power is therefore doubtful ... so far as the relationship of the President with the cabinet is concerned, I

32. Ibid., Vol.7, P.1155-56.

33. C.A.D. Vol.11, P.988.

must say that we have, so to say, completely copied the system of responsible Government that is functioning in Great Britain today".³⁴

3. Powers and Position of President

There was wide divergence of opinion in the Constituent Assembly regarding the Presidential powers, infact, no body knew precisely where the President stood vis-a-vis the Prime Minister on an overall interpretation of the relevant Articles when the Constituent Assembly was finally adopted.

To begin with, the Constitutional text expressly dotes the President with extensive Powers. A series of Articles (example Article 75, 85, 111, 123, 352-60 etc.) indicates that certainly the makers of our Constitution didnot want to have "mere figure head" President. As Munshi rightly pointed out :

"The President was expected to be a political force representing national unity and was well invested with such authority, dignity and residual Power, so that when political Parties developed inflexible attitudes, he being above party, could restrain their excesses and defend the constitution. His principal role was to prevent a parliamentary Government from becoming parliamentary anarchy", or a majority Government from indulging in Constitutional excesses".³⁵

34. Ibid., Vol.10, P.956.

35. K.M. Munshi, The President Under the Indian Constitution, Bombay: Bharatiya Vidya Bhavan, 1963, P.26.

To make this point explicit, Dr. Munshi again added :

"The position of the President was Pivotal ... so that he might not sink into a figure head as in pre de Gaulle France or become a formal dignitary like the Governnor General of a British Dominion."³⁶

B.N.Rau, in his memorandum proposed that the President be vested with "discretionary Powers", explaining that "although under responsible Government, the Head of the State acts for a most part on the advice of ministers responsible to the Legislatures, nevertheless, there are certain matters in which he is entitled to exercise his own discretion."³⁷

However, UCC rejected the concept of discretionary powers for the President. While drawing up the list of Presidential attributions, provided not only for a procedure of impeachment, but also opined clearly that the "President's Power to dissolve the lower chamber of the Federal Legislature should be exercised only on the advice of the ministers".³⁸

It will be well to remember that no member of the Constituent Assembly ever suggested that the President should be an independent organ of power or that he should not be bound by the advice of his ministers. No member had the slightest doubt in his mind that the

36. K.M.Munshi, Indian Constitutional Documents, Vol I, Op.cit, P.255

37. B.S. Rao, op.cit, vol.2, P.476.

38. Ibid., P.555.

President they were providing for was to be a Constitutional President occupying the same place as the king under the British constitution. To put it sharply in the words of Ambedkar :

"Under the constitution, the President occupied the same as the king under the English Constitutions. The President was "the head of the state but not of Executive". He represents the nation but does not rule the nation. He is the symbol of the Nation. His place in the administration is that of a ceremonial advice on a seal by which the nations decisions are made known.³⁹

Conforming to this analysis, Austin says, "Munshi's thesis is an unwarranted assumption not borne out by the documents".⁴⁰

Infact, the theory of Parliamentary Government can not be reconciled with the theory of an independent Presidential Power for the simple reason that the cabinet cannot be supposed to serve two masters.

Conclusion :

To conclude, the scope of Presidential Powers and his status touched off a serious constitutional and Political Controversy in the Constituent Assembly. But the clearcut tilt was towards, establishing a British type of Parliamentary Executive. Dr. Ambedkar said to the Constituent Assembly:

39. C.A.D. Vol.7, P.32-33.

40. G.Austin, Indian Constitution : Cornerstone of a Nation, Delhi: Oxford University Press, 1966, P.121-122, footnote.

The title of the functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of Government Prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government, what the Draft Proposes is the Parliamentary system. The two are fundamentally different....⁴¹

Thus, from the above analyses of the debates, we can discern that our founding fathers had established a Parliamentary form of Government, for they thought, it would best suit to the Indian conditions.

D

The Formative Years of the Nehru Phase

The early years that followed the commencement of the constitution were a period of great stress and strain for nation, a difficult time and one ridden with many crises. Besides the stupendous task of building the structure of Parliamentary Polity in a country ravaged by colonial rule for many generations, the newly born Republic of India had to face the needs of reconstructing the nation's economy badly battered by the burdens and aftermath of worldwar, the tragic consequences of the partition of the country, the responsibility of rehabilitation of the uprooted millions and acute shortage of essential food grains. In the background of all this, that India's representative institutions and the system of Parliamentary democracy endured was a great tribute to their strength and resilience and to the leadership of Jawaharlal Nehru. Nehru had an unflinching faith in the Parliamentary

41. C.A.D., Vol.7, P.32-33.

institutions which gave a distinct strength and stature to our polity under Nehru era. This section even at the risk of some repetition would endeavour to focus on Nehru's thinking on the importance of Parliamentary institutions :

Soon after the Republic was created there arose some solid differences between the President and the Prime minister in regard to their respective role perceptions and relationship with each other. In March 1950, President Prasad in a note to Prime Minister Nehru raised certain issues in regard to his powers to act independently of the advice of the council of ministers.⁴² Then President Prasad sought the opinion of the Attorney-General, M.C. Setalvad in the matter of the constitutional position of the President vis-a-vis the Prime minister and his cabinet. In his note sent to the President, setalvad opined that the President had the right to dismiss the ministry and dissolve the parliament. Armed with Attorney-General's opinions, Prasad wrote to Nehru and raised the following points :

1. that President could not be expected to give assent to Bills without knowing the details and background thereof and that he had the power to withhold assent to Bills in his discretion;
- ii. that in the matter of sending messages to Parliament in respect of a Bill or otherwise, he could act in his discretion;

42. H.N.Pandit, The P.M's President, Delhi : S.Chand & Co.1974 P.91, Appendix I.

- iii. that he could dismiss a minister or the ministry, dissolve Parliament and order fresh general election;
- iv. that as the supreme commander of the Defence Forces, he could send for the chiefs and ask for information about defence matters;
- v. that there were basic differences between the position of the British Monarch and that the President of India, viz., hereditary v. elective office, unitary v. federal nature of polity and the removability of the President by impeachment. The President was not bound to act on the advice of council of ministers "against the decision of the state authority even in matters falling exclusively within latter's jurisdiction". The Constitution did "not admit a wholesale importation of all practices and conventions of the British constitution"⁴³. To reply, Nehru consulted the Attorney-General, whose opinion differed from Prasad's own interpretation of his Prerogatives.⁴⁴

At the back of all this controversy was perhaps the Hindu code Bill, to which President Prasad was radically opposed. He felt that such a revolutionary measure which would change the personal law of the Hindus should not be pressed in the Provisional Parliament because it was indirectly elected and didnot have the mandate of the people at a General election. There were also some other minor issues on

43. Ibid., P.16-17 and p.96, Appendix II.

44. Ibid., P.16-17.

which the President-Primeminister relationship was subjected to strains.⁴⁵ Despite all these differences between the two greats, as Durga Das puts it, "the concern for the proprieties of Public Conduct," prevented a crisis in the President-Primeminister relationship developing and coming into the open.⁴⁶

Towards the fag end of 1960, the controversy regarding the President's Powers and functions erupted again and this time very much in the open. The Salvo was fired by President Dr. Rajendra Prasad when he made a controversial speech at the Indian Law Institute at Delhi on 28 November 1960. The question of the position of the President vis-a-vis the Prime-minister and the Council of ministers had been raised and discussed earlier but it seemed somewhat odd that it should again be raised openly in this manner by no other than the President of the Constituent Assembly and was very closely associated with the framing and adoption of the Constitution. It had been firmly established by that time that the President was to act on the advice tendered by the Council of Ministers. Constitutionally the President could do little on his own accord though he naturally carried tremendous prestige and influence as a person occupying the highest office of the state.

Nonetheless, Dr. Prasad had certain doubts about the extent of the President's powers and raised them in the following form :

45. See S.C. Kashyap, History of Parliamentary Democracy : From the Earliest Time to the End of the Nehru Era, Delhi : Shipra Publication, 1991, P.187-192.

46. Quoted in H.N. Pandit, op.cit., P.17 and P.101, Appendix III.

"....the question which I should like to be studied and investigated is the extent to which and the matters in respect of which, if any, the power and functions of the President differ from those of the Sovereign of Great Britain. Generally what are the Points in respect of which the powers and functions of the two are the same and what are the points, if any, and the extent to which they differ? In this connection, it may be pointed out that there is no provision in the Constitution which in so many words, lays down that the President shall be bound to act in accordance with the advice of his council of ministers The question which has to be investigated is how far these and other Provisions go towards making the functions and powers of the President identical with those of Monarch of Great Britain".⁴⁷

Not wholly unexpectedly, this led to a stormy debate. The actual reasons for this controversy could be the attitudinal differences between these two giants. Whatever their differences. When a Public debate started on Prasad's remarks and his attention was drawn to it Prasad was quick to realise the need for dissolving the Controversy and described his Law Institute remarks as a "casual reference" only.⁴⁸ Nehru, for his part, decided not to raise any public controversy. He was conscious of the nuances of delicate issues. Deploring over this issue, he said :

"It is embarrassing for me to discuss the President. But since the matter has been discussed so much, let me say that I rather doubt if the President himself attached much value to this point. If you look up the reports of the Constituent Assembly,

47. Rajendra Prasad Speeches, 1960-61, New Delhi: Government of India Publications Division, 1962, P. 164-66.

48. The Hindustan Times (New Delhi), 29 November, 1960.

you will find our President who was the President of the Constituent Assembly had himself discussed this matter at some length and given his position on it, even then."⁴⁹

Nehru asserted that the President is always a Constitutional head. He didn't see this controversy fit enough to cause an amendment to the relevant articles to remove the elements of the so called ambiguity. Nehru reiterated his profound faith in the Constitution and said :

"We have been functioning for ten years and more. We have modelled our Constitution on the Parliamentary System and not on what is called the Presidential System, although we have copied or rather adopted many provisions of the U.S. Constitution because ours is a federal Constitution. Essentially our Constitution is based on the U.K. Parliamentary model. That is the basic thing. In fact, it is stated that wherever it does not expressly say anything, we should follow the practice of the House of Commons in the U.K."⁵⁰

CONCLUSION:

In fine, the assertion of Presidential Powers by Dr. Prasad within the existing Constitution is, to subscribe Zins view, an "internal struggle"⁵¹ of the Presidentialists. However, this assertion refused to take shape of any Constitutional crisis, although, it caused certain amount of embarrassments to both the offices of

49. Jawaharlal Nehru's Speeches, Vol.4, New Delhi: Government of India Publications Division, 1963, P.100-101.

50. Ibid.

51. Max Jean Zins, Strains on Indian Democracy, New Delhi, ABC Publishing House, 1983, P.106.

President and Prime Minister under Indian Constitution. As a matter of fact, the founding fathers of our Constitution those who were at the helm of affairs, could not afford to question their own judgments and kept the Parliamentary democracy going smoothly and safely. With the Constitutional Pragmatism, Public morality and Political sagacity of the founding fathers of our Constitution, the democratic Polity survived in the face of grave crises during the infancy of our Republic.

CHAPTER - III

THE DEBATE ON AN ALTERNATIVE REGIME DURING
THE EMERGENCY (1975-76)

A

THE CONTEXT

It is useful to recall that in the Constituent Assembly itself some members had expressed serious doubts about the suitability of the westminster model for a diverse and heterogeneous country like India and suggested alternative models of Government like the Presidential System of the USA, the co-operative system of Switzerland and the Semi-Presidential System of France. But Nehru, Ambedkar, K.M. Munshi and other important members of the Assembly pressed for the adoption of the westminster model largely on the ground of familiarity. The model worked reasonably well so long as the Framers of the Constitution, who had developed a fellow feeling in their common struggle for freedom and were also conscious of the value of sound conventions in the working of the West-Minster model, remained active. But as they passed away and a new generation of politicians took over and unprecedented political compulsions emerged from the heterogeneity in India, the serious deficiencies of the westminster system in the Indian situation revealed themselves in an increasingly menacing manner.

Within few years of Pandit Nehru's death, his close colleague, K.M. Munshi, who was a member of the Drafting Committee of the Constituent Assembly commented on the experience of the first 17 years of our Constitution as under:

"Those of us who supported the British Cabinet System to which we were accustomed, thought that it would work effectively in India, but I must confess that we have failed to evolve the two-party democratic system. Our democratic instincts have proved immature. The Congress is failing to pieces. Many opposition parties have no constitutional outlook. The Cabinet System of Government has not been a success. The Central Government has been wobbly. We are heading towards a situation in which either the Presidential System or military rule would become inevitable."¹

Most people will agree that need of the hour is to search a system which may prevent the frittering away of national energies in the demoralising political squabbling and bargaining and will share the view with Dr. K.M. Munshi. The talk of a suitable and effective system is not a sudden out burst. From '60's onwards, coinciding with the gradual erosion of the Congress Party's Parliamentary Majority, with the sharpening of political antagonism, with the fall in Nehru's prestige and popularity, in short with the beginning of the Congress decline, that the thrust of the advocates of Presidential regime became direct and public.

This Political Context during which the debate was floated can be dealt in three phases. The first phase stretches till 1969, the second covers the 1969 crisis, the third lasts from 1975-77. Thereafter, begins a new period, where the question of Presidential Powers is posed somewhat differently.

1. K.M. Munshi, India's Constitutional Document, vol.1, Pilgrimage to Freedom, 1902-1950, Bombay: Bharatiya Vidya Bhavan, 1967, p.274.

a) The First Phase: Till the crisis of 1969.

From the middle of the 60's the demand for a Presidential Government gained momentum. In 1965, for the first time in the history of the Congress Party R. Venkataraman (at that time minister of Industry in the State of Madras) submitted a resolution to this effect at the AICC meeting of Bangalore.² The resolution could not be put on the agenda due to the Pakistani aggression at that time. Venkataraman explained later³ that his proposal aimed at ensuring greater stability at the Union level, as a President elected by direct universal suffrage would not be dependent upon the changing fortunes of the majority party in Parliament.

