Selected Reading Material
On Political Consepts
&
Constitution of India

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CONTENTS

EVOLUTION AND PHILOSOPHY BEHIND THE INDIAN CONSTITUTION

Three important questions bothered the man right from the beginning of the history of civilization. They are:

1. Is Government necessary?
2. What is the best form of Government?
3. How can we prevent the Government from becoming tyrannical?

Answer to the above three questions is the origin of idea of constitutionalism and then the Constitutional law. The Constitution refers to that body of doctrines and practices which form basis for organizing a state.

The human being, according to the great Greek Philosopher Aristotle, is a political and social animal. Either human being or a family cannot survive in isolation. It became necessary for man to organize himself into communities and societies. With the growth of population, these societies grew and multiplied and some form of rules and regulation was needed. Out of this need arose law and government.

Robert M MacIver, in the Web of Government[1], says that the same necessities that create the family create regulation. The existence of family requires the regulation of sex, the regulation of property, and the regulation of youth...here is government in miniature and already government of a quite elaborate character....family is everywhere the matrix of the government.

MacIver explained the difference between the state and the government and the organ and organization in an effective expression: "When we speak of the estate we mean the organization of which government is the administrative organ. Even organization must have a focus of administration, an agency by which its policies are given specific character and translated into action. But the organization is greater than the organ. In this sense the state is greater and more inclusive than its government. A state has a constitution, a code of laws, a way of setting up its government, a body of citizens...when we think of this whole structure we think of the state... Under these endlessly varied circumstances the habits pertaining to government, which at first were centered in the family and kin-circle, found a locus in the inclusive community".

[1] Robert M MacIver, The Web of Government, New York, Free Press, 1965, p 17

A written constitution is essentially a basic expression of the ideas and organization of a government that is formally presented in one document. Written Constitution is contained in one document, such as Soviet Union or Constitution of India or Swiss Constitution. Some constitutions are found in several documents, such as Canadian Constitution which include a "Constitution Act", as well as several pieces of the legislation and historical documents. There are governments without constitutions, which are yet constitutional governments because they have limited governments, which can be called constitutional regimes. The British Government does not possess a document called 'The Royal Constitution". There are number of different documents that are part of the body of what is referred to as British Constitutional Law, including:

1. Magna Carta 1215
2. Petition of Right of 1628
3. Bill of Rights 1689
4. The Act of Settlement 1701 and
5. Certain special Acts of Parliament.

What is Constitution?

It is in short, a rule of book of a nation, codifying rule of law.

Constitution is a legal document having a special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state, and declares the principles governing the operation of those organs[2]. Like every other Constitution, the Indian Constitution also seeks to establish the fundamental organs of government and administration, lays down their structure, composition, powers and principal functions, defines the inter-relationship of one organ with another, and regulates the relationship between the citizen and the state, more particularly the political relationship. The states have reasserted certain principles of law through written Constitutions. As a democratic Constitution, the Indian masterpiece also reflects the fundamental political values in substantive ways by guaranteeing Fundamental Rights to the citizens, and in procedural ways by providing remedies. It mirrors basic values about who shall govern, and in what direction. Constitution means the structure of a body, organism or organization, or we can also say, what constitutes it or what it consists of. Because the nation is one of the biggest in the would with most of varieties of the people and the cultures, India needs an expressly written code of governance, more specifically when the people chose to have different institutes, estates, mechanisms and levels of sovereignty. And thus we have the longest written constitution, which is one of the essential features of democratic federation.

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[2] Wade and Phillips -- Constitutional Law 14th Edn. P 1

Functions of the Constitution

The Constitution is a political structure, whether it is written or not and followed or not. They have several functions.

a) Expression of Ideology: it reflects the ideology and philosophy of a nation state.

b) Expression of Basic Law: Constitutions present basic laws which could be modified or replaced through a process called extra ordinary procedure of amendment. There is a special law also which usually focus upon the rights of the citizens, for instance, rights concerning language, speech, religion, assembly, the press, property and so on.

c) Organizational frame work: It provides organizational framework for the governments. It defines the functions legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.

d) Levels of Government: Constitution generally explains the levels of different organs of the Government. Whether it is federal, confederal or unitary will be described by the Constitution. They delineate the power levels of national and provincial governments.

e) Amendment provision: As it would not be possible to foretell all possibilities in future with great degree of accuracy, there must be sufficient provisions for amendment of the Constitution. It should contain a set of directions for its own modifications. The system might collapse if it lacks in scope for modification. Inherent capacity to change according to changing times and needs help any system to survive and improve.

Soviet Constitution was mostly an expression of ideology and was less an expression of organizational set up. The American Constitution is more an expression of governmental organization and a guideline for the power relationship of the regime than an expression of the philosophy of the regime.

What is Constitutionalism?

One needs to know the 'Constitutionalism' and "Constitutional Law" before understanding the philosophy of Constitution of India. Having a Constitution itself is not Constitutionalism. Even a dictator could create a rulebook calling it Constitution, which never meant that such a dictator had any faith in

Constitutionalism. Recognizing the need for governance, the Constitutionalism equally emphasizes the necessity of restricting those powers.

The Constitutional law means the rule, which regulates the structure of the principal organs of the Government and their relationship to each other, and determines their principal functions. The rules consist both of legal rules enacted or accepted as binding by all who are concerned in Government. All the Constitutions are the heirs of the past as well as the testators of the future[3]. Constitution of Indian Republic is not the product of a political revolution but of the research and deliberations of a body of eminent representatives of the people who sought to improve the existing system of administration[4].

Thus the Constitutionalism, in brief, is specific limitations on general governmental powers to prevent exercise of arbitrary decision-making. Unlimited powers concentrated in a few hands at the helm of affairs and their exercise would jeopardize the freedom of the people. These powers have to be checked and balanced with equally powerful alternatives in a system, where it will be nearly impossible for dictators to emerge. In one word 'Limited Governance' is the Constitutionalism, which is supposed to reflect in the Constitutional Law of a democratic state. Constitution of India is the Constitutional Law incorporating the Constitutionalism. The listed fundamental rights and guaranteed remedies, creation of judiciary as an impartial arbiter with all independent powers besides broad based legislative check on the executive are the reflections of such constitutionalism. From these essential characters the doctrines of judicial review, rule of law, separation of powers, universal franchise, transparent executive, fundamental right to equality and quality of life emerged and consolidated. At the same time, the rulebook has a responsibility to check anarchy and possibility of people misusing freedom to resort to violent means of overturning the constitutionally governing institutions. That responsibility is undercurrent in the reasonable restrictions placed on the exercise of fundamental rights of the people. The founding fathers of the Constitution made restrictions specific while the rights appear in general terms, paving a way for independent judiciary to expand the scope of freedoms and reading emerging rights into the sacred statements of rights under fundamental rights chapter. At the same time specification of restrictions operate as powerful restraints on the powers of the rulers. The right as the individual power in the hands of people and authority as the ruling power in the hands of institutions cannot go arbitrary and anarchic undermining the democratic peace. The democratic constitutionalism is three pronged in Indian Constitution, one- guaranteeing freedoms, two- restricting governing institutions, three- empowering the independent arbiter of judiciary

[3] Jennings -- Some Characteristics of the Indian Constitution, p. 56, 1953
[4] DD Basu, Introduction to the Constitution of India, p. 3 (3rd Edn. 1946)

with power to review the executive and legislative orders affecting the interests of people in general or afflicting basic norms of rule of law.

Basic Philosophy

Mr. Justice H. R. Khanna in his 'Making of Constitution said: "The framing of a Constitution calls for the highest statecraft. Those entrusted with it have to realize the practical needs of the government and have, at the same time, to keep in view the ideals, which have inspired the nation. They have to be men of vision, yet they cannot forget the grass roots"[5]. A Constitution at the same time has to be a living thing, living not for one or two generations but for succeeding generations of men and women. It is for that reason the provisions of the Constitution are couched in general terms, for the great generalities the Constitution have a content and significance that very from age to age and have, at the same time transcendental continuity about them. ...A constitution states, or ought to state, not the rules of the passing hour, but the principles for an expanding future[6].

The Indian Constitution is based on the philosophy of evolving an egalitarian society free from fear and bias based on promoting individual freedom in shaping the government of their choice. The whole foundation of constitutional democracy is building a system of governance in systematic machinery functioning automatically on the wheels of norms and regulations but not on individual whims and fancies. It is easy to dream such a system of rule of law than framing a mechanism for it. The Indian Constitution is a marathon effort to translate philosophical rule of law into practical set up divided into three significant estates checking each other exercising parallel sovereignty and non-egoistic supremacy in their own way. Apart from excellent separation of powers to avoid the absolute concentration, the Constitution of India envisages a distinct distribution of powers between two major levels of Governments- central and provincial with a fair scope for a third tier – the local bodies. However, the operation of the system came in contrast with men and their manipulations leading to different opinions and indifferent options. Whatever may be the consequential aberrations, the system of rule of law is perfectly reflected in framing of the Constitutional norms codifying the best governing mechanisms tested and trusted in various democratic societies world over.

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[5] Khanna, H R, Making of India's Constitution, pp 1-2.
[6] Ibid, p 3

Preamble:

The first Prime Minister of Independent India categorically presented the objective of the constitution in a lucid statement: "The first task of this Assembly (Constituent Assembly) is to free India through a new Constitution, to feed the starving people and clothe the naked masses and to give each Indian the fullest opportunity to develop himself according to his capability[7]". This resolve reflected in Resolution passed on the 22nd January 1947 and inspired the shaping of the Constitution into a dynamic document. This resolution is the inner theme of the Preamble, which should be read, referred and remembered.

> We, THE PEOPLE OF INDIA,
> having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizen:
> JUSTICE-social economic and political;
> LIBERTY of thought, expression, belief, faith and worship;
> EQUALITY of status and of opportunity;
> And promote among them all
> FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The concept of "We the people..." being the source and authority for drawing up the Constitution was also taken from the US model and preamble begins with those words. Though the Constituent Assembly had legal power to enact the Constitution, the Preamble followed the American example and claims that We the people of India, do hereby adopt, enact and give to ourselves this Constitution" and declared that objective of the Constitution were ***justice, liberty, equality and fraternity.*** Though there was broad mention of objectives in the Preamble, the framers chose to include detailed goals and objectives in Part IV entitled "Directive Principles of State policy" on the lines of Irish Free State, mentioning that they were not enforceable like Fundamental Rights.

Preamble is a statement of objects, which are expected by the Constitution makers to be realized through the implementation of the Constitution. In Berubari Union and Exchange of Enclaves, AIR 1960 SC 845, the Supreme Court considered the preamble a key to open the mind of the

[7] Constituent Assembly Debates, 22nd Jan, 1947, Vol. II p 316

Constitution makers. It is a guide to interpretation of the provisions of the Constitution.

Preamble made it clear that Constitution emanated from the people of India and not from any external authority or any less authority than the people of India. Many Constitution experts and the Supreme Court stated that it is a conclusive assumption and a legal fiction, which cannot be tested or questioned in any court. Supreme Court held that the preamble was part of the constitution and it could be amended except the basic features in the Preamble. 42nd Amendment inserted three "Secularism, Socialism and Integrity" in Preamble. As these concepts were already implied in the Constitution, the addition was not considered to be the amendment of the basic features.

Dr. B.R. Ambedkar in his concluding speech in the Assembly stated that "Political democracy cannot last unless there lies at the base of it social democracy. What does social democracy mean? It means a way of life, which recognizes liberty, equality and paternity, which are not to be treated as separate items in a trinity. They form a union of the trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity"[8].

Constituent Assembly: A Sovereign Body

The roots of the formation of the Constituent Assembly and the framing of the Constitution are relevant to understand its philosophy and evolution. The Constituent Assembly was formulated under the Cabinet Mission Plan prior to Independence. The elections to the Constituent Assembly were conducted under the system of separate electorate based on the community. After such an election too, it could not become a sovereign body. Thus its authority was limited in respect of the basic principles and procedure. The British Government brought it into existence in their process of conceding less and retaining the most of the authority with itself as counter strategy to the revolutionary raising. The Constituent Assembly was expected to work within the framework of the Cabinet Mission scheme alone. However, these limitations were removed by the Indian Independence Act, 1947 under which it was made free to frame any constitution it pleased.

Evolution of the Constitution of India

Dr. Rajendra Prasad was elected the permanent Chairman of the Constituent Assembly. It met on December 9, 1946. The Muslim League

[8] Basu, D.D. Introduction to the Constitution of India, 18th Edition, p 24

members were not understanding the reason and not agreeing to any viable proposition. The British Authorities were not in a mood to control or convince them. Thus in the initial days, the Constituent Assembly could not deliberate or decide any considerable thing. However, Jawaharlal Nehru moved the Objective Resolution on December 13, 1946 and that was passed on January 22, 1947. It was the expression to the ideals and aspirations of the people of India and so the objectives of the Constitution. These fundamental objectives guided the drafting members in framing a rulebook for the governance of the new nation. This ultimately became the very significant preamble of the Constitution of India. After the Independence the Drafting Committee was appointed by the Constituent Assembly in accordance with the decisions on the CA on the reports made by the various Committees. Dr. B.R. Ambedkar was appointed the chairman of the Drafting Committee consisting of Sir Alladi Krishnaswamy Iyer, K.M. Munshi, T.T.Krishnamachari, and Gopalaswami Ayyangar. Sir B.N.Rau prepared the original Draft on which the work of the committee was based. Several eminent personalities were elected to the Constituent Assembly through the indirect method of elections from the members of the Provincial legislatures. Infact, no prominent personality of the country was left out of the Assembly. The members include Jawaharlal Nehru, Rajendra Prasad, Sardar Patel, Maulana Azad, Gopalaswami Ayyangar, Govind Ballabh Pant, Abdul Gaffar Khan, T.T.Krishnamachary, Alladi Krishnaswami Ayyar, H.N. Kunzu, H.S. Gaur, K.V.Shah, Masani, Acharya Kripalani, Liaquat Ali Khan, Khwaza Nazimuddeen, Sir Feroze Khan Noon, Suhrawardy, Sir Zafarullah Khan, Dr. Sachchidananda Sinha. Except Gandhi and Jinna almost all prominent public figures figured in this August body. They were elected on a limited franchise. But they were also elected on adult franchise in the first general elections held in 1952.

The draft Constitution was published in January 1948 and the people of India were given 8 months to discuss it and suggest changes. On November 4, 1948, the general discussions on the draft commenced in the Constituent Assembly and continued for five days. Then there was a thorough discussion clause by clause for about 32 days. As many as 7635 amendments were proposed and 2473 were actually discussed before a third reading was given for another 12 days. The Constitution of India was adopted and signed by the Chairman Dr Rajendra Prasad on November 26, 1949. The draft was considered for 114 days and the Constituent Assembly sat for 2 years 11 months and 18 days. Initially some important Articles came into existence, but the entire Constitution came into force from January 26, 1950.

There is a criticism that the Constitution would have been adopted by means of a referendum as was done in Ireland. Several old members of the Constituent Assembly were elected to either Parliament or State Assemblies vindicating their contribution to the drafting the Constitution and accepting the principles enshrined therein.

Glanville Austin wrote: "With the adoption of the Constitution by the members of the Constituent Assembly on November 26, 1949, India became the largest democracy in the world. By this act of strength and will, Assembly members began what was perhaps the greatest political venture since that originated in Philadelphia in 1787"[9].

Self-Government and Equality

A reference to the history of British rule and Indian Independence struggle provide basic idea of self-governance that emerged into a people's participative democracy. The last emperor of Moghul dynasty did not mind to delegate the civil administration authority to the East India Company, which was the first historic blunder that paved the way for the Company rule. The merchants who came for tea and other such things were granted not only the business rights but the revenue power to collect their dues from the clients. After some years the Company also could bargain power of administering justice within its colony and started applying the law of their own developing islands of their own sovereignty in India. This means the power of governance and the civil administration. Then imperialistic interests improved making it a sovereign with active support of the British Crown. When the officers of the company looted the innocent people and cheated the company too, the British Administrators realized that it was no longer good to leave the Indian nation in the hands of company and conveniently took over the reigns of governance. It encouraged the independent princely states if the princes subjugate to British, and if not, they won them over in battles fought by Indian born Crown soldiers backed by English captains. Till 1947 they tried to create several states within India and gave them all courage to opt out of acceding to Indian Union apart from inciting communal dissentions. Unification of scattered Indian states within the sub-continent was Herculean task, which made the present Indian Union possible after a violent partition into three pieces. The framers of the Constitution intended to secure the hard-won freedom with integrity and preferred a strong union within a federation, which otherwise appear contradictory. Mahatma Gandhi wrote in January 1922 under the caption 'Independence" in his weekly, "Young India": Swaraj, therefore will not be a free gift of the British Parliament. It will be expressed through an Act of Parliament is true. But it will be merely a courteous ratification of the declared wish of the people of India. This statement clarifies the doubts about 'independent' origin of Independence of India, if any.

[9] Glanville Austin, The Indian Constitution: Cornerstone of a Nation, p 308

The Task:

The Constituent Assembly became sovereign body after Indian Independence Act, 1947 was enacted and it was freed from limitations and restrictions imposed by British Parliament earlier under different Acts and plans. The sole task of the Constituent Assembly was framing of the Constitution for Independent India. The search for providing a legal frame and incorporating important systems relevant to India began. The framers looked forward to international documents, progressive democratic constitutions, and constitutional doctrines prevailing in Britain.

It can be said in one word, what was finally adopted by the framers was British form of Government adapted to a Federal Constitution, as stated by the authority on the Constitutional Law of India, H.M. Seervai.

The British has an unwritten unitary Constitution based on two fundamental doctrines:

1. Doctrine of supremacy of the Parliament
2. Cabinet form of Government with a Monarch as its head.

What the framers drew from UK was the Westminster model of cabinet Government as the system to govern India, according to Supreme Court. This model increasingly demands a high standard of character and conduct from members of Legislative, Judiciary and higher Civil Service.

Two world wars and consequential trials of war criminals before India achieved Independence marked the international scene. The horrendous thought of extermination of millions of people in gas chambers revealed in Nuremberg trials, war crimes, crimes against humanity, inhuman and barbaric violence over the civil population during wars and civil strife in partition which left a permanent scar reminded the humanity of the need for human life and dignity. Cruelties and infamies during Nazi regime influenced making of the Constitution. Part III with Fundamental rights was generated out of such human suffering and inspired by the Universal Declaration of Human Rights. Fundamental Rights were not included in earlier Constitution i.e., the Government of India Act 1935, because the British parliament was skeptical about the necessity of enshrining Fundamental Rights. The rights declared by UN were not enforceable.

While incorporation of fundamental rights is significant aspect of the new Constitution, the framers deliberated a lot in importing the concept of federalism with changes suitable to Indian circumstances and diversity in unity, rather than unity in diversity. Federalism as a basic philosophy is accepted and provided in the Indian Constitution. The Cooperative Federalism, which is how the character

of Indian Constitution was described, has evolved from conflicting situations and controversial background recorded by the history.

Why Federalism?

There are two levels of government above local level, with sovereignty in certain specific areas. The Central government will be having sole authority to coin money, raise an army and declare war, while intermediate level of government, i.e., states or provinces have sole authority to regulate education, criminal law, or civil law, citizens deal with both levels of government.

Federal constitution provides for expression of regional goals and national objectives. It has a special advantage that the Federal Government can absorb some of the costs of new technology or programs that would have to be absorbed completely by member units in a unitary or con-federal government system. It can accommodate the aspirations and sovereign interests of different provinces with ethnic groups, linguistic characteristics. Federation is suitable to a plural society with multiple cultures and multiple language speaking populations. Federalism allows countries involved to maximize the growth and political strength, while at the same time allowing the expressions of regional characteristics[10]. In situations of large size, involving separation and divergence of communities the federation will be a useful and working system of government. Around 21 nations are federal in this world, which occupy largest part of the globe. While China is Unitary, other four big nations like, Canada, the United States, Brazil and Australia are the federations. The USSR was also a federation, till it had split into some smaller federations. Mexico, Venezuela and Argentina in Latin America; Nigeria in Africa; Switzerland Yugoslavia and Czechoslovakia (till it was split into nations) in Europe and India in Asia are the other federations. Switzerland chose federal system as that suits its three language groups, German, French and Italian. It recognizes three official languages. Of the twenty two Swiss cantons, there are eighteen uni-lingual cantons, three bilingual cantons and one trilingual canton. The Swiss Constitution guarantees each citizen the right to communicate with the central government in any of the three official languages[11]. Germany also adopted the federal system. Instead of dividing the powers between the Bund (Central Government) and Lander (Member Units), the German Constitution provides for broad area of concurrent jurisdiction. The Upper House of the National Legislature, the Bundesrat, is chosen by the Lander Governments and has an absolute veto over matters of 'national' concern[12].

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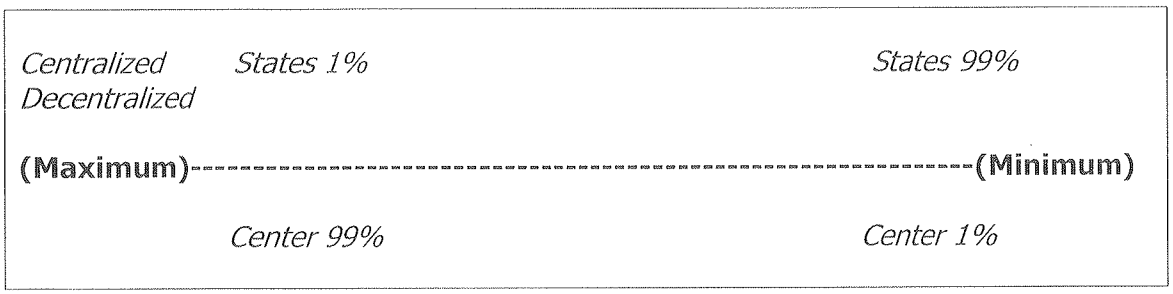
[10] Ronald Watts, New Federations: Experiments in the Commonwealth, Oxford Clarendon Press, 1966
[11] Ursula K Hicks, Federalism: Failure and Success New York Oxford University Press, 1978 pp 144-171
[12] ibid.

William Ricker has suggested a useful framework within which the many federal governments of the world may be measured. He has suggested that federations can be measured along a 'centralized-decentralized' dimension. The following minimum and maximum, illustrated in Figure may define this dimension.

Minimum: The ruler(s) of the federation can make decisions in only one narrowly restricted category of actions without obtaining the approval of the rulers of the constituent units.

Maximum: The ruler(s) of the federation can make decisions without consulting the rulers of the member governments in all but one narrowly restricted category of action.



Scale of Federalism

The closer to the 'minimum' end of the scale a federal government is, the more it can be described as a peripheral federation'. The closer to the maximum of the scale a federal government is, the more it can be described as a centralized federation.

Federalism: A Basic Philosophy

Genesis of idea of federalism in India was first traced in Simon Commission, "Indian Statutory Commission" appointed in 1927. The Commission was meant for revision of the Constitution for India. In its report in 1930, the Commission recommended the evolution of India into "a federation of self-governing units".

The representatives of Princely States declared during the First Round Table Conference 1930-32) that they would join an "All India federation with a self-governing British India". The White Paper embodying the report of Round Table Conference, in March 1933 was submitted to Joint Select Committee of Parliament, which preferred creation of "All India Federation".

By Government of India Act 1935, the background was ready for making India to become a federation with 11 Governor's Provinces and 650 Native States, who supposed to have fifty per cent seats in Council of States. However, execution of the instrument of accession was the prerequisite to form the Federation, which could not become a reality.

The Cabinet Mission Plan in 1946 contemplated the division of the country into three Zones, Zone A, Zone B and Zone C, based on the concentration of Hindus and Muslims. Zones B and C included Muslim dominated areas. The Center was supposed to be uniting point of these three zones, with its power confined only to Defence, Foreign Affairs and Communication. Constituent Assembly was to be divided into three sections according to the Zonal Scheme for evolving provincial and group Constitutions. The proposal of grouping of Provinces became point of dispute and disagreement, while in general; the Plan was acceptable to major political parties. The division of three Zones eventually resulted in the Partition as a precondition for Independence. While presenting the Partition scheme, Lord Mount batten insisted the major parties to agree for partition to have the federation with a strong center, instead of weak center as contemplated in Cabinet Mission Plan.

Generally speaking, the CONFEDERATION is a system where the units dominate the Union, in Unitary State, the Union dominates the Units, and if Union and Units are co-equal it is Federation. In a Confederation, there will be an alliance between independent states where units can secede. In Unitary State the legislatures of Units derive power from Central Legislature. Vital feature of federation is division of legislative powers, each unit being sovereign in its own sphere.

Dr B.R. Ambedkar used the term Union to make it clear that states had no right to secede from the Union to set themselves into separate States. He said that this Union was Federation and called it a flexible federation to say that it was not as rigid as the American Constitution was. However the expression Federation was not used deliberately.

In *Keshavananda Bharathi* case[13], the Supreme Court said that the federal character of the Constitution was its basic feature. In State of Rajasthan v. Union of India (AIR 1977 SC 1361) it was held that states could not assert any right based on the supposed federal character of the Constitution. Supreme Court said: "The Constitution is amphibian in sense that it can move either on the federal or the unitary plane. When action is taken under Article 356 the movement is on the unitary plane."

[13] AIR 1973 SC 1461

In *West Bengal v. Union of India*[14] the Supreme Court observed: 'The Indian Union is not a true federation".

Five Essentials of Federal Character:

1. The Constitution must be written
2. It must be rigid
3. It must be supreme law of the land
4. There must be division or distribution of powers between the Union or Federal Government and the various States or Provinces
5. There must be an independent and impartial judiciary to interpret the Constitution and the Laws.

Thus, our India emerged as a federation getting relieved from the clutches of British Raj. Several princely states, which were divided and ruled, came together to form the Indian Union. The Center and Provinces of Pre-Independence days became Union and States with clear division of powers enlisted in three lists- Union, States and Concurrent Lists. Most of the federations in the world came into existence because of two or three independent states coming together. In India the process is reverse. Originally it was a vast unitary state with several provinces as administrative units. Indian federation was not the result of an agreement between the federating states. The Indian Federation was joined by the former Princely States, which later became the units of the federation. Several such states acceded to India and became full-fledged members of the Indian Union. When Constitution came into force the component units were grouped into four categories of States. By a gradual process the reorganization of States took place, which continued up to the close of 1969. In 1969 Twenty Second Amendment to the Constitution was passed. State of Jammu and Kashmir had been accorded a special position in Indian Union. In Sardar Patel's words: " ...the first requirement of any progressive country is internal and external security. Therefore I started planning on the integration of the country.....It is impossible to make progress unless you first restore order in the country. Maulana Azad in one of his notes in 1948 referred, inter alia, to a demand gathering strength for linguistic states and observed that the only was of maintaining Indian solidarity was to give a commanding position to the Center in the new Constitutional set up. Indian National Congress was advocating for a strong center from the beginning. In fact, the Cabinet Mission Plan which resulted in weak center proved to be a disaster as the country was bifurcated.

Ambedkar said that the Indian federation was a "Union" because it was indissoluble, and no state had a right to secede from the Indian Union. He said:

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[14] AIR 1963 SC 1241

> The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the States to join in a federation, and that the federation not being the result of an agreement, no State has the right to secede from it. The federation is a Union because it is indestructible. Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute[15].

Strong Center to secure the nation

The founding fathers of the Constitution felt a need for a strong Center because of prevailing social economic and political conditions. Ambedkar said in the Constituent Assembly: "The Indian Constitution is a federal Constitution in as much as it established what may be called a dual polity which will consist of the Union at the Center and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution". However, he asserted that the Indian Constitution avoided the tight mould of federalism in which the American Constitution was caught, and could be both unitary as well as federal according to the requirements of time and circumstances.

We the people of India, opted for a federation in which Center was to be very strong and which has in-built mechanism to convert the Constitution into a unitary Constitution in certain circumstances and situations is crystal clear from the various provisions of the Constitution. Each and every regional government of the country is independent each of the other within its sphere. However it is called "cooperative federalism" as the states are expected to cooperate with each other. Thus the Indian Constitution had been cast in a mould of its own. It is certainly federal in so far as it assigns different, distinct and independent legislative fields to the Union and State governments, and in so far as it has in-built mechanism of converting the federation into a unitary system, it is typically Indian model.

[15] Khanna, H R, Making of India's Constitution, EBC, pp20-21

Federation, a model:

Among the models available before the Constituent Assembly, the US Constitution was very important document on Federation, the Acts prepared by the UK Parliament prescribing Constitutions for Canada, Australia and India and Bill of rights introduced in US through ten amendments.

Executive:

The framers adopted British model of Executive. The Executive is responsible to Legislature in Canada and Australia and that was the concept in Government of India Act 1935 also. Framers did not hesitate to adopt the same.

President:

The name for the Head of the Nation, i.e., the President, was drawn from US model, while position, functions and powers of the President were almost similar to those of the Head of the Britain, i.e., Crown.

Vice President:

The name and nature of Vice President's office was also drawn from US Constitution, where Vice President holds the position of ex-officio chairman of Second Chamber. Framers adopted the system of parliamentary executive in preference to the Presidential System of US.

Separation of Powers:

A renowned Constitutional expert, authority on Constitution of India, and an Advocate, Mr. H.M. Seervai removed the common misconception by stating that the machinery of Government set up by our Constitution follows in essentials the British and not the American model. He says:

> The doctrine of separation of powers and the doctrine that legislatures are the delegates of the people which are basic doctrines of the US Constitution do not form part of the Constitution of Great Britain or the Constitution of India. Our Constitution has rejected the presidential form of Government, that is, of an executive independent of, and not responsible to, the legislature, and adopted the British model of Government by a Cabinet, that is, of an executive responsible to, removable by, the legislature. (Articles 74, 75 for Union Executive and Arts. 163,164 for State Executive).....The President is the formal head of

the Government and has to act on the advice of the Cabinet like the Crown in Great Britain[16].

Legislature:

1. Predominant Position: The Constitution conferred on the House of the People, and on the Legislative Assemblies of each State, the predominant position.

2. Privileges: Though it is not as supreme as that of UK Parliament, the Parliament in India also enjoys a superior status in terms of privileges of the British House of Commons at the commencement of the Constitution. (Arts. 105 and 194)

3. Procedure in respect of finance, the provision for consolidation fund, the scrutiny and supervision of Union and State public accounts by an independent Comptroller and Auditor General of India, are on lines of British system.

Judges:

The appointment of judges of Supreme Court and High Court and the appointment of subordinate judiciary is also on the lines of British model and not the American model. The judges hold the office till a slated age and that they can be removed only by a process of impeachment. The position of Judges of SC is same in US England and India. In England and India, the judges are not elected like in many states of US.

Legalism & Rigidity:

The following requisites of federalism brought in the legalism and rigidity to the federal structure of the Constitution.

1. A Written Constitution.
2. Concept of Ultra vires, empowering the Courts to declare the law as ultra vires, which makes federalism to give rise to legalism.
3. Powers of Federal Government lack flexibility for they are limited by the terms conferring the powers, which can be enlarged only by amendment to the Constitution.

Legalism and rigidity are inevitable consequences of federalism. Rigidity is an inherent defect in Federalism and the unavoidable price of federal union.

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[16] Seervai, the Constitutional law of India, Vol 1, Fourth Edition, p 159

Method of distribution of powers given in detail was hoped to mitigate the rigidity and legalism of a federal constitution.

Minimising the Rigidity:

Dr, Ambedkar listed out various ways adopted to minimise the rigidity and legalism of federal constitution [17]

1. The distribution of legislative power between the Union and the States which gives to the Union exclusive power to legislate in respect of matters contained in List I, and a concurrent power to legislate in respect of matters contained in List III of Schedule VII (Article 246)

2. The power given to Parliament to legislate on exclusively State subjects, namely,
   a. with respect to a matter in the State List in the national interest Art. 249
   b. in respect of any matter in the State List if a proclamation of emergency is in operation Art 250.
   c. For two or more States by consent of those States (Art. 252)

3. Provisions for proclamation of emergency and the effect of such proclamation (Art 353 and 353.

4. Provisions included in the Constitution which are to be operative "unless provision is made to the contrary by Parliament by law" or words to the same effect.

5. Provisions regarding the amendment of the Constitution.

Residue Powers:

1. In the United States Constitution, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." (The Tenth Amendment to the Constitution) The powers are thus mutually exclusive and it was left to judicial interpretation to imply a limited field of concurrent legislative action. In Australia, the residuary powers are reserved with States, but the enumerated powers of the Commonwealth are not exclusive so that there is a large field of concurrent legislative action. Canadian Constitution gave residuary powers to the Dominion. It contained double enumeration of exclusive legislative powers. The Government of India Act 1935 gave exhaustive lists of power- List I- Federal, List

[17] (Constituent Assembly Debates, Vol VII, p 34.).

II Provincial, and List III concurrent Legislative Lists. Article 246, and Schedule VII gave Parliament a very wide field of exclusive legislation and a substantial field of concurrent legislation to mitigate the rigidity and legalism inherent in federalism.

Conflict between Federal Law and State Law:

In the United States, Canada and Australia it is well settled that in any irreconcilable conflict between a valid federal law and valid State law the federal law will prevail and the State law will be void to the extent of its repugnancy to the federal law. The paramountcy of federal law was generally provided in GI Act 1935. Section 107 provided flexibility in the exercise of concurrent legislative power where law made by provincial legislature will prevail over earlier Federal law with certain conditions and limitations. Article 254 conferred on Parliament the power to repeal a State law made in exercise of concurrent legislative power.

With regard to taxation power also independent and exclusive lists were made in GI Act, which was adopted by the Constitution. It avoided overlapping powers of the taxation. The Constitution has taken over the principle of exhaustive enumeration of legislative subjects in the three legislative lists with beneficial results. Article 248 gives residuary powers to the Union.

Flexibility in working of Federation

2. Article 249 is a well-drafted provision intending to secure greater flexibility in working the federation. The States have exclusive power to legislate on matters contained in the States List. Article 249 provides for a situation where the national interest requires that Parliament can legislate on a subject in the State List only if Council of States resolves by 2/3 majority that it is necessary in the national interest. Such a resolution remains in force for one year and can be extended beyond. The law passed in pursuance of such resolution ceases to have effect after six months. It is meant to deal with temporary situation. Articles 250, 352 and 353 confer power to issue a proclamation of emergency, after which Parliament can pass laws for a State in respect of the matters contained in the List II. This power has to be exercised by the President of India and requires the approval of both Houses. Dr Ambedkar says that these provisions made the Indian Constitution both Federal and Unitary. In normal times it is framed to work as a federal system. But in times of war it is so designed as to make it work as though it was a unitary system[18]. There is no such provision in the Constitutions of United States, Canada and Australia. However same result is arrived by the judicial interpretations in those three countries. GOI Act 1935

[18] Constituent Assembly Debates Vol VII pp 34-35

gave express power in times of war to the federal government to legislate even on subjects of exclusive provincial legislation.

Emergency Provisions:

Inclusion of "internal disturbance" in Section 103 of GOI Act, 1935 was questioned on the ground that it was aimed at Freedom Movement. That word found its place in the Constitution also. This is the expression used for imposing Emergency on 26th June 1975. This was replaced later by "armed rebellion".

Two or more states can empower the parliament to legislate on state subject under Article 252. Similar powers were available under GOI Act, 1935 (S. 103). However, the law passed under Article 252 by Parliament, cannot be amended by state legislature. Article 252 provides another flexibility in the working of federal government.

Union's Power to Legislate on State Subjects:

The power of Chief Executive in the Union to legislate on State subjects through ordinance and power of the Union when the constitutional machinery failed in States are other two aspects drawn from the GOI Act, 1935 (Section 42). Article 123 empowers the President to promulgate ordinances during the recess of the Parliament, and Article 213 gives similar power to the Governor in the States. Powers under Article 356 are also found under GOI Act, (Section 45), wherein the Federal executive takes over the administration when the constitutional machinery failed in the state.

Restrictions on Trade:

Section 297 of the Act of 1935 prohibited certain restrictions on internal trade and thus secured freedom of inter-State trade and commerce by providing no provincial legislature or government shall have power to pass any law or take any executive action prohibiting or restricting the entry into or export from a province of any goods or class of goods and by prohibiting discriminatory taxation on goods manufactured and produced outside a province. Thus Government of India Act, 1935 furnished a model, which with some alterations could be adopted by the drafting committee relating to inter-State trade and commerce. But, Seervai says, the framers preferred to borrow Section 92 of the Australian Constitution and couched Article 301 in similar language giving freedom of trade and commerce.

Amending Provisions:

Government of India Act 1935 was not provided with amending provisions because that power was retained by the British Parliament itself. Any Constitution without provision for Amendment will become extremely rigid. The US constitution and Constitutions of other federations made provision for Amendment. Article 368 provided for amendment.

Constitutions of Canada, Australia and GOI Act 1935 did not provide for citizenship, because there was no need. All the citizens of these countries were subjects of United Kingdom and thus were having common citizenship. Indian Constitution provides for single citizenship throughout the country. American Example of dual citizenship, namely, a citizenship of the United States and a citizenship of individual state was not followed in India because the provinces of India were not separate states with constitution of their own.

The US Constitution provided for establishment of dual agencies for carrying out federal and State laws, such as federal courts established in each State and a federal executive operating in each state to enforce federal laws. In the Constitutions of Canada, Australia and in the GOI Act 1935 also such a provision existed. But in these countries Federal Agencies have not come into existence. So is the case with our country too. The Constitution of India provided for such power but in fact this power has not been exercised.

Fundamental Rights:

Great philosophers Locke and Adam Smith and Mill believed that social harmony and progress were compatible with reserving a large area for private life over which neither the State nor any other authority must be allowed to trespass. Hobbes stressed the need for centralized control and decrease that of the individual. But both the sides agreed that some portion of human existence must remain independent of the sphere of social control. To invade that preserve, however small, would be despotism. Jefferson, Burke, Paine and Mill stated that we must preserve a minimum area of personal freedom if we are not to 'degrade or deny our nature'. We cannot remain absolutely free, and must give up some or our liberty to preserve the rest. But total self-surrender is self-defeating. Since justice demands that all individuals be entitled to a minimum of freedom, all other individuals were of necessity to be restrained, if need be by force, from depriving any one of it[19]. This is the philosophical basis for freedoms and the restrictions over it, which appear in appropriate equilibrium in Indian Constitution.

[19] Khanna H R, Making of India's Constitution, pp 30-31.

The inclusion in the Constitution of a distinct part guaranteeing Fundamental Rights can be traced to the forces that operated in the struggle for independence during British Rule. As early as 1895 Bill, which was described by Mrs. Annie Besant as the Home Rule Bill, was introduced which envisaged a Constitution for India guaranteeing to every citizen freedom of expression, inviolability of one's house, right to property, equality before the law and in regard to admission to public office, the right to present claims, petitions and complaints and right to personal liberty. In August 1918 Indian National Congress soon after he publication of the Montagu-Chelmsford Report, made a demand that the new Government of India Act should declare the rights of the people of India as British Citizens. The Constitution of the Irish Free State in 1921 which included a list of Fundamental Rights also made a lasting impression on the Indian leaders. The Commonwealth of India Bill finalized by the National Convention in 1925 contained specific declaration of rights visualizing for every person in terms practically identical with the relevant provisions of the Irish Constitution specifying fundamental rights. Simon Commission Report in 1930 did not support the demand for enumeration of Fundamental Rights in the Constitution Act on the ground that abstract declaration of such rights was useless there existed the will and means to make them effective. In March 1931 Indian National Congress Karachi session reiterated demand for a written guarantee of Fundamental Rights as essential in any future Constitutional set up in India. The Joint Select Committee of the British Parliament on the Government of India Bill of 1934 did not favour this demand. Thus the Government of India Act 1935 did not enumerate the Fundamental Rights. The Sapru Committee appointed by the All Parties Conference during the year 1944-45 expressed the view that Fundamental Rights should be expressly guaranteed. The British Cabinet Mission Plan of 1946 envisaged the setting up of an Advisory Committee for reporting, inter alia, on Fundamental Rights. The Constituent Assembly has debated every fundamental right and developed the text of the significant Part II.

The American Bill of Rights declared rights in terms almost absolute, leaving it to the courts to impose restrictions over them based on some doctrines. However Indian Constitution provided a new fundamental right under Article 32, namely the right to move the Supreme Court for enforcement of Fundamental Rights.

Existence of Fundamental Rights chapter along with enforcing Articles, Seervai says, is not a feature that distinguishes the Indian Constitution from British, Canadian and Australian Constitutions, and it does not resemble the US Constitution. Doctrine of Ultra vires is not applicable to the Acts made by the British Parliament, but applied by the English courts to subordinate bodies constituted by Statutes or Charter, and the Privy Council considers the validity of laws made in colonies. There is English Bill of Rights, 1689 also which declares

the basic freedoms which Englishmen claimed for themselves. The Fundamental Right under Article 32 is not different from the other rights conferred by the Constitution. The well known English Writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto are essential components of judicial review power, which was stated in express terms under Article 32 and 226 and thus the origin of these Articles could be traced in English writs, which were exercised for centuries by the Court of Queen's Bench. Thus Seervai says that no new jurisdiction is created by Constitution of India.

State Legislature:

Seervai also points out another major difference between US and Indian Constitution, while the former provides Constitution only for the Federation, the Indian Constitution provides for Center and States also. In US the legislatures of the States are considered to be the delegates of Federation, whereas the British Parliament never envisaged such a concept. The State legislatures were as supreme and sovereign as British Parliament, which is accepted as the rule in Constitution of India also. The doctrine of immunities of instrumentality evolved by the US Supreme Court, the doctrine of police powers and the doctrine of the political question have no place in our Constitution. For our Constitution is a detailed and an elaborate document containing provisions as regards the power of executive and judiciary, and for distribution of legislative power also. US Constitution is a very brief document which declares rights in wide general terms leaving it to the judiciary to evolve exceptions and qualifications to those rights, which were clearly incorporated as the restrictions over declared rights in the Constitution itself.

Distribution of Powers:

Generally in a Federation the concept is that both the Union and State are equally sovereign and supreme. The principle of distribution being that the powers in matters of national concern and matters where uniformity of laws throughout the country is desirable to the Union and powers in matters concerning the state or local interest being given to the State. There are two forms of distribution. One- enumerated powers are given to the Union and residuary power to States as in the US and Australia. Two-enumerated powers are given to the States and residuary powers being given to the Union as in Canada.

India, that is Bharath...

The First Article of our Constitution says, "India, that is Bharath, shall be a Union of States." Wade and Philips defined the Constitution as a document having a special legal sanctity which sets out the frame-work and the principal

functions of the organs of the Government of a State and declares the principles governing the operation of t hose organs. It is a rulebook for a nation.

A new republic came into force on 26th January 1950 on which day the Constitution of India has come into existence. Then the debate about the character of our Constitution started. Is it a Union or Federation?

India emerged as a federation getting relieved from the clutches of British Raj. Several princely states, which were divided and ruled, came together to form the Indian Union. The Centre and Provinces of Pre-Independence days became Union and States with clear division of powers enlisted under three lists- Union, States and Concurrent Lists. Most of the federations in the world came into existence because of two or three independent states coming together. In India the process is reverse. Originally it was a vast unitary state with several provinces as administrative units. Indian federation was not the result of an agreement between the federating states. The Indian Federation was joined by the former Princely States, which later became the units of the federation. Several such states acceded to India and became full-fledged members of the Indian Union. When Constitution came into force the component units were grouped into four categories of States. By a gradual process the reorganization of States took place which continued up to the close of 1969. In 1969 Twenty Second Amendment to the Constitution was passed. State of Jammu and Kashmir had been accorded a special position in Indian Union. Ambedkar said that the Indian federation was a "Union" because it was indissoluble, and no state had a right to secede from the Indian Union.

A strong Center

The founding fathers of the Constitution felt a need for a strong Center because of prevailing social economic and political conditions. Ambedkar said in the Constituent Assembly: "The Indian Constitution is a federal Constitution in as much as it established what may be called a dual polity which will consist of the Union at the Center and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution". However, he asserted that the Indian Constitution avoided the tight mould of federalism in which the American Constitution was caught, and could be both unitary as well as federal according to the requirements of time and circumstances.

We the people of India, opted for a federation in which Center was to be very strong and which has in-built mechanism to convert the Constitution into a unitary Constitution in certain circumstances and situations is crystal clear from the various provisions of the Constitution. Each and every regional government of the country is independent each of the other within its sphere. However it is

called "cooperative federalism" as the states are expected to cooperate with each other. Thus the Indian Constitution had been cast in a mould of its own. It is certainly federal in so far as it assigns different, distinct and independent legislative fields to the Union and State governments, and in so far as it has in-built mechanism of converting the federation into a unitary system, it is typically Indian model. There is an eternal debate about the character of the Constitution- is it Federal or Unitary.

Parliament decides the fate of States

Article 3 empowers Parliament to abolish or create States and therefore, it is argued that the very existence of States depends upon the mercy of Parliament. Parliament also can change the boundaries of the States.

There are high emergency provisions in favour of the Centre, which negate the federalism. At the same time, the very fact that these provisions are of temporary nature and Emergency which is also known as President's Rule cannot be perpetrated for long, strengthens the argument that Indian Constitution is a federation.

Whereas the Articles 256,257 read with Article also establish that it is not a federation. Articles 249 to 253 empower in some special circumstances Parliament to legislate on the subjects of State List, which goes to say that it is non-federal.

There is another opinion that it is a quasi-federal constitution and contains more unitary features than federal. The other view is that it is a federal constitution with a novel feature of getting more powerful in national emergencies. The framers of the Constitution view it as Federal Constitution. Ambedkar said: "I think it is agreed that our Constitution not withstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces non the less, is a Federal Constitution."

Federal Features:

1. The first characteristic of federation is distribution of powers among the centre and states with matters of national importance being entrusted with the Union, and matters of local concern remain with the States.
2. Every individual or the institution or system derives power from the Constitution, which is supreme.
3. The written constitution is another feature of federation. Foundations of federation lies in the complicated terms reduced into writing.

4. Once it is written it is expected to be rigid. In a rigid Constitution the process of amendment is difficult. Constitution is a permanent document. It is supreme law of the land. Amending it is not impossible, but difficult.
5. To maintain the division of powers between two levels of the Government, an independent and impartial authority above all the ordinary bodies, the judiciary is established. The judiciary has the final power of interpretation of and guarding the provisions of the Constitution.

Unitary Features:

1. The union appoints its agents as Governors for the states, in whose name the entire administration runs. They are answerable to the President.
2. Parliament has power to legislate for the states in national interests.
3. The Union decides the fate of the states. Parliament can form new states and alter boundaries of existing states.
4. The Constitution gives more powers to the Union during emergencies. There are three types of emergencies. 1. Emergency caused by war or external aggression, 2. Emergency caused by failure or constitutional machinery of the states.

Emerging into a "Cooperative Federation"

Single citizenship, All India Civil Services, Unified Judiciary, single Election Commission, the Finance Commission, and the Planning Commission also establish the unitary character of our constitution. Indian Constitution is not laissez faire federal Constitution. Paras Diwan, an eminent law writer said in his "Indian Constitutional Law at page 6: "It is essentially a cooperative federation, where two sets of governments are not antagonistically independent of each other but coordinate, cooperate and collaborate in each other's efforts "to secure to all its citizens justice, social, economic and political, liberty of thought expression, belief, faith and worship: equality of status and of opportunity: and to promote fraternity assuring the dignity of the individual and the unity and integrity of the Nation."(Preamble of the Indian Constitution)

Paul Appleby calls the Indian Constitution as extremely-federal[20]. The so called autonomy of the states appears to be a myth or practically impossible in certain circumstances. The biggest threat to the autonomy of the states is the provisions like Article 356. The Sarkaria Commission which probed into the centre and state relations suggested exhaustive measures to improve the state autonomy and strengthen the cooperative federalism, the basic concept of our constitution. With the advent of regional parties gaining popularity with their

[20] Public Administration in India, Report of Survey (1954), 51.

relentless fight against the misrule by Central Governments ignoring the needs of some states, the demand for more powers increased. The unitary features of the Constitution are coming under the constant attack from the states, which are asking for more share in tax revenue and legislative powers.

List of Powers

Generally in federal Constitutions, which follow the American model, enumerate a list of legislative powers for the Union and leave the residue to the States. The Canadian Constitution followed a different pattern. There are two lists of legislative powers, one for Centre and the other for the Provinces and the residue is vested in the Centre. Indian Constitution followed the Canadian Federal model. The Concurrent list is the idea borrowed from the Australian pattern of federal division of powers. In Government of India Act 1935, a similar division of power was envisaged. These three lists are found in Seventh Schedule. It consists of two elaborate lists for Union and States and an additional list called Concurrent list, regarding which both the Union and States can legislate. The Parliament and State legislatures both have concurrent power of legislation over the items included in this list. So as long as the Parliament does not pass a law on any of these items, the state may pass any law they like on the same. But once the Parliament does enact a law on such items, Parliamentary law shall prevail over any state law in this regard. There is one exception to this general rule. If a state legislature pass any law on an item in concurrent list, a later point of time, it will prevail over an earlier law of the Parliament on the same subject, if the state law was reserved for the consideration of the President or received his assent. This is the original feature of our constitution, which enables a State to pass a more advanced piece of legislation than an existing Parliamentary law, or to provide through a new law with the consent of the Union, to suit the special conditions or circumstances prevailing in that state.

There are several unique features of Indian Constitution, which made it a distinctive federation.

Absence of dual citizenship, Constitution being a single constituent authority to include the powers and functions of both center and states, several express provisions which minimised the rigidity and legality of federal nature, making the state unitary during emergency, unity despite separate existence of center and state with distinct powers, absence of rivalry between center and states are some of the peculiar features of Indian constitution, which justify the description of distinctive federation.

Constitution making is a continuous process. Evolution of the Constitution does not stop with making of a Constitution. It in fact begins with that.

Subsequent changes and amendments, dynamic consequences of observance and breach of those provisions, judicial interpretations in live examples offer new colours and deep insights to fill spirit in dry letters of the Constitution. Every significant judgment along with a political development presents the Constitution from an unseen angle and through a different light altogether. Seventy Third and Seventy Fourth Amendment to the Constitution is one such landmark.

Continuous evolution and evaluation of Constitution

The Seventy-third and Seventy-fourth amendments to the Constitution in 1992 have fortified the third tier of the governance, i.e., and local bodies like Panchayats and Municipalities. This amendment did not alter the relationship between the center and states, but tried to create a strong representative polity at third level. It is an encouraging federal tendency.

Second important development is evolution of several procedural curbs on the powers of center under Article 356. Judicial legislation on this aspect emphasizes that the polity under Indian Constitution is basically federal, and center cannot frequently interfere with the administration at the state by resorting to demolition of elected government on political reasons. S. R. Bommai case and executive actions of the President in sending back the resolution of the Cabinet for imposition of president rule in UP are some more developments which strengthened the federal character of the constitution. Besides this the dynamic politics of the nation necessitated political alliances forming the Government in association with different splinter groups rather than cohesive political parties, each forming into a strong lobby or pressure group which reflect diversity of interests, view points and variety of practical restrictions on exercise of power by the persons occupying top executive positions. The power center has to inevitably heed to the opinion emerging from a relatively small group, which also possessed the power to pull down the Government. By new millennium the federalism and democratic dynamics could be found in coalition politics of India both in ruling and opposition.

Nature and Characteristics of Indian Federalism:

Ivo D. Duchacek has drawn a model to explain the nature and characteristics of the Indian Federalism, and analysed the links between two spheres of seemingly exclusive jurisdiction. He classified these links under two broad categories. They are (I) the Constitutional overlaps and (II) Extra Constitutional overlaps[21].

[21] Ivo D Duchacek, Comparative Federalism, Holt, Rinehart and Winston, inc, New York, 1970, p 278.)

Constitutional overlaps:

1. The 'Elastic Clause'
2. Constitutional authorization for federal supervision of local execution of national laws.
3. The right to insure the republican or democratic form of government.
4. Emergency powers in case of invasion or insurrection.
5. War and foreign policy powers.
6. Concurrent powers.
7. Dependence of the central authority on the State government, in such things as state control of national elections, control over the upper chamber, and local administration of national programs. Dependence of the Central Authority on the components also includes the possibility of blackmail, implied in the Constitutional grant of the right of secession[22].

1. Elastic Clause:

There is distribution of powers through three lists among the center and states. If the Union law trenches upon the State subjects or vice versa, the courts apply a principle of interpretation known as the "Doctrine of Pith and Substance". This doctrine validates the law despite the entrenchment into the domain of one by another. It proves the elastic nature of powers.

2. Constitutional Authorization for Federal supervision of local execution of national laws:

Article 256 says that every state has to exercise its executive power so as to ensure the compliance with the laws made by the parliament and any existing laws which apply in that state. To do this, union executive can give directions to a state as it finds necessary for that purpose. Thus the state has an obligation to comply with the law of parliament and union can issue directions for that purpose. This serves a dual purpose, that the state law shall always comply with the Union law and that in execution of the laws the Union can issue directions to the state. Article 257 also deal with the control of the Union over states. Article 258 empowers Union powers on states. Failure to comply7 with these directives may lead to imposition of President Rule under Article 365. Articles 339(2), 344(6) and 350A authorise the President to issue certain directions to the states to get certain specific things to be given effect to. This aspect has direct impact on the nature of Indian federation itself.

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[22] ibid. 277

3. Right to insure Republican or Democratic form of Government:

Preamble says that India is Republic and democratic. In Keshavananda Bharathi case it was held that democratic and republican form of government form part of basic structure of the constitution and thus cannot be amended.

4. Emergency powers in case of invasion or insurrection:

Article 352 refers national emergency. Armed rebellion has been substituted for 'internal disturbance 'by 44th amendment so that emergency cannot be imposed for 'internal disturbance'. This Article gives sweeping powers to the Union in case of emergency. There is an obligation on the Union to protect the states against external aggression or internal disturbance, as per Article 355. Under Article 257-A assistance to states by deployment of armed forces or other forces of the Union was also possible. This provision has been however, omitted by the Constitution 44th Amendment in 1978. Even in the absence of such a provision there is definitely an obligation on part of the Union to do so in terms of Article 355. Thus Indian Constitution would satisfy this overlap also giving the power in favour of the Union Government at the time of such emergencies or insurrections.

5. War and Foreign Policy Powers:

These powers are exclusively with the center. Art 352 empowers the Union to impose emergency and give sweeping powers. States cannot question or raise objection till normalcy is restored. Depending upon the nature of emergency the extent of power would also vary. The power of the Union Government during such emergencies of war is provided under Article 246 read with Entries 1 and 2 of List I to Schedule VII which speak about the Defence of India. Article 246 read with entries 10,11,12,13,14,15and 16 of List I of Schedule VII contain the powers of foreign policy entrusting exclusively to the Union. Article 253 empowers the Parliament to make any law for the whole or any part of the country for implementing any treaty with other countries or any decision made at any international conference. Thus in these two areas the Union has absolute powers.

6. Concurrent Powers

Concurrent list provides scope of legislation for both Union and Center. Article 254 plays key role in interpreting the three lists. In case of conflict the law made by parliament will prevail over the state law [254(1)]. If the State law on subject listed under concurrent list, is reserved for the consideration of the President by the Governor under Article 200, and has received assent from the President then the State law shall prevail over the Central law in that state alone.

Nothing in this article shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to or amending, varying or repealing the law made by state. [exception provided under 254(2)]

7. Dependence of the central authority on the States for local administration of national programmes:

The Union has to depend on states for national elections, local administration and national programmes. Article 324(6) imposes an obligation both on the President and the Governors of states to make available such staff as necessary for the discharge of the functions conferred on the Election Commission. Under Part XI, Chapter II provides the frame for Administrative relations (Art 256-261) with regard to local administration of national programmes and policies. In the implementation of national policies also the Union can issue directions and if these directions are ignored, the Union government can go to the extent of removing the governments under Article 356. These seven overlaps, which are present in the Indian constitution, prove that the Union Government is more powerful than federal units.

Extra Constitutional Overlaps:

A) Economic and social imperatives such as economic planning, technological innovation (atomic energy, computers, and other costly projects calling for national financing and controls), Social Welfare Programmes and the growth of large national organizations that cut across the territorial divisions, such as manufacturing corporations, insurance companies, banks, labour and farm organizations and mass media. They all challenge the intra-federal boundaries ("the worst inanities" as Morton Grodzins called the boundaries of American States) that had been drawn in earlier eras and that cannot be justified on any grounds of rational efficiency. Planning Commission and National Development Council are extra constitutional bodies which eroded the powers of the states. The projects like atomic energy and other costly enterprises have to be funded by the center and regulated by it. Railways, Airways, waterways, Public Corporations and companies, Banks, Insurance companies, mass media organizations like AIR and Doordarshan are under the control of central authority. But the privatization of these institutions have reduced the control of the Union authority over it and private persons are playing key role by manipulating these organizations

B) Population shifts, especially the growth of big cities, the emergence of new regional territorial communities regardless of state boundaries, or emergence of new territorial communities within the existing state boundaries. Interstate travel and migration of people from one state to another state created multi-linguistic groups all over the country. Because of this states formed on the basis of language has lost their significance to some extent.

C) External pressures (threats and opportunities) that result in further extension of the federal powers. Three wars that India fought after independence increased the power of the center. Central authority and command over external affairs and relations with neighbours, increase the importance and power of the Union Government.

Political culture and political parties whose orientation, structure, and changing leaders may have a profound impact on the reality of federalism.(ibid, 279) When there was single party rule in center and states, the power of Union Government was enormous and the federal polity has been totally undermined. Only after the advent of regional parties or due to raise of non-congress parties the situation changed. With the advent of coalition politics, there is some sort of federal character visible in the governance at the center. The regional leaders and parties are playing definite role in national politics and running constitutional offices.

Thus a prolonged debate amongst the Constitutional Jurists about the nature of the Indian Constitution went on changing along with emerging character of Indian Constitution Earlier view was that it was a quasi-federal constitution and contains more unitary features than federal. The other equally strong view that it was a federal constitution with a novel feature of adopting itself to national emergencies. The framing of Indian Constitution as done away with the traditional classification followed by the political scientists such as the Constitutions are either unitary of federal. As discussed above, the framers incorporated a proportionate mix of features of unitary Constitution, wherein the powers of the Government are centralised in one Government viz., the Central Government, the provinces are subordinate to the Centre, and the features of federal Constitution where there will be division of powers between the federal and the State Governments and both are independent in their own spheres. It is mainly federal with unique safeguards for enforcing national unity and growth. It is a Union of composite States of a novel type. It enshrines the principle that in spite of federalism, the national interest ought to be paramount[23].

