Chapter VII

Conclusions And Observations
Chapter-VII

CONCLUSIONS AND OBSERVATIONS

Modified to suit varying local environments, the British model of parliamentary government has exercised a profound influence on the development of parliamentary institutions overseas, particularly in the Commonwealth Nations. The Constitution of India envisages a Parliamentary system of government both at the Union and the State level. The form of government introduced by the Constitution of India is a Parliamentary Government of the British type. The Provincial Constitution Committee and the Union Constitution Committee of the Constituent Assembly of India held a joint meeting on June 7, 1947, as per the decision of the Chairman of the Union Constitution Committee and decided that it would suit the conditions of this country better to adopt the parliamentary system of constitution, the British type, of Constitution with which we are familiar. The preceding chapters have provided the background that helped the researcher to draw conclusions and make observations.

Since the Constituent assembly of India adopted Parliamentary System of Government based on Westminster model of the British type
a serious attempt is made in the second chapter to list the important Constitutional Conventions that are the basis of parliamentary system of government in Britain as well as the historical evolution of these conventions. This chapter helped the researcher to fully understand the significance of the unwritten rules of parliamentary system of government in the United Kingdom as well as in all the countries adopting parliamentary system of government.

The decision of the Constituent Assembly of India in favor of Parliamentary Democracy was based on the Indian experience of running partial responsible government in the provinces under the government of India act of 1919 and full responsible government under the Government of India Act of 1935. During experimentation of responsible government during the British rule, the Indian leaders became familiar with the working of conventional system of responsible government in Britain. Both the Acts contained provisions that were partly codified form of British Parliamentary Conventions.

A reasonable survey of the working of partial parliamentary system and full parliamentary system in Indian provinces is made in chapter III. It is noticed that the British introduced their representative institutions in India and gradually established parliamentary institutions
one after the other. The British thus provided a reasonable opportunity to the Indians to get themselves acquainted with the conventional system of British Parliamentary Government. The British Acts enacted for India partly codified the conventions that helped in the working of the machinery of government.

Influenced by the British Democratic tradition of self rule the Indian nationalist leaders at the outbreak of First World War demanded Home rule for India and then demanded for Constituent Assembly to frame India's Constitution. And finally, in 1930s, the Indian leaders had only one goal to achieve, that is, the creation of the Constituent Assembly to frame the constitution without any foreign interference. India ultimately got their demands fulfilled in 1946-47. All these developments pictured in the fourth chapter gave a glimpse of Indian thinking on constitution making. The dream of Constituent Assembly became a reality in 1946 well before India became independent. When the Muslim League boycotted the proceedings of the Constituent Assembly of United India, putting fourth the demand for partition of India to create Pakistan for Muslim majority areas, partition became inevitable. This led to the integration of all but few princely states with India.
As in the case of all Constituent Assemblies the Indian Constituent Assembly faced the problem of choosing a form of government. In the fifth chapter a brief survey is made of the proceedings of the Constituent Assembly taking a decision in favor of parliamentary form of government—the federal parliamentary republican system of government. During the debate in the Constituent Assembly on the report of the Provincial Constitution Committee wide references have been made to British Conventions though most of them have not been incorporated. Leading member of the Constituent Assembly K. M. Munshi made a following remark with regard to the conventions in the pre-independent India. He said that during the British period political tradition of Britain was engrafted on our way of thinking. Our constitution in consequence has come to be based largely on the British model. Even the Government of India Act of 1935, on the lines of which we drew up our constitution, was largely the product of British Political Tradition, which in their application to Indian condition has become part of ours.

Since British Parliamentary System of Government was to be based to a large extent on the British Constitution the Constituent Assembly faced the challenge of codifying the conventions of
Parliamentary Government into the written constitution of India. At various stages of constitution making efforts have been made by the framers of the Constitution to take note of the provisions of the Government of India Act of 1935 and the then existing conventions in the United Kingdom. An analytical study is made in chapter VI about the Constituent Assembly's efforts to codify the British Conventions into the Indian Constitutional System. There was a need to analytically describe the growth of complex institutions in Britain on the occasion of their transfer to new environment in India.

In the early stage of Constitution making the leaders of the Constituent Assembly, Indian National Congress and Ministers in the Government of India and provinces, who dominated the proceedings of the Constituent Assembly of India, felt that the conventions must be written and codified in order that uncertainties of memory and difficulties of interpretation might vitiate the sanctity of the convention. This thinking was based on the understanding that the conventions are usually respected because they are reasonable rules. Many conventions are far more important than the provisions of the Constitution because the conventions enable the people who run the government to work the
machinery of government. They also thought that when we are framing a written constitution why not codify the conventions.