Then came the 4th General Elections held in 1967, in which the Congress suffered serious reverses. The result of the 1967 Elections produced a shock wave which was felt not only within a badly divided Congress but throughout the Indian Political System. The electorate was seen to have brought to an end the era of Congress dominance. A number of non Congress Governments came to power in the States and the margin of preponderance of the Congress Party in the Parliament itself was reduced by more than 80 seats.⁴

2. Statesman, 29-5, 1965.

3. Swarajya, 10.1.1976, pp.1-3.

4. Rajnikothari, "Political Change of 1967", in Economic and Political Weekly, January (Annual Number), 1971, p.231.

Key Congress leaders including the Party President Kamraj and several important regional bosses like S.K. Patil, Atulya Ghosh etc. were defeated. The overall consequence of this 'debacle' was felt in a series of upsets in the states, a great deal of Governmental instability and infact it signalled a new phase in the development of the Indian Polity.

Admittedly, the result of 1967 elections had deeper ramifications for the electorate, the Political Parties, the national and State Governments and the country's approach to the policy issues. But the main thrust of this change was a decline in Congress Party's hitherto predominant position, though the decline was by no means catastrophic.

Indian Party System has generally been characterized by one Party dominance. Morris Jones thinks of this dominant Party System as one of "open interaction and open party structure."⁵ To quote Rajni Kothari, "There is plurality within the dominant party which makes it more representative; provide flexibility and sustain internal groups and movements from outside party and thus prevent other parties from gaining strength."⁶ But the twenty years of one party dominance had come to an end in that electoral upheaval in

5. W.H. Morris-Jones, Politics Mainly Indian, New Delhi: Orient Longman, 1978, p.217.

6. Rajni Kothari, "The Congress System in India", in his Party System and Election Studies, Occasional Papers of the Central Publishers, 1967, p.6.

which both the Congress and India had reached a new turning point in post-independence development, for the Congress would have to adjust to its loss of hegemony while the Indian political system adjusted to a shift from one party dominance to multipartism.⁷

With the loss of Congress hegemony, the Country was plunged into a state of Political instability. The Political system was exposed to the evils of floor crossing by the legislators. There was an endemic defection of legislators from one party to another, demoralisation of democratic institutions, an increase in corruption and with it a growing popular Cynicism toward Politics, Political Parties and the Political system itself.

Also, in the resulting shake up of the Congress elite, no one emerged strong enough to achieve his ends unaffected by the pattern of consensus, compromise, accommodation and bargaining which had once been encouraged as party of the Congress dedication to democratic ideals but which increasingly after the 4th General Elections, became the sole means of party and personal survival.

No where was the sense of frustration and alienation as strong as among major sectors of the Indian business elite. By early 1968, the steady erosion of political stability was leading sectors of the

7. S.A. Kochanek, The Congress Party of India : The Dynamics of one Party Democracy, Princeton : Princeton University Press, 1968, p.407.

business community to question openly the viability of the existing Political System in India. On February 1968, J.R.D. Tata, a business tycoon told that the Indian Political System was failing. Moreover, he continued, "the British Parliamentary System of Government.... is unsuited to conditions in our Country, to the temperament of our people and to our historical background."⁸ He suggested Scrapping it in favour of a Presidential system. Under such a system, he argued, a chief executive elected for a fixed term would be "irremovable and free to govern through Cabinets of experts.... who may, but need not include Professional Politicians."⁹ Under a Presidential system, then, India would gain both stability and expertise in the management of Public affairs. In this connection, the interview done in 1967 by Stanley Kochanek¹⁰ of 71 industrialists belonging to 75 leading business houses was significant. Most of them endorsed the opinion expressed by Tata. The tenor of replies was as follows: we want a stable and able Government. With the present system you get a crowd who are ignorant of Government and administrative procedure and although Government may have a large number of ministers, no real work is done. Moreover, Government becomes unstable and where Government becomes unstable business suffers." For others, "the problem with the Parliamentary System is that it does not push

8. J.R.D. Tata, Speech Delivered at the Sixtieth Annual General meeting of the Indian merchants chamber, Bombay: Tata Press, 1968, pp.21-22.

9. Ibid., p.26.

10. S.A. Kochanek, Business and Politics in India, London: University of California Press, 1974, p.33.

up the right people. There is a great deal of ability and talent in India which is simply not used and the greater tragedy is that a great deal of India's brain Power goes unused and the brains simply do not want to work under the Present System, which is stifling." The solution according to them, was to adopt the Presidential System, which "gives liberty without destroying the effectiveness of Government."¹¹

Till 1969, these opinions remained 'personal' in character. Even though significant, they stayed more or less academic. The crisis of 1969, for the first time created the conditions for their implementation.

b) The Second Phase : The Crisis of 1969.

In the fall of 1969, the Indian National Congress suffered a major split; it was clearly the most serious crisis the Congress had suffered in its post-independence history as the ruling Party. The Catalyst behind the Congress split seemed to have been conflicts over power among the post Nehru Congress elites, which in addition to purely personal differences also came to display elements of ideological and generational differences.¹² The two sets of competing elites within the Party took rather antithetical postures in the ensuing crisis : the Indicate (Pro-Indira Group) considered

11. Ibid.

12. M.P. Singh, Split in a Predominant Party : The Indian National Congress in 1969, New Delhi : Abhinav Publishers, 1981, p.281.

it in purely 'ideological' terms and the Syndicate (the Old Guard) in those of a simple conflict for power."

In addition, competition for power between different elements of the party leadership prompted them to mobilise new bases of mass support. For reasons of generational differences, Mrs. Gandhi and her allies were successful in projecting themselves as the proponents of a new level of social and political mobilization in the country, as opposed to the Syndicate, whose public image seemed to be more conservative and traditionalistic.

Faced at first with a formidable array of forces against her in the Party, Mrs. Gandhi took initiative to take the whole issue to a broader arena than the Party. Through a series of populist tactics and policy shifts - e.g., the demand for "Conscience Voting" in the Presidential election, bank nationalization, abolition of Privy Purses and other Princely Privileges. Mrs. Indira Gandhi succeeded in generating a tremendous popular upsurge in her favour.¹³ The Syndicate, initially considerably stronger suffered a progressive depletion of support within the party until Mrs. Gandhi's faction eventually emerged as the majority faction and forced the syndicate rump to split.

13. For Details see B.B. Misra, The Congress Party and Government: Policy and Performance, New Delhi : Concept Publishing Company, 1988, pp.215-245.

Another notable incident during the crisis period of 1969 was the struggle for Presidential Succession after the premature death of Zakir Hussain. In an extraordinarily risky move designed to free herself from Syndicate tutelage and constraints, Mrs. Gandhi engineered the defeat of Sanjiva Reddy, a syndicate member whom the party had nominated for President of India, by unofficially backing V.V. Giri, an independent candidate who conveniently had entered the race. These events created a deep schism which was unable to maintain its unity despite the frantic attempts to the contrary of the Prime Minister.

The significance of the Congress split for Indian political system stemmed from the centrality to the political process of the Congress led predominant party system - a system in which a broad based and inclusive "Party of Consensus" ¹⁴ (the Congress) occupied the dominant, central position with a multiplicity of legally legitimate but electorally ineffectual opposition parties on the margins. The split of 1969 had marked the decline of what Kothari calls the "Congress System." ¹⁵ For the first time since independence, the political domination of the Congress was threatened. This Conjunction was all the more threatening as no alternative capable of guaranteeing the stability of the State was in sight.

14. M.P. Singh, op.cit., p.40.

15. For Details see Rajni Kothari, "The Congress System in India" in Asian Survey, vol.4, no.12, December 1964, pp.1161-1173 and "The Congress System Revisited: A Decennial Review" in Asian Survey, vol.14, no.12, December 1974, pp.1035-1055.

It is precisely in this perspective that the advocates of "Strong President" inscribed their own reflections on the President of the Republic and built up a case to project him as the ultimate guarantor of the constitution, the last rampart of the state against threats of destabilization. It is therefore not a pure accident, that, to quote Harish Khare, "Since the 4th General Elections, a persistent attempt has been made to graft on the Constitution of India a new doctrine of an activist Presidency."¹⁶ sub-scribing this view the Economist From London wrote that "India's new Political make up may make possible or demand, a more active Presidency."¹⁷

Moreover, with the 1969 crisis, the element of consensus began to erode within the Congress Party and with this also eroded the Prime Minister's arbitration capacity. Increasingly it was perceived as a dictate. During this year, Mrs. Gandhi was repeatedly accused of dictatorship. It is in these circumstances that the Presidents role required a new dimension. Opposition looked elsewhere for the arbitrator that it had lost with the Prime Minister : in the Office of the President.

-
16. H. Khare, "The Indian Prime - Minister : A Plea for Institutionalization of Power" in Journal of Constitutional and Parliamentary Studies, January - March 1971, vol.5, no.1, p.36.
17. Economist, 15.4.1967("Choosing a President").

A conjunction of diverse factors, reflecting the depth of the crisis affecting the states explains that a modification in India's constitutional practice could have occurred at this juncture. A few years later, another crisis - much more acute furnished the opportunity to attempt a legal transformation of India's political regime from a Parliamentary to Presidential form.

c) The Third Phase : The 1975-77 Crisis - The Emergency.

The Emergency was more than a single shocking episode - it was in a sense a water shed in the history of post-independence India. From 1975 onwards, the Congress Party experienced not only the centralization of power within it but the establishment of personal rule over it. This period also witnessed popular movements in most part of the country centring around corruption, Congress misrule, price-rise etc. In a desperate bid to save her regime Mrs. Gandhi cut short the democratic process and went for the Emergency to suppress the rising mass discontent. The Emergency was thus, understandable as a consistent expression of Mrs. Gandhi's political style and temperament as a continuation of her tendency to concentrate political power. And under the rule of Mrs. Gandhi Congress remained as an autocratic and monolithic system. Kothari described the period of 1975-76 as a "Year of depoliticization" and bravely called for a restoration of "the political process in its fullness", adding that "without an active political process no civil society can endure for long."¹⁸

18. Rajni Kothari, State Against Democracy : In Search of a Humane Governance, Delhi : Ajanta Publications, 1988, p.270.

Notwithstanding its vagueness, the Emergency had certain tangible effects on the broader socio-political milieu. The popular reaction against the repressive state during the Emergency got manifested in the 1977 General Elections which swept out of power a leader and her loterie for a 19 months of arbitrary and capricious rule. It not only marked an end to the callous rule of Mrs. Gandhi but also sounded the deathknell of the "Congress System" itself. It happened as the three major bases of its support the rural electorate, the Muslims and the Harijans had alienated from it in good measure in the wake of Emergency excesses.¹⁹

Another significant effect of the Emergency was the Opposition Unity against the Indira Gandhi autocracy and for this the J.P. movement in Bihar and Gujarat provided the best opportunity. This united opposition dethroned Congress in 1977 Elections, marked a shift in political competition - from intra party to inter party competition, and introduced a sharp bipolarity into the polity.

Objectively speaking, from 70's onwards the process of centralization of political power started and the Prime Minister was seen as Congress's most vital resource. Gradually this evolution took on such significance that a few commentators on the Indian Political Scene could ask "Is India moving towards a Prime Ministerial System?"²⁰ They began to define Council of Ministers as the Prime-Minister's "Cabinet".²¹

-
19. Iqbal Narain, "India 1977 : From Promise to Disenchantment?" in Asian Survey, February 1978, vol.18, no.2, p.112.
20. H.M. Jain, "Changing role of the Prime Minister: Is India moving towards a Prime Ministerial System" in Journal of the Society for Study of State Government", April-September, 1973, vol.6, no.2-3, p.121.
21. Ibid., p.128.

It was viewed in this context that the Prime Minister "emerged as an independent Executive for more comparable to that existing in Presidential than Parliamentary System."

B

THE QUESTION OF CONSTITUTIONAL CHANGE

The period of Emergency because of its very nature turned out to be the most propitious for the sharpening of the debate on systemic change. From the very first months of the Emergency, strong pressures were brought to bear in favour of Constitutional changes. To the extent that Constitutional reform in all its aspects became one of the major political question of the years 1975-77, it would no doubt be improper to reduce the constitutional debate of this period to just one dimension : the Problem of a Presidential regime.

a) The Motivation for Change.

The ruling Congress Party affirmed that there is nothing sacrosanct in the constitution if it went against the aspirations and ideals of the Indian People. It came to the conclusion that evils have crept into our system and it failed to ensure the freedom of the individuals.²² On the basis of this assumption the ruling party favoured certain changes in the system.

22. Shrimati Indira Gandhi on Democracy, New Delhi : Publications Division, January 1977, p.26.

But beneath this assumption, there was a different reality which need to be grasped. After 1965, when the first Official Congress resolution asking the Party to go for a Presidential regime was formulated, the 'Presidentialist' demand was increasingly articulated by big business circles and the Conservative elements from within and without the Congress. They tried to use the Presidential office in support of their offensive against Governmental policies.²³ The political crisis of 1969, which crystalised on the issue of bank nationalization and the Presidential elections, is an illustration of this reality. It also revealed for the first time, in Indian Contemporary history, that the Country's Constitutional Institutions were very much a political stake in the struggle for state power.

A parallel development during this period was the increasing political instability, which appeared at first in the different Indian states before reaching the union itself. Manifestation of a three dimensional crisis of the state, of the "Congress System" and of the 'Power bloc's" leadership²⁴ - it engendered a marked process of concentration of power in the hands of Prime Minister . The rules of the Parliamentary system were distorted and it became more appropriate to qualify the new emergent political set-up as the

23. Zins, Max Jean, Strains on Indian Democracy, New Delhi : ABC Publishing House.

24. Ibid.

Prime-Ministerial system, which in its different aspects, differed basically little from a Presidential system. The period of the Emergency, bore witness to this evolutionary process. 'Presidentialist' or 'Presidential Prime Ministerialist' Schemes proliferated; beyond their differing nuances, all aimed at the setting up of an all powerful Executive, free from the constraints of Parliamentary pulls and pressures.

b) Alternatives Suggested.