Salient Features

The basic philosophy of our Constitution is summed up in the Preamble, which declares India to be a Sovereign Socialist Secular Democratic Republic.

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[23] Jennings, Some Characteristics of Indian Constitution, p. 55

1. Largest Written Constitution :-- It is a written constitution containing as many as 395 Articles and 9 schedules, originally. It is the bulkiest and the largest one in the world. Constitution of U.S.A. contains just 7 Articles, that of Australia 128 and that of Canada 47 Articles. The 395 Articles of Indian Constitution were divided into 22 parts. After the Constitution 78th Amendment Act, 1995, the Constitution now consists of 443 Articles divided into 26 parts and 12 Schedules. Since 1950 to 1995, 21 Articles have been repealed and 69 more Articles have been added. As the framers wanted to remove difficulties during the working of the Constitution, they incorporated several details to avoid loopholes and defects. They framed the Chapter on Fundamental Rights on the model of the American Constitution, and adopted the parliamentary system of Government from the United Kingdom, they took the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935. It lays down the structure not only of the Central Government but also of the States, while American Constitution left the aspect of drafting the provisions of governance to the States. The vastness of the country and diversity in the society with peculiar problems is another reason for bulkiness of the Constitution.

2. Sovereign Socialist, Secular Democratic Republic :-- According to Preamble, India is a Sovereign, Socialist, Secular, Democratic Republic. The word Sovereign emphasises that India is no more dependent upon any outside authority. The term "Socialist" has been inserted in the Preamble by the Constitution 42nd Amendment Act, 1976. In general, it means some form of ownership of the means of production and distribution by the State. India has chosen mixed economy and now drifting towards privatisation. The term Secularism means a State which has no religion of its own as a recognised religion of State. It treats all religions equally. In a secular State the State regulates the relation between man and man. It is not concerned with the relation of man with God. The term "democratic" indicates that the Constitution has established a form of Government which gets authority from the will of the people. The rulers are elected by the people. Justice, liberty Equality and Fraternity are the essential features of the democracy. The term Republic signifies that there shall be an elected head of the State who will be the Chief Executive Head. The President of India, unlike the British King or Queen, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of a Republic.

3. Parliamentary form of Government :-- Both at the Centre and States, the Constitution established a parliamentary form of Government. The British model has been adopted in toto, in this regard. The essence of the parliamentary form of Government is its responsibility to the legislature. The Council of Ministers is collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers is responsible to Legislature, and therefore it is called responsible Government. On the otherhand the American Government is a Presidential form of Government, where the President, the real executive and elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his cabinet are not members of Legislature. They are appointed by the President and therefore, responsible to him.

Parliamentary democracy has three important characteristics namely,--

(i) the executive is responsible to the Lower House ;
(ii) the Lower House has a democratic basis (i.e. it is elected by the people ; and
(iii) the ultimate legislative and financial control is vested in this Lower House.

The Parliamentary system of Government in India is based on adult suffrage, whereby all citizens of India who are not less than 18 years of age and are not disqualified on certain grounds like non-residence, unsoundness of mind or corrupt practices have the right to be registered as voters in any election to the Lok Sabha and to the Legislative Assemblies of the States.

4. Partly Rigid and Partly Flexible :-- The Constitution of India is partly rigid and partly flexible. There are certain provisions which can be amended by a simple majority in Parliament, while there are certain other provisions whose amendment requires not only a special majority in Parliament but also ratification by at least one half of the State Legislatures.

A written constitution is generally said to be rigid. But the Indian Constitution despite being a written one, is not rigid and it is sufficiently flexible.

5. Fundamental Rights :-- The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic State. These rights impose limitations on the powers of the State. The State cannot take away or abridge these Fundamental Rights of the citizen guaranteed by the Constitution. If it passes such a law it may be declared as unconstitutional by the Courts. Besides declaring the fundamental rights, the Constitution provided a machinery to enforce them. The Supreme Court is empowered to grant most effective remedies in the nature of Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto, and Certiorari whenever these rights are violated. However, the Fundamental Rights are not absolute. They are subjected to certain restrictions, based on some social interests. Thus our Constitution tries to strike a balance between the individual liberty and the social interest. This idea of incorporating Bill of Rights has been taken from the Constitution of the United States.

6. Directive Principles of State Policy :-- The Directive Principles of State Policy contained in Part IV set out the aims and objectives to be taken up by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justiciable. Though by their vary nature they are not justiciable in the Court of law, yet the State Authorities have to answer for them to the electorate at the time of election. The idea of the welfare state envisaged in our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty. The support to villages and rural economy called Gram Swaraj, one of the ideals of Mahatma Gandhi could be found only in Directive Principles of State Policy. Ideals which could not be guaranteed as enforceable rights were accommodated in this Part after much deliberations in the Constituent Assembly.

7. Fundamental Duties :-- The Constitution (42nd Amendment Act, 1976) has introduced a Code of ten "Fundamental Duties" for Citizens. The fundamental duties are intended to serve as a constant reminder to every citizen that while the Constitution has specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behaviours. These duties, like the Directive Principles of State Policy cannot be judicially enforced. However they remind the responsible citizen what Constitution expects from them.

8. Adult Suffrage:-- In the place old communal franchise, the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the right to elect their representatives for the legislature. The adoption of the universal adult suffrage under Article 326 without any qualification of sex, property, taxation, or the like is a bold experiment in India having regard to vast extent of the country and its population, with an overwhelming illiteracy.

9. An Independent Judiciary :-- After a thorough deliberation in the Constituent Assembly, the founding fathers created an independent judiciary with a power of Judicial Review as the custodian of the fundamental rights of the citizen. It plays a significant role in determining the limits of power of the Centre and States. Single independent judiciary to interpret the Union and State Laws, vibrant Judicial review of executive and legislative action are other basic features of the Indian Constitution which secure the philosophical foundations of the rule of law and democracy. The judiciary is the only resort for a citizen to enforce the constitutional provisions and secure the rights.

10. A Secular Socialist State :-- The Citizens of our country are free to follow any religion and they enjoy equal rights without any distinction of caste, creed religion or sex. The word "secular" has been included in the Preamble by Forty Second Amendment. Article 15 (1) prohibits any discrimination based on religion, and Article 25 (1) provides that subject to public order, morality and health and to the other provisions, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Secularism is also subject to democratic socialism. Religious freedom cannot therefore be used to practice economic exploitation. The right to acquire, own and administer property by religious institutions is subject to the regulatory power of the State.

11. Single Citizenship :-- Though the Constitution envisaged a dual polity i.e., Centre and States, it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e., the citizen of USA and a State citizenship. Every Indian has a citizenship through out the country with same rights. Recently Indian citizenship is given to the non-resident Indians permitting them to retain the foreign citizenship.

SALIENT FEATURES OF INDIAN CONSTITUTION

However good a Constitution may be it is sure to turn out bad because those who are called to work it happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.

Law is a social phenomenon as well as social institution. Law keeps on changing with the changing needs of the society as it is part of social reality. Sumner says that 'an institution is the combination of a concept and a structure'. Constitution is theory of rights. It is a heir of the past and testator of future. Constitution is a reflection of peoples' aspirations. It is a fundamental law of the land. It regulates the political relationship between state and citizen.

Our own time has been burgeoning "Constitutional justice" which has in a sense combined the forms of legal justice and the substance of natural justice. Desirous of protecting the permanent will rather than the temporary whims, States have reasserted higher law principles through written Constitutions. Thus there has been a synthesis of three separate concepts – the supremacy of certain higher principles, the need to put even the higher law in written form, and the employment of judiciary as a tool for enforcing the Constitution against ordinary legislation.

Constitutionalism is an "articulation of devices for the limitations and control of political power and to liberate the power from the absolute control of the rulers and to assign them their legitimate share in the power process". The Constitution is the process by which the governmental action is effectively restrained and is understood as the process of the function of which it is not only to organize but to restrain. Constitutionalism refers to limits on majority decisions; more specifically to limits that are in some sense self-imposed. Constitutionalism is both an end and means. It is both value free and value-loaded. It has both normative and empirical dimensions. Prof. Cohen emphasized that Constitutional law is applied politics. In the backdrop one should understand the Constitution of India and the values and morality for which it stands. The salient features of the Indian Constitution reflect the democratic, secular and socialistic values of Indian pluralism. The Indian Constitution promotes these ideals through Constitutionalism which is present through out its text.

The doctrine of Rule of Law according to Dicey consists in 'the exclusion of exercise of arbitrariness, or prerogative or even of wide discretionary authority

on the part of the Government. No person acting on behalf of the State can exercise power, unless he can point to some specific rule of law which authorized his act'. It means the acceptance of the paramountcy of the law which binds all rulers and the ruled and which no one can escape. It seems beyond doubt that ancient Indians evolved and observed the doctrine of rule of law-dharma both in letter and spirit. They attached absolute validity to Law of Dharma and all other rules and actions acted upon were null and void if it were in conflict with the said higher law. The King, the State Government and the Praja (the people) are all subordinate to law of dharma. It is the Law (dharma) which alone ruled and as already observed, the King was never above law but under law. The government of the ancient Hindus was, therefore, a government of laws and not of man.

The Historical Perspective:

The Constitution of India, precursor of the new Indian renaissance, became effective on January 26,1950. Before its advent, India was governed under the Government of India Act of 1935, which came into effect in 1937. India was then a part of the British Empire; sovereignty of the British Empire; sovereignty of the British Crown prevailed over the country and it was in the exercise of this sovereignty that the British Parliament had enacted the Act of 1935. Only two major features of the Act need be mentioned here. Firstly, the Act conferred only a very limited right of self-government on the Indians. The executive authority in a province was vested in the Governor who was appointed by the Crown. He was to act ordinarily on the advice of the Ministers who were to be responsible to the Provisional Legislature, which was on a limited franchise. But the Governor could exercise certain functions in his discretion or on his individual judgment in which case he was not bound by the ministerial advice and was subject to the control of the Governor-General. The executive authority at the center was vested in the Governor-General who was appointed by the Crown. Though ordinarily the Governor-General would act on ministerial advice, he could discharge certain functions in his discretion or on his individual judgment in which case he was not bound by ministerial advice, but was subject to the control of the Secretary of State for India who was a remember of the British Cabinet. Defence and external affair, among others, fell in this category. Secondly, the Act of 1935 sought to change the character of the Indian Government from unitary to federal. The Indian Federation was to consists of the provinces in which British India was divided, and the large number of States under the native princes. This scheme however, never fully operative as the princes did not join the Federation; the federal concept could be implemented partially in so far as the relationship between the Center and the provinces was based on this basis. Further, the ministerial form of government, as envisaged by the act of 1935 could not also be introduced at the Center which continued to function under the Government of India Act of 1919. Accordingly, the Central

Government consisted Governor General and a nominated Executive Council. In this structure the governor general occupied the key position as he could overrule his Council on any points if in his opinion the safety tranquility or interests of British India were materially affected. In short before 1947, the effective power and control over the Indian Administration lay with the Secretary of state, the Governor General and the Governors. Indian participation in the Governmental process was very limited and naturally the Indians never felt reconciled to such a dispensation. There thus arose an insistent demand for independence which resulted in the setting up of a Constituency of an Assembly for drafting a Constitution for a free India. The assembly formally commenced its task of Constitution making from December 9, 1946,when its first meeting but could not make much headway because of the political impasse arising from a lack of understanding between the two major political parties, the Indian National Congress and the Muslim League. The political deadlock was resolved in 1947 when the British parliament enacted the Indian Independence Act that partitioned the country into two independent units- India and Pakistan. The Constituent Assembly then embarked on its work in right finalized and adopted the Constitution of India November 26,1949.

Various other Constitutions were taken into consideration by the Drafting Committee constituted under the chairmanship of Dr. B.R.Ambedkar, Sir B.N. Rao, the Constitutional Advisor visited various countries and met a variety of jurists including Justice Frank Furter with a view to obtain the experiences of those Constitutions. Bill of rights, written Constitution model and judicial review were incorporated in the Indian Constitution, adopting the United States model parliamentary democracy and west minister model were taken from the Britan Constitution. Irish Constitution is the model for Directive Principles of State Policy. Australian Federal functions and Canadian experiences were taken into consideration for the Indian Federal Government. Even though different Constitutions were taken into consideration for the drafting of new Constitution. Indian Constitution is the product of history. It reflects the aspirations of the people, it aims at a classless, casteless egalitarian society. Its strivs to transform the static feudalistic Indian society into a dynamic vibrant society.

Salient features of Indian Constitution

1. The lengthiest and written Constitution in the world
2. Establishment of a Sovereign, Socialist, Secular, Democratic Republic.
3. Parliamentary form of Government,
4. Unique blend of rigidity and flexibility
5. Fundamental Rights
6. Directive Principles of state policy
7. Fundamental Duties
8. Partly Federal, Partly Unitary or a federalism with strong center

9. Adult Franchise
10. Single citizenship
11. Independent judiciary

1. The Lengthiest and Written Constitution in the World

It is a written Constitution containing as many as 395 Articles and 9 schedules, originally. It is the bulkiest and the largest one in the world. Constitution of U.S.A. contains just 7 Articles, that of Australia 128 and that of Canada 47 Articles. The 395 Articles of Indian Constitution were divided into 22 parts. After the Constitution 78th Amendment Act, 1995, the Constitution now consists of 443 Articles divided into 26 parts and 12 schedules. Since 1950 to 1995, 21 Articles have been repealed and 69 more Articles have been added. As the framers wanted to remove difficulties during the working of the Constitution, they incorporated several details to avoid loopholes and defects. They framed the Chapter on Fundamental Rights on the model of the American Constitution, and adopted the parliamentary system of Government from the United Kingdom, they took the idea of the Directive Principles of State Policy from the Constitution of Ireland, and added elaborate provisions relating to Emergency in the light of the Constitution of the German Reich and the Government of India Act, 1935. It lays down the structure not only of the Central Government but also of the States, , while American Constitution left the aspect of drafting the provisions of governance to the States. The vastness of the country and diversity in the society with peculiar problems is another reason for bulkiness of the Constitution.

2. Establishment of a Sovereign, Socialist, Secular, Democratic Republic:

The Preamble of the Constitution declares India to be a Sovereign, Socialist, Secular, Democratic Republic. The word 'Sovereign' means the independent authority of a state. It means that it has the power to legislate any subject and that it is not subjected to the control of any other state or external power. The word 'Sovereign' emphasizes that India is no more dependent upon any outside authority. It means that both internally and externally India is Sovereign. It's membership of the Commonwealth of Nations and that of the United Nations Organization do not restrict her Sovereignty. Critics say that India's membership of the Commonwealth of Nations is not compatible with her Sovereign status. But, it is to be noted that India's membership of the Common Wealth of Nations does not in any way restrict for Sovereignty India's membership of the Common Wealth is a self imposed limitation. According to Mr. Ramaswamy "it is a Courtesy arrangement devoid of any Constitutional Significance". Explaining the true position of India in the Common Wealth on 10th May, 1949, the then Prime Minister Jawaharlal Nehru said "we took a pledge long ago to achieve Poorna Swaraj. We have achieved it. Does a Nation looses it's

independence by an alliance with another country? Alliance normally means mutual commitment. The free associations of Sovereign Common Wealth Nations does not involve such commitments. It is well known that it is open to any Member Nation to go out of the Common Wealth if it chooses .....It must be remembered that the Common Wealth is not a super state in any sense of the term. We have agreed to consider the king as symbolic head of this pre association. But the king has no function attached to that in that Common Wealth. So far the Constitution of India is concerned, the king has no place and we shall owe no allegiance to him."

The term 'Socialist' has been inserted in the preamble by the Constitution 42nd Amendment Act 1976. This concept was already implicit in the Constitution. The Amendment merely spells out clearly this concept in the preamble. The word "Socialism" is used in democratic as well as socialistic Constitutions. It has no definite meaning. In general, however, the word means some form of ownership of the means of production and distribution by the state. The degree of state control will determine whether it is a Democratic State or Socialistic State. India has, however, chosen its own brand of socialism e.g. mixed economy. The establishment of a Socialistic state at the Avadi Session in 1955 Congress explained this objective as 'establishing a 'socialistic pattern of society' by a resolution - "*In order to realize the object of Congress....and to further the objectives stated in the Preamble and Directive Principles of State Policy of the Constitution of India, planning should take place with a view to the establishment of socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speed up and there is equitable distribution of the national wealth".*

The ideal of a '*secular state*', which means that the state promotes all religions equally and does not itself uphold any religion as the state religion. The question of secularism is not one of sentiments, but one of law. The secular objective of the state has been specifically expressed by inserting the word 'secular' in the preamble by the Constitution 42nd Amendment Act 1976. Secularism is the part of the basic structure of the Constitution. There is no provision in the Constitution making any religion 'the established church' as some other Constitution do. On the other hand, the liberty of '*belief, faith and worship*' promised in the preamble is implemented by incorporating the Fundamental Rights of all citizens relating to freedom of religion which guarantees to each individual freedom to profess, practice and propagate religion, Assuring strict impartiality on the part of the state and its institution to words all religions. The term 'Secularism' means a state which has no religion of its own as recognized religion of state. It treats all religions equally. In a Secular state the state regulates the relation between man and man and is not concerned with the relation of the man with god.

Democratic Republic stands the good of all the people which is embodied in the concept of a welfare state which inspires the Directive Principles of State Policy. The economic justice assured by the preamble can hardly be achieved if the Democracy envisaged by the Constitution were confined to a political Democracy in the words of Pandit Nehru, "Democracy has been spoken of chiefly in the past, as political democracy, roughly represented by every person having a vote. But a vote by itself does not represent very much to a person who is down and out, to a person, let us say, who is starving or hungry. Political democracy, but itself, is not enough except that it may be used to obtain gradually increasing measure of economic democracy, equally and the spread of good things of life to others and removal of gross inequalities." Or as Dr. Radhakrishnan has put it – "Poor people who wander about, find no work, no wages and starve, whose lives are a continual round of sore affliction and pinching poverty, cannot be proud of the Constitution or its law". The Indian Constitution promises not only political but also social democracy, as explained by Dr. B.R. Ambedkar in his concluding speech in the Constituent Assembly – "Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean. It means a way of life, which recognizes liberty, equality and fraternity which are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. *Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity."* The term 'Democratic' indicates that the Constitution has established a form of government which gets its authority from the will of the people. Justice, liberty, equality and fraternity which are essential characteristics of a democracy are declared in the preamble of the Constitution as the very objectives of the Constitution. The preamble to the Constitution declares that the Constitution of India is adopted and enacted by the people of India and they are the ultimate masters of the Republic. Thus the real power is in hands of the people of India, both in the union and in the states. The term 'Republic' signifies that there shall be an elected head of the state who will be the Chief Executive Head. The President of India, unlike the British King, is not a hereditary monarch but an elected person chosen for a limited period. It is an essential ingredient of the Republic.

3. Parliamentary form of Government:

Both at the Centre and States, the Constitution established a parliamentary form of Government. The British model has been adopted in toto, in this regard. The essence of the parliamentary form of Government is its responsibility to the legislature. The Council of Ministers are collectively responsible to the Lower House i.e., Lok Sabha. In States the Council of Ministers are responsible to Legislature, and therefore it is called responsible Government.

On the other hand the American Government is a Presidential form of Government, where the President, the real executive and elected directly by the people for 4 years. All executive powers are vested in him. He is not responsible to the Lower House, i.e., the Congress. The members of his cabinet are not members of Legislature. They are appointed by the President and therefore, responsible to him only.

Parliamentary democracy has three important characteristics namely,

(i) the executive is responsible to the Lower House
(ii) the Lower House has a democratic basis (i.e. it is elected by the people; and
(iii) the ultimate legislative and financial control is vested in this Lower House.

The Parliamentary system of Government in India is based on adult suffrage, whereby all the citizens of India who are not less than 18 years of age and are not disqualified on certain grounds like non-residence, unsoundness of mind or corrupt practices have the right to be registered as voters in any election to the Lok Sabha and to the Legislative Assemblies of the States.

Parliamentary or Presidential System:

For the last two decades, a debate has been going on in the country whether the present parliamentary system should be continued or should be replaced with the presidential system under which the president, elected directly by the people for a fixed term, will function as the nation's executive unhampered by the legislature in taking administrative decisions. He will also have the distinct advantages of choosing his ministerial team from among the best talent, available in the country without being subjected to the pulls and pressures of elected representatives. Those who favour the presidential form of government claim that it has the following advantage: first, the chief executive in a presidential system is relatively free from sectional and party disputes. His term is fixed and thus it ensures stability of the government and President can devote his time for the development of the country. Secondly, he is free to choose his team of ministers from the best talent available within the country. His choice is not restricted to elected representatives as is the case in parliamentary system. Thirdly, it discourages the disease of defections and maintains discipline among the members of a political party.

On the other hand, those who favour the retention of the present parliamentary from of government claim that it has the following advantages over the presidential form of governments. First, it is a responsible government. The government is subjected to scrutiny in the legislature as regards its

achievements and failures. The ministers are accountable to the legislature. Secondly, the Prime Minister who enjoys 2/3 majority in Parliament is much more powerful than the President in the United States. Thirdly, there is nothing to prevent the Prime Minister to choose the best talent from outside for his cabinet and get them elected or nominated to either House of Parliament and fourthly, the disease of defection can be removed by appropriate legislation.

At the outset it has to be made clear that the framers of the Constitution preferred the parliamentary system of government mainly for two reasons – (1) the system was already in existence in India and people were well acquainted with it, (2) it provides for accountability of ministers to the Legislature.

4. Unique blend of Rigidity and Flexibility:

It has been the nature of the amending process itself in federations which has led political scientists to classify federal Constitution as rigid. A Rigid Constitution is one which requires a special method of amendments of any of its provisions while in flexible Constitution any of its provisions can be amended by ordinary legislative process. A written Constitution is generally set to be rigid. The Indian Constitution, though written, is sufficiently flexible. It is only a few provisions of the Constitution that requires the consent of half of the state legislatures. The rest of the provisions can be amended by a special majority of parliament. The fact that the Indian Constitution has been amended 78 times during the period of 49 years of its working disapproves the view taken by Sir Ivor Jenning who had characterized our Constitution as rigid for the following reasons:

(i) that the process of amendment was complicated and difficult;
(ii) that matters which should have been left to ordinary legislation having been incorporated into the Constitution no change in these matters is possible without undergoing the process of amendment.

5. Fundamental Rights:

Representing the crystallization of the values and concepts held dear in India's varied and rich cultural heritage and having its roots deep in the motivational forces of the national struggle for independence, the formulation of a bill of rights was among the first tasks to which the Constituent Assembly addressed itself. A comprehensive charter of rights was soon evolved through various stages in the Assembly and its Committees. Described by Dr. B. R. Ambedkar as 'the most criticized part' of the Constitution, Part III dealing with the Fundamental Rights was discussed for as many as 38 days – 11 in the Sub-Committee, 2 in the Advisory Committee and 25 in the Constituent Assembly. Coming closely on the heels of the Universal Declaration of Human Rights, inclusion of a Bill of Rights in the Constitution of India accorded with

contemporary democratic and humanitarian temper and Constitutional practice in other nations of the world. It reflected in no small measure the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration. Also incorporation of a chapter of Fundamental Rights in our Constitution became necessary in view of the special problem of minorities and the need to assure them of the fullest protection of their rights.

The Fundamental Rights incorporated in Part III, the Directive Principles of State Policy in Part IV and the Fundamental Duties in Part IVA added later actually constitute one organic whole which follows from the Preamble. Taken together, they really proclaim the fundamental values and constitute the foundational principles of Constitution. Thus, the preambular assurance of the dignity of the individual, which in fact happens to be the basic principle underlying the Universal Declaration of Human Rights, is sought to be implemented through various provisions of Parts III and IV. The values of freedom and equality befitting the dignity of the human individual, made more complete and substantive by ideals of economic and social justice, so eloquently proclaimed by the Preamble, are elaborated in the Fundamental Rights and Directive Principles.

Part III of the Constitution which contains perhaps one of the most elaborate charters of human rights yet framed by any State, consistent with the aim of the unity of the nation and interests of the public at large, has been described by Justice Gajendragadkar as the 'very foundation and cornerstone of the democratic way of life ushered in this country by the Constitution' (Sajjan Singh V State of Rajasthan, AIR 1965 SC 845). These Fundamental Rights substantially cover all the traditional civil and political rights enumerated in articles 2 to 21 of the Universal Declaration. According to Justice Bhagwati:

"These fundamental rights represent the basic values cherished by the people of this country since the vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a 'pattern of guarantee' on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in its various dimensions." (Maneka Gandhi V. Union of India, AIR 1978 SC 597).

The Fundamental Rights have been guaranteed under six broad categories, namely,

(i) The right to equality including equality before law and the equal protection of laws (article 14), prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth (article 15), equality of

opportunity in matters of public employment (article 16) and abolition of untouchability and the system of titles (articles 17 and 18).

(ii) The right of freedom including the right to protection of life and personal liberty (article 21) and the right to freedom of speech and expression, assembly, association or union, movement and to reside and settle in any part of India, and the right to practice any profession or occupation (article 19).

(iii) The right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings (articles 23 and 24).

(iv) The right to freedom of conscience and free profession, practice and propagation of religion (articles 25 to 28).

(v) The right of minorities to conserve their culture, language and script and to establish and administer educational institutions of their choice (article 29 and 30).

(vi) The right to Constitutional remedies for the enforcement of all these Fundamental Rights (article 32).

Some of the Fundamental Rights like 'equality before law and equal protection of all laws' (article 14), protection in respect of conviction for offences (article 20), protection of life and personal liberty (article 21), protection against arrest and detention in certain cases (article 22), freedom of religion (articles 25-28) etc. are available to all 'persons'. There are, however, some rights which can be claimed only by the citizens e.g. not to be discriminated on grounds of religion, race, caste, sex or place of birth (article 15), equality of opportunity in the matter of public employment (article 16) and freedom speech and expression, assembly, association, movement, residence and profession (article 19).

Originally, article 19(1)(f) and article 31 contained the right to property i.e. to acquire, hold and dispose of property subject to the right of the State to compulsory acquisition for public purpose by authority of law. However, right to property ceased to be a Fundamental Right when the Constitution (Forty-fourth Amendment) Act, 1978 omitted sub-clause(f) of clause (1) of article 19 and the whole of article 31 from the Constitution.

Article 31A and 31B inserted by the First Constitutional Amendment and article 31 C inserted by the Twenty fifth Amendment sought to protect laws providing for acquisition of estates, Acts and regulations specified in the Ninth Schedule and laws giving effect to Directive Principles.

Article 33-35 deal with the power of Parliament to modify the rights conferred by Part III of the Constitution in their application to forces.

It is true that the fundamental human rights enshrined in the Constitution of India are hedge in by many limitations and restrictions. Replying to the criticism that the Fundamental Rights were riddled with so many restrictions that no value could be attached to them and referring in particular to critics who had relied on the U.S. Constitution in support of their contention that Fundamental Rights were not 'fundamental' unless they were also 'absolute'. Dr.Ambedkar has observed in the Constituent Assembly on November 4, 1948.

6. Directive Principles of State Policy

The modern welfare State as a regulator, controller, arbitrator etc., is certainly expected to engage in all activities necessary for the promotion of the social and economic welfare of the community. The preamble of the Indian Constitution in that direction has socio economic revolution which tries to bring about the real satisfaction of the fundamental needs of the common man.

At the time of the framing of the Constitution our founding fathers from their experience as well as from history were keenly aware of the fact that the structure of the Constitution would reflect the social realities in the society. That's why even though the original draft had only one chapter regarding the enforceable rights both individual and social rights of the citizens, on the doubts expressed by some of the members in the constituent assembly about the capacity of the society in implementing the rights in social nature the chapter was divided into two parts; one is enforceable (Part III) another is non-enforceable (Part-IV). The Part III consists of Fundamental Rights which are enforceable. Part IV consists of Directive Principles to the State Policy which are fundamental in the governance of the country even though they are not enforceable. This original scheme is to be understood in the light of sociological jurisprudence. According to this thought every civilize society at a particular given time has some achieved goals and has achievable goals (jural postulates). Under Indian Constitution directive principles to the State policy are jural postulates at the time of the framing of the Constitution. Until recent past Directives were not considered seriously by the Courts because of strict legalistic positive approach adopted by them. The recent teleological approach of the Court provides basis for the meaningful understanding of the basic human rights. In that direction the scope of right to life and personal liberty under Article 21 was widened to the extent that life means life with human dignity. The apex Court started taking Directive principles to the State policy as basis for meaningful enforcement of Fundamental Rights. Now the Directives of Part IV

are not mere Directives. They are supplementary and complementary to Fundamental Rights.

Regarding the relationship between Part III and Part IV three views were emerged. They are: (1) When there is a conflict between Part III and Part IV. Part III prevails over Part IV (State of Madras v. C. Dorairajan, AIR 1950 SC 228). (2) Directive Principles prevail over Fundamental Rights when there is conflict between them (See The Legislature, executive attitude in bringing 1st, 7th, 24th, 25th, 27th and 42nd Constitutional Amendments and the minority view of Justice Bhagavathi in Minerva Mills v. Union of India, AIR 1980 SC 1789, Justice Chinnapareddy view in (Sajeev Coke v. Bharat Cooking Coal, AIR 1983 SC 239), (3) it is necessary to see any conflict between these two parts. Both are supplementary and complimentary to each other and harmonious construction between these two parts must be made (See H.R. Khanna's view in Kesavananda Bharati v. State of Kerala AIR 1973 SC 146), the majority view of (Minerva Mills). The present demand of the society which is reflected in the recent Supreme Court Judgements is that at least some Directives must be read with Fundamental Rights.

Part IV of the Constitution enumerates certain Directive Principles of State Policy which are declared as fundamental in the governance of the country. These principles are intended to be the imperative basis of State policy. They are really in the nature of instructions issued to future legislatures and executives for their guidance. The Chairman of the Drafting Committee said :

"The Directive principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act....The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed, wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise".

The Directive Principles of State Policy differ in one vital respect from the Fundamental Rights. Whereas the former are non-justiciable rights, the latter are justiciable rights. They have expressly been excluded from the purview of the Courts. If the state is unable to take any positive action in furtherance of the Directive Principles, no action can be brought against it in law Courts. This want of enforceability had led a critic to describe them as "little more than manifesto of aims and aspirations". A Directive, which lacks the quality of enforceability, is, according to this view, useless or at least not worth forming part of a Constitutional document. The Constitution should include only those provisions whose enforcement is obligatory on the State.

The criticism is unjustified. In the nature of things the rights enumerated in this part can only be Directives and cannot be justificiable rights. This is so because the Directive Principles require positive action on the part of the State, and, therefore, can be guaranteed only so far as practicable. They are not like the Fundamental Rights which speak of certain things which the State ought to refrain from doing. Such being the nature of the Directive Principles of State Policy, they are not suitable for enforcement in a Court of law. Moreover, it is not correct to say that they have no binding force. The authorities of the State may not have to answer for the breach in a law Court, but they will certainly have to answer for them to the electorate at election time. These principles have great educational value. They are really in the nature of moral precepts for the authorities of the State. Constitutional declaration of policy of this kind is now becoming increasingly popular. However, the significant thing to note about the Directive Principles of State Policy is, as Mathew, J. pointed out in the Kesavananda Bharati case, that, although they are expressly made unenforceable, that does not affect their fundamental character. They still very much form part of the Constitutional law of the land. They are as important as the Fundamental Rights of individuals. They are fundamental in the governance of the country.

Directive Principles of State Policy and Fundamental Rights together constitute the 'conscience' of the Constitution, and represent the basic rights inherent in human beings in this country. There is no inherent conflict between the Directive Principles of State Policy and Fundamental Rights and both are equally relevant in promoting the aims and objectives of the Constitution. However, in translating them in to socio-economic reality some degree of compromise is inevitable. Thus in determining the scope and ambit of the Fundamental Rights, Courts may not entirely ignore the Directive Principles of State Policy and must adopt the principle of harmonious construction in order to give effect to both as far as possible. Mathew, J. went a step further and explained that whether at a particular moment in the history of the nation, a particular Fundamental Right should have priority over the moral claims embodied in Part IV or must yield to them is a matter which must be left to be decided by each generation in the light of its experience and values.

Merely because the Directive Principles are non-justiciable, it does not follow that they are in a way subservient or inferior to the Fundamental Rights. The Directive Principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual a living reality. Thus the Directive Principles enjoy a very high place in the Constitutional scheme and it is only in the framework of the socio-economic structure envisaged in the Directive Principles that the Fundamental Rights are intended to operate. It is,

therefore, not correct to say that under the Constitutional scheme, Fundamental Rights are superior to Directive Principles or Directive Principles must yield to Fundamental Rights. Both are in fact equally fundamental and an effort should be made to harmonise them by importing the Directive Principles in the construction of Fundamental Rights. This harmony must be maintained even by Constitutional amendments. The Constitution is founded on the bed-rock of the balance between Parts III and IV, and to title the balance by giving supremacy to one over another is to destroy the harmony between the Fundamental Right and Directive Principles which is an essential feature of the Constitution.
Among the Economic Rights and the principles of social security which the State is required to ensure to the people are-

(i) Adequate means of livelihood;
(ii) Equal pay for equal work for both men and women;
(iii) Fair distribution of material resources of the country;
(iv) Protection of child and adult labour;
(v) Living wage for workers;
(vi) Right to work;
(vii) Free and compulsory education for children up to the age of fourteen;
(viii) Conditions of work ensuring a decent standard of life and full enjoyment of leisure and of social and cultural opportunities;
(ix) Public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of underserved want;
(x) Humane conditions of work ; maternity relief;
(xi) Promotion of educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the people; and
(xii) Raising of the level of nutrition; and improvement of public health
Other important directive principles are –

(i) Organization of village panchayat;
(ii) Establishment of uniform civil code for all citizens;
(iii) Prohibition;
(iv) Organization of agriculture and animal husbandry;
(v) Prohibition of slaughter of useful cattle, specially milk and draught cattle and their young ones;
(vi) Separation of the Judiciary from the Executive;
(vii) Participation of labour in management of industry;
(viii) Protection of environment, forests and wild life;
(ix) Equal justice and free legal aid; and
(x) Promotion of international peace and security.

Some of these Directive Principles such as the directives on legal aid, free and compulsory education, and protection of weaker sections and provisions for just and humane conditions of work in association with some of the Fundamental Rights have also been judicially enforced and made enforceable.

7. Fundamental Duties

The Constitution (42nd Amendment Act, 1976) has introduced a Code of ten "Fundamental Duties" for Citizens. The Fundamental Duties are intended to serve as a constant reminder to every citizen that while as the Constitution has specifically conferred on them certain Fundamental Rights, it also requires the Citizens to observe certain basic norms or democratic conduct and democratic behaviours. These duties like, the Directive Principles of State Policy cannot be judicially enforced.

8. Partly Federal, Partly Unitary or a Federalism with Strong Center

According to the traditional classification followed by the political scientists, Constitutions are either unitary or federal. In a Unitary Constitution the powers of the Government are centralized in ones government viz., the Central Government. The provinces are subordinate to the Centre. In a Federal Constitution on the other hand, there is a division of powers between the Federal and the State Governments and both are independent in their own spheres.

There is a difference of opinion amongst the Constitutional jurists about the nature of the Indian Constitution. One view is that it is a quasi-federal Constitution and contains more unitary features than federal. The other view is that it is a federal Constitution with a novel feature adopting itself to national emergencies. The view of the framers of the Constitution is that the Indian Constitution is a Federal Constitution. Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, observed thus, "I think it is agreed that our Constitution notwithstanding the many provisions which are contained in it whereby the Centre has been given powers to override the Provinces (States).

No other Federal Constitution makes such elaborate provisions as the Constitution of India in respect of the relationship between the Union and the States in the financial field. In fact, by providing for the establishment of a Finance Commission for the purpose of allocating and adjusting the receipts from certain sources, the Constitution has made an original contribution in this extremely complicated aspect of federal relationship. The significance of this provision becomes evident when one takes into account the unending conflicts between the federation and the units in the financial field that characterize the working of the other federations.

Often the federation and the units have tried to raise revenue by taxing the same sources such as income-tax. In theory, it may look right, but in practice it created great inconveniences. The federation thought that the States stood in its way of enhanced taxation, while the States looked upon the federation as a hindrance to their financial soundness. At the same time, the people thought that they were subjected to double or excessive taxation. There was a constant challenge by the States to the authority of the federation to impose a particular tax. At the same time, the federation too, resorted to the same process against the States. Individual citizens too, challenged the authority of either the federation or the States so as to suit their interests. The result was an enormous amount of litigation. The Indian Constitution lays down a broad scheme for the distribution of revenue resources between the Union and the States. But it has left the task of detailed allocation to the Finance Commission to be set up by the President within two years after the inauguration of the Constitution.

The basic principles that guide the allocation of resources between the federation and the units are efficiency, advocacy and suitability. It is, indeed, difficult to achieve all the three and at the same time, Constitutional, natural and economic considerations often stand in the way. Even if a certain system might suggest itself as the most acceptable, if would not satisfy the claims and counter-claims of the various States. Hence, the Constitution has attempted a compromise. According to this, the subject is divided into two parts, namely, (1) the allocation of revenues between the Union and the States, and (2) the distribution of Grants-in-aid.

Grants-in-aid (Art. 275)

Federalism is not only a unifying but also a leveling-up force. Among the constituent States of the Union are some which are developed and advanced while others are undeveloped or underdeveloped and backward. One of the results expected of a federal union is the opportunity that it should provide for the socially and economically backward units to better their lot. A common method adopted for this purpose is the system of the Union giving grants to the needy States. Article 275 provides for this by empowering Parliament to pay, out of the Consolidated Fund of India, certain sums every year as grants-in-aid to the revenues of such States, to the extent that such assistance is adjudged as necessary. The grants so fixed are based upon the recommendations of the Finance Commission. It is not necessary that every state should get grants-in-aid every year. If, in the opinion of the Finance Commission, a particular State does not need such assistance, Parliament may leave it out while allocating such grants. The Constitution, however, makes it obligatory for the Union Government to pay such grants-in-aid to cover the schemes of development

undertaken by a State with the approval of the Union for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the Scheduled Areas.

Planning - Commission:

In this connection, the role of the Planning Commission is very significant. It is concerned with the formulation of national Five-Year Plans and the mobilization and allocation of resources for the implementation of those plans. The Planning Commission is not a body established by the Constitution, but by the Union Government. Yet the role of the Commission is decisive in the allocation of finances for developmental purposes. And this places the States in a position of financial dependence on the Commission for the Five-Year Plans.

This is not a happy situation from the point of view of the States. Perhaps, in the initial stages of development of India as a new politically independent country this was necessary both to ensure the unity of the nation and the balanced development of the different regions. But during the last fifty-five years, the pattern of Indian economy has undergone a considerable change. The States today feel that if they have to pursue their developmental objectives satisfactorily, they should have greater financial resources. And this is possible only if either the Centre gives them a larger share of the Central revenues or allows them to have more taxation powers, if necessary, through Constitutional amendment. It is not likely that the Centre would agree with either of these demands readily. But there is an indication to believe that these demands are bound to gather momentum and strength in the days to come.

Financial Control by the Union in Emergencies:

As in the legislative and administrative spheres, so in financial matters, the normal relation between the Union and the States (under Arts. 268-279) is liable to be modified in different kinds of emergencies. Thus, (a)while a Proclamation of Emergency (Art. 352(1) is in operation, the President may by order direct that, for a period not extending beyond the expiration of the financial year in which the Proclamation ceases to operate, all or any of the provisions relating to the division of the taxes between the Union and the States and Grants-in-aid shall be suspended (Art. 354). In the result, if any such order is made by the President, the States will be left to their narrow resources from the revenues under the State List, without any augmentation by contribution from the Union.

(b) While a Proclamation of Financial Emergency [Art. 360(1)] is made by the President, it shall be competent for the Union to give directions to the States-

(i) to observe such canons of financial propriety and other safeguards as may be specified in the directions;
(ii) to reduce the salaries and allowances of all persons serving in connection with the affairs of the State, including High Court judges;
(iii) to reserve for the consideration of the President all money and Financial Bills, after they are passed by the legislature of the State [Art.360]

Financial relations between the Union and the States, especially in a developing economy, cannot remain static for long. Adjustments will have to be made in the light of the changing pattern of the economy. Legislative enactments on taxation cannot be made for all times to come.

It may be that we deviated in respect of certain matters from the strict federalism as operating in the U.S.A. or Switzerland, but the reasons are obvious. The Indian Constitution makers defined the Indian federal structure not with an eye on theoretical but on practical considerations in designing Federalism. Under the impact of world wars, international crisis, scientific and technological progress and developments and the emergence of the ideal of social welfare State, the whole concept of Federalism had been undergoing a change for sometime throughout the world. There are centralizing tendencies in evidence in every Federation and whether it is in U.S.A. or in Australia, strong and powerful national governments have emerged in very Federation. The Framers of the Indian Constitution took note of these tendencies and kept in view the practical needs of the country designed on Federal structure not on the footing that it should conform to some theoretical, definite or standard pattern, but on the basis that it should be able to therefore, constitutes a new bold experiment in the area of Federalism.

In short, it may be concluded that the Constitution of India is neither purely Federal nor purely unitary but is a combination of both. It is a union of composite State of a novel type. It enshrines the principle that inspite of Federalism, the national interest out to be paramount. Thus, the Indian Constitution is mainly Federal with unique safeguards for enforcing national unity and growth.

9. Adult Franchise:

Dr.B.R.Ambedkar said in the Constituent Assembly that the Parliamentary Democracy we mean 'one man one vote.' In the place of old communal franchise, the uniform adult suffrage system has been adopted. Under the Indian Constitution every man and woman above 18 years of age has been given the Right to Elect their representatives for the legislature. The adoption of the universal adult suffrage under Article 326 without any qualification of sex,

property, taxation, or the life is bold experiment in India having regard to vast extent of the country and its population, with an overwhelming illiteracy.

10. Single citizenship

Though the Constitution envisaged a dual polity i.e. Centre and States, it provides for a single citizenship for the whole of India. The American Constitution provides for dual citizenship i.e. the Citizen of U.S.A. and a state Citizenship. Every Indian has one citizenship throughout the country with same rights.

11. Independent judiciary

Man's love for justice makes a democracy possible but man's inclination to injustice makes democracy necessary. The basis of the democracy is rule of law and will of the people. In view of the value of democracy framers of Constitution envisaged the democratic form of Government in India. The Fundamental Rights, the concept of limited government, judicial review, Constitutional supremacy, the preambular goals, directives, accountability of executive to the legislature, accountability of legislature to the people, accountability of the judiciary to the Constitution form the Constitutionalism in India. Independence of Judiciary is ensured for effective Judicial review under Indian Constitution as it is essential not for the benefit of Judges themselves but for the community as a whole. The separation of powers (functions) represents a delicate balance. Its success depends on continued public confidence in the political impartiality of the Judges. Rule of Law demands independence of judiciary. Independence of judiciary includes not only the implementation of separation of powers (functions) but also accountability and credibility. Judiciary like the other wielders of public power is a fiduciary for the public. Administration of justice should protect citizens against discrimination and persecution.

An independent and impartial judiciary is said to be the first condition of liberty. It is the custodian of the rights of the citizen. In a federal Constitution, it plays another important role; it determines the limits of the powers of the Centre and the States. The following provisions of the Constitution are intended to secure independence and impartiality of the Supreme Court and the High Courts.

Thus, our Constitution has done everything possible to make the Supreme Court and the High Courts independent of the influence of the Executive. An attempt is made in the Constitution to make even the subordinate judiciary independent of extraneous influences. The Constitution also directs and facilitates separation of the executive from the judiciary and places the magistracy which deals with criminal cases on the same footing as civil Courts.

Judicial review in India is based on the assumption that the Constitution is the supreme law of the land, and all governmental organs, which owe their origin to the Constitution and derive their powers from its provisions, must function within the framework of the Constitution, and must not do anything which is inconsistent with the provisions of the Constitution. In a federal system it is a necessary consequence to have an impartial and independent judiciary whose basic function is to act as an arbitrator in a dispute arising between the Centre and the States. Under the Indian Constitution, there is a specific provision in Article 13 (2) which says that the State shall not make any law which takes away or abridges the Fundamental Rights enshrined in the Constitution, and any law made in contravention of this provision shall, to the extent of inconsistency, be void. The inclusion of this provision appears to be due to abundant caution, because even in the absence of such a provision, the Courts would still have the power to examine the Constitutionality of a law on grounds of infringement of Fundamental Rights. This is so because not only the judges are bound by the oath to uphold the Constitution but also the Courts can be approached for the enforcement of the Fundamental Rights. One of the unique features of the Constitution is that a person has a Fundamental Right to approach the Supreme Court. Moreover, wide original and appellate jurisdiction has been given to the Supreme Court and High Courts to adjudicate on the Constitutionality of any actions.

The framers of the Indian Constitution, as we have already noted, adopted the parliamentary form of government which was obtained from England. But the Union Parliament and State Legislatures, unlike the English Parliament, owe their origin to the Constitution and derive their powers from its provisions, and therefore function within limitations prescribed in the Constitution. There is a necessary implication that the Constitution confers on the Courts the power to scrutinize a law made by a legislature and to declare it void if it is found to be inconsistent with the provisions of the Constitution. In England Parliament is Sovereign and there is no written Constitution to control or limit that Sovereignty and therefore the Courts lack the power to adjudicate upon the Constitutionality of the laws of Parliament though they may restrict their reach and scope through interpretation in the light of Constitutional Principles. Judicial review in India bears resemblance to that available in the United States where the Supreme Court and other Courts have endowed themselves with the provisions of the Constitution.

At one time it was regarded that the Fundamental Rights under the Indian Constitution bear some resemblance to the Bill of Rights under the American Constitution bear some resemblance, the deliberate rejection of the 'due process of law' clause from its incorporation in the Indian Constitution has made all the difference in the nature of judicial review. It was firmly established, that the limitations for its exercise were clearly enunciated and the difference between

the American and Indian position arising primarily from the due process clause and absolute enumeration of the Fundamental Rights in the former was emphasized. The words "procedure established by law" in Article 21 were distinguished from "due process of law" in the V and XIV Amendments of the U.S. Constitution and were held to be imposing almost no limitation on the legislature. Certain Fundamental Rights are guaranteed simultaneously with permissible reasonable restrictions which may be imposed by law on the enjoyment of these rights for certain purposes or in public interest. The determination by the legislature of what constitutes 'reasonable' is not final. It is subject to supervision by Courts. However, "in evaluating such elusive factors and forming their own conception of what is reasonable, that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgement in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable". Nevertheless, the Supreme Court has laid down some broad generalization for determining the reasonableness of restrictions, e.g., the Court will apply the objective standards, the restriction should not be greater than what is required by the circumstances or there should be proximate connection between the restriction and the object sought to be achieved.

Challenges to Independence of Judiciary:

In India though the other Constitutional functionaries loose their credibility but the judiciary has preserved its dignity decorum, and sobriety by and large. But judicial aberration, linguistic indiscretion, irritating observations and violent diction are slowly escalating.

Delay in the Justice delivery mechanism which is caused by a number of factors involving the judicial personnel, bar members, rules of procedure and evidence etc. is a self defeating charade. No doubt, Courts are temples of Justice but some Judges feel themselves as Gods which is against the spirit of Constitutionalism and Constitutional morality.

If the Judges are receptive to influence, inducements, pressures, threats or interference, direct or indirect, independence of Judiciary becomes committed judiciary and loose its credibility.

We know the independence of the judiciary is closely tied to the merit of those selected for judicial office is widely recognized. Members of legal fraternity are guardians of the rights of the individual and society at large.

The law is the embodiment of everything that is excellent and the members of the Bar who have a vast reservoir of wisdom, strength and courage are its torchbearers. Krishna Iyer, J., in the Bar Council of India v. M.V. Dabholkar observed that the vital role of the lawyer depends upon his probity and professional lifestyle. The central function of the legal profession is to promote the administration of justice. As monopoly to legal profession has been statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which makes him worthy of confidence of the community in him as a vehicle of social justice. "Law is not trade, nor brief merchandise. "Law is universally described as an honourable profession and is distinguished by its rules of ethics without which advocacy would degenerate into a trade or mere sordid pursuit for livelihood and accumulation of wealth.

Changes in the institutions and structures of the judicial system which includes Courts, judicial procedures, judicial administration, professional services, accountability systems and improvement of the human material, the personal managing the institutions which includes the lawyers, the judges, the Court administrators are to be brought immediately for greater professional and judicial accountability.

The Constitution is the Supreme law of the land and all state organs including parliament and State legislatures are bound by it. They must act within the limits laid down by the Constitution. They owe their existence and power to the Constitution and therefore, their every action must have its support in the Constitution. If it lacks its support or is other wise contrary to it, it is unConstitutional and can be so declared by the Courts in appropriate proceedings. No legal validity can thus be conferred no acts which are unConstitutional or are based on unConstitutional acts. Since the Constitution is the supreme law, it lies upon the Courts to determine the meaning and scope of that law with reference to any other law or action. In the performance of that function the Courts do not act as super legislatures or super executive.

The Constitution provides for its amendment but not for its review. In 1999 the multiparty coalition government at the Centre led by Bharatiya Janata Party mooted the idea of appointing a commission to review the Constitution and recommend amendments in it. In view of serious doubts about the Constitutionality of the execution of the idea and its opposition from public and political parties, the Government modified it and notified the Constitution of a National Commission to Review the Working of the Constitution on 22nd February 2000. its terms of reference state:

The Commission shall examine, in the light of the experience of the past 505years, as to how best the Constitution can respond to the changing needs of

efficient, smooth and effective system of governance and socio-economic development of modern India within the frame work of Parliamentary democracy and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features".

National Commission to Review the Working of the Constitution (NCRWC) submitted its report without suggesting any substantial changes in the present Constitutional set up. It shows the strength of the present working of Indian Constitution.

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BASIC STRUCTURE OF THE LEGISLATURE, EXECUTIVE AND JUDICIARY

Introduction

The Sovereign, socialist, Secular, Democratic and Republic Government of India is based on most important tripod of three organs i.e. executive, legislature, and judiciary.

The present write-up aims at clarifying the basic structure of these three organs of Indian Government.

Before elaborating the structure of these organs, it is important to know about the source and evolution of the duties, power and scope of each of these organs. The Constitution of India is an organic document which defines the powers and functions of these organs and their interrelationship.

It has adopted the federal structure with a strong centre; and simultaneously it provides for Parliamentary democracy with an executive responsible to the legislature, and the judiciary to the legislature and the judiciary to test the validity of the Parliamentary legislation on the basis of the Constitutional provision. Following is the detailed analysis of the structure of each of these organs.

I. EXECUTIVE

The Indian executive is two tiers and it constitutes the executive at centre as well as at state level. Let us first elaborate the Union Executive.

UNION EXECUTIVE

The Union executive constitutes of the President, Vice-President, and the Council of Ministers.

The President

- ***Election***

India being a republic country, there is no hereditary monarch as the head of State, but is headed by the institution of the President.

Art.52 of the Indian Constitution lays down the provision for creation of the office of the President, who is elected by an indirect method of election, by an electoral college.]

The Electoral College consists of the

- Elected members of both the Houses of Parliament.
- The elected members of the legislative Assemblies of the states
- The elected members of the legislative Assemblies of Union Territories of
  Delhi and Pondicherry.

As the President is the representative of the nationals as well as a representative of the people in the different states, the uniformity of representation of the different states at the election is ensured.

This proportional representation is sought to be achieved by means of single transferable vote by secret ballot. The votes cast by all members of the Electoral College are allotted to the voters on the basis of following two principles.

1. As far as practicable, there is uniformity in the scale of representation of the difference states at the presidential election[24].To achieve this result, a member of the Electoral College from a state Legislative Assembly has as many votes as are obtained by the following formula.

$$\frac{\text{State Population}}{\text{Total No. of elected member in the State legislative Assembly}} \times \frac{1}{1000}$$

2. There is a parity of votes between the elected members of the houses of Parliament, and of the State Legislative Assemblies, so that the former command the same number of votes in the Electoral College as the latter. This result is achieved by the following formula which gives the number of votes available to a member of parliament in the Electoral College.[25]

$$\frac{\text{Total No. of votes assigned on the members of the State Legislative Assemblies in the Electoral College}}{\text{Total number of elected member of the two Houses of Parliament}}$$

[24] Article 55(1)
[25] Article 55(2)c

Further under Article 71(1) Protection is conferred on the President's election from being challenged on the ground of the existence of any vacancy for whatever reasons among the members of the Electoral College electing him.

- ***Disputes***

According to Article 71(1) all doubts and disputes arising in connection with the election of the President are to be decided by the Supreme Court whose decision is final.

- *Qualifications for Post of President*

A candidate for the President's post must possess following qualifications

(a) Must be a Citizen of India.
(b) Must have completed the age of thirty five years.
(c) Must be qualified for election as a member of the House Of the People and
(d) Must not hold any office of profit under the Government of India, or the Government of any State or under any local or other authority subject to the control of any of the said Government.

But a sitting President or Vice President of the Union or the Governor of any state or a Minister either for the Union or for any State is not disqualified for election as President.

- *Tenure*

The normal tenure of the President is five years from the date on which he enters upon his office, but he continues to hold office even thereafter till his successor enters upon his office[26].

A person who is or has been the President is eligible for re-election to that office if he fulfills the necessary conditions for this purpose as mentioned above.[27]

The President may resign his office before the expiry of his normal tenure of five years by writing to the Vice-President. The Vice-President has to communicate the President's resignation to the speaker of the Lok Sabha.

- *Impeachment*

[26] Article 56
[27] Article 57

The President may be removed from his office, before the expiry of his term, by the process of impeachment on the ground of violation of the Constitution.[28]

Following is the procedure for impeachment.

a) The proposal to prefer the charge is to be put in the form of a resolution of the House. Such a resolution can be moved only after a fourteen days written notice signed by not less than one fourth of the total number of members of the House.

b) The resolution must be passed by a majority of not less than two thirds of the total membership of the House

- *Privileges*

The office of the President enjoys many privileges and immunities. He is not answerable to any court for the exercise and performance of the powers and duties of his office, or for "any act done or purporting to be done by him" in the exercise and performance of these powers and duties.[29] The privileges by the members individually are freedom from arrest, exemption from attendance as jurors and witnesses and freedom of speech. At the same time the privileges enjoyed collectively by the House are the right to publish debates and proceedings and the right to restrain publication by others, the right to exclude others, right to regulate the internal affairs of the House and to decide matters arising within its walls, the right to publish Parliamentary misbehavior and the right to punish members and outsiders for breach of its privileges.

- *Powers and Duties of the President*

The President of India is a head of the "executive power" of the Union According to Article 53 of the Indian Constitution, the "executive power" of the Union shall be vested in President. The literal meaning of the term "executive power" is the execution of the laws enacted by the legislature; but nowadays the function of executive is not limited only to the execution of laws. With the expansion of the state's function, all the residuary functions of state have passed on to the Executive. Hence in short Executive power can be explained as the residue of powers remaining after deducting the legislative and judicial function.

[28] Article 56(1)b, Article 61(1)
[29] Article 36(1)

(a) Administrative power: Administrative means the execution of the laws and the administration of the departments of Government. In matters of administration, not being a real head of the Executive like the American President, the Indian President shall not have any administrative function to discharge nor shall he have that power of control and supervision over the Departments of the Government as the American President possesses.

Tough he may not be the real head of the administration, all officers of the Union shall be his subordinates and he shall have a right to be informed of the affairs of the Union.

The administrative power also includes the power to appoint and remove the high dignitaries of the Sate.

In making some appointments the President has to consult some persons other than the ministers as well, for e. g. In appointment of the judges of the Supreme Court of India the President shall consult the Chief Justice of India and such other Judges of the Supreme Court and of the High Court as he deems necessary.

b) Military Power: Military power means the command of the armed forces and the conduct of war. The Supreme command of the defence forces is, of course, vested in the President of India, but the Constitution expressly lays down that the exercise of this power shall be regulated by law[30].This means that though the President may have the power to take action as to declaration of war or peace or the employment of the Defence Forces, it is competent for Parliament to regulate or control the exercise of such power. The President's powers as Commander-in-chief cannot be construed, as in the U.S.A as a power independent of legislative control. Further Constitution states that certain acts cannot be done without the authority of law, it must be held that such acts cannot be done by the President without approaching Parliament for sanction e.g., acts which involve the expenditure of the money, such as the raising, training and maintenance of the Defence Forces.[31]

(c) The Diplomatic Power: Include all matters which bring the Union into relation with any foreign country. The legislative power as regards these matters as well as the power of making treaties and implementing them, of course, belongs to Parliament. But though the final power as regards these things is vested in Parliament, the Legislature cannot take initiative in such matters. The task of negotiating treaties and agreements with other countries, subject to ratification by Parliament, will thus belong to the President, acting on the advice of his Ministers. Though diplomatic representation as a subject of legislation

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[30] Article: 53(2)
[31] Article: 114(3)

belongs to the Parliament, like the Head of the other states, the President of India will represent India in International affairs and will have the power of appointing Indian representative to other countries and of receiving diplomatic representatives of other states, as shall be recognized by Parliament.

(d) Legislative Powers:

The President of India is a component part of the Union Parliament and here is one of the instances where the Indian Constitution departs from the principle of Separation of Powers underlying the Constitution.

The Council Of Ministers

Constitution of Council of Ministers

The Council of ministers consists of the cabinet system where the number of the ministers is not specified in the Constitution; it is decided on the basis of exigencies of time. This is so because the Indian Constitution has based its cabinet system on the basis of the English System which works on the basis of conventional practices. The council of Ministers belongs three categories of ministers, firstly Cabinet Ministers who are not necessarily part of cabinet but they have to attend the meetings if specially invited by the Prime Minister or for discussing the matters concern with their respectively departments. Secondly the State Ministers who hold separate departments and are responsible for their own departments. Thirdly Deputy Ministers who don't hold any independent departments.

- *Appointments of Ministers*

The Prime Minister is selected by the President; and the President has to restrict the selection to the leader of the majority party in the house of the people, or a person who is in position to win the confidence of the majority in that house. Other Ministers are appointed by the President on the advice of Prime Minister.[32] De Jure the President has power to dismiss the individual Ministers. However the defacto power of dismissing the Ministers lies in the hands of the Prime Minister.

- *Salaries of Ministers*

The salaries and allowances of ministers depend upon the decision of parliament which it may determine by law from time to time.