Only a few members of the Constituent Assembly, other than those who were directly associated with the process of drafting the constitution, proved themselves well conversant with the principles and the conventions of British Parliamentary Government. K. Santanam was a leading member who objected to the vague nature of the constitutional provisions with regard to parliamentary government.² It must, in any case, be remembered that institutions cannot easily be transplanted from one part of the world to another. Every people adopt institutions to conform to its history and tradition. Colonial people will prove no exception to this rule.

As the Joint committee on Indian Constitutional Reforms emphasized in 1934, the student of government who assumes that the British Constitutional Theory can be applied at will in any country misses the fact that it could not be successfully applied even in Great Britain, if it were not modified in a hundred ways by unwritten clauses and tacit conventions. The committee members were most probably drawing the attention of Indian leaders demanding parliamentary system of government at the centre to the informal spirit, customs and
conventions which formed the lubricant that enables the machinery of government of parliamentary system. The reports of the committee also reminded that the institutions cannot easily be transplanted from one part of the world to another. Suggestion from some corners was also made to write down the provisions of the constitution approximating to the British Conventions. This was most probably the difficulty faced by the Constituent Assembly of India. The question before the Constituent Assembly was: 'Should the well-known conventions of Parliamentary Government or Cabinet Government as prevailed in England, be included in the constitution in the form of provisions'. On this issue the observation of K.M.Munshi is note worthy. He said that all supporters of parliamentary form believed that its form and conventions should be adopted along with the general framework. But the opinion in the Assembly was divided as to whether the conventional form should be the written or unwritten. At the end the Constituent Assembly decided that there would be no written conventions excepting those few that were written the protection of the parliamentary government was thus left to the conventions.

There is generally a feeling among the political scientists that parliamentary form of Democracy is the most difficult one to work,
compared to presidential form and other forms of government. K.C Wheare observed that the system of the Parliamentary Executive is not always described or laid down in the actual constitution but rests upon other rules of law and even more upon usage and conventions. This is mainly because parliamentary democracy is a product of British genius and peculiar to British tradition and conventions. When it is transplanted to other countries its success depends upon the climate and local conditions.

The whole world knows that efforts have been made by many countries of the Commonwealth and others adopting British model of Parliamentary Government to codify British Constitutional Conventions. But it is astonishing to note that the United Kingdom Government in 2008, appointed a joint Parliamentary Committee on Conventions to consider the practicability of codifying the key Conventions on the relationship between the two Houses of Parliament. The Committee felt that rules of behavior followed for some years for good reasons should not be codified because they loose their flexibility, if transformed into rules that are enforced. This shows that utmost caution is necessary while codifying the complex Conventions.
The Constituent Assembly of India also faced the same question. The authors of the Indian Constitution could not copy the Conventions in Toto. From the nature of things, it is not possible to reduce into writing all the rules of Convention upon which the English parliamentary system of government rests and the framers of the Indian Constitution have made no such attempt. Thus it cannot be contended that Article 75 of the Constitution of India fully lays down the principles upon which Cabinet system of Government should work in India. There is no doubt that Convention must invariably grow up in order to fill up the blanks in the Constitution and to serve as a link between the letters of the constitution to meet the exigencies as they arise.

Though the framers of the Constitution of India had plans to codify the important Conventions in the form of clauses of the written constitution of India they were unable to do that. A group of prominent Congress Party members of the Constituent Assembly was assigned the responsibility to look into the matter. But they were unable to draw a comprehensive list of Conventions and convert them into the suitable form of clause of the Constitution of the 29 well-known Conventions discussed in the previous chapter only half of the Conventions found
their place in the body of the Constitution. The framers of the Constitution neglected the importance of Political Parties as a necessary political infrastructure for the survival of parliamentary democracy they were focusing only on governmental machinery. That is why the written Constitution of India expressly embodied only some of the Conventions of the British Constitution. Under the impact of the instrument of instructions issued to the Governor General of India and Governors of the Provinces in 1921 and 1937 for the smooth working of responsible governments in India during the British rule. These instructions have been included in the schedules to the Draft Constitution of India. There was a lengthy debate on the necessity of these instructions. But at the end, the leading members of the Constituent Assembly took a decision to drop the idea of inclusion of a schedule as it was considered unnecessary and superficial. The argument was based on knowledge-ability of the importance of conventions in the working of parliamentary system of the British type.

T.T. Krishnamachari explained in the Constituent Assembly the reasons for omitting the schedule. He said that it has now been felt that the matter should be left entirely to the Conventions rather than be put
into the body of Constitution as a schedule in the shape of instrument of instruction.

The provisions of the Constitution were then adopted on the distinct understanding that the relevant conventions would be followed wherever necessary. It is not to open to the President of India and the Prime Minister to ignore them merely because the schedule was deleted. It is for the President to ensure that Conventions of Parliamentary Government are followed. We must therefore infer that Conventions that were not to be included in this way were deliberately left out by the framers of the Constitution. It was well understood during the framing of the Indian Constitution that the President must act on Ministerial advice.

