

The 42nd Amendment must go

By M. R. Masani

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ONE of the most passionate passages in the Manifesto of the Janata party is that which denounces the 42nd Amendment to the Constitution. It reads: "The Constitution was amended to sanctify and institutionalise a total concentration of power in the hands of one individual—the Prime Minister. The authoritarian trends that had unfolded themselves over the past few years were embodied in the 42nd Amendment which was bulldozed through Parliament. To call it an amendment is a misnomer. It is a betrayal of the testament of faith that the founding father bequeathed to the people and it subverts the basic structure of the 1950 Constitution. It vitiates the federal principle and upsets the nice balance between the people and Parliament. Parliament and the judiciary, the judiciary and the executive, the States and the Centre, the citizen and the Government. It is the culmination of a conspiracy to devalue democracy that started with the erosion of the cabinet system, the deliberate and consummate scuttling of democratic processes in the ruling party, and the concentration of all power in the hands of a leader who has been sought to be identified with the nation or even to be placed above it." The Manifesto then goes on to pledge that the Party would seek to rescind the 42nd Amendment.

It is no wonder, then, that of the several attempts at backsliding in which the Janata Government has already indulged, the one that attracts the most widespread concern and alarm is the expressed intention of the Union Government to make a deal with the Congress Opposition and rescind only certain provisions of the Amendment, leaving others on the Statute book, thus giving legitimacy of that constitutional monstrosity.

Quite apart from the breach of faith with the electorate that is involved, it would appear that those in authority have already forgotten that the basic objection to the 42nd Amendment is not so much that it contains certain obnoxious

provisions but the manner in which it was bulldozed through Parliament at a time when leaders of the Opposition were in prison, the press was censored and no free discussion worth the name was possible.

Obviously, the right thing for the government to do is to move for rescinding the entire 42nd Amendment lock, stock and barrel and later to re-enact separately such provisions in the 42nd Amendment as may possess some virtue.

At this point a strange alibi is trotted out, and that is that the Congress party has a majority in the Rajya Sabha and that therefore a Bill for the repeal of the Amendment in toto would stand little chance of being adopted. So what? Does it mean that a government in a parliamentary democracy should only introduce legislation for which a majority in both houses of parliament is assured in advance? There are many countries, particularly those that have Federal Constitutions such as ours, where the Government of the day enjoys a majority in the Lower House but not in the Second Chamber. A case in point today is the present Labour Government in U.K. The House of Lords—with a Conservative majority—has on more than one occasion thrown out legislation adopted by the House of Commons. Does this mean that Mr Callaghan should from now on send for Mrs Margaret Thatcher for a quite chit-chat and say: "Margaret, old girl, do you mind very much if I introduce a Bill for such and such a purpose and will you please tell the Lords to behave? If you don't, I shall desist from introducing the measure in the Commons." How long would Mr Callaghan last in office if he were to follow the strategy that certain leaders of the Janata government in Delhi have announced that they propose to follow?

Quite apart from principle, this is not even good parliamentary procedure or strategy. The correct thing for the Janata Government is to introduce a Bill for the total re-

peal of the 42nd Amendment and dare the Congress party to throw it out to the Rajya Sabha. Let the people of India know who comes in the way of rescinding of this infamous amendment so well described in the Janata Manifesto.

There has been a certain amount of speculation about the motivation for this attempt to backtracking. One of the suggestions advanced is that the Janata Government either finds some of the powers bequeathed to them by Mrs Gandhi's regime worth hanging on to or that they do not have the guts to come forward before the bar of public opinion and justify the repeal of certain provisions.

Whatever the motive, there can be little doubt that if this attitude is persisted in, it may open the door to quite unfortunate compromises. Take, for instance, two objectionable provisions in the 42nd Amendment about which one hears a great deal of humming and hawing already going on in Delhi.

The first of these is the introduction of the terms "secular" and "socialist" in the description of our Republic. Since the majority of the Indian people are Godfearing and love their land and their property, both terms are objectionable. In case there should be any attempt to put a gloss on the meaning of these words, a reference to the Concise Oxford Dictionary shows that the terms "secular" is defined as "sceptical of religious truth or opposed to religious education," while the term "socialism" is defined as "a theory which advocates State ownership and control of the means of production, distribution and exchange." By contrast, our Constitution guarantees the right to the Freedom of Religion and the giving of religious education in schools belonging to the minorities by Articles 25 to 28 and Article 30, while the Right to Property is a Fundamental Right of the citizen guaranteed by Articles 19 and 31. Our Constitution is thus neither secular nor socialist.

Another obnoxious amendment is that which reduces the President of the Republic

to a mere puppet and rubber stamp of the Prime Minister and Cabinet of the day. Let us imagine that a future Prime Minister comes to the then President and asks him to sign a Proclamation of Emergency suspending the Fundamental Rights of the citizen. Under the present dispensation, if the President objects to signing such a Proclamation because the preconditions to such a Proclamation do not exist, all that the Prime Minister has to do is to say that the Cabinet of the day so wills it and that the President is bound by the "advice." This is precisely what happened on 26th June 1975. Do we want it to happen again?

Even worse, if the Prime Minister of the day and his party lose their majority in the Lok Sabha and the President quite rightly asks for their resignation, the Prime Minister—unless this amendment is repealed—would be justified in telling the President to abide by the Cabinet's advice, with the result that the President becomes party to a coup d'état subverting the Constitution and democracy itself.

The President is one of the valuable checks and balances, along with the independent judiciary, against the domination of the parliamentary executive of the day. In his Prison Diary, Mr Jayaprakash Narayan was provoked on September 7, 1975 by certain remarks made by the then Attorney-General about the supremacy of Parliament to write: "This is a horrendous picture of our democracy. No wonder Gandhiji called parliamentary democracy a dictatorship of the majority... What does the supremacy of Parliament mean? It means something sordid, something revolting to a democrat. A Parliament virtually means the Cabinet... the Cabinet means the leader, the Prime Minister... So let no one be beguiled by the concept of the supremacy of Parliament. The concept just does not fit into the picture. Here there must be clearly laid down checks and balances. No organ of the State should be supreme." How right he was.