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[32] Article 75 (1)

- *Ministerial and Collective Responsibility*

The Council of Ministers shall be collectively responsible to the house of people[33]. Hence the Ministry of the body shall be under constitutional obligation to resign as soon as it looses the confidence of the popular house of legislature. The term collective responsibility means that all the members of the Government are united in support of its policies and exhibit that unanimity on public occasions even if they differ in the cabinet meeting and another meaning is the Minister who had an opportunity to speak for or against the policies in the cabinet are personally and morally responsible for their successes and failures[34].

Simultaneously the Minister is individually responsible to the President. The Ministers shall hold office during the pleasure of the President[35] and hence even if the Ministers are collectively responsible to the Legislature still they are individually liable to be dismissed by the executive head.

The Attorney-General for India

- *Appointment of Attorney- General*

The office of Attorney-General is one of the offices placed on special footing by the constitution. He is the first law officer of the Government of India and his duty is:-

1. To give advice on such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the President and

2. To discharge the functions conferred on him by the constitution or any other law for the time being enforce[36].

The Attorney-General shall be appointed by the President and shall hold the office during the pleasure of the President. The qualification of the Attorney-General is that of the Judge of Supreme Court.

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[33] Article 75 (3)
[34] Registered Society V/s Union of India, (1999) 6 SCC Page No. 667.
[35] Article 75 (2)

[36] Article 76

The Comptroller and Auditor-General of India

- *Appointment of Comptroller and Auditor-General*

Another important office of the Government of India as provided by the constitution is of Comptroller and Auditor-General who controls the entire financial system of the country at the union as well as the State levels[37].

The basis of the Parliamentary system is the responsibility of the executive and the Legislature and their checks over each other and ultimately of which lies in the system of the financial control of the Legislature. The Legislature can perform its function efficiently provided the Legislature aided by an agency fully independent of the executive, and who would scrutinize the financial transactions of the Government and bring the results before the Legislature.

However the Comptroller and Auditor-General is independent which can be same from the following provisions of the Constitution.

i. Though appointed by the President, the Comptroller and Auditor-General may be removed only an address from both houses of parliament on the ground of proved misbehavior or incapacity.

ii. His salary and condition of service shall be statutory and shall not be liable to variation to his disadvantages during the term of his office.

STATE EXECUTIVE

The Indian parliament being the federal we have the two tier system and so the state executive is based on the similar pattern as that of the Union Executive. The State Executive constitutes of the Governor, Chief Minister, and the ministers.

The Governor

The Governor is the head of the state executive. The executive power is vested in the governor and all the executive action of the state has to be taken in the name of the governor. Normally there shall be Governor for each State but the amendment of 1956 makes it possible to appoint the same person as the Governor for two or more States[38].

- *Appointment of Governor*

[37] Article 148

[38] Article 153

The Governor is not elected but is appointed by the President and holds its office at the pleasure of the President.

Any citizen of India who has completed who has completed 35 years of his age is eligible for the office of the Governor but he must not hold any other office of profit, nor be a member of the Legislature of union or of any State[39]. There is no bar to the selection of a Governor from amongst the members of a Legislature but if a member of Legislature is appointed as Governor then he ceases to be member immediately upon such appointment. The normal terms of a Governor's office shall be 5 years, but it may be terminated earlier either by the dismissal by the President or resignation.

- *Powers of the Government*

Unlike the President the Governor doesn't have diplomatic or military powers but he possesses executive, Legislative and Judicial power.

(a) Executive Powers:

The Governor has a power to appoint his council of Ministers, Advocate-General and the member State Public Service Commission. The Ministers as well as the Advocate –General holds office during the pleasure of the Governor, however the members of State Public Service Commission cannot be removed by him, they can be removed by the President on the report of the Supreme Court on reference made by the President and, in some cases on the happening of certain disqualifications[40].

Like the President even the Governor has the power to nominate the members of the Anglo Indian Community to the Legislative Assembly of his State.

(b) Legislative Powers : The Governor is the part of the State Legislature as the President is the part of the Parliament. He has a right of addressing and sending messages, and summoning, proroguing and dissolving the State Legislature just as the President has in case of Parliament. He also possess a similar power of causing to be laid before the State Legislature the annual financial statement and of making demands for grants and recommending money bills[41].

[39] Article 158
[40] Article 317
[41] Article 202 & 207

(c) Judicial Powers: The Governor has the power to grant pardons, reprieves, respites or remission of punishments or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which executive power of the State extends[42]. He is also consulted by the President in the appointment of the Chief Justice and the Judges of High Court of State.

(d) Emergency Powers : The Governor has no emergency powers to meet the situation arising from external aggression or armed rebellion like the President, However he has the power to make a report to the President that whenever he is satisfied that a situation has arisen in which Government of the State cannot be carried on in accordance with the provisions of the constitution, thereby inviting the President to assume to himself the functions of the Government of the State or any of them[43].

The Council of Ministers

- *Appointment of Council of Ministers*

The head of the State Council of Minister is the Chief Minister is appointed by the Governor. While other Ministers are by the Governor on the advice of Chief Minister. The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State and individually responsible for the Governor. The Ministers are jointly and severally responsible to the Legislature they are publicly accountable for the acts or conducts in the performance of their duties. Any person may be appointed a Minister according to the confidence he gains in the Legislative Assembly, but he ceases to be a Minister if he is not or does not remain for a period of six consecutive months, a member of the State Legislature. The salaries and the allowances of the Ministers are governed by laws made by the State Legislature[44].

Advocate General

Each State shall have an Advocate General for the State an official corresponding to the Attorney General of India and having similar functions for the State.

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[42] Article 161
[43] Article 356
[44] Article 164

II. LEGISLATURE

UNION LEGISLATURE

- *Composition of Parliament*

The Parliament of India is bicameral which consists of 2 houses lower house is called as house of people or Lok Sabha and the upper house called as Council of States or Rajya Sabha .

- *Rajya Sabha*

The maximum strength of Rajya Sabha has been fixed at 250 members out of these 238 members are elected representatives of the States and the Union Territories[45]. The 12 members are nominated by the President from amongst those who have special knowledge or practical experience of such matter as Literature, Science, Art and Social Services[46].

The representatives of a State in Rajya Sabha are elected by the elected member of the State Legislative Assembly in accordance with the system of proportional representation by means of the single transferable vote[47].

- *Lok Sabha*

Lok Sabha is the popular house consisting of directly elected members. The maximum strength of Lok Sabha has been fixed at 550 members of whom not more than 530 are elected by the voters in the State and not more than 20 represent the union territories. The member from the State are elected by the system of direct election from territorial constituencies on the basis of adult suffrage [48].

Every citizen of India who is not less than 18 years of age on a date fixed by Parliament and does not suffer from any disqualification as laid down in the Constitution, or in any law on the ground of non residence, unsoundness of mind, crime or currept or illegal practice, is entitled to vote at an election for the Lok Sabha [49].

Seats in the house are allotted to each state in such a way that as far as practicable, the ration between the number of seats allotted to a state and its

[45] Article 81 (b)
[46] Article 80 (1)(a),80 (3)
[47] Article 81 (1)(b), 80 (4)
[48] Article 81 (1) (a)
[49] Article 326

population is the same for all the states this provision does not apply to the state having a population of less than 6 millions.

- *Functions of Parliament*

Following are the various functions of the Parliaments

(i) Providing the Cabinet

The first and foremost function of Parliament is that of providing the cabinet and holding them responsible. Though the responsibility of the cabinet is to the popular chamber the membership of the cabinet is not restricted to that chamber and some of the members are usually taken from the upper chamber.

- *Control of the Cabinet*

Article 75 (3) of the Constitution provides for this responsibility of the popular chamber to see that the cabinet remains in power so long as it retains the confidence of the majority in that house.

- *Criticism of the Cabinet and of Individual ministers*

It is the function of both the houses to participate though the power to bringing about a downfall of the ministry belongs only to the popular chamber. While the cabinet left to formulate the policy, it is the function of the Parliament to bring about the discussion and criticism of that policy on the floor of the house so that not only the cabinet can get the advice of deliberative body and learn about its own errors and deficiencies.

(ii) An organ of Information

The Parliament is more powerful than the press or any other private agencies in context of information because Parliament secures the information authoritatively from those who have the knowledge of things. This information is collected and explored not only through the debates but through the specific mediums of questions to ministers.

(iii) Legislation

The most important function of the Legislation is of enacting and making of Legislation

(iv) Financial Control

It is only the power of the Parliament not only to authorise expenditure for the public services and to specify the purpose to which the money shall be appropriated, but also to provide the way and means to raise the revenue required by means of taxes and other impositions and it also ensures the money that was granted has been spent for authorized purpose.

- *Duration*

Firstly the Council of States is not subject to dissolution. It is a permanent body, 1/3 of its member retire on the expiration of every second year, I accordance with the provisions made by Parliament in this behalf. It follows that there will be an election of 1/3 of the membership of the Council of States at the beginning of every third year50.

Secondly normal life of the House of people is five years. But it may be dissolved earlier by the President. However the normal term may be extended by an Act passed by the Parliament itself during the proclamation of emergency.

- *Session and Dissolution*

It is the President's power

(a) To summon either House
(b) To Prorogue either House and
(c) To dissolve the house of people

The Constitution imposes a duty upon the possible to summon each House at at such intervals that six months shall not intervene between its last sitting in on session and the date appointed for its first sitting in the next session[51]. This means that the Parliament must meet at least twice a year and not more than six months shall elapse between the date on which a House is prorogued and the commencement of its next session.

Hence we need to make a difference between prorogation and dissolution from adjournment. A "session" is the period of time between the first meeting of a Parliament and its prorogation or dissolution. The period between the prorogation and reassemble in a new session is termed as recess.

[50] Article 83 (1)
[51] Article 85 (1)

The sitting of a House may be terminative by

(a) Dissolution
(b) Prorogation
(c) Adjournment

The dissolution may take place by two ways firstly by efflux of time i.e. on the expiry of the term of five years or the terms as extended during a proclamation of emergency and secondly by an exercise of the President's power under Article 85 (2).

While the powers of dissolution and prorogation are exercised by the President on the advice of his council of ministers, the power to adjourn the daily sittings of the House of people and the council of states belongs to the Speaker and the Chairman respectively.

The dissolution brings the House of people to an end, while prorogation merely terminates a session. Adjournment does not put and end to the existence of a session of Parliament but merely postpones it. A dissolution ends the very life of the existing House of people so that all matters pending before the House lapse with the dissolution.

- *Officers of Parliament*

Each house of parliament has its own residing officer and secretarial staff

Speaker

There shall be a speaker to preside over the Lok Sabha. The house of people shall as soon as its first meeting is over, choose two members of the house as Speaker and Deputy Speaker[52]. The Speaker is empowered to preside the house but he shall not vote in the first instance however he can exercise the casting vote in case of equality of votes. The speaker should have final power to maintain order within the house of people and to interpret its rules of procedure. In absence quorum it is the duty of the speaker to adjourn the house or to suspend the meeting until there is a quorum.

Deputy Speaker

When the office of Speaker is vacant or the Speaker is absent from a seating of the house, then Deputy Speaker presides except when a resolution for his own removal is under consideration. While the house of people has a speaker

[52] Article 93

elected by its members from among themselves, the Chairman of the Council of States performs that function ex-officio.

Chairman of the Rajya Sabha

The presiding officer of Rajya Sabha is known as the Chairman. The Vice President of India is ex-officio Chairman of the house. The house also elects the Deputy Chairman from amongst its members to vacates his office as soon as he ceases to be a member of the house. He may resigned his office by writing to the Chairman. The Deputy Chairman performs the duties of the Chairman when that office is vacant or when the Vice President is acting as President of India. If the office of the Deputy Chairman is also vacant then the duties of the Chairman are performed by such member of Rajya Sabha as President may appoint for the purpose till any of these offices is filled.

Parliamentary Secretariat

Each house has separate Secretarial staff of its own though there may be some posts common to both the houses. The term of recruitment and conditions of service of persons appointed to the Secretarial staff of a house may be regulated by law by Parliament. Until so regulated, the President of India may, after consultation with the Speaker of Lok Sabha or Chairman of Rajya Sabha as the case may be make rules for the purpose the rules so made have effect subject to provisions of any law which Parliament may make[53].

Powers, Privileges and immunity

Both the Hoses of Parliament as well as of State Legislature has similar privileges under construction[54].

Legislative Procedure

The Legislative Procedure of the Parliament is conducted in different stages relating to the bills other than money bills following are the stages.

a. **Introduction of the Bill** – A bill other then money or financial bill may be introduced in either House of Parliament and requires passage in both houses before it can be presented for the President's assent. A bill may be introduced either by a minister or by a private member.

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[53] Article 98
[54] *Supra* at p. 4

b. Motion after the Introduction – After a bill has been introduced or on some subsequent occasion, the member in charge of the bill may make one of the following motions in regards to the bill i.e. – That it be taken in to consideration - that it be referred to select committee – that it be referred to joint committee of the House with concurrence of the other House - that it be circulated for the purpose of eliciting public opinion there on.

On the day on which any of the motions is made or any subsequent to which the discussion is postponed, the principles of the bill and its general provisions may be discussed.

c. Report by Select Committee: fter introduction of the bill the member in charge or any other member by way of an amendment may move that bill to be referred to a select committee. When such a motion is carried, the select committee of the house considers the provisions of the bill. After the select committee has considered the bill, it submits it report to the house and after the report received, a motion that the bill as returned by the select committee be taken in to consideration lies. When such a motion carried the clauses of the bill are open in to consideration and amendments are admissible.

d. Passing of the bill in the House where it was introduced – When a motion that the bill be taken in to consideration has been carried and no amendment had been made or after the amendments are over, the member in charge may move that the bill be passed.

e. Passing of the bill in the other House – When bill is passed in one House it is transmitted to the other House. When the bill is received in the other House it undergoes all the stages as in the earlier House. The House may follow either of the courses –

- It may reject the bill all together
- It may pass bill with amendments. And the bill will be returned to the originating House.
- It may take no action on the bill i.e. keep it lying on its Table. In such a case if more than 6 months elapse from the date of reception of the bill, President may summon a joint sitting.

f. President's Assent – When a bill is passed by both the Houses then the bill is presented to the President for his assent. If the President withholds his assent there is an end to the bill. If the President gives his assent the bill becomes an Act from the date of his assent. In stead of either refusing or giving assent the President may return bill for reconsideration of the House. However if the House passes the bill again with or without amendments and is

again presented to the President then the President shall have no power to with hold his assent from the bill.

STATE LEGISLATURE

- *Composition of State Legislature*

The composition of State Legislature is uniform, however the Constitution a distinction between small and bigger states. While the Legislature of every State shall include the Governor and in some of the States it shall consist of two Houses namely the Legislative Assembly and Legislative Council and while in the remaining there shall be one House i.e. Legislative Assembly[55].

Legislative Council

The size of the Legislative Council varies with the size of the Legislative Assembly. The membership of the Legislative Council is not more than 1/3 of the membership of the Legislative Assembly but not less than 40. This provision has been adopted so that the upper House may not get predominance in the Legislature[56].

The system of the composition of the council as laid down in the Constitution is not final. The final power of providing the composition of this chamber of the State Legislature is given to the Union Parliament[57]. But until Legislates on the matter the composition shall be as given in the Constitution. This is as follows. It will be a partly nominated and partly elected body, the election being the indirect on and in accordance with the principle of the proportional by the single transferable vote. The members are drawn from various sources and hence the council consists of variety of composition.

Broadly 5/6 of the total number of member of the council shall be directly elected and 1/6 will be nominated by the Governor. Where –

a. 1/3 of the total number of members of the council shall be elected by electorate consisting of members of local bodies, such as Municipalities.
b. 1/12 shall be elected by electorates consisting of graduates of 3 years standing residing in that State.
c. 1/12 shall be elected by electorates consisting of persons engaged for at least three years in teaching in education institution within the State not lower in standard than Secondary schools.

[55] Article 168
[56] Article 171 (1)
[57] Article 171 (2)

d. 1/3 shall be elected by member of Legislative Assembly from amongst member who are member of Assembly.
e. The remainders shall be nominated by the Governor from persons having knowledge or practical experience in respect of such matters as Literature, Science, Art, Co-operative movement and Social Service.

- *Legislative Assembly*

Legislative Assembly of each State shall be composed of members chosen by direct election on the basis of Adult suffrage from territorial constituencies. The number of members of the Assembly shall not be more than 500 or less than 60. The Assembly in Mizoram and Goa shall have only 40 members each.

There shall be a proportionately equal representation according to population in respect each territorial constituency within a State. There shall be are adjustment by Parliament by law upon the completion of each census[58].

- *Duration*

The duration of the Legislative Assembly is 5 years but it may be dissolved before that by the Governor and the term of 5 years may be extended in case of a proclamation of emergency by the President. In such a case the Union Parliament shall have the power to extend the life of the Legislative Assembly up to a period not exceeding 6 months after the proclamation ceases to have effect, subject to the condition that such extension shall not exceed 1 year at a time[59].

The Legislative Council is subject to dissolution but 1/3 of its members shall retire on the expiry of every second year. It will thus be a permanent body like the Council of States, only a fraction of its membership will be change every third year.

- *Officers*

A Legislative Assembly shall have Speaker and Deputy Speaker and the Legislative Council shall have its Chairman and Deputy Chairman and the provisions relating to them are analogous to those relating to the corresponding officers of the Union Parliament.

[58] Article 170
[59] Article 172 (1)

- *Legislative Procedure*

The Legislative procedure in the State having two chamber is broadly similar to that in the Parliament[60]. Except for the following :-

a. As Regards Money Bill: he position is the same. The Legislative Council shall have no power except to make recommendations to the Assembly for amendments or to with hold the bill for the period of 14 days from the date of receipt of the bill. In any case the will of the Assembly shall prevail, and the Assembly is not bound to accept any such recommendations.

b. As regards bill other than money bills, in this case too the only power of Council is to interpose some delay in the passage of the bill for a period of 3 months which is of course larger then as in case of money bills. Hence the Legislative Council shall not be revising but merely advisory and dilatory chamber. If it disagrees to the bill then the bill shall have second journey from the Assembly to the Council but ultimately the view of Assembly shall prevail and in the second journey the Council have no power to withhold the bill for more than a month[61].

III. JUDICIARY

Unlike the other two organs of the State there is no federal distribution of judicial powers. Under the Indian Constitution there is one single integrated system of courts for the Union as well as the States which administers both union and State laws. The Supreme Court of India stands at the head of the entire judicial system.

- *Hierarchy of Courts*

In the hierarchy of the courts at the apex is the Supreme Court of India below which stands the High Courts of different States and under each High Court there is hierarchy of other courts which are referred as "subordinate courts" in the Constitution (foot note).

The bifurcation of the courts is also made on the basis of branches of justice at the lowest stage it is the civil and criminal. The Union and the Bench Courts constituted under Village self Government Acts, which constituted lowest civil and criminal courts respectively have been substituted by the Panchayat

[60] *supra* at p. 15
[61] Article 197 (1) b, 197 (2) b.

courts which have been set up after the enactment of constitution. The Panchayat courts also function on two sides civil and criminal under various regional names such as Nyaya Panchayat, Panchayat, Adalat etc. In some states the Panchayat courts are the criminal court of the lowest jurisdiction I respect of the petty cases. The Munsiff's court are next in the civil hierarchy, above Munsiff are the subordinate judges who have got unlimited pecuniary jurisdiction over civil suits and hear first appeals from the decisions of the subordinate judges and also from the Munsiffs and himself possess unlimited civil and criminal jurisdiction further the suits of small value are tried by the provincial small causes court.

Next in the hierarchy is the district judge who is the highest judicial authority for civil as well as criminal in the district. He hears appeals from the decisions of the superior Magistrates and also tries the more serious criminal cases, known as session's cases. A subordinate judge is sometime bested with the power of Assistant Session Judge I which case he combines both civil and criminal power like District Judge.

The enactment of criminal procedure code has vested the trial of criminal cases exclusively in the hands of Judicial Magistrate except in the state of J&K and Nagaland. The Chief Judicial Magistrate is the head of the Criminal Courts within the district.

In Calcutta and other metropolitan areas there are Metropolitan Magistrates. The judicial and metropolitan Magistrates discharged judicial function under the administrative control of the State high courts are different from Executive Magistrates who discharges the Executive function of maintaining law and order and under the control of the State Government.

So far as civil judiciary administration is concern, in the Presidency towns called as metropolitan areas; the original side of the High Court at Calcutta tries the bigger civil suits arising within the area of Presidency towns. Suits of lower value within the city are tried by the City Civil Court and the Presidency Small Causes Court. But the Original Criminal jurisdiction of all High courts including Calcutta has been taken away by the Cr.P.C.

The High Court is the Supreme Judicial Tribunal of the State having Original as well as Appellate jurisdiction. It exercises appellate jurisdiction over the District and Session Judge, The Presidency Magistrate and the Original jurisdiction of High Court. There is a High Court for each states except Manipur, Meghalaya, Tripura, which have the High Court of Assam in common. Similarly the High Court of Chandigarh is common for Haryana and Punjab and High Court of Bombay which is in common to the State of Maharashtra and Goa.

THE SUPREME COURT

The Supreme Court of India which is also called as the guardian of the constitution. Since the language of the constitution is not free from ambiguities and its meaning is likely to be interpreted differently by different authorities. Hence there might be a controversy in this regard. In order to resolve this controversy their has to be an independent and impartial authority. And this function can be performed efficiently by none other than the judicial body. Hence the Supreme Court of India is conferred the responsibility of the final interpreter and the guardian of the constitution. Simultaneously it is also the guardian of the fundamental rights of the people.

- *Constitution of the Supreme Court*

It is the power of the Parliament to make laws regulating the constitution organization, jurisdiction and powers of the Supreme Court. The Supreme Court of India consists of Chief Justice of India and not more than 25 other judges[62].

- *Appointment of Judges*

Every Judge of Supreme Court is appointed by the President of India. He shall consult other persons besides taking the advice of his ministers. In case of appointment of Chief Justice he shall consult such judges of the Supreme Court and of the High Court as he may deem necessary. It is a conventional practice that the senior most judge of the Supreme Court to hold the office of the Chief Justice. It was also laid down in the case of Supreme Court advocates V. Union of India[63]. In case of appointment of other judges of Supreme Court the President appoints them in consultation with the Chief Justice of India[64]. The said provision hence modifies the appointment of judges by the executive by providing that the executive should consult members of the judiciary itself who are well qualified to give their opinion in this matter.

- *Qualification for Appoint as a Judge*

A person shall not be qualified for the appointment as a judge of the Supreme Court unless he is

a. A citizen of India and
b. Either
i. A distinguished jurist

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[62] Article 124
[63] (1993) 4 SCC,441
[64] Article 124 (1)

ii. *Has been a High Court Judge for 5 years*
iii. Has been an advocate for at least 10 years[65].

- *Tenure of Judges*

No minimum age is prescribed for appointment as a judge of the Supreme Court nor, any fixed period of office. Once appointed a judge of the Supreme Court may cease to be so on happening of any of the following contingencies.

a. On attainting the age of 65 years.
b. On resigning his office by writing addressed to the President
c. On being removed by the President upon an address to that effect being passed by a special majority of each house of Parliament.

The only grounds upon which such removal may take place are proved misbehavior.

- *Impeachment of Judges*

Article 124 (4) combined with Judges (Inquiry) Act 1968 lays down the following procedure of impeachment the President

i. A motion addressed to the President signed by at least 100 members of the Lok Sabha or 50 members of the Rajya Sabha is delivered to the speaker or the Chairman.
ii. The motion is to be investigated by a committee of three (2 judges of Supreme Court and a distinguish jurist)
iii. If the committee finds the judge guilty of misbehavior or that he suffers from in capacity the motion together with the report of the committee is taken up for consideration in the House where the motion is pending.
iv. If the motion is passed in each House of two-thirds of that House present and voting the address is presented to the President.
v. The Judge will be removed after the President gives his order for removal on the said address.

The procedure of impeachment is the same for judges of Supreme Court and High Courts.

[65] Article 124 (3)

- **Types of Jurisdiction**

(i) Original Jurisdiction

The function of the Supreme Court under the original jurisdiction is purely of a federal character is confined to the disputes between the Government of India and any of the States of the Union, the Government of India and any State or states on one side and any other state or states on the other side, or between two or more states inter-se. The original jurisdiction of Supreme Court is exclusive which means that no other court in India shall have the power to entertain any such suit. On the other hand the Supreme Court in its original jurisdiction will not be entitled to entertain any suit where both the parties are not units of the federation. If any suit is brought either against the State of the Government of India by a private citizen, that will not lie within the original jurisdiction of the Supreme Court but will be brought in the ordinary courts under the ordinary law.

(ii) Writ Jurisdiction

The Writ Jurisdiction of the Supreme Court is conferred under Article 32 of the constitution which is used for enforcement of fundamental rights. This jurisdiction is also considered some times as original jurisdiction. However it can be treated as a separate jurisdiction since the dispute in such cases is not in between the units of the union but an aggrieved individual and the Government or any of its agencies.

(iii) Appellate Jurisdiction

The Supreme Court of India is the highest court of appeal for all the courts in the territory of India. However the appellate jurisdiction of Supreme Court may be divided under three heads.

a. Cases involving interpretation of constitution – Civil, Criminal or otherwise.
b. Civil cases irrespective of any constitutional question.
c. Criminal cases irrespective of any constitutional question.

(iv) Advisory Jurisdiction

The Supreme Court shall have an advisory jurisdiction i.e. it can give its opinion any question of law or fact of public importance as may be referred to it for consideration by the President[66].

(v) Miscellaneous Jurisdiction

Article 317 (1) of the constitution confers the power of reference to the Supreme Court of India under various other provisions like s. 257 of Income Tax Act 1961, s.7 (2) of the Monopolies and Restrictive Trade Practices Act 1969, s.130 (A) of the Customs Act 1962. Appeals also lie to the Supreme Court under the Representation of the People Act, Advocates Act, Contempt of Courts Act, Customs Act, Terrorists and Disruptive Activities Act etc.

THE HIGH COURT

There shall be a High Court in each State, however a Parliament has the power to establish a common High Court for two or more States as stated above. The High Court at the head of the judiciary in the State.

- *Constitution of High Courts*

Every High Court shall consist of a Chief Justice and such other judges as the President of India may from time to time upon.

The President has the power has to appoint

a. Additional judges for a temporary period not exceeding two years for the clearance of arrears of work in a High Court.
b. An acting Judge, when a permanent Judge of High Court (other than a Chief Justice) is temporarily absent or unable to perform his duties or is appointed to act temporarily as Chief Justice.

- *Appoint of Judges of High Court*

Every Judge of High Court is appointed by a President. In making the appointment the President shall consult the Chief Justice of India, Governor of the State also the Chief Justice of that High Court in the matter of appointment of a Judge other than Chief Justice. Hence it is a participatory consultative process[67].

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[66] Article 143
[67] Supreme Court Adv. v. Union of India (1993) 4 SCC. 441

- *Qualifications of High Court Judge*

The Indian constitution lays down the qualifications for the Judge of the High Court which are as follows.

a. He must be a citizen of India, not being over 62 years and must have
b. Held for at least 10 years of judicial office in the territory of India or has been for at least 10 years an advocate of a High Court or of two or more such courts in succession[68].

- *Jurisdiction of High Court*

i. Territorial Jurisdiction

Except where Parliament establishes a common High Court for two or more states or extends the jurisdiction of a High Court to a union territory, the jurisdiction of the High Court of the state is a co-terminous with the territorial limits of that state.

ii. Ordinary Jurisdiction

The Constitution does not make any provision relating to the general jurisdiction of the High Courts, but maintains their jurisdiction as it existed at the commencement of the Constitution with this improvement that any restrictions upon their jurisdiction as to revenue matters that existed prior to the Constitution shall no longer exist[69] .

iii. Original Jurisdiction

The High Courts at the three Presidency towns at Calcutta, Bombay and Madras had an original jurisdiction, both civil and criminal, over cases arising within the respective Presidency towns. The original criminal jurisdiction of the High Court has however been taken away by the criminal procedure code of 1973.

Though City Civil Courts have also been set up to try civil cases within the same area, the original jurisdiction of these High Court are not altogether been abolished but retained in the respect of action of higher value.

[68] Article 217 (2)
[69] Article 225

iv. Appellate Jurisdiction

The Appellate Jurisdiction can be categorized in two categories i.e. civil and criminal.

- Civil - On the civil side, an appeal to the High Court is either a first or second appeal; firstly from the decisions of District Judges and from those of subordinate judges in cases of higher value lie direct to the High Court on questions of fact as well as law secondly when any Court subordinate to High Court decides an appeal from the decision of an inferior, a second appeal lies to the High Court from the decision of the lower appellate court, but only on question on law and procedure, as distinguished from question of fact[70]. Thirdly there is provision for appeal under the letters patent of Allahabad, Bombay, Calcutta Madras and Patna High Courts. These appeals lie to the appellate side of the High Court from the decision of a single of the High Court itself, whether made by such judge in exercise of the original or appellate jurisdiction of the High Court.

- Criminal - The criminal appellate jurisdiction of the High Court consist of appeal from the decision of firstly a Session Judge or an Additional Session Judge where the sentences is of imprisonment exceeding seven years. Secondly Assistant Session's Judge, Metropolitan Magistrate or other Judicial Magistrates in certain specified cases other then petty cases.

v. Jurisdiction of Superintendence

Every High Court has a power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction, excepting military tribunals[71].

This power of superintendence is a very wide power in as much as it extends to all courts as well as tribunals within the states, whether such court or tribunal is subject to the appellate jurisdiction of the High Court or not.

vi. Writ Jurisdiction

Article 226 confers upon the High Court the powers to issue writs jurisdiction according to which every High Court shall have power throughout the territorial limits in relation to which it exercises jurisdiction to any person or authority including the appropriate cases, any Government within those territories, directions, orders of writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or any of them.

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[70] Section 100 of Civil Procedure Code
[71] Article 227

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PUBLIC SERVICES UNDER THE CONSTITUTION

Constitution of India has provided for creation of common all India Services. This is intended for maintaining uniformity in administration. Personnel for all India services, including judicial services are recruited on all India basis and they are common to the Union and the States. The members of these services are placed in key positions of the Union and States.

Part XIV of the Constitution deals elaborately with the subject of services under the Union and the States. This indicates the great importance, which the framers of our Constitution attached to the civil service. Our civil service is based on British model. We have not adopted the 'spoils system', which prevails in United States of America where appointments are made as a reward for political service to a party. Such appointments may be lost on a change of government. However, after great efforts, the federal government of United States of America has to a great extent eliminated spoils system in civil services. The success of the provisions of Part XIV for its effective working of a non political civil services much depends to a very large extent upon establishing a proper relationship between the Ministers and Civil servants. The expression State is not defined. Article 308 merely says that State under this part does not include State of Jammu and Kashmir. Section 3[58] General Clauses Act defines State to mean a STATE Specified in the first schedule to the Constitution and includes a Union Territory. This definition of State is different from and narrower than the definition of State under Article 12. (Sukhdev Singh V. Bhagatram A.I.R 1975 S.C.1331) Provisions of Part XIV have no application to a post held under local bodies like municipalities or Panchayats or to posts held in statutory corporations.

Service Rules :-

Article 309 enables the legislature to legislate in regard to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the UNION or any State. Recruitment is a comprehensive term and it includes appointments, selection, promotion, deputation. Even appointment by transfer is not unknown. (K. Narayanan V. State of Karnataka 1994 Supp [1] SCC44 at P54.The Executive is empowered to make rules regulating recruitment and conditions of service of persons appointed till a law is made by the legislature in this regard. The rule making power of the government is identical with that of the legislature [Ram Avatar V. State of Uttar Pradesh AIR 1962 ALL328 [FB] .Once a legislature has made a law in this regard,

the executive is excluded from exercising its rulemaking power. However, the executive can make rules in areas not covered by legislation [State of Rajasthan V. Rajmal Mehta [1999] SCC 593].

The President acting directly or through officers subordinate to him, is free to constitute a service [with as many cadres as he chooses], to create posts without constituting a service or to create posts outside [the cadre of] the constituted service. The President [or the person directed by him] may, or again if he so chooses may not, make rules regulating the recruitment and conditions of service of persons appointed to such service odd posts. He is also free to make or not to make appointments to such posts. Nor is it obligatory for him to make rules of recruitment before a service may be constituted or a post created or filled. But if there is an Act of Parliament or rule under the proviso of Article 309 on the matter the executive power under Articles 53 and 73 may not be exercised in a manner inconsistent or contrary to such an Act or rule [Katyani Dayal Vs. Union of India [1980] 3SCC 245].

Article 309 also makes it clear that the conditions of service ,whether laid down by the legislature or prescribed by the rules, must conform to the mandatory provisions of the Constitution as laid down in Articles 310,311 and 320 or in Part III [Union of India V. Tulasi Ram Patel AIR 1985 SC 1416]. The rules should also satisfy the conditions laid down in Article 39[d] namely equal pay for equal work [Bhagwan Dass V. State of Haryana AIR 1987 SC 2049].

Tenure:

Conditions of service in a comprehensive sense include tenure no rule can be made under this Article trespassing the rights guaranteed by Article 311. In Moti Ram V. N.E.F. Railway AIR 1964 SC 600. The Supreme Court held that termination of service of permanent employees by giving them notice for a period mentioned under rules 148[3] and 149[3] invalid for being violative of Article 311. A rule validating past illegal recruitments is not a rule within the meaning of proviso to Article 309, hence it is not concerned either with recruitment or conditions of services of employees and conflicts with Article 311[B.S.Vadera V. Union of India AIR 1969 SC118]. Rules dealing with functions of the Public Service Commission are not rules relating to recruitment, and therefore are not statutory of the nature authorized by proviso to Article 309 [B.N. Nagarajan V.State of Mysore AIR 1966 SC 1942]. Rules relating to compulsory retirement does not contravene either Article 309 or 311 of the Constitution.

The government has the power to make rules altering terms of service unilaterally. The legal position of a government servant is more of a status than of contract. It is much more than a purely contractual

relationship voluntarily entered into between the parties. The duties or status are fixed by the law and in the enforcement of these duties society has interest [Roshanlal V. Union of India AIR 1967SC1889]. When once a person is appointed to his post or office, the government servant acquires status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which may be framed or altered by the government.

Power to make rules under Article 309 includes the power to amend or alter the rules with retrospective effect subject to the principle that benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect. [T.K.Kapur V.State of Haryana 1986 Supp SCC 584].

The Supreme Court in Union of India V. Tulasiram Patel AIR 1985 SC 1416 which held that the Acts or rules made in pursuance of Article 309 are subject to the doctrine of pleasure laid down in Article 310[1].This proposition was approved in Satyavir SINGH V. Union of India AIR 1986 SC 555.

Doctrine of Pleasure:

In England, the common law rule is that a civil servant holds his office during the pleasure of the crown. This means that there is no contract that gives the employee a remedy for its breach. The crown can terminate his services at any time without giving any reason. A Civil servant cannot claim arrears of salary due or damages for wrongful dismissal, nor can he enforce any of the conditions of service. The doctrine of pleasure rests upon the public policy that a public servant whose continuance in office is not or is against public interest must be relieved of it. The same policy considerations weighed in including the doctrine of pleasure under Article 310[1].

The doctrine of pleasure is qualified and is subject to express provisions of Article 311.Barring this exception the doctrine of pleasure is absolute and cannot be restricted by legislation or executive directions or rules. The doctrine in India differs from the English Principle In England Parliament has unrestricted sovereign power to narrow down the pleasure of the crown. The rule of English Law that a civil servant cannot sue the State or crown for arrears of salary does not prevail in India and it has been negative by statutory law in India.[State of Bihar Vs. V. Abdul majid AIR 1954 SC 245]

Article 310[1] says that every person who is a member of a defence service or of a civil service of the Union or of an all India service or holds any post connected with defence or any civil post under the Union, holds office during the pleasure of the President. Similarly every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the governor of the State. The general rule of holding office

during the pleasure of the President or the governor, as the case may be, will operate subject to ' except as expressly provided by the Constitution.

Constitution has declared that the tenure of posts of judges of the High Court [Art.218],and the Supreme Court[Art.124], of the Comptroller and Auditor General of India [148[2]],of the Chief Election Commissioner [Art.324], and the Chairman and members of the Public Service Commission [Art.317] are not at the pleasure of the Government.

The difference between the expression 'a civil service' and 'a civil post' can be explained by the fact that all civilian employees of the Union are not in the established services; some appointments are temporary, others non established. The post of the Advocate General is a civil post under the State. To constitute a person as a civil servant or to constitute a post as a civil post under the Union or the Sate, there must be a master and servant relationship which is a question of fact depending upon the circumstances such as the nature of the post, its control, pay etc. [State of Uttar Pradesh V.A.N. Singh AIR 1965 SC360].

During the Pleasure:

The public servant holds office during the pleasure of the President or the Governor as the case may be has two important consequences;

1) the Government has the right to regulate or determine the tenure of its employees, notwithstanding anything in the contract to the contrary, provided that the mandatory provisions laid down in Article 311 have been observed.

2) the Government has no power to restrict or give up its prerogative of terminating the services of its employees at pleasure under any contract made with its employees except to the extent of clause (2).

In State of Uttar Pradesh V. Baburam Upadhya AIR 1961 SC751, the Supreme Court observed that the power of the government to dismiss at pleasure, subject to the provisions of Article 311, is not an executive power under Article 154, but a Constitutional power and is not capable of being delegated to officers subordinate to him.

Relying on its observations in Jayantilal Amritlal V. F.N. Rana AIR 1964 SC 648 that the power of the President under Article 311[2] cannot be delegated, the Supreme Court in Sardarilal v. State of Punjab [1971] 1SCC 411, held that the executive functions of the nature entrusted by certain articles in which the President has to be satisfied personally about the existence of certain facts or state of affairs cannot be delegated by him to anyone else.

However, after the decision of Samsher Singh v. State of Punjab [1974]2SCC831, the above propositions are not correct and are no longer good law. The oppositions are reformulated.

1) the distinction made in the Jayantilal Amritlal case between the personal and executive functions of the President does not lead to any conclusion that the President is not the Constitutional head of the government.

2) the President ,so also the Governor, is the Constitutional or formal head and exercises his powers and functions under the Constitution on the aid and advice of the Council of Ministers.

3) the President, as well as the Governor in the exercise of his discretion under Article 310[1], acts on the aid and advice of the Council of Ministers and is not required to act personally Dealing with the appointments or dismissal or removal persons belonging to the State judicial service, the Supreme Court held that the Government was exercising an executive function within the rules made under the Constitution and not a personal function. It is now clearly established that the pleasure of the It is now clearly established that the pleasure of the President or Governor under Article 310[1] is exercised not in any personal capacity but as the head of the government acting on the aid and advice of the Council of Ministers.

Article 310[2] expressly authorizes the making of a term contract. Again, the payment of compensation to a servant of crown for premature termination of a fixed term contract is void. Article 310[2] expressly authorizes such payment if the post is abolished. It also authorizes the payment of Compensation to a government servant if he is asked to vacate the post before the stipulated period for reasons not connected with any misconduct on his part. Article 310[2] thus not only emphasizes the consequences of the tenure at pleasure, but also establishes that our Constitution recognizes the distinction between terminating a persons service for reasons connected with misconduct and for reasons not connected with misconduct. A person who is removed for misconduct cannot be paid compensation under Article 310[2] but he can be paid compensation if he is removed for reasons not connected with misconduct.

Constitutional Safeguards to Civil Servants:

Article 311 places two restrictions on the prerogative of dismissal at pleasure. These are

1) the persons employed in civil capacities under the Union or State shall not be dismissed or removed by any authority subordinate to that by which they were appointed; and

2) no such person shall be dismissed or removed or reduced in rank except after an enquiry as provided in clause [2] These restrictions were the Constitutional safe guards for civil services. This is according to Prof. Upendra Baxi 'Unique in world Constitutionalism.'

The above safeguards do not apply to all government servants. They apply only to persons who are members of a civil service of the Union or of an all India service or of a civil service of a State or to persons who hold a civil post under the Union or a State These safeguards are not applicable to members of defence forces or to any posts connected with defence.

Article 311 does not apply to a civilian working in the military engineering service, military farm ,naval base, or a ordinance factory, employees of Council of Scientific and Industrial Research, Oil and Natural Gas Commission, Life Insurance Corporation and Bank employees because they are not persons holding a civil post under the Union or State. The expression civil post means an appointment, office, or employment on the civil side of the administration as distinguished from military side. Merely because salary or wages are paid from State funds or that State exercises a certain amount of control over the post does not mean that a person is having a status of holding a civil post under the State. A relationship of master and servant between the State and person said to be holding a post under it must exist. The existence of this relationship is induced by the State's right to select and appoint the holder of the post, the right to control the manner and method of his doing work and payment by it of his wages and remuneration. The existence of relationship between the State and person is always a question of fact

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The provisions of Article 311 apply both to permanent and temporary servants. This was clearly laid down by the Supreme Court in Parshotam Lal Dhingra V. Union of India AIR 1958 SC 36.

Article 311 has no application to suspension of a government servant from service as it is neither dismissal nor removal. [Shrivastava Vs. State of Madhya Pradesh [1973] 1SCC656].

No Removal By Subordinate Authority;

A civil servant cannot be dismissed or removed by an authority subordinate to the authority by which he is appointed. A person was appointed in the Calcutta police force by the commissioner of Police. When he was dismissed by an order passed by Deputy Commissioner of Security Control, who was an

officer subordinate to the Commissioner of Police, the dismissal was held to be violative of the provisions of Article 311[1].[Santosh Kumar Dutt V. commissioner of Police AIR 1955 Cal 81].It does not mean that 311 implies that the removal must be by the same authority who made the appointment or by his direct superior. It is enough if the removing authority is of the same rank or grade. The power of dismissal can be exercised by any officer other than the appointing authority provided he is not subordinate in rank[MSRTC V.Mirza Khasim Ali Baig AIR 1977 SC747].

Whether or not an authority is subordinate in rank or not has to be determined with reference to the state of affairs existing on the date of appointment. Delegation of power cannot make a particular appointment enhance or improve the hierarchical status of the delegate. [Krishna Kumar Vs. Divisional Assistant Electrical Engineer AIR 1979 SC1912].

Reasonable Opportunity to Defend;

A civil servant is not to be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Before the forty-second amendment of the Constitution, a second opportunity was also required to be given to the civil servant to represent against the punishment proposed as a result of the enquiry. Now, forty-second amendment has excluded this requirement.

An opportunity to defend has to be given to the civil servant at the stage of inquiry of charges against him, and this is in accord with the rule of natural justice that no one should be condemned without hearing [Audi Alteram PARTEM], the requirement of giving opportunity to defend himself against the proposed dismissal , removal, or reduction in rank does not apply to all cases of termination of service by the government. The protection of Article 311[2] is available only when there is dismissal, removal, or reduction in rank is sought to be inflicted by way of punishment and not otherwise [Sukhbans Singh v. State of Punjab AIR1962 SC1711]. The removal, dismissal, or reduction in rank must be for reason personal to the officer i.e when he guilty of misconduct or is lacking in ability or capacity or the will to discharge his duties as he should do.[Shyamlal V.State of Uttar Pradesh AIR 1954 SC369]. To the question what does the expression ' reasonable opportunity' The generally accepted view has been that it will be difficult and inexpedient to lay down any general rules to decide whether or not an officer charged has had reasonable opportunity.. What it means is that before an officer is punished by way of dismissal, removal, or reduction

1) an inquiry should have been held in accordance with the rules of natural justice, and

2) the inquiry should have been conducted fairly and properly.

The principles of natural justice are not fixed principles. What principles of natural justice should be applied depends on the facts and circumstances of each case. Venkataraman Aiyar J. in Union of India V. T.N. Varma AIR 1957 SC 882 AT 885] referring to the principles of natural justice observed 'Stating broadly and without intending to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity to adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of cross examining them. It is hardly necessary to emphasize that the right to cross examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the inquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the inquiry had not been held in accordance with the rules of natural justice.'

Without underscoring the importance of the principles of natural justice the Supreme Court in Union of India V. Tulasiram Patel AIR 1985 SC 1416,held that the application of the principles of natural justice may be excluded by legislation or by a Constitutional provision such as the second proviso to ARTICLE 311[2]. The Supreme Court in Khemchand V. Union of India AIR 1958 SC 300, held that reasonable opportunity envisaged to the government servant under Article 311[2] includes

i] an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

ii] an opportunity to defend himself by cross examining the witnesses produced against him and by examining himself or other witness in support of his defence.

Reasonable opportunity was held to be not satisfied where the complainant's witnesses were not produced before the inquiry officer but only written statements were produced pleading that the delinquent civil servant had removed them from the scene. The delinquent could not test the truth of the statements through cross examination. [Kuldeep Singh V. Commissioner of Police AIR 1999 SC 677].

In Union of India V. Mohamed Ramzan Khan AIR 1991 SC 471. a distinction was made between the disciplinary inquiry conducted by the disciplinary authority and by the inquiry officer. Principles of natural justice require that the report of the inquiry officer be submitted to the disciplinary authority, for enabling the authority to take decision about the delinquent servant, the report be made available to the servant so as to enable him to have an opportunity to make representation against any adverse remarks in it. While in the case of disciplinary inquiry conducted by the disciplinary authority, no report is prepared and therefore this rule does not apply. This is a new dimension added to the principles of natural justice. Further clarifying the Ramzan Khan's case in Managing Director E.C.I.L.Hyderabad V.B.Karunakar [1993] 4SCC 727, a Constitutional bench of the Supreme Court held that the forty second amendment of the Constitution has abolished the giving of second opportunity to a delinquent civil servant before the imposition of penalty.

Even after the forty second amendment law requires that the disciplinary authority must supply a copy of the inquiry officer's report to the delinquent civil servant for his observation and comments before the disciplinary authority considers the report. Non observance of this procedure amounts to denial of reasonable opportunity under Article 311[2].Mere non observance of the procedure would not result in lead to automatic reversal of the disciplinary authority's decision by the reviewing Court or Tribunal. The Court or Tribunal must see whether the non observance of the requirement would have made any difference in the decision. "It is only if the Court or Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

Compulsory Retirement:

A person who is compulsorily retired in accordance with the service rules cannot claim any right because the retirement is not by way of punishment.(Satish Chandra Anand V. Union of India AIR 1953 SC 250) .Shyamlal V. State of Uttar Pradesh AIR 1954 SC 369 , AN officiating superintending Engineer was compulsorily retired under ARTICLE 265 (A) OF the Civil Service Regulations. The question was whether it amounted to compulsory retirement within the meaning of Article 311(2) of the Constitution. The court pointed out that removal like dismissal no doubt brings about termination of service, but every termination of service does not amount to dismissal or removal.

In this case it was held that since the compulsory retirement carried no element of charge or imputation, Article 311(2) is not attracted. In other words compulsory retirement may amount to removal or dismissal if the officer is stigmatized that is called blame worthy, deficient, guilty of some misconduct, is

lacking in ability or capacity or the will to discharge his duties as he should do. The justification of compulsory retirement is in public interest, to weed out the dead wood and maintain a high standard of efficiency in service. As a facet of the doctrine of pleasure it gives an absolute right and not merely a discretion to exclude the rules of natural justice. The test is public interest. Any colourable exercise of power or an arbitrary or malafide order or an order based on no evidence would be struck down.(Baikunthanath Das V.Chief District Medical Officer AIR 1992 SC 1020).

Termination of Service or Reduction in Rank:-

The Supreme Court laid down two tests for determining if the dismissal removal or reduction in rank is by way of punishment in Parshotamlal Dhingra V. Union of India AIR 1958 SC 36:

Whether the servant has the right to the post or rank, or

Whether he has been visited with evil consequences.

If the servant had a right to the post then every termination of his service brought about otherwise than according to the terms of contract of employment or any rule governing the service *perse* be as and by way of punishment. He will then be entitled to protection under Article 311,for such termination of service operates as a forfeiture of his right to the post and he is visited to the evil on sequence of loss of pay and allowance. Similarly ,if the government servant has right to a particular rank, then the very reduction from the rank will operate as a penalty for he will then loose the emoluments and privileges of that rank. The servants who have right to hold the post fall into three categories namely permanent, quasi - permanent, temporary when the appointment is for a specific period.

Permanent Servants:-

In Motiram V. N.E.Frontier Railway AIR 1964 SC 600 ,the validity of Rules 148(3) and 149(3) of the Railway Establishment CODE was challenged. The rules provided for termination of service of permanent employees by giving them notice for a period mentioned in that rule, and also that such notice was not required to be given in certain cases mentioned therein, including the cases of retirement of employees on attaining the age of superannuation. Regarding the nature of the right which a permanent servant has under the relevant railway rules ,the Supreme court held that a person who substantially held a permanent post had a right to continue in service, subject ,of course, to the rules of superannuation and compulsory retirement. If for any other reason that right was taken away and he was asked to leave his service, the termination of his

services would inevitably mean the defeat of his right to continue in service, and as such, it was in the nature of a penalty and amounted to removal. Therefore, if by the rules in question, such a termination was authorised, the rules would clearly contravene Article 311(2) and must be held invalid.

In the case of a government who has no right to hold the post or the rank, his termination from service or reversion will not perse be punishment, since it does not forfeit any right of the servant to hold the post or the rank as he never had had the right(State of Haryana V.D.R. Saugar AIR 1976 SC 1199). For applying the provisions of Article 311(2) the test is whether the order of dismissal or removal or reduction in rank also visits the servant with evil consequences. An order is of evil consequence when it "entails or provides for forfeiture of his future chances of promotion."

The power to create or abolish a post is a matter governmental policy which is determined by the exigencies of circumstances and administrative necessity, and such matters are decided by the government in the interests of administration and the general public. Termination of service brought by the abolition of post effected in good faith does not attract Article 311(2).(K.Rajendran V. State of Tamil Nadu AIR 1982 SC 1107)

Temporary Servant:

Appointment to a post on a officiating basis, from the nature of appointment, itself is of a transitory nature and in the absence of any contract or a specific rule regarding the conditions of service to the contrary, the implied term of such an employment is that it is terminable at any time. The government servant so appointed acquires no right to the post. The order of reversion simpliciter will not amount to a reduction in rank or a punishment. A government servant holding a temporary post and having a lien on a substantive post may be sent back to the substantive post in the ordinary routine administration or because of exigencies of service. A person holding a temporary post may draw a salary higher that of his substantive post and when he is reverted to his parent department the loss of salary cannot be said to have any penal consequences.

Temporary servants are entitled to protection of Article 311(2) in the same manner as permanent servants, if the government servants takes action against them by meting out one of the three punishments, that is, dismissal, removal or reduction in rank. But this protection is available where discharge ,removal ,or reduction in rank is sought to be inflicted by way of punishment and not otherwise.9Champaklal V. Union of India AIR 1964 SC 1854).

The Supreme Court has summarized the position in regard to the services of a temporary servant or a probationer in State of Punjab V. Sukh Raj AIR 1968 SC 1089 as follows:-

the services of a temporary servant or a probationer can be terminated under the rules of employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

the circumstances preceding or attendent on the order of termination of service have to be examined in each case, the motive behind it is immaterial.(State of Uttar Pradesh V. Bhoop Singh AIR 1979 SC 684).

if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

an order of termination of service in unexceptionable form preceded by an inquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Con situation.

if there a full- scale departmental inquiry envisaged by Article 311, i.e. an inquiry officer is appointed, a charge sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the of the said Article.

Exceptions :-

Article 311 (2) lays down that there shall be no need for an inquiry or giving notice even where a civil servant is removed dismissed , or reduced in rank by way of punishment.

where a person is dismissed or removed or reduced in rank on the ground of conduct which has led him to conviction on a criminal charge; or

where the authority empowered to dismiss or remove a person or to reduced him in rank is satisfied that for some reason, to be recorded in writing, it is not reasonably practicable to hold such inquiry; or

where the President or the Governor, as the case may be, is satisfied that in the interest of security of the State it is not expedient to hold such inquiry.

These three exceptions came for authoritative pronouncement in Union of India V. Tulasiram Patel AIR 1985 SC 1416. It was held that the restrictions on the doctrine of pleasure expressly removed by the Constitution could not be reintroduced through an act or rule. The Court further held that the second proviso is of exceptional nature and before availing it the conditions specified in different clauses must be strictly satisfied. Moreover, the proviso can be availed only for the imposition of three penalties mentioned in clause, i.e. dismissal, removal , or reduction in rank and not for other penalties.

Referring to clause (a) of the proviso, the Court held that conviction on a criminal charge is the only condition which has to be satisfied. On the existence of that condition the disciplinary authority would decide the penalty to be imposed. The penalty should not be arbitrary or grossly excessive, disproportionate or unwarranted by the facts and circumstances of the case. Action under this clause may be taken after the conviction even if the convicted employee has gone in appeal and his sentence has been suspended by the court. If the convicted employee succeeds in his appeal and the conviction is set aside, he may claim reinstatement and all benefits in his job as if he was never convicted and no action was taken against him. (Deputy Directorate of Collegiate Education (Admn) V. Nagoor Meera, AIR 1995 1364.

Clause (b) of the proviso requires (i) the existence of a situation making the holding of inquiry contemplated by Article 311(2) not reasonably practicable, and (ii) recording in writing of the reasons that constitute the satisfaction of the disciplinary authority that it is not reasonably practicable to hold an inquiry. In respect of (i) the decision of the disciplinary authority has been made final expressly by clause (3) of Article 311 because on the spot it can best judge the situation. The situation may arise at any stage, i.e even after the inquiry has been instituted or is already in progress. The recording of reasons is mandatory though they need not be detailed or separate for every individual if a large number of individuals are involved in the same act nor need they be communicated to the civil servant concerned though such communication is always desirable.(Bakshi Sardarilal V. Union of India AIR 1987 SC2106).

The satisfaction of the President or Governor under clause(c) is not personal satisfaction but satisfaction as head of the State or government acting on the advice of his Council of Ministers. His satisfaction about the expediency of the inquiry is final and he need not disclose the facts on which it is based either to the civil servant concerned or to any other authority.

All these propositions have been reiterated and approved in Satyavir Singh V. Union of India AIR 1986 SC 555. If the satisfaction of authority is questioned in a court, the authority has to show that its satisfaction is based on certain

objective facts and is not the outcome of the whim or caprice of that authority. Finality of the decision does not save it from being tested on the grounds of arbitrariness, malafides, extraneous considerations or merely a ruse to dispense with the inquiry. (Jaswant Singh V. State of Punjab air 1991 sc 385). Reliefs and

Remedies :

Article 311(1) and (2) are mandatory. A dismissal or removal contrary to these clauses is void and inoperative and the aggrieved civil servant is entitled to suitable relief at the hands of the court.

Public Service Commission:

Constitution provides for the establishment of Union Public Service Commission and State Public Service Commission . If two are more States agree they may have a Joint Service Commission. A resolution should be passed by the legislatures of those States urging the Parliament to pass a law for creating a Joint Public Service Commission for serving the needs of those States. The members of the Union Commission are appointed by the President and those of the State Commission by the Governor. One half of the members of every Public Service Commission shall be persons who, up to the dates of their respective appointments, have held office for at least ten years under the Government .(Art.316). Normally , a member holds office for a term of six years. But if a member of the Union Commission attains the age of sixty – five and of the State Commission sixty-two, he shall have to retire though he may not have completed the term of six years . The Chairman of the Union Public Commission is debarred from further appointment under the Union or State Government and the Chairman of a State Commission may only be appointed as Chairman or member of the Union Public Service Commission or Chairman of a State Public Commission of a State other than the one where he has already served. A person who has held the office as a member of a Public Service Commission shall be ineligible for reappointment to that office(Art.316(3))

The Chairman or a member of a Commission may be removed by the President if he is adjudged as insolvent , accepts during his term of office any other paid employment, or suffers from such infirmity of mind or body as , in the opinion of the President, renders him unfit for continuance in office. He may also be removed on ground of misbehaviour, if the Supreme Court, after an inquiry recommends the removal on this ground.(Art.317).The Commission conducts examination for appointments to the services. The Commission must be consulted in all matters relating to methods of recruitment, on the methods to be followed in making appointments, promotions and transfers, on the suitability of applicants; on disciplinary matters affecting any person in a civil capacity; on claims by such person for payment of costs incurred in defending legal

proceedings and compensation for injuries incurred on duty and the amount of such pension.

In State of Mysore V. R.V.Bidap AIR 1973 SC 2520. the Supreme Court held that a member, when appointed as Chairman in middle of his term starts a new six year term subject to other provisions of the Constitution. Krishna Iyer J explained that while a member and a Chairman of a Public Service Commission both are members, they hold different offices. The tenure of his office starts under Article 316(2) " from the date on which he enters upon his office.", which in the case of Chairman, appointed as such or originally as member and later elevated as Chairman, begins when he starts functioning as Chairman.

The President of India made reference to the Supreme Court for inquiry and report whether a member of the Haryana Public Service Commission ought ,on the ground of misbehaviour , be removed from his office in inre Sher Singh (1993) 3 SCC 216 The Court held, finding the allegations against the member to be true that he tried to influence the Commission and tamper with the examination to get favour for his nephew and that when he failed in his efforts he made baseless allegations against the Chairman and Secretary of the Commission. The Supreme Court answered the reference in the affirmative.

The Public Service Commission is entrusted with the duty to conduct examinations for making appointments to the services of the Union and States respectively. Further, the Union or State Public Service Commission shall be consulted on all matters relating to methods of recruitment to civil services and for civil posts, disciplinary matters affecting a civil servant ,etc(Art.320(3) . The Supreme Court held in State of Uttar Pradesh V. M..Srivastava AIR 1957 SC 912, and also in Jatinder Kumar V. State of Punjab (1985) 1SCC 122 , that the words," shall be consulted" in clause (3) of Article 320 are not be construed as mandatory and accordingly in the absence of consultation the action of the government under any of the sub-clauses of clause (3) shall not be null and void.

THE CONCEPTS OF LAW AND JUSTICE

A Greek philosopher rightly said that there are three terms on this earth which can not be defined with certainty: truth, beauty and justice. Justice is a vague term or it may be said a wider term to include many things for the reason that its application differs from one context to another context, from one country to another and one from person to another. Thus, justice is difficult to define as it is an abstract concept. But attempts were made to define justice by the philosophers and jurists. In the same way, the term 'law' is also wide and its meaning and application depends upon the way in which it is defined. Law has been defined by various authorities with reference to their philosophies and ideologies. Thus, the term 'law' has been defined by various authorities ' according to the objects they have in mind, their background, their education and the social, political and economic climate in which they work'.[i] Law, as a subject, is different from other disciplines.