Durga Das Basu a leading Indian commentator on the Constitutional Law of India observed that though the aim of Article 74 and 75 was to put into writing the principles of responsible government as they existed in England at the time of writing the Constitution, All principles upon which the Cabinet government rests have not been embodied therein, and even on some fundamental points the framers of the Constitution have been obliged to leave the matter to the Conventions, usages and the personal factor. The object of the framers
of our Constitution, as would appear from the Constituent Assembly debates, was to make the President a Constitutional and formal Head of the Executive like the English King and to make him act with the advice of the Council of Ministers.

It is well-known that India's Constitution is silent on many important aspects of the working of Parliamentary Government. It provides nothing about many things because it is not easy to convert the Conventions into law. Commenting on the inability of the Indian Constitution makers, a leading British experts on Constitutional Law Smith de S.A. asked the question if the Conventions and rules of strict law alike are binding rules why not codify the Conventions in a strictly legal form? He also answered this question by saying that it is difficult to define a number of important Conventions. They are blurred and experimental therefore they cannot be codified in a statutory form.

More recently a distinguished British Political Columnist Thunder Dragon distinguishing between the written Constitution and the unwritten Constitution said that a written Constitution is fixed, solid, petty much written in stone. Changing such a Constitution is like pulling teeth. Getting involved deeply in British Constitution is a complicated and dangerous business. It rests significantly on
Conventions that have never been enshrined in Law. The benefit of an un-codified Constitution over a written Constitution is its flexibility. Times change and unwritten Constitution adapts with it discarding out of date or unworkable bits in favor of new procedures and formations.

Durga Das Basu drew attention to the importance of conventions. Wherever the written Constitution is silent, he argued, that in matters on which our Constitution is silent we should invariably follow the English Convention on the point. There is no question of following a different rule. He said that unless the language of the Constitution itself points out that the framers of the Constitution intended to depart from the English rule, it would be safer to adhere to the latter; for, once it is conceded that we adopted the English system of Parliamentary Government because we found it more conducive to representative democracy and orderly administration. We should also acknowledge that parliamentarianism has succeeded in England only because the English people have adhered to these somewhat settled principles. Basu continued and said that British Conventions would be a legitimate aid in interpreting the meaning of the provisions of the Constitution when the text is not cleared and is silent on some particulars.
Vagueness of the Convention and the new situation create problems for codification.

Where the Constitution is silent it has to be supplemented by Conventions even where there is a provision in a Constitution, but generally worded, it may have to be interpreted in the light of Conventions which have grown up by the passage of time. M.M.Singh, writing about the inability of the Constituent Assembly to codify Conventions, said that although the Indian Constitution, by writing many Conventions of parliamentary government into law, seeks to give maximum possible expression to the principles of parliamentary government, it leaves a vital gap to be filled in by conventions for the actualization of parliamentary form of government. The President of the Constituent Assembly Babu Rajendra Prasad addressing the members of the Constituent Assembly of India on 26th November, 1949 said that we have prepared a democratic Constitution. But successful working of the democratic institutions requires in those, who have to work them, willingness to respect the view point of others, capacity for the compromise and accommodation. Many things which cannot be written in a Constitution are done by Conventions. The ways in which
we have been able to draw this constitution without taking recourse to division in lobbies strengthen that hope.

Conventions of British Constitution act as a backbone to the legal structure of the country. Deviating from certain Conventions may create complications in the working of the governmental machinery. Violation of Conventions may produce gross consequences in respect of the working of governmental machinery.

Modern Political Thinker Harold Laski, giving his observations about the Constitution of India in 1950, said that I think that the Indian Constitution is too complicated. I believe in simple Constitutions. The admixture of British, American and Australian Constitution may not work well in India. At any rate the chances of success are much better if India follows Conventions more than the written laws. Rigid Constitutions do not make for elasticity in the political organization of a country.9

Writing about the importance of Constitutional Conventions Ivor Jennings said that Constitutional Conventions provide the flesh which clothes the dry bones of the law; they make legal Constitution work; they keep in touch with the growth of ideas.10 Smith agreed with this view and said that evolution by Convention is still needed in countries
with written Constitution. This would keep the Constitution up to date. As long as a Conventional rule is regularly observed there is no apparent reason for codifying it if Convention is not respected the need for codifying it arises. In the United Kingdom a Convention about legislative relations between the House of Lords and the House of Commons was replaced in 1911 by a precise set of statutory rules. Another example is that of Statute of Westminster, 1931.