In the beginning of 1976, the debate was accelerated with the publication by Mainstream of text which had been circulating under cover.²⁵ It asserted that it had been conceived "in the light of the experiences of the working of democracy in our country during the past twenty-five years", and added:

"towards this end, among other things, the unobstructed working of the Executive in the interest of the people within the full period of the mandate that they give to the Executive at the time of free and fair elections, must be ensured; so that the nation's Chief Executive puts the requisite authority to the fullest use of the nation without let or hindrance, fear or favour, according to his wisdom and conscience."

The text further stated : "Since our President is thus elected by a popular direct mandate, he should, in the scheme of things, enjoy more authority and powers than even the U.S. President."

25. Mainstream, 14(8). 3.1.1976, pp.7-10.

Another suggestion which had been mooted to make the system stronger came from Rajni Patel, President of the Bombay Pradesh Congress Committee and a member of the Swaran Singh Committee. Under a 'Presidentialist Prime Ministerial' form, he proposed to study in detail the institution of Prime Minister elected by the popular vote : "this will strengthen the hands of the Chief Executive enabling him or her to exercise authority without the vexation of pulls and pressures that a Prime Minister elected indirectly is subjected to."²⁶

It is in this context, 'the Hindu' aptly resumed the crux of the ongoing debate : "One of the favourite talking points in the emerging debate is the suitability of the French System to the Indian conditions for ensuring greater political stability and disciplined development." The newspaper noted that no decision had as yet been taken at the highest level despite the general feeling that some far reaching changes were both necessary and desirable.²⁷

c) The Swaran Singh Committee (SSC) on Constitutional Reforms:-

Before highlighting the recommendations of the Swaran Singh Committee, it is essential to grasp the Congress Party's perception towards the constitution. The Congress viewed the constitution as a living document - adaptive to the Changing economic, social and ideological milieu. No Constitution, however, strongly worded by legal Pundits can stand up if it does not meet the needs of social

26. Rajni Patel, "Parliamentary Democracy Reconsidered", Socialist India, vol.12, 27.3.1976, p.10-12.

27. Hindu, 22.11.1975.

change. Keeping this in view, the Congress Election Manifesto of 1971 had clearly spelt out that changes in the constitution would be necessary for the implementation of far reaching changes in the life of the people.²⁸

The stage had come when the Congress had to decide and could not afford delay in fulfilling its commitments. The overwhelming support from the masses to the congress in the 1971 General Elections affirmed that it was the sole representative of the people. The Congress President D.K. Barooah appointed a committee headed by Swaran Singh²⁹, former Defence Minister, on 26 February 1976 to prepare a draft amendment to the basic law so as to facilitate the implementation of longstanding socio-economic reform.

The committee which was given two months to submit its report started its work by scotching the rumours that the ruling party was thinking of doing away with the Parliamentary form of Government. The Prime Minister gave similar assurances both in Public speeches as well as in the Parliament.

-
28. M.S. Kidwai, "Swaran Singh Committee Recommendations : An Analysis", in Mainstream, July 3, 1976, p.11.
29. The Committee comprised of three Union Ministers (H.R.Gokhale, V.N. Gadgil & V.A. Sayid Mohammad), S.S. Ray (Chief Minister of West Bengal), Rajni Patel (President of Bombay Pradesh Congress Committee), C.M. Stephen (Vice-President of the Congress Parliamentary Party), D.P. Singh (Member of Rajya Sabha) and A.R. Antulay (General Secretary of the Congress Party).

The SSC had made its proposals for constitutional amendment from three angles... Political, Socio-economic and legal.³⁰ Its recommendations received wide support at the AICC session. Members after members supported the philosophy behind the changes and specific proposals viz. retention of Parliamentary form of Government, the supremacy of the parliament, curtailment of the writ jurisdiction of courts especially in matters pertaining to Socio-economic aspects, new schemes for judicial review of legislation and preamble.

On the specific question of systematic change, the most significant aspect of the report was that it sought to strengthen the system of Parliamentary democracy in the Country against the Presidential System which was supposed to be the most important 'basic features of our Constitution, when it was drafted.'³¹ The committee was of the opinion that the separation of powers in the Presidential System, most of the time, resulted in Constitutional deadlocks. In a vast country like India, with a kind of regional diversity, the parliamentary system preserves best the unity and integrity of the Country and ensures greater responsiveness of the people.

Thus the 'anti-Presidential' conclusions of the Swaran Singh Committee put a final stop to the ongoing debate on the subject. On 13th April, 1976, they were examined and adopted in their main

30. For Details see the Swaran Singh Committee Report in Hindustan Times, 23.5.1976.

31. K.K. Nigam, "Swaran Singh Committee Report - Some Comments" in Socialist India, May 29, 1976, vol.12, p.8.

points by the working committee of the Congress Party.³² After due discussions with legislators and jurists the final proposals of the committee were accepted by the AICC.³³

d) The Reactions to the SSC Report.

1. CPI(M)'s View:- The recommendations of the SSC were received with both relief and criticism. The CPM rejected the proposals intoto and questioned the right of the Parliament to amend the Constitution on the ground that it was serving a term beyond the normal term of five years.³⁴

It viewed that the leaders of the ruling Party were trying to institute the Presidential dictatorship under the Facade of SSC recommendations. Their basic aim was to undermine the basic right of the people, and make the constitution a pliant instrument of one Party dictatorship of securing monopoly of power for itself, of securing unhibited power for the executive.³⁵ The CPM categorically said that by the slogan 'Supremacy of the Parliament', the ruling Party meant the Supremacy of the Executive over the people, over their basic fundamental Rights - the sub-Ordination of people's sovereignty to the dictates of the Executives. And the Swaran Singh Committee report is a device towards this end.

32. Hindustan Times, 14.4.1976.

33. For the Text of AICC Resolution, see Patriot, 30.5.1976.

34. CPI(M) On Constitutional Changes, Calcutta : CPI(M) Publications, 1976, p.16.

35. Ibid., p.15.

2. NATIONAL COMMITTEE FOR REVIEW OF THE CONSTITUTION:

A National Committee³⁶ for Review of the Constitution which was constituted in Bombay at a meeting of opposition MP's and leaders from academic and social life of the Country, in its interim report released on 28th March 1976, dealt with the recommendations of the SSC. It was of the view that the proposed Constitutional amendments should be brought forward only after a new Lok Sabha had been elected by the people.³⁷ The committee saw no objection to the SSC proposals in matters of judicial Review, Preamble etc. It also agreed that the Parliamentary System of Government was best suited to India and stressed that it should not be given up in favour of the Presidential or any other system.³⁸ However, the committee exposed the intention of the ruling party, in an absolutely unequivocal language. It viewed that the drastic changes in the Constitution which were being proposed by the ruling party were for the purpose of institutionalizing the Emergency powers on a permanent basis and for establishing an authoritarian regime in the Country. It appeared that there was a desire to do away with the multi party system and to replace the same by a single party dictatorship.

-
36. The committee consisted of Era Sezhiyan & Krishnakant as Convenors and M.C. Chagla, K. Santhansan, Babubhai Patel, Shanti Bhusan, H.V. Kamath, V.M. Tarkunde and Miss Aloo Dastur.
37. National Committee for Review of the Constitution - Statement issued by the committee after the meeting held on 31st July & 1st August 1976, New Delhi, p.2.
38. National Committee for Review of the Constitution - Interim Report, Delhi : Navchetan Press, 25 May 1976, p.3.

3. CPI's View:-

The CPI wholeheartedly accepted the SSC recommendations. It was of the opinion that most of these recommendations were broadly in line with what the democratic forces in the Country had been demanding.³⁹ The CPI criticized CPM's total rejection of Swaran Singh Committee report not as an intellectual lapse but an offshoot of the CPM's political line. It castigated CPM of sectarian anti-Congressism and subjectivism.⁴⁰

On the broader question of systemic change CPI's argument was both convincing and realistic. It recognised serious drawbacks and limitations of the system. However, the scrapping of the system in favour of Presidential system will not bring the needed correctives, but on the contrary make the situation infinitely worse.⁴¹ It may even pave the way for authoritarianism. The parliamentary system, the party held, had played a very important role in strengthening our independence, promoting national integration and above all, in raising the democratic consciousness of the people, not with standing the never ceasing efforts, political reaction and bureaucracy to undermine the system.

39. Bhupesh Gupta, "Constitutional Amendments : CPM on wrong Rails Again" in New Age, July 18, 1976, p.8.

40. Ibid.

41. New Age, 22.2.1976, p.8 (Proposals of the National Council of CPI for Amendments to the Constitution).

4. Move for the Consenbly:-

While reviewing the recommendations of SSC, the Congress units in four States - Punjab, Haryana, Bihar & U.P. passed resolutions urging that the Parliament should be converted into a constituent Assembly,⁴² with representative of states associated with it. It gave a new dimension to the process of constitutional amendments. Also implied in it was the need for deeper and more exhaustive scrutiny of several proposals for changes in the constitution. But the CPI was very prompt in denouncing these manoeuvres.⁴³ The CPI General Secretary (Rajeshwara Rao, described the move as extremely dangerous which would undo and reverse all the gains achieved since 1971 on the question of supremacy of parliament.

The Government was concerned at the practicability of the proposals. Therefore, the Prime Minister rejected the proposal and reiterated her conviction that Parliament has the power to amend the Constitution. The intention of the Congress in bringing about amendments to the Constitution was only to strengthen the sovereignty of Parliament.

42. P. Sood, Politics of Socio-economic Change in India, New Delhi : Marwah Publication, 1978, p.126.

43. New Age, 22.10.1976.

To sum up, the Swaran Singh Committee pinned its faith in the supremacy of the Parliament to bring about the need and changes in the constitution for promoting and safeguarding social progress. It rejected the opinions of the people those who wanted to weaken the supreme power of the Parliament. The basic principles of the Constitution as the SSC viewed, rule out everything that weakens Parliament's supremacy and puts the President or anyone else above it. The Committee found the Presidential system as highly disturbing and bravely called for the discouragement of such preposterous ideas. Thus, with the explicit pronouncement of SSC, nearly three decades of the efforts of the advocates of the Presidential regime come to nought.

CHAPTER - IV

THE DEBATE SINCE 1980's.

A Pause in the Debate - 1977-79.

The end of the Emergency could not be conceived as merely the end of twenty month old authoritarian regime for it was itself an outcome of a static political process that had ceased to perform over a long period of time, producing insecurity at the top (hence the continuous process of concentration of power into fewer and fewer hands) and unrest at the bottom (hence the rising torrent of Protest). It symbolised more an act of desperation growing out of the failure of the system rather than of determined intervention to set the system on a new course.

With the defeat of the congress party in the 1977 General Elections and Janata's rise to power, the demand for a Presidential regime slipped into the background. The Janata Party clearly perceived that the 1977 Elections for the electorate was ineffect, to quote Achin Vanaik, a "single issue referenda"¹ - a choice primarily between democracy and dictatorship.² For obvious reasons, the refusal of the Emergency was followed by that of the Presidential System, which had become identified, in the ruling coalitions mind, with the authoritarian experience that they had just opposed. As for the

-
1. Achin Vanaik, The Painful Transition :Bourgeois Democracy in India, London : Verso Publications, 1990, P.93.
 2. Sharda Paul, 1977 General Elections in India, New Delhi : Associated Publishing House, 1977, P.120.

Congressmen, they had other major worries to resolve than to debate upon the Presidential question.

The Janata Government maintained in the Constitution one of the major constitutional reforms of the Emergency : that related to Article 74. Thereafter the provision that the President was bound to act in accordance with the council of ministers came to stay. However, a new clause was added to it : the President had the right to ask the Council to reconsider its advice, but it was clearly stipulated that he would abide by it after such consideration.³ This adjunct was undoubtedly motivated by the desire to dilute but not hinder the Prime minister's power of decision. A similar motive guided the adoption of the 44th amendment which enjoined the Prime-minister to submit in writing, for the President's signature, the decision of her or his cabinet to proclaim a state of Emergency.⁴ This provision, it was thought, would preclude the repeat performance of the 1975 decision taken personally and secretly by the Prime-minister and signed with great ease and without qualms by the President.

The break-up of the Janata Coalition and return to power of the Congress in 1980, once again brought to the fore the question of

3. Art.74, as it stands today, reads as follows : "There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President who shall in the exercise of his functions, act in accordance with such advice, provided that the President may require the council of ministers to reconsider such advice, generally or otherwise, and the president shall act in accordance with the advice tendered after such consideration".

4. Article 352 (3).

Presidential regime. It was an irony that the debate on the systemic change was floated by no other than the ruling congress party at a time when the political system was relatively stable than the previous years. It was probably, by raising the inspired cry for "a national debate" on the form of Government, Prime minister Indira Gandhi tried to create an impression as if Price-rise, mass unemployment, the deterioration of the law and order situation, rampant corruption in high places and other ills in economic, political and social life were due not to the policies of the Government but to the existing form of Government. In fact, as L.K. Advani pointed out, the debate had been precipitated by the ruling party as a kind of "red-herring" to divert public attention from its own failures.⁵ Against this background the statements either in favour of a change in the system or against it by the ruling party members, opposition members, scholars, constitutional experts and jurists are to be examined.