Law is distinguished from morals. What is morality may not be legality. But law necessarily should have ethical content to command public acceptance. It is very rightly said, "The distinction between law and morals and between 'having an obligation' and 'having a sense of obligation' is important, but it is even more important than their relationships should not be left out of account. Law without a sense of obligation is unworkable, which means that any discussion of law as a functioning phenomenon has to include this moral dimension."[ii] The terms 'ethics' and 'morals" are used interchangeably. It is said that "Ethics is the sphere of ideal forms of life set by individuals for themselves. By contract the sphere of morality denotes 'rules or principles' governing human behaviour which apply universally within a community or class." Salmond observed "The central notion is that there exist objective moral principles which depend on the essential nature of the universe and which can be discovered with reason" and that ordinary human law is the only truly law so far as it conforms to these principles.

There is a close relation between law and morals. Both morals and law are originated from the same source and it is said' the law and morals have a common origin but diverge in their development.' This made some authorities to define 'law' as 'minimum ethics.' There is always a very close relation between the law and the life of a community, and in the life of the community morals have got a prominent place It follows that law must conform to morals. Morals are also considered to be the end of law and law has been defined in terms of 'justice.' The aim of law is to secure justice. Justice in its popular sense is very much based upon morals. Pound says 'morals is an evaluation of interests; law is or at least seeks to be a delimitation in accordance therewith.' But there are certain common features between morals and law. The morals are concerned

with the individual and lay down rule for the shaping of his character. Law concentrates mainly on the society and lays down rules concerning the relationships of individuals with each other and with the State. It is said that Law is for the purpose of convenience and expediency, and it s chief objective is to help a smooth running of the society. The observance of morals is a matter of individual conscience. Morals are considered to be of universal value. Pound says that 'as to application of moral principles and legal percepts respectively, it is said that moral principles are of individual and relative application; they must be applied with reference to circumstances and individuals, whereas legal rules are of general and absolute application."

The interesting question is whether law is to be considered a body of 'rules' However, rule connotes a standard by which to judge conduct or on which to base one's conduct.[iii] The question is: what is the basis of the rules on which one conduct can be judged. One of bases may be ethics. An ethical rule is not necessarily a legal rule. A legal rule is the rule which is derived from an authentic source which has the power to enforce without leaving any option to follow it...' Rejecting this contention, it is observed, "there are many rules in society prescribing how people ought to behave but not all of them are internalized 'law' There are, for example, accepted rules in various sports, rule of etiquette, morals and so on... legal rules are distinguished from others with reference to the criterion, or criteria, of validity, which in this country are statures, precedents, and immemorial customs.[iv] Immanuel Kant believed that actions are morally right if they are motivated by duty without regard to any personal goal, desire, motive, or self-interets. It implies that the State actions are considered to be morally justified as it does not have any 'personal interest' except public interest. However, the concept of ' law' also presupposes 'legal system'[v] which has the power to make a law and has the machinery to enforce it

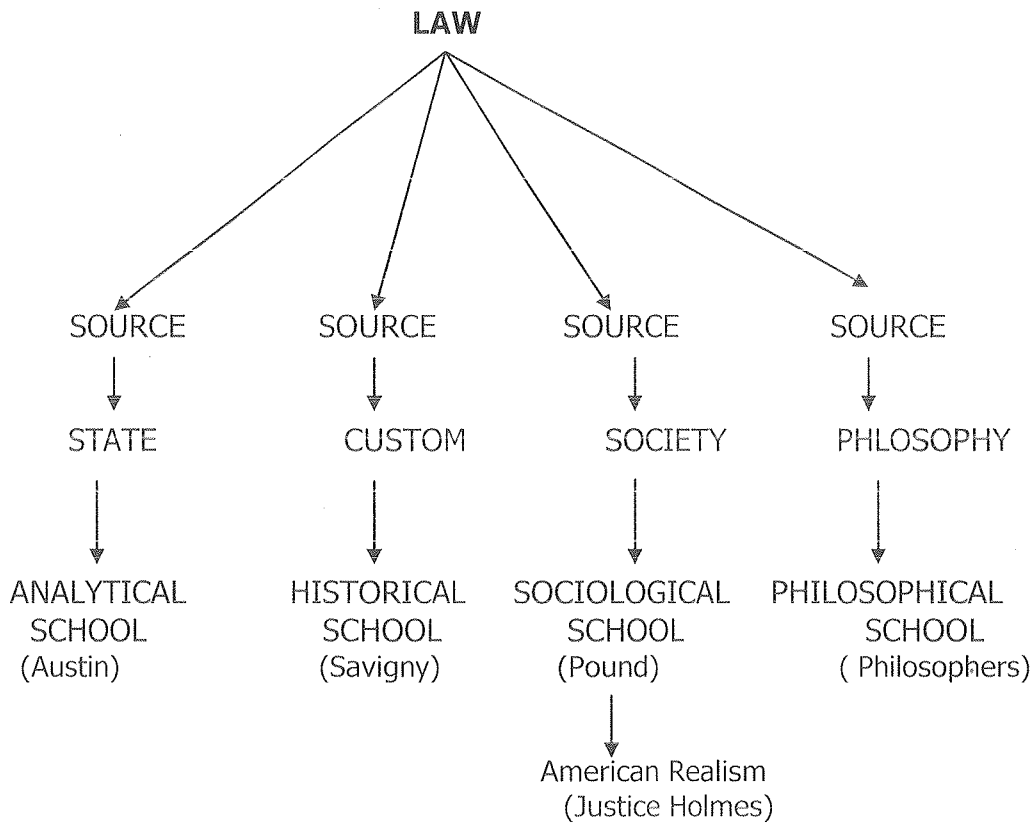
Concept of Law

It was said once 'Law is law' Some critics said 'law as law' W. Friedmann rightly said "Over thousand of years the most powerful minds of all nations have been unable to agree on a universal definition of law." According to Paton, 'Law has a two fold aspect; it is an abstract body of rules and also a social machinery for securing order in the community.' It is abstract in the sense, it deals with the society which is not static. It also examines the issues of control of human behavaiour which is unstable and unpredictable. Bentham is the first jurist who exposed the law and legal systems in his work, 'The Limits of Jurisprudence Defined', written in 1782. About his theory, it is said, 'he was bitterly scornful of the pretensions of natural law. But he had his own gospel, that of utility, and he wished to test every law to see if it led to the greatest happiness of the greatest number.' He advocated reform based on the concept of utility.

The interesting questions to analyze are: How to define law, and what is its content. The approach of jurists and philosophers to define law has been classified into **various schools..** The concept of law is derived from a 'source' and the 'source' is based on some assumptions and in some cases, certain set of circumstances. Law is also defined devoid of all these assumptions. We examine some of the theories which explain the concept of law and also the 'content' of law. As it is said, the definitions of law are innumerable and 'all definitions or characterizations of law veer between two extreme positions: one extreme emphasizes its coercive character: the other lays stress on social acceptance, the actual observance of law by the community to which it is addressed[vi]

In this lesson, we study the different theories of law developed by the following schools:
i)Analytical School or Imperative School ii) Historical School iii) Sociological school iv) American Realism v) Philosophical school and vi) Pure theory of law.

(I use the following diagram to enable the students to understand the basic elements of different schools of law).



The approaches of all the schools shown in the diagram are discussed below.

An attempt was made by John Austin to expound the **analytical theory** to define law in his pioneering work entitled 'The Province of Jurisprudence Determined:' Austin's analytical or imperative theory of law opposes natural law as the source of law. It tries to define not with reference to its content but some formal criteria by drawing the distinction between legal rules and the morals, etiquette. It is said "Austin, who is the exponent of this theory rested on positivism and the positive law, according to him, has some essential elements: (i) it is a type of command (ii) command is laid down by a political superior and (iii) it is enforceable by a sanction.. Simply speaking, according to Austin, "law is a command of the sovereign" It is felt that Austin adopted the phrase 'sovereign' from Hobbes, in the celebrated phrase of the French Constitution of 1791, 'indivisible, inalienable and imprescriptible.

Thus, in Austin's theory of law, law has three essential requisites, (i) the presence of a sovereign (ii) issue of commands and (iii) sanctions to enforce commands. But the commands are the expressions of desire given by superiors to inferiors. To determine the relationship between superiors and inferiors, the test is the ability of a person to punish the other in case of the disobedience of other. It is also a difficult issue to determine what is a command . Every instruction of the sovereign, for example, to bring a cup of tea, can not be construed as commands, 'only the commands which are general in nature can be called commands which in turn become laws.'

Another important essential to construe command as law is that the command must be issued by a political sovereign. He is the political sovereign whose commands are generally obeyed by the people. Here he relies on certain presumptions. Austin defines sovereign and says " a sovereign is any person, or body of persons, whom the bulk of a political society habitually obey, and who does not himself habitually obey some other person or persons." Stressing the need to obey law, it is nothing but to say, law is to be effective, if it is obeyed. Law becomes ineffective if it does not receive general obedience. Salmond says, emphasizing this, referring to Austin's theory of law "without general obedience, the law makers' commands are as empty as a language no longer spoken or as a monetary currency no longer in use "[vii]But, ".... The existence of a dominating sovereign will is an absolute pre-requisite to all law.[viii] It implies that the law flows from the Sovereign in the form of commands. It is further observed. ".. . . the essence of law is that it is imposed upon society by a sovereign will. In the other, the essence of law is that it develops within society of its own vitality. In one case, law is artificial; the picture is that of an omnipotent authority standing high above society, and issuing downwards its behests. In the other case, law is spontaneous growing upwards, independently of any dominant will. The second view does not exclude the notion of sanction or enforcement by a supreme established authority.[ix]As mentioned above, there are certain illusions or assumptions that 'there may be social observance existing before it or without it,

but they are not law in any proper significance of that term. Before any rules, deserving the name of the law can be said to exist, there must be a sovereign form which they can derive authority [x]There may be many sources but 'the full dignity of the term 'source' can be properly applied only to sovereign. Legislation, then, is the most appropriate because it is the most direct, expression of 'sovereign's will. but nobody ever supposed that the law consisted solely of legislation" [xi]The comfort of certainty lies in a sovereign which is definite, constant and intangible basis for the operation of all law But " Whatever may have been the history of primitive societies, the law of the modernized world is, as a fact, invariably enforced by some kind of ultimate sanction."[xii] It is true that in democratic societies, Austin's indivisible sovereignty is quite inappropriate

Another School of thought which defines the concept of law is **Historical School** advocated by Savigny. According to this school, law can be found but can not be made.

They say, the law, like language, develops with the life of the people. In all communities, Savigny says, there are certain established elements such as language, manners and political organization which have a national character. They are the natural manifestations of popular life and by no means product of man's free will. Savigny says law, language, customs and government have no separate existence. Law is inseparable from the society. This school of thought believes that the nature of any particular system of law was a reflection of the spirit of the people who evolved it. This was further emphasized by his disciple Puchta, who called it *volksgeist*. According to this all law is the manifestation of this common consciousness. He declared " law grows with the growth, and strengthens with the strength of the people and finally dies away as the nation loses its nationally." He also said "A nation meant only a community of people linked together by historical, geographical and cultural ties." He felt that " law is a matter of unconscious growth. Any law making should therefore follow the course of historical development. Custom not only precedes legislation, but is superior to it, and legislation should always conform to the popular consciousness. Law is thus not of universal application. It varies with people and ages. The *volksgeist* can not be criticized for being what it is. It is the standard by which laws, which are the conscious product of the will as distinct from, popular conviction, are to be judged. [xiii]

According to this school, " Law grows with a nation, increases with it, and dies at its dissolution and is a characteristic of it. He further says "that in the early stages law develops spontaneously according to the principle of internal necessity. Savigny observed " ... the organic evolution of law with the life and character of a people develops with the ages, and in this it resembles language. As in the latter, as in the law, there can be no instant of rest, there is always movement, and development of law is governed by the same power of internal

necessity as simple phenomena" Paton observed 'Law evolved, as did language, by a slow process and , just as language is a peculiar product of a nation's genius, so is the law. The source of the law is not the command of the sovereign, not even the habits of a community, but the instinctive sense of right possessed by race. Custom may be evidence of law, but its real source lies deeper in the minds of men. "the living law ' is the real thing is to be unearthed or identified. The exponents of this school feel that legislation can succeed only if it's in harmony with the internal convictions of the race to which it is addressed. Others who further explored this theory were Maine and Vinogradiff. Historical School emphasizes that " law cannot be understood without an appreciation of social milieu in which it has developed."

However, this approach of historical school was attacked by saying *Volksgeist* is not the only source of law. It is said that sometimes, an alien legal system is effectively transplanted in another country. In some cases, an individual can also greatly influence a legal system. But there are some assumptions on which the theory of this school is based. Paton said that some customs are not based on an instinctive sense of the community. Some rules may develop unconsciously. It is observed "Law has been used to plan the future deliberately and not merely to express and order the results of the past growth. The judge must hew the block and make precise the form of law. To regard the just as a mere passive representative of the *volksgeist* is just as dangerous. It is criticized that Savigny encouraged juristic pessimism. However, this school of thought was appreciated by regarding the historical method in jurisprudence should be supplemented by a critical approach based on a philosophy of law, in order that a true perspective may be maintained"

Another School of thought which attempted to define the concept of law is known as **Sociological School or Functional School**. Roscoe Pound is the exponent of this school. He defines law basing on sociological perspective. Dean Pound, a well known sociologist, is the main architect of this theory. He observed that we cannot understand what a thing is unless we study what it does. Law must be defined in relation to social interests. Law in action may be different from law in books. According to Pound, law is more than a set of abstract norms or a legal order. It is also a process of balancing conflicting interests and securing the satisfaction of the maximum of wants with the minimum of friction. He rightly said " no new heaven can be created by a stroke of pen" but urges that the jurist should study the actual social effects of legal institutions. This theory advocates 'compromise' of conflicting interests by sacrificing some for the welfare of the community. He further said that jurist is not a divine character to determine all these issues. For the purpose of understanding 'the law of today' wrote Prof. Pound "I am content to think of law as a social institution to satisfy social wants-the claims and demands involved in the existence of civilized society-by giving effect to as much as we may with the least sacrifice, so far as,

such wants may be satisfied or such claims given effect by an ordering of him conflict through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying human wants or claims or desires through social control: a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence-in short, a continually more efficacious social engineering." [xiv]

Pounds metaphor of engineering" has been criticized as suggesting a system of merely mechanical expedients mechanically administered to social exigencies[xv]Allen felt "Experiment implies initiative and a ceaselessly 'engineering' law suggests the picture of a science which is always seeking new instruments, new expedients, for new needs-new 'goods' in short, for the good life.[xvi]

Ihering is another exponent of this school. He defined law with reference to social context. According to him, 'the development of law is neither spontaneous nor peaceful.' It is the result of constant struggle or conflict with a view to attain peace and order. The end of law, according to Ihering, is to serve purpose ie., social purpose. The duty of the State is to protect and further social purposes and to suppress those individual purposes which clash with it. According to him, law means those rules which secure the conditions of social life by State through coercion. His theory is also called 'social utilitarianism' as he follows Bentham's premise that the purpose of law is to further and protect social interests and to purse pleasure and avoid pain. He also acknowledged that law is the only factor among many others. There are some other conditions of life, such as climate etc.,

Another theory propounded by the **American realists** says that law is the official actions of the courts. Justice Holmes is the exponent of this school. It is rightly said "Like Austin, the realist looks on law as the command of the sovereign, but his sovereign is not Parliament but the judges; for the realist the sovereign is the court"[xvii]This theory advocates the principle that 'all law is in reality judge-made' Justice Holmes declares" the prophecies of what the courts will do, in fact, and nothing more pretentious are what I mean by the law."

They assert that what the courts say or make is law. Unless the courts uphold the law passed by the Parliament, there would not be any validity, they declare. It is true , in the words of Gray, " the courts put life into the dead words of the statute.' Acceptance of law or validity of law depends upon many issues. Some issues may not go to the courts and in such cases, there can be a legal vacuum in that area. Some of the statements of the lawyers may be

unofficial. The real contribution of the realists is that they showed the distinction between law in the books and law in action.

Another School of thought defines law with philosophical approaches of great philosophers such as Immanuel Kant, St.Thomas Aquinas. Nature is considered to be one of the 'reasons' for the emergence of law by the philosophers.. Some advocated that law is the dictate of reason and others defined law as the gift of nature. Most of these theories were developed by great philosophers. The idea of natual law was even thought of in the early times. It was present in Greek, Roman and Hindu thought. The concept of natural law caused the growth of a set of principles and rules which were known in Roman law as 'acuitas' and in England they were called 'equity.' According to Salmond 'the rules for human conduct are logically connected with truths concerning human nature' Stoic philosophers, while giving emphasis to this theory, advocated, "live according to nature" and declared that 'man should live according to the dictates of reason." . Immanuel Kant believed that actions are morally right if they are motivated by duty without regard to any personal goal, desire, motive, or self-interets..To this school of thought, source of law is a supreme source and the principles are considered to have derived from some supreme source (other than political or worldy authority.). Some philosophers argued that if nature is the source of law, God who is the creator of nature, is the source of law. They say, 'Law is written by the finger of God in the hearts of men."

A theory which is claimed to be **'pure'** was propounded by Kelsen. He attacked other theories of law on the ground that all the theories of law are covered with the fabric of social sciences. It is rightly said that " If Austin was driven to make his jurisprudence rigid reaction against the modern schools which have so far widened the boundaries of jurisprudence that they seem almost conterminous with those of the social sciences. But while Austin not consciously formulate a detailed philosophy, Kelsen admittedly builds on the doctrine of Kant."[xviii]Kelsen tried to show the concept of law as free from all social sciences. It is said ".. Kelsen wishes to free 'the law from the metaphysical mist with which it has been covered at all times by the speculations on justice or by the doctrine of *jus naturae*"[xix]He desires to create a pure science of law, stripped of all irrelevant material, and to separate jurisprudence from the social sciences..." He wanted the law free from all subjective and political considerations. He says " Law does not attempt to describe what occurs but rather to prescribe certain rules, to lay down standards of action which men ought to follow." He finds that we cannot define law in terms of justice, for the reason that many rules may be unjust. He declared 'justice is an irrational ideal" He showed a theory of norms which can be the basis to define and understand law. He created an initial hypothesis or *grundnorm* and all other norms flow from it. If one has to identify proper law, one should not go beyond ground norm. . The subject of

jurisprudence, is nothing but a study of the hierarchy of norms. The validity of each norm depends upon a superior norm. It is said "the initial hypothesis is abstract, but as we descend the ladder the norms gradually become more concrete until we reach the final norm which imposes an obligation on a particular individual." [xx] For example, if one wants to understand the Indian legal system, one has to identify what is *grund norm* and one should not go beyond it. The *groundnorm* is the Constitution and all the laws and obligations flow from it. All the laws passed by the legislations are to be tested in the light of the principles of Constitution as it is the *grundnorm* and all other 'laws' are *inferior norms*.. Thus, Kelsen showed the normative science to develop the theory of law devoid of all social sciences. However, Paton rightly said " Kelsen is correct in showing that law is a weapon that may be used to effect many ends-indeed, it is curious to see that his impartiality in conflicting social problems of today has led conservatives to call him a dangerous radical and the revolutionaries to dub him a reactionary."[xxi] But it is difficult to imagine a society without milieu of social facts and moral values. Paton rightly said "To exclude the whole of sociology and of ethics leaves jurisprudence but a mental exercise in abstract notions."
The main features of Kelssen's pure theory of law are [xxii]:

i) "The aim of a theory of law, as of any science, is to reduce chaos and multiplicity to unity.
ii) Legal theory is science, not volition. It is knowledge of what the law is, not what law ought to be.
iii) The law is a normative but not a natural science.
iv) Legal theory, as a theory of norms is not concerned with effectiveness of legal norms.
v) A theory of law is formal, a theory of way of ordering, changing contents in a specific way
vi) The relation of legal theory to a particular system of positive law is that of possible to actual law.

When we want to know what law is, it is said, "it is a theoretical question not a question of law but a question about law" Thus, the difficulty to define law is that this concept is itself is surrounded with philosophical perplexities. . Law is generally of the following kinds: a) Imperative law b) Physical or scientific law c) Natural or moral law d) Conventional law e) Customary law f)Practical or technical law g) International law and h) Civil law. Broadly, law may be divided into two classes: 1) International law and 2) Municipal law or national law. Again International law is divided into (1) Public international; law (2) Private International law. The municipal law is divided into two classes: Public law and Private law. Public law is divided into (1) Constitutional law (2) Administrative law and (3) Criminal law. Private law, for example, includes: 1). The law of persons 2.)The law of property 3).The law of obligations 4).The conflict of law. There are three source of law. They are i) custom ii) Precedent and iii)

Legislation. Whatever may be the kind, law requires the presence of the following elements.:

i) In the modern systems, law presupposes State. However, in the primitive soiety, there was a law without State.
ii) The rules which are made or authorized to be made by the State are known as Laws
iii) To make the rules effective, there are sanctions to enforce them
iv) The law is needed to serve some purpose.

The Concept of Justice

What the law should achieve, 'one answer is justice.' Men live in the society and not in the deserts. There need to be a 'system' based on 'principles or rules' and the 'institution' to supervise the actions of the members of the society. The duty of such institution is to make a balance between bad and good, just and unjust and truth and untruth. Where the law is an essential instrument to control or regulate human behavior, the State should enforce the law and render 'justice' to all. As it is mentioned in the beginning, it is difficult to define the term 'justice,' The reasons for such difficulty are many. The element of 'justice' differs from person to person, from place to place and from region to region and from context to context. What ultimately universally agreed upon is 'Without institutionalized law enforcement, man tends to redress his wrongs by his own hand. A more civilized substitute for such primitive practice is provided by the modern state's system of administration of justice." [xxiii]It is also identified that the secondary function of the State is to administer justice. Salmond defined law in terms of administration of justice. He said 'Law is a body of rules and principles recognized and applied by the State for the administration of justice,

The issues which are essentially to be examined are: i) what is justice, ii) what are the kinds of justice and iii) what should be the 'basis' to administer justice

The Anglo-Saxon laws continuously direct that justice is to be done equally to rich and poor. There are many definitions to define the term 'justice.' But it is found difficult to define the term justice. Justice Mathew says, "I do not think that there is the concept of justice." Lord Wright said 'I have not found any satisfactory definition of justice, but what it is, it is the quality of what it is just. And what is just in a particular case is what appears to be just to the just man, in the same way as what is reasonable to the reasonable man." An attempt is made here to mention some of the definitions of justice to show the different dimensions to the concept of justice.

Thomas Aquinas, "Justice is a certain rectitude of mind whereby a man does what he ought to do in the circumstances confronting him." As a

theologian, Aquinas believed that justice is a form of natural duty owed by one person to another and not enforced by any human-made law. He advoacted that all people are equal and must treat each other with respect. Hence,he said that obedience to natural principles of morality is to satisfy a duty owed to God,. He further said :" Justice is habit (*habitus*) whereby a man renders to each one his due with constant and perpetual will."

It is rightly observed " Justice is the first virtue of social institutions ,as truth is of systems of thought. . . an injustice is tolerable only which it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.[xxiv] John Rawls says "My aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant. In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement".[xxv] Every legal systems is oriented towards certain purposes which it seeks to implement in this sense, every legal system is of 'purposeful enterprises" But in this universal sense the concept of justice is also of necessity devoid of ideological content. [xxvi]

The terms justice has two aspects, namely abstract justice and concrete justice. In the abstract sense 'justice' means a course of conduct both legal and moral, which tends to augment human' welfare'. In the concrete sense, justice plays a positive role in regulating the procedural safeguards afforded to litigants in the courts of law. But the conceptions of justice have varied from age to age. But it is felt that it is a term which has to be judged in the context of changing socio-economic contours of a given society. 'Justice,' Ihering said, "changes its abode and the mere removal has the consequence that if the state authorities desire to lay violent hands upon it, they must cross the street[xxvii]But different kinds of justice are frequently used to denote a special category of justice, for example, natural justice, social justice, distributive justice etc, Hans Kelsen, while referring to give precise definition , said, " No other question has been discussed so passionately ;no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet, this question is today as unanswered as it ever was. It seems that it is one of those questions to which the resinged wisdom applies that man cannot find a definitive answer, but can only try to improve the question." In Courpus Juris Secundum. Justice is defined as : "The dictate of right according to the consent of mankind generally of that portion of mankind who may be associated in one government, or who may be governed by the same principles and morals;: the constant and perpetual disposition to render every man his due; the conformity of our actions and our will to the law; that end which ought to be reached in a

case by the regular administration of principles of law involved as applied to the facts. In a judicial sense it is defined as exacting conformity to some obligatory law" Plato defines ' Justice' as a virtue of that psyche or soul which is the quint-essential personality of human creature.

One theory is 'an unjust law is no law." And Salmond said ' that justice has this narrow sense can be seen by examining the converse concept, that of injustice.' In ancient India, the term law and justice have invariably associated with the term *Dharma.*[xxviii]

According to Roscoe Pound's theory of justice, "the law is a means to balance the competing interests of an individual along with the social interests of the society." The positivist school led by Austin dealt with the concept of 'justice' from a dogmatic angle, e.g., "the law of the land is the measure of justice." According to John Rawls, "Principles of Social justice are necessary for making a rational choice between various available systems. The way in which a concept of justice speicifies basic rights and duties will affect problems of efficiency, co-ordination and stability. This is why it is necessary to have a rational conception of justice for the basic structure of the society." [xxix]It is observed, with reference to major legal systems in the world, "Good social order implies the primacy of law; men must live according to law and; where necessary be prepared to fight for the supremacy of law; administrative authorities, no less than any other part of society, must act legally; courts must ensure that law is respected. Law, a mirror of justice, is in this conception superior even the equity itself; outside the law, there can only be anarchy, or arbitrariness, chaos or the rule of force. Law is therefore venerated, the courts are temples of justice, the judges its oracles. [xxx]

Justice, as a generally, valid concept, is formal, in the sense that it is the goal to which every legal order aspires as a 'purposeful enterprise' and procedural, in the sense that the Aristotelian notion of equality for equals implies a minimum machinery of justice and third party determination. [xxxi]

Justice in conformity with law was the philosophy pounded by Austin and the 'the earlier traditional notions concerning the concept of 'justice' such as 'eternal and irrevocable justice' were dismissed by Austin as an unassuming abstraction, fustian phrase which appealed to the ear not to the intellect.'[xxxii] While dealing with 'particular justice' as distinct from 'universal justice,' Aristotle distinguished between distributive justice and 'corrective justice' Distributive justice is based on the principle that there has to be equal distribution among equals. Corrective justice seeks to restore equality when this has been disturbed eg. wrong doing, which assumes that the situation that has been upset was distributively just.

Plato and Aristotle devoted the major part of their theories to attainment of justice. They were greatly influenced in their thoughts on justice by the decline of Athenian democracy." Plato attempted to derive his conception of justice from inspiration; Aristotle developed it from a scientific analysis of rational principles developed against a background of existing types of political communities and laws. The connecting link between them is concept of virtue, the all embracing idea of which justice is a necessary part and aspect."

Another dimension was given to the concept of justice. Individual welfare is considered as one of the activities of the concept of justice. Salmond observes that justice consists in giving to every man his own. The rule of justice determines the sphere individual liberty in the pursuit of individual welfare, so as to confine that liberty within the limits which are consistent with the general welfare of mankind. Within the sphere of liberty so delimited for every man by the rule of justice, he is left free to seek his own interest in accordance with the rule of wisdom.

Thus, the concept of justice has been defined by various authorities basing on various issues. The actionable part of law can be said Justice as law is for justice and the concept of justice can be viewed from its operational part of its. Fitzgerald, who revised the twelfth edition of Salmond's work on Jurisprudence, observes that law is an instrument of society, and its object is justice Thus, administration of justice is one the essential functions of a State.

Justice is of two types: Civil and Criminal justice. This classification is necessary in matters of administration of justice. Blackstone says: "Wrongs are divisible into two sorts or species, private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals, and is thereupon frequently termed civil injuries; the latter are a breach and violation of public rights and duties which affect the whole community considered as community; and are distinguished by the harsher application of crimes and misdemeanours."[xxxiii]

There are some of the differences between these two: i) civil justice and criminal justice are administered by different courts ii) both have different forms of procedures and iii) both have different legal remedies or recourses. But some of the wrongs, in modern legal systems, invite both civil and criminal proceedings. For example, trespass, negligence, defamation, nuisance etc.,

The question is how to administer justice. What should be the basis to administer justice? It is felt that the Administration of justice should be carried out 'according to law' Thus, it follows the principle, "Justice According to Law." This process brings many advantages. It brings uniformity in the administration of justice. It enables the subjects to regulate their conduct as the applicable law

is known to them. It also helps judges to apply law uniformly. It also ensures impartiality and equality. It also helps a systematic development of law. The laws afford equal justice to all.The problem of the relation between justice and positive law dominated Greek thinking and has been the subject of legal thought ever since.

Ehrlich distinguished between static and dynamic principles of justice. Thus institutions such as contract, succession, the interest in one's own labour have certain ideal forms. Justice demands perfect economic contract or the legal prohibition to enrich oneself by someone else's labour

John Stuart Mill's contribution to legal theory lies in his investigation on the relations between justice and utility, individual interests and general interests. Mill investigated the nature of justice and its relations to utility.. He attempted a synthesis between justice and utility.

According to Friedmann, "the law must be certain. The demands of justice and of positivity are invariable parts of the idea of law, they stand above conflicts of political opinion. Utility provides the elements of relativity. But not only utility itself is relative, the relation between the three components of the idea of law is relative too. How far utility should prevail over justice, or security over utility, is a market to be decided by each political system." Friedmann further observes in his characteristically elegant language "between these three pillars of the idea of law there is bound to be tension. Justice demands equality that is generalization. But utility demands equality that is generalization. But utility demands individualization. Thus the executive tends to make decisions in accordance the administrative problems form the point of view of justice. Again, positivity of the often means certainty at the expense of justice or the consideration of the individual case. Even patently unjust decision continues to be recognized in the interest of legal stability."

Thus, the concept of justice is difficult to define. But it is felt that the end of law is justice and justice is administered according to law. The idea of law, in the words of Stammler, is the application of the concept of law in the realization of justice.

Modern Trends

According to Justice V.R.Krishna Iyer, "Justice, Justices and Justicing are the trinity of the Judicial Administration. For their functional success all three must be fine-tuned to respond to the imperatives and urgencies of the Third World and even the Fourth World within the Third World – the marginalized, victimized, sub-humanized sector. What, then, is justice? Its human essence is the same every where: to render to each person or collective what is due in a

given social, economic, political milieu."[xxxiv] The modern States which are backed by well defined legal systems and their judicial institutions attaching high importance to render justice to all keeping in view of new changes and challenges. In the words of Lord Denning: "Every new decision – in every new situation – is a development of the law: Law does not stand still. It moves continually. Once this is recognized, then the task of the judge is put on a higher plane. He must consciously seek to mould the law so as to serve the need of the time. He must be an architect – thinking of the structure as a whole – building for society a system of law which is strong, durable and just. It is on his work that civilized society it self depends."[xxxv]

Justice is however the goal aspired by every legal order and the lawyer must naturally seek guidance form the principles of justice. As Buckland well said, "A man will be a better lawyer, as he will be a better architect or physician, if his mind is open to the movements of thought on the profounder issues of life, beyond his immediate professional concerns. And, if his mind is so open, he can hardly fail to have some sort of philosophy of his own."[xxxvi] In the modern world, "Law is a social institution . . . .The training of lawyers has hitherto failed to take sufficient account of the essential unity of the study of law and these other disciplines. They are not just related to each other, but inextricably interwoven; their pattern is not that of circles which touch at their circumferences, but of circles which overlap. Only on such an integrated basis is it possible for lawyers to approach their subject meaningfully and improve its serviceability."[xxxvii]

The word 'justice' is being prefixed to some of the concepts to show the importance of it. For example, we use the terms 'distributive justice,' 'social justice,' 'natural justice,' 'economic justice.' etc. to encompass the changes in the structure of the legal system. In India, the modern concept of justice is not merely justice in legal terms, but it embraces political and economic justice as enshrined in the Constitution. It is true that 'change within a legal system may come in various ways, by day-to-day adjustment of detail and tinkering with the concepts used in legal reasoning, which is appropriate in a slow moving society; or by reform on a larger scale, which becomes inevitable when the whole social structure begins to change."[xxxviii]Now the trend is towards "Justice to All' and all the legal systems are serious in searching alternatives to provide easy access to justice to common man. Access to justice movement is gaining momentum through out the world. It is true that, in the words of Jawaharlal Nehru, 'We must realize that the nineteenth century system has passed away, and has no application to present-day needs. The lawyer's view, so prevalent in India, of proceeding from precedent to precedent is of little use when there are no precedents. We cannot put a bullock-cart on rails and call it a railway train. It has to give way and be scrapped as obsolescent material." The concepts of law and justice need new directions in the new millennium to construe new meanings to the old concepts.

Legal Remedies Including the Writs

There are several legal remedies to protect the rights of the people. The system of law aims at securing the interests of individuals and resolves the disputes through authoritative adjudication with binding decision. Remedies provided by law are called legal remedies, of which the writs form an important component. In fact, the power of higher courts in granting writs to the authorities to provide relief to the aggrieved citizens is the ultimate method of protection of rights. All personal rights, contractual rights and constitutional rights are secured through the judicial process. Remedies are of two kinds- Constitutional which are also called public law remedies, and legal remedies, i.e., private law remedies. While constitutional law deals with rights in general against public bodies, the private law remedies are agitated between individuals.

The Constitution provided for remedies to individuals under Article 226 and 32, and some more remedial provisions are also made, such as Articles 136, 299, 300. Some remedies are available for the government servants under articles 309 to 311 of the Constitution of India.

A. Legal Remedies

Several other right-duty situations arise between the persons depending on the context and circumstances of their day to day operations in the dynamic society. They are as follows:

(1) Domestic or matrimonial remedies under personal law
(2) Remedies under Criminal Law
(3) Contractual remedies
(4) Remedies provided by Law of Torts
(5) Remedies and Specific Relief Act
(6) Other Legal Remedies under Statutes

1. Personal Law Remedies

Marriage being a sacred contract, it creates rights and obligations for the spouses and they are adjudicated whenever the parties approach with a complaint of breach of duty and violation of rights. Some of the marital remedies are as follows:

(a) Divorce/Nullity of marriage: On grounds of adultery, desertion and cruelty the couple can seek divorce. There are various other grounds on which spouses can seek matrimonial relief.

(b) Judicial Separation: In judicial separation, the marital bond remains till another chance for protecting the bond is exhausted. If the couple reconciles to live together marriage remains, if not leads to divorce.

(c) Restitution of conjugal rights: Conjugal relationship is one of the main purposes of marriage, and unilateral absence from conjugal life gives rise to a right to the other spouse a remedy for seeking a decree or order for living together. If the decree for conjugal right could not be enforced, the aggrieved spouse can seek divorce.

(d) Maintenance: one of the parties, generally the wife needs to maintain her life either during the marriage or after the separation, which needs to be provided for. Thus the maintenance is of two kinds:

(i) Pendente lite and expenses for proceedings
(ii) Permanent alimony and maintenance

Marriage laws pertaining to Hindus, Muslims, Christians and Special Marriage Act, which is applicable for the couples married and registered under this Act, irrespective of their caste or religion provided for all the above kinds of remedies.

Personal Law remedies also include succession rights. Succession laws of different religions provide for legal shares of property left over by the deceased among the legal heirs. During 2005, the Hindu Succession Act, 1956 is amended to provide equal right to women to seek partition of coparcenary property and claim a share as if she is a male member. It is an attempt to bring gender equality.

Protection of Women from Domestic Violence Act, 2005 provided additional remedies to women of different status such as wife, daughter, sister or mother for violence perpetuated against her by members of the family. Such remedies include compensation for injury, torture, mental cruelty etc. Dowry Prohibition Act, 1961 and Criminal Law provisions penalize criminal actions of the spouses, and victims can also seek compensation under law of torts.

2. Remedies under Criminal Law

The Criminal law is of two types, substantial criminal law and procedural law. In fact, every person has right to life and any injury to life will be a crime. Person who intentionally causes injuries or death to the other is penalized. Securing the penalty for the proved criminal is a criminal law remedy available to the society in general, while victim has a right to claim damages under law of torts for the injury caused because of the crime.

Indian Penal Code has codified the right of private defence under Sections 96-106. Every person has right to his life, liberty and property which the law of crimes seeks to protect realizing the constitutional right to life and personal liberty under Article 21. Every person can protect his person, property and liberty as explained below:

(a) Offences against Person: Offences against person include causing injury, hurt or grievous hurt, murder, rape, attempt to commit suicide, abetment to commit suicide, assault, sexual harassment etc.

(b) Every person has right to property against the following crimes. Law supports the protection of property, both movable and immovable, against

(i) Theft
(ii) Robbery & Dacoity
(iii) Mischief
(iv) Trespass

Under Criminal Procedure Code: The following are the remedies available under Code of Criminal Procedure:

1. Restoration of abducted female (98).
2. Security for keeping peace and good behaviour:
   (a) On Conviction (106)
   (b) Other apprehended cases (107-118)
3. Public Nuisance (133-143)
4. Urgent cases of Nuisance or apprehended danger (144)
5. Disputes relating to immovable property (145)
6. Maintenance of wives, children and parents (125-128)
7. Compensation to victim (357)
8. Compensation to victim : groundlessly arrested (358)
9. Order to pay costs in non-cognizable cases (359)
10. Compensation to accused on discharge or acquittal (250)
11. Restoration of property (451,452)
12. Adjournment Costs
13. Punishment

(a) Death
(b) Imprisonment for a term or life
(c) Forfeiture
(d) Fine
(e) Deprivation of Civil Rights

3. Remedies under Law of Contracts

The general law of contracts created mechanism to secure the rights of the parties to the contract on breach and fraud etc. The Contracts Act 1872 defines the contract, prescribes the essential conditions of valid contract, liabilities of surety, bailee, partners, and rights relating to negotiable instruments etc. Generally damages can be claimed for breach of contract.

Following remedies are available under Contracts Act:

(a) Courts have power to set aside the contract induced by undue influence, etc.
(b) Decide consequences of recission of voidable contract
(c) Obligation of person receiving advantage under void agreement
(d) Devolution of joint liability
(e) Damages for breach of contract, etc.
(f) Devolution of joint liability
(g) Liability of joint promissors
(h) Liability of co-sureties to contribution
(i) Grant of penalty, when specified.

4. Remedies provided by Law of Torts

Law of Torts provide for a civil remedy for injuries caused to a person by another. The injuries include

(a) assault, battery (physical injury or interference with the person) causing death,
(b) injuries affecting family relations such as enticement of wife, children or servant,
© wrongful confinement,
(d) injury to reputation, i.e., defamation,
(e) injury to property e.g., trespass, conversion, passing off, breach of intellectual property rights,
(f) wrong to person and property such as deceit, negligence, nuisance and conspiracy,
(g) interference with the free conduct of business,
(h) abuse of legal procedure e.g., malicious prosecution and champerty, and
(i) other wrongs like invasion of privacy and abuse of statutory power.

Remedies

Under law of torts the remedies are of two kinds-

(a) Judicial, and
(b) Extra judicial.

a) Judicial Remedies:

(a) Damages: Generally the Remedy for above wrongs is payment of damages. There are various kinds of damages granted by civil courts under law of torts. They are:

(i) Ordinary damages
(ii) Nominal Damages
(iii) Special Damages
(iv) Exemplary Damages or punitive damages

(b) Injunction
(c) Specific Performance
(d) Restitution of property.

b) Extra Judicial Remedies

Every body has right of private defence to protect life and property of the self and of those whom they are interested in. The law of torts recognize the following varieties of extra judicial remedies:

(a) Self defence
(b) Expulsion of trespasser
(c) Reentry on land
(d) Recaption of Chattel
(e) Distress damage feasant or distraint of things doing damage
(f) Abatement of nuisance

5. Remedies under Specific Relief Act

The Specific Relief Act provided for some special remedies under special circumstances. It provides for

(a) specific performance of certain contracts, where mere damages for breach of contract will not do justice,

(b) protection of possession of immovable property, driving out of even the title holder of the property if the possession taken over by undue and unjustifiable means,

(c) specific recovery of the property appropriated without justification,

This law (Specific Relief Act, 1963) provided for following reliefs:

(a) Declaratory decree (ss 34 & 35)
(b) Injunction (SS 37 & 38)
(c) Rectification of documents, if the real intention of the parties is not truly reflected (s 26)
(d) Recission of contracts in the interest of security equitable protection of rights of parties (S 30)
(e) Direction to require benefit to be restored or compensation to be paid. (s 33)
(f) Granting Damages (S 40)

6. Other Statutory Remedies

a) Under Consumer Protection Act, 1986:

The Consumer Protection Act is considered to be partial codification of law of torts, where the injuries caused by negligent service are remedied. This enactment, being the result of consumer protection movement, provides following rights and protections.

(a) Protection against hazardous good
(b) Right to information
(c) Right of access to verity
(d) Right to due attention at appropriate forums
(e) Unscrupulous Expatiation
(f) Right to consumer education

Apart from the above rights the law provided remedy for deficiency in services and supply of defective goods to purchaser. The law is aimed at creating a parallel and separate forum for redressing the consumer problems. General remedy available is payment of damages as fixed by the consumer forum.

b) Equitable Remedies

To secure various rights discussed above, the civil procedure code provided for a procedure by following which the citizen can seek some provisional equitable remedies. Under Order 39 rules 1 and 2, the party can seek attachment of the property of the other party or appointment of receiver for the

property of the others or seek the arrest or seek the security for availability and to be bound by law.

c) Under Transfer of Property

Transfer of Property Act deals with various kinds of transfers and safeguards the parties from powerful side by prescribing certain statutory conditions to follow while conveying the property. It protects the mortgagor to regain the property and not to lose simply by virtue of mortgage. It also protects the rights of tenants and the owner to re-enter the property by following procedure. The Transfer of Property Act, 1872 defines the 'property', 'immovable property', explains essentials of valid sale, agreement to sell, mortgage, lease and gift. Several rights and remedies are provided regarding various kinds of transfers. Following remedies are also available:

(a) Equity of the equal parties to the transaction is protected under section 40.
(b) Equity law demands that the first in time shall prevail under section 48
(c) There is provision for payment for improvements of the land belonging to others, under specified circumstances, under section 57
(d) Usufructory mortgager has right to recover possession under section 62
(e) Rights of the parties where contract is partly performed, is protected under section 53A
(f) Section 81 provides for marshalling of securities and contribution to mortgage debt.

7. General Remedies under Civil Law

Thus according to all above civil laws, the following are the remedies available for the aggrieved persons.

1. Damages
2. Partition
   (a) Preliminary decree – determination of share
   (b) Final decree – actual partition by metes and bounds

3. Dissolution of partnership

(a) Settlement of accounts
(b) Dissolution

4. Accounts

   (a) Settlement of accounts
   (b) Actual disbursement

5. Eviction of a tenant or licensee or traspasser
6. Mesne Profit – In respect of unlawful occupation of immovable property
7. Interest – u/s 34 CPC in money decree; court can award for following:

    (a) Prior to filing of suit
    (b) In Pendency of suit
    © From date of decree to realization

8. Costs – at the discretion of the courts

(a) General cost u/s 35 of CPC
(b) Compensatory cost u/s 35A of CPC
© Cost for delay u/s 35B of CPC

9. Removal of defect/replacement of goods/refund of price or service charges and compensation of any loss or injury suffered by consumer. Defiance of order attracts imprisonment and/or fine (Consumer Protection Act.)

10. Matrimonial

(a) Divorce/Nullity of marriage
(b) Judicial Separation
(c) Restitution of conjugal rights
(d) Maintenance
    (a) Pendente lite and expenses for proceedings
    (b) Permanent alimony and maintenance

B. Constitutional Remedies

The unique feature of Indian Constitution is provision of a fundamental right to remedy. As aptly described by Dr. B. R. Ambedkar, Chairman of Drafting Committee of Constituent Assembly, Article 32 is the real heart and soul of the Constitution. It is through Article 32, a victimized citizen can approach the apex court of justice without completing the formalities of passing through all the hierarchy. A kind of straight and instant remedy is provided in summary manner to ensure the protection of the fundamental rights and realize the guarantees offered by the state.

Each and every fundamental right constitutes a direct limitation on the powers of the government. Any right being stifled by state could be the subject matter of agitation before the Supreme Court. Though it involves a trouble for

common man to go to highest court in the Capital of the Country, the possibility of securing remedy makes it very significant.

The very concept of right to remedy under Article 32 and to almost the same extent under Article 226 at High Courts, is significant and makes Indian Constitution superior to all contemporary democratic constitutions. Entire judicial process flowed from these two very important articles and scores of rights were restored to the people in India.

While Articles 14 to 31 (repealed) 31C, which are substantive rights, Article 32 provides for a procedural right. It is also called as remedial right for enforcement of those substantial rights. Only when it is essentially established that a fundamental right is violated the Article 32 can be invoked and otherwise it cannot be. You cannot question any administrative action or legislation if those actions do not violate the fundamental rights, under this provision. The Supreme Courts jurisdiction under Article 32 extends to whole of India, while that of Article 226 is the concerned State in which the High Court is located. However under Article 226 the jurisdiction of the High Court is available not only for the protection of fundamental rights but also for other purposes relating to the judicial control of administrative authorities by means of writs only in its appellate jurisdiction, unless the fundamental right is involved in which case it exercises original jurisdiction under Article 32. The power to issue writs is now available only to High Courts and the Supreme Court of India, but the Parliament has power to confer it to the other courts also. Thus under the Administrative Tribunals Act, 1985, writ jurisdiction has been conferred on the administrative tribunals which deals with service disputes concerning the public servants. Except in this aspect, the power has not been exercised by the Parliament so far. Any government can initiate action to confer these powers on other courts for the purpose of enforcing the fundamental rights.

The right to constitutional remedies allows Indian citizens to stand up for their rights against anybody even the government of India. This fundamental right is described in the constitution as:

Article 32: Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Article 33: Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to:-

(a) The members of the Armed Forces; or

(b) The members of the Forces charged with the maintenance of public order; or

(c) Persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or

(d) Persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Article 34: Restriction on rights conferred by this Part while martial law is in force in any area.- Notwithstanding anything in the foregoing provisions of this Part, Parliament may by law indemnify any person in the service of the Union or of a State or any other person in respect of any act done by him in connection with the maintenance or restoration of order in any area within the territory of India where martial law was in force or validate any sentence passed, punishment inflicted, forfeiture ordered or other act done under martial law in such area.

Article 35: Legislation to give effect to the provisions of this Part. - Notwithstanding anything in this Constitution,-

(a) Parliament shall have, and the Legislature of a State shall not have, power to make laws-

with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and
for prescribing punishment for those acts which are declared to be offences under this Part; and Parliament shall, as soon as may be after the

commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii)

(b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub-clause (i) of clause (a) or providing for punishment for any act referred to in sub-clause (ii) of that clause shall, subject to the terms thereof and to any adaptations and modifications that may be made therein under article 372, continue in force until altered or repealed or amended by Parliament.

Article 226: Power of High Courts to issue certain Writs

(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.

Articles 32 and 226 are the provisions of the Constitution that together provide an effective guarantee that every person has a fundamental right of access to courts. Article 32 confers power on the Supreme Court to enforce the fundamental rights. It provides a guaranteed, quick and summary remedy for enforcing the Fundamental Rights because a person can go straight to the Supreme Court without having to go undergo the dilatory process of proceeding from the lower to higher court as he has to do in other ordinary litigation. The Supreme Court is thus constitution the protector and guarantor of the fundamental rights.

The High courts have a parallel power under Article 226 to enforce the fundamental rights. Article 226 differs from Article 32 in that whereas Article 32 can be invoked only for the enforcement of Fundamental Rights, Article 226 can be invoked not only for the enforcement of Fundamental Rights but for any 'other purpose' as well. This means that the Supreme Court's power under Article 32 is restricted as compared with the power of a High Court under Article 226, for, if an administrative action does not affect a Fundamental Right, then it can be challenged only in the High Court under Article 226, and not in the Supreme Court under Article 32. Another corollary to this difference is that a PIL (Public Interest Litigation) writ petition can be filed in Supreme Court under Article 32 only if a question concerning the enforcement of a fundamental right is involved. Under Article 226, a writ petition can be filed in a High court whether or not a Fundamental Right is involved.

The provision of legal aid is fundamental to promoting access to courts. The Supreme Court of India has taken imaginative measures to promote access to justice when people would otherwise be denied their fundamental rights. It has done this by the twin strategy of loosening the traditional rules of locus standi, and relaxing procedural rules in such cases. Thus where it receives a letter addressed to it by an individual acting pro bono publico, it may treat the letter as a writ initiating legal proceedings. In appropriate cases it has appointed commissioners or expert bodies to undertake fact-finding investigations. Thus, the mechanism of PIL now serves a much broader function that merely espousal of the grievances of the weak and the disadvantaged persons. It is now being used to ventilate public grievances where the society as a whole, rather than a specific individual, feels aggrieved.

Several sections of the constitution such as Articles 13 (Laws inconsistent with or in derogation of the fundamental rights (are void)); 14 (Equality before law); 20 (Protection in respect of conviction for offenses); 21 (Protection of life

and personal liberty); 22 (Protection against arrest and detention in certain cases); 38 (State to secure a social order for the promotion of welfare of the people); 39 (Certain principles of policy to be followed by the State) have been interpreted in conjunction with Article 32 and 226 to extend right of access to courts and judicial redress in various matters. Not only that, but for enforcement of these rights, the Supreme Court, and several High Courts also issued the writs, emphatically directing the wrongdoing authorities from either resisting to violate or pay damages for violation or to do a particular activity or refrain from doing something which affects the rights of the people.

The writs are of various types. The following is the brief description of various writs:

a) Habeas Corpus

The writ of habeas corpus — an effective bulwark of personal liberty — is a remedy available to a person who is confined without legal justification. The words habeas corpus literally mean "to have the body". When a prima facie case for the issue of writ has been made, then the court issues a rule nisi upon the relevant authority to show cause why the writ should not be issued. This is in order to let the court know on what grounds he has been confined and to set him free if there is no justification for his detention. This writ has to be obeyed by the detaining authority by producing the person before the court.

Under Articles 32 and 226, any person can move for this writ to the Supreme Court and High Court respectively The applicant may be the prisoner or any person acting on his behalf to safeguard his liberty for the issuance of the writ of habeas corpus as no man can be punished or deprived of his personal liberty except for violation of law and in the ordinary legal manner. An appeal to the Supreme Court may lie against an order granting or rejecting the application (Articles 132, 134 or 136). Disobeying this writ is met with by punishment for contempt of court under the Contempt of Courts Act.

b) Mandamus

The word mandamus literally means "we command". The writ of mandamus is a command issued to direct any person, corporation, inferior court, or Government requiring him/it to do a particular thing specified therein, which pertains to his/its office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction while resort to certiorari and prohibition arises when the tribunal has wrongly exercised jurisdiction or exceeded its jurisdiction and are available only against judicial and quasi-judicial bodies.

Mandamus can be issued against any public authority. It commands activity. The writ is used for securing judicial enforcement of public duties. In a fit case, the court can direct executives to carry out Directive Principles of the Constitution through this writ (State of Maharashtra vs MP Vashi, 1995 (4) SCALE). The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed for. It is not issued if the authority has discretion.

The Constitution, through Articles 226 and 32, enables mandamus to be issued by the High Courts and the Supreme Court to all authorities.

Mandamus does not lie against the President or the Governor of a State for the exercise of their duties and power (Article 361). It does not lie also against a private individual or body except where the state is in collusion with such private party in the matter of contravention of any provision of the Constitution of a statute. It is a discretionary remedy and the High Court may refuse if alternative remedy exists except in case of infringement of fundamental rights.

c) Prohibition

A writ of prohibition is issued to an inferior court, preventing the latter from usurping jurisdiction which is not legally vested in it. When a tribunal acts without or in excess of jurisdiction, or in violation of rules or law, a writ of prohibition can be asked for. It is generally issued before the trial of the case. While mandamus commands activity, prohibition commands inactivity, it is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent, this writ may be of right and not a matter of discretion.

d) Certiorari

It is available to any person, wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially in excess of their legal authority (The King vs Electricity Commissioners, (1924) I.K.B. 171, R 204-5).

The writ removes the proceedings from such body to the High Court, to quash a decision that goes beyond its jurisdiction. Under the Constitution of India, all High Courts can issue the writ of certiorari throughout their territorial jurisdiction when the subordinate judicial authority acts i) without or in excess of jurisdiction, in ii) contravention of the rules of natural justice or iii) commits an error apparent on the face of the record. The jurisdiction of the Supreme Court to issue such writs arises under Article 32. Although the object of both the writs

of prohibition and of certiorari is the same, prohibition is available at an earlier stage whereas certiorari is available at a later stage but in similar grounds, that is, certiorari is issued after authority has exercised its powers.

e) Quo Warranto: The writ of quo warranto enables enquiry into the legality of the claim which a person asserts, to an office or franchise and to oust him from such position if he is an usurper. The holder of the office has to show to the court under what authority he holds the office. It is issued when: i) the office is of public and of a substantive nature; ii) created by statute or by the Constitution itself, and iii) the respondent has asserted his claim to the office. It can be issued even though he has not assumed the charge of the office.

The fundamental basis of the proceeding of quo warranto is that the public has an interest to see that a lawful claimant does not usurp a public office. It is a discretionary remedy which the court may grant or refuse.

Generally speaking, the Article 32 confers powers on any person to approach the Supreme Court of India straight away for a remedy. But it is established in many decisions that a person seeking a remedy under this Article has to exhaust the alternative remedies before approaching the Court through a writ petition. There are number of exceptions to this rule. Article 32 it self is a fundamental right and the remedy cannot be denied on technical grounds when there is a violation of his fundamental right.

If the writ petition filed under Article 226 before any High Court is dismissed, the petitioner cannot file a similar petition before the Supreme Court under Article 32, since the principle of res judicata, i.e., already decided case cannot be re-agitated before the Courts of Law. However this doctrine of res judicata will not apply in the cases of writs of habeus corpus because to secure the personal liberty is a precious thing, and if writ could not be issued directing the physical presence of arrested person in one instance, it can be issued at another point of time. The Doctrine of Constructive Res Judicata also will not apply in case of writ petitions. This principle means, if a pleas is supposed to have been taken up in previous litigation, but that was not raised and decided, the plaintiff is precluded from raising that plea in another petition. This has been incorporated to prevent multiple litigation and to enable the petitioners to consolidate all his claims in one and first petition itself. It is presumed to have been raised and rejected, though in fact they were not raised at all. This constructive res judicata will not be applicable in writ petitions, and petitioners are free to raise a fresh ground seeking the writ. This writ jurisdiction has been incorporated within the fundamental rights chapter, and it cannot be taken away by any statute.

The rights of people are enforced through writs against the state. The state as defined in article 12 includes not only the Government of India, Parliament of India, the Government and the Legislature of a State or a Union Territory, but all local authorities such as Panchayats, Municipalities, and other local self-governing institutions and 'other authorities'. The expression 'other authorities' include all statutory authorities and the state instrumentalities or agencies of the State[72]. Thus the administrative actions taken up by these authorities can be questioned under writ jurisdiction of higher Courts. The Writ Procedure has been used in England since the thirteenth century for purposes of securing human rights of the people. In India the writ procedure was introduced by the Regulating Act 1773, which empowered Supreme Court at Calcutta established by Royal Charter on 26th March 1774 to issue prerogative writs. The Indian High Courts Act 1861 replaced the Supreme Court with High Courts at Bombay, Calcutta and Madras with writ issuing powers. The High Courts other than these Presidency courts were not having writ powers. Section 45 of Specific Relief Act 1877 empowered the three Presidency High Courts to make orders requiring any specific act to be done or forborne within the local limits of their ordinary civil jurisdiction by any person holding a public office or by any corporation or inferior court. 1923 Criminal Procedure Code was amended to confer the power to issue writs on all High Courts. Section 115 of Code fo Civil Procedure 1908 provided that a High Court might call for the record of an inferior court and if there had been absence of jurisdiction or failure to exercise jurisdiction or material irregularity in the exercise of jurisdiction, it could make such orders as it thought fit. This was a provision similar to Cirtiorari.

The High Courts can issue the writs for any purpose. "For any purpose" means for enforcement of statutory or common law right, other than a right qcquired through a contract or under any personal law[73].
Article 227 confers upon High Courts the power of superintendence over all Courts and tribunals in the country. It is not just administrative supervision but also of judicial supervision on all tribunals except tribunals relating to the armed forces.

These writs are generally called prerogative because they are issued by the Sovereign. The expression used in these Articles of Constitution of India 'writs in the nature of' suggest that writs need not be exactly similar to those in England. The power conferred to issue appropriate remedies against illegal legislative as well as administrative acts. The scope of writs under the Constitution is much higher and wider than that of the prerogative writs in England. Our courts can issue directions, orders or writs other than prerogative

[72] Ajay Hasia v Khalid Mujib AIR 1981 SC 487
[73] Calcutta Gas Co Proprietary Ltd v West Bengal 1962 SC 1044

writs. This enables the court to mould the relief to meet peculiar and complicated requirements of this country[74].

In England the Rules of Supreme Court were amended in 1977 to bring in reforms. Liberalization of rules of locus standi, which made it possible to obtain the appropriate remedy in the form of an order through one single proceeding came in through enactment of Supreme Court Act 1981 In India, a petition can be disposed of under whichever provision is more beneficial to the Petitioner. The Courts in India have detechnicalised the writ jurisdiction by introducing various inputs, such as appointment of commissioners, or epistolary jurisdiction (entertaining letters as petition), to facilitate access to the writ jurisdiction[75]. The Constitution of India has assigned the Supreme Court and High Courts the role of custodian and guarantor of the fundamental rights[76].

Azad Rikshaw Pullers Union v Punjab[77] the Punjab Government has come out with a scheme under which only those rikshaw pullers who owned vehicles could obtain licence to the riskhaws. It was challenged. Many rikshaw pullers do not own the vehicles and owners do not pull rikshaws. Several rikshaws were idle. The Supreme Court instead of pronouncing on the Constitutional validity of the Punjab Cycle rickshaw (Regulation of rikshaws) Act 1975, under which the scheme was made, brought about a settlement by which riskhaw pullers obtained loans from a bank, so they could buy the vehicles and repay the loan later through easy instalments. For the purpose of achieving social justice, the Court has enough power to mould the relief and mend the technicalities.
Under article 32 the grant of appropriate remedy is not discretionary but a matter of right. In Fertilizer Corporation Kamgar Union v India AIR 1981 SC 344 Chandrachud CJ said: the jurisdiction conferred on the Supreme Court by Article 32 is an important part of the basic structure of the Constitution because it is meaningless to confer fundamental rights without providing an effective remedy for their enforcement, if and when they are violated.

