CHAPTER VI

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Indian Constitution as originally framed was an open-ended constitution. It was not a socialist constitution in the true sense of the term. Nor it would warrant the view that such a constitution was totally devoid of any socialist potentiality. The social and economic provisions of the constitution could lead our economy in any economic direction socialist or non-socialist, depending on the will and performance of the public authorities. At its inception therefore the constitution was open-ended.

To recapitulate the main provisions which, under usual interpretation, hold out socialist promises, there is first the preamble which records the aspiration of the constitution to secure justice, social, economic and political and also equality of status and of opportunity to all our citizens.

Secondly, there are the directive principles of state policy which are supposed to be the mainstay of any policy move towards socialist goal. The principles contained in this part (i.e. Part IV) have been made
fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.

Article 38 states that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

The Directives do not make it imperative upon the State to bring the economy under total and outright social ownership. But it does contain enabling provisions, introducing social control wherever and whenever necessary in the economy. Although the term 'Nationalisation' is not used in the constitution, it remains in a disguised form in Article 39(b) and 39(c), wherein it is stated that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.; and that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.
On the other hand, certain vital parts of the constitution are so framed as to put a curb on the state trying to stretch its long hands in the social and economic sphere. Whether these should be construed as a built-in restraint on the socialist programmes of the state is a question to which the constitution does not provide definitive answer but makes it contingent upon the unpredictable interaction between the policy-making and the judicial organs of the Government. The chapter on fundamental rights is one such restraining instrument by which individual liberty is guaranteed. Part III of the constitution also envisages status-quo in the relations of production.

Later on, our statesmen pursued such economic policies as from time to time made one believe that the country was possibly heading toward some variant of Fabian Socialism. That the policies were intended to create a socialist trend in respect of the vital sectors of our economy would be clear from measures like Land Reforms policy, abolition of the Zamindari system, ceiling on land holdings, introduction of economic planning in our country, Industrial Policy Resolutions of 1948 and 1956,
Bank Nationalisation measure, derecognition of the princes' title to privy purse, nationalisation of coal industries, ceiling on urban properties, etc.

At the declaratory level, at least, the Government tried to show that these measures emerged out of a clear-cut socialist commitment. In doing so, it was also felt by the authorities that the constitution in its original form was not much of a help to fulfil those commitments. Rather, there were definite impediments which had to be removed by frequent amendments to the constitution. Within 30 years from the introduction of our constitution, as many as 44 Amendment Acts were passed so as to carry out the policy measures proclaimed from time to time.

There are now fewer obstacles to economic reform under the present Constitution of India with its 44 amendments. The main objectives of economic reform in India are to remove poverty, provide employment and to take measures leading to economic growth. The constitution in its original form contemplated a welfare state, based on some conventional notions of social justice but there was nothing in it that prevented the authorities from enlarging that base so that the State acquired a socialist character in good time. There
is little room for doubt that with the incorporation of necessary constitutional amendments, the progress and prosperity of the nation and the aspirations of the people can be achieved under the present constitution. But reforms of this type, by themselves, do not guarantee socialist transformation of the society.

The question that comes up now is what is the basic concept of socialism in a democracy? The term 'Socialism' signifies freedom from all forms of exploitation - social, political and economic. A radical view of socialism implies vast and revolutionary changes in the political and social structure and the ending of vested interests in land and industry. It means the ending of private ownership of the means of production so that the right to property exists in a restricted sense and the replacement of the profit system by a higher ideal of co-operative service. For a definition of democratic socialism we must see the idea actually conceived by Jawaharlal Nehru, who adopted a pragmatic approach to this issue. Nehru believed in the democratic process to bring about socialism. He believed in some sort of evolutionary socialism mostly along the lines propounded by the Fabian Socialists. The twin institutions of democracy and socialism will, according to him, achieve both
the solution of conflicts by peaceful methods and the harmonious working of a free society. "Indeed Nehru assimilated all these principles in his policy for five year plans. His idea of mixed economy providing both for the public and private sectors, his creation of the State Banks to help the small investors and cottage industries, his enunciation of the principles of socialistic pattern of society and democratic socialism, his long term plans to make India self-sufficient in steel, machines and machine tools thereby increasing the wealth of the country, his non-alignment policy committing the country neither to the U.S.A., nor to the Communist Russia during the period of cold war - all these bear the stamp of a really tolerant Fabian Socialist".