B

The Contrasting view points in the Debate
since 1980's

The contrasting views of a growing number of people on this issue reflect the merits and demerits of different institutions, their efficacy and capacity to survive the strains and stresses of our Political System. For the purpose of analytical understanding, a reasonable classification of different view points on this debate on the form of Government is attempted. Firstly, one set of view points aim at a change from the present parliamentary to the Presidential form of

6. L.K. Advani in Times of India, 30.11.1980, Sunday Review, P.1

Government. Secondly, another view points attempt to affect certain changes within the system to make the Parliamentary form of Government more effective, notwithstanding their disagreement with the Presidential form of Government. Thirdly, a number of people prefer the parliamentary form of Government to the Presidential form largely on the basis of principles. But they donot advocate any change within the existing system. Lastly, there are some people who call for a change in the perspective than a change in the form of Government.

1. The first forceful advocacy for a systemic change during this period came from A.R. Antulay, the chief-minister of Maharashtra and one of the blue-eyed boys of the Prime-minister Indira Gandhi who declared that "it is high time we discarded the so called Parliamentary system and adopted the Presidential System of Government".⁶ In India, Antulay argued, Parliament is not Sovereign and Supreme because of the provision of judicial review in the Constitution. And the judiciary is not in tune with the feelings of the poor and dountrodden. Secondly, unlike England and America, India cannot have stability. In England there is stability because Parliament is sovereign and in the United states there is stability of the Government because the President cannot easily be removed. Thirdly, economic well being of the people is not possible under Parliamentary brand of democracy because British democracy is an institution of affluent class.⁷

6. Times of India, 16-11-1980, Sunday Review, P.1.

7. Ibid.

The next major Contribution to the debate came from Vasant Sathe. He was of the view that coalitions spell instability and hence there was a need for a change. He emphasized that :

"the issue is not whether we should have Parliamentary form or Presidential form, but whether within the framework of our present constitution, we can have a provision whereby we could ensure stability of the Government at the national level. Once we start arguing as to whether we should have a Presidential form or not we then ask ourselves whether it should be the American or the French variety and then get into the examination of those two systems and thus invariably land ourselves into a barren debate. We have had enough experience now of the working of our own constitution to know where our weakness lies and how to go about to get it right. It is not necessary for us to find analogies or support from other systems".⁸

Vasant Sathe viewed critically the Party system in India and stated that our failure to evolve a two party system at the national level has been the biggest drawback in our democratic experiment. He suggested that one way of avoiding this pitfall is to have the national chief executive elected by the direct mandate of the entire people of the country.⁹ That will, as Sathe held, result in two things (a) ensure stability as the head of the Executive would not then depend on the vagaries of majority or minority in the Parliament; (b) encourage perforce an alternate Party¹⁰, because when one person is to be projected as the leader of the nation, parties will have to

8. Vasant Sathe, Two Swords in one Scabbard : A Case for Presidential Form of Parliamentary Democracy, New Delhi, Nib Publishers, 1989, P.88.

9. Ibid, p.98.

10. Ibid.

come together to project that one man. To put it sharply, what Sathe had been suggesting will encourage stability and emergence of national parties.

Sathe in his thesis proposed the alteration of Articles 54 and 55 to provide for the election of the President by direct universal franchise in order to fit his alternative 'within the framework of our present constitution ; but his views were contrary to the authoritative expositions of our founding fathers in the constituent Assembly. As we have noted, Nehru was opposed to direct election of the President because the executive power was to vest not in the President but in the Cabinet. Sathe's disavowal notwithstanding, the Presidential system is precisely what his amendment would establish.

Another vibrant voice was B.K.Nehru who cogently endorsed the Presidential System as the only way out of the gradually enveloping political and financial crisis suggesting simultaneously the retention of the essentiality of the separation of powers¹¹. He held that a fixed tenure for the executive will make a Government more effective by setting it free from the game of numbers as evinced in support withdrawal from a single party or governing coalition and from defection/destabilization.

He also went to the extent of suggesting direct election of the Chief Executive¹² and a fairly long period of time to enable him to put

11. B.K.Nehru, 'A Fresh Look at the Constitution', Mainstream, Vol. XXX, No.14, January 25, 1992, P.11.

12. B.K.Nehru, 'Is it time for a Change ? Some Thoughts on the Indian Constitution', in Indian Express, 15.2.87.

into effect the policies that he wishes the country or the state to pursue. Another inestimable advantage would be that they would be able to choose their ministers from the best material available without being restricted to those who have the good fortune of being elected. Furthermore, the ineligibility of legislators to occupy ministerial office would automatically stop the intrigue for that purpose which is often their most absorbing occupation and would encourage them to apply their minds to policies and legislation which is their legitimate function.

B.K. Nehru held that there is generally a classical objection to the Presidential System, that there is the Possibility of a deadlock between the executive and the legislature. No doubt this has happened in America but in the conditions we envisage in India - of a fragmented and fractured legislature - this situation is not likely to arise. There are two safeguards against such a danger; one, as in France, is to give the President the power of dissolution and the other is to have the kind of provision, which the French constitution has, of more or less assuming the consent of the legislature for a wide variety of legislation and requiring in others a positive act of rejection rather than failure to approve.

So radical a provision might, however, give colour to the second objection which is that presidency of the kind envisaged might lead to dictatorship. A safeguard against this happening would be to provide that a President and Governor could not succeed himself for a second term.¹³

13. B.K. Nehru, Thoughts on the Indian Discontent, Delhi: Allied Publishers 1986, pp. 8-9

To put it precisely, B.K.Nehru has attempted to sketch the outlines of a constitution which in his view, should replace the present one. His proposals, though radical, would make an earnest attempt to plug the loopholes of the present Parliamentary form of Government.

Another notable exposition in favour of the Presidential system came from M.C.Chagla. He said : with the adoption of the Presidential System, the scramble for office will also go, because a seat in the legislature will not lead to the cabinet. The party system will become considerably modified and we will have the legislators attending to legislation and matters of policy rather than indulging in abuses. Chagla suggested for a structural changes in the functioning of our Parliamentary System¹⁴ - the eradication of corruption, the electoral reforms which ensure the return of proper candidates to the legislature, the prevention of defection and a fair and equitable relationship between the centre and the state - or else, the present system will break down, as he predicted. For this purpose, he called for a national convention to debate over the issue and decide what should be done to make the Parliamentary System work better or, if necessary, completely overhaul the system and replace it by one which is more suited to our genius and also take into account our national failings and defects.

N.A. Falkevala had criticized Antulay's paper during the Emergency on the ground that it, would have, in effect, destroyed democracy.

14. Views of M.C.Chagla as incorporated in Anirudh Prasad, Presidential Government or Parliamentary Democracy, New Delhi : Deep & Deep Publications, 1981, Appendix 1.A, P.119.

However, he expressed his preference for the Presidential system "provided a fair balance of power between the executive, legislature and the judiciary is maintained".¹⁵

In expressing himself in some detail on the subject, Palkhivala focused on the four advantages in having the Presidential System.¹⁶

First, it enables the President to have a Cabinet of outstanding competence and integrity, since the choice is not restricted to the Parliament. Secondly, since the cabinet ministers are not elected, they are not motivated to adopt cheap populist measures which are so costly to the country in the longrun. Thirdly, the Presidential System permits cabinet ministers to be absorbed in the job of governing the country instead of wasting their time and energy in needless politicking. Fourthly, it would stop defections and desertions on the part of the legislators, which are in most cases motivated purely by the thirst for power and hunger for office.

In an absolutely unequivocal language, Palkhivala favoured the Presidential form of Government and said that it is specially tailored to suit our own requirements. To him, the crucial point about any Presidential System is that it must be one which is in total conformity

15. Quoted in A.G.Noorani, The Presidential System : The Indian Debate, New Delhi : Sage Publications, 1989, P.34.

16. N.A. Palkhivala, 'Presidential System : A Question of Timing', Hindustan Times, 8.1.81.

with the philosophy of freedom and liberalism underlying our constitution. In sum, it must be the very anti-thesis of an authoritarian state.

Palkhivala raised a genuine question about the timing of the debate.¹⁷ To him, the debate on the Systemic change is absolutely irrelevant at a time when we are assured of a stable Government with the Congress (I) securing majority seats in both the Houses of Parliament. This kind of debate at this juncture, he added, would divert attention from the urgent and enormous problems facing the country today.

R.K.Hegde, another notable exponent of the Presidential System, put the whole debate in a different perspective. He strongly felt that the Presidential System would help strengthen our federal structure¹⁸ ensuring decentralization and delegation of power to the states. Reiterating his commitment to federalism, Hegde emphasized on the direct election of the Executive. He said :

Direct election of the President could project leaders who represent the entire country unlike the Prime-minister representing just one constituency or enjoying the confidence of just a single party. A directly elected chief executive would transcend regional, Communal

17. Ibid.

18. Telegraph, 21.11.1986.

and caste divisions. Therefore, he will not only be the symbol but a true representative of the entire nation. He will also not be subjected to the day-to-day pulls and pressures of Party politics, legislators and others. The term of office would be secured constitutionally and this would lend a lot of stability. Limiting the term of the President to a definite period would also have a salutary effect.¹⁹

However, Hegde was conscious of certain flaws in the Presidential System. He apprehended that since democratic institutions are less developed in India, the Presidential System could result in greater centralization and possible abuse of power. Simultaneously he was convinced that the present Parliamentary System has not been adequate. Therefore he urged for a critical appraisal of the present system and called for a national debate.

It is interesting to note that while Hegde linked the Presidential System to decentralization, L.K.Advani linked it to greater centralization. In his Presidential address at the ninth National Council session of the BJP, he suggested the establishment of a commission on the Constitution to examine²⁰:

(1) The suitability of the Presidential System as a device to contain centrifugal tendencies; (2) The Political consequences of the

19. Times of India, 18.1.1987.

20. Quoted in Vasant Sathé, Two Swords in one Scabbard, New Delhi : Nib Publishers, 1989, Annexures, P.151.

first past of the post system of elections which we have accepted; and the impact the adoption of proportional representation of a mixed system would have on making India a real participatory democracy;

(3) The need to redraw the political map of India with the requirements of development and administration as the Principal consideration, and

(4) what could contribute more to the strengthening of our nation state - a centralized federal polity as we have at present, or a decentralized unitary set-up.

Later, Advani said that he had not advocated the Presidential System. But he had certainly de-frozen the Party's resolute opposition to the idea and he had called for a national debate to have a second look on the constitution.²¹ He held that the founding father's preference for the Parliamentary system was predicated upon the hope that in the course of time a two party system would emerge. However he stated that his party had not worked out the essentials of a new system.

2. The supporters of the Parliamentary System of Government have put forth certain arguments to drive home their points and simultaneously exposed the loopholes of the Presidential System. Commenting on this subject A.G.Noorani argues that the Parliamentary System is better equipped to deal with the Problems of current Indian political requirements than a change would. To him, the revitalization of democratic institutions can only able to ensure both stability and accountability.²²

21. Telegraph, 20.1.1987.

22. A.G.Noorani, The Presidential System : The Indian Debate, New Delhi: Sage Publications, 1989, PP.99-102.

For this he suggested the reform and revitalization of Party System in India.

S.R.Sen while recognising the non-feasibility of a Presidential System in India held that the present Parliamentary System need to be reformed in order to make it more stable, responsible and responsive to the problems of important sections of our diverse society. The modification of the present trend towards extreme confrontation by introducing features which will help promote a co-operative approach, has to be done within the basic structure of our constitution through consensus. This can be done, Sen added, by suitably amending only three Articles of the Constitution, i.e., Articles 74, 75 and 164 by a two-third majority in both the Houses.²³ These amendments would help our present constitutional system move half way towards the co-operative system that obtains in Switzerland, producing some very beneficial results.

The CPI(M) leader Harkishan Singh Surjeet commenting on the subject said that his party (CPM) stands for a change in the system, but not in the sense it was debated, i.e. a change from the present Parliamentary to the Presidential System. The change for which the CPM stands is a basic change in the socio-economic structure.²⁴ However,

23. S.R.Sen, "Reforming our system of Government", in Economic and Political Weekly, March 2-9, 1991, P.486.

24. See the views of H.S. Surjeet incorporated in Vasant Sathe, op.cit. annexures, p.149.

Surjeet expressed his desire in defence of the present system as against the kind of change that is being advocated. He categorically pointed out that it is not CPM's position that no change can be made in the constitution if, on the basis of experience, some changes are needed to strengthen the democratic structure.

Another significant contribution to the debate came from E.M.S. Namboodiripad who expressed his dissatisfaction with the present Parliamentary system but did not hold the view that the Presidential System is the effective remedy for the malady. In fact, he did not give much importance to the constitutional set up. To him, the philosophical political outlook that guides the socio-economic policies of the Government is the underlying cause of the failure of the system.²⁵ By bringing basic changes in the Government's policies we can solve our problems. Namboodiripad held that because the Parliamentary Cabinet system helps the process of fighting to bring about the basic changes, it is preferable to the Presidential System.

Aghok Mitra while favouring the Parliamentary form of Government suggested that a decentralized structure of the Polity and economy is an imperative necessity to tackle the multiple problems facing the country. To him, the Presidential form of Government would further

25. E.M.S. Namboodiripad in Times of India, 30.11.80.

the centralizing tendency of our polity and would in no time degenerate into an oligarchy or worse. To ensure decentralization, he added, the administrative, fiscal and legislative powers have to be drastically redistributed and constitution has to be redrawn accordingly.²⁶

3. Paul R. Brass made an interesting analysis of the credibility of India's Parliamentary System in the context of federalism. He argued that the predominant tendencies in the development of India's federal system have been towards pluralism, regionalism, decentralization and interdependence.²⁷ There also exist strong forces in favour of centralization. But he strongly held that the centralization and consolidation of power in India's federal parliamentary system are bound to be ephemeral unless the institutional form of the system is changed to a Presidential type.²⁸ But this option holds great potential dangers for the future stability and integrity of India, as Brass pointed out. The consequences of the adoption of a Presidential form of Government are more problematic, as there are several possible forms that the system may take. He added that a Presidential system of the French pattern, adopted with a view toward centralizing power by the centre

26. The views of Ashok Mitra as incorporated in Arirudh Prasad. Presidential Government or Parliamentary Democracy, New Delhi : Deep & Deep Publications, 1981, Appendix I.C, P.125.