The basic principle of judicial review is that courts do not sit in appeal over the decisions of administrative authorities. Therefore, courts do not determine, under the power of judicial review, the questions that fall within the jurisdiction of such authorities. The Courts made a distinction between acts that were ultra vires or in violation of the principles of natural justice and acts that were erroneous, though within jurisdiction.

While exercising the powers under Article 32 the Supreme Court expanded the scope of right to life under Article 21 to include several aspects of better

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[74] TC Basappa v T Nagappa AIR 1954 SC 440.
[75] S.P. Sathe, Administrative Law, 7th edition, 461
[76] KK Kochunni v Madras AIR 1959 SC 725
[77] AIR 1981 SC14

living. With the growth of public interest litigation article 32 has become an important site for the vindication of various group human rights.

A rule was gradually evolved as a judicial policy that the court will not entertain a writ petition under article 226 if there was an alternative remedy. It was a rule of policy, convenience and discretion, rather than a rule of law. If the alternative remedy was onerous and burdensome or where the decision of an authority was without jurisdiction or in violation of the rules of natural justice or there was an error of law apparent on the face of record or where the statute under which an administrative order was passed was unconstitutional, the courts granted the remedy under art 226[78]. In 1976 the Constitution (Forty-second) Amendment Act 1976, exhaustion of alternative remedies was converted into a rule of law. Clause (3) was added to article 226 providing that no petition for redress of any injury shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. This provision was subsequently deleted by Constitution (Forty-fourth Amendment Act 1978. However the above clause before its deletion was interpreted to mean that a writ would be non-maintainable only when the alternative remedy was adequate and equally efficacious. The Court is not disabled by this rule and it can give relief under peculiar and special facts.

The law of limitation does not directly apply to writ petitions, but the courts have held that a petition would be barred if it comes to the Court after the lapse of a reasonable time. This is not a rule of law but a rule of practice. In this writ jurisdiction the court is not court of appeal and will not here questions of facts. It does not undertake assessment of evidence to determine questions of facts.

The words 'in the nature of' in article 226 enabled the High Courts to issue interim relief's of the nature of injunctions or stay orders as temporary reliefs until the substantive matters are settled finally.

Exceptions

The Constitutional remedies are not available under Articles 32, 226, 227 and 136 under two occasions. The Parliament has power under Article 33, to determine by law to what extent any of the remedial rights are available against Armed Forces or the forces charged with the maintenance of public order. The right to move the court for the enforcement of fundamental rights can be suspended during a declaration of emergency. The President may under Article 352 by proclamation make a declaration of existence of emergency. In ADM

[78] S.P. Sathe, Administrative Law, 7th edition, 474

Jabalpur v Shivkant Shukla AIR 1976 SC 1207 the Supreme Court by a majority of four against one (Khanna J) held that prima facie valid detention order, was a complete answer to a petition for habeas corpus. This decision was criticized severely while the Khanna's dissent was well appreciated. The emergency provisions were amended by the Constitution (Forty-Fourth) Amendment Act 1978. There cannot be any declaration of emergency on the ground of internal disturbance. Except when internal rebellion is threatened, the emergency can never be declared. Even during emergency, the right to move a Court for the enforcement of the rights guaranteed by articles 20 and 21of the Constitution (regarding rights of a person accused of an offence and the right to personal liberty) shall not be suspended.

The High Courts have the power of superintendence over all courts throughout the territories in relation which it exercises jurisdiction under clause (2) of Article 227. The High Court may call for returns from such courts; make regulations of practice for such courts, prescribes forms in which books, entries and accounts shall be kept by officers of such courts. The power of superintendence includes judicial superintendence also. This power of superintendence should not be exercised when the petitioner has not exercised the alternative statutory remedies. The power of superintendence under Article 227 is wider than the power to issue writs under Article 226 in some aspects, in some other aspects it was narrower.

Under Article 136 (1) the Supreme Court has the power to grant special leave of appeal from judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The Court has been expressly forbidden to hear appeal against any judgment, determination, sentence or order passed or made by any court martial or military tribunal. The jurisdiction under this article is discretionary in nature and supposed to be exercised very sparingly under exceptional and special circumstances.

Generally a person coming to court has to show that he has an interest to protect. He cannot raise a vicarious claim, He cannot agitate the right of a third person or invite the court to deal with an academic or hypothetical question. The principle behind these rules is to prevent spurious claims or speculative litigation or to preserve the time and energy of courts from being wasted. Usually the statutory remedies are available for the persons aggrieved.

Public Interest

There is a distinction between a private grievance and a public grievance. Where public power has been abused and used for private gain, it is public grievance and in such allegations the Courts granted locus standi to a person

who might not be an aggrieved person in the technical sense. As the Supreme Court gave a liberal interpretation to provisions of Part III of the Constitution, the remedial jurisprudence has been expanded. A person or an association of persons now could move the courts to protect the fundamental rights of the victims of social injustice. The test that apply is:

(a) person or persons whose cause was espoused by the petitioner must be devoid of resources in terms of money and knowledge; and

(b) the petitioner himself must not have any personal interest in the matter he is espousing.

Thus the Public Interest Litigation the PIL is now available in following forms:

(a) Courts acted suo moto in response to letters written by persons or organizations on behalf of the victims of injustice

(b) Petitions filed by social action groups or eminent, selfless individuals on behalf of the victims of social injustice, who because of lack of resources such as knowledge and money could not have approached the court, were entertained despite technical inadequacies.

In Hussainara Khatoon v Bihar[79], first time the Supreme Court acted suo moto and dealt the question of undertrial prisoners who were languishing in jails for decades together. Under Cr.P.C. a person's undertrial detention is to be set off from his total period of the sentence if found guilty. But due to enormous delay in judicial process, the under trial detention exceeds the period of sentence prescribed for the offence. The Court held that right to speedy trial was part of article 21 and that was deprived of. In Kadra Pahadiya & Others v Bihar[80] a letter written by a social scientist was positively responded to by Supreme Court. The apex court ordered acquittal of undertrial prisoners who were young boys.

A prisoner wrote to Justice Krishna Iyer from prison cell that another prisoner in his neighbour prison cell was being tortured by police by inserting a baton into his anus. This letter led to a decision in Sunil Batra v Delhi Administration[81].

The Supreme Court also took suo moto action based on a newspaper report about a tragedy in which 25 mentally challenged patients were killed at Ervadi of Tamilnadu, by fire as they could not escape because they were chained

[79] AIR 1979 SC 1360
[80] 1981 SC 939 and (1983) 2 SCC 104
[81] AIR 1978 SC 1675

to their beds or to poles. The Court criticized the governments for non-implementation of Mental Health Act 1987[82].

Because of liberalization of locus standi, the constitutional remedies under Article 32 and 226 have been made available to unfortunate millions of victims, who had no means to approach the courts. Several social organizations and public spirited individuals could agitate for the rights of those down trodden who could have never knocked the doors of justice.

It is in this writ jurisdiction, the scope of human rights, particularly, the right to life under article 21 has been expanded by humanistic interpretation of provisions of constitution against inhuman strict reading by the executive administrators. When Bihar rulers were resorting to repeated promulgamation of Ordinances and their repromulgamation after lapse to avoid the legislative scrutiny but have the benefit of oppressive law, a professor of economics Mr DC Wadhwa raised the question before the Supreme Court, wherein it was held that such repeated promulgamation of ordinance was against the mandate of Articles 123 and 213 of the Constitution[83]. There are some more cases wherein the public interest litigation expanded the remedial jurisprudence.

BodhisattwaGautam v. Subhra Chakraborty[84]

Facts: The Supreme court ordered the accused to pay Rs.1, 000 per month as an interim compensation to the victim of rape during the pendancy of the criminal case.

Ruling: Rape is violative of Right to Life under Article 21 which includes right to live with human dignity. The Supreme Court has the jurisdiction to enforce the fundamental rights against private bodies and individuals and can award compensation for violation of fundamental rights. It can exercise its jurisdiction suo moto or on the basis of PIL

Common Cause, a Registered Society v. Union of India[85]

Facts: The Supreme court held it had committed an error apparent on the face of the record in its previous judgment in holding that a minister committed misfeasance in the public office and directed notice to be issued to him to show cause why police be not directed to register a case and institute criminal prosecution against him for criminal breach of trust or any other offence and awarded payment of an exemplary damages of Rs. 50 lakhs to the Govt. by him.

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[82] Re Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu AIR 2002 SC 979
[83] DC Wadhwa v Bihar, AIR 1987 SC 579
[84] (1996) 1 SCC 490
[85] (1999) 6 SCC 667

The Court now held it to be not sustainable and recalled the same. Ruling: The Council of Ministers shall be collectively responsible to the House of People. This "collective responsibility" under Article 75 has two meanings. First that all members of a government are unanimous in support of its policies and second that the ministers, who had an opportunity to speak for or against the policies in the cabinet are thereby personally and morally responsible for its success and failure.

Merely because a person is elected by the people and inducted as a minister, he cannot be said to be holding a trust on behalf of the people so as to be liable for any criminal breach of trusts.

An order passed by the Minister though expressed in the name of the president, remains that of the minister and it cannot be treated to have been issued by the president personally and such an order is subject to judicial review. The Right to Life as interpreted under Article 21 includes the right to move freely and mingle with fellow beings which is violated if CBI is directed to investigate an offence without a prima facie case.

Bandhua Mukti Morcha v. Union of India[86]

Facts: The Supreme Court entertained a matter concerning release of bonded labor raised by an organization dedicated to the cause of release of bonded labor.

Ruling: The court explained the philosophy underlying PIL as follows: (at 813) "Where a person or class of persons to whom legal injury is caused by reason of violation of a fundamental right is unable to approach the court of judicial redress on account of poverty or disability or socially or economically disadvantaged position, any member of the public acting bona fide can move the court for relief under Article 32 and a fortiorari also under Article 226, so that the fundamental rights may be meaningful not only for the rich and the well to do who have the means to approach the court but also for the large masses of people who are living a life of want and destitution and who are by reason of lack of awareness, assertiveness and resources unable to seek judicial redress.

Ram Prasad v.State of Bihar[87]

Facts: The Court held that the Sathi Land Restoration Act, 1950 was void as it singled out a particular individual from his fellow subjects and visited him with a disability which was not imposed on others and against which even the right to complain was taken away. The Court also held that the Act was highly

[86] (1984) 3 SCC 161
[87] 1963 SCR 1129

discriminatory. The Act sought to nullify a settlement made by the Court of Wards which was in management of the Bethiah Raj, it would appear under political pressure, as it was found on evidence that other settlements of lands belonging to the Bethiah Raj on similar terms had not been proceeded against, or sought to be invalidated.

Ruling: The Court observed that while good faith and knowledge of the existing conditions on the part of a legislature are to be presumed, if there is nothing on the face of law or the surrounding circumstances brought to the notice of the court on which the classification may be reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminatory legislation. In the absence of a reasonable basis for special treatment, there is a violation of Article 14, if an individual is deprived of his right to access to a Court of Law for the vindication of just grievances, a right belonging to every individual.

Hussainara Khatoon (IV) v Home Secretary, State of Bihar[88]

Facts: The case dealt, inter alia, with the rights of the under trial prisoners on habeas corpus petitions which disclosed a shocking state of affairs in regard to administration of justice in the State of Bihar. An alarmingly large number of men and women, children including, were behind prison bars for years awaiting trial in courts of law. The offences with which some of them were charged were trivial, which even if proved, would not warrant punishment for more that a few months, perhaps a year or two, and yet they remained in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. The Court ordered immediate release of these under trials many of whom were kept in jail without trial or even without a charge

Ruling: Fairness under Article 21 is impaired where procedural law does not provide speedy trial of accused; does not provide for his pre-trial release on bail on his personal bond, when he is indigent and there is no substantial risk of his absconding; if an under-trial prisoner is kept in jail for a period longer than the maximum term of imprisonment which could have been awarded on his conviction and if he is not offered free legal aid, where he is too poor to engage a lawyer, provided the lawyer engaged by the State is not objected to by the accused.

Where the petitioner succeeds in establishing his case, the Court would grant him any relief which is necessary to afford proper justice, or to prevent

[88] (1980) 1 SCC 98

manifest injustice regardless of technicalities such as to issue directions to the Government and other appropriate authorities, as may be necessary, to secure to a prisoner his constitutional rights.

The Supreme Court (per Bhagwati J) (at 107, para 10) held that the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to improving speedy trial.

Khatri v. State of Bihar II[89]

Facts: Several petitioners filed writ petitions under Article 32 for the enforcement of their fundamental rights under Article 21 on the allegation that they were blinded by the police while they were in its custody. The question arose whether the Court could order production of certain reports submitted by the CID to the State government and some correspondence between the government and certain officials.

Rulings: The only object of a habeas corpus is to release a person from illegal detention. But even in a proceeding for habeas corpus, the Court is competent to mould the relief as to meet the requirements of a particular case or issue appropriate directions. The Court said that the proceedings under Article 32 are neither 'inquiry' nor a 'trial' for an offence. Neither the Supreme Court is a criminal court nor the petitioners accused persons and so criminal procedural laws are not applicable to the Court's writ jurisdiction under Article 32.

The SC again emphasized that the state governments cannot avoid their constitutional obligation to provide free legal service to the poor accused by pleading financial or administrative inability. A trial held without offering legal aid to an indigent accused at state cost will be vitiated and conviction will be set aside. Providing free legal service to the poor and the needy is an essential element to any "reasonable, fair and just" procedure.

The provision of legal aid is fundamental to ensuring access to courts. This right of the indigent arises from the moment he is first produced before a magistrate. It is at this stage that the accused gets his first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody and so the accused needs competent legal advice and representation at this stage. The accused can also claim free legal aid after he has been sentenced by a court but is entitled to appeal against the verdict. The Court further emphasized that it is the legal obligation of the magistrate or judge before whom

[89] (1981) 1 SCC 635] (the Bhagalpur Blinding case)

the accused is produced to inform him that if he is unable to engage a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state. The Court took the view that the right to free legal aid would be illusory for the indigent accused unless the trial judge informs him of such a right

The Court also urged that the constitutional requirement to produce an arrested person before a judicial magistrate within 24 hours of his arrest be strictly and scrupulously observed.

Sheela Barse v. Union of India[90]

Facts: Ms.Sheela Barse, a dedicated social worker took up the case of helpless children below age of 16 illegally detained in jails. She petitioned for the release of such young children from jails, production of information as to the existence of juvenile courts, homes and schools and for a direction that the District judges should visit jails or sub-jails within their jurisdiction to ensure children are properly looked after when in custody.

Ruling: The Court held that it is the right of a public minded citizen to bring an action for the enforcement of fundamental rights of a disabled segment of the citizenry.

Where the Court comes to a conclusion that the right to speedy trail of an accused has been infringed, the charge or the conviction, as the case may be, shall be quashed.

The Court directed that surprise visits should be paid to the police lock-ups by a judge of the City court appointed by the Principal judge.

The Court observed that children in jail are entitled to special treatment. Children are national assets and they should be treated with special care. The Court urged the setting up of remand and juvenile homes for children in jails.

Thus legal remedies cove a very wide range of solutions to various problems. The remedial jurisdiction is expanded with liberal interpretation of the High Courts and the Supreme Court through their activist approach. While the Constitutional remedies are within the reach of people for whom State Capitals and National Capitals are accessible. The subordinate judiciary is entrusted with responsibility of providing remedial relief at the district level under civil and criminal statutes from where the appeals are available up to the highest courts. It is for the citizens to stake claims for enforcement of their rights. The judicial

[90] (1986) 3 SCC 596

activism is basically the citizen's activism which will transform the remedial system and realize the solutions envisaged by the legislation.

According to the maxim, ubi jus ibi remedium where there is a right there must be a remedy. Hence the law that defines a right has an obligation to provide a forum to seek a remedy and also provide for a remedy. Only in the legal set up the rights get realized and governments will be peaceful. It is the duty of every responsible citizen to bring grievance to the notice of appropriate forum for appropriate remedy.

Basic Structure – A Critique

Questioning regarding the limitation on the Constitution amending power were raised before the Supreme Court since 1951 through Shankari Prasad. The theory of implied limitations and the doctrine of acquiescence formed the bases of minority opinions in Sajjan Singh. However, in Golaknath's Case, fundamental rights were expressly recognized as limitations on the Constitution amending power. In the Golaknath's Case, the Court unfortunately did not have the benefit of academic disquisitions on the distinction between Law and Constitutions, the basis of such distinction being the "criterion of validity". Kesavananda though overtly overruled Golaknath, but as some jurists pointed out, covertly exhumed Golaknath. It will be worth while the intellectually rewarding to examine the Basic Sturcture Doctrine as a Limitation on the constituent or quashi-constituent or constitution amending power of the Indian Parliament. The Indian Supreme Court's judicial craftsmanship manifested through Basic Structure Doctrine, which constituted a legal category of concealed multiple reference which was used by the Supreme Court in striking down constitutional amendments in subsequent years demonstrably to uphold rule of law and through it judicial review and judicial power.

In Smt. Gandhi's case, Basic Structure was interpreted to include democracy in the sense of 'free and fair elections', 'equality in the sense of rule of law'(according to Mathew J. it also includes Article 14, itself a fundamental right) and the 'principle of separations of powers'. Sikri C.J., himself in Kesavananda gave a detailed enumeration of basic features. Till a later court adopts any one of them as a basis for decision, they are only potential erosions of a ration decidendi under the head "Basic Structure". In Minerva Mills case the court added "harmony between fundamental rights and directive principles" as a basic feature. In Chandra Kumar's case the court added judicial power as a basic feature. The Supreme Court in a number of cases consistently held that 'Judicial Review' is a basic feature.

Given the progressive orientation of the Supreme Court, its creative role under Article '41, and the creative elements implicit in the process of determining ration decidendi, it is not surprising that the judicial process has not be crippled in the discharge of its duty to keep the law abreast of the times by the traditionalist theory of stare decisis. However, from the point of view of legal theory, our judicial decisions suffer from insufficient perceptions of the rich jurisprudential insights which have been brought to bear upon classic analysis of the notion of ration decidendi in mature juristic writings.

There are at least two reasons as to why conflict arose between the two wrings of Government (legislature and Judiciary). In the first place, the supremacy of Parliament over Judiciary was sought to be established by means of amendments. Secondly, conflicts arose over the issues of nature and extenet of fundamental rights, particularly the right to property, certering around the question of payment of compensation. In other words, attitudes of the Parliament and those of the court differed sharply over the issue of placing community interest over individual interest.

Kesavananda Bharati case, a historic watershed of seminal importance in constitutional interpretation and its path breaking efforts, has opened up new horizons of judicial review providing the Supreme Court with radically new opportunities for innovative adaptation of its adjudicatory role for addressing the grave challenges that confront the court in its decisional tasks as a guardian of those basic democratic values which lie at the root of free society and civilized people.

The validity of 42nd Amendment Act was the subject matter of challenge before the Supreme Court in the Minerva Mill case. Minerva Mills case too, like to earlier decisions has put it beyond doubt that the Parliament has no constitutional power to alter the basic feature or the Basic Structure of the Constitution.

The Basic Structure concept itself, being in the area of value judgment defies all attempts at a precise definition or delimitation. It embraces within its pervasive sweep a cluster of constitutional values which can merit inclusion within the halo of Basic Structure only if they are basic or essential principles or help in fixing the identify of the Constitution itself. The Basic Structure doctrine need not be an intractable riddle if the socio-economic aspects and the concepts of our constitutional values, as they can be gathered from the Preamble and the text of the Constitution, are used as the guide in judicial determination of such questions.

The Supreme Court upheld Parliament's power to enact 52nd, 26th and 36th Constitutional Amendments, as they were not violative of Basic Structure and reiterated judicial review as a basic feature. But Bommai is an instance where the Basic Structure doctrine was employed to justify an executive action. This is indeed surprising, may be distressing. However, the application of this doctrine to ordinary legislation and executive action is unwarranted and robs the doctrine of its sanctity and vigor.

Justice K. Ramaswamy in S.S. Bola Vs Sardana (A.I.R. 1997 SC 3127 at p. 3170) while reiterating that judicial review as the basic feature upon which hinges the checks and balances blended with hind sight in the Constitution as

people's sovereign power for their protection and establishment of egalitarian social order under the rule of law emphasized that judicial review adjusts the Constitution to meet new conditions and needs. It is the constitutional duty and responsibility of the constitutional courts, as assigned by the Constitution to maintain the balance of power between the legislature, executive and judiciary. The judicial review is a linkage between the individual liberties and social interest, political stability to counterbalance the ultra vires Acts or actions by judicious decisions.

The American doctrine of political question which has been used both by the Supreme Court of U.S. and the dissenting Judges of our Supreme Court in Golaknath and Kesavananda as the overriding consideration for keeping the judicial branch out of the area of the amendment power.

The essence of law is that it binds every one. Constitutionals and judicial review can never achieve success unless they reflect the broad consensus that obtains in the community on basic value held to be sacrosanct. Born and brought up in the Austinian positivistic tradition the Indian Supreme Court in the initial years did not question Parliamentary supremacy. However, during the mid 1960's the Supreme Court embarked on a confrontationist course mainly due to the political instability prevalent. The confrontation then continued till the decision in Kesavanda's case which is a hall mark for judicial accommodation of Parliamentary power, though the Election case was an instance where the judiciary had to take it to the apotheosis primarily to control the naked power of a brute and bind majority in the Parliament. From then on it is a story of mutual accommodation and judicial restraintivism which have characterized the relationship between judiciary and legislature. However, Chandra Kumar's case has reiterated on the one hand limited legislature power as a basic feature and on the other hand unlimited judicial power as par to the Basic Structure. Thus, recent trends are ominous portents of megalomaniacal assumption of power by the judiciary.

IMPLEMENTATION OF DIRECTIVES THROUGH FUNDAMENTAL RIGHTS - NEED OF THE HOUR

From the nature of Fundamental Rights and Directive Principles, it is understood, Fundamental Rights are individual rights, Directive Principles of the State Policy are social rights. Art.13gives teeth to Part III (enforceable) and Art.37 gives importance of Directives in governance of the country even though no teeth is given (non-enforceable). However, both are important. As long as there is no conflict, both should be implemented. But when any conflict between Fundamental Rights of an individual and Directive of society, which interest should be implemented at the sacrifice of the other interest is always a moot point. Here it is important to note that Fundamental Rights are negative rights in the sense that the state should not do some thing in interfering the Fundamental Rights where as Directive Principles are positive rights in the sense that the state should do some thing positively to implement directives.

An attempt here is made to find out the actual position and value of Directive Principles under the Constitution. Three problems generally existed while creating relationship between Fundamental rights and Directive Principles.

Regarding the relationship between Fundamental Rights and Directives, three views are emerged:

The first View:- The first view is that the Fundamental Rights are superior to the Directive Principles. So the directive Principles must give way to the Fundamental rights in case of conflict between the two. According to the Fundamental Rights are sacred and inalienable and are so basic for the human beings that they must prevail over any other part of the Constitution. Another reason for such supremacy of Fundamental Rights over Directive Principles may be due to literal interpretation to the article 37 which declared that the directive Principles are not justiciable i.e., non enforceable.

The second View :- The second view is that Fundamental Rights and Directive Principles are equal in importance. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. In case of conflict, attempt must be made to harmonise them with each other.

The Third View:- The third view is that Directive Principles are superior to Fundamental Rights. This view is based that Directives are Social Rights, Fundamental Rights and Individual rights. Let the societal rights be enforced at the cost of the individual rights.

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Hormonious Construction for Promoting Constitutionalism

Democracy is workable as long as there is a substantial area of shared values and aspirations among the people and where they have the maturity to rise above differences. Once this willingness to 'rub along together' deisappears and differences become irreconcilable, (e.g., with racial or religious divisions), and fragmentation reaches the point of pluralism without a cohesive substrate, then government through democratic participation becomes precious, if not impossible. For it may then not be possible to reach majority decisions and, even if it were, one Section or whether democracy itself is only an intermediate stage in the doom of society, beginning with loss of confidence in a tyrant and ending in anarchy. The answer is that it need not be. The message coming through history is that to break out of the melancholy spiral of power and liberty a way must be found or curbing both rather than promoting either. This, it would seem, is the paramount need of the present age in its quest for justice.

Keeping all these things in view, the framers of the Constitution provided a mechanism to balance the competing interests.

The Indian Constitution is the mansion which was built with four basic pillars i.e., Justice, Equality, Liberty and Fraternity. The conscience of the Indian constitution can be seen through Preamble, Fundamental Rights and Directive Principles. The ultimate goal of the constitution is to achieve "Social Justice".

In the words of Justice Bhagwati, "It is not possible to fit Fundamental Rights and Directive Principles in two distinct and strictly defined categories, but it may be stated broadly that Fundamental Rights represent Civil and Political Rights while Directive Principles embody Social and Economic rights. Both are clearly part of the broad spectrum of human rights"

Our Constitution creates a sovereign Socialist, Secular Democratic Republic, a polity in which every parliamentary majority is subject to constitutional rights. Every individual is its essence. The Fundamental Rights indicate the area of this sanctum sanctorum. Entry in to this area is normally prohibited.

Directive Principles are mandatory injections issued by the founding fathers to successive Governments in this country to achieve certain ends conceived to be good. But the founding fathers could not ignore the elementary maxim of Gandhian Philosophy that means are as important as the ends. So in the compulsory pursuit of the indicated social goals, the state was injected against trespass in to the sacred temple of the individual. The Gandhian relationship of ends and means puts the Fundamental Rights and the Directive Principles in a state of harmony.

At the time of the framing of the Constitution our founding fathers from their experience as well as from history were keenly aware of the fact that the structure of the Constitution would reflect the social realities in the society. that's why even

though the original draft had only one chapter regarding the enforceable rights both individual and social of the citizens, on the doubts expressed by some of the members in the constituent Assembly about the capacity of the society in implementing the rights in social nature the chapter was divided into two parts; one is enforceable (Part III) another is non-enforceable (Part IV). The Part III consists of Fundamental Rights which are enforceable. Part IV consists of Directive Principles to the State Policy which are fundamental in the governance of the country even though they are not enforceable. This original scheme is to be understood in the light of sociological jurisprudence. According too this thought every civilised society at a particular given time has some achieved goals and has achievable goals (jural postulates). Under Indian Constitution Directive Principles to the State Policy are jural postulates at the time of the framing of the Constitution. Until recent past directives were not considered seriously by the courts because of strict legalistic positive approach adopted by them. The recent teleological approach of the court provides basis for the meaningful understanding of the basic human rights. In that direction the scope of right to life and personal liberty under Article 21 was widened to the extent that life means life with human dignity. The apex court started taking Directive Principles to the State Policy as basis for meaningful enforcement of Fundamental Rights. Now the directives of Part IV are not mere directives. They are supplementary and complementary to Fundamental Rights.

The preamble of the Indian Constitution has socio economic revolution which tries to bring about the real satisfaction of the fundamental needs of the society. To implement the constitutional goals set out in preamble, the Fundamental Rights (Part III) and Directive Principles to the State Policy (Part IV) are provided under constitution. Part III consists of Fundamental Rights which are enforceable individual rights. They are justiciable rights. They are also called as negative rights in the sense, the negative obligations on the state are imposed. That means the state should not do something infringing them. If infringed, the Supreme Court, being the protector rights can issue either of the five writs. Where as Par IV consists of Directive Principles to the state policy are fundamental in the governance of the country even though they are not enforceable. They are also called as positive rights. That means the positive obligations are imposed on the state to do something in furtherance of these directives.

The Directive Principles of State policy which are enunciated in part IV of the Constitution are not enforceable by any court but they occupy a unique place of honour in our Constitution., Article 37 of the Constitution provides that the provisions of Part IV shall not be enforceable by any court but that "the principles therein laid down are nevertheless fundamental in the governance of the county and it shall be the duty of the State to apply these principles 'in making laws' Surely, what is fundamental in the governance of the country cannot be any the less important then, say, the rights which are conferred by the Constitution on individuals.

The Directive principles must Act as a beacon light in the making of laws, which means that the laws enacted by our legislatures must strive to achieve the goal envisaged by the directive principles. Indeed, an eminent counsel advanced an argument in the Supreme Court, which was not dealt with by the court in its judgement. That a law which is contrary to or is not in conformity with the principles enunciated in Part-IV must be struck down as unconstitutional.

Thus the Fundamental Rights and Directive Principles are supplementary and complimentary to each other. The Harmonious construction between part-III and Part-IV is the part of Basic Structure of the Indian Constituion.

Thus Fundamental Rights are important for the dignity of Human beings in a civilised Society where as the Directive principles of state Policy are relevant and useful for eradication of poverty through Social and Economic Justice.

Directives are jural postulates and hence depending up on the capacity of the society, directives are to be implemented. In the recent past directives like equal pay for equal work, free and compulsory of primary education etc., are read through Art.21 of the Indian Constitution. This is a healthy trend and the Parliament also passed recently the Education Amendment Bill under which a new Article.21A is proposed to be inserted. The national review committee on working of the constitution also proposed to enlarge the Fundamental Rights. Enlargement of the Fundamental Rights means giving enforcement to Directive Principles. Hence, the need of the hour is implementing directives as far as follows along with Fundamental Rights.

LIBERTY

by V.Sriranjani

(Political Theory: An Introduction, edited by Rajeev Bhargava and Ashok Acharya)

INTRODUCTION

Consider the following sentences-
The BA class wants to have a free period (state of affairs).
I feel free to talk to my teacher (perception).
I am totally free to choose my career (choice).
Even in the 21st century, a substantial part of South Asia's population is not free form the clutches of poverty (denial of material needs)
No country should be denied its freedom (denial of sense of dignity).

Now, let us substitute the term liberty wherever 'freedom' has been used in the above instances. Each of these sentence brings to the fore a different dimension of the concept, defying a single definition of liberty. They also highlight concepts other than liberty-equality, right, justice, etc. How does one then delineate and distinguish the concept of liberty?

MEANING

Let us take the following sentence as an example-'I am at liberty to learn how to drive a car.' To begin with. It means there are no hindrances to your decision. Nobody physically stops you from learning how to drive a car. Second, the existence conditions for learning how to drive a car are available and accessible. So, you would have to have access to a car, a person who is willing to teach you how to drive, streets where it is safe for you to practice driving, etc. Third, and in a certain sense t5his precedes the first two, you have a choice to learn how to drive a car. So, the concept of liberty carries three connotations-the notion of choice, the absence of constraints to make and exercise such a choice, and the existence conditions that enable you to actuate the choice.

EVOLUTION OF THE CONCEPT

Liberty as a concept has been viewed variously by thinkers in various stages of the history of political thought. Each of these views expresses the thinker's understanding of the historical phase in which the concept evolved and is in sync with the larger philosophical outlook of the thinker. Let us understand the views of the various thinkers and see to what extent each of them mirror the three connotations of liberty-choice, absence of constraints, and existence conditions.

Read the following sentence and observe the meanings that it gives rise to –'I am free to take my political theory exam.' Invariably, the first thing that comes to one's mind is that one is not restrained from taking the exam. Now, let us look at the reasons for which one wants to take the exam. Broadly, one wants to take

the exam to clear it and secure career prospects. Two immediate reasons can be stated-first, it is necessary to take the exam if one has to be promoted to the next level; second, if one does not take the exam, one is declared to have failed the paper. So, the fear of failure impels one to take the exam. Let us take the example further. My future security depends on clearing the exam. But I am not prepared for the exam. In this context, If I am at liberty to take my exam and do whatever I can to secure my future, does it include the liberty to cheat in the exam?

It is this understanding of liberty that is put forward by Thomas Hobbes in his fictional state of nature. According to Hobbes, liberty or freedom signifies the absence of all impediments to action that are not contained in the nature and intrinsic quality of the agent. As Hobbes would explain, it is proper to state that the person who is tied with chains wants the liberty to leave, as the impediment is not in the person but in his chains, whereas that cannot be said of one who is sick or lame, because the impediment is in oneself. Fear and necessity, for Hobbes, are the motivating factors in human nature that impel them towards liberty. As he explains, a man sometimes pays his debts only for fear of imprisonment, which because nobody hindered him from detaining, was the action of a man at liberty.

Two issues emerge. One, can the act of one to preserve oneself be justified as an act of liberty even if it violates the safety of another human being (s)? Two, do you think the action of a person based only on fear or necessity is an act of liberty? Would you say that the act of begging due to the fear of starvation or the necessity to eat one square meal a day is an act based on liberty? After all, the beggar is not physically restrained by anybody in the act of begging.

While such an understanding of liberty does take into account the 'absence of constraints' aspect, it totally undermines the notion of choice and does not recognize any kind of moral framework. Going back to our example of wanting to learn how to drive a car, one may want to learn to drive a car as there is no other mode of transport available or because one is coerced into it. However, for it to be a decision based on liberty, the decision has to be based on the fact that one wants to learn or does not want to learn driving. It is the notion of choice that is conspicuously absent in the examples by which we understand Hobbes's view of liberty. The beggar does not have a choice on whether she wants to beg or not. Similarly, a dacoit cannot rob or kill anyone and explain it as an act of liberty to preserve herself/himself.

Hobbes' understanding of liberty, based on considerations of fear and necessity rather than choice, does not make a clear distinction between acts of liberty and acts under the threat of coercion. For choice to be exercised in the exercise of liberty, existence conditions have to exist. Such conditions can include material resources as well as a moral framework. The scope of exercise choice in a moral framework finds place in Locke's understanding of the concept.

Let us reconsider the example of choice cited at the beginning of the chapter-'I am totally free to choose may career.' This basically throws up two points-'no one should dictate to me what my career should be. So, if I want to be

a VJ (video jockey) or a writer, I should not be forced to become an IAS (Indian Administrative Services) officer or do an MBA course. However, my choice of career should not harm anybody. So, I should not choose a career as a thief or murderer.'

It is this view of liberty as choice exercised in a moral framework that comes across in Locke's understanding of the concept. This moral framework is based on the Laws of Nature of which equality is a central tenet. The Law of Nature, according to Locke, is that no one ought to harm another in his life, health, liberty, or possessions. Liberty as a natural right, for Locke is no more than the liberty to do what the Law of Nature allows-in other words, what is morally permitted. For Locke, each individual is free to the extent the exercise of freedom does not violate the tenet of equality. The exercise of liberty should not be at the cost of equality.

Now, what does liberty as a natural right imply for Locke? As a natural right, liberty is a universal right. It is a right held equally by all in the state of nature. It is also a right that is bestowed by nature along with the right to life and property. As a natural right, liberty in innate in human nature, is universal and can be apprehended by reason. As a right bestowed by nature, Locke views it as inalienable. In other words, one cannot waive from one's person the right to liberty. As Locke states, 'Every One... is bound to preserve himself, and not to quit his station willfully; so by the like reason when his own Preservation comes not in competition, ought he, as much as he can, to preserve the rest of Mankind' (Locke 1988: p.271 emphasis added).

As a natural right, liberty precedes civil and political society in Locke's thought. The contract of civil society is drawn to preserve natural rights, including liberty. While the political society regulates liberty, it has no power to constrain it. The Lockean individual is guided by the faculty of reason in the exercise of freedom in conditions that are alterable. So, the Lockean individual will not seek the freedom to want to fly like a bird but will seek the freedom to be heard even if in a minority.

While the moral framework of Locke ensures existence conditions that qualify the 'absence of restraint' and the element of choice, it does not specify ways to bring about existence of conditions to facilitate choice. Let us understand this through the earlier example- I am free to choose my career. In the Lockean scheme, this will amount to the following-Nobody has a right to dictate to me my choice of career. I have as much right to choose my career as any other person. My choice should not harm anybody.

These implications, however, do not take into account restraints on choices that are not natural. Again, going back to the example of a beggar who begs for a living-nobody need have dictated the beggar to choose begging for a living and neither does it harm anyone. Does it mean that the beggar chose to beg as a natural right?

Till now, the concept of liberty or freedom has been discussed basically at the level of the individual. Also, the exercise of liberty is either preserving oneself (Hobbes) or operating within a moral framework (Locke). But neither of these conceptions addresses the hindrances of hierarchy and inequality in the exercise

of liberty. While Locke does consider natural equality as a prerequisite, social inequalities are not addressed at all. It is this hindrance to liberty that is addressed in Rousseau's thought.

Consider the instance that some of us own a vehicle and travel by it in the city. This can have two possible effects. One, it introduces a hierarchy between those who own a vehicle and those who do not. Two, it increases pollution levels that is harmful to all. So liberty here can be understood as liberating the people of the city from the hierarchy and inequality between a few people owing vehicles and those who do not. Liberty is also choosing the right option, in this case, a pollution-free option.

Rousseau considered freedom as a collective venture, and a freeing oneself from selfish motives towards a larger good for the entire group. His conception of liberty liberates human beings from the hierarchical and unjust inequality of society. Rousseau views this inequality as the constraints in the realization of liberty. Unlike Hobbes and Locke, liberty is not a natural right for Rousseau. Liberty for him is liberation from a state of unfreedom which comes into being with the emergence of civil and political society. Constraints on liberty refer to the constraints of one's baser nature that does not facilitate human nature to think of the good of all. Constraints also refer to the inequality in society that does not allow for the exercise of liberty?

A people is liberated only through obedience to law. Law is equated with the expression of the general will of the whole community. The individual in obeying the laws obeys one's own self as the author of those laws, authored by virtue of the capacity of uniting with others in the community. An individual can be free only by being a part of a free people who obey laws.

For Rousseau, one is liberated when one is free of personal servitude. His way out is to make individuals dependent not on other individuals or institutions, but upon the whole community, which protects the goods and persons of every citizen with the united force of all. The individual is liberated from subjection to one's lower nature in uniting with the whole community. As Rousseau states, 'a free people obeys, but it does not serve, it has leaders but no masters; it obeys the laws, but it obeys only the laws, and it is due to the strength of laws that it is not forced to obey man'. It is the understanding of freedom through obedience to law that is captured in the famous phrase of Rousseau in The Social Contract- 'Man is born free, but everywhere he is in chains.'

The element of choice in Rousseau's thought is quite interesting. It appears that he seems to equate choice with the right to choose the right option, where the right option is pre-decided. For example, driving a car can be seen as something that contributes to pollution. Pollution is harmful to all. It can then be decided that the right option is to ride a bicycle rather than drive a car. So, the existence conditions would be tailored not towards conditions that enable them to drive a car but conditions that are friendly to cyclists and pedestrians as also conditions that would check pollution levels and be in the interest of the larger good.

The word freedom may also have a parallel, though simplistic, reference to the idea of pleasure. Utilitarians see a positive correlation between freedom

and pleasure. Freedom is about seeking pleasure and avoiding pain. This is best captured in Bentham's works. Liberty for Bentham is viewed through the utilitarian maxim of 'Greatest Happiness of the Greatest Number'. In this view, the liberty of the rapist or the murderer comes into practical competition with that of the victim.

Let us look at two examples of pleasure giving activities-

(a) Watching sunset is an activity that gives me pleasure. I should be free to watch the sunset.

(b) Taking drugs gives me pleasure. I should be free to take drugs.

Since the utilitarian understanding of freedom does not make any distinction between different kinds of pleasures, there is no different between the kind of pleasure felt under (a) and (b).

There can be four possible reasons because of which one can't endorse such a view of freedom in an unqualified manner. One, such an understanding of freedom is not accompanied by a sense of moral responsibility. The drug addict may indulge in anti social activities that may cause pain to a large number of people. Two, it violates the harm principle-that one's exercise of liberty should not harm the life, liberty and possessions of others-that Locke qualifies his understanding of liberty with. Three, because the pleasure of one person (the drug addict) can cause pain to several people, the utilitarian maxim of the 'Greatest Happiness of the Greatest Number is violated. Four, this understanding though very similar to the Hobbesian understanding of liberty, does not have the sole qualification that Hobbes sets for the exercise of freedom, namely, self preservation. So, the drug addict's freedom to take drugs as it gives him/her pleasure may even be a self-destructive move.

This simplistic understanding of liberty within the utilitarian framework has been fine-tuned to a great extent in the work of Bentham's disciple-J. S. Mill's On Liberty. This view will be discussed in detail in the next section.

- **J.S Mill of Liberty**

Look at yet another example cited in the beginning of the chapter –The BA class wants to have a free period. On the face of it, it appears as a collective decision of the class. Now, there might be a few students (as few as even one student) who may want the lecture to take place. What do you think should be the decision of the teacher? An almost immediate response may be that since a majority of the students do not want the class to take place, the opinion of a few students (or one student) who want to attend the lecture should not be considered. This can generally be justified as a democratic decision. Such a 'democratic decision,' however, is at the cost of suppressing the individual decisions of the students who want to attend the lecture.

The liberty not to have one's individual opinion suppressed by collective decisions of society and state is at the core of J.S. Mill's understanding of liberty.

Mill's views on liberty are based on his understanding of utility ' in the largest sense grounded on the permanent interests of man as a progressive

being'. His essay On Liberty seeks to protect individual liberty from the interference of state and society. He takes the concept of liberty beyond the utilitarian doctrine of Bentham by holding the view that a proper conception of happiness includes freedom as individuality. For Mill, individuality was a prerequisite for the cultivation of the self. This would enable society to progress as each individual is useful in proportion to the extent they differ from the rest.

J.S. Mill qualified utilitarianism with two considerations- (a) in applying the principle of utility, consideration has to be given both to the quality and quantity of pleasure, and (b) utilitarianism need not involve a radical break with traditional morality. Instead, everyday rules of morality can be seen as the utilitarian thumb rule.

It is almost inevitable for conflicts to emerge from these qualifications. After all, it is very difficult to prove that watching a classical dance recital is more pleasurable than eating bhelpuri on the streets (or vice versa). Conflicts can emerge even for Mill's second qualification. Take the statement 'Honesty is the best policy.' One can find arguments as to how this will result in greater pleasure as well as greater pain. Liberty for Mill can be regarded as a principle that mediates such conflicts. Freedom or liberty, for Mill, is also valuable as an end in itself. This is not to say that even a 'wrong' act is to be valued if it is freely chosen. What it indicates is freedom as an essential component of the ideal of individuality. It is by virtue of the freely chosen actions that an individual is regarded as a worthy person.

Mill discusses liberty under three aspects-liberty of thought and discussion, principle of individuality, and limits of authority over an individual's action.

Liberty of thought and discussion is often understood as freedom of expression. It is not just the right of an individual to express an opinion but also includes the right of individuals to hear opinions expressed. So, while freedom of expression is sought to be exercised minimally at the level of an individual, the good derived from the freedom is for humankind at large.

Mill enumerates four reasons in favour of the freedom of expression. They are-

(a) If an opinion is suppressed as against the prevailing notion and the suppressed opinion is right, then humankind stands deprived of its benefit. And, even if it is the prevailing notion that is right, suppression of the 'wrong' deprives humankind of the opportunity to reinforce what is right, suppression of the 'wrong' deprives humankind of the opportunity to reinforce what is right. So, to facilitate the expression of opinions, true or false, that are against the prevailing notions in society, freedom of expression is needed.

(b) In the field of social and political belief, truth rather than being of one view or the other, emerges from the conflict of two or more opposing views. It is only freedom of expression that facilitates the airing out of several views.

(c) Freedom of expression can throw up right views as well as wrong. But even vies that are wrong or false should not be suppressed as they may

contain elements of truth. Such elements of truth may be lost to humankind if freedom of expression is not exercised.

(d) Even prevailing views that are true and right need opposition to reinforce their truth and to prevent themselves from being frozen into inert clichés. Indeed, it is only by being exposed to contradictions that view become reliable guides for action.

According to Mill, it is the clash of views facilitated by the freedom of expression that provides the intellectual impetus for thought, discussion, and progress. Mill is convinced that without such freedom society finds itself enfeebled by dogma. Beliefs held by such a society degenerate into prejudices and opinions lack a rational foundation.

Individuality enables a human being to choose rather than blindly follow accepted modes of behaviour, customs, and practices. There is no pre-decided concept of the 'right' or 'wrong' way of life. The content of 'right' choices depends on the kind of person one is. Mill defends the principle of individuality against governmental interference and social tyranny. The sphere of non-intervention in an individual's life is demarcated by drawing a distinction between self-regarding and other-regarding activities. Self-regarding actions are actions over which the individual is sovereign. Whether an action is other-regarding or is of concern to others depends on whether such action is harmful to others. Now, there can be several instances where the boundaries between self-regarding and other-regarding actions are quite blurred. For example, addiction of an individual to drugs is as much a self-regarding as an other-regarding issue. To counter this, some reading on Mill state that a self-regarding action cannot be viewed as other-regarding if it causes offence, it can be viewed so only if it causes injury. This exempts intervention in self-regarding action on grounds of moral believes as to the appropriate from of social behaviour.

- **Liberty: A Liberal Good**

It is often felt that liberty is a concomitant value of liberalism. As a multifaceted concept, the value of liberty or freedom is present in the writings of even those who are not considered liberals. Of the thinkers we have discussed so far, Rousseau is one such example. Yet another thinker is Karl Marx. Marx's understanding of liberty is through instances of what is not liberty.

Let us go back to our example- 'I am free to choose my career'-to understand the way in which Marx perceives the absence of liberty. Let us be more specific - 'I view myself as a writer and want to choose writing as my career.' Now, let us assume that due to lack of the right material existence conditions, in order to survive I have to work as a factory worker to have a career as a writer would be to realize the writer in myself. My job as a factory worker disables me from relating to myself. In that sense, my own labour confronts my sense of self and alienates me.

According to Marx, what defines human nature is the ability to express creativity. The circumstances that create situations of inability of expression of self are those that deny liberty Marx explains the denial of liberty, what he terms alienation, as a four-stage process. The agent is alienated from the product, from productive activity, one's own human nature and from other human beings. Marx explains this by saying. 'As a result, therefore, man (the worker) no longer feels himself to be freely active in any but his animal functions-eating, drinking, procreating or at most in his dwelling; and in his human functions he no longer feels himself to be anything but an animal.'

Marx's understanding of the term 'liberation' is leading a life of self-realization. Self-realization can be defined as the full and free actualization and externalization of the powers and abilities of the individual. Marx held capitalism responsible for the lack of opportunities for self-realization. He also emphasized, however, that capitalism creates the material bases for another society in which the full and free self-realization of each and every individual becomes possible.

Capitalism hinders self-realization in two ways. One, the formation of desires occurs through a process the individual does not understand and with which one does not identify. Often, one's own desires appear as alien power, not as freely chosen. Two, the realization of desires is often frustrated by lack of coordination and common planning. The aggregate outcome of individual actions appears as an independent and even hostile power, not as freely and jointly willed. The non-identification with one's desires and confrontation of one's self by those desires is what he termed alienation.

CLASSIFICATION NEGATIVE AND POSITIVE LIBERTY

Let us have another look at the example-the BA class wants to have a free period. Now, the students of the class do know that this may mean that they may not cover their course before the exam. This will cost them their marks and affect their future career prospects. Nobody is forcing the class to miss the lecture. Yet, the temptation to have some free time stops the class from doing what it ought to do-attend the class. In this example, no one is stopping the students from bunking the class and in this sense the students in the class are free. On the other hand, if being free is being self-determined and entails control over temptations to take care of real interests, then the students of the class are not free.

It is to explain this distinction that the concept of liberty was classified in 1969 as negative liberty and positive liberty b y Isaiah Berlin in his celebrated work- Two Concepts of Liberty.

- **Negative Liberty**

The term 'negative' in negative liberty indicates injunctions that prohibit acts that restrict freedom. Popularly understood as freedom from interference, the scope of negative liberty is the answer to the question 'Over what area am I master? (Berlin 1969: 121-22),. Berlin further states. 'If I am prevented by others from doing what I could otherwise do; I am to that degree unfree: and if this area is contracted by other men beyond a certain minimum, I can be described as being coerced, or, it may be, enslaved' (Berlin 1969: 121-22). For example, If an

individual who is otherwise qualified to contest elections is prevented by others from doing so by the use of coercion, the liberty of the potential candidate is being infringed. Berlin, however, makes it clear that incapacity to attain a goal is not unfreedom. As he states, 'only restriction imposed by other people affect my freedom.'

Negative liberty rests on two main axioms-

(a) Each one knows one's own interest best. This is based on the assumption of the individual as a rational agent with a capacity to deliberate and make an informed choice.

(b) The state has a limited role to play. This follows from the earlier axiom: with the individual agency foregrounded, the state cannot decide ends and purposes for the individual.

For Berlin (1969), negative liberty as freedom is the opportunity to act, not action itself. As opportunity concept of freedom' it focuses on the availability rather than exercise of opportunity. The central problem with the negative concept of liberty is its indifference to the quality of action. For example, It makes no distinction between being liberated to pursue the occupation of one's choice and the liberty to starve. Indeed, poverty is not always seen as an infringement of freedom in negative liberty.

Two thinkers who illustrate negative liberty in their writings are Frederick Hayek and Robert Nozick. Hayek views liberty as a negative concept, because 'it describes the absence of a particular obstacle-coercion by other men', and it becomes positive only through what we make of it. This is complimented by Hayek's definition of individual freedom as the state in which a man is not subject to coercion by the arbitrary will of another', Hayek does not view negative liberty as exhaustive of the concept of freedom as the postulates a necessary connection between liberty, justice and welfare. He explains this by stating that the conception of freedom under the law rests on the contention that when we obey laws, in the sense of general abstract rules irrespective of their application to us, we are not subject to another man's will and are therefore free.'

In Nozick's conception, the primary threat to liberty is the imposition of obligations to which one has not consented. Liberty is to be safeguard by keeping such obligations to a minimum, leaving the greatest possible scope for voluntary agreements and exchange. The idea that respect for individual liberty requires consent is a necessary condition for all obligations beyond the requirements of minimal framework of rights.

- **Positive Liberty**

The concept of positive liberty proceeds with the idea that each self has a higher self and a lower self. The higher self, the rational self, should attain mastery over the lower self for in individual of a people to be liberated in the understanding of positive liberty. As Berlin (1969) states, 'The positive sense of the word 'liberty' derives from the wish on the part of the individual to be his own master..... I wish to be the instrument of my own, not of other men's acts of will.... I wish, above all, to be conscious of myself as a thinking, willing, active

being, bearing responsibility for his choice and able to explain them by reference to his own ideas and purposes'. It does not just refer to non-interference, but includes the idea of self-mastery where the higher self is in command of the lower self.

Positive liberty is the freedom to do. It is what can be called the 'exercise concept of freedom'. It is exercising and availing of the opportunities while negative freedom is just having opportunities. Unlike negative liberty, positive liberty is open to the idea of directing the individual either by law or an elite. As long as the law directs the individual towards rational ends, it liberates rather than oppresses the individual's personality. Rousseau is a votary of positive liberty when he states that true liberty is in obedience to moral law. He also refers to it as the function of the will of the enlightened people. From a neo-Marxist perspective, Herbert Marcuse also favours a positive conception of liberty. The reason given is that the working class is incapable of seeing its true end and needs to be directed towards liberation by the revolutionary elite.

Positive liberty also includes the idea of collective control over common life Maintaining a pollution-free environment is a collective effort for the common benefit. While this may allow a certain degree of coercion, it is usually justified by the larger good involved.

Many liberals, including Berlin, have suggested that the positive concept of liberty carries with it a danger of authoritarianism. Consider the fate of a permanent and oppressed minority. Because the members of this minority participate in a democratic process characterized by majority rule, they might be said to be free on the grounds that they are members of a society exercising self-control over its own affairs. But they are oppressed, and so are surely unfree.

- **J. S. Mill and Negative and Positive Liberty**

Mill, often viewed as a defender of the negative concept of freedom, compared the development of an individual to that a plant: individuals, like plants, must be allowed to grow, in the sense of developing their own faculties to the full and according to their own inner logic. Personal growth is something that cannot be imposed from without, but must come from within the individual.

Critics, however, have objected that the ideal described by mill looks much more like a positive concept of liberty than a negative one. Positive liberty consists, they say, in exactly this growth of the individual: the free individual is one that develops, determines and changes her own desires and interests autonomously, and from within. This is not liberty as the mere absence of obstacles, but liberty as self-realization.

Wile the emphasis on non-intervention in the life of the individual tends to classify mill as a theorist of negative liberty, the defence of find individuality to facilitate deliberate cultivation of certain desirable attitudes, does not preclude the possibility of understanding Mill as a theorist of positive liberty.

- **Insufficiency of Negative Liberty: Charles Taylor**

While Mill does not limit himself to the negative concept of liberty and Berlin discusses the role of positive liberty as self-mastery that complements the view of negative liberty as non-interference, Charles Taylor points out why negative

liberty may be a necessary prerequisite but not a sufficient condition for freedom. Taylor discusses the two types of liberty as the opportunity concept of freedom (negative liberty) and as the exercise concept of freedom (positive liberty). For Taylor, the concept of freedom is inclusive of the concept of self-realization. This notion of self-realization is unique to each individual and can only be worked out independently. Taylor feels that a pure opportunity concept of freedom is inadequate to attain freedom inclusive of self-realization. As Taylor states, 'We can't say that someone is free, on a self-realization view, if he is totally unrealized,' For example, if you have the potential to sing well, to the extent that nobody goes out of the way to deny you opportunities, your sphere of negative liberty has not been violated. However, you are not liberated till you don't exercise the freedom to realize your potential as a singer.

This exercise of freedom is further qualified. Merely exercising freedom does not lead to the attainment of self-realization. There are certain condition put on one's motivation to qualify the exercise concept of freedom as a quest for the attainment of self-realization. One is not free if one is motivated 'through fear, inauthentically internalized standards, or false consciousness'. So, if you exercise your potential to be a good singer because somebody coerces you, or you think it will elevate your social standing or you think of it as a way to be popular among friends, then the quest for self-realization is a motivated one. Taylor also states that the subject cannot be the final authority on whether one's desires are authentic. This is because others may know us better than we know ourselves.

On the one hand, one has to be cautious that the quest for self-realization, even if decided by the subject, is not motivated by fear or false consciousness. On the other hand, since the subject is vulnerable to having her/his quest for self-realization motivated, the question arise as to who decides the authenticity of the quest for self-realization. One way out is the Rousseauan way, where the 'right' path helps in the realization of one's higher self. This, however, can have authoritarian, totalitarian implications. For, if the subject is to realize a good that is pre-decided by someone other than her/him as consonant with one's higher nature, it is an anachronic situation in which the subject needs to relinquish the freedom to make an independent judgement of the 'right' path to attain freedom.

Taylor acknowledges that the concept of positive liberty, understood in the Rousseauan framework is prone to totalitarian manipulation. However, according to him, the quest for self-realization need not be subject to totalitarian manipulation. The reason given by him is that since each person has his/her original form of realization, nobody can possess a doctrine or a technique to manipulate with a totalitarian intention as such a doctrine or a technique cannot in principle exist if human beings really differ in their self-realization.

- **Liberty: Freedom as a Triadic Relation**

As Gerald MacCallum (1967) pointed out, there is no simple dichotomy between positive and negative liberty; rater, we should recognize that there is a whole range of possible interpretations or 'conceptions' of the single concept of liberty. He explains liberty as a triadic relationship in the following manner–X is free from Y to do or become (or not to do or become) Z. According to MacCallum

– a subject, or agent, is free from certain constraints, or preventing conditions, to do or become certain things. Freedom is, therefore, a triadic relation- that is, a relation between three things: an agent, certain preventing conditions, and certain doing or becomings of the agent. Any statement about freedom or unfreedom can be translated into a statement of the above form by specifying what is free or unfree, from what it is free or unfree, and what it is free or unfree to do or become. Any claim about the presence or absence of freedom in a given situation will, therefore, make certain assumptions about what counts as an agent, what counts as a constraint or limitation on freedom, and what counts as a purpose that the agent can be described as either free or unfree to carry out.

Indeed, as MacCallum says, a number of classic authors cannot be placed unequivocally in one or the other of the two camps. Locke, for example, is normally thought of as the father of classical liberalism and, therefore, a staunch defender of the negative concept of freedom. He, indeed, states explicitly that [to be at] liberty is to be free from restraint and violence from others', But he also says that liberty is not to be confused with 'licence' and can be exercised only within a moral framework (Locke 1988: paras 6, 57). Locke also seems to endorse an account of MacCallum's third freedom variable (Z) that Berlin would call positive, restricting this to actions that are not immoral (liberty is not licence) and to those that are in the agent's own interests (I am not unfree if prevented form falling into a bog.)

LIBERTY AND OTHER CONCEPTS

- **Liberty and Equality**

The concepts of liberty and equality conflict or complement each other depending on how they are defined. The most common reason for the conflict is scarcity of resources and the nature of its distribution. To understand the nature of conflicts between equality and liberty. Let us start with an example. Let us take the example of a family with meager resources to be divided between the education of two siblings, one of whom wants to become a doctor and another an engineer-arguably both incur fairly high expenses. Either the family can divide the resources in an equal way between the two siblings or allow one of them to pursue her/his vocation of choice. However the resources are divided, the values of equality and liberty end up in a relation of conflict.

Liberty and equality conflict with each other when equality is understood as equality of outcome and liberty is understood as freedom to choose. Equality as equality of outcome tends to work as a leveling mechanism. This consequently reduces the freedom of choice by restricting the availability of outcome. In the above example, if the resources are divided into two equal halves, what is achieved is an equal outcome with both siblings having the same amount of resources. This equality is, however, accompanied by the fact that neither can pursue the vocation of their choice. The stress of equality of outcome, thus, is at the cost of the liberty to choose.

Liberty and equality also tend to conflict with each other when either concept is equated with fairness. A fair state of affairs is however very subjective. Any state of affairs can be fair if some arbitrarily believe it to be fair and vice versa. In the example discussed above, giving all the resources to one of the siblings can be seen as fair to the extent that at least one of them can exercise the freedom of choice. The same situation can also be seen as unfair as the other sibling is totally deprived of any share of resources. An equal division between both the siblings too, can be arbitrarily described as fair (as neither is totally deprived of her/his share) as well as unfair (neither is now capable of pursuing the vocation of their choice).

Equality and liberty can also conflict with each other when the practice of one is at the cost of the other. The extent to which liberty is attained can b e gauged by the extent to which a trade-off has taken place with the concept of equality and vice versa. Again, going back to the example above, the liberty of any one sibling to pursue the vocation of her/his choice is in proportion to the extent of equality that is violated by the other sibling's equal share of resources. The liberty of each sibling is violated to the extent that the equal division of resources has limited their choice.