By a pragmatic approach Nehru tried to mean first, that production is perhaps more important than distribution, for unless a good surplus is produced, there will be little to distribute. Secondly, exclusive monopoly of the state is essential in defence and key industries in which huge amount of expenditure is involved. Thirdly, state sector is required to concentrate on certain vital industries and it is meaningless to go about nationalisation in a large scale for that would expand the states' limited financial resources. Fourthly,
the resulting economic situation would be a mixed economy in which both the public sector and the private sector would exist side by side. Fifthly, equitable distribution is felt necessary after production is adequately raised. Sixthly, all such changes would be brought about by the government taking the people into confidence and through Parliament, the purpose being to take the wind out of the sails of the wealthier and more powerful sections of our society who may try to take away their usual pound of flesh even as the economy progresses under the initiative of the state.

The next point we have examined is the extent to which right to private ownership of the means of production is consistent with the proposed transformation. The immediate question that came up is whether socialist economic transformation is synonymous with the term 'mixed economy'. Had it been so, it would well be argued that the right to property, as originally provided in the constitution, need not interfere with the process of transformation. And there should be no harm if it is conceived as a fundamental right too. But the whole point ceases to hold water as soon as one detects the basic hollowness in the argument that a mixed economy is all
that we should be looking for in democratic socialism. Apart from the fact that a mixed economy can at best be a transitional arrangement and not a permanent feature of a society with socialist aspirations, it has been elaborately established in the present study that the kind of mixed economy currently being operated in India can be farthest from socialism if it not only takes for granted a permanent co-existence of the of the private and the public sector, but even contributes to the very strength of the former at the cost of the latter. Unfortunately as we have seen any radical economic measure pursued by the government have, on many occasions, been criticised for: the simple reason that those are not consistent with our mixed economic ideals.

This generates a kind of ambivalence regarding 'what is to be done' and is often reflected in the government attitude, so far as constitutional amendments to the right to property is concerned. By the end of the 60's, the government tried to diverge from the path of mixed economy on the socialist transition and for this reason, the right to property stood in need of suitable amendment so that it would be consistent with the proposed transformation. The process of constitution amendments may be referred, in brief, in this connection.
Until the Golaknath case was decided, in 1967, the right to property, along with other fundamental rights, was safeguarded under Article 13 with the net effect that it could not be amended even if it was found to constitute the main stumbling block to any radical economic reform. The Golaknath ruling strengthened the argument that fundamental rights could not be amended by Parliament. Then followed the 24th Amendment, and it clarified that nothing mentioned in Article 13 "shall apply to any Amendment of this constitution". The utmost desire of carrying out radical economic measure on the part of the Government was felt in the passing of the 25th Constitution Amendment which established supremacy of the Directive Principles over the Fundamental Rights i.e. insertion of Article 31(2) and substituted the word 'amount' for compensation (as provided in Article 31). Next, followed the Keshavanand Bharati Case in which the Supreme Court ruled that Parliament could amend any and every part of the constitution (a ruling which is inconsistent with the previous one in the Golaknath Case), but it could not destroy its basic structure. Although no proper definition of basic structure was available, yet the right to hold, acquire and dispose of personal property was considered one of the basic structures of our constitution. Therefore, property right
could not be amended. Then came the 42nd Amendment and "for the removal of doubts" it declared that "there shall be no limitation whatsoever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this constitution" (Section 55).

The 42nd Amendment Act has expanded Article 31 (C) to its maximum extent. Article 31 (C) was inserted in 1971 (by the 25th Amendment Act) in order to exclude from the purview of Articles 14, 19 and 31, any law made to implement the directive principles contained in Articles 39(b)-(c), that is to eliminate the capitalistic abuses of property and the economic system founded on it. Apart from this it would also be helpful to achieve "socio-economic reform" or "devolution, which would end poverty and ignorance". Finally, the 44th Amendment Act, 1978 deleted Article 19 (I)(F) as well as Article 31. Thus the right to property ceases to be a Fundamental Right, but it still remains a constitutional right.

At the moment then the property right can no longer be said to constitute the real stumbling block to economic reform. With the help of Article 31(2), as amended by the 25th Amendment Act (the Supreme Court has upheld its validity)
there is no question of paying market value or compensation as such for property compulsorily acquired by the State. The position now is such that if a piece of property worth Rs. 20 lakhs is acquired for any amount such acquisition would not be unconstitutional on the ground of its reasonableness.

Moreover, a majority of laws imposing restrictions on the right to hold property have been judicially upheld rather than struck down. Article 31(A) has given a "Carte blanche" to the State to carry out its projects of genuine agrarian reforms. The enactment of laws to distribute the ownership and control of the material resources of the community and to ensure that the operation of the economic system does not result in concentration of wealth is outside the purview of challenge for violation of property rights. Most land reform legislation, including socio-economic legislation, is incorporated into the Ninth Schedule. In 1951, there were only nine Acts in this schedule. Today, the number had gone up to 200 statutes. Once an Act is included in the Ninth Schedule, it cannot be challenged even if it violates all the fundamental rights in Part III, including the right to property. Therefore, socio-economic reforms are not very difficult to carry out when there are such wide and extensive powers lying at the disposal of the State. Obviously,
the true remedy lies in ensuring that these acts are administered with efficiency.