27. Paul R. Brass, Pluralism, Regionalism and Decentralization Tendencies in contemporary Indian politics in A.J.Wilson & D.Dalton (ed), The States of South Asia : Problems of National integration, New Delhi, Vikas Publishing House, 1982, P.255.

28. Ibid. P.259.

would probably be resisted by the strong states. So there is no 'solution' to the conflicting drives towards centralization and decentralization of Indian Polity. "Adoption of Presidential System of American Pattern", to quote Brass, "might free the system from the uncertainties and instabilities associated with the cycle of centralization and decentralization, but it will not end the struggles between the centralizers and decentralizers".²⁹

It would be sheer injustice to deal with a debate of such importance without giving adequate treatment to justice P.N.Bhagwati's view. He was of the opinion that it is not the system which is at fault. Ultimately the success of a system depends on the men who operate it. Bhagwati preferred the Parliamentary form of Government because he thought it would ensure greater accountability than in the Presidential form for, once the president is elected for five years he is just not accountable to any one. He stated that the survival and well being of democracy dependend not on the form of Government, but in the strength of such democratic institutions as the judiciary, the legislature, the trade unions and the Press.³⁰ "We have to protect these institutions if we want to save democracy from erosion", he said.

Another powerful criticism against the Presidential System came from the noted constitutional expert V.M. Tarkunde. He clearly opined

29. Ibid.

30. The views of P.N.Bhagwati as incorporated in Vasant Sathe, op.cit. Annexures, PP.158-159.

that the Presidential form of Government is less democratic, both actually and potentially, than the cabinet form of Government. Stretching the same argument further he maintained that, if democracy implies the diffusion and decentralization of power - the Presidential form of Government, which concentrates all executive power in the hands of one person, is relatively more undemocratic than the cabinet system. The most objectionable point about the Presidential form of Government, according to Tarkunde, is the motive as well as the opportunity that it would provide to a President in an underdeveloped country for establishing a dictatorial regime. Putting this logic in Indian context, he said that an Indian President would have a better opportunity to establish a dictatorial regime.³¹

Y.B.Chavan thought that the Parliamentary System of Government suits the peculiar conditions in our country. And the failures of our system, he conceived to be an intrinsic part of each and every system at least in the early years of its growth. He held that the Presidential system has the danger of developing or degenerating into a dictatorial system. It will also aggravate the divisive tendencies in a pluralist society like ours.³² Chavan said that to bring in the Presidential System, our present constitution will have to be completely dismantled and rewritten. And in this case there is a possibility of

31. V.M.Tarkunde, "objections to Presidential System in Illustrated weekly of India, 27.8.1978, F.13.

32. Y.B.Chavan in Times of India, 30-11-1980.

instability and it may give rise to revolutionary conditions. Thus the proposal has grave implications for the country.

4. Putting the debate on a different perspective Rajni Kothari had parted company with the formal school of political science that had focussed on the constitutions and on formal institutions like the executive, legislature and the judiciary. In laying out a new model of democracy - away from the west minister model which we borrowed from the British, Kothari had dwelt at length on the institutional dimension than on any other³³ and he had done this mainly by reference to his view that in mapping this institutional terrain of a competitive polity the party system played a crucial role that must take on a grass roots organization and act as representative mechanism which mediate between the Government and the people.

Kothari had developed at great length the theme of diffusion and decentralization and wide acceptance of values and norms, rules of the game and shared understanding. The whole edifice of democratic norms and the widespread belief and faith in the democratic process, Kothari pointed out, were crucial to the basic enterprise of building a new India.³⁴

Clearly Kothari's model aims at providing a sense of autonomy and power to the various regions, social groups and political parties

33. Rajni Kothari, Politics and the People : In search of a Humane India, Vol2, Delhi: Ajanta Publications, 1989, P.278.

34. Ibid., Vol.2, P.XII.

and on that basis rebuild the consensus that has been badly shattered due to systematic erosion during the last few years of institutional framework of the polity - of the party system, of federalism of local self Government, of the educational system and of autonomous organizations and voluntary agencies.

Notwithstanding the relative merits and demerits of the different proposals on this subject, the movement towards a Presidential regime has bypassed the stage of individual commitments and has become a factor to be taken into account in the Indian politics. However, it is noteworthy that till now, no detailed scheme on the Presidential Government had ever been propounded, or so widely supported. These schemes were at best a reaction against the working of the Parliamentary form of Government. Thus, after a few years in the wilderness, the cause of the advocates of a Presidential regime has again gathered momentum though in a subtle way, and is waiting its hour of triumph in the gradually but constantly deteriorating climate of instability affecting the Indian polity.

C

Political Instability and the Proposal
for the National Government

It must be remembered that Parliamentary democracies are essentially party oriented systems of working of Governments in which the formation of Government is dependent on a clear mandate from the people. But unfortunately in India political parties have increasingly failed to secure this clear popular mandate and thus a coalitional culture have been crept into the Indian Parliamentary system. More

so, since 1989 Elections for the Ninth Lok Sabha, it has almost become impossible for the multi-party system in India to avoid minority Governments in future. This was also the thrust of President R.Venkatraman's Republic Day broadcast in 1991. He said :

"Numerous examples can be cited of minority or coalition Governments working with stability and success in different parts of the Globe. We in India may have to adapt ourselves to such a situation if it arises and learn to work together in common cause, shedding in the process rigid party positions. In a multiparty political system, we may not be able to avoid coalition Government in the interest of the nation."³⁵

Within one year India had witnessed both minority and mini minority Governments of V.F Singh and Chandra Shekhar respectively at the centre and alliances and coalitions in various states proved extremely temporary. Explaining this phenomenon, Bhambhri described this period as an "era of weak Governments".³⁶

Indian politics is hence moving towards a period of considerable volatility and instability. It has been fast approaching a period to what S.M.Lipset and Stein Rokkan have referred to as a period of "freezing hypothesis"³⁷, a period in which no political party could be in

35. Quoted in S.R.Sen, 'Reforming our system of Government', Economic and Political Weekly, March 2-9, 1991, P.485,

36. C.F.Bhambhri, Elections 1991 : An Analysis, Delhi : B.R., Publishing Corporation, 1991, P.39.

37. Quoted in K.K.Fanda, "Politics of instability and the role of the President in the Indian Parliamentart model", in Teaching Politics, Vol. XVII, No.1&2, 1991, P.58.

a position to claim an overall majority and would thus inevitably throw what is known in common parlance as "hung Parliament".

As the major parties start losing their central role in the political life of the state system, it is the President who would be required to play the vital role of a magic link between various institutional interactions, as a "space-setter of the democratic standard".³⁸ Thus it would be necessary at this stage to talk about the changing role of the institution of the President not only as an institution to uphold the basic spirit of Indian democratic republic but also as an institution to help in sustaining the belief of the common man in a democratic set up that they alone are the guardians of the Rule of Law to which the people as well as the institutions of our Parliamentary System of democracy are totally and unequivocally committed.

Since early 1991 the office of the President has been subjected to a lot of controversy. President's invitation to Chandra Shekhar to form the ministry after the fall of the V.P.Singh Government, his reluctance for seven days from March 6 till March 13, to dissolve the Ninth Lok Sabha as advised by the incumbent council of ministers and subsequent constitutional developments in Tamil Nadu and the opposition Parties, warning to the President that they would not co-operate in passing the crucial bills in the Parliament if the former does not dissolve the Lok Sabha and order fresh elections, are some of the unhealthy developments that have forced the Presidency to be brought into public

38. Ibid.

scrutiny. The National Front and the Left parties came down heavily on the role of the President and criticized him as a 'Part of Constitutional Perversity'.³⁹

It is this period of Constitutional crisis, that the proposal for National Government has been suggested. Vasant Sathe in his comprehensive proposal for a national Government, suggested that in the national interest there could be a national presidium consisting of Jyoti Basu, V.P.Singh, L.K.Advani, Chandra Shekhar, and Rajiv Gandhi to direct the working of a national council of ministers headed by Dr. S.D.Sharma as the Prime Minister.⁴⁰ The Primary task of the National Government, Sathe added, would be to strengthen the edifice of our democratic nation by restructuring and strengthening the four main pillars, namely, (i) economic institutions; (ii) political institutions; (iii) social institutions; and (iv) administrative institutions.⁴¹ His moot point is that the National Government must be free from the controversial internecine strife based on mutual rivalry which results in a waste of national energy. It calls for the leaders to overcome their personal and Party Prejudices, bias and egos, and make earnest endeavour to extricate the country from the economic distress

In his advocacy for a National Government, Sathe wanted to convert both Houses of Parliament into a new constituent Assembly with the objective of taking a fresh look at the Constitution.

39. Times of India, New Delhi, 1-2-1991.

40. Vasant Sathe, National Government: Agenda for a New India, New Delhi: UBS Publishers, 1991, P.150.

41. Ibid., P.25.

A number of people have dwelt upon such proposal. Deepankar Ghose, while suggesting a structural change for a Presidential régime in India said that the interregnum before the change should be a national Government of all political Parties at the centre and also in the states⁴² at least for four years to plug the loop-holes of our present Constitution. The National Government would provide, to quote Ghose, 'a breathing space'⁴³ at a time of economic uncertainties created by the spectacle of tottering Governments at the national level.

The proposal for setting up of a National Government has a series of drawbacks. The all party Government with no organizational network and ideological commitment to certain broader goals would tend to collapse within a short time. The mutual bickerings among the leaders of different parties can not altogether be ruled out. Moreover, the National Government establishing a nominated constituent Assembly and ruling without elections and without an elected Parliament could be disastrous for the healthy functioning of a Parliamentary form of Government. However, the Political consensus is very essential today without which the governance of India is not possible. It is not possible to arrive at a consensus where every political party is projecting almost diametrically opposite view points and this has been witnessed during the current phase of politics. Such a stage in politics is characterized by instability and immobilism and it is

42. D. Ghose, Appeal to President : Presidential system only way, Calcutta, Firma KLM Private Ltd., 1991, P.119.

43. Ibid., P.121.

happening in India. In this fluid and uncertain political climate it is all the more interesting to observe as to how the demand for a presidential regime will take its course in the future time to come.

CONCLUSION

The demand for an exhaustive reassessment of the provisions of the Indian Constitution has been echoed with varying degrees of assertiveness for well over two decades. The debate has gained increasing momentum, especially in the last few years, in the context of political scenario triggered off by the eighth and ninth general elections. The basic issues that have been highlighted by the people who have been consistently stating that a second look at the Constitution is long overdue, can be classified under two broad heads. In the first place, independent India's experience with parliamentary democracy has failed to effectively mirror the aims and aspirations of the people.¹ Secondly, the four decades of the working of Indian democracy has demonstrated an increasing at times alarming - centralization of power inevitably resulting in the stifling of local initiative. Such a concentration of power is believed to strike at the very foundations of democratic governance. The manner in which the federal system has been functioning is indicative of the hopelessly inadequate autonomy enjoyed by the State Governments.² Thus, the spotlight of attention in any debate on the structural changes in the Indian political system has invariably been on the working of the Indian Parliamentary System on the one hand, and the dynamics of Indian federalism on the other.

The present debate on the practical utility of the existing constitutional arguments needs to be discussed against the backdrop of the severe stresses and strains that the Parliamentary System has

1. See B.K.Nehru, "A Fresh Look at the Constitution", Mainstream, Vol.XXX, January 25, 1992, PP.9-18.

2. Ibid,,PP. 15-16.

been subjected to in the last four decades. A natural fall out has been the apparent - even growing - disenchantment in certain sections with the parliamentary form of democratic governance.

The most strident attack on the Parliamentary System has come from the people who argues that the system has created and perpetuated an atmosphere of political instability.³ The 1989 and 1991 general elections of the Lok Sabha ushered in an era of political instability, triggered off by the inconclusive nature of the electoral verdict. Under the Parliamentary System, as it operates in India, the political strategies and alliances that emerge in the post-election scenario, invariably donot have the stamp of popular approval.

But the analyses of the political context of the 1980's revealed that it was not the question of political instability which furthered the debate on the systemic change rather it was an outcome of the misrule of the Congress Party at the Centre. Though it was thought to be a "synthetic debate" prompted by the ruling congress party, yet a number of thinking people have dwelt upon this debate. The advocates of Presidential System, while expounding on the failures of the present system, have not tried to explain how the system has failed and where it has failed⁴? For them, the success of the Present system is negligible vis-a-vis the failure. Moreover, they were not able to project a clear picture about the types of Presidential form to be suitable in Indian Context.

3. Vasant Sathe, Two Swords in one Scabbard, New Delhi: Nib Publishers, 1989, P.92.

4. See The views of H.K.Surjeet as incorporated in Ibid., pp. 151-152

However, it needs to be stressed that the arguments that are being marshalled to defend the case for a change from the Parliamentary system to the Presidential, on closer scrutiny are not merely limitations of the Parliamentary form of Government, but the inherent problems of a nascent democracy. The aberrations that have been experienced in the functioning of the Polity, are the problems that confront any democratic political system that is struggling to gain firm roots.

The crisis that the Indian Polity is today grappling with is essentially related to the attempt to democratize - to a fuller extent the Political and Social Process. Thus, a shift to the Presidential System may not necessarily be the Panacea for the systems problems. Such a change could infact accentuate and highten the tensions. The Presidential System requires stable and vibrant democratic foundations and strong democratic values. In its absence, the Presidential System could well pave the way for Presidential dictatorship, a trend only too obvious in several Afro-Asian nations. By adopting the Presidential System we may be unwillingly opening the floodgates for change, thus permitting the inflow of a variety of forces and Pressures, over which we could have little control.

