CHAPTER - I

PROLOGUE
student of Indian government and politics - Indian or Western, must guard against the assumption that political institutions having similar and familiar names necessarily function in an identical manner. Both the Indian and the Western student who embarks on a study of Indian politics may detect forces and trends which he may reject as 'non-political movements'. If he carefully observes the style of functioning of the people who hold identical political positions will find their functioning influenced by the working of the Western political institutions in a country which is in fact non-west, though, it has western political institutions.

Thus, the totality of a society in all its spheres of social, economic and political life determines the nature of its polity.

A polity functions through political institutions which give the society its coherence and maintain its unity. Societies, including political societies are dynamic and are always in a process of constant change. In this process a society becomes an amalgam of the past and the present while looking to the future and in this process of change a certain pattern is noticeable. In a democratic country the provision of a fundamental law provides at once a means and a pattern for an orderly change in the polity.
The concept of a constitution as an ethos of the people is as old as the Greek polities. The Greek polities was a totality of the state phenomena with regard to the institutions of the state, as well as the activities of the state. In the sociological sense ethos connotes the fundamental character or spirit of a culture or the underlying sentiment that informs the beliefs, customs or practices of a group or society. Before an understanding of a political world can be made as a resultant of the social and historical processes in society, it becomes imperative to take cognizance of the fact that the political behaviour of a people is influenced by the manner in which political parties function. They provide a via media between the people and the government by offering a particular ideology and providing an objective as also the manner and the method to achieve that objective. Political parties are the bedrock of a democratic system of any country. It is more so in countries with a parliamentary system of government.
There is a plethora of political parties in India. Some of these parties are national and others regional. But the most striking feature of the Indian party system is that a single political party - Indian National Congress - has continuously dominated the Indian political scene and ruled the country for more than three decades with a short interval of less than three years.

Another phenomenon which alongwith the political parties influences the political behaviour of a people is that of the pressure groups of all hues. The influence of this phenomenon may not be very apparent and direct, nonetheless, these pressure groups and political parties are instrumental in generating not only a political opinion amongst the people, but also determining their political behaviour, thus exerting an influence on the political life of a people which in turn influences their social and economic life. The social, economic and political factors interact in a society, this can be said to be universally true.

The Indian polity is no exception to this universal phenomenon. It is characterized by numerous and varied economic, social, cultural, religious and political factors. It is a polity of a multilingual, multireligious and multiracial society. The heterogeneous element in the Indian society pervades all levels in social, economic and
political spheres. A large country with a population of 683,810,051\(^1\) and a growth rate of 2.75 per cent per year and a literacy rate of 36.17 per cent of the total population\(^2\), has peculiarities of its own in relation to the political behaviour of its people. In a background of 'greater inequalities of wealth', poverty, illiteracy, unemployment, absence of an accepted national language\(^3\) and the adoption of 'Western notions' and western political institutions in a 'non-western west' to say the least, are exotic. In this context it seems pertinent to say that any


2. In the figures relating to literacy the States of Assam and Jammu and Kashmir are not included.

3. Article 343 of the Constitution reads:

"(1) The official language of the Union shall be Hindi in Devanagari script.

The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.

(2) Notwithstanding anything in clause(1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:

Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.

(3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of:

(a) the English language, or

(b) the Devanagari form of numerals,

for such purposes as may be specified in the law."

Note: English continues to be used simultaneously with the Hindi language in Devanagari script.
The change in the Indian polity which is relevant to this study begins with the adoption of the Constitution of India on January 26, 1950. This Constitution was the end product of the deliberations of the Constituent Assembly. The concept of a constituent assembly which may be said to be a revolutionary concept, a special and representative body to hammer out the constitution, the fundamental law for a country, is essentially western. The Philadelphia Convention of 1787 which framed the Constitution of the United States of America and the National Constituent Assembly of France 1789-1791 were the products of revolutions. These two released a trend, the effects of which were felt throughout Europe in that the constitutions of almost all the countries of Continental Europe were framed by their respective constituent assemblies. The idea of a constituent assembly is taken as implicit, if not an integral part of the concept of democracy and self-determination and has been given and is given the most important place by countries engaged in their struggle for independence.

In the case of India, the demand for independence carried with it the demand for a constituent assembly, though, in an implied manner. The demand became explicit after the failure of the three Round Table Conferences (November 12, 1930; September 7, 1931 and November 17, 1936).
As the Indian National Congress was the vanguard of the Indian National Movement, it demanded a constituent assembly at its Faizpur Session (1936) by passing a resolution that such an assembly should be elected by adult suffrage and should have the power to 'determine finally the Constitution of the country'. In its November 1939 session, the Indian National Congress made the acceptance of its demand for a constituent assembly by Great Britain as a minimum basis for its cooperation in World War II and reiterated its demand for a constituent assembly by passing a resolution that the Constituent Assembly is, "the only method for determining the constitution of a free country and the only adequate instrument for solving communal and other difficulties."

The exigency of the Second World War forced England to agree in principle to the Indian National Congress demand for a constituent assembly. Its acceptance was first expressed in an equivocal manner in August 1940 by the British Government when it declared that it was mainly the responsibility of Indians themselves to produce a 'Constitutional Scheme' for their country.

The Indian demand for constituent assembly was specifically recognised by Great Britain through the Cripps Offer, 1942 which provided for an "elected constitution making body" to frame a constitution for India
after World War II. The recognition of this demand was repeated in all subsequent official British pronouncements.