Expressing his opinion about codification of British Conventions and Customs relating to Parliamentary Government Ivor Jennings said that we must beware of assuming that the incidents of responsible government must everywhere be the same or that the Convention must be repeated. Responsible Government is not the same in Britain, Canada, New Zealand, South Africa, and Eire; still less is the same in the countries of Europe which have adopted it. 11 Adding to what Jennings said about the nature of the Parliamentary Institution, K.M.Munshi gave a comparative position of the British Monarch and Indian President. He said that the elected President cannot occupy exactly the position of the hereditary Head of the State like the British Monarch. Indian President is impeachable. British Monarch's position is unchallenged. Sidney Low held similar few about transplantation of
parliamentary system of the Westminster Model. He said that none of the imitation exactly reproduces the original. Even in some colonies where every effort has been made to apply the English model as closely as possible, the resemblance is incomplete.

Some Critics of Parliamentary System of Government in India attacked the working of the system of government in the country. But it should be remembered that parliamentary system of government is the most suitable form of government as India is a plural society. Indeed a vast majority of stable democracies in the world today are parliamentary regimes, where executive power is generated by legislative majorities and depends on such majorities for survival. Indian Parliamentary system has worked admirably well within the limits of its Constitutional framework. Unlike so many new countries, the essentials of a free polity are preserved in India. That is why Smith praised India as back as 1962. He said that viewed against the background of Constitutional mortality in Asia, the Indian experiment is a striking success story.

During Indira Gandhi regime there were some voices against Parliamentary System. They were in favor of switchover to Presidential system of the United States model. But the debate lost its momentum
because the support to this idea was very meager. Justice K. Punnaiah, Former Justice, Andra Pradesh High Court and member of the recently appointed Constitution Review Committee held the view that there no justification to switchover to the Presidential system, as Parliamentary Democracy which forms the bedrock of the Indian Constitution, is functioning very well. It is best suited for India. Parliamentary Democracy is a basic structure of the Constitution of India.

All political theorists are united on the question of the principle against arbitrary government. When a democratic system is chosen, a nation cannot be impatient with democracy. A period of life of around sixty years may, conceivably be not deemed to constitute a period of history being perhaps too short a span in the life of a nation or to pass judgment about a nation. India therefore a virtually unique among contemporary post colonial countries in having functioned, since independence, with parliamentary system modeled on the British form of Government on the basis of the evidence gathered it may be said that all the hypotheses are confirmed.
Major Findings of the Study

The following are the findings of the study:

1. We must beware of assuming that incidents of Parliamentary Government must everywhere be the same or that the conventions of Britain must be repeated.

2. The British Constitutional Conventions cannot be easily translated into written form.

3. The British constitutional theory cannot be applied at will in any country because the British Parliamentary Institutions are modified in numerous ways by unwritten laws and tacit conventions

4. Conventions are not confined to the countries with unwritten Constitutions. The conventions develop around most Constitutions because no legal rules could completely provide for the working of the Government. The legal rules are to be supplemented by non legal rules, that is, conventions.

5. It is difficult to define a number of important conventions as they are blurred or experimental.
6. Indian leaders were bent upon adopting the conventions, ideas and practices of British democratic society but they did not succeed in their effort.

7. The system of the Parliamentary Executive is not always described or laid down in the Constitution but rests upon other rules of law, usages and conventions.

8. Parliamentary Democracy is the most difficult of all systems to operate successfully.

9. The British Constitutional Conventions were not easily translated into written form.

10. To put the Constitutional Conventions into writing is possible but it is a very difficult task.

11. The proposal of the leaders in the Constituent Assembly had the idea of putting the British Constitutional Conventions into writing but it was found to be no easy task.

12. The Constituent Assembly of India partly succeeded in codifying the British Conventions of Parliamentary Government.
Suggestions

The study suggests following measures for the smooth and successful working of Parliamentary Government in India.

1. The chances of success of the Parliamentary Constitution are much better if India follows conventions more than the written laws.

2. The Constitution-makers may try to spell in some detail those matters which were traditionally left to conventions and usages.

3. The Constitution of India has adopted the Parliamentary form of Government from the unwritten Constitution of England. It is obvious therefore the essentials of that system would be reduced into writing in India.

4. Those who are responsible for putting into experiment the scheme of Parliamentary Government in India should follow the British Convention in the matter where the Constitution of India is silent.
Further Research

This study may not be conclusive and it needs further research. The present review of the Constitution of India may not be sufficient to introduce constitutional reforms relating to the working of Parliamentary democracy. Therefore, this study suggests to workout the constitutional reforms in order to enhance the effectiveness of Parliamentary democracy in this country. This can be considered for further research.
Notes and References

1. For details see, Constituent Assembly Debates (CAD) Volume IV, pp. 628-677

2. CAD, Volume VIII, p. 264


9. S.N.Agarawal, Harold Laski Discusses Indian Politics in Modern Review Volume 84, 1950, p. 458


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