The solution to the present crisis lies in recognising the inherent utility of the Parliamentary System on the one hand, and making the necessary modifications in its working - in the light of four decades of experience - on the other. The changes that have become urgently necessary are to be sought in five spheres :

(1) initiation of major electoral reforms; (2) reforming our Party System; (3) ensuring the growth of and respect for Parliamentary norms and Conventions; (4) strengthening Parliamentary Control over Executive through the Committee System; and (5) developing norms to be followed while forming Governments.⁵

1. The Pressing need for electoral reforms has been recognized by various Political Parties, academicians and even by the Election Commission. Unfortunately, little has been done in this regard. A major lacuna in our electoral system is that the electoral verdict is not effectively mirrored in the composition of the legislature. Winning an election by Polling the highest number of votes by a candidate, as the present electoral practice permits, resulted in an alarming gap between the percentage of votes polled and the percentage of seats won by various political parties.

In view of this glaring anomalies, there is a pressing need to replace the system with a more suitable one. In this regard the recommendations of the Tarkunde Commission for the adoption of the "Partial list System", according to which only candidates securing more than 50% of votes polled are declared elected, is welcome.

Another electoral reform that needs to be implemented is to provide that no candidate can contest from more than one constituency in an election. Moreover, the increasing use of money and muscle power in the election has grown in an unmanageable proportion and thereby manipulating the electoral verdict in favour of one Party or the other. And this can be tackled only by reforming our electoral laws.

5. S. Shastri, "Indian Constitution: Is a Fresh Look Really Necessary?" Mainstream, Vol XXX, May 16, 1992, P.10.

2. Reform and revitalization of the Party System is indispensable to any kind of proposal to strengthen the Parliamentary democracy in India. In fact, a time has come to pass a law to regulate our Party System. First, a Political Party should be registered on the basis of its constitution. Second, it should be the legal responsibility of every Political Party to hold its annual elections on the basis of its membership. Third, Parties should reveal their sources of funds.

3. Efforts also need to be made to ensure that the right Parliamentary norms and conventions evolve and are respected. The successful working of the Parliamentary System largely depends upon the capacity of the Political Parties to pool their strength and energies to evolve a consensus on the norms and conventions to be observed. A vigilant Public opinion and alert mass media could also play a useful role in ensuring adherence to these conventions.

4. The effectiveness of the Parliamentary System can be considerably enhanced by strengthening and streamlining the mechanisms of Parliamentary control over the Executive. The accountability of the Executive to the Legislature today appears to be remote and hence the chain of Parliamentary Control needs to be revitalized and the dynamics of Parliamentary Surveillance made operationally Purposive. The members of Parliament should give serious thought to the question as to whether the creation of Parliamentary Committees would help in ensuring greater accountability.

5. The credibility of the Parliamentary System can also be restored by developing norms that need to be followed at the time of the formation of Governments. In recent years, we have been witnessing a situation wherein a Political Party/alliance forms the Government with the help of "unconditional Support" of other Political Parties. The Political Parties that offer this support to the ruling Party weild enormous authority without any responsibility. That's why a norm needs to be developed that if a Party wishes to offer support to a ruling coalition, it must do so by entering the Government and not by supporting it from outside.


While the above mentioned changes are crucial for strengthening the Parliamentary System and restoring Public confidence in the suitability of the system for India, corresponding adjustments also need to be made in the working of the federal system.

The federal arrangement that was being envisaged by the Constitution created a federation with a strong centre. Even while tilting the power equation in favour of the Centre the constitution provided for specific areas of influence and operation for both the centre and the states. However, an increased degree of centralization has been experienced in the working of the federal system during the last four decades. The working of the Indian political system, the attitudes of the political leaders, especially those who weilded power at the Centre and the stark realities of Indian politics, have all contributed to the process of over centralization. A natural by-product of this development has been the increasing demand for state autonomy.

Tensions in federal relations have basically been caused by the manner in which the Central Government has misused its authority . The Politicization of the Governor's office, the blatant misuse of Article 356 and the increasing dependence of the states on the Centre in the financial sphere have all heightened the tensions.

What the system today needs is a return to and acceptance of the federal spirit as enshrined in the constitution. Attention also needs to be focussed on the recommendations made by the Sarkaria Commission. These recommendations, if implemented in letter and spirit, would help harmonise the relations between the centre and the states . The Inter State Council could play a pioneering role in effecting harmony in federal relations.

Any attempt to initiate the fundamental changes in the Political Structure by initiating major amendments in the Constitution, appears to be neither practical nor feasible in the present political context.

 To set the Political System back on the right track, it is imperative that the reasons for the deviation be clearly identified. What the system needs today is the sincere implementation of certain reforms within the framework of the Present Constitution. The Political Structures and institutions created by the constitutions have not lost their relevance today. The fault obviously lies in the manner these institutions were manipulated for Petty Political ends.

A fresh look at the Constitution, if at all necessary, should only be to remind those who operate the system of the rationale, logic and philosophy that guided the Constitution makers in creating these Political structures. A structural remedy can never be a solution for problems created by operational incompetence.

APPENDICES

APPENDIX - I

- a) Excerpts from Nehru's Speech in the Constituent Assembly on the Report of the Principle of the Union Constitution:
(21 July 1947), C.A.D., vol.IV, pp.713-14.

Now Sir, one thing we have to decide at the very beginning is what should be the kind of governmental structure, whether it is one system where there is ministerial responsibility or whether it is the Presidential system as prevails in the United States of America; many members possibly at first sight might object to this indirect election and may prefer an election by adult suffrage. We have given anxious thought to this matter and we came to the very definite conclusion that it would not be desirable, first because we want to emphasize the ministerial character of the Government that power really resided in the Ministry and in the Legislature and not in the President as such. At the same time we did not want to make the President just a mere figure-head like the French President. We did not give him any real power but we have made his position one of great authority and dignity. You will notice from this draft Constitution that he is also to be Commander-in-Chief of the Defence Forces just as the American President is. Now, therefore, if we had an election by adult franchise and yet did not give him any real powers, it might become slightly anomalous and there might be just extraordinary expense of time and energy and money without any adequate result. Personally, I am entirely agreeable to the democratic

procedure and I greatly fear that if we have a wide scale wastin^f of the time, we might have no time left for doing anything else except preparing for the elections and having elections. We have got enough elections for the Constitution. We shall have elections on adult franchise basis for the Federal Legislature. Now if you add to that an enormous Presidential election in which every adult votes in the whole of India, that will be a tremendous affair. In fact even financially it will be difficult to carry out and otherwise also it will upset most activities for a great part of the year. The American Presidential election actually stops many activities for many many months. Now it is not for me to criticise the American system or any other system. Each country evolves the system of its choice. I do think that while there are virtues in American system, there are great defects in that system. I am not concerned with the United States of America. I am concerned with India at present and I am quite convinced in my mind that if we try to adopt that here, we shall prevent the development of any ministerial form of Government and we shall waste tremendous amount of time and energy.

b) Excerpts from Dr. B.R. Ambedkar's Speech in the Constituent Assembly on the motion on the Draft Constitution expounding the difference between the Presidential and Cabinet Systems.

(4 November 1948, C.A.D., Vol.VII, pp.32-33.)

"In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union.' The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common

between the forms of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential System of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Minister. He can do nothing contrary to their advice nor can he do any thing without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions - (1) It must be a stable executive and (2) it must be responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a Non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from a point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary

Executive being more dependent upon a majority in Parliament becomes more responsible. The Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through questions, Resolutions, Non-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system is it is felt far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability".

APPENDIX - II

Text of the document in favour of a presidential form of regime, which circulated within the Congress Party during the Emergency, Published by "Mainstream", New Delhi, Vol.14, no.18, 3.1.1976, pp. 7-9.

The present system of government, most will agree, has not come upto the expectation of the common man of our country. Some variation is, therefore, warranted in the light of the experience of the working of democracy in our country during the past twenty-five years.

The pattern, consequently, may have to be changed if the ideal of development of the common man, socially, educationally, culturally and economically within the framework of democracy is to be achieved. Towards this end, among other things, the unobstructed working of the executive, in the interest of the people within the full period of the mandate that they give to the executive at the time of the free and fair elections, must be ensured; so that the nation's Chief Executive Officer puts the requisite authority to the fullest use of the nation without let or hindrance, fear or favour, according to his wisdom and conscience.

The time of the Chief Executive should not be allowed to be frittered away in fruitless debate and discussion and in attending to comparatively less important matters at the expense of major and

vital decisions affecting the people as a whole, both at the national and also at the international level. Having obtained, therefore, the mandate of the people, and having been consequently clothed with the necessary powers and authority, all the time that is at his disposal, is the property of the nation to whose service it must be fully devoted.

Following are some of the Suggestions to achieve the above objective :

1. The President should be the Chief Executive of the Nation, as in the USA, but whereas in the USA the President is elected by those elected-that is, by electors-by each State for the purpose (and hence indirect election to some extent), our Constitution should provide election of our President directly by voters at the time of Parliamentary poll; two boxes to be provided - one for a Lok Sabha candidate and one for a Presidential candidate. The term of office of the President should be six years. Thus, our Chief Executive will get elected by tens of millions of voters.

- II. The Vice-President should also be elected for six years; but in the manner as our President is today elected, that is, by MPs and MLAs. Such wider electorate-though indirect-is necessary even in the case of the Vice-President because, it is he who has to take over the functions of the President, in case of mid-term vacancy in the Presidency. Besides, he may exercise all powers and authority as may be delegated to him by the President from time to time.

- III. The term of the Lok Sabha shall be for six years and co-extensive with the President and the Vice-President.

- IV. Since our President is thus elected by a popular direct mandate, he should, in the scheme of things, enjoy more authority and powers than even the US President.
- V. The President shall appoint a Chairman and other members of the Council of Ministers, half of whom shall be the members of Parliament. Each Minister will be placed by the President in charge of one or more portfolios. The Council of Ministers shall be responsible and accountable to the President. The Chairman of the Council will preside over the meetings of the Cabinet unless the President summons a meeting in which case the President will preside.
- VI. The Vice-President will preside over the Rajya Sabha. The Lok Sabha will elect the Speaker from among its Members. The Speaker will preside the meetings of the Lok Sabha.
- VII. The President can thus establish a liaison with the Legislature; and unlike in the USA, the Legislature will not be too independent of the Executive.

"Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of either House, any joint Sitting of the Houses, and any committee of Parliament of which he may be named a Member, but shall not by virtue of this Article be entitled to vote."

- VIII. The President, in consultation with the Council of Minister, shall make all appointments of the Justices (Judges shall be so designated) of the Supreme Court including its Chief Justice. The appointments of the Judges (not Justice) of the High Courts including their Chief Judges (not Justice) of the High Courts including their Chief Judges (not Chief Justices are there should be only one Chief Justice) shall be made by the President in consultation with the Council of Ministers of the States concerned. All the powers that are exercised by the US President and all those today exercised by the Union Cabinet will be exercised by the President. The President may, however, consult the Council of Ministers in such matters and in such manner as he may deem fit.
- IX. The Ministers who are Members of Parliament can initiate any legislation including Money Bills and the Constitutional Amendments. The business in the House will be transacted as today and the Chairman of the Council of Ministers can, on behalf of the President, inform the Houses on the affairs of the State. The President may, once in every year, give to the Joint Session of Parliament information of the state of the Union.
- X. There shall be a Superior Council of Judiciary. The President shall be the Chairman of the Superior Council of the Judiciary with the Chief Justice of India as its first Vice-Chairman and the Minister for Law and Justice as the second Vice-Chairman. All administrative matters in the Judicial field shall be decided

by this Council. Besides the Chairman and the two Vice-Chairman, this Council will consist of two Justices of the Supreme Court to be elected by all the Justices of the Supreme Court by secret ballot from among themselves and two Chief Judges from among the various State High Courts to be elected by secret ballot by all the Chief Judges; four persons to be elected by Parliament in manner prescribed by law; and four persons to be nominated by the President. Besides the ex-officio members, the term of other elected members shall be for six years. The President by virtue of his office as the Chairman of the Superior Council of the Judiciary can punish for his own contempt. Besides deciding administrative matters pertaining to Judiciary, this Council or its Committee for the purpose shall be deemed to be the authority to interpret laws and the Constitution; as also to determine the validity of any legislation. The decision given by this Authority shall be final and binding on all Courts. Thus the Court's jurisdiction to decide these matters is automatically taken away. The Supreme Council or a Committee thereof, appointed for the purpose, will review the conduct of the Justices and the Judges of the High Courts and may recommend removal or even dismissal of any of the Judges/Justices to the President. It will review the performance of Judges. It will also hear complaints against Justices and the Judges or shall suo moto inquire. The council or its Committee will ensure the discipline of these Judges, their independence and the administration of the Courts⁸.

XI. Thus, our President should be armed with all the necessary powers and authority. Even though the French President under the 1946 Constitution is not directly elected by the people, he enjoys great powers and even his appointees—the Council of Ministers too enjoy considerable powers.

TH-4193



APPENDIX - III

Why not a Prime Minister elected by the People ? Parliamentary Democracy Reconsidered.

Rajni Patel
President, Bombay P.C.C.

Published in Socialist India, Vol.12, 27.3.1976, PP. 10-12.

From the time of recorded history India has had a tradition of some form of democracy. Even under absolute kings or emperors of ancient dynasties, there was great concern for popular wishes and popular interests, and respect for public opinion and public guidance. The administration was carried out by a Council of Ministers and a body of advisers. Republics also flourished in this land from time of Manu.

From Manu to Kautilya through the Buddhist era, those in charge of governance were enjoined to associate public opinion and interests in the conduct of national affairs. The People's interests were paramount. Even during the Moghul era, the emperors wisely kept public welfare as their prime concern and offered the fullest opportunities to their humblest subjects for the redressal of wrongs.