The long history of constitutional experiments in this country for the last 3 decades thus may be likened to an architect's frantic effort to close the gaps between the socialist promises of the constitution and some of its disabling provisions. Partly also, it is an attempt to set out in clear terms what actually those promises were and to provide greater constitutional safeguards against their possible erosion under the impact of a constitutional battle between the Parliament and the Judiciary. As of today, the question is not whether the constitution stands in the way of socialist reconstruction. Now we have a different question to face: What is it that stands in the way of the constitutional principles being realized? Probably, it is the 'Will to force' or 'Will to implement' socialist objectives that now surfaces as the real requisite, and there will be no point in blaming our constitution for this.

For the will to transform we have invariably to look to the only conveyor of the peoples' sovereign command i.e. the Parliament. Ours is a system of Parliamentary Democracy.
A glance at the Objectives Resolution adopted in the Constituent Assembly would clearly indicate Parliamentary supremacy in our country. But, how far the Parliament works as a lever of economic transition to Socialism?

Firstly, it can be said that notwithstanding anything contained in the constitution, the socialistic policy pursued so far, was only possible because of a 'pious wish' to pursue socialist ideals by our Parliamentarians. But they could not always command the necessary will to translate the ideals into reality. Indeed, there was no compulsion for them to do so as long as they knew that the constitution was too flexible for any strict application in the socialist direction.

Moreover, a Parliament has normally a tenure of five years. At the end of five years, it is reconstituted. There may be a possibility of difference of outlook between the two. It may so happen that the successors to a parliamentary majority with socialist inclinations may subscribe to a completely different social outlook and work for reversal of the policies of their predecessors. Fortunately so far, one has not come across instances of such reversal in India, the legislative trend having generally been not
against socialist commitments. But the possibility cannot be entirely ruled out, particularly in view of the fact that the interlude of Janata regime, while not opposing socialism, did introduce measures and policies (such as rolling plan, unimaginative fiscal measures, attitude towards public distribution system) which were later construed by the successor Government of Congress (I) as interruptions and also distortions of earlier measures aimed at socialist transformation. In fact pursuit of socialist economic policies takes a long time - much longer than a period of five years; nor can the gains of one parliamentary tenure get politically quickly consolidated so as to thwart any move in the opposite direction. As we have seen, socialist economic policies were not pursued with equal emphasis all the time since the very inception of Parliamentary system in the post-independence India.

Over and above, pursuit of socialist economic policies did not always symbolize an unalloyed zeal for ushering in a progressive society. Political motivations, often antithetical, might have worked from behind. The Indian political scene which has been taking a heavy dose of socialist propaganda from a great many political quarters, is not visibly anywhere
near achieving socialism. Yet the battle cry goes on undiminished possibly because it still pays handsome electoral dividends. The point is that the widening gap between promises and performance cannot be explained except in terms of a lack of genuine commitment. That is why, in spite of its socialist protestation, the ruling party is yet to come out with a time bound programme of replacing the mixed economic structure of the mid 50's by a truly socialist set up. Clearly, the march of the public sector has not been to the diminution of or at the cost of the private sector.

An equal if not a heavier burden of responsibility also attaches the Judiciary. While examining the underlying intention of the most of the constitutional amendments (which owe their inspiration to the Directive Principles of State policy as provided in our constitution and also to the socialist commitment of the political leaders), the judiciary took quite a conservative stand. The Judges interpreted the various clauses, statutes of law strictly in narrow legal sense, keeping at arms length the growing social awareness about the deficiencies of the constitution. Even in its conservative zeal, the judiciary failed to stick to the standard of consistency, often reversing its
own rulings, as for instance, in the interpretation of the term 'law' in Article 13 which prevents the State from making any law which was in conflict with the Fundamental Rights. By no stretch of imagination can such shifting of grounds be called an expression of the rational and independent outlook of the judiciary. On the contrary, it may well be apprehended if the personal inclinations of our judges did not get precedence over the national interests. On many crucial occasions, the Directive Principles were not allowed to prevail over the Fundamental Rights in the eye of our judiciary. Hence, the judiciary in its present form failed to be treated as a dependable guide to and a guardian of our constitution, for every now and then it has to be reminded by constitutional amendments that the constitution does enshrine the high ideals of socialism, only in a less explicit form than appears to be appropriate in the legal-political setup peculiar to India.