John Rawls, a social contract theorist of the 20th century, attempted to reconcile the values of liberty and equality through his 'veil of ignorance' argument. The motive behind this was as much to secure the inviolability of liberty s welfarist and redistributivist ideals of equality.

Rawls developed a scheme of basic liberties in his work, A theory of Justice. The basic liberties are those that free and equal persons with the relevant moral capacities would choose in what he calls the 'original position'. This original position is a position where individuals divide liberties and resources in society without knowing their placement in society (see the chapter on justice). According to Rawls, these basic liberties consist in freedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person, and finally, the rights and liberties covered by the rule of law. To resolve conflict between various liberties, Rawls suggests that the institutional rules that define these liberties must be adjusted so that they fit into a coherent scheme of liberties. This scheme is secured equally for all citizens. In the Rawlsian scheme, redistribution of resources to bring about equality is qualified by two conditions-that the basic liberties will not be infringed upon and that increase of resources at any level should not be at the cost of the worst-off person.

- **Equality and Liberty: A Complementary Relation?** A complementary relation between equality and liberty also depends on the way they are defined. To examine the possibility of a complementary relation liberty can be understood as being in control of one's life. This implies three thing-

(a) Leading one's life according to one's beliefs, desires and purposes

(b) Being able to examine and revise them

(c) Being able to pursue alternative paths

Equality can be understood as non-discrimination. As non-discrimination, it entails elimination of disadvantages of those who suffer from them, yet are not responsible for them. It entails protection of essential interests that are harmed by such disadvantages. Without an equal opportunity to be liberated, neither equality nor liberty can attain its purpose in totality.

Equality accompanies the concept of liberty in the view of most thinkers. For Locke, natural rights (inclusive of liberty) are regulated by natural law characterized by equality. For Rawls, any method of distribution of liberties or social resources has to conform to the norm of equality.

- **Liberty and Rights**

While there is a strand in Western political thought that equates the concept of right with the concept of liberty (Hobbes; Locke, Nozick), contemporary theory is of the opinion that they are two distinct concepts. The traditional view understood the equation between the two concepts as the idea of having a right to do or be something is the same as the freedom to do or be something. Later, it was felt that while liberty cannot be equated with the concept of right, a right is a liberty in a restricted sense-a liberty that is protected, recognized or allowed by the law (Holmes 1881; Lamont 1946).

The concept of liberty differs with the concept of right in at least three ways.

(a) There can only be a right to something, whereas freedom can be freedom to, as well as, freedom from. One does not have a right from something (this is distinct from a right not to do or be something).

(b) There are degrees of freedom, but not of rights. One can be more or less free, but one cannot have more or less of a right.

(c) Liberty cannot be delegated, transferred or waived unlike a right.

In contemporary theory, Dworkin admits that the concept of liberty can be related to a concept of right in a weak sense. As he explains, someone has a right to liberty if s/he either wants it or if it is good for her/him to have it. But a right to liberty cannot be always sustained in a stronger sense of right. As in, if someone has a right to something, then it is wrong for the government to deny it to her/him even though it would be in the general interest to do so.

THE CONCEPT OF LIBERTY IN INDIA

The term closet to liberty in the Indian tradition is mukti; its connotations, however are entirely other-worldly. Understood either as renunciation or as deliverance from the chain of rebirth, the initial understanding of mukti did not refer to freedom from social restrictions.\

Ideas of modern liberty entered colonial India through three different routes-colonial legal arrangements accompanied by tacit understandings of rights and freedoms of individuals institutional spread of Western-style education, and intellectual influence of Western social thinking. With the rise of the middle class and spread of non-ancestral salaried jobs, freedom began to be expressed in an

individualistic manner. Women were elevated from their hierarchically subordinate position in the joint family to that of a companion. Freedom was also expressed in the religious sphere through the formation of associations. Voluntary associations were also formed for the establishment of educational projects, advancement of women, sports clubs, etc. However, opportunities to form and enter these associations were limited to the upper-caste elites. Two pioneers of freedom from social restrictions in India-Rabindranath Tagore and Raja Ram Mohan Roy-were a part of these elite.

In western India, unlike Bengal, thinkers from lower-caste groups began to use ideas of social freedom to attack caste hierarchy, notably Jyotiba Phule and later, B.R. Ambedkar.

The meaning of freedom came to be located in the everyday life of caste indignities. Freedom had two aspects to it-liberation of lower castes from upper-caste domination, and alternative action with regard to jobs in the colonial administration. The strand remained in a state of potential conflict with the nationalist strand-freedom from colonial rule. By the first decade of the 20th century, the meaning of freedom came to be dominated by the idea of freedom from colonial rule.

Both the strands of freedom found a place in the views of Gandhi. Gandhi adopted the term swaraj as an analogue to the concept of freedom. The very term swaraj carries with it the two main components that it embodies-swa as in 'self and raj as in 'rule' and can be understood as 'self-rule' in two sense-'rule of self' and 'rule over self', Gandhi understood and sought to apply freedom as swaraj in both senses of the term. Swaraj, in the context of the freedom struggle in India, referred to freedom as a constitutional and political demand, and as a value at the social-collective level, It meant not just freedom from British rule, but also freedom from the cultural authority of the West.

It is the understanding of swaraj as 'rule over self' that was highlighted by Gandhi in his work. Hind Swaraj, where he states, 'it is swaraj when we learn to rule ourselves'. Swaraj, in this understanding, is about redeeming one's self-respect, self-responsibility, and capacities for self-realization from institutions of dehumarization. Understanding the real 'self', and the relation to communities and society, is critical to the project of attaining swaraj. Such of an understanding of swaraj advocated that people must continuously strive to create a different set of institutions structures and processes consistent with diverse cultures. Traditions as well as principles of the natural world. Gandhi believed that the development that follows would liberate both individual and collective potentialities guided by the principle of justice.

LIBERTY AND THE INDIAN CONSTITUTION

The Indian Constitution discusses liberty in Part III of the document under Fundamental Rights. These rights are primarily In the form of negative injuctions rather than positive directions to the state. While the rights are fundamental, they are not absolute. Liberty as a principle, is protected not just by the right to freedom and the right to personal liberty, but also by the Directive Principles of State Policy.

While Article 19 of Part III of the Constitution- Right to Freedom- enumerates the various freedoms, Article 21 defines the scope of the liberty principle.

Article 21- worded in the following manner: No person shall be deprived of his life or personal liberty except according to procedure established by law- is the only article in the entire gamut of Fundamental Rights that does not have exceptions or qualifications to its application. In fact, one need not even be a citizen of India to invoke Article 21. In not demanding the criterion of citizenship, the Indian Constitution had elevated the right to life and personal liberty to the status of a human right.

Judiciary in India and Article 21 Statutes do not cover every conceivable case, and even when a statute does control a case, the courts may need to interpret it. Judicial decisions are known collectively as case law. A judicial decision legally binds the parties in the case, and may also serve as a law in the same prospective sense as does a statute. In other words, a judicial decision determines the outcome of the particular case, and also may regulate the future conduct of all persons within the jurisdiction of the court.

It is instructive to note the way courts in India have understood and applied the cocept of liberty. Its multifaceted aspects as mirrored in the application of law facilitate the structure of reality and prevent liberty from being restricted to the abstract realm. The Indian judiciary is replete with instances of case law on the concept of liberty. Through its judgements and observations it has substantially contributed to the expansion of the right to life and personal liberty. The four instances cited below indicate the role of judicial decisions in the expansion of the scope of liberty.

The judiciary initially restricted itself to limiting the concept of liberty to tangible constraints. The Supreme Court in 1963 in the Kharak Singh case pointed out, that 'in dealing with a fundamental right such as the right to free movement and personal liberty, that only can constitute an infringement which is both direct as well as tangible and it could not be that the constitution makers intended to protect or protected mere personal sensitiveness.'

A far more expansive understanding of liberty was visible in 1981 when a Supreme Court judge observed (Francis Coralie Mullin v. Administrator, Union Territory of Delhi) that

The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling (sic) with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extend of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activates as constitute the bare minimum expression of the human self.

The expansive understanding was further reiterated in 1984 in the Bandhua Mukti Morcha case- the scope of Article 21 was broadened by drawing on the Directive Principles of State Policy. The judgement noted-

This right to live with human dignity (as) enshrined in Article 21... must include protection of the health and strength of workers ... of tender age of children against abuse, opportunities and facilities ... to develop in a healthy manner ... in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief.

A holistic interpretation of Article 21 was put forward in 1989 (Ramsharan v. Union of India) where it was held that 'all that gives meaning to a man's life including his tradition, culture and heritage, and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution'. In a 1991 judgement, the Supreme Court went on to include 'the right of enjoyment of pollution-free water and air for full enjoyment of life' under Article 21.

Rights
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(Political Theory: An Introduction
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INTRODUCTION

The individuals have rights and the fact that rights mark important limits on what may be them by the state, or in the name of other conceptions, is now a familiar position in modern political philosophy:

When the founders of the United States stated in the Declaration of Independence that certain rights were inalienable, they were at the forefront of a moral movement that continues to exert a profound impact on society even today. Indeed, at the same time, the French were also developing their own equivalent, the Declaration of the Rights of Man and of the Citizen (1789). Thus, the two most influential political documents of the modern age rake the notion of rights as the central concept upon which their political organization are built.

This chapter attempts to give a comprehensive analysis of rights, kinds of rights, rights
and duties and different theories of rights. Recent developments and issues concerning rights are also discussed.

The interest in rights was not restricted to the 17th and 18th centuries only; the second half of the 19th century also witnessed a major resurgence of interest in the notion of human rights. Issues of rights play a central role in our political life. The civil rights movement from the 1960s onwards took rights as the cornerstone upon which the rebuilding of oursociety was to be based. More recently, issues about rights of women and disadvantaged minorities have been a matter of debate. With the increasing medial advancements, we are now discussing whether persons have a right to die, i.e. euthanasia. Discussions about animals in research and testing are often phrased in terms of animal rights. Sexual choice is discussed in terms of gay and lesbian rights. Human rights have become a major concern in recent times. Thus, discourse about rights has become persuasive in our society. The language of rights has proved to be the most powerful language for moral change in the 20th and early 21st centuries.

Now the question arises: what is a right? Simply speaking, a right is to get 'ones due', i.e. to get what is due to someone as a human, citizen, individual or as a member of a group,etc. To have a right, then, is to be entitled to do something to have something done; for example, to vote, to speak, to avail of healthcare, etc. It is different from obligation, as Hobbes points out -on any occasion you have a choice whether or not to exercise your right. You are not obliged to do what you are entitled to do. For example, it is your right to vote, but you are not obliged to vote; you are free to exercise your choice, to vote or not to vote. While rights and obligations are not the same, they are still connected. Whenever you decide to do what you have a right to do, others have an obligation to let you do it.

But upon what grounds can the claim to have a right be justified? What is it that entitles me and obligates you? The right is conferred and the correlative obligation imposed by a law in a society of which you and I are both members and whose legal system we areboth subjected to. But all rights are not legal in nature, moral rights for example. Thus rights and their correlative obligations are essentially social in character. One has them as a member of a social group, be it a society or a nation. Rights need recognition from society and from the state. Rights, therefore, are claims which can be justified on legal, moral ethical or human grounds.

A right must be justified in the first place as something I have as a member of some social group. Second, what I claim as a right must be something which is necessary for me if I all to play my proper part as a member. Third, my claim to have it as a right is justified only I am able to and willing to respect the rights of the other members of the group.

Rights express a certain kind of relationship between two parties: the right-holder and the right-observers. Rights thus have two faces, depending on whether they are viewed from the perspective of the holder of the right or from those with whom the right-holder is interacting. From the standpoint of the right-holder, a right is permission to act, an entitlement 'to act, to exist. To enjoy, to demand,' But from the standpoint of the right-observers, the right usually imposes a correlative duty or obligation, as I mentioned earlier. This duty can be either negative (to refrain from interfering with the right-holders exercise of the right) or positive (to assist in the successful exercise of the right). Finally, to have a right entails certain responsibilities. This brings us to the distinction between negative and positive rights.

Negative and Positive Rights

Negative rights are rights that entail non-interference from the society at large, For example the right to liberty, life, property, etc. The right to life prevents others from killing me but it does not obligate them to do anything positive to assist me in living my life to the full orto live happily.

Positive rights are rights that impose obligations on other people or the stale to do something for a fuller enjoyment of our rights. For example, the right to health, basic subsistence etc. requires positive interference to do something. But negative rights restrict us from doing something. Negative rights entail only negative obligations of non-

interference; positive rights entail positive obligations on the pan of the right-observer to do something to assist in the right-holders exercise of the right. Rights can be classified in various ways--moral, legal, human rights, etc. or civil, political, social rights. I will now discuss the difference between civil, political and social rights.

Civil, Political, and Social Rights

In contemporary political thought, the term 'civil rights' is indissolubly linked tostruggle for equality of African Americans during the 1950s and 1960s. The aim of the struggle was to secure the status of equal citizen hip in a liberal democratic state. Civilrights are the basic legal rights a person must possess in order to have such a status. Theyare the rights that constitute free and equal citizenship and include personal, political, andeconomic rights. No contemporary thinker of any significance holds that such rights canbe legitimately denied to a person on the basis of race, colour, sex, religion. national origin, and disability .

Until the middle of the 20th century. civil rights were usually distinguished from 'political rights'. The former included the rights to own property, the right to make and enforce-contacts the right to legal recourse and the right to one's religion. Civil rights also covered freedom of speech and of the press; but they did not include the right to hold public office, or to testify in court. The latter were political rights, reserved for adult males.

The civil-political distinction was conceptually and morally unstable insofar as it was used to sort citizens into different categories It was part of an Ideology that classified women as citizens who were entitled to certain rights but not to the full panoply to which menwere entitled. As that ideology broke down, the civil-p lineal distinction began to unravel.The idea that a certain segment of the adult citizenry could legitimately possess one bundle weights, while another segment would have to make do with an inferior bundle, became increasingly implausible. In the end, the civil-political distinction could not survive the company of the principle that all citizens of a liberal democracy were entitled, in Rawls' words, are adequate scheme of equal basic liberties'.

The claims for which the American civil rights movement in the 1950s and 1960s initially fought belong to the first generation of civil rights claims. Those claims included the 18th century set of civil rights- such as the right to legal recourse and to make and contracts-but covered political rights as well. However, many thinkers and activist argued that these first-generation claims were too narrow to define the scope of free and equal citizenship. They contended that such citizenship could be realized only by honouring an additional set of claim, including rights to food, shelter, medical care and employment. This second generation (19th century) of economic 'welfare rights', they argued helped to ensure that the political, economic and legal rights belonging to the first generation could be made effective in protecting the vital interests of citizens and were not simply paper guarantees

Yet some scholars have argued that these second-generation rights should not be subsumed under the category of civil rights. The traditional political and civil rights

can be ecured by legislation. Since the rights are for the most part rights against government transference the legislation needed had to do no more than restrain the executive's own ..... This is no longer the case when we turn to the 'right to work', the 'right to social security', and so forth.

The third generation of claims (20th century) has received considerable attention in current years, what may be broadly termed 'rights of cultural membership'. These include language rights for members of cultural minorities, and the rights of indigenous peoples to preserve their cultural institution and practices, and to exercise some measure of political economy. There is some overlap with the first-generation rights, such as that of religious, but rights of cultural membership are broader and more controversial.

Another classification of rights can be made: on the basis of legal and moral grounds. Let us now distinguish between legal and moral rights.

Legal Rights

Laws differ from ordinary life or moral discourse in that the truth of any legal statement depends ultimately on the acts of certain authorities. Whatever is legal or illegal is so because it was declared so by legal authorities. The ultimate touchstone, therefore, of all legal statements are the acts of these legal authorities. It is because courts have defined terms ina certain manner; whether these agree with the moral meaning is irrelevant.

Legal authorities used the term 'right' to refer to four different properties: the correlate on a legal duty (claim), the absence of duty (privilege or liberty), the capacity to change legal relations (power), and the protection against change in ones legal position (immunity).

Moral Rights

In ordinary language, we use the term 'right' in at least two ways; we say that someone has the right to something, and we also say that someone has a right to do certain things.

In the first instance, the existence of the right concerns the behaviour of someone other than the right-holder, since to say that 1 have a right to something is to say that someone has the duty to act in a certain manner towards me. In the second instance, it is the right-holders behaviour that is in question, and to say that he has a right to act in a particular way is to say that he is morally free to do so-that it is not wrong for him to do so. These two uses of the term 'right' correspond in part to Dworkin's (1977: 188) 'strong' and 'weak' senses of right, respectively.

The standard interpretation of a claim-right is that another person ha the duty to act in a certain way with respect to the 'thing' to which the first person has a right. But does a right to-something merely imply a duty in others or is it a package of normative advantages. Either way, the core idea of right appears to be that an object or interest protected by a duty has some things that are considered to be good, and to say that one has a right to such a thing means that ones interests in that thing deserves protection.

Not all goods or interests generate rights; it is only when there is a particularly important moral reason for protecting the good or interest in question that we speak of there being a right attached to it. This idea is expressed in Dworkin's (1977: 189-90) well-known claim that individual rights are political trumps held by individuals. He goes on to add that to individuals have rights when, for some reason, a collective goal is not a sufficient justification for denying them what they wish, as individuals, to have or to do, or is not a sufficient justification for imposing some loss or injury upon them. The idea is also expressed in Raz's (1995: 166) claim that a right exists if an aspect of a single person's well-being is a sufficient reason for holding some other person or persons to be under a duty. Political theories will differ in their estimate of the importance of certain goods or interests for human beings and therefore in their ascription of particular rights, but the central idea remains that of important interests of individuals protected against wider moral considerations. That is why, according to Hartney (1991), giving rights to the society would simply annihilate any competing individual rights. But he ignores the very important issue of individuals not as atomized entities but as culturally embedded, and the idea of 'good' as rooted in ones culture.

THEORIES OF RIGHTS

We will now discuss different theories associated with the idea of rights. Rights are not only of different kinds but there are various theories on the origin of rights. The first and the oldest theory of rights is the natural rights theory.

The Theory of Natural Rights

The most influential statement on natural rights was given by John Locke in his Second Treatise on Civil Government published in 1690 (repr. 1946). But before Locke, Thomas Hobbes had also propounded a theory of natural rights. Hobbes' idea of natural rights can be traced to his conception of the 'state of nature'. This state is the condition of human life in the absence of organized political authority and government, the natural condition of man in contrast to his artificial condition under a government. According to Hobbes (1946: 80-81), the right of nature or what he calls 'jus Naturale',

> is the liberty each man hath to use his power as he will himself for the preservation of his own nature, i.e. to say his own life, and consequently of doing anything which in his own judgment and reason he shall conceive to be the aptest means.

This liberty is a right to nature because each man has it in the state of nature. It is the only right anyone can have in the absence of a government. But this is not a worthy right because, as Hobbes (1946: 82) later points out, the state of nature is a condition of war where everyone is against everyone, and in which everyone is governed by his or her own reason. Thus , Hobbes concludes that the natural right of every man to everything must be given up as a necessary condition for the establishment of a government and to end the anarchy of the state of nature. All must agree to obey unconditionally one supreme authority. Hobbes, however, retains one natural right and that is the right to life. If the government orders a man to kill himself, he may resist.

John Locke (1946) also thinks of the state of nature as being the condition of humanbeings in the absence of government. But unlike Hobbes, he does not think that it is inherently a state of war. 'Men live together according to reason, without a common superior on earth with authority to Judge between them are properly in a state of nature.'

According to Locke, in the State of nature men are in perfect freedom to order their actions and dispose of their possessions and persons as they think fit within the bounds of the law of nature, without asking leave or depending upon the will of any other man. Healso adds that it is 'a state of equality, wherein all the power and jurisdiction is reciprocal, no one having more than the other'. But this natural freedom is not freedom to do as you like. It is freedom 'within the bounds of the law of nature', The state of nature has a law of nature to govern it. This law teaches all mankind, who will consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions.

Locke speaks of man as being born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature. But what are these rights and privileges? To this, Locke's answer is that every man has a natural right to his life and freedom of action to use his property as he thinks fit, provided that he does not interfere with any other man's enjoyment of the same conditions.

The theory of natural rights has been criticized by many thinkers, but the most vehement critics of this theory are the utilitarians.

The Utilitarian Theory of Rights

The utilitarian theory of rights was outlined by the English philosopher Jeremy Bentham (1748-1832), Bentham was dissatisfied with the aimless and 'unscientific' character of the legislation of his day and critical of the idea that Significant and genuinely reforming, legislation could be based on the traditional idea of 'rights'. He argued that lawmakers should use what he called the 'principle of utility' to construct morally sound legislation. By utility he meant that 'property in any object, whereby it tends to produce benefits, advantages, good or happiness or that which prevents the happening of mischief, pain, evil or unhappiness to the party whose interest is considered-if that party be the community then the happiness of the community; if a particular individual then the happiness of the individual' (Burns and Harts 1970: 14).

Bentham defines the principle of utility as that which commands a state to maximize the utility of the community. The measure of a government is said to be dictated by the principle of utility when it takes care of the greatest happiness of the community, rather than the happiness of some people. He goes to the extent of bringing out a mathematical way of calculating utility to give an air of scientific authority,

Bentham's principle of utility has been persistently alluring to generations of politician policy makers and theorists ever since he promulgated it. It is not only simple, seemingly scientific, and can be given a mathematical formulation, but is also centrally concerned with what we may take to be the core of morality-human welfare. Yet, the principle of utility has been heavily criticized, so that over the years the advocates of that principle have felt the need to modify and redefine it to make it plausible. To appreciate these criticisms consider the interesting theoretical assumptions built into the Benthamite

principle of utility. First, Bentham takes it for granted that each of us can evaluate our own happiness Second, he assumes that this evaluation can also be made by those who are determining policy in a stale. Third, his principle assumes that this evaluation is quantitative, that happiness is something inside each of us that can be measured and represented by a single number, as if it were 'stuff' that came in degrees. Fourth, hi principle assumes that the happiness of each person can be added to the happiness of any other person, allowing us not only to compare the happiness of persons but also to add their 'happinesses' together to get a sum total of 'happinesses'.

It was not long before the assumptions were attacked. Consider the third assumption, that the evaluation of happiness is purely a quantitative matter: can we really measure people's happiness, assuming that happiness is only one kind of thing that comes in degrees but does not differ in kind? Bentham insisted that happiness was not a word that denoted multiple experience or feelings in a human being but only one kind of feeling-the feeling of pleasure. However, John Stuart Mill, himself a follower of utilitarianism, thought that this view was incorrect, since we intuitively think that experiences of 'pleasure' not only differ In quantity but also quality. Mill sympathized with critics of Bentham who contended that the idea that life has 'no higher end than pleasure' was 'utterly mean and grovelling'.

Many people who are attracted led to the principle of utility have argued that we should not abandon Bentham Idea but only redesign it. They argue for a better way of identifying human welfare, such that it can be quantified, measured and aggregated. Moreover, contemporary utility theory, developed by John von Neumann, Oskar Morgenstern and Leonard Savage, has generated a way of doing something like 'measuring' the satisfaction of preferences, so that we come up with a number that accurately reflects how well a person has received what she wants, showing the intensity of those wants. However, these 'measurement numbers', as they stand, cannot be added together as the principle f utility requires.

Critics have argued that such an idea is wrong-and that expected utility theory is misused if it seen as a source for the foundation of a notion of welfare that will be serviceable to the utilitarians. Such critics raised the technical issues about the nature of the 'measurement' of preferences that game theory gives. These sorts of problems have eroded the popularity of utilitarianism in our times. Yet, critics have argued that there are even more serious problems plaguing the theory, having to do with the kind of policy recommendation it would generate if its foundational assumptions could be better clarified and defended. Consider, or example, that the theory tells us to maximize total happiness. Now, if maximizing total happiness depended upon impoverishing some members of the society, the principle of utility would nonetheless tell us to do so. Yet, this intuitively strikes us as unfair.

Some people have actually put forward a moral theory called intuitionism. According to this view, we have fundamental moral ideas within us that are the source of our conceptions of justice and to which any adequate moral conception must answer. However, such a theory has not proven popular: first, it has no resources within it to systematize or interpret intuitions if they come to us in an inchoate form. Second, it has no theoretical resources to prioritize among intuitions or decide between them when they conflict. Third, and perhaps most important, given that many intuitions held by people reflect the prejudices, injustices and peculiarities of their culture, intuitionalism must be

able to identify which intuitions should be morally relied upon-and yet it does not have the theoretical resources to do so. Hence, philosophers critical of utilitarianism have attempted to formulate alternatives to intuitionism that could not only show the failure of the principle of utility in a way that relies less on intuition but also yield a satisfactory conception of justice based on reason. The most prominent of these attempts, by John Rawls, is the topic of our next section.

John Rawls on Rights

John Rawls A Theory of Justice (1971) is the most influential contemporary work on rights. For Rawls, what is directly relevant for social ethics and justice is the individual's means to pursue their own ends to and to live whatever 'good life' they choose for themselves. Rawl's vision of the just state is deeply egalitarian in spirit. His argument makes use of the idea of a hypothetical social contract, applied not to the nature of the state's authority over the people but to the nature of justice. We are, says Rawls, to imagine ourselves in a contract situation in which we must agree with all those people who will live with us in a society based on the principles of justice that will govern it. He argues that any principle of justice that results from this hypothetical agreement process should be understood to be the best defensible conception of justice available to us.

Rawls also believes that the contract takes the individual seriously. He was greatly influenced by Kant, who seems to think that the idea of contract acknowledges the way in which people should be treated as 'ends' in themselves and not solely as 'means'. A social contract test of political policies is, in Kant's view, a way to secure that acknowledgement by hypothetically involving each member of the society in the assessment of those policies in a way that respects her interests and perspectives as an individual.

Rawls also believes that a contract test takes the individual seriously in a way utilitarianism does not. Rawls argues that in the utilitarian calculation the boundaries of the individuals are merged, and what is morally important about them -i.e. their welfare- is aggregated together. Instead of endorsing a moral reasoning procedure that explicitly conflates individuals, Rawls argues that an adequate theory of justice must morally respond to and preserve the 'distinction of persons'. Rawls' theory of justice as fairness consists of the two principles.

> **First** principle: 'Each person is to have an equal right to the most extensive liberty compatible with a similar liberty for others'.
> Second principle: 'Social and economic inequalities are to be arranged so that they a both (c) reasonably expected to be in everyone's advantage and in particular, to the advantage of the least well-off persons; and (b) attached to positions and offices open to all.'

Rawls' arguments have been attacked by many critics. There have been right-wing and left-wing attacks. On the right, critics have charged that Rawls has failed to acknowledge the proper role that effort, merit and responsibility should have in the distribution of resources. Why should people receive roughly equal allotments when some work harder than others when some invest more wisely than others, or when some are lazy and fail to contribute effectively to the community? They claim that a system of

distributive justice that ignores differences in effort undermines individual responsibility, promotes sloth and allows the lazy to free ride on the efforts of the industrious in a way that will likely lead to social unrest eventual diminishment of the economic pool. Now, if it produces the latter results, own theory would disallow that distribution, because in this situation giving more industrious is justified in order to increase the economic pool and to yield more for everyone. Hence, he would allow unequal distributions in order to forestall a drop in productivity. In contrast, he would not allow them if the economic pool were increased but people to benefit from the increase were the most advantaged.

Rawls' right-wing critics would object, however, if the more advantaged by virtue of creating those increases are allowed to enjoy their share of the increased economic pool even that adds to societal inequality. On the left, critics have pointed to Rawls' willingness to depart from strict equality of holdings and some have wished for a conception of equality that focuses more on the equality of people's welfare than the equality of their resources. The critics from the left have also been troubled by his failure to incorporate more fully the idea of personal responsibility into his theory.

The Libertarian Theory of Rights

Surely after the publication of Rawls' book, Robert Nozick's published Anarchy, State and... 1974), which is in some respect a libertarian reply to A Theory of Justice. Nozick argues against what he call 'patterned' and 'end-state' conceptions of justice, The former as conceptions of Justice that seek to implement a distributive scheme according to some patterning principle. The latter are conceptions that seek to attain a certain kind of telos, or via a certain distribution of resources.

What is important in Nozick's view is the idea that each individual has certain rights particular, certain property rights that are 'absolute' in character in the sense that no amount of good accruing to the community generally or to other individuals can justify the arrangement or overriding of these rights.

Nozick's ultimate concern is with the way end-state and patterned conceptions of Justice interferes with liberty. Hence, he argues for a historical conception of justice, on which he the theory of rights. Nozick's particular version of historical principle is what he calls entitlement theory of justice' which consists of three principles:

1. A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
2. A person who acquires a holding in accordance with the principle of justice in transfer from someone entitled to the holding is entitled to the holding.
3. No one is entitled to a holding except by repeated applications of (1) and (2),

In addition to these principles, Nozick also endorses a principle of rectification that would provide for the redressal of past injustices. But this conception of justice essentially entails defence of the free marker and the capitalist system. His argument is a way of defending the free market insofar as it realizes justice by respecting the liberty of the individual regardless of its effects on aggregate welfare and regardless of its economic implications.

There have been many criticisms of libertarian views in general and Nozick's version of libertarianism in particular-some of them passionate. The most obvious and popular criticism has been of the libertarian notion of rights: for why should we think that morality demands that we accord people such absolute rights? How could rights be thought to trump so decisively all considerations of others' welfare in the community? Moreover, what if the economy flourishes better if the state interfered in the market economy? Libertarians may not allow it, and yet most citizens and firms might actually want it and even demand it, insofar as they believe they will be better off with such governmental interference.

HUMAN RIGHTS

Human rights are international moral and legal norms that aspire to protect all people everywhere from severe political, legal and social abuses. Examples of human rights are theright to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured and the right to engage in political activity. These rights exist in morality and in law at the national and international levels. They are addressed primarily to governments, requiring compliance and enforcement. The main source of the contemporary conceptions of human rights is the Universal Declaration of Human Rights (1948) and the many human rights documents and treaties that have followed in its wake.

The philosophy of human rights addresses questions about the existence, content, nature, universality and justification of human rights. The Universal Declaration of Human Rights (UDHR) sets out a list of over two dozen specific human rights that countries should respect and protect. We may group these specific rights into six or more families: (i) security rights that protect people against crimes such as murder, massacre, torture and rape; (ii) liberty rights that protect freedom in areas such as belief, expression, association, assembly and movement; (iii) political rights that protect the liberty to participate in politics through actions such as communicating, assembling, protesting, voting and serving in public office (iv) due process rights that protect against abuses of the legal system such as imprisonment without trial, secret trials and excessive punishments; (v) equality rights that guaranteeequal citizenship, equality before the law and non-discrimination; and (vi) welfare rights (or 'economic and social rights') that require the provision of education to all children protections against severe poverty and starvation. Another family that might be in included is group lights. The UDHR does not include group rights, but subsequent treaties do. Group rights include the protection of ethnic groups against genocide and the ownership by countries of their national territories and resources.

The general idea of human rights can be explained by setting out some defining features. It answers the question of what human right are with a general description of the concept rather than a list of specific rights. Two people can have the same general idea of human rights even though they disagree about whether some particular rights are human rights.

Human rights are political norms dealing mainly with how people should be treated by their governments and institutions. They are not ordinary moral norms applying mainly in interpersonal conduct (such as prohibitions of lying and violence). As

Thomas Pogge (2000) puts it, 'to engage human rights, conduct must be in some sense official'. But we must becareful here since some rights, such as rights against racial and sexual discrimination are primarily concerned to regulate private behaviour. Still, governments are directed in two ways by rights against discrimination. They forbid governments to discriminate in their actions and policies, and they impose duties on governments to prohibit and discourage both private and public forms of discrimination.

Not every question of social justice or wise governance is a human rights issue. For example, a country could have too much income inequality, inadequate provision for high education, or no national parks without violating any human rights. Deciding which norms should be counted as human rights is a matter of some difficulty. And, there is continuing pressure to expand lists of human rights to include new areas. Many political movements would like to see their main concerns categorized a matter of human rights, since this would publicize, promote and legitimate their concerns at the international level A possible result of this is 'human rights inflation', the devaluation of human rights caused by producing too much bad human rights currency.

SOME RECENT DEBATES ON RIGHTS

Communitarian Perspectives

Communitarians critique the earlier discussed notions of rights on the ground that they take the 'individual' as the unit for the distribution of resources. Communitarians argue that the 'individual' is not an abstract category but is deeply embedded in his/her culture. Thus, they assert that the 'community' or 'group identify of an individual should be takeninto account, rather than the 'individual'. For many communitarians, the problem with liberalism is not its emphasis on justice, nor its universalism, but rather its individualism. According to this criticism, liberals base their theories on notions of individual rights and personal freedom, but neglect the extent to which individual freedom and well being are only possible within a community. Once we recognize the dependence of human beings on society, our obligations to sustain the common good of society are as weighty as our rights to individual liberty: The central argument of Michael Sandel's book, Liberalism and the limits of Justice (1982: 183) is that liberalism rests on a series of mistaken metaphysical and meta-ethical views, for example, that claims of justice are absolute and universal; that we cannot know each other well enough to share common ends, and that we define our personal identity independently of socially given ends. Hence, communitarians argue, the liberal 'politics of rights' should be abandoned for a 'politics of common good'.

Many communitarians agree about the importance of rights and justice, but they claim that liberals misinterpret justice as an ahistorical and external criterion for criticizing the ways of life of every society. Utilitarians, liberals, egalitarians and libertarians may disagree about the content of Justice, but they all seem to think that their preferred theory provide a standard that every society should live up to. They do not see u as a decisive objection that their theory may be in conflict with local beliefs-this is sometimes seen by liberals a the point of discussing justice-it provides a standpoint for questioning our beliefs and for ensuring that they are not local prejudices. As Dworkin (1985: 219) puts it,

... in the end political theory can make no contribution to how we govern ourselves except by struggling against all the impulses that drag us back into our own culture towards generality and some reflective basis for deciding which of our traditional distinctions and discriminations are genuine and which are spurious.

Michael Walzer (1983) argues that this quest for a universal theory of rights is misguided. The only way to identify the requirements of rights and justice is to see how each particular community understands the value of social goods. A society is just if it acts in accordance with the shared understandings of its members, as embodied in its characteristic practices and institutions. Hence, the identifying principle of rights and justice is more a matter of cultural interpretation than of philosophical argument. Walzer asserts that the shared understandings in our society require 'complex equality', i.e. a system of distribution that does not try to equalize all goods, but rather seeks to ensure that inequalities in one 'sphere do not permeate other spheres. However, he acknowledges that other societies do not share this understanding of justice and for some societies justice may involve virtually unlimited inequality in rights and goods.

Multicultural Perspectives on Rights

One of the central theoretical and practical conundrums of our age is the problem of reconciling the aspirations to political equality with the fact of social and cultural differences within liberal democratic states. The liberal democratic state is increasingly being challenged both by theorists of democratic equality and by political movements to recognize that the ideal of universal citizenship in which each person is treated with 'equal concern and respect' can no longer be easily identified with a programme of uniform rights. They assert that the ideal of universal citizenship is based on the conception of equality as 'difference- blindness', which multiculturalists argue is 'formal' and not 'real' in nature. Real equality, according to the theorists of multiculturalism, is ensured not through 'uniformity of treatment' but by keeping in mind their social and cultural location.

Many defenders of group rights for ethnic and national minorities insist that they areneeded to ensure that all citizens are treated with genuine equality. According to this view the accommodation of difference is the essence of true equality, and group-specific rights are needed to accommodate our differences. Proponents of individual rights respond that individual rights already allow for the accommodation of differences, and that true equalityrequires equal rights for each individual regardless of race or ethnicity. But some minority rights eliminate-rather than create-inequalities. Some groups are unfairly disadvantaged in the cultural marketplace, and political recognition and support rectify this disadvantage. Kymlicka (1989a, 1989b) gives the example of the national minorities, the viability of their societal cultures may be undermined by economic and political decisions made by the majority. They could be outbid or outvoted on resources and policies that are crucial to the survival of their societal cultures. The members of majority culture do not face this problem. Given the importance of cultural membership, this is a significant inequality,which becomes a serious injustice if not addressed. Any plausible theory of rights should recognize the fairness of protection for the minorities. Giving minority rights to members of minority cultures may eliminate the disadvantages faced by them. Group-differentiated rights--such as territorial autonomy, veto powers, guaranteed representation, land claims and language rights-can help rectify these disadvantages by alleviating the vulnerability of minority cultures to majority decisions. Given that it is important for minorities to preserve their culture and their differences,

they demand special rights that are essential for preserving their culture. Is giving special rights to some people not against the idea of equality? Should all minorities be granted group-differentiated rights? What if by giving group-differentiated rights the minorities demand a separate state for themselves? What will happen to national integration? These are some important issues that come up, but which are beyond the scope of this discussion.

Although multiculturalism has found many supporters, there are problems within it regarding women's rights, since most cultures endorse and permit control over women by men Also, multiculturalism would pose a challenge to the liberal notion of nation-state, i.e. it may lead to cessationist movements like the one in Kashmir and the North-East in India, Tamils in Sri Lanka, etc. Either way, the apprehensions are well founded and deserve serious consideration. We need to examine whether communities should be given special rights to preserve their culture. Should they have the right to protect all prevalent practices? Are all existing practices crucial for preserving a particular way of life? Should there be some minimum conditions that all cultures must adhere to? These are important questions that need to be analysed further within the framework of multiculturalism-in this regard it is important to consider the issue of intra-group equality, too.

Multiculturalism has raised important questions about the status of minorities within the nation-state. They have revealed the other side of the so-called neutral politics of liberal democracies as being biased against minorities. Above all, it has compelled the liberal democracies to analyse the implications of their socio-cultural policies, to see if they discriminate against minorities. Multiculturalism, like postmodernism, has raised questions about universals. It has raised a finger on one standard, i.e. Anglo-American conception of rights, justice, equality, good life, value system and meanings. Multiculturalists say that a society with strong collective goals can be liberal, provided it is also capable of respecting diversity, especially when dealing with those who do not hare its common goals, and also offer adequate safeguards for fundamental rights. There will undoubtedly be tensions and difficulties in pursuing such goals, but such a pursuit is not impossible. The sense of multiculturalism as it is debated today has a lot to do with the imposition of some cultures on others, what they intend to fight is forced assimilation.

As Bhikhu Parekh (2000) asserts, in multicultural societies, cultural communities generally demand various kinds of rights they think they need to maintain their collective identity. Some of these rights, usually called group, collective, or communal, are not easy to accommodate within liberal jurisprudence and raise difficult questions such as whether the concept of collective rights is logically coherent and what kind of collectivities may legitimately claim what kinds of rights.

Just as individual rights are those rights of which the individuals are the bearers, collective rights are those of which human collectivities are the bearers. Human collectivities are of several kinds, ranging from groups united by transient or long-term common interests to historical communities based on a shared way of life.

The Feminist Challenge

According to feminists, justice should be understood from a 'group' perspective, a groups or communities play a crucial role in shaping one's perspectives on justice. Feminists believe that social or political systems based on the individual perspective of justice are highly biased because they are shaped by the dominant individual male and not by women or other marginalized groups. Thus, such political and social system of domination, such asthat of men over women or of the privileged over marginalized groups, can distort society so severely that none of the theories of justice will prove acceptable unless these systems of oppression are overturned. The feminists argue that if women live in a society where they are not allowed to hold certain forms of property or vote or engage in certain occupations, then merely distributing resources in some kind of 'equal' fashion will not be enough tosecure justice. Greater resources do not solve or ameliorate the fact that in such a society women are partially mastered .

Susan Moller Okin's Justice, Gender and the Family (1989) offers both a critique and a reconstruction of Rawls' original position as an analytic tool used to define workable standards of justice for liberal democratic societies. She says that Rawls' own characterization of theoriginal position, despite its occasional claims to gender neutrality, in fact contains many implicit assumptions that would tend to reinforce the current inequality of women in the gendered structure of social institutions. Rawls' characterization of parties to the original positions as heads of families and as member of the paid workforce suggests an implicit assumption that the parties are the male heads of relatively traditional families. Okin argues that the social structure of gender relations and the nature of family certainly raise issues of justice. In a society where domestic labour is performed mainly by women, women's inequality in other spheres is virtually assured. The equal value of political liberties is out of reach in a gender-structured society, because involvement is time consuming and women who bear responsibilities for domestic labour have little time for political activities as it imposes the constraint of a 'double workday' on them. Finally, the most important argument is that the primary goods for the social basis of self-esteem are less sure for girls than for boys. The consequences, Okin (1987: 107) contends, is that 'in a gender-structured society there is such a thing as the distant standpoint of women and ... this standpoint cannot be adequately taken into account by male philosophers', whose moral reasoning abstracts from gender altogether.

Iris Marion Young (89:258) in her widely cited article argues that 'the ideal of universal citizenship' contains three meanings of universality: The first-universality as inclusion of all in full citizenship status and in participation in public life-this stands in tension with the other two meanings of universality, i.e. universality as a focus on the common good, defined in terms of what citizens share rather than what divides them; and universality as al treatment, defined as same treatment without regard to group differences. Young says that a genuine commitment to universality in the first sense will require a conception of differentiated citizenship both with respect to deliberation about the common good and with respect to the allocation of rights Young's critique is aimed directly at the republican tradition. She acknowledges that contemporary republicans emphasize on what citizens have in common. This undermines the differences between groups. Different social groups have different needs, cultures, histories, experiences and perceptions of social relations, which influence their interpretation of the meanings and consequence of policy proposals, and the form of their political reasoning. These difference in political interpretation are not merely or even primarily a result of differing or conflicting interests because groups have differing interpretations even when they seek

to promote justice, and not merely their own self-regarding ends. Thus, a genuine commitment to the inclusion of all in public deliberationrequires that differences be not suppressed but acknowledged and respected. The best way to do this is to establish special forms of representation for disadvantaged groups that ensure that these groups have the resources needed to organize themselves, and theirperspectives are seriously considered in public decisions.

The attempt to realize an ideal of universal citizenship that finds the public embodying generality as opposed to particularity commonness versus difference, will tend to exclude to put at a disadvantage some groups even when formally they have an equal citizenship status. The idea of the public as universal and the concomitant identification of particularity with privacy make homogeneity a requirement of public participation. All citizens shouldassume the same impartial general point of view. Young criticizes the view of universal citizenship on the grounds that societies have certain privileged groups and some oppressed groups, and in such a situation to leave behind particular affiliations and to adopt a general of view would mean that the interests of the privileged will dominate. Thus, instead of universal citizenship in the sense of this generality, Young proposes 'a group differentiated citizenship' and a heterogeneous public.

A liberal theory can accept special rights for a minority culture against the larger community so as to ensure equality of circumstances between them. But it will not justify special rights for a culture against its own members. Liberals are committed to supporting the right of individuals to decide for themselves which aspects of their cultural heritage are worthy passing on. Liberalism is committed to the view that individuals should have the freedom and capacity to question and possibly revise the traditional practices of their community would they come to see them a no longer worthy of their allegiance.

CONCLUSION

To sum up this discussion, there is no intrinsic reason to assign rights to individuals alone, for if individual are incomplete without the cultural resources that communities provided there individual rights are incomplete without community rights. But we cannot buy peace between the communities at the expense of individuals. Thus, we need to think of community rights as conditional rights. But these cultural rights should not override the core rights i.e. the right to life, freedom, equality, and the right to assert rights.

JUDICIAL GOVERNANCE AND JUDICIAL ACTIVISM
(From the book "Before Memory Fades" by Fali S Nariman)

That sometimes some men and women who sit on the bench are not conscious of the extent (or limits) of such power, or do not have the sensitivity to exercise judicial restraint when warranted, only means that those (few) men and women are just not equal to the supremely difficult task of judging entrusted to them under the Constitution. It only indicates that perhaps it is time we adopted a better method of selection of judges for our higher judiciary.

After reminiscing about some judges, I cannot avoid a topic uppermost in the minds of many citizens: 'judicial governance'. The more pejorative simile is 'judicial activism'. Ronald Dworkin, a great academy jurist, has a theory about the legitimacy of judicial governance. Present day judges , he says, who may have had nothing to do with the written Constitution when it was framed, by reason of their position as judges, become and must act like partners with the framers of the Constitution in an ongoing project it is and will always be ongoing project to interpret a historical document in the best possible light.

Dworkin has invoked the idea of a constitutional conception of democracy wherein judicial review occasioned by a charter of rights ensures the democratic pedigree of legislation by benchmarking the values found in the content of law, making. For Dworking, 'statistical democracy' mere majority rule has to be complemented by 'communal democracy' where political decisions must treat everyone with equal concern and respect, and 'each individual must be guaranteed fundamental civil and political rights'.

In the early 1980s, on the occasion of the twenty-fifth anniversary of the Charter of Rights in the Canadian Constitution, a spate of articles appeared in foreign journals. Amongst them was on e published in the Oxford Journal of Legal Studies, in which, a professor of Queen's University, Kingston, Ontario, offered a critical review of a recently published book called *A Common Law Theory of Judicial Review: The Living Tree?* The author covered a broad range of disciplines - law, philosophy, political theory, constitutional theory and special interest - in his dissertation about the role of unelected judges in a democracy- particularly the role of the Supreme Court in shaping constitutional policy. The author sought to resolve the impasse over the question of judicial review of written Constitutions. He described two groups - one group which upheld, and the other, which criticized the Canadian Charter of Rights - he called them

the' *boosters'* and the *'bashers.* For the 'boosters: the rigidity of the Constitution was what made it valuable (he said); for the 'bashers, this was one of the chief ills of a written Constitution!

Yet, according to the author of the book, neither approach is true of Constitutions. A written Constitution, he says, should be viewed as a 'living tree' with 'roots' in precedent and in the community's constitutional morality - a tree that has 'branches' and grows over time through evolving common law jurisprudence. The author (W. J. Waluchow) makes a convincing case of how this enables an approach to constitutionalism that is both authoritative and flexible. He says that the protection of rights must be left to traditional institutional mechanisms, which is necessarily the *unelected* judiciary.

All judicial review - all manner of adjudication by courts - is itself an exercise in judicial accountability - accountability to the people who are affected by a judge's rulings (if the punitive contempt power is kept well in check). That accountability gets evidenced in critical comments on judicial decisions when judges behave as they should (as moral custodians of the Constitution); the function they perform enhances the spirit of constitutionalism. My only regret sometimes is that some of our modern -day judges - whether in India or elsewhere - do not *always* realize the solemnity and importance of the functions they are expected to perform. The ideal judge of today, if the is to be a constitutional mentor, must move around, in and outside court, with the Constitution in his pocket, like the priest who is never without the Bible (or the Bhagavad-Gita). Because, the more you read the provisions of our Constitution, the more you get to know of how to apply its provisions to present-day problems.

The Supreme Court of India came into existence simultaneously with the Constitution - on 26th January 1950. In 1954, one of its first judges (Justice Vivian Bose) described, in elegant prose, what the constitutional provisions meant (and should mean) to the justices:

> We have upon us the whole armour of the Constitution and walk henceforth in its enlightened ways, wearing the breast plate of its protecting provisions and flashing the flaming sword of its inspiration.

The 'flaming sword' that Justice Bose contemplated is in Article 142 of this Constitution. It empowers the Supreme Court in exercise of its jurisdiction 'to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it'. No other court in the country has this power. It has conferred this power deliberately on our highest court to stress the obvious viz. that the fount of justice under our Constitution is the apex court; that when on some rare occasions enacted law diverts the true course of justice, power is vested in the Supreme Court and

in the Supreme Court alone, to make such orders as are necessary for doing complete justice. This is what the framers of our Constitution originally intended. This is the trust that the founding fathers placed in the justices of our highest court. My regret is that the justices of the highest court have, over the years (except for a flash - in - the- pan decision of the year 1991),[4] refused to accept the onerous responsibility placed on them, and have said - taking shelter under enacted law - that nothing can be done even by the highest court where the *law stands* in *the way - justice (they now say) must pay obeisance to* enacted law," All very well in legal theory, but hopelessly wrong in conception. The only reason why this power was reserved, only to be exercised by the justices of the highest court was because they, above all others, were to be trusted more than any other judge in the entire country; they could not be expected to do wrong. This was the faith that the Constitution had in the justices of the Supreme Court - a faith unfortunately not shared or reciprocated by later justices of the Court in themselves!

Students and votaries of law (all lawyers and judges are students and votaries of law) should not pay lip service to 'statistical' democracy, which is the making of laws by elected legislatures elected on the basis of universal adult franchise, but to welcome with confidence 'judicial governance'. Consider for a moment the Constitution of India, 1950. It is a detailed document, defining the three great organs of state: Parliament and state legislatures; the executive, central and state; and the higher judiciary (the high courts and the Supreme Court).

There is hardly any provision where the court's scrutiny or jurisdiction is excluded. Yes, there are articles in our Constitution (they are few) where courts are not permitted to question what goes on in Parliament, and in turn Parliament is not permitted to discuss or debate the conduct of sitting judges. But that's about all.

For a moment, do not bother to consider whether present (or past) judges of the high courts and the Supreme Court have lived upto the expectations of those who framed the Constitution - most of them have, some have not. But leave that aside for a moment, and just consider our basic document of governance and the reach of the overarching provisions: Article 32 (Right to Constitutional Remedies in the Supreme Court directly for enforcement of all fundamental rights), Article 226 (power of high courts to issue certain writs) and Article 227 (power of superintendence over all courts and tribunals by the high court). Whether politicians like it or not, these Articles do give primacy to the judges. The Constitution, as drafted and as it exists today, has placed the judges of the superior judiciary in the driving seat of Governance - Governance with a capital G.

It is true that the Constitution, although it makes separate provision for the three

great organs of state, does not place them in air-tight compartments. Way back in 1955, the highest court had authoritatively said so - in Ram Jawaya's case *(Ram lawaya vs State of Punjab* - AIR 1955 S.c. 549). It is one of the few important judgments of the court, delivered by Justice B. K. Mukherjea (when he was chief justice). B. K. Mukherjea's portrait hangs in Court No. I, opposite to India's first chief justice (Sir Harilal Kania). Deservedly so; Mukherjea was appointed chief justice of India on 23 December 1954 on the retirement of his predecessor in office, Justice Mehr Chand Mahajan. But he (Mukherjea) may have been chief justice longer if he had responded to Prime Minister Jawaharlal Nehru's call that he (Mukherjea) take on the office of CJI after the retirement of Chief Justice Patanjali Sastri in January 1954. Mukherjea had then declined since in order of seniority it was Mehr Chand Mahajans turn.

When Nehru pressed him, Mukherjea said he would sooner resign than usurp the highest office before his turn! Mehr Chand Mahajan was thus duly appointed CJI (on the retirement of Justice Patanjali Sastri) on 4 January 1954, and it was only after Mehr Chand Mahajan retired at age 65 in December 1954 that Justice B. K. Mukherjea assumed the office of CJI. He was a judge long before my time - but amongst the first judges of the Supreme Court, he was (in the reckoning of all whom I have spoken to), perhaps, the greatest.

The facts in Ram Jawaya's case were as follows: the writ-petitioners were printers and publishers of text books for different classes in schools of Punjab. The education department of the Punjab Government in pursuance of a policy of nationalization of text books had issued a series of notifications since 1950 regarding their printing, publication and sale which placed restrictions upon the fundamental rights of the petitioners to carry on their businesses guaranteed under Article 19(1)(g). The education *department said* that the *restrictions* were reasonable and were saved under Article 19(2). But the petitioners argued that no restrictions at all could be imposed on the petitioners' fundamental right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution by mere executive order without supporting legislation. This argument was negative. In a unanimous opinion of the court, the Constitution Bench (presided over by Chief Justice B. K. Mukherjea) held that the Indian Constitution did not recognize the strict doctrine of separation of powers, and that the executive could exercise powers of departmental or subordinate legislation even absent enacted laws. However, orders issued by the executive could never be permitted to violate enacted law or to violate fundamental rights. The court said that the petitioners had no fundamental rights which could be said to have been infringed by the action of the government, because ordinarily it was for the school and college authorities to prescribe the text books which were to be used by students. Publishers of such textbooks

had no right as to what should be prescribed as textbooks by school or college authorities.

A couple of years ago, when I spoke at a function in New Delhi on the separation of powers under the Constitution, I did so in the presence of the then Hon'ble Speaker, Somnath Chatterjee (former chief justice, J. S. Verma, presided). We had in the person of the speaker and the former chief justice of India, the two highest representatives (present and past) of the two great organs of government - Parliament and the courts. I said that in their august presence I felt like the priest who was newly appointed to his parish and who went to make a courtesy call on his bishop. The bishop welcomed the young padre and then solemnly instructed him that in all his Sunday sermons he should praise those who are in heaven, and never forget to condemn all those who are in hell. The priest shuffled a bit, and then gathered up courage to tell his bishop:

I am sorry My Lord, I cannot do so. Because I have friends in both places.

I too have had friends in both places. I have spent six rich and eventful years with lawmakers (1999 to 2005) and learnt much from them, and I have also spent a professional lifetime with lawyers and judges. Having been on both sides of the fence, I think I can present a somewhat dispassionate view.

As to when judicial power should trump legislative and executive action, and when if at all parliamentary power can or should trump judicial power, the only truthful answer is: *it all depends*. It all depends on public acceptability of court decisions in high-profile cases. In India, the content and reach of judicial power is not defined - neither in our Constitution nor anywhere else. But in a Westminster-type Constitution like ours it is never so defined.

Some of my lawyer friends will recall Liyanages case (1966).6 This was a case which went up to the Privy Council from Ceylon (now Sri Lanka), which then had a Westminster-type Constitution like India's. In Liyanage's case, an ordinance was passed by the Government of Ceylon which prescribed that three prominent ministers who had taken part in an infructuous coup d'etat against the state - a coup that failed - should be tried, not by the established courts of the land but by a special tribunal of three judges. When this act was challenged as a usurpation of judicial power, a plea was made by counsel for government that unlike the US Constitution, this Westminster-type Constitution did not mention anywhere, nor recognize the concept of judicial power. But

the Privy Council rejected the plea. After setting out the provisions of the Constitution of Ceylon (then a reflection of India's Constitution), the Privy Council said that:

> ... although no express mention was made of vesting in the judicature of judicial power there was provision that Judges shall not be removable except by the Governor-General on an address of both Houses.
>
> These provisions manifested (the Privy Council said) an intention to secure in the judiciary a freedom from political, legislative and executive control.
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> These provisions are wholly appropriate in a constitution which intends that judicial power shall be vested only in the judicature.

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These provisions are wholly appropriate in a constitution which intends that judicial power shall be vested only in the judicature.
They would be inappropriate in a constitution by which it was intended that judicial power should be shared by the executive or the legislature.
And then in words of purple prose the Privy Council went on:

The constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the judicature. It is not consistent with any intention that henceforth it should pass to or be shared by, the executive or the legislature.

Simple as that - that is the reach of the judicial power under the Constitution of India as well.

The content of judicial power is not defined in our Constitution. It is assumed as having been conferred on the great chartered high courts (Bombay, Calcutta and Madras). The high court acts were passed in the year 1862, and this judicial power is now shared by the Supreme Court of India along with all the 21 high courts in the country.

Many believe that written constitutions that give power to the courts to strike down legislation made by a country's elected Parliament is undemocratic. It enables unelected judges (they say) to thwart the wishes of the elected representatives of the people in Parliament. There may be something to be said for this point of view. But it is too late in the day to complain. For nearly 60 years now, we have been working a Constitution which is federal in nature with allocated subjects oflegislation separately and exclusively given to states and to the union. There is also a chapter on fundamental rights; all laws and executive actions inconsistent with them are expressly declared to be 'void: In a controversy then, some authority would have to be the final arbiter. And that arbiter under our Constitution is ultimately the country's highest court.

It has been said that where there are no judicially manageable standards, our courts should not interfere. They should leave it to the elected representatives of the people. Theoretically speaking, this is correct - but what if the elected representatives fail to perform? What then?

Since 1950, 14 general elections to the Lok Sabha have been held and with all the publicity that is given to proceedings in Parliament, ordinary people - people who have voted their elected representatives into Parliament - remain today generally unsatisfied as

to how members of our Parliament and also members of legislative assemblies function, if and when they function at all! Almost every session of Parliament during the last few years has been marred by some dispute or contention of the moment - not of any grave national importance. There is hardly any serious debate on topics of all-India concern! When I was in the Rajya Sabha, I noted that in two successive years an important measure like the annual Finance Bill was passed in each House of Parliament in a matter of minutes, without debate or discussion - amidst din and shouting. There is something wrong somewhere.

And the reason for what prime minister Dr Manmohan Singh recently characterized (in my humble opinion quite erroneously) as *'judicial over-reach'* is this - *all power grows by what it feeds on.* All judicial power also accretes by the mere circumstance that other constitutional bodies and authorities set-up to legislate and to pass administrative orders have failed to act when called upon to act. I suggest that the 'judicial over-reach', the prime minister spoke about, is the direct consequence of legislative and executive 'under-reach': i.e., poor performance in the making of laws and particularly in their execution. If judges need to introspect (and I confess that they do, and frequently too), politicians need doubly to introspect and ask themselves whether they have fulfilled the aspirations of the people who elected them to make laws for the people and help alleviate their problems.

If judges are to get off the backs of parliamentarians, politicians and bureaucrats - who claim the direct right to govern on the basis of adult franchise - they must come up with a much better record of performance. Only when they do, will the people of this great country give us back majority governments in the centre - as they did before the year 1980. In our constitutional history of 60 years, judicial power has kept vacillating - contracting at times, expanding at times - according to the exigencies of the moment.

During the Internal Emergency of Iune 1975 upto March 1977, judicial power had contracted - almost to vanishing point, and one of those who fought against that Emergency was an eminent parliamentarian, Somnath Chatterjee, later honourable speaker, to whom liberty was the very blood of life. In his entire political life, Somnath Chatterjee had always fought against tyranny and religious bigotry - that was why he was opposed to the Emergency. Another was the lion of the Indian press - Ramnath Goenka, whose memorable case in the Supreme Court - *Indian Express* (1985) - I was privileged to argue. Yet another stalwart was my dear friend Cusrow Irani of the *Statesman* of Calcutta. They were amongst the bravest of the brave in those hard times: when judicial power under our Constitution was at its lowest ebb.

As I have said already, judicial power had contracted to its lowest level with the infamous decision in *ADM labalpur* (1976) when India's then chief justice proclaimed in

a judgment - a judgment which needs to be overruled (but inexplicably has not been so far) - that: Liberty itself is the gift of the law, and it may by the law be forfeited or abridged.