All this was in addition to the widespread democratic institutions that prevailed at the village and grassroots level and continued right down to recent times.

Western Democracy

It is fashionable to belittle this democratic tradition by applying the yardsticks of modern Western democracies. Western democracy is not the last word on the subject nor is it something which appeared *suo moto*.

It was the ingrained democratic tradition in our peoples through their long history that made our great leaders lay stress on democracy during our liberation struggle. For, both these had been denied to us during the two centuries of colonial rule. British rule destroyed the popular democratic institutions that still flourished at the grassroots. And yet, the compulsions of the freedom struggle forced the British to reintroduce some representative institutions in the country. By the Government of India Act of 1919, they projected "a faint picture of an enfeebled parliamentary system. But at the same time, they tried to divide the Indian people on communal lines".

Out of the opposition of leaders like C.R.Das to this mischief implied in the accent on communalism grew our emphasis on secularism. Very soon, secularism became one of the great foundations of the struggle for freedom led by the Indian National Congress.

The Motilal Nehru Committee Report of 1928 was the first attempt by the Indian people to frame a Constitution for free India. The Nehru report fully reflected a desire for the parliamentary democratic system.

The Government of India Act of 1935 accepted the principle of a federal structure and a parliamentary system at the provincial level but the Congress denounced this Act on the ground that it did not represent the will of the people and that it was meant to facilitate and perpetuate the exploitation of the people of India.

Pandit Jawaharlal Nehru called for a Constituent Assembly elected on the basis of adult franchise to draft a new Constitution for India.

In 1938, the Congress under Netaji Subhash Chandra Bose, raised the demand for a Constitution framed by the Constituent Assembly.

Even the historic "Quit India" resolution of August 8, 1942 reiterated the demand that the provisional government frame a scheme for a Constituent Assembly, "which will prepare a Constitution acceptable to all sections of the people." This Constitution, the resolution added, "should be a federal one with the largest measures of autonomy for the federating units."

When freedom came, we set ourselves the task of formulating our own democratic Constitution.

The hopes and aspirations of the Indian people were reflected in the Objectives resolution moved in the Constituent Assembly, by Jawaharlal Nehru. The resolution declared its "firm and solemn resolve to proclaim India as an independent sovereign Republic" wherein "all

power and authority of the sovereign, independent India, its constituent parts and organs of government are derived from the people and wherein shall be guaranteed and secured to all the people of India, justice, social, economic and political, equality of status and opportunity before the law, freedom of thought, expression belief, faith, worship, vocation, association and action, subject to law and public morality and wherein adequate safeguards shall be provided for minorities, backward and tribal areas and depressed and other backward classes."

Objective Resolution

All these sentiments were crystallised in the Constitution the people of India gave themselves in 1950. True, in it, we had borrowed many ideas from countries which had created their own democratic institutions.

Over the last 25 years as we developed politically and socially, some of the democratic institutions we had created showed signs of stress and strain. We realised that some of them could not stand the test of time or experience.

Our Constitution had adopted the federal structure to fulfil the aspirations of the people of this vast land, with different languages, uneven economic development, different life-styles and levels of cultural attainments.

To maintain unity in this wide diversity and to secure territorial integrity, a strong Centre was absolutely essential and therefore, the Constitution opted for a strong Centre with residuary powers in the Central List. It specifically made provisions to convert the federal structure into an almost unitary form in times of emergency.

Emergency Provisions

In preference to a presidential form of government, a cabinet form of government was adopted. This ensured a strong Centre.

A Concomitant of the federal structure was an independent judiciary. The Constitution created the Supreme Court at the Centre and the High Courts in the States and ensured constitutional immunity to the judges. It was expected that the legislature, the executive and the judiciary would work in harmony to attain the ideals enshrined in the Constitution.

Some of the institutions we created in the fond hope that they would become models of democratic functioning belied our expectations and turned out to be forums where sometimes democratically elected members showed little concern for the people's problems and aspirations.

Luckily, the founding fathers of the Constitution, aware of the likely growth of de-stabilising forces in the developing countries like ours had made special provisions in the Constitution to meet any Emergency arising out of war or internal disturbances.

It had been part off the hot and cold war strategy to promote internal disturbances in a country considered hostile or neutral. Emergency provisions under the Constitution took not of this new threat. Four aggressions on India, communal riots and various internal disturbances proved the wisdom of the founding fathers.

The success of the parliamentary system in India, by itself, created forces bent on subverting it. In the process of rendering justice to the vast masses, some of the vested interests were hurt. They joined hands with communal and fascist forces to create chaos and confusion.

Split and After

Frustrated in their attempts to reverse the march of the Indian people towards democratic socialism, they abandoned the part of democracy. Various factors brought about a situation where an organised and vocal minority almost held the majority to ransom and thwarted the proper functioning of our democratic institutions. People who were not even members of such institutions were subjected to all kinds of indignities, insinuations, character assassination, physical assaults and threats of liquidation.

The malfunctioning of such institutions revealed how inadequate they were and stressed the need for their overhaul and refashioning.

After the historic split in the Congress in 1969 and the rout of the Grand Alliance in the 1971 elections, the opposition set about

destroying democracy, bit by bit, State by State. The irresponsible opposition, instead of helping the government and the nation to tide over the difficulties that came in the aftermath of the Bangladesh war and the serious famines, droughts and floods that ravaged several parts of the country, tried to create more confusion and to demoralise the people.

A campaign of false propaganda in which the Press, controlled by the big business organisations took part, was launched. Freedom of expression was misused on a scale never seen anywhere in the world. Frequent strikes, accompanied by violence were triggered off at the slightest pretext. The good of the working class and the welfare of the common people were discarded, in a bid to seize power at any cost.

There were threats to paralyse the working of Parliament and State Legislatures. State legislators themselves were forcibly made to resign on pain of personal violence or murder. A programme of so called total revolution was launched in a bid to sound the death knell of democracy. The climax came when the unscrupulous Opposition openly called upon the armed forces to mutiny.

All this led the people to ask themselves if the system and the institutions we had fashioned needed to be changed to fulfil the aspirations of the people and to attain a faster rate of economic progress, particularly for the weaker and vulnerable sections of society.

Timely Measures

It was clear that the organised minority holding the majority

to ransom was challenging the very right of the majority to a decent life, free from want and penury. History has taught us how a weak democratic system was undermined by an organised minority to usher in fascism and totalitarianism.

Such a development was prevented in India by the timely and stern measures adopted by Shrimati Indira Gandhi. The entire democratic system has been subjected to discipline, which it had lacked all along. Timely action has prevented democracy from degenerating into licence and disorder.

A series of measures were taken since June 26 last to ensure that the democratic framework is not subjected to misuse or distortions, or to deny social and economic justice to the people.

Social and economic justice continues to be the touchstone of any move to amend or alter the Constitution. Such amendment are not based on abstract actions but dictated by experiences in the working of the system over the last two and a half decades.

The constitutional amendments pushed through recently have not been aimed at weakening the judiciary, nor of making it ineffective.

By her courage, calm, and resoluteness, Shrimati Indira Gandhi rescued democracy, saved secularism and ensured socialist advancement, the fundamental bases of our ideals.

Need for Changes

The crucial question today is whether when we talk of parliamentary democracy we are necessarily wedded and beholden to the Westminster model. There is, to my mind, nothing sacrosanct about it that it should apply blindly to our ethos and genius and the traditions handed down to us by our own history. The Congress has affirmed that we would hold nothing sacrosanct if it went against the aspirations and ideals of the Indian people.

What we seek to attain today is democracy which ensures the freedom of the individual and his society which together guarantee him equality and justice in all its wide-ranging forms. He must be assured security, order and orderly growth by which he may fulfil his and the nation's greatness and destiny. The type of democracy we ultimately fashion must ensure that good government means not only of the constituents but even more importantly of the Centre. A country of our size and complexity cannot be held by arbitrary force—the participation of the people through democratic means is inescapable. At the same time it is also inevitable that there should be a strong Centre to ensure the unity and integrity of the country. It is absolutely necessary that forces of disintegration, secession and destabilisation are squarely met. Therefore, it is now for us to devise a system by which while there is the widest popular and democratic participation there is also a strong and confident central authority thrown up by the people.

Seen in this perspective, changes in the existing constitutional system, to make it responsive to the challenges of the time and reflect the true ideals of our people are imperative.

Various suggestions have been mooted to make the system stronger. Among them one that deserves to be studied in detail and debated is the institution of Prime Minister elected by the popular vote. This will strengthen the hands of the chief executive enabling him or her to exercise authority without the vexation of pulls and pressures that a Prime Minister elected indirectly is subjected to. A popularly elected Prime Minister will also be more responsive to his or her constituents and be in closer touch with them. This suggestion, however, has its own draw backs. One has to consider a possible situation where a Prime Minister belongs to one party while the parliamentary majority rests with another. This would lead to clashes and conflicts that would hamper the smooth functioning of the Government.

There is another aspect that needs very careful study. Some measures have been taken lately to restrict the powers of review by judiciary. Judicial review has sometimes been found to be a road block instances when social welfare measures were mooted. For example, the wide exercise of granting injunctions has halted or delayed the implementation of social welfare legislation like land ceiling, land distribution and the curbing of smuggling and other anti-social activities. Since the judicial system is such the Courts were bound to exercise their powers of review. The time has now come to restrict or to do away with the powers of judicial review, as is the case in France and England.

It must also be ensured that Courts' time should not be taken up in adjudicating upon service matters which can well be entrusted to special tribunals. This would relieve pressure on courts to help speedier disposal of other cases.

The Prime Minister has time and again asserted that any constitutional reforms or amendments would be undertaken only after the fullest opportunity is given to every section of society to express its views.

It is the inborn democratic tradition that is implied in this assertion and I am confident that any changes in the existing system will come about only if it is for the good of the largest number of people and also, only by their will and consent.

BIBLIOGRAPHY

DOCUMENTS

Amendments to the Constitution of India, Moved by CPI(M),
M.P.s, Calcutta, CPM Publications, 1974.

Constitutional Assembly Debates, vol.4,7,10 and 11.

CPI(M) On Constitutional Changes, Calcutta : CPM Publications,
1976.

✓ Jawaharlal Nehru's Speeches, vol.4, New Delhi : Government
of India Publications Divisions, 1963.

J.R.D. Tata. Speech Delivered at the Sixtieth Annual General
Meeting of the Indian Merchants Chamber, Bombay : Tata Press,
1968.

National Committee For Review of The Constitution, Interim
Report, New Delhi : Navchetan Press, 1976.

✓ Rajendra Prasad Speeches, 1960-61, New Delhi : Government of
India Publications Division, 1962.

✓ Shrimati Indira Gandhi : On Democracy, New Delhi : Publications
Division, 1977.

Some Comments on Constitutional Changes, New Delhi : Communist
Party Publications, 1975.

BOOKS

a. General Theoretical:

Bagehot, Walter., "The English Constitution", London: Oxford University Press, 1968.

Bassett, R., The Essentials of Parliamentary Democracy, London : Frank Class & Co., 1964.

Birch, A.H., 'Representative and Responsible Government : An essay on the British Constitution'. London : George Allen and Unwin, 1964.

Blondel, Jean., 'Introduction to Comparative Government'. London : Weidesfeld and Nicolson, 1969.

_____, The Organization of Governments : A Comparative Analysis of Governmental Structures, London : Sage Publications, 1982.

Bryce, James., Modern Democracies, London : Macmillan, 1929.

Dahl, Robert, A., Poliarchy : Participation and Opposition, New Haven : Yale University Press, 1971.

_____, Dilemmas of Pluralist Democracy : Autonomy Vs. Control., New Haven and London; Yale University Press; 1982.

Deutsch, Karl, W., Politics and Government : How People Decide Their Fate, Boston : Houghton Mifflin Company, 1970.

Diamond, L. and Others (ed.), Democracy in Developing Countries, 4 vols. Colorado : Lynne Rienner Publishers, 1988.

Ekstein, H. and Apter, D.E. (ed.), Comparative Politics : A Reader, London : Macmillan, 1963.

Epstein, Leon, D., 'Parliamentary Government in Sills, Davil, L., (ed.), International Encyclopedia of Social Sciences, vol.11, New York : Macmillan, 1968.

Finer, Herman., 'Theory and Practice of Modern Government', London : Methuen, 1961.

Finer, S.E., Comparative Government, Allen Lane : The Penguin Press, 1970.

Friedrich, Carl. J., 'Constitutional Government and Democracy : Theory and Practice in Europe and America', Calcutta : Oxford & IBH, 1966.

- Garner, J.W., Political Science and Government, New York : American Book Company, 1932.
- Held, David., 'Models of Democracy', Cambridge : Polity Press, 1987.
- Jennings, Ivor., 'Cabinet Government', London : Cambridge University, 1969.
- _____. , 'Parliament', London : Cambridge University, 1970.
- Laski, Harold, J., 'Parliamentary Government in England : A Commentary'; London : George Allen and Unwin, 1938.
- _____. , 'American Presidency : An Interpretation', London : George Allen and Unwin, 1943.
- _____. , 'Grammar of Politics', London : George Allen and Unwin, 1960.
- Lijphart, Arend., Democracy in Plural Societies : A Comparative Exploration, New Haven : Yale Univ. Press, 1977.
- _____. , Democracies : Patterns of Majoritarian and Consensus Government in Twenty-one Countries, London : Yale University Press, 1984.
- Linz, J.J. and Stepan, A. (eds.), The Breakdown of Democratic Regimes, London : The Johns Hopkins University Press, 1978.
- Lowell, A.L., The Government of England, vol.1, Boston : Houghton Mifflin, 1901.
- Mackintosh, John, P., 'The British Cabinet', London : Stevens & Sons Ltd., 1968.
- Macridis, Roy, C. and Brown, B.E., Comparative Politics : Notes and Readings, London : The Dorsey Press, 1972.
- Marshall, G. (ed.), 'Ministerial Responsibility', Oxford : Oxford University Press, 1989.
- Neustadt, Richard, E., Presidential Government in International Encyclopedia of Social Sciences, vol.XII, New York : Macmillan, 1968.
- Powell, G.B., Contemporary Democracies : Participation, Stability and Violence, Cambridge : Harvard University Press, 1982.
- Ranney, Austin., The Governing of Men, Hindsale : The Dryden Press, 1975.