Consequently, the Indian Constituent Assembly came into being in November 1946, as a result of the Cabinet Mission Plan.¹

The Muslim League boycotted the Constituent Assembly and its protests notwithstanding, the Constituent Assembly met on December 9, 1946, even before the passing of the Indian Independence Act 1947, and embarked on its work to frame a Constitution for India.

When the Constituent Assembly met for the first time, it was not a sovereign body due to its being subject to the authority of the British Parliament. There was an internal constraint also viz., the objections of the Muslim League and its members of the Constituent Assembly. This constraint was removed when Pakistan came into being. But right from the beginning there was no doubt in the mind of Jawaharlal Nehru as to the position of the Constituent Assembly that it was a sovereign body. He asserted at a Press Conference on July 10, 1946, "We have agreed to go to the Constituent Assembly and we have agreed to nothing else.... what we do there, we are entirely and absolutely free to determine. We have committed ourselves to no single matter to anybody."²

But the passing of the Indian Independence Act, 1947, completely changed the character of the Constituent Assembly and it ipso facto became a sovereign body. It reconvened on August 14, 1947 to assume its powers on behalf of the Government of India.

The Constituent Assembly took two years, eleven months and twenty days to complete and finalise the Constitution of the Union of India. Finally, the Constituent Assembly adopted the Constitution on November 26, 1949 and the Constitution came into force on January 26, 1950.

The contradictions found in the traditional Indian society and the political experience gained by it during the British rule may be said to be responsible for the Indian Constitution being the lengthiest written Constitution amongst the constitutions of the countries of the world and the Constituent Assembly was hard put to reconcile these conflicting interests and factors in the Indian society.

The Constitution sets up a federal polity, the units of the federation being the centre and the states. Consequently, there is a division of governmental powers between the Centre and the States. The residuary powers

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1. For example, H. V. Kamath commented in the Constituent Assembly, "The emblem and the crest that we have selected for our Assembly is an elephant. It is perhaps in consonance with that that our Constitution too is the bulkiest that the world has produced." C.A.D., Volume VII, p. 1042.

2. The Constitution provides for three lists, namely, the Union List comprising 97 items; the State List comprising 66 items; and the Concurrent List comprising 47 items.
vest in the Central government.

However, there is no uniformity of opinion in regard to the nature of Indian federal polity. One school considers it federal\(^1\), while the other calls it unitary\(^2\);

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1. K. Santhanam, C. E. Alexandrowics and Paul H. Appleby subscribe to the view that India is a federation.
   For example, K. Santhanam remarked in the Constituent Assembly, "We have got a Constitution which is federal in character and the federalism of it is so well protected by the judiciary that it cannot be broken except by change of the Constitution."
   C.A.D., Volume XI, p. 718.
   C. H. Alexandrowics calls India, "Undoubtedly a federation in which the attributes of sovereignty are shared between the Centre and the States."
   Paul H. Appleby holds India as "extremely federal".

2. P. T. Chacko, B. M. Gupte and P. S. Deshmukh hold the opinion that India is a unitary polity.
   For example, P. T. Chacko commented that what the Constituent Assembly had created was "in form a federation in substance a unitary Constitution" and that "all power is given to the Parliament at the Centre and practically no power is given to the legislatures in the States."
   B. M. Gupte felt that the Constitution would set up "not a federal state but a decentralized unitary state."
   C. A. D., Volume XI, p. 844.
   P. S. Deshmukh pointed out that the Constitution as it emerged was "more unitary than federal."
still another views it as a mixture of unitary and federal elements\(^1\)

However, it may be pointed out that the term federation is commonly used for the Indian polity in spite of the fact that the Constitution nowhere mentions the term federation\(^2\); it only makes use of the expression 'Union of States'.

The Indian federation is the result of a centrifugal process, as such the states do not have the right to secede from the Union\(^3\).

An important characteristic of the Indian federation is its parliamentary system of government not entirely based on the Westminster model, as it offers a unique combination of the parliamentary and the presidential form of government.

The Indian federal polity is marked by a unique judicial system in that it has an integrated judicial set up with the Supreme Court at the apex.

The Indian Constitution demarcates two different and distinct spheres of jurisdiction for the Parliament and the

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1. K. C. Wheare has called the Indian federal system as quasi federal.
   See K. C. Wheare: Modern Constitutions, 1951, p. 29; and Federal Government, 1953, p. 28.

2. Article I of the Constitution reads: "India, that is Bharat, shall be a Union of States".

3. The term 'union' as explained by Dr. Ambedkar in the Constituent Assembly, means that the Indian federation is not a result of an agreement between the constituent units and that the units have no right of secession. C. A. D., Volume II, p. 438.
Supreme Court. The Constitution confers exclusive power of law making on the Parliament while the interpretation of the Constitution is the function of the Supreme Court. But it needs to be pointed out that the functioning of the Constitution since its adoption and the subsequent case law has attracted a good deal of attention to the fact that the position of the two institutions is not as clear as it appears. Again, the balance of power which is sought to be created by the Constitution by assigning two distinct roles to these institutions has been a subject of discussion in Parliament and the judgments of the Supreme Court and has generated a public debate as well.

This has led to a situation which may be characterised as a struggle for supremacy of power.

The following pages attempt to examine and discuss at some length and with some depth, the relative position of these two institutions namely, the Parliament and the Supreme Court, and the issues in which the two have been interlocked striving for supremacy - in the balance of power provided by the Constitution.