

A every side needs to
reinforce its



A rigid constitution safeguards legislative encroachments and is a guarantee against hasty changes. Placing serious obstacles in the way of organic changes is absolutely essential for the safe working of democracy. “ It may be added,” says Laski, “ that an age which, like our own, has seen the classic safeguards of representative government thwarted on every side needs to reinforce its conviction of their urgency.” A rigid constitution guarantees to minorities their rights. Where fundamental rights are concerned, minorities cannot be expected to agree to their rights being imperiled by a majority action. If the majority ventures it, the judges perform their function of guardianship most conscientiously. Justice Jackson of the Supreme Court of the United States declared in *West Virginia State Board of Education v. Barnette*, “ The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and establish them as legal principles to be applied by the courts.

” A rigid constitution is conservative in the sense that it ‘ is free from dangers of temporary popular passion. It possesses the merits of permanence and stability and is sure to command the confidence of the people. The people weigh even ordinary legislation in terms of the provisions of the constitution. Finally, the facility of amendment sometimes carries a deleterious effect. Referring to the situation under the German Republic, Max Radin said, “ The heaping up of constitutional changes by simple votes the Reichstag destroyed what Professor Lowenstein of Yale aptly calls the ‘ constitutional conscience’ of the nation, and rendered far-reaching and revolutionary changes by ordinance and coup d’etat less shocking.

” But when rigidity and conservatism are carried beyond requisite necessity, they prove elements of weakness. The difficulty in amending the constitution very often proves detrimental to national interest. It causes unnecessary delay which may lead to revolution. Take, for example, the method of constitutional amendment in the United States of America. There is no prescribed time limit, unless specifically determined by a resolution of Congress, within which a constitutional amendment may be ratified by three-fourths of the States legislatures. It can be delayed indefinitely, thereby defeating the purpose of the amendment. Moreover, thirteen smaller States in America can veto the constitutional amendment, much to the detriment of national interests.

According to Lord Macaulay, the most important cause of all revolutions is the fact that while nations move onward, constitutions stand still. A rigid constitution becomes stationary unless amendment is easy or its text is flexible. A good constitution is that which can be easily adjusted and adapted to the changing social, political and economic conditions of the country and keeps pace with the time. “ Progress demands adaptability and flexibility and such adaptability and flexibility can only be secured in countries with rigid constitutions by a sufficiently easy method of amendment.” A rigid constitution, which is necessarily written, having been made at a particular time, cannot foresee the distant future. The vision of its framers however far-sighted they might have been must remain blurred; they cannot imagine the shape of things to come.

“ It (a rigid constitution) is like an attempt to fit a garment to an individual without taking into consideration his future growth and changes in size.”

Moreover, a rigid constitution is without any regard to the past and without anticipation of the future, and is, therefore, conservative in outlook. It does not adequately admit growth and expansion. Under a rigid constitution the main concern of the judiciary is to see whether the law conforms to the provisions of the constitution or not. Judges are generally conservative in their outlook and when they go to the letter of the law, they are disregarding of the new spirit to which the constitution needs to be adjusted.

“ To entrust the judge,” says Laski, “ with the power to override the will of the legislature is broadly to make him the decisive factor in the State.” The judiciary becomes a super-legislature, but not in its representative capacity. Its decisions are political in nature and are, therefore, not impressive, impartial and worthy of any special respect as the decisions of the courts should generally command.

The attitude of the judiciary, which lacks elasticity and adaptability, may accelerate the forces which upset the constitution itself. Some writers hold that rigid constitutions are more valuable, because they are less subject to party feelings. But this is not correct. Rigid constitutions are the focus of national sentiment; they are centres of national discussion and, as such, are more subject to party forces than flexible constitutions.