- Ranney, A. and Others (ed.), The Government of Great Britain, Cambridge : Cambridge University Press, 1975.
- Sartori, G., Parties and Party System : A Frame work for Analysis, Cambridge : Cambridge University Press, 1976.
- Sidgwick, H., Elements of Politics, London : Macmillan, 1951.
- Strong, C.F., "Modern Political Constitutions : An introduction to the Comparative study of their history and existing form", London : ELBS, 1966.
- Verney, Douglas, V., 'Analysis of Political Systems', London : Routedge and Kegan Paul, 1959.
- Wiarda, H.J., (ed.), New Directions in Comparative Politics, Boulder : West View Press, 1985.
- b. On Indian Context :
- Austin, Granville., "The Indian Constitution : Cornerstone of a Nation", Bombay : Oxford University Press, 1966.
- Bhambhri, C.P., Elections 1991 : An Analysis, Delhi : B.R. Publishing Corporations, 1991.
- Bhaskara Rao, V. and Venkataswarlu, B., Parliamentary Democracy in India : Trends and Issues, Delhi : Mittal Publications, 1987.
- Chalpathi Ram, M. & Others (ed.), Parliamentary Democracy in Retrospect, New Delhi : Publications Division, 1973.
- Das, B.C., The President of India, New Delhi : S. Chand & Company Ltd., 1977.
- Ghose Deepankar ., Appeal to President : Presidential System only Way, Calcutta : Firma KDM Private Ltd., 1991.
- Grover, V. (ed.), Political System in India, vol.10, New Delhi : Deep and Deep Publications, 1989.
- Haqqi, S.A.H., Indian Democracy at the Cross-roads, Delhi : Mittal Publications, 1986.
- Jain, H.M., The Union Executive, Allahabad : Chaitanya Publishing House, 1969.
- Kagzi, M.C.J., The Present Constitutional Issues and Views, New Delhi : Metropolitan Publishers, 1987.

- Kashyap, S.C., The Political System and Institution Building under Jawaharlal Nehru, New Delhi : National Publishing House, 1990.
- Kashyap, Subhash C. (ed.), Indian Polity : Retrospect and Prospect, New Delhi : National Publishing House, 1989.
- Kochanek, S.A., Business & Politics in India, London : University of California Press, 1974.
- Kochanek, Stanley A., The Congress Party of India : The Dynamics of One Party Democracy, Princeton : Princeton University Press, 1968.
- Kothari, Rajni., Party Systems and Election Studies, Bombay: Allied Publishers, 1967.
- _____, State Against Democracy: In Search of a humane Governance, Delhi: Ajanta Publications, 1988.
- _____, Politics and the People : In Search of a Humane India - vol.I & II, Delhi : Ajanta Publication, 1989.
- Krishna Iyer, V.R., Law, Freedom and Change, New Delhi : Affiliated East-West Press, 1975.
- Limaye, Madhu., Contemporary Indian Politics, New Delhi : Atma Ram and Sons, 1982.
- _____, Cabinet Government In India, New Delhi : Radiant Publishers, 1989.
- Maheswari, S.R., Indian Parliamentary System, Agra : L.N. Agarwal Educational Publishers, 1981.
- Markandan, K.C., Spirit of the Constitution, Jalandhar : ABS Publication, 1986.
- Mehrotra, N.C., Political Crises and Polls in India, New Delhi : Deep & Deep Publication, 1980.
- Misra, B.B., The Congress Party and Government : Policy & Performance, New Delhi : Concept Publishing Company, 1988.
- Morrisjones, W.H., Politics Mainly Indian, New Delhi : Orient Longman Limited, 1978.
- Mukharji, P.B., The Indian Constitution : Change and Challenge, Calcutta : Rupak Publishers, 1976.
- Munshi, K.M., President Under the Indian Constitution, Bombay : Varatiya Vidya Bhavan, 1963.

- Munshi, K.M., India's Constitutional Document (vol.1, Pilgrimage to Freedom 1902-50), Bombay : Varatiya Vidya Bhavan, 1967.
- Noorani, A.G., The Presidential System : The Indian Debate, New Delhi: Sage Publications, 1989.
- Palkhivala, N.A., Reshaping the Constitution : Implication of the Swaran Singh Committee's Recommendation, Bombay : Tata Press, July 1976.
- Pandit, H.N., The Prime Minister President : A New Concept on Trial, Delhi : S. Chand & Co., 1974.
- Pant, H.G. (ed.), Constitutional System in India : Continuity and Change, New Delhi : Vasudha Publications, 1983.
- Pathak, G.S., Parliamentary Democracy, Bombay : Varatiya Vidya Bhavan, 1971.
- Prasad, Anirudh, Presidential Government or Parliamentary Democracy, New Delhi : Deep and Deep Publications, 1981.
- Rao, B.S., The Framing of India's Constitution, vol.V, Nasik : Government of India Press, 1968.
- Rao, K.V., Parliamentary Democracy of India : A Critical Commentary Calcutta : The World Press, 1965.
- Rau, B.N., India's Constitution in the Making, Calcutta : Orient Longmans, 1960.
- Sathe, Vasant, Two Swords In One Scabbard : A Case for Presidential Form of Parliamentary Democracy, Delhi : Nib Publishers, 1989.
- _____, National Government : Agenda for a New India, New Delhi : UBS Publishers, 1991.
- Sharma, B.K., Political Instability in India, New Delhi : Mittal Publication, 1989.
- Sharma, S.P., Political Promises and Performance, New Delhi : Ashish Publishing House, 1991.
- Singhvi, L.M., Parliamentary Democracy, New Delhi : Publication Division, 1973.
- Singh, M.P., Split in a Predominant Party : The Indian National Congress in 1969, New Delhi : Abhinav Publications, 1981.

- Sood, P., Politics of Socio - Economic Change in India, New Delhi : Marwah Publications, 1978.
- Vinaik, hin., The Painful Transition : Bourgeois Democracy in India, London : Verso Publications, 1990.
- Venkataswaran, R.J., Cabinet Government in India, London : George Allen and Urwin, 1967.
- Venkateswarlu, K., Indian Democracy at Work, New Delhi : NCERT, 1978.
- Wilson, A.J. & Dalton, D. (ed.), The States of South Asia : Problems of National Integration, New Delhi : Vikas Publishing House, 1982.
- Zins, Max Jean., Strains on Indian Democracy, New Delhi : ABC Publishing House, 1988.

ARTICLES

- Benegal, Som., "Search For Alternative to Parliamentary Democracy", Mainstream, July 26, 1980.
- Brass Paul, R., 'Political Participation, institutionalization and Stability in India', Government and Opposition, IV(i), Winter, 1969.
- Chaturvedi, R.G., 'The President and the Council of Ministers', Journal of Constitutional and Parliamentary Studies, vol.4, no.3, July - September, 1970.
- Cutler, Lloyed, 'To Form a Government', Foreign Affairs, 59, Fall 1980.
- Gangal, S.C. 'President and Prime Minister', Gandhi Marg, May 1987.
- Giri, V.V., 'Prelude to Presidential Form of Government?', Illustrated Weekly of India, May 25, 1980.
- Goyal, O.P., 'On a Presidential System For India', Journal of Constitutional and Parliamentary Studies, April-June 1968.
- Gupta, Bhupesh., "Constitutional Amendments : CPM on Wrong Rails Again", New Age, New Delhi, 18.7.1976.
- Jain, H.M., "Changing Role of the Prime Minister : Is India Moving Towards a Prime-Ministerial System" in Journal of the Society for Study of State Governments, vol.6, No.2-3, April - September, 1973.
- Kaviraj, S., 'On the Crisis of the Political institutions in India', Contribution to Indian Sociology, July - December 1984.
- Khare, H., 'The Indian Prime - Minister : A Plea for Institutionalization of Power', Journal of Constitutional and Parliamentary Studies, vol.5, no.1, January - March 1971.
- Kidwai, M.S., 'Swaran Singh Committee Recommendations : An Analysis', Mainstream, July 3, 1976.
- Kothari, Rajni., 'The Congress System in India", Asian Survey, vol.4, no.12, December 1984.
- _____, "Politics of Fragmentation and Political Integration" Political Science Review, 6(1), January - March 1967.
- _____, 'Political Change of 1967', Economic and Political Weekly, January (Annual Number), 1971.

- Kothari, Rajni., "The Congress System Revisited : A Decennial Review", Asian Survey, vol.14, no.12, December, 1974.
- _____, "Democracy and Dictatorship in India, The Radical Humanist, 42(2), May 1978."
- _____, 'Institution Building', Seminar, no.361, September, 1989.
- Kumar, Bartendu., 'Presidential System, Who is afraid of it?' Democratic World, September, 1982.
- Linz, Juan, J., "The Perils of Presidentialism", Journal of Democracy, vol.2, no.1-4, 1990.
- Mahmood, M., 'Semi-Presidential Regime For India", Indian Journal of Politics, March 1983.
- Mitra, Ashok., "Nation Voted Wisely : Coalition Suits diverse Country, Times of India, New Delhi, 8.12.1989.
- Mukherjee, S., 'Defence of the Parliamentary System', Radical Humanist, July 1987.
- Namboodripad, EMS., 'Amending the Constitution', Mainstream, July 24 1976.
- Narain, Iqbal., 'Democratic Politics and Political Development in India", Asian Survey, vol.X, February 1979.
- _____, "India 1977 : From Promise to Disenchantment?" Asian Survey, vol.18, No.2, February 1978.
- Nehru, B.K., "Is it time for a Change? Some Thoughts on the Indian Constitution", Indian Express, New Delhi, 15.2.1987.
- _____, 'A Fresh Look at the Constitution', Mainstream, vol.XXX, No.14, January 25, 1992.
- Nigam, K.K., "Swaran Singh Committee Report - Some Comments", Socialist India, vol.12, May 29, 1976.
- Pachauri, P.S., 'Whether Presidential System will suit India Better?', Journal of Constitutional and Parliamentary Studies, October-December 1979.
- Palkhivala, N.A., 'Should we alter our Constitution", Illustrated Weekly of India, 4 January 1976.
- _____, "Presidential System : A Question of Timing", Hindustan Times, New Delhi, 8.1.1981.

- Palmer, Norman, D., 'India in 1975 : Democracy in Eclipse', Asian Survey, February 1976.
- Panda, K.K., 'Politics of instability and Role of the President in the Indian Parliamentary Model', Teaching Politics, vol.XVII, No. 1 & 2, 1991.
- Panjwani, R., 'The Swaran Singh Committee Report is Most Welcome', Socialist India, vol.12, May 1, 1976.
- Patel, Rajni., 'Parliamentary, Democracy Reconsidered', Socialist India, vol.12, 27 March, 1976.
- Patil, V.T., "Reflections on Constitutional Changes", Modern Review January 1977.
- Ramachandran, V.G., "Some thoughts on Swaran Singh Panel's Report", Swaraiya, vol.20, May 15, 1976.
- Rao, K.V., The last word (in) The Illustrated Weekly of India, December 24, 1978.
- Roy, Amal and Venkatasubbiah, V., 'Political Development and Constitutional Reforms - Some Recent Trends'. Economic and Political Weekly, January 17, 1981.
- Sahay, S., 'Time to Refashion the Constitution', Mainstream, vol.XXIX, No.33, June 8, 1991.
- _____, 'West - Minster Model Crumbles', Seminar, September 1980.
- Santhan, S.K., 'Comments on Constitution Changes', Swaraiya, vol.21, September 27, 1976.
- Santhanam, K., "Future of the Constitution", Swaraiya, May 1, 1976.
- _____, "The President of India" in Journal of Constitutional and Parliamentary Studies, vol.3, No.3, July - September, 1969.
- Schlesinger, A.J., 'Parliamentary Government', The New Republic, August 31, 1974.
- Sen, S.R., 'Reforming our System of Government', Economic and Political Weekly, March 2-9, 1991.
- Shakir, Moin., "The Problem of Indian Democracy", Radical Humanist, August 1979.
- Shastri, S., Indian Constitution : Is a Fresh Look Really Necessary? Mainstream, vol.XXX, May 16, 1992.

- Singh, Dinesh., 'A By gone Era' in Seminar, No.361, September 1989.
- Singh, M.P., 'Presidential System for India?', Journal Constitutional and Parliamentary Studies, January - March 1980.
- Sundquist, James, L., "Parliamentary Government and Ours", The New Republic, October 26, 1974.
- Tarkunde, V.M., "Objections to Presidential System", Illustrated Weekly of India, 27.8.1978.
- Venkatachar, C.S., Reflection on India's Stability : 1947 - 1989, Monthly Public Opinion Surveys, vol.1, XXXIV, No. 1 & 2, June 1989.
- Wallace, Paul., 'The Leadership Crisis', Asian Survey, vol.9, February, 1979.
- Wariavwalla, Bharat., 'India in 1988 - Drift, Disarray, or Pattern?', in Asian Survey, vol.29(2), February 1989.

NEWSPAPERS

- | | | |
|-----|-----------------|-------------|
| 1. | Indian Express | (New Delhi) |
| 2. | Economist | (London) |
| 3. | Hindu | (Madras) |
| 4. | Hindustan Times | (New Delhi) |
| 5. | New Age | (New Delhi) |
| 6. | Patriot | (New Delhi) |
| 7. | Statesman | (Calcutta) |
| 8. | Swarajya | (Madras) |
| 9. | Telegraph | (Calcutta) |
| 10. | Times of India | (New Delhi) |



1874