This astounding statement was not controverted by three of the other judges who concurred with the chief justice. The fifth justice on the bench of five (actually the senior most next to the Cjl), Justice H. R. Khanna, alone dissented from the majority view. That is why Khanna's portrait hangs in Court No.2 where he sat until he resigned because of what is now known as the 'Second Supersession' - Justice Beg (Judge No.3) was appointed chief justice of India, and Justice Khanna in Court No.2 demitted office. Incidentally, it was the majority decision in *ADM labalpur* that made MISA (Maintenance of Internal Security Act) sacrosanct and totally beyond all judicial review.

Fortunately for us, this concept of liberty propounded in *ADM labalpur* is not the rule *oj* law on which our Constitution has been founded. It is the rule *by* law. If the rule of law is the rule by judges (as it is frequently said to be), and the rule *by* law is the rule of the elected representatives in Parliament without any possibility of that rule being questioned by the judicial arm of the state, I for one can confidently say that I would prefer to live under a rule-oj-law dispensation rather than under a *rule-by-law* regime.

I am glad that the pendulum swung away from Chief Justice Ray's grim dictum in the post-Emergency period when both courts and Parliament (mark you, even Parliament) said that Article 21 -life and liberty clause - can never be suspended and it is, I believe, by this single act of Parliament (when it amended our Constitution to provide that the right to life and liberty could never be suspended even during an Emergency) that has given supremacy to the judicial branch of government over all other branches.

Why? Because over the years, in one notable decision after another, the following rights have been declared by the Supreme Court to be encompassed within the four corners of Article 21 viz. the right to go abroad; the right to privacy; the right against solitary confinement; the right to legal aid; the right to speedy trial; the right against custodial violence; the right to medical assistance in an emergency; the right to shelter; the right of workers to safe working conditions and to medical aid; the right to social justice and economic empowerment; the right to pollution-free water and air; the right to a reasonable residence; the right of citizens to food, clothing, decent environment and even protection of the cultural heritage; the right of every child to full development; the right of residents of hilly areas to access roads; the right to education; the right to live in a clean city with noise pollution at minimum levels ... an almost endless list of rights - in other words - the right of every inhabitant to live his or her life with dignity.

Recently (11 September 2007) the court has said that the right to life

includes the right to opportunity, and therefore postulates the concept of a level playing field for all citizens - even when they are responding to something so prosaic and exclusively administrative - as government tenders.'

If this is the width of Article 21, can anyone wonder about the legitimacy of judicial governance? That legitimacy is written into Article 21 and other articles of the Constitution by that final interpreter of the Constitution, the Supreme Court of India. In effect, a large number of Directive Principles of State Policy set out in Part IV of our Constitution, which have not been declared by the Constitution to be enforceable in any court (but nonetheless fundamental to the governance of the country), have now been made enforceable by courts through the wide and liberal interpretation of Article 21 - a feat of judicial 'engineering' un-matched in any other part of the world.

You cannot have engineering without tools. And the tools have been provided by the founding fathers. The legitimacy of *judicial governance* is established by the provisions contained in four Articles of our Constitution - 21, 32,226 and 227. Chief Justice Hidayatullah, long after he retired, when confronted with the doctrine of basic structure evolved by our judges, publicly said that the seed of this doctrine of basic structure was embedded in Article 32 of the Constitution. Dr B. R. Ambedkar had said much the same thing in the Constituent Assembly when the Constitution was framed. He said that Article 32 is 'the very soul of the Constitution and the very heart of it .. .' He called it 'the most important Article without which this Constitution would be a nullity'.

Take Article 226 - it empowers the Supreme Court and the high courts to issue writs, orders and directions not only for enforcement of fundamental rights but also 'for any other purpose'. And Article 227 is to keep tribunals within the limits of their authority. The width of Article 226 was emphasized by the Constitution Bench of our Supreme Court way back in 1955 when the court said:

We can make any order, or issue any writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

Mark the words, 'in all appropriate cases' and 'in appropriate manner: Such exercise of power is always appropriate. Legitimate judicial power loses legitimacy when it is not exercised in an appropriate manner and in appropriate cases.

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Chief Justice Sir Edward Coke proclaimed in England way back in the year 1615 that the power of courts was not only to correct errors and misdemeanors but all manner of misgovernment 'so that no wrong or injury, neither private not public, can be done, but that it shall be (here) reformed or punished by due course of law' These are the powers vested in India's superior judiciary.

That sometimes some men and women who sit on the bench are not conscious of the extent (or limits) of such power, or do not have the sensitivity to exercise judicial restraint when warranted, only means that those (few) men (and women) are just not equal to the supremely difficult task of judging entrusted to them under the Constitution. It only indicates that perhaps it is time we adopted a better method of selection of judges for our higher judiciary.

Persons who are 'prejudicially affected' by acts or omissions of any governmental or other authority - sometimes even 'strangers' - can approach courts for relief under Articles 32 and 226. India's constitutional historian, H. M. Seervai (in his *Constitutional Law of India,* 4th Edn., Vol. I, p. 381), has given what he describes as the most-striking illustration of strangers being granted relief under Articles 32 and 226.

It is also perhaps the earliest of such instances viz. that of an unreported judgment of Justice Gandhi of the Bombay High Court (October 1975) in a writ petition filed by a public-spirited citizen, Piloo Mody. In *Piloo Mody* vs *State of Maharashtra,* the single judge of the Bombay High Court adopted a liberal and expansive view of locus standi long before the Constitution Bench of five judges did so in the First Judge's Case in December 1981 *(S. P. Gupta* vs *Union of India).* Piloo Mody had complained that the Bombay Government, through its three ministers, had leased out valuable plots of government land at a gross undervalue. The Bombay High Court judge rejected the state's contention that the petitioner had no locus standi to challenge the government order since he had nothing to do with the land. The judge upheld the petitioner's contention that the leases were granted mala fide at a gross undervalue. He then directed that the lessee who obtained the leases should pay 33.33 per cent more rent to the government. The state of Maharasthra gained a rent increase of Rs.l crore per year for 99 years as a consequence of a writ filed by a stranger - a distinguished one at that. It was the decision in Piloo Mody's case that gave fresh impetus to the concept of PIL, which has been since then frequently used (though sometimes also misused/abused). It is the misuse (or abuse) that requires correction, not by abolishing PILs, but by laying down norms and framing strict guidelines for ensuring that such PILs are not improperly motivated.

I do not subscribe to the view that there has to be necessarily a 'balance of power' maintained between the three organs of the state. But I am definitely of the view that judicial power, howsoever defined, cannot be trenched on either by Parliament or state legislatures or by the executive at the Centre or in the states.

Do remember how it was so trenched on when the Ninth Schedule to our

Constitution was deliberately added way back in 1951 by the Constitution First Amendment Act, which provided that all laws - central or state - which Parliament chose to put in a schedule to the Constitution - the Ninth Schedule - were to be totally immune from all judicial review for violation of fundamental rights. Even if such laws did violate any fundamental rights and had even been struck down by courts, all such laws got automatically revived, and were to continue as valid! This total denial of judicial power enacted by Article 31B8 was tolerated only because the laws that were initially put in the Ninth Schedule were land- reform laws. But later judgments of the Supreme Court said that laws which were placed in the Ninth Schedule were not confined only to land reforms. And what happened? Taking advantage of this pronouncement by the highest court, the government of the day (the GOl) - during the period of the Internal Emergency in 1975:

- First, put MISA (the dreaded security law) also in the Ninth Schedule, making its noxious provisions impervious to all judicial review;
- And next, enacted the Prevention of Publication of Objectionable Matter Act, 1976, an act to control and muzzle the free press, and also placed that act in the Ninth Schedule!

It is only when the Internal Emergency was lifted (thank God it was) and elections were held, and the Janta government came to power on a wave of popularity as a backlash to the Internal Emergency that a new Parliament (mark you, Parliament itself) deleted MISA from the Ninth Schedule (a truly remarkable achievement) and repealed the Press Gagging Act, i.e., it left the 'life and liberty clause' and freedom of press', guaranteed by Article 19 (1) (a), virtually free of all executive and legislative constraints.

This was done by (a strong) Parliament with an overwhelming majority of elected members belonging to one single party. Because they were right thinking, they knew and believed that freedom (for citizens like you and me) can only be secured through courts- not through Parliament or executive governments.

But then consider what happened three years ago (in the year 2006), when the Supreme Court considered (in Coelho's case" and in a com panion case) the width of the basic structure doctrine before a bench of nine judges. Arguments were solemnly advanced on behalf of the Union ofIndia (yes, on behalf of those even now in charge of the Government of India) that Article 31B was amenable to more enacted laws being put in the Ninth Schedule - not necessarily land-reform laws - and so avoiding all constitutional scrutiny! It was said by counsel appearing for the GOI that enactments of

state legislatures (or of Parliament) even if they were enacted contrary to the Fundamental Rights Chapter, could be lawfully put into the Ninth Schedule - thus ensuring complete immunity from challenge! I was lead counsel for the Coelhos and contested this. Senior counsel Harish Salve appeared for another group of petitioners in support. Fortunately, we succeeded. In a statesmanlike decision of a unanimous court delivered by Chief Justice Sabharwal (the arguments took only five working days), the court ruled against the GOL The nine- judge bench said that the basic structure test did not exclude a consideration of the provisions of the fundamental rights chapter. The arguments on behalf of the Union of India were a typical attempt at 'executive over-reach'. The real reason was that the government of the day was anxious to place in the Ninth Schedule the Delhi Laws (Special Provisions) Act, 2006 - which had suspended by legislation, for a limited period of one year, the sealing of premises which had been expressly authorized by orders passed by the Supreme Court! Because of the Supreme Court's decision in Coelho's case, Article 31 B is no longer the 'black-hole' of the Constitution that the GOI wanted it to be.

I vividly recall what Swaran Singh - India's foreign minister in Indira Gandhi's government - said during the dark days of the Internal Emergency of] une 1975. He was appointed chairman of the Constitution Committee which included three prominent practising lawyers, and their specific mandate was to clip the wings of the high courts by proposing amendments to Article 226 - the great searchlight provision in our Constitution. It is really a searchlight for ferreting out injustices in individual cases and passing appropriate remedial orders. Swaran Singh told his colleagues that when he was himself a minister in the Punjab Government, he found that as a minister it was just not possible to render justice in individual cases because of the pressures and pulls of party politics, and that it was far better that courts were left to do the job.

He was the one person - a non-practising lawyer - who set his face against abolition of Article 226, and we all should be truly grateful to him for having saved the writ jurisdiction of the high courts. It was the practising lawyer - politicians on that Constitution Committee who so fervently wanted to scrap .z\.rtic\e 11(,\ lhe mora\ 0\ fu\~ ~\o~ ~ fuat 'Ne should avoid relying on high-profile lawyers (with political inclinations) because with their argumentative skills, they are able to rationalize all forms of tyranny.

I do not think it is fair or permissible to speak a60uf €k *8mRi~8(€REe* of Parliament in all things, nor to talk about clipping the wings of the judi ature or saying that judges ar going too far. By saying so, you dishonour the Constitution and the founding fathers. Yes, you may criticize this or that judgment of the Supreme Court (I frequently do) or judgments *oi tbe high courts which have needlessly* interfered - in the course of so-called PILs - with the day-to-day governance of the country which ordinarily ought to be left to the elected representatives or those administering the laws. It is such PILs

that have given our higher judiciary a bad name.

If the PILs had retained the character which first prompted the Supreme Court to recognize them, there would have been no problem viz. to afford to the poor and indigent a foothold and an audience in courts - that was in fact the original intention. But now some PILs have wormed their corrupted way into all walks of public life.

These PILs ask courts to pronounce on this or that administrative or executive policy (sometimes at the instance of some hidden hand); and some judges in some courts appear to be willing to oblige. Anthony Lester (Lord Lester), England's leading lawyer, once gave the modern-day version of Lord Acton's famous phrase, 'Power corrupts and absolute power corrupts absolutely.' Lord Lester said that some judges in England have a variant to this - they say that, 'Judicial power is wonderful and absolute judicial power is absolutely wonderful: He said it in jest, of course, but some judges in India do believe and sometimes act as if absolute judicial power is absolutely wonderful. This is what gives judges a bad name; it is then that they are likened to 'Emperors: which they are definitely not.

Two years ago (in 2008) that maverick friend and colleague of mine, Ram J ethmalani, said in court, in a case where we were appearing on the same side - and which involved a scam in the telecom sector - that Lord Acton's aphorism (‚Power corrupts and absolute power corrupts absolutely') needed adaptation in India with elections around the corner in the year 2009 viz.:

All power corrupts - *and the fear of losing power corrupts absolutely!*

'Ample judicial power administered with ample judicial wisdom' is the need of the hour; not a curtailment of judicial power, but maturer wisdom in its administration.

No, we don't need judges who behave like 'Emperors'. What we do need are those
whom the lust of office does not kill;
whom the spoils of office cannot buy;
who possess opinions and a will;
who have honour; and will not lie;
who can stand before a demagogue.
And damn his treacherous flatteries without winking
Tall Men (and women), sun-crowned, who live above the fog
In public duty and in private thinking ... 10

Notes and References

1. *Laws Empire* (1986), Ronald Dworkin, Harvard Law University Press, Cambridge, pp. 61-63.

2. *Oxford [ounral of Legal Studies,* Vol. 27, No.4, November 2007, London.

3. A *Common Law Theory of Judicial Review: The Living Tree (2007),* .). ViI~\\\C ~> Cambridge University Press, London.

4. *Delhi Judicial Service vs State ofGujarat, AIR;* 1991 se 2176

5. *Union Carbide Corporation vs Union of India,* 1991 (4) *sec* 584; and *Supreme Court Bar Association vs Union of India,* AIR 1998 SC 1895

6. 1966 (1) All England Reports 650 (Opinion of Lord Pearce speaking for their lordships of the Privy Council)

7. *Reliance Energy Ltd. vs Maharashtra State Road Development Corporation Ltd.* - 2007 (8) *see I*

8. Article 31B, as inserted in the Constitution by the Constitution (First Amendment) Act, 1951, reads:

   31B. Validation of certain Acts and Regulations - Without prejudice to the generality of the provisions contained in Article 31- A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away of bridges any of the rights conferred by, any provisions of this art, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force.

9. *I. R. Coelho vs State of Tamil Nadu* - 2007 (2) see 1

10. From *Life of Abraham Lincoln* (1998), Josiah Gilbert Holland, Bison Books Publisher. The poem in the book was penned by the author, and as frequently quoted by Nani Palkhivala in his speeches; it ends with these ominous words:

    For while the rabble, with their thumb-worn creeds,

    Their large professions and their little deeds,

    Mingle in selfish strife, lo! Freedom weeps,

    Wrong rules the land and waiting Justice sleeps.

Definition of State (Article 12)

Fundamental rights available against State and not against private Individuals.--Individual needs constitutional protection against the State. The rights which are given to the citizens by way of fundamental rights as included in Part III of the Constitution are a guarantee against State action as distinguished form violation of such rights from private parties. Private action is sufficiently protected by the ordinary law of land. In *P.D. Shamdasani* v. *Central Bank of India,* the petitioner, in an application under Article 32 of the Constitution, sought the protection of the Court on the ground that his property right under Articles 19 (1)(f) and 31 were infringed by the action of another private person-the Central Bank of India. The Supreme Court dismissed the petition and held: "Neither Article 19(1) nor Article 31 (1) was intended to prevent wrongful individual's acts or to provide protection against merely private conduct..... The language and structure of Article 19 and its setting in Part III of the Constitution clearly show that the Article was intended to protect those freedoms against the State action other than in the legitimate exercise of its power to regulate private rights of property by individuals is not within the purview of the Articles"

Definition of State (Article 12).- Article 12 defines the term 'State' as used in different Articles of Part III of the Constitution. It says that unless the context otherwise requires the term 'State' includes the following :-

1. The Government and Parliament of India, *i.e.,* Executive and Legislature of the Union.
2. The Government and the Legislature of each State, *i.e.,* Executive and Legislature of States.
3. All local or other authorities within the territory of India.
4. All local and other authorities under the control of the Government of India.

The term 'State' thus includes executive as well as the legislative organs of the Union and States. It is, therefore, the actions of these bodies that can be challenged before the courts as violating fundamental rights.

(a) *Authorities.-According* to Webster's Dictionary: "Authority" means a person or body exercising power to command. In the context of Article 12, the word "authority" means the power to make laws, orders, regulations, bye-laws, notification etc. which have the force of law and power to enforce those laws.

(b) *Local Authorities.-* 'Local authorities' as defined in Section 3 (31) of the General Clauses Act refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trust and Mining Settlement Boards. In *Mohammed Yasin* v. *Town Area Committee,* the Supreme Court held that the bye-laws of a Municipal Committee charging a prescribed fee on the wholesale dealer was an order by a State authority contravened Article 19 (I)(g). These bye-laws in effect and in substance have brought about a total stoppage of the wholesale dealer's

business in the commercial sense. In *Sri Ram* v. *The Notified Area Committee,* a fee levied under Section 294 of the U.P. Municipalities Act, 1919, was held to be invalid.

(c) *Other authorities.-In* Article 12 the expression 'other authorities' is used after mentioning a few of them, such as, the Government, Parliament of India, the Government and Legislature of each of the States and all local authorities. In *University of Madras* v. *Santa Bai,* the Madras High Court held that 'other authorities' could only indicate authorities of a like nature, *i.e. ejusdem generis.* So construed, it could only mean authorities exercising governmental or sovereign functions. It cannot include persons, natural or juristic, such as, a University unless it is 'maintained by the State'.But in *Ujjammbai* v. *State of U'P,* the Court rejected this restrictive interpretation of the expression 'other authorities' given by the Madras High Court and held that the *ejusdem generis* rule could not be resorted to in interpreting this expression. In Article 12 the bodies specifically named are the Government of the Union and the States, the Legislature of the Union and the States and local authorities. There is no common genus running through these named bodies nor can these bodies so placed in one single category on any rational basis.

In *Electricity Board, Rajasthan* v. *Mohall Lal,* the Supreme Court held that the expression 'other authorities' is wide enough to include all authorities created by the Constitution or statute on whom powers are conferred by law. It is not necessary that the statutory authority should be engaged in performing governmental or sovereign function. On this interpretation the expression 'other authorities' will include *Rajasthan Electricity Board, Cochin Devasom Board, Co-operative Society,* which have power to make bye-laws under Co-operative Societies Act, 1911. The Chief Justice of a High Court is also included in the expression 'other authorities' as he has power to appoint officials of the Court. The President-" when making order under Article 359 of the Constitution comes within the ambit of the expression 'other authorities'. In effect, the Rajasthan Electricity Board's decision" has over ruled the decision of the Madras High Court in Santa Bai's case, holding a University not to be "the State". And finally, the Patna High Court, following the decision of the Supreme Court, has held that the Patna University is"a State".

In Sukhdev Singh v. Bhagatram, the Supreme Court, following the test laid down in Electricity Board Rajasthan's case by 4:1 majority, (Alagiriswamy, J. dissenting) held that Oil and Natural Gas Commission, Life Insurance Corporation and Industrial Finance Corporation, are authorities within the meaning of Article 12 of the Constitution and therefore, they are 'State'. All three statutory Corporations have power to make regulations under the statute for regulating conditions of service of their employees. The rules and regulations framed by the above bodies have the force of law. The terms ofcontract with a particular employer is prescribed by the statute itself. These regulations are

binding on these bodies. The employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provisions. The employees are entitled to claim protection of Articles 14 and 16 against the Corporation. Mathew, J., in a separate but concurring judgment, preferred a broader test that if the functions of the Corporation are of public importance and closely related to governmental functions it should be treated an agency or instrumentality of government and hence a 'State' within the ambit of Article 12 of the Constitution.

The effect of these decisions was that the 'authorities' not created by the Constitution or by a statute could not be a 'State' within the meaning of Article 12 of the Constitution. This was a very restrictive interpretation of the expression 'other authorities' under Article 12 of the Constitution.

But in subsequent decisions the Supreme Court has given a broad and liberal interpretation to the expression 'other authorities' in Article 12. With the changing role of the State form merely being a police State to a welfare State it was necessary to widen the scope of the expression "authorities" in Article 12 so as to include all those bodies which are, though not created by the Constitution or by a statute, are acting as agencies or instrumentalities of the Government. In modern times a government has to perform manifold functions. For this purpose it has to employ various agencies to perform these functions. The Court has, therefore, rightly taken the view that such juridical persons acting as the instrumentality or agency of the government must be subject to the same restrictions as the State.

In Airport Authority's case, Bhagwati, J., preferred, and rightly, the broader test as suggested by Mathew, J., in Sukhdev v. Bhagatram case. In this case the Court has held that if a body is an agency or instrumentality of government it may be an 'authority' within the meaning of Article 12 whether it is a statutory corporation, a government company or even a registered society. Accordingly, it was held that the International Airport Authority which had been created by an Act of Parliament was the "State" within the meaning of Article 12. The Central Government had power to appoint the Chairman and other members of the Airport Authority. It has power to terminate the appointment of any member form the Board. The capital needed by it was provided only by the Central Government. *But what is the test whether a body is an agency or instrumentality?* The Court laid down the following tests for determining whether a body is an agency or instrumentality of the Government :-

(1) financial resources of the State is the chief funding source, *i.e.,* if the entire share capital of the corporation is held by Government, (2) existence of deep and pervasive State control, (3) functional character being governmental in essence, *i.e.,* if the functions of the corporation are of public importance and

closely related to governmental functions, (4) if a department of Government is transferred to a corporation, (5) whether the corporation, enjoys monopoly status which is State conferred or State protected.

However, the Court said that these tests are not conclusive but illustrative only and will have to be used with care and caution.

Applying this test in *Som Prakash* v. *Union of India,* the Court held that a *government company (Bliarat Petroleum Corporation)* fell within the meaning of the expression 'the State' used in Article 12. The expression 'other authorities' will include all constitutional or statutory authorities on whom powers are conferred for the purpose of carrying commercial activities or bodies created for the purpose of promoting economic activities. The expression 'other authorities' is not confined only to statutory corporations alone but may include a government company, a registered society, or bodies which have some nexus with government. Similarly, in *Star Enterprises* v. C. *T.D.C. ofMaharashtra Ltd.,* it has been held that a government company under Section 617 of the Companies Act constitute as the Development Authority under the Maharashtra StateTown Planning Act, 1966 is a 'State' within the meaning of Article 12 and therefore in its dealings with the citizens of India it would be required to act within the Rule of law and would not be permitted to conduct its activities arbitrarily.

In *u.P. Warehousing Corporation* v. *Vijai Naratn.i"* it was held that the *U'P. Warehousing Corporation* which was constituted under a statute and owned and controlled by the Government was an agency or instrumentality of the Government and therefore, "the State" within the meaning of Article 12. Its employees have a statutory status and therefore in case of wrongful dismissal of an employee a writ could be issued against such body. Chinnappa Reddy, J., agreeing with majority, in his separate judgment summed up the position as follow: "I find very hard indeed to discover any distinction on principle between a person under the employment of an agency or instrumentality of the government or a corporation set· up under statute or incor orated but wholly owned by the Government. The function of the State has completely changed. It is a welfare State which has resulted in *inter se* governmental activity in manifold ways. Its activities have touched many aspects of a citizen's life. The Government, directly or through the corporations, now owns or manages a large number of industries and institutions. It is the biggest trader in the country. The Government, its agencies and instrumentalities, corporation set by it or owned by it have thus become the biggest employers in the country. There is no reason why, if government is bound to observe the equality clauses of the Constitution in the matter of employment, should not be equally bound.

It is therefore right and the independence and integrity of those employed in the public sector should be secured as much as the "independence and integrity of civil servants".

In *Ajay Hasia* v. *Khalid Mujib,* it has been held that a Society registered under the Societies Registration Act, 1898, is an agency or "instrumentality of the State" and hence a 'State' within the meaning of Article 12. Its composition is determined by the representatives of the Government. The expenses of society are entirely provided by the Central Government. The rules made by the society require prior approval of the State and Central Governments. The society is to comply with all directions of the Government. It is completely controlled by the Government. The Government has power to appoint and remove the members of the society. Thus, the State and the Central Government have full control of the working of the society. In view of these elements the society is an instrumentality of the State or the Central Government and it is therefore an "authority" within the meaning of Article 12. The test is not as to how the juristic person is created but why it has been brought into existence. A corporation may be statutory corporation created by a statute or a government company formed under the Companies Act, 1956, or a Society registered under the Societies Registration Act, 1860, or any other similar statute. It would be an 'authority' within the meaning of Article 12 if it is an instrumentality or agency of the Government and that would have to be decided on a proper assessment of the case in the light of the relevant factors.

In *B.S. Minhas* v. *Indian Statistical Institute,* it has been held that the *Indian Statistical Society,* a society Registered under the Societies Registration Act, 1860 being under the complete control of the Government of India is an instrumentality of the Central Government and therefore, an "authority" within the meaning of Article 12 of the Constitution. Accordingly, a writ-petition under Article 32 against the Institute for violation of fundamental rights is maintainable. Similarly, the Court held that the *Indian Council of Agricultural Research* a society registered under the Societies Registration Act, is an instrumentality of Central Government, and an "authority" within the meaning of Article 12 and, therefore, amenable to writ-jurisdiction under Article 32 of the Constitution. In *Manmohan Singh Jaitla* v. *Commissioner, Union Territory of Chandigahr,* the Court following *Ajai Rasia's* case held that an aided school which received a Government grant of 90 per cent was an "authority" within the meaning of Article 12. Similarly, it has been held that the *Food Corporation of India* the *Steel Authority of India, Bihar State Electricity Board, Indian Oil Corporation,* are the 'State' within the meaning of 'other authorities' under Article 12 as they are instrumentalities of the State. In *AISSF Association* v. *Defence Minister-cum-Chairman, B.O.G.S.S. Society,*. it has been held that Sainik School Society is the"State" and amenable to writ jurisdiction of the Court The entire fund is given by the State Government and the Central Government. The overall control vests in the Governmental authority.

In *S.M. Jlyas* v. *ICAR,* it has been held that the Indian Council of Agricultural Research is a State within the meaning of Article 12 of the Constitution.

In *Central Inland Water Transport Corporation* v. *Brojo Nath Ganguly,* the Court applied the above test and held that the Central Inland Water Transport Corporation, a Government company which was wholly owned by the Central Government and managed by Chairman and Board of Directors appointed and removable by Central Government, was "the State" within the meaning of Article 12 and therefore an instrumentality or agency of the State. It is nothing but the Government operating behind a corporate veil, carrying out a Governmental activity and Governmental functions of vital public importance through the instrumentality of a Government Company. If there is an instrumentality or agency of the State which has assumed the garb of a Government Company as defined in Section 617 of the Companies Act, it does not follow that it thereby ceases to be an instrumentality or agency of the State.

In *Sheela Barse* v. *Secretary, Children's Aid Society,* the Court held that the *Children's Aid Society, Bombay* registered under the Societies Registration Act, 1860 was an instrumentality of the State and fell within the expression 'the State' within the meaning of Article 12. It is a Public Trust under the Bombay Public Trusts Act of 1950. The Chief Minister of the State is its *ex-officio* President. The Society receives grants from the State.

In *M.C. Mehta* v. *Union of India,* the important question which was raised before the Court was whether a private corporation fell within the ambit of Article 12. Although the question whether a private corporation fell within the ambit of Article 12 was not finally decided by the Court, but it stressed the need to do so in future.

In *Tekraj Vasandi* v. *Union of India,* it has been held that the *"Institute of Constitutional and Parliamentary Studies* ", a society registered under the Societies Registration Act, 1860, is not a State within the meaning of Article 12. The Institute of Constitutional and Parliamentary Studies is neither an agency nor an instrumentality of the State. It is a voluntary organisation. The object of the society is not related to government business. In the functioning of the society, the Government does not have deep and pervasive control. Though the Minister exercises his authority as the controlling department of Government in the matter of making the grant but that itself may not be a conclusive feature. In a welfare State government's control is very pervasive and, in fact touches all aspects of social existence. A society registered under the Societies Registration Act may be treated, as 'State' if either the government business is under taken by the society or the public obligation of the State is undertaken by the society. Since such a position is not present in the present case the Institute of Constitutional and Parliamentary Studies does not come within the purview of 'other authorities'

in Article 12. In *Sri Kona Seema Co-operative Central Bank Ltd.* v. *N. Seetharama Raju,* it has been held that the Co-operative Bank registered under the A.P. Co-operative Societies Act is not 'State' within the meaning of Article 12 as the functions of the Bank were not of public importance and not closely related to governmental function. The Bank's main object was to raise funds to finance its members. Following *Tekraj Vasanji* v. *Union of India* the Court in *Chandra Mohan Khanna* v. *NCERT,* has held that *National Council of Educational Research and Training,* is not a 'State' within the meaning of Article 12 ofthe Constitution. It is a society registered under the Societies Registration Act. The object of the NCERT is to assist and advise the Ministry of Education and Social Welfarein the implementation of the governmental policies and major programmes in the field of education particularly school education. These activities are not wholly related to governmental functions. The governmental control is confined only to proper utilization of the grant. It is an autonomous body. Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the government within the sweep of the expression, 'State'. In the modern concept of welfare State, independent institution, corporation and agency are generally subject to State control.

In *Pradeep Kumar Biswas* v. *Indian Institute of Chemical BioLogy* a seven judge Bench of the Supreme Court by a majority of 5 : 2 has overruled the decision in *Sabbajit Tewari's* case and *held* that Council of Scientific and Industrial Research (CSIR) is an instrumentality of the State within the meaning of Art. 12 of the Constitution. The majority held that even though it was formed under the Registration of Societies Act, 1860, yet it is a 'state' because the government had overriding control over the organisation. The object incorporated in Memorandum of Association of CSIR "manifestly demonstrates that CSIR was set up in the national interest to further the economic welfare of the society by fostering planned development in the country." The Government of India has a dominant role in the governing body of the CSIR. All the members of the governing body, except *ex-officio* members, are nominated by the President and their membership can also be terminated by him. The Prime Minister is the *ex-officio* President. The governing body also has the powers to make rules, amend or repeal the by-laws of CSIR but only with the sanction of Government of India.

In G. *Bassi Reddy* v. *International Crops Research Insft.* it has been held that the International Crop Research Institute is an international organization and has been set up as non profit research and training centre to help developing countries to alleviate rural poverty and hunger in various ways is therefore, not a 'State' within the meaning of Article 12 of the Constitution. Consequently, no writ petition can be allowed by its employees challenging their removal from service as being violative of Articles 14 and 16 of the Constitution. It is not set up by the Government and gives service to a large number of countries voluntarily. It is not controlled by nor is accountable to the Government. Likewise, in *General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur,V.P.* v. *Satrughan Nishad,* it

has been held that the Co-operative Sugar Mill was neither instrumentality nor agency of Government and, therefore, not 'State' within the meaning of Art. 12 of the Constitution. The Government of Uttar Pradesh held only 50% share in the mill and the expenditure of mill was not met by the State but it operated on the basis of self generated finances. The nominees of State Government in the committee of management of mill was only 1/3 and it was dominated by *2/3* non government members. Under its bye-laws State Government could neither issue anydirection to mill nor determine its policy. The State has no deep and pervasive control over mill.

In *V. K. Srivastava* v. *U.P, Rajya Karmachari Kalyan Nigam,* following the decision in *Pradeep Kumar Biswas* v. *Indian Institute of Chemical Biology,* it has been held that the D.P. Rajya Karmachari Kalyan Nigam is an agency and instrumentality of State and, therefore, is a State within the meaning of Art. 12 of the Constitution. Thecontrol of State on Corporation (Nigam) is not only regulatory but deep and pervasive. It is formed with the object of catering to needs of Government employees as supplement to their salaries and perks. Top executives of the Government department, are *ex-officio* members and office bearers of Corporation. The Corporation is fully supported financially and administratively by State and its authorities. Even in day to day functioning the Corporation is supervised and controlled by various departmental authorities of State particularly of Food and Civil Supplies.

In *Assam Small Scale Industries Development Corporation Ltd.* v. *J.D. Pharma-ceuticals,* the Supreme Court has held that the Assam Small Scale Industries Development Corporation Ltd. is a statutory body and is State within the meaning of Article 12 of the Constitution. The Assam Preferential Stores Purchase Act, 1989 was enacted for encouraging growth of small scale industries in the State of Assam. The Corporation has power to place orders for supplies to the Government and has power to make 90% of purchase price in advance. The petitioner small scale unit entered into agreement with the Corporation wherein the S.S.I. unit was termed as a principal and corporation as agent and supply was made by S.S.I. to Corporation and the Corporation was bound to release the payment upto 90%. The Corporation cannot withhold payment on the ground that it had not received payment from the purchasing authority.

Punjab Water Supply and Sewerage Board v. *Ranjodli Singh* it has been held that an autonomous body is a 'State' within the meaning of Art. 12 of the Constitution. The statutory bodies are bound to apply the rules of recruitment laid down under statutory rules. They are bound to the scheme of equality. The State Government cannot issue directions contrary to statutory rules governing such conditions. Even a scheme under Art. 362 would not prevail over statutory rules. Regularisation of service on contractual basis in Punjab Water Supply and Sewerage Board can be terminated. Regularisation cannot be ordered by the

High Court. The order is, therefore, liable to be set aside. In *Lt. Governor of Delhi* v. *K. Sodhi* the Supreme Court held that the State of Council of Educational Research and Training (SCERT) is not a 'State' within the meaning of Art. 12 of the Constitution. The Court discussed the Bench decision of *Pradeep Kumar Biswas. (2002)* where it had held that each case would be decided in the light of cumulative facts to determine if a body is financially, functionally and administratively dominated by or under the control of the Government. The Supreme Court observed that the SCERT was fully funded by the Government and is an autonomous in its administration and had control over finances and, therefore, held that it was not covered by Art. 12 of the Constitution. *Mandamus* cannot be issued to SCERT to compel them to extend to its employees.

(d) *Authorities under the control of the Government of India.-By* words 'authorities under control of the Government of India', it is meant to bring into the definition of State all areas outside Indian territory but which are under or may come under the control of the Government of India, such as, mandatory or trustee territories. Such a territory may come under India's control by international agreement. Thus even such areas will be the subject to Part III and the inhabitants of such areas may also claim the benefit of Fundamental Rights guaranteed in Part III.

In *State of Assam* v. *Barak Upatyaka D. V. Karmchari Sansthan,* the Supreme Court has held that the financial assistance provided by the State Government in the form of grant in aid to Assam Cooperative Society continuously for some years does not make the society a State within the definition of State under Article 12 of the Constitution and therefore, the State would not be responsible to bear and pay salaries and allowances of its employees by extending aid forever. ,

Unaided minority School.- Unaided minority schools over which the Government has no administrative control due to their authority under Article 30 (1) ofthe Constitution are not "State" within the meaning of Article 12 of the Constitution. The right to equality which is available against the state cannot be claimed against unaided minority schools and in the absence of any statutory provision or administrative instruction requiring private unaided schools to pay their teachers the same salary and allowances as are being paid to the teachers of private recognized aided schools as being paid in the government institutions, unaided minority institutions are under no obligation to pay equal pay for equal Walk to their teachers.

Is Judiciary included in the word "State"?-In America it is well-settled that the judiciary is within the prohibition of the 14th Amendment. The judiciary. it is said, though not expressly mentioned in Article 12 it should be included within the expression 'other authorities' since courts are set up by statute and exercise power conferred by law. It is suggested that discrimination may be brought

about...even (by) judiciary and the inhibition of Article 14 extends to all actions of the State denying equal protection of the laws whether it be the action of anyone of the three limbs of the State .

The question whether the judiciary was included within the definition of 'the State' in Article 12 arose for consideration of the Supreme Court in *Naresh* v.", *State of Maharashtra.* It was held that even if a Court is the State a writ under Article 32 cannot be issued to a High Court of competent jurisdiction against its judicial orders, because such orders cannot be said to violate the fundamental rights. Mr. H.M. Seervai is of opinion that the judiciary should be included in the definition of 'the State' and a judge acting as a judge is subject to the writ-jurisdiction of the Supreme Court. The courts, like any other organ of the State, are limited by the mandatory provisions of the Constitution and they can hardly be allowed to override the fundamental rights under theshield that they have within their jurisdiction, the right to make an erroneous decision.[68] In view of the judgment of 7 Judge Bench of the Supreme Court in *A.R. Antulay* v. *.S. Nayak,69* where it has been held that the court cannot pass an order or. issue a direction which would be violative of fundamental rights of citizens, it can be said that the expression "State" as defined in Article 12 of the Constitution includes judiciary also.

THE COMING OF THE LEVIATHAN

How state-level societies differ from tribal ones; "pristine" versus competitive state formation; different theories of state formation, including some dead ends like irrigation, leading to an explanation of why states emerged early on in some parts of the world and not in others

State-level societies differ from tribal ones in several important respects.

First, they possess a centralized source of authority, whether in the form of a king, president, or prime minister. This source of authority deputizes a hierarchy of subordinates who are capable, at least in principle, of enforcing rules on the whole of the society. The source of authority trumps all others within its territory, which means that it is *sovereign.* All administrative levels, such as lesser chiefs, prefects, or administrators, derive their decision-making authority from their formal association with the sovereign.

Second, that source of authority is backed by a monopoly of the legitimate means of coercion, in the form of an army and/or police. The power of the state is sufficient to prevent segments, tribes, or regions from seceding or otherwise separating themselves. (This is what distinguishes a state from a chiefdom)

Third, the authority of the state is territorial rather than kin based.Thus France was not really a state in Merovingian times when it was led by a king of the Franks rather than the king of France. Since membership in a state does not depend on kinship, it can grow much larger than a tribe.

Fourth, states are far more stratified and unequal than tribal societies, with the ruler and his administrative staff often separating themselves off from the rest of the society. In some cases they become a hereditary elite. Slavery and serfdom, while not unknown in tribal societies, expand enormously under the aegis of states.

Finally, states are legitimated by much more elaborate forms of religious belief, with a separate priestly class as its guardian. Sometimes that priestly class takes power directly, in which case the state is a theocracy; sometimes it is controlled by the secular ruler, in which case it is labeled caesaropapist; and sometimes it coexists with secular rule under some form of power sharing.

With the advent of the state, we exit out of kinship and into the realm of political development proper. The next few chapters will look closely at how China, India, the Muslim world, and Europe made the transition out of kinship and tribalism and into more impersonal state institutions. Once states come into being, kinship becomes an obstacle to political

development, since it threatens to return political relationships to the small-scale, personalties of tribal societies. It is therefore not enough merely to develop a state; the state must avoid retribalization or what I label repatrimonialization.

Not all societies around the world made this transition to statehood on their own. Most of Melanesia consisted of acephalous tribal societies (that is, lacking centralized authority) prior to the arrival of European colonial powers in the nineteenth century, as did roughly half of sub-Saharan Africa, and parts of South and Southeast Asia? The fact that these regions had no long history of statehood very much affected their development prospects after they achieved independence in the second half of the twentieth century, especially when compared to colonized parts of East Asia where state traditions were deeply embedded. Why China developed a state at a very early point in its history, while Papua New Guinea did not, despite the latter having been settled by human beings for a longer period of time, is one of the questions I hope to answer.

THEORIES OF STATE FORMATION

Anthropologists and archaeologists distinguish between what they call "pristine" and "competitive" state formation. Pristine state formation is the initial emergence of a state (or chiefdom) out of a tribal-level society. Competitive formation occurs only after the first state gets going. States are usually so much better organized and powerful than the surrounding tribal-level societies that they either conquer and absorb them, or else are emulated by tribal neighbors who wish not to be conquered. While there are many historical examples of competitive state formation, no one has ever observed the pristine version, so political philosophers, anthropologists, and archaeologists can only speculate as to how the first state or states arose. There are several categories of explanation, including social contract, irrigation, population pressure, war and violence, and circumscription.

The State as a Voluntary Social Contract

Social contract theorists like Hobbes, Locke, and Rousseau were not in the first instance trying to give empirical accounts of how the state arose. They were attempting, rather, to understand a government's basis of legitimacy. But it is still worth thinking through whether the first states could have arisen through some form of explicit agreement among tribesmen to establish centralized authority.

Thomas Hobbes lays out the basic "deal" underlying the state: in return for giving up the right to do whatever one pleases, the state (or Leviathan) through its monopoly of force guarantees each citizen basic security. The state can provide other kinds of public goods as well, like property rights, roads, currency, uniform weights and measures, and external defense, which citizens cannot obtain on their own. In return, citizens give the state the right to tax, conscript,

and otherwise demand things of them, Tribal societies can provide some degree of security, but can provide only limited public goods because of their lack of centralized authority. So if the state arose by social contract, we would have to posit' that at some point in history, a tribal group decided voluntarily to delegate dictatorial powers to one individual to rule over them. The delegation would not be temporary, as in the election of a tribal chief, but permanent, to the king and all his descendants. And it would have to be on the basis of consensus on the part of all of the tribal segments, each of which had the option of simply wandering off if it didn't like the deal.

It seems highly unlikely that the first state arose out of an explicit social contract if the chief issue motivating it were simply economic, like the protection of property rights or the provision of public goods. Tribal societies are egalitarian and, within the context of close-knit kinship groups, very free. States, by contrast, are coercive, domineering, and hierarchical, which is why Friedrich Nietzsche called the state the "coldest of all cold monsters." We could imagine a free tribal society delegating authority to a single dictator only under the most extreme duress, such as the imminent danger of invasion and extermination by an outside invader, or to a religious figure if an epidemic appeared ready to wipe out the community. Roman dictators were in fact elected in this fashion during the Republic, such as when the city was threatened by Hannibal after the Battle of Cannae in 216 B.C. But this means that the real driver of state formation is violence or the threat of violence, making the social contract an efficient rather than a final cause.

The State as a Hydraulic-Engineering Project

A variant of the social contract theory, over which a lot of unnecessary ink has been spilled, is Karl Wittfogel's "hydraulic" theory of the state. Wittfogel, a former Marxist turned anticommunist, expanded on Marx's theory of the Asiatic mode of production, providing an economic explanation for the emergence of dictatorships outside the West. He argued that the rise of the state in Mesopotamia, Egypt, China, and Mexico was driven by the need for large-scale irrigation, which could be managed only by a centralized bureaucratic state.

There are many problems with the hydraulic hypothesis. Most early irrigation projects in regions with nascent states were small and locally managed, Large engineering efforts like the Grand Canal in China were undertaken only after a strong state had already been constructed and thus were effects rather than causes of state formation. For Wittfogel's hypothesis to be true, we would have to imagine a group of tribesmen getting together one day and saying to each other, "We could become a lot richer if we turned over our cherished freedom to a dictator, who would be responsible for managing a huge hydraulic-engineering project, the likes of which the world has never seen before. And we will give up that freedom not just for the duration of the project,

but for all time, because future generations will need a good project manager as well." If this scenario were plausible, the European Union would have turned into a state long ago.

Population Density

The demographer Ester Boserup has argued that population increase and high population densities have been important drivers of technological innovation. The dense populations around river systems in Egypt, Mesopotamia, and China spawned intensive systems of agriculture involving large-scale irrigation, new higher-yielding crops, and other tools. Population density promotes state formation by permitting specialization and a division of labor between elites and nonelite groups. Low-density band- or tribal-level societies can mitigate conflict simply by moving away from one another, hiving off segments when they find they can't coexist. Dense populations in newly created urban centers do not have this option. Scarcity of land or access to certain key public resources are much more likely to trigger conflicts, which then might require more centralized forms of political authority to control.

But even if higher population density is a necessary condition for state formation, we are still left with two unanswered questions: What causes population density to increase in the first place? And what is the mechanism connecting dense populations with states?

The first question might seem to have a simple Malthusian answer: population increase is brought about by technological innovation such as the agricultural revolution, which greatly increases the carrying capacity of a given piece of land, which then leads parents to have more children. The problem is that a number of hunter-gatherer societies operate well below their local environment's long-term productive capacity. The New Guinea highlanders and the Amazonian Indians have developed agriculture, but they do not produce the food surpluses of which they are technically capable. So the mere technological possibility of increased productivity and increased output, and therefore increased population, does not necessarily explain why it actually came about." Some anthropologists have suggested that in certain hunter-gatherer societies, increases in food supply are met with decreasing amounts of work because their members value leisure over work. Inhabitants of agricultural societies may be richer on average, but they also have to work much harder, and the trade-off may not seem appealing. Alternatively, it may simply be the case that hunter-gatherers are stuck in what economists call a low-level equilibrium trap. That is, they have the technology to plant seeds and shift to agriculture, but the social expectations for sharing surpluses quickly quash private incentives to move to higher levels of productivity.

It could be that the causality here is reversed: people in early societies would not produce a surplus on their own until compelled to do so by rulers who could hold a whip hand over them. The masters, in turn, might not want to work harder themselves but were perfectly happy to compel others to do so. The emergence of hierarchy would then be the result not of economic

factors but rather of political factors like military conquest or compulsion. The building of the pyramids in Egypt comes to mind.

Hence, population density may not be a final cause of state formation but rather an intervening variable that is the product of some other as yet unidentified factor.

States as the Product of Violence and Compulsion

The weaknesses and gaps in all of the explanations that are primarily economic in focus point to violence as an obvious source of state formation. That is, the transition from tribe to state involves huge losses in freedom and equality. It is hard to imagine societies giving all this up even for the potentially large gains of irrigation. The stakes have to be much higher and can be much more readily explained by the threat to life itself posed by organized violence.

We know that virtually all human societies have engaged in violence, particularly at the tribal level. Hierarchy and the state could have emerged when one tribal segment conquered another one and took control of its territory. The requirements of maintaining political control over the conquered tribe led the conquerors to establish centralized repressive institutions, which evolved into an administrative bureaucracy of a primitive state. Especially if the tribal groups differ linguistically or ethnically, it is likely that the victor would establish a relationship of dominance over the vanquished, and that class stratification would become entrenched. Even the threat of this kind of conquest by a foreign tribe would encourage tribal groups to establish more permanent, centralized forms of command and control, as happened with the Cheyenne and Pueblo Indians.

This scenario of a tribe conquering a settled society has unfolded countless times in recorded history, with waves of Tanguts, Khitai, Huns, Rurzhen, Aryans, Mongols, Vikings, and Germans founding states on this basis. The only question, then, is whether this was how the very first states got their start. Centuries of tribal warfare in places like Papua New Guinea and southern Sudan have not produced state-level societies. Anthropologists have argued that tribal societies have leveling mechanisms to redistribute power after conflict; the Nuer simply absorb their enemies rather than rule them. So it appears that still other causal factors are needed to explain the rise of states. It was only when violent tribal groups spilled out of the steppes of inner Asia or the Arabian desert or the mountains of Afghanistan that more centralized political units formed.

Circumscription and Other Geographical-Environmental Factors

The anthropologist Robert Carneiro has noted that although warfare maybe a universal and necessary condition for state formation, it is not a sufficient one. He argues that it is only when

increases in productivity take place within a geographically circumscribed area like a river valley, or when other hostile tribes effectively circumscribe another tribe's territory, that it is possible to explain the emergence of hierarchical states. In uncircumscribed, low-population-density situations, weaker tribes or individuals can simply run away. But in places like the Nile valley, bounded by deserts and the ocean, or in the mountain valleys of Peru, that were bounded by deserts, jungles, and high mountains, this option didn't exist. Circumscription would also explain why higher productivity led to greater population density, since people didn't have the option of moving away.

The tribes of the New Guinea highlands have agriculture and live in circumscribed valleys, so those factors alone cannot explain the rise of states. Absolute scale might also be important. Mesopotamia, the Nile valley, and the Valley of Mexico were all relatively large agricultural areas that were nonetheless circumscribed by mountains, deserts, and oceans. Larger and more concentrated military formations can be raised, and can project their power over larger areas, particularly if they have domesticated horses or camels. So it was not just circumscription, but also the size and accessibility of the area being circumscribed, that determined whether a state would form. Circumscription would help early state builders in another way as well, by protecting them from external enemies outside the river valley or island while ever-larger forces were being marshaled. Across Oceania, chiefdoms and proto states were formed only on the larger islands like Fiji, Tonga, and Hawaii, not on the smaller ones like the Solomon Islands, Vanuatu, or the Trobriands. New Guinea is a large island, but it is extremely mountainous and cut up into a myriad of tiny microenvironments.

The State as the Product of Charismatic Authority

Archaeologists who speculate about the origins of politics tend to be biased in favor of materialistic explanations like environment and level of technology, rather than cultural factors like religion, simply because we know more about the material environment of early societies. But it seems extremely likely that religious ideas were critical to early state formation, since they could effectively legitimate the transition to hierarchy and loss of freedom enjoyed by tribal societies. Max Weber distinguished what he called charismatic authority from either its traditional or modern-rational variants. The Greek word charisma means "touched by God"; a charismatic leader asserts authority not because he is elected by his fellow tribesmen for leadership ability but because he is believed to be a designee of God.

Religious authority and military prowess go hand in hand. Religious authority allows a particular tribal leader to solve the large-scale collective action problem of uniting a group of autonomous tribes. To a much larger degree than economic benefit, religious authority can explain why a free tribal people would be willing to make a permanent delegation of authority to a single individual and that individual's kin group. The leader can then use that authority to

create a centralized military machine that can conquer recalcitrant tribes as well as ensure domestic peace and security, which then reinforces the leader's religious authority in a positive-feedback loop. The only problem, however, is that you need a new form of religion, one that can overcome the inherent scale limitations of ancestor worship and other kinds of particularistic forms of worship.

There is a concrete historical case of this process unfolding, which was the rise of the first Arab state under the Patriarchal and Umayyad caliphates. Tribal peoples inhabited the Arabian peninsula for many centuries, living on the borders of state-level societies like Egypt, Persia, and *Romel* Byzantium. The harshness of their environment and its unsuitability for agriculture explained why they were never conquered, and thus why they never felt military pressure to form themselves into a centralized state. They operated as merchants and intermediaries between nearby settled societies but were incapable of producing a substantial surplus on their own.

Things changed dramatically, however, with the birth of the Prophet Muhammad in A.D. 570 in the Arabian town of Mecca. According to Muslim tradition, Muhammad received his first revelation from God in his fortieth year and began preaching to the Meccan tribes. He and his followers were persecuted in Mecca, so they moved to Medina in 622. He was asked to mediate among the squabbling Medinan tribes, and did so by drafting the so-called Constitution of Medina that defined a universal umma, or community of believers, that transcended tribal loyalties. Muhammad's polity did not yet have all the characteristics of a true state, but it made a break with kinship-based systems not on the basis of conquest, but through the writing of a social contract underpinned by the prophet's charismatic authority. After several years of fighting, the new Muslim polity gained adherents and conquered Mecca, uniting central Arabia into a single state-level society.

Normally in conquest states the lineage of the founding tribal leader evolves into the ruling dynasty. This didn't happen in Muhammad's case because he had only a daughter, Fatima, and no sons. Leadership of the new state thus passed to one of Muhammad's companions in the Umayyad clan, a parallel segment in Muhammad's Quraysh tribe. The Umayyads did evolve into a dynasty, and the Umayyad state under Uthman and Mu'awiya quickly went on to conquer Syria, Egypt, and Iraq, imposing Arab rule over these preexisting state-level societies.

There is no clearer illustration of the importance of ideas to politics than the emergence of an Arab state under the Prophet Muhammad. The Arab tribes played an utterly marginal role in world history until that point; it was only Muhammad's charismatic authority that allowed them to unify and project their power throughout the Middle East and North Africa, The tribes had no economic base to speak of; they gained economic power through the interaction of religious ideas and military organization, and then were able to take over agricultural societies

that did produce surpluses. This was not a pure example of pristine state formation, since the Arab tribes had the examples of established states such as Persia and Byzantium all around them that they could emulate and eventually take over. Moreover, the power of tribalism remained so strong that subsequent Arab states were never able to overcome it fully or to create state bureaucracies not heavily influenced by tribal politics (see chapter 13). This forced later Arab and Turkish dynasties to resort to extraordinary measures to free themselves from the influence of kinship and tribal ties, in the form of slave armies and administrators recruited entirely from foreigners.

While the founding of the first Arab state is a particularly striking illustration of the political power of religious ideas, virtually every other state has relied on religion to legitimate itself. The founding myths of the Greek, Roman, Hindu, and Chinese states all trace the regime's ancestry back to a divinity, or at least to a semidivine hero. Political power in early states cannot be understood apart from the religious rituals that the ruler controlled and used to legitimate his power. Consider, for example, the following ode to the founder of China's Shang Dynasty, from the Book of Odes:

Heaven commissioned the swallow
To descend and give birth to the [father of our} Shang
[His descendants} dwelt in the land of Yin and became great.
[Then} long ago Ti appointed the martial Tang
To regulate the boundaries through the four quarters ...

Another poem asserts:

Profoundly wise were {the lords of} Shang
And long had there appeared the omens {of the dynasty};
When the water of the deluge spread vast abroad,
Yu arranged and divided the regions of the land.

We seem to be getting closer to a fuller explanation for pristine state formation. We need the confluence of several factors. First, there needs to be a sufficient abundance of resources to permit the creation of surpluses above what is necessary for subsistence. This abundance can be natural: the Pacific Northwest was so full of game and fish that the hunter-gatherer- level societies there were able to generate chiefdoms, if not states. But more often abundance is made possible through technological advances like agriculture. Second, the absolute scale of the society has to be sufficiently large to permit the emergence of a rudimentary division of labor and a ruling elite. Third, that population needs to be physically constrained so that it increases in density when technological opportunities present themselves, and in order to make sure that subjects cannot run away when coerced. And finally, tribal groups have to be motivated to give

up their freedom to the authority of a state. This can come about through the threat of physical extinction by other, increasingly well-organized groups. Or it can result from the charismatic authority of a religious leader. Taken to- ether, these appear to be plausible factors leading to the emergence of a state in places like the Nile valley.

Thomas Hobbes argued that the state or Leviathan carne about as a result of a rational social contract among individuals who wanted to solve the problem of endemic violence and end the state of war. At the beginning of chapter 21 suggested that there was a fundamental fallacy in this, and all liberal social contract theories, insofar as it presupposed a presocial state of nature in which human beings lived as isolated individuals. Such a state of primordial individualism never existed; human beings are social by nature and do not have to make a self-interested decision to organize themselves into groups. The particular form that social organization takes is frequently the result of rational deliberation at higher levels of development. But at lower ones, it evolves spontaneously out-of the building blocks created by human biology.

But there is a flip side to the Hobbesean fallacy. Just as there was never a clean transition from an anomie state of nature to an orderly civil society, so there was never a complete solution to the problem of human violence. Human beings cooperate to compete, and they compete to cooperate. The birth of the Leviathan did not permanently solve the problem of violence; it simply moved it to a higher level. Instead of tribal segments fighting one another, it was now states that were the primary protagonists in increasingly large-scale wars. The first state to emerge could create a victor's peace but over time faced rivals as new states borrowing the same political techniques rose to challenge its predominance.

WHY WEREN'T STATES UNIVERSAL?

We are now in a position to understand why states failed to emerge in certain parts of the world like Africa and Oceania, and why tribal societies persist in regions like Afghanistan, India, and the uplands of Southeast Asia.The political scientist Jeffrey Herbst has argued that the absence of indigenous states in many parts of Africa flows from the confluence of several familiar factors: "The fundamental problem facing state-builders in Africa- be they colonial kings, colonial governors, or presidents in the independent era-has been to project authority over inhospitable territories that contain relatively low densities of people. He points out that, contrary to popular imagination, only 8 percent of the continent's land has a tropical climate, and that 50 percent receives inadequate rainfall to support regular agriculture. Though the human species got its start in Africa, human beings have thrived better in other parts of the world. Population densities had always been low throughout the continent until the arrival of modern agriculture and medicine; it was not until 1975 that Africa reached the population density that Europe enjoyed in the year 1500. Parts of Africa that are exceptions to this generalization, like the fertile Great Lakes region

and the Great Rift Valley, have supported much higher population densities and indeed saw the early emergence of centralized states.

The physical geography of Africa has also made the projection of power difficult. The continent has few rivers that are navigable over long stretches (again, exceptions to this rule like the lower Nile support this point, since it was home to one of the world's first states). The great deserts of the Sahel are a huge barrier to both trade and conquest, in contrast to the less arid steppe lands of Eurasia. Those mounted Muslim warriors who did manage to cross this obstacle soon found their horses dying of encephalitis from the tsetse fly, which explains why the Muslim parts of West Africa are limited to the northern parts of Nigeria, Cote d'Ivoire, Ghana, and the like. In the parts of Africa that are covered by tropical forests, the difficulty of building and maintaining roads was an important obstacle to state building. The hard-surfaced roads the Romans built in Britain were still being used more than a millennium after the collapse of Roman power there; few roads can last more than a few seasons in the tropics.

There are relatively few regions in Africa that are. clearly circumscribed by physical geography. This has made it extraordinarily difficult for territorial rulers to push their administration into the hinterland and to control populations. Low population density has meant that new land was usually available; people could respond to the threat of conquest simply by re-treating farther into the bush. State consolidation based on wars of conquest never took place in Africa to the extent it did in Europe simply because the motives and possibilities for conquest were much more limited. This meant, according to Herbst, that the transition from a tribal to a territorial conception of power with clearly conceived administrative boundaries of the sort that existed in Europe did not take place. The emergence of states in parts of the continent that were circumscribed, like the Nile valley, is an exception fully consistent with the underlying rule.

The reason for the absence of states in aboriginal Australia may be similar to that which pertains to Africa. Australia is for the most part an extremely arid and undifferentiated continent; despite the length of time that human beings have lived there, population density has always been extremely low. The absence of agriculture and of naturally circumscribed regions may explain the failure of political structures above the level of tribe and lineage to emerge.

The situation in Melanesia is rather different. The region consists entirely of islands; so there is natural circumscription; in addition, agriculture there was invented long ago. Here the problem is one of scale and the difficulties of power projection, given the mountainous nature of most of the islands. The mountain valleys into which the islands are divided are small and capable of supporting only a limited population, and it is extremely difficult to project power over long distances. As noted earlier, the larger islands with more extensive fertile plains, such as Fiji and Hawaii, did see the emergence of chiefdoms and states.

Mountains also explain the persistence of tribal forms of organization in many of the world's upland regions, including Afghanistan; the Kurdish regions of Turkey, Iraq, Iran, and Syria; the highlands of Laos and Vietnam; and Pakistan's tribal agencies. Mountains simply make these regions very difficult for states and their armies to conquer and hold. Turks, Mongols, and Persians, followed by the British, Russians, and now the Amerians and NATO forces have all tried to subdue and pacify Afghanistan's tribes and to build a centralized state there, with very modest success.