The probable causes of the judiciary taking a conservative stand and inconsistent rulings might be ascribed to the fact that, initially, it admired the economic principles followed by the Government thinking that nothing could go beyond the extremes of a mixed economy and the Government would act within the original framework of the Constitution.
Therefore, a total loss of identity of the constitution was quite unthought of. From 1950 up to 1965, the Supreme Court's rulings were more or less consistent and clear-cut. The judiciary took it for granted that the Government would stick to the path of mixed economy and a balance could be preserved between the public and the private sectors. Arbitrary deprivation of property was not apprehended on any large scale. The legislature and the judiciary worked as harmoniously as possible. But, by the end of the 60's, there occurred a sudden change of Governmental outlook on the economic front. From 1969 onwards, the Government took a series of radical economic measures, although the exact reason (apart from political) behind it was not known. The judiciary fell into a dilemma. In pursuance of the policies so far adopted, it had to support some policy measures ruling that the constitution could be amended except for the fundamental rights, while in certain cases, it could not keep pace with the radicalism followed by Parliament, and ruled that compensation was a just and equitable issue. Soon after, the judiciary discerned that if it went on supporting the radical economic measures, then individual liberty could not be safeguarded and the entire fabric of the economic status quo would go into pieces. Hence, it ruled in 1973, in the Keshavanand Bharati
Case, that the basic structure of the constitution could not be amended and the power of judicial review was restored in respect of acts of amendment. In short, the Court wanted to remind the legislators that a written constitution has some inherent limitations beyond which it cannot go and while examining the legality of a law or constitutional amendment, it has no other alternative but strictly to follow the legal procedure.

One thing is clear in this connection. That is, the slow rate of transformation of our economy towards socialist direction. Since there occasionally arises a deadlock between the guardians and the wielders of the constitution, which takes too much time to be resolved, a way out is said to have been proposed by the 45th Constitution Amendment [Referendum]. A referendum, or to say, people's verdict, might be prescribed whenever fundamental changes are sought to be ushered in.

It has been proposed, in the 45th Amendment Bill that, if Parliament tried to amend the constitution in a manner that would affect its secular or democratic character, submerge Fundamental Rights, prejudice or impede free and fair elections on the basis of adult suffrage or compromise the independence
of the judiciary, then, apart from following the procedure laid down in Article 368 (adoption by each House by a majority of the total and two-thirds of those present and voting) the amendment must be approved by the people of India by a majority of votes at a referendum in which at least fifty-one percent of the electorate participate. But the proposal could not be pushed through any further.

The proposal for a referendum is, no doubt, a good one. Several points may be cited in favour of this proposal. Firstly, people's verdict is solicited whenever Parliament takes any major political or economic decision because in a democracy it is the people who ultimately must decide their own fate, or rather, they should choose in which direction the country should go. Doubts may be raised in this connection, about the ability to take part in this challenging task of the Indian people, a significant portion of which remains illiterate till now. But it would be a mistake to think that just because they are illiterate, they are not so intelligent as to decide their fate. Rather they are well on record as quite capable of taking the right stand, when crisis demands. This is evident from the results of some past general elections involving certain basic social and political issues.
Another point needs clarification. Some may question at, to seek public opinion all over the country, it requires a lot of money to be spent. This is true, indeed. But considering the importance of referendum (which may be hardly solicited) and while comparing it to the expenditure incurred in frequently held parliamentary elections and by-elections the total expenditure may not seem to be too prohibitive. Apart from this, expenditure in conducting a referendum may not amount to such a figure as is normally required for holding a general election all over the country. Not only that, Parliament in order to seek a referendum, need not be dissolved. Rather, it may go on with its usual business.

But, and this is a big but indeed, a referendum will decide only matters which have been referred to the people. And if the referendum issues in any directive that apparently comes into conflict with the constitution, or the will of the legislators, the court will be only too happy to take up the case and once again assert its power to arrest social change even in the face of a popular verdict. From a confrontation between the Parliament and the judiciary, therefore we reach the new stage of a confrontation between the people and the judiciary. Such a prospect, menacing though it is,
still belongs to the realm of hypothesis, and certainly does not fall within the scope of the present enquiry. The point, however, remains that if the people were to decide their own social destiny, just because their elected representatives find it inconvenient to do previous little about it or because the appointed guardians of their right decide to be guided by old fashioned ideas of individual liberty, then there should be no question of any agency which can properly claim to override the express will of the people on an issue to issue basis that has not been mediated by a temporary parliamentary majority. After all, there can be no conflict between the readiness to achieve socialism and the democratic norm of accepting the people's will however, much it may be subject to the persuasion of the political parties.