Understanding the conditions under which pristine state formation occurred is interesting because it helps to define some of the material conditions under which states emerge. But in the end, there are too many interacting factors to be able to develop one strong, predictive theory of when and how states formed. Some of the explanations for their presence or absence begin to sound like Kipling Just So stories. For example, in parts of Melanesia the environmental conditions are quite similar to those of Fiji or Tonga-large islands with agriculture supporting potentially dense populations-where no state emerged. Perhaps the reason has to do with religion, or particular accidents of unrecoverable history.

It is not clear how important it is to develop such a theory, however, since the vast majority of states around the world were the products of competitive rather than pristine state formation. Many states were formed, moreover, in historical times for which we have a written record. Chinese state formation, in particular, began extremely early, somewhat after Egypt and Mesopotamia, and contemporaneously with the rise of states around the Mediterranean and in the New World. There are extensive written and archaeological records of early Chinese history, moreover, that give us a far more contextualized sense of Chinese politics. But most important, the state that emerged in China was far more modern in Max Weber's sense than any of its counterparts elsewhere. The Chinese created a uniform, multilevel administrative bureaucracy, something that never happened in Greece or Rome. The Chines-e developed an explicit antifamilistic political doctrine, and its early rulers sought to undermine the power of entrenched families and kinship groups in favor of impersonal administration. This state engaged in a nation-building project that created a powerful and uniform culture, a culture powerful enough to withstand two millennia of political breakdown and external invasion. The Chinese political and cultural space extended over a far larger population than that of the Romans. The Romans ruled an empire, limiting citizenship initially to a relatively small number of people on the Italian peninsula. While that empire eventually stretched from Britain to North Africa to Germany to Syria, it consisted of a heterogeneous collection of peoples who were allowed a considerable degree of self-rule. By contrast, even though the Chinese monarch called himself an emperor rather than a king, he ruled over something that looked much more like a kingdom or even a state in its uniformity.

The Chinese state was centralized, bureaucratic, and enormously despotic. Marx and Wittfogel recognized this characteristic of Chinese politics by their use of terms like "the Asiatic mode of production" and "Oriental despotism" What I argue in succeeding chapters is that so-called Oriental despotism is nothing other than the precocious emergence of a politically modern state. In China, the state was consolidated before other social actors could institutionalize themselves, actors like a hereditary, territorially based aristocracy, an organized peasantry, cities based on a merchant class, churches, or other autonomous groups. Unlike in Rome, the Chinese military remained firmly under the state's control and never posed an independent threat to its political authority. This initial skewing of the balance of power was then locked in for a long period, since the mighty state could act to prevent the emergence of alternative sources of power, both economic and political. No dynamic modern economy emerged until the twentieth century that could upset this distribution of power. Strong foreign enemies periodically conquered parts or the whole of the country, but these tended to be tribal peoples with less-developed cultures, who were quickly absorbed and Sinified by their own subjects. Not until the arrival of the Europeans in the nineteenth century did China really have to contend with foreign models that challenged its own state-centered path of development.

The Chinese pattern of political development differs from that of theWest insofar as the development of a precociously modern state was not
offset by other institutionalized centers of power that could force on it something like a rule of law. But in this respect it also differed dramatically from India. One of Marx's biggest mistakes was to lump China and India together under a single "Asiatic" paradigm. Unlike China but like Europe, India's institutionalization of countervailing social actors-an organized priestly class and the metastacization of kinship structures into the caste system-acted as a brake on the accumulation of power by the state. The result was that over the past twenty-two hundred years, China's default political mode was a unified empire punctuated by periods of civil war, invasion, and breakdown, whereas India's default mode was a disunited system of petty political units, punctuated by brief periods of unity and empire.

The chief driver of Chinese state formation was not the need to create grand irrigation projects, nor the rise of a charismatic religious leader, but unrelenting warfare. It was war and the requirements of war that led to the consolidation of a system of ten thousand political units into a single state in the space of eighteen hundred years, that motivated the creation of a class of permanent trained bureaucrats and administrators, and that justified the move away from kinship as the basis for political organization. As Charles Tilly said of Europe in a later period, for China, "war made the state, and the state made war."

FUNDAMENTAL FREEDOMS UNDER ARTICLE 19 OF THE CONSTITUTION OF INDIA

Article 19(1)[1] of the Constitution, guarantees certain fundamental rights, subject to the power of the State to impose restrictions on the exercise of those rights. The Article was thus intended to protect these rights against State action other than in the legitimate exercise of its power to regulate private rights in the public interest.

FREEDOM OF SPEECH AND EXPRESSION

Expression is a matter of liberty and right. The liberty of thought and right to know are the sources of expression. Free Speech is live wire of the democracy. Freedom of expression is integral to the expansion and fulfillment of individual personality. Freedom of expression is more essential in a democratic setup of State where people are the Sovereign rulers. Iver Jennings said, without freedom of speech, the appeal to reason which is the basis of democracy cannot be made. Milton in his *Aeropagitica* says that without this freedom there can be no health in the moral and intellectual life of either the individual or the nation.

According to Justice Krishna Iyer, *"This freedom is essential because the censorial power lies in the people over and against the Government and not in the Government over and against the people."*

The freedom of speech and expression is required to fulfill the following objectives :

a) To discover truth
b) Non self-fulfillment
c) Democratic value
d) To ensure pluralism

The people of India gave to themselves, the Constitution of India, with a view of make it Sovereign, Democratic, Socialistic, Secular and Republic. In our democratic society, pride to place has been provided to freedom of speech and expression, which is the mother of all liberties. One of the main objectives of the Indian Constitution as envisages in the Preamble, is to secure LIBERTY OF THOUGHT AND EXPRESSION to all the citizens. Freedom of Expression is among the foremost of human rights. It is the communication and practical application of individual freedom of thought. Irrespective of the system of administration, various constitutions make a mention of the freedom of expression.

In *Bennett Coleman & co. v. Union of India,* the Supreme Court held that newspaper should be left free to determine their pages and their circulation. This case arouse out of a constitutional challenge to the validity of the Newspaper (Price & Page) Act, 1956 which empowered the Government to regulate the allocation of space for advertisement matter. The court held that the curtailment of advertisements would fall foul of Article 19(1)(a), since it would have a direct impact on the circulation of newspapers. The court held that any restriction leading to a loss of advertising revenue would affect circulation and thereby impinge on the freedom of speech.

In *Indian Express Newspapers* v. *Union of India*, a challenge to the imposition of customs duty on import of newsprint was allowed and the impugned levy struck down. The Supreme Court held that the expression *freedom of the press* though not expressly used in Article 19 was comprehended within Article 19(1)(a) and meant freedom from interference from authority which would have the effect of interference with the content & the circulation of newspapers.

In *Secretary, Ministry of Information and Broadcasting* v. *Cricket Association, Bengal*, the Supreme Court held that broadcasting is a means of communication and a medium of speech and expression with in the framework of Article 19(1)(a). This case involved the rights of a cricket association to grant telecast rights to an agency of its choice. It was held that the right to entertain and to be entertained, in this case, through the broadcasting media are an integral part of the freedom under Article 19(1)(a).

Article 19(1)(a) of the Indian Constitution guarantees to all its citizens including media "the right to freedom of speech and expression". Clause (2) of Article 19, at the same time provides: "nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest of:-

a) Sovereignty and Integrity of India.
b) The Security of the State.
c) Friendly relations with foreign states.
d) Public order.
e) Decency or Morality.
f) Contempt of Court.
g) Defamation.
h) Incitement to an offence.

FREEDOM TO ASSEMBLE

The freedom to assemble is of special interest within the realm of constitutional law, since it is enabled and restricted by an intersection of the constitutional text and the criminal procedure code. While the constitution provides for it as a right, the procedural provisions radically restrict this freedom, by empowering the state to regulate its expression and peremptorily curtail it exercise. This rather contradictory approach is a refection of a colonial legacy and the unquestioning adoption of most of the provisions of the 1872 Code of Criminal Procedure by the contemporary Indian State. It is logical that the colonial state maintained a legal framework that enabled a quick breakup of any sort of organising, meeting, association or assembly that could threaten it. It is unfortunate that the modern India continues this legacy, both in the context of assembly and association rights.

In *Himat Lal K. Shah v. Commissioner of Police*, the Supreme Court considered the question as to whether the requirement that prior permission in writing from the police before holding a public meeting on a public street violated the Petitioners Article 19 (1) rights? Here the rule in question enabled the

Commissioner or an officer designated by her to refuse permission for such a meeting.
Chief Justice Sikri writing for the majority distinguished between a statutory provision that
enabled the regulation of conduct of persons in assemblies and processions and a rule that enabled the refusal of permission to hold public meetings on public streets without guidelines being prescribed for the officer responsible. He found no fault with the prior permission requirement, as according to him "the right which flows from Art. 19 (1) (b) is not a right to hold a meeting at any place and time. It is a right which can be regulated." He invalidated the arbitrary powers conferred on the officer authorised by the Commissioner of Police.
In *Kameshwar Prasad v State of Bihar*, a rule that prohibited any form of demonstrations by government employees was examined. The court reasons that a government servant, did not lose her fundamental rights, and that the rule by prohibiting both orderly or disorderly demonstrations violates Article 19 (1) (b). The Court did not take issue with the notion that governmental employees as a class could have their rights or freedoms burdened. The apex court explains that "by accepting the contention that the freedoms guaranteed by Part III and in particular those in Article 19 (1) (a) apply to the servants of Government we should not be taken to imply that in relation to this class of citizens the responsibility arising from the official position would not by itself impose some limitations on the exercise of their rights as citizens".

Restrictions on the freedom of assembly

Article 19 (3) of the Constitution provides that nothing in the right to assemble peaceably shall affect the operation of any existing law in so far as it imposes, or prevents the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of that right. The restrictions pertaining to sovereignty and intergrity were added after the adoption of the Constitution.

FREEDOM OF ASSOCIATION

Article 19(1)(c) of the Constitution of India guarantees to all its citizens the right "to form associations and unions or cooperative societies" Under clause (4) of Article 19, the state may by law impose reasonable restrictions on this right in the interest of public order or morality or the sovereignty and integrity of India. The right to form associations or unions or cooperative societies has a very wide and varied scope including all sorts of associations *viz.*, political parties, clubs, societies, companies, organizations, entrepreneurships, trade unions etc.

The right to form trade unions should not lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike as a part of collective bargaining or otherwise. The right to strike or to declare a lock-out may be controlled or restricted by various industrial legislations such as Industrial Dispute Act or Trade Unions Act.

Right to form association does not carry the right to recognition

Right to form association does not carry the right to strike

Right to form association does not carry the right to inform rival union

Freedom of association and government employees

In *O.K Ghosh* v. *E.X.Joseph*, the respondent, a government servant was the secretary of the civil accounts association. The appellant was the accountant general of Maharashtra. A memo was served on the respondent intimating him that it was proposed to hold an enquiry against him for having deliberately contravened the provisions of Rule 4-A of the Central Civil Services (Conduct) Rules 1955 in so far as he participated actively in various demonstrations organized in connection with the strike of the central government employees and had taken active part in the preparations made for the strike. The respondent filed a writ petition in the High Court of Bombay with a prayer that a writ of certiorari be issued to quash the charge sheet issued against him. He also prayed for a writ of prohibition against the appellant prohibiting him from proceeding further with the departmental proceedings against him. The respondent Joseph also contended that Rules 4-A and 4-B were invalid as they contravened the fundamental right guaranteed to him under 19(1)(a)(b)(c) and (g). The High Court held that Rule 4-A was wholly valid but Rule 4-B was invalid. Rule 4-A provided that no government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service. Rule B provided that no government servant shall join or continue to be a member of any service association which the government did not recognize or in respect of which the recognition had been refused or withdrawn by it. As both parties were not satisfied with the judgement given in the High court they preferred appeal to the Supreme Court.

The Supreme Court held that Rule 4-A in so far as it prohibited the demonstration of employees was violative of fundamental rights guaranteed by Article 19(1) (a) and (b), that the High Court was wrong in conclusion. The Supreme Court further held that participation in demonstration organized for a strike and taking active part in preparations for it cannot mean participation in the strike. The respondent could not be said to have taken part in the strike and the proceedings against him under Rule 4-A were invalid. The Supreme Court also held that Rule 4-B imposed restrictions on the undoubted right of the government servants under Article 19 which were neither reasonable in the interest of public order under Article 19(4) in granting or withdrawing recognition, the government might be actuated by considerations other than those of efficiency or discipline amongst the services or public order. The restrictions imposed by Rule 4-B infringed Article 19(1)(c) and must be held to be invalid.

Restrictions on the Freedom of Association

The right of association like other individual freedom is not unrestricted. Clause (4) of Article 19 empowers the State to impose reasonable restrictions on the right of freedom of association and union in the interest of "public order" or "morality" or "sovereignty or integrity" of India. It saves existing laws in so far as they are not inconsistent with fundamental right of association.

FREEDOM TO MOVE FREELY THROUGHOUT THE TERRITORY OF INDIA

Article 19(1)(d) guarantees to all citizens of India the right "to move freely throughout the territory of India." This right is however, subject to reasonable restrictions mentioned in clause (5) of Article 19, i.e. in the interest of general public or for the protection of the interest of any Scheduled Tribe.

Article 19(1)(d) of the Constitution guarantees to its citizens a right to go wherever they like in Indian territory without any kind of restriction whatsoever. They can move not merely from one State to another but from one place another within the same State. This freedom cannot be curtailed by any law except within the limits prescribed under Article 19(5). What the Constitution lays stress upon is that the entire territory is one unit so far the citizens are concerned. Thus the object was to make Indian citizens national minded and not to be petty and parochial.

Grounds of Restrictions – The State may under clause (5) of Article 19 impose reasonable restriction on the freedom of movement on two grounds-

a) In the interests of general public
b) For the protection of the interest of Scheduled Tribes.

FREEDOM TO RESIDE AND SETTLE IN ANY PART OF THE TERRITORY OF INDIA

According to Article 19(1)(e) every citizen of India has the right "to reside and settle in any part of the territory of India." However, under clause (5) of Article 19 reasonable restriction may be imposed on this right by law in the interest of the general public or for the protection of the interest of any Scheduled Tribe. The object of the clause is to remove internal barriers within India or any of its parts. The words "the territory of India' as used in this Article indicate freedom to reside anywhere and in any part of the State of India.

It is to be noted that the right to reside and right to move freely throughout the country are complementary and often go together. Therefore most of the cases considered under Article 19(1)(d) are relevant to Article 19(1)(e) also. This right is subject to reasonable restrictions imposed by law in the interest of general public or for the protection of the interests of any Scheduled Tribes. Thus where a prostitute, under the Suppression of Immoral Traffic in Women and Girls Act, 1956, was ordered to remove herself from the limits of a busy city or the restriction was placed on her movement and residence, it was held to be a reasonable restriction.

FREEDOM TO PRACTISE ANY PROFESSION, OR TO CARRY ON ANY OCCUPATION, TRADE OR BUSINESS

Article 19 (1) (g) of Constitution of India provides Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art.19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens. Sub clause (g) of Article 19 (1) confers a general and vast right available to all persons to do any particular type of business of their choice. But this does not confer the right to do anything consider illegal in eyes of law or to hold a particular job or to occupy a particular post of the choice of any particular person. Further Art 19(1) (g) does not mean that conditions be created by the state or any

statutory body to make any trade lucrative or to procure customers to the business/businessman. Moreover a citizen whose occupation of a place is unlawful cannot claim fundamental right to carry on business in such place since the fundamental rights cannot be availed in the justification of an unlawful act or in preventing a statutory authority from lawfully discharging its statutory functions.
Keeping in view of controlled and planned economy the Supreme Court in a series of cases upheld the socially controlled legislation in the light of directive principles and the activities of the private enterprises have been restricted to a great extent. However under Article 19(6), the state is not prevented from making a law imposing reasonable restrictions on the exercise of the fundamental right in the interest of the general public. A law relating to professional or technical qualifications is necessary for practicing a profession. A law laying down professional qualification will be protected under Article 19(6).

Under article 19(6)(ii) nothing contained in Sub-clause(g) of Clause (1) of Article 19 shall affect carrying on by the State any trade, business, industry or service, whether to the exclusion, complete or partial of citizens or otherwise if it is not in the interest of general public. Article 19 (6)(ii) will have no application if the State is not carrying on any trade.

Introduction

Sudha Pai

Over the last three decades, the states of the Indian union have come to occupy a seminal position in politics at the national level. In the immediate post-independence period, the Constitution established a federal structure, but due to the absence of regional forces in the Constituent Assembly, a single written constitution, and the existence of a one-party dominant system, the states did not play a significant role. In contrast, today, states enjoy much greater autonomy. With the rise of regional parties they have now become partners in central governance, and following liberalization they have attained greater financial freedom. New social and cultural identities and groups have asserted themselves by changing the established contours of state party systems, leading to fresh political alignments in every national election.

Two interrelated long-term developments in the post-Independence period have been responsible for the growth of state politics as an arena distinct and relatively autonomous from national politics. On the one hand, with the formation of a federal structure in a large and diverse country, there has developed *a common arena of state politics* somewhat divergent from that of national politics. The states have become conscious of their autonomy and collective voice against the centre; with the establishment of a market economy, there is greater competition between states over access to common resources or in attracting private investment—domestic and international. On the other hand, each state has developed over time *distinct and region-specific characteristics*, and a *relatively autonomous political arena* of its own. The establishment of linguistic states set into motion a process of politicization of underprivileged social groups into politics, and assertion of ethnic/regional identities and movements based upon caste and community in the states creating differentiation. All-India

politics has also interacted with local political formations thrown up by the specificities of politics in each state creating different patterns. Both these developments—increase in commonalities of structures and processes among states, and greater differentiation due to specificities in each state—are taking place at the same time; both regional and national identities have developed side-by-side that has enabled the states to hold together. The latter has not effaced the former, nor has the continued presence of the former led to balkanization as predicted in the 1950s.

The chapters in this Handbook examine these significant shifts in the functioning of state politics along three axes, the interplay between them creating new patterns:

- Pan-Indian and regional forces that have existed historically and determined the process of states reorganization in 1956 and, subsequently, present-day demands for smaller states in particular.
- Democratization and regionalization of politics which underlie the rise of regional parties, identity politics, social movements, and electoral politics in the states.
- Economic reform which has in recent years shaped state politics around issues of growth, equity, and governance.

These three axes have been selected as they are determining significant developments in contemporary politics in the states. At same time they have historical relevance as they have played a significant, formative role in shaping state politics which began in the colonial period, but more importantly since independence. Moreover, close interaction between these three aspects has helped in the gradual social deepening of democracy in the states. A number of phases can be discerned in the journey—based on the above mentioned processes—of the development of an autonomous arena and a distinct identity for the states within the Indian union. The reorganization of states at independence initiated the process of creating a viable social and political federal structure in keeping with the needs of nation-building that is still underway. The three decades from the 1950s to the 1970s, due to the existence of the Congress system, proved to be one of the slow beginnings of party systems, institutions, and electoral politics in the states. Major turning points which initiated a process of differentiation and increasingly made the states important players were the defeat of the Congress party in the mid-1960s in a number of states, the de-linking of state and national elections, the Green Revolution, and the rise of a rich peasant class, rising political consciousness, and social movements in many states (see the chapters on the states in Narain 1972).

While earlier democratization and regionalization of politics were underlying processes, they accelerated in the 1980s initiating a second phase that experienced gradual decline of the cardinal features of the Nehruvian political system—a systemic change leading to the collapse of older structures, processes, and norms necessitating the establishment of new ones. Writing in the early 1980s, a period of ferment, John Wood raised the seminal question of whether political development in the states pointed to 'continuity or crisis'? (1984: 15). Many of the problems he described were eventually responsible for a multi-faceted crisis of much greater magnitude; some attributed it to decline of the traditional 'social order' (Frankel and Rao1989), while others to a 'crisis of governability' (Kohli 1991).

Consequently, the 1990s constituted a decisive shift, a period of transition, when collapse of the older polity dependent on single-party dominance and its associated features triggered a number of related changes with enormous

But it can also be understood as the product of a long historical process that has shaped the political geography of the Indian subcontinent. Pan-Indian and regional forces have existed here, and their interplay has created distinct cultural regions and identities (Cohn 1987). Beginning from the colonial period, there has been a constant re-orientation of their relationship with an emerging national identity, a process that remains incomplete.

A longer historical view provides a perspective of the processes of formation of regions and states on the Indian subcontinent and can contribute to an understanding of the recurring demands for reorganization. In fact, it can be argued that the subfield of state politics has not emerged as a truly multidisciplinary area drawing on the work of historians. Until recently, historians were concerned with Indian political history largely at the national level, the focus being on national organizations and leaders. But since the 1980s, attention has shifted to the regional level. Gerald Barrier, examining approximately 200 books and articles published on regional and subnational elements in Indian colonial political history, points to a historiographic trend towards understanding the nationalist movement within the perspective of regional and even local developments (Barrier 1985: 111). This shift provides a rich source of material for the contemporary researcher to understand current demands for smaller states.

Writing in the 1880s, British administrators raised the issue whether historically there was a country called 'India' or is it the perennial nuclear regions of Bengal, Andhra, and Punjab that have formed the enduring reality on the subcontinent. Doubting the ability of India to become a nation, they argued that it was fragile, political artefact of imperialism whose withdrawal would lead to it flying apart leading to the re-emergence of regional states. A related issue is why despite its large size, distinct, territorially bounded nationalities did not develop into independent states on the Indian subcontinent, such as Europe which has 25 countries. Both the concept of the nation state in Europe and the subcontinental empire in India have been quite different (Rudolph and Rudolph 1985: 43). The European experience of 'stateness' was primarily one of narrowing of sovereignty into ethnically homogenous defined areas, whereas in India central authority extended across ethnic boundaries bringing together communities in a layered, segmented but ordered heterogeneity due to cultural and social differences (ibid.). Thus, regions retained their relative fluidity through history and, even today, are political projects and contested constructs even when they appear to be 'natural'.

Ainslie T. Embree argues in his chapter that these two historical realities—regional cultures and an all-India civilization—have provided the basis for the federal nation state in the post-independence period. Unlike in Europe, an all-India civilization as an enduring political and social entity, continuous with the modern nation state *together* with the perennial nuclear regions of India—Punjab, Bengal, Madras, etc.—with the lines of regional geography matching the structure lines of political and social history, while coexisting, provides the 'two realities' of Indian civilization. The central elements of the former, that is, all-India civilization as an enduring political and social entity, have not spread evenly into all regions. It has a 'thick' layer in some and a 'thin' layer in others, and limited to a small elite group everywhere, beneath which exist the 'little traditions'. In this complex arrangement, it is three 'stratified linkages' of religious and philosophical ideas—literary culture, political theories, and historical memories—that have provided unity: the indigenous Brahmanical and the external Islamic and Western tradition. The

implications for the states. Regional parties and identity politics based on caste and community created political instability due to several factors such as no party gaining a majority in state assemblies, short-lived coalition governments, economic collapse, and poor governance. This was particularly true of the states in the Hindi heartland where, in contrast to states in southern and western India, social change began only in the late colonial period and the pace reduced further after independence. Here the process of transition from the older political system to the newer one was more drawn out and painful, although longer-term analysis of change in the states is more positive. Two parallel shifts that took this process forward were economic reform and demands for smaller states which have the potential for re-configuration of states within the federal structure.

By the early 2000s, these developments created a post-Congress polity in which multiparty competition had changed the structure of electoral competition in the states, provided space for the rise of new social identities, giving regional parties a greater role in national politics, and loosened the tight mould of federalism cast at independence. In more recent years, with the relative decline of identity politics, the issue of development during a period of liberalization and the impact of creation of smaller states, particularly in the Hindi heartland, has come to the fore. A recent study positing a relationship between faster economic growth and victory of the Congress party in the 2009 elections in the states, argues that when the slow growing states accelerated in the early 2000s to 6 per cent or more growth, incumbents started winning, indicating that fast growth benefits and draws votes from the masses (Gupta and Panagariya 2010). In the 1990s when economic progress was not good, anti-incumbency was a trend; in the 2000s with faster growth, economic performance of the incumbent government became an important determinant of the way voters behave. This suggests that a new relationship is emerging between faster and more inclusive growth and electoral politics (ibid.). However, the nature of economic change taking place in the states and its relationship with policies of liberalization and politics remains complex and controversial, as some of the contributors in this volume have argued. Nor has identity politics disappeared; it is now employed together with a developmental agenda for all sections of society and not for the benefit of a particular social group as in the past. Both the Bahujan Samaj Party (BSP) government headed by Mayawati between 2007 and 2012 and the Janata Dal (JD) government headed by Nitish Kumar since 2010, which came to power on a winning caste-combination and the use of inclusive development programmes for all social categories once in office, provide good examples where deeper research into these changes is possible and required. Thus, during the 2000s, faster but socially inclusive growth, economic reform, greater participation, improved governance, and rising demands for reconfiguration of the states have come to occupy centre stage.

This introduction employs the lens of *continuity* and *change* to interpret these processes analysed by the contributors since independence, but more particularly in the contemporary phase. It further discusses to what extent past patterns are continuing or have been replaced by newer ones, and the direction and extent of change. The concluding section briefly examines emerging future trends in state politics.

REGIONS, REORGANIZATION, AND NEW ASSERTIONS

The reorganization of the Indian states after independence by the nationalist leadership was an attempt to create a coherent federal arrangement in keeping with the wishes of the people.

latter two produced empires that spread gradually over the subcontinent blunting the potentialities of the regions for nationality formation by distorting their political development. In fact, Embree suggests that India has held together well after independence, overcoming major separatist movements in the Northeast and in Punjab because by the end of the twentieth century, history and ideology have combined to produce something new in the subcontinent—a state stronger than society.

Distinct phases can be discerned in the formation of regions and their interplay with reorganization of states on the subcontinent, a process that began in the colonial period. The national movement contributed to the rise of regional identities and movements that led to the rise of regional consciousness side by side with nationalism. Broomfield (1982) points to the development of regional elites during the colonial period at different points of time, in different ways, and with different interpretations of the past and of the emerging nation. Two kinds of mobilization took place: horizontal and vertical. In the former, large masses joined the movement under the Indian National Congress (INC), while the latter process saw the integration of certain regions under the growing linguistic middle classes in these regions (Reddy and Sharma 1977). Since language was the basis of many of these movements, it emerged earlier as an important fulcrum around which demands for demarcation of regions along linguistic lines arose gradually. As a result, in the 1920s, the INC under the leadership of Gandhi adopted the principle of linguistic reorganization of states as a political objective. These developments underlie the strident demand for the formation of linguistic states in 1956.

These significant aspects are discussed in the next chapter by Asha Sarangi, which analyses the historical reasons and political compulsions that determined the rationale for states reorganization. It is based on a close reading of the report of the State Reorganization Commission (SRC). Entrusted with the task of providing a workable framework to facilitate the process of reorganization, the SRC report discussed factors such as financial viability, size of the states, unity and security of the country, planned economic development of different regions, and linguistic-cultural homogeneity of the states, and tried to provide workable criteria. However, by the 1950s, the demand for linguistic reorganization had become so intensely political that in the final resort the linguistic principle became the main basis of reorganization. Sarangi's chapter also shows that the demands for smaller states such as Telangana or Purbanchal in contemporary times had been stated before the SRC and the specific reasons for not granting them separate statehood.

However, with the emergence of region as an important factor in state politics, the reorganization undertaken in 1956 was at best an unfinished task; a product of developments in the colonial period culminating in the formation of 14 states and 9 union territories. The following decades witnessed the formation of more states: Maharashtra and Gujarat in 1960; Haryana and Punjab in 1966; Nagaland in 1963; several states in the Northeast in 1970–80; and Goa in 1992. While many older demands for reorganization since independence remain unresolved, the last two decades have witnessed a third phase of increasing demands for formation of smaller states that are a product of developments in post-independence India. There has been a shift away from issues of language and culture that had shaped the earlier process of reorganization to focus upon smaller size for better governance and greater participation, administrative convenience, economic backwardness, and similarity in the developmental needs of the subregion and broad cultural–linguistic

affinity (Majeed 2003: 85). The creation of the three new states of Uttarakhand, Jharkhand, and Chhattisgarh carved out of the large states of Uttar Pradesh (UP), Bihar, and Madhya Pradesh, respectively in 2000, which were earlier viewed as 'low key' demands and not very economically viable has also taken the process further (Kumar 1998: 130–40). Against this backdrop, the announcement by the central government that it would move a resolution to form a separate state of Telangana on 9 December 2009, sparked off demands for many smaller states including a second SRC.

In this ongoing debate on the grounds on which states can be reorganized, size and economic backwardness have emerged as two central issues. Scholars have argued that mere creation of smaller states does not guarantee that they will be well-governed, or will experience faster economic development. However, others have pointed out that recently created small states such as Bihar and Jharkhand are not performing badly (Singh 2010). But it is also felt that the focus should not be only on size, rather it should be on state capacity, which varies widely across the country. A related issue is the need for socially and economically inclusive growth, which assumes importance with rising state/regional inequalities in the period of liberalization and retreat of the state from many welfare functions. Demands for new states such as Vidharbha, Saurashtra, Bodoland, Coorg, and Harit Pradesh, among others, are being made on the basis of economic backwardness of subregions within large states. Unequal development among regions due to distorted patterns of colonial investment has continued into the post-independence period, leading to capitalist enclaves in the big states surrounded by poorer regions. However, the Srikrishna report points out that today Telangana is not the most backward region in Andhra Pradesh (AP), all subregions have backward districts. A close reading of the report suggests that the Telangana movement today is driven not so much by economic backwardness, but a modicum of economic growth and heightened desire for rapid and inclusive development among all sections including the tribal groups which would bring them closer to other more developed regions.

However, size and economic backwardness are not the driving factors behind the creation of the three new states in 2000. More immediately, the reasons lie in the tremendous changes that have taken place in the politics of the states in the Hindi heartland. An important development is the competition within new, local elites in these states within both the national parties, the Bharatiya Janata Party (BJP), and the Congress, to create smaller states and gain control over them, and thereby increase their clout in parliament in an era of coalition governments. In Uttarakhand, as Emma E. Mawdsley's chapter shows, the ideas which underlay the movement—in contrast to identities and ideas arising out of old movements such as Chipko—were feelings, within this new local elite, of unity within the hills, difference from the UP plains, and loyalty to India, which were used to skilfully create a strong demand for a separate state. The movement succeeded because these ideas were in keeping with a growing recognition that there was a need to break up some of India's large states, such as UP, and hence this appealed to the rationalizing and modernizing discourse of the Indian state, particularly the planners and developers. Differences within the movement arising out of caste, community, and subregion were overcome, but not entirely as they surfaced during the formation of the state and still need to be resolved.

In contrast to Mawdsley, Stuart Corbridge has raised doubts that the formation of these three states does not point to greater

democratization, or enhanced ability of the new regional political elites to deal with rising identities and demands from below. Rather it is based on fraud and hypocrisy. The state of Jharkhand was formed with little regard to the aspirations of the Adivasis who have led a long struggle since the 1930s for a greater tribal state. His analysis points to a long process of de-tribalization due to narrower definition of tribalness, entry of non-tribals, and rise of an educated class and cooption by the Congress, all of which undermined tribal identity and destroyed the movement. Nor have high growth rates due to entry of private companies helped the tribals. An 'adivasi cosmovision' still exists but betrayed by leaders, the tribal movement has turned towards issues of forests, land, and dams rather than a separate state.

However, Maya Chadda's chapter argues that the frequent reorganization of state boundaries has helped in strengthening the federal system and not led to Balkanization as feared in the 1950s. Her positive reading is based on the argument that each of the three phases of reorganization since independence has a 'master theme' that has aimed at achieving federal balance through various means of accommodation. In the 1980s, the federal structure faced a serious challenge from separatist movements in Punjab, Assam, and later Kashmir. But in contrast to scholars who feel that these problems have weakened the Indian state, Chadda argues that the formation of the three new states in 2000 can be viewed as an expression of a 'new confidence' among national elites in the strength of Indian federalism and democracy. This is perhaps due to the resolution of conflicts in Punjab, Assam, and Kashmir, closer integration of ethnic and caste-based regional parties into the central government, greater space for local politics, freer economy, and new forms of governance using civil society. These debates suggest, as Sanjib Baruah (2010) has also argued, that the problem of reorganization looks different when viewed from different regions, particularly peripheral regions such as the Northeast, and it is not necessary that the same model will prove successful in all parts of the subcontinent.

POLITICS OF DEMOCRATIC CHANGE: PARTIES, ELECTIONS, AND MOVEMENTS

De-colonization and adoption of a democratic federal constitution set into motion two long-term processes that have shaped politics in the states: democratization and regionalization (Pai 2000: 5). Many changes triggered by these twin processes are addressed by contributors in the second part of the volume. Democratization has been instrumental in the politicization and mobilization of new and underprivileged social groups into politics, assertion of ethnic/regional identities, and movements based upon caste, community, and region. It is the product of a number of developments: the inauguration of the constitution; adoption of adult franchise; land reforms; spread of literacy; movements and rise in political awareness. During the first four decades of single party rule and centralized planning, at least three developments took it forward: the defeat of the Congress party in 1967 in 8 out of 16 major states; the de-linking of state assembly elections by Mrs Indira Gandhi in 1971 leading to a separate arena for state politics; and the rise of regional parties in the 1980s due to demands for greater autonomy and economic developments such as the Green Revolution leading to the formation of rich peasant/backward caste groups contributed to the decline of the Congress in many states such as AP, UP, and Punjab.

The parallel process of regionalization underlies the gradual shift of power from a single centre to *many poles* located in the states though this has not been a continuous process, the balance of power has shifted back and forth

over phases (Pai 2000: 5). A multidimensional process, it is the consequence of rise of regional consciousness, spread of the electoral process, socio-political mobilization, emergence of identities, and shift to multiparty system. The impact of this process is visible as early as the 1980 Lok Sabha elections in which the Congress obtained an absolute majority, but it initiated a process of shifting of its regional base and progressive shrinking of the social base as a result of which it began to lose rapidly in many states one after the other. Certain developments as part of this process contributed to new patterns in the states: the rise of the backward castes, Dalit assertion, and the politics of Hindutva, which led to the rise of narrower sectarian parties such as the Samajwadi Party (SP), Rashtriya Janata Dal (RJD), BSP, and BJP.

Three chapters in this part deal with political developments that underlie much of the changing patterns in the states: decline and collapse of Congress dominance in the late 1980s; the emergence of the BJP as an alternative; and the resulting shift towards a fragmented multiparty system. Sudha Pai's chapter examines the decline of the Congress and recent attempts at revival in the key state of UP. It analyses three significant social movements that find resonance in other states—mobilization of the backward caste/rich peasantry; Hindu nationalism; and Dalit assertion—that were able to transform themselves into strong opposition parties and mount a serious challenge to the Congress party in UP leading to its progressive decline and marginalization. Pai argues that while the process of revival of the Congress has begun, it faces many daunting problems: regaining the traditional base of the party, internal elections, and putting into place new cadres and leaders who will be able to rebuild the organization. However, in the 2012 assembly elections, despite hopes of better performance, the Congress has not been able to recover lost ground. Once again it is lower caste parties that have held their own, this time it is the SP which has been able to gain a majority.

The spectacular rise of the BJP from 1989 onwards is closely related to the retreat of the Nehruvian consensus on secularism that provided room for a right wing Hindu party for the first time after independence. Consequently, at the national level and in an increasing number of states, the rise of the BJP in the 1990s was the defining feature of Indian politics and the party system as it provided a Hindu nationalist alternative to the Congress, especially in the Hindi heartland due to the Mandir issue (Brass 1993; Hansen and Jaffrelot 2001). E. Sridharan's contribution analyses the expansion of the BJP across Indian states between 1989 and 2004, a period when it became a strong national party, using a twofold strategy: forming pre- and post-electoral coalitions with state-level parties based on strategic exploitation of opportunities, ignoring ideological incompatibilities, and arising out of the way the multiparty system was evolving following the decline of the Congress system. Second, after 1998, through the incentive of bringing regional partners into its ruling coalition the National Democratic Alliance (NDA), it spread from its initial confinement to the states in north India by leveraging its perceived electoral pivotality to form state-level coalitions on progressively better terms with state-level parties so as to expand across states and obtain the desired parliamentary majority at the centre. Sridharan holds that it is too early to say whether the system will stabilise into two broad heterogeneous coalitions—the United Progressive Alliance (UPA) and the NDA—as the structure of coalitions remain in a flux.

The transformation of the party system is evident in the inability of any party to obtain a decisive majority in the parliamentary elections in the 1990s and the fragmentation for the first time of seats among a large number of regional

and state-level parties. There was a shift to a new 'region-based' multiparty system in which the all-India parties—the Congress and the BJP—reduced to 'cross-regional parties', that is, with a base in a few states, compete for power at the centre (Pai 1996). Since the 1999 national elections two poles—the NDA and the UPA—have emerged around which regional parties continue to form pre- or post-poll alliances. These alliances are neither ideological nor do they have a common programme, but they increase their bargaining power of regional parties with the centre and strengthen their position vis-à-vis opposition parties in their own states. Thus, regionalization is the important and continuing factor, with blurring of lines between national and state party systems, due to which changing patterns in the states are feeding into the national party system determining its form to a much greater degree than earlier, creating unstable coalitions. The ongoing democratic struggles in the states will, in the long run, create more settled political alignments and development of a stable *multiparty polarized system*, in which state/regional parties compete for power and form national coalitions. These issues are discussed in Sanjay Kumar's chapter, which illustrates through data on national and state elections and voting patterns among various regions/communities, how the states have emerged as 'the main theatre of politics' in at least three ways: greater space and importance for regional parties; increased political participation in voting and other forms of democratic participation; and greater differentiation in patterns of participation among states and social communities. As voters have developed trust in regional parties, he feels that the revival of national parties is unlikely in the near future and the former will continue to be important in national politics.

The next four chapters discuss the emergence, features, and electoral performance of key regional parties: the Telugu Desam Party (TDP) in AP, Dravidian parties in Tamil Nadu, the Asom Gana Parisha (AGP) in Assam, and the left parties in West Bengal. They underline the variety of regional parties emerging from different socio-political contexts making generalization across the subcontinent almost impossible. Regional parties can be understood as the end product of a complex interplay between regional consciousness—which began in the nineteenth century—and a number of socio-economic and political developments since independence, such as formation of linguistic states, uneven economic development of the states, spread of literacy, increasing levels of mobilization, and entry of new groups into politics leading to the creation of regional elites. The rise of regional elites coincided in time with the growing dissatisfaction with Congress rule in many regions leading to regional parties.

Analysing the reasons underlying the success of the oldest regional parties, the Dravidian parties, despite splits, have never been out of power since 1967. John Harris and Andrew Wyatt argue that the non-Brahman movement brought an unusual political elite to power which succeeded in developing a 'common political language' shared by the elite and the masses, a federal power-sharing arrangement with the Congress, and successful provision of welfare to large sections of the population. However, recent years have witnessed the breakdown of this pattern of politics and decline of Dravidianism as an ideology that appeals to the masses. While the reasons remain controversial, the authors point to structural weakness, personal and family dominance in the party, corruption, extortion and coercion, and external rise of smaller parties, caste-based politics, and progress of the Hindu right resulting in a shift from a fairly stable 'two and a half party' to a fragmented multiparty system. These negative developments help explain the

defeat of the Dravida Munnetra Kazhagam (DMK) in the 2011 assembly election, which could not be compensated as in earlier years, by providing extensive welfare.

The TDP in AP and the AGP in Assam are regional parties that are a product of developments in post-independence India. They were both formed in the 1980s by regional elites that successfully built on feelings of regional consciousness, pride, and, in the latter's case, neglect. Analysing the emergence and consolidation of the TDP formed by N.T. Rama Rao (popularly known as NTR) in 1982, K.C. Suri in his chapter argues that it arose out of the desire of the people for an alternative regional force to the Congress, which it was felt was unable to articulate or fulfil their needs and interests. High levels of dissatisfaction among the electorate with the Congress, and internal divisions within it due to factionalism, enabled the TDP in the 1983 assembly and 1984 parliamentary elections to unite non-Congress votes and establish itself as the single largest opposition party. Despite its defeat in the 2004 state elections, the TDP remains a major party, though in recent years its leaders are mired in corruption, it has no clear cut ideology, and, most importantly, at present, a clear stand on the issue of the creation of a separate state of Telangana.

Sandhya Goswami's contribution reveals how a regional party has played both an assimilationist as well as a divisive role in Assam. The regional movement was able to successfully transform itself into a regional party, the AGP, and capture power. However, given the socio-cultural divisions within the society, this triggered subregional and ethnic aspirations among the people. The AGP could not deal with these contradictory processes as it did not draw up any comprehensive plan for the state and was mired in corruption, leading to intense mobilization, thus ending in a split. While the Congress could make a comeback in 2001, its position remains weak due to the BJP–AGP alliance. In the 2011 state assembly elections, the AGP failed to capitalize on the poor governance by the Congress and bad seat adjustments, recording its worst ever performance. More fundamental reasons are that it could not fulfil its historic role of uniting all sections, including the as-yet-unrepresented social forces, to form a cohesive Assamese nationality.

The left parties in West Bengal can be described as 'regionalized parties' that for over 30 years have represented the interests of the people of the state. Dwaipayyan Bhattacharya examines how with its receding credibility, trust deficit, and reduced ability to maintain social peace, the Communist Party of India (Marxist)- [CPI (M)] led left front faced the challenge of oppositional politics in West Bengal. The basic problem is that the CPI (M) failed to comprehend the new class equations in which its earlier stock of land reform measures had fast depleted and introduced change in its outlook. However, the greatest danger to the left in being able to sustain itself in West Bengal was the shift it made since the mid-1980s towards market-fundamentalism, globalized consumerism, and the neoliberal transformation of a centrist polity into one of competitive federalism. In sum, the new social coalition of the left has not been able to negotiate with the capitalist in a globalized world. Carrying forward the analysis, the Epilogue by Bhattacharya shows that taking advantage of the left's ideological failure, administrative and organizational mistakes, corruption and complacency, in the May 2011 assembly elections the Trinamool Congress and Congress party alliance won a resounding victory with the Left Front obtaining a historic low of 62 seats. However, Bhattacharya comments that the new government without any well-planned agenda is repeating many mistakes of the past

and has already lost the initial popular support it enjoyed during the campaign.

A second dimension of the process of regionalization that has determined politics in the states has been the emergence of social movements based on caste, community, or ethnic identities. In the states lying in southern and western India, such movements began in the colonial period itself though in recent years, as in Tamil Nadu, they have taken new forms. But it is the states lying in the northern plains and the northeast that have experienced them more recently and are still in the throes of unsettling social change and resulting political instability. The five chapters in the third part of the book address movements in five states that have in recent years impacted on state politics creating new patterns. Backward caste and Dalit movements have played a determining role in the Hindi heartland (Jaffrelot 2003; Pai 2002), while Dalit assertion has taken a different form in Tamil Nadu. In contrast, movements in the northeast based on feelings of marginalization, tending at times towards demands for secession, require different analytical frameworks for understanding their hopes, aspirations, and sense of alienation from the mainland.

Discussing the reasons underlying the decline of backward caste politics in three major states of the Hindi heartland in recent years is the chapter by A.K. Verma. Providing election data from these states, he shows how in more recent years endemic political instability has pushed parties to restructure their new 'social coalitions'. This is taking place through not only homogenization as in the past, but also by reaching out to subalterns from other castes, especially from the upper castes, so as to reinvent a 'backward class' constituency for them replacing the 'backward caste' constituency. The Bihar model of Nitish Kumar and the UP model of Mayawati demonstrate, he argues, 'class orientation' which is more open, inclusive, and has greater focus on the vertical integration of the marginalized that runs through the entire hierarchical social structure attempting formation of a 'subaltern class'. Of course it remains to be seen if such strategies will be successful in both states.

M.S.S. Pandian in his chapter illustrates how the relationship between the backward castes in Tamil Nadu—the Thevars and Vanniyars, and the Dalits, the Vellars, Devendra Kula, and Parayars—has undergone a major change since the early 1990s witnessed in the increasing and violent conflicts between the two groups. The problem is asymmetrical power relations between the Dalits and the backwards. While the former have acquired a new cultural capital, through education and jobs due to reservations, they are seeking social equality through self-assertion and have created a space for autonomous Dalit mobilization through formation of parties such as the Dalit Panthers. The backward castes, in comparison, remain backward and stagnant in their economic status and still promote untouchability in various forms and take pride in their caste and martial background, as they no longer exercise ideological hegemony over Dalits and have to affirm their authority through dominance mediated by violence.

Dalit assertion has taken a different form in UP from Tamil Nadu due to both a complex process of assertion at the grass-roots and a strong Dalit party, the BSP, that has challenged mainstream parties and captured power. Accordingly, two chapters deal with these issues: the first with the larger Dalit movement in the state and the second with the BSP. Badri Narayan's study, on the one hand, examines the ongoing process of inclusion of Dalits in the democratic sphere and the dialectics of contradiction involved in it. In UP, this process has included and represents the more assertive margins in the sphere of politics and governance, and continues to exclude many of the

non-assertive, small, invisible, and insignificant lesser-Dalits as by-product of its functional character. Sohini Guha's chapter, on the other hand, focuses on the changing strategies of electoral mobilization employed by the BSP to capture power in UP. Initially the party had fought against the vote-bank politics of the Congress party arguing that Dalits must be represented by representatives belonging to their 'own caste constituents' who understood their needs and provided an alternative. In more recent years, there has been a reversal of its subaltern agenda seen in the nomination of dominant-caste candidates. She, however, argues that this was a strategy of *bahujan* empowerment in response to changing electoral situations and does not mark a break in the party's ideological proclivities and in the nature of representation and benefits offered by the party to plebeian groups.

Sajal Nag shows how the context and nature of movements are different in the seven states of the Northeast from the rest of the country. Representatives from these states feel both demographically and culturally marginalized, constituting the 'other' and only tangentially a part of mainstream India and Indian democracy. Here movements take two forms: regional and secessionist. Regional parties remain divided due to tribal and sub-tribal loyalties, vulnerable to defection, and anchored in local issues rather than ideologies. The Indian state, by using military force and draconian laws against secessionist movements, has reduced the region to a war zone leading to high levels of migration by the youth. As a result of such policies governments formed here have no democratic credence and no legitimacy.

POLITICS OF ECONOMIC REFORMS IN THE STATES

The shift from a single party to a multiparty system was accompanied by a move away from the mixed economy established at independence towards a market-oriented economy with the adoption of a Structural Adjustment Programme (SAP) in 1991. Consequently, since the second half of the 1990s, scholarly interest has shifted from an analysis of the ongoing process of reform at the federal level since 1991 to understanding the interaction between economic reform and democratic politics in the states. There is a growing consensus that if economic reform is to succeed it must be implemented in the states. This is because under the constitutional division of powers, decision-making related to the sectors that are central to this process—industrial infrastructure, power, agriculture, education, etc.—lies with the states. With the dismantling of centralized planning and controls, there has been a progressive devolution of power to the states which makes gaining their support crucial for the successful implementation of reforms. However, this is not easy as different parties are in power in the states; state governments are much closer to the electorate and more vulnerable to instability arising out of pressures by economic interests, conflicting pressures, and diverse local interests (Guhan 1995).

Accordingly, the process of economic reform has shown immense regional variations in terms of pace, extent, and direction with states being categorized as fast reformers such as AP, Gujarat, and Karnataka; intermediate reformers such as Odisha and West Bengal; and the lagging reformers consisting of the more backward states in the northern belt such as Bihar or UP, which today are trying to catch up (Bajpai and Sachs 2000). Studies also indicate that India's developmental failure or recent successes cannot be credited to the policies framed by the central government. Due to the federal structure, it is as much the result of varying political choices by regional elites and regional political competition (Jenkins 1999;

Sinha 2005). Some of the 'fast' reformers had earlier seen the emergence of strong regional parties such as the TDP, DMK, or All-India Anna Dravida Munnetra Kazhagam (AIADMK), which were instrumental in pushing reform. Fast-reforming states such as AP and Karnataka under Chandrababu Naidu and S.M. Krishna were characterized by features that seem crucial to successful implementation: some degree of political stability, strong leadership, insulation of the institutions involved, and competent administrative governance. In contrast, during the 1990s, classed as a slow reformer, UP was affected by endemic political instability due to hung assemblies and short-lived governments based on the politics of competitive populism that made economic reform impossible (Pai 2005). However, economic reform has not played a central role in electoral politics in the states in comparison to politics of identity largely because knowledge about liberalization remains relatively low (Kumar 2004; Yadav 2004). But Varshney (1999) has argued that reforms that affect the elite have moved forward while those that affect the masses negatively have not, which implies that social and electoral support base does matter in sustainability of economic reform.

The first chapter in the fourth part by Lloyd I. Rudolph and Susanne Hoeber Rudolph shows how two key shifts in the 1990s—liberalization and the emergence of a regionalized multi-party system—have resulted in the gradual creation of a federal market economy. In this the states enjoy a greater share of economic sovereignty while the centre is moving from an interventionist to a regulatory state that enforces fiscal discipline, accountability, and transparency. Consequently, performance by the states depends much more on themselves. They also need to address the major challenges posed if liberalization is to succeed: deficits, administrative pricing, and failure to collect user charges. Second, improve the policy environment, governance and infrastructure, and develop human resources to attract investment. Third, deal with the fiscal discipline imposed by the centre, international, and domestic credit-rating agencies. But the states are on a learning curve, intense and often harmful competition is being gradually replaced by cooperation such as the move to adopt Central Value Added Tax (CENVAT). These measures could moderate, if not eliminate, the race to the bottom, lessen disparities among states, and help them move on to a faster growth rate within a federal market economy.

Against this backdrop, much research since the mid-1990s has focused on the sharpening of regional disparities and its relationship to economic reform. While some scholars have found evidence of a measure of 'convergence' in development among the states, others have pointed to 'divergence' due to accentuation of regional disparities in social and economic development (Ahluwalia 2002; Bagchi and Kurian 2005). Focusing on the political impact of the process of reform, Baldev Raj Nayar's chapter argues that globalization alone cannot be blamed for creating inequalities. Rather political 'transmission mechanisms', particularly the working of institutions and policies adopted by various state governments in changing contexts, can play a key role. Also his categorization of 20 major states shows that the simple thesis of polarization or convergence is not useful: the states are spread out along a wide spectrum; acceleration in growth is not confined to any particular set of states; since independence different sets of states have been growth drivers at different times; and under different economic policy regimes. Rather, Nayar finds globalization a positive force as dilution of controls and variety of tax reforms has created a national market and generated revenue for loan waivers and welfare programmes such

as the National Rural Employment Guarantee Act (NREGA) in the states creating greater political stability and national integration. He also links economic reform to dissatisfaction within some states such as AP and UP leading to demands for smaller states, which he feels could help create a more balanced multi-polar federation.

Closely associated is the question of how the newly formed small states in 2001 have performed during a period when the Indian economy has been undergoing liberalization. Most controversial has been the discovery of 'miracle' growth of 11.03 per cent in Bihar under the NDA government headed by Nitish Kumar from 2005–10, which, it is argued, has put the state on to a new and higher growth path due to improved quality of governance or *sushasan*. Joining this debate, the chapter by Chirashree Das Gupta argues that official data for the decade of 1999–2009 points to no structural break under the NDA; the recent growth represents the resumption of a long, fluctuating, and volatile higher growth continuum that started in 1994–5, which was interrupted by the impact of the bifurcation of Bihar in 2001. Critical of reliance by scholars appreciative of the Bihar miracle on neoliberal prescriptions of techno-managerialism and good governance, Das Gupta argues that it is a politically fractious movement lopsided in three dimensions: regional, sectoral, and social. Moreover, growth acceleration that began in 2002–3 and is evident from 2003–4 to 2004–5, cannot be attributed to the NDA's policy interventions announced only after November 2005 and operationalized only by the middle of 2006. Thus, the growth miracle is spread over the last years of the RJD government, the two time periods when Bihar was under President's Rule since its fall, along with the period under the NDA's rule.

Analysing the political economy of Bihar after its bifurcation, Das Gupta points to a higher growth continuum that began as early as 1994–5 due to two types of social churning. First, land struggles since the late 1970s, out of which change in the political economy of accumulation started in the 1990s leading to diversification in the patterns of accumulation by new entrants due to social empowerment of the backward castes. Second, agricultural growth, construction, a communication boom, and most importantly, an expansion in trade and during the period 1999–2004, which preceded the policies adopted by the Nitish Kumar regime. Political alliances between the upper and lower castes have not helped, even with constant attempts to reconcile breakdown and conflicts between the traditional upper-caste landed ruling classes and the emerging contending factions of the backward, upwardly mobile aspirants. Pointing to an increased perception of a growth miracle following the victory of the Nitish Kumar regime in the 2010 assembly elections, Das Gupta argues for a study of the structural basis of movement of low income states of India towards a higher growth trajectory.

The establishment of Special Economic Zones (SEZs) or export enclaves in the states in the 2000s on arable farm land by state governments is one of the most controversial policies adopted under liberalization and is related to the issue of increasing inequalities between and within states discussed above. Its proponents argue that SEZs will lead to much required industrial development, increase exports, improve infrastructure, and provide employment to the large army of landless who have not been absorbed into agriculture. Its critics hold that SEZs will have an adverse impact on food production and further aggravate the condition of the rural poor dependent on agriculture for their livelihood and create enclaves where multinational capital can easily enter and profit, leading to a nexus of state power and

neo-liberal capital or 'corporate imperialism' (Srivastava 2008). Examining this policy across states provides a comparative picture of how different state governments have shaped their individual SEZ Acts or rules and dealt with strident and often well-organized mass movements by farmers and landless labour for land acquisition, compensation, and rehabilitation laws as well as greater transparency and accountability in their application. This issue has played an important role in the assembly elections to five states held in 2012. This is particularly true of UP where the key question of land acquisition and compensation to farmers featured in the electoral campaign and affected the voting pattern in the western districts of the state. In short, this is the arena in which the interaction between economic reform policies and politics including mass politics is best seen.

Rob Jenkins in his chapter examines how various states have responded to political forces, mainly oppositional movements that have accompanied the establishment of SEZs. His research shows that states vary widely in not only the kind of resistance to establishment of SEZs—primarily to unfair rules and methods of land acquisition and corruption of local officials—from the local population, but also in terms of whether and how they adapt to and learn from episodes of political conflict and respond to resistance institutionally. He points out that large-scale and well-organized opposition to unfair laws and practices has been underway in the states during the period of liberalization, leading to social legislation such as the NREGA, Right to Information (RTI) Act, the Right to Education Act, and the pending National Food Security Act. It reflects rising political consciousness and role of non-governmental organizations (NGOs) in taking these issues to the people. In the case of SEZs, it remains to be seen if mass movements will lead to greater transparency in operation, or whether it is precisely to avoid such opposition that industrialists will increase their efforts to create SEZs, which can offer a refuge from the pressures of India's 'second democratic upsurge'.

An issue that has occasioned much debate is the social and political developments that have made implementation of economic reform possible in the states. A major contributory factor, according to Leela Fernandes, has been the emergence and growing significance of a new, urban middle class which has begun to assertively claim a 'role as the agent(s) of globalization in India' (2007: xiv). This has created a desire among the newly emerged better-off groups, agricultural and industrial, in the smaller metropolises to emulate and join the privileged lifestyle and patterns of consumption depicted in the media and associated with English-educated professional classes. Economic reform has also been described as one of the 'elite revolts'—carried out by or on behalf of urban, industrial, and even agricultural and political elite—against the earlier model of state-directed economic development (Corbridge and Harriss 2000: 145). Kochanek (1996) and Pederson (2000) point to a close nexus between economic reforms and organized business classes that have actively lobbied and have been responsible for policy debates in favour of reforms. Scholars have pointed to the role played by elites in pushing forward reform processes and in mediating the relationship between state politics and mass political responses (Chibber and Eldersveld 2000: 354). Thus, there is a close relationship between the political processes of democratization which have thrown up new classes and the consolidation of economic reform in the 1990s.

The chapter on AP illustrates how analysis of the new Indian middle class can deepen our understanding of the political dynamics of economic reform and the conditions under which a reform agenda can be pushed.

Jos Mooij's chapter points to three elements that were deployed by a political leader in AP, a relatively underdeveloped state, from 1994 to 2004 to introduce reform: hype, skill, and class. Chandrababu Naidu, a dynamic and skilled politician, was able to build an image of reform-mindedness, commitment to modern management, as well as hype the reforms as part of a larger development and governance project that appealed simultaneously to the middle classes, his party workers, and the rural poor. But an equally important reason was that the reforms appealed to a new social class consisting of the middle caste/rich peasant (Reddys and Kammas of the coastal regions) who having experienced considerable agricultural prosperity since the colonial period has in recent years diversified into trade and industry and most recently information technology (IT) industries. As a regional capitalist class, they formed the TDP, are well represented in the assembly, bureaucracy, private sector, and increasingly the central coalition, and were happy with Naidu's technical, a-political style of working in which it was argued that the reforms needed to be insulated from the deliberative democratic process so as to guarantee rapid development. Such a method worked as there is little evidence in AP of a significant takeover by the lower-caste groups.

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The analysis of the contributions in this volume suggests that while some features have continued from the early post-independence period, there has been a significant and decisive change in the functioning of democratic politics in the Indian states in recent decades. At independence, the Westminster system provided the model towards which it was thought that India would gradually move. However, a close reading of the contributions in this volume suggests that an Indian variant of parliamentary-cum-federal democracy is emerging, shaped in great measure by changes in the states. These changes are taking place, as argued in the beginning, at two levels: across states giving them a common political platform and within states giving politics in each of them their own distinctive character. A key reason is gradual dismantling over the last three decades of the older single-party system and its associated forms of democratic governance in the states, which was a legacy of the national movement, propelling the polity into a post-Congress and post-liberalization era in which new structures and processes are being built. The three aspects selected for examination—regions, movements and party politics, and economic development during liberalization in the states—have contributed in considerable measure to these changes in the states and helped shape new national patterns.

Despite our large size, cultural diversity, and regional history and identities, commonalities of structures and processes have emerged across states separate from national politics. New regions have emerged based no longer only on language, but a desire everywhere for improved development, governance, and participation. State party systems are gradually emerging in which national and state parties compete, contributing to the creation of a region-based, national party system. Every state election is like a national election, as national issues such as corruption, economic reform, and a second reorganization of the states are debated by parties and the electorate. A common trend has been the emergence of more inclusive democratic structures and social deepening of politics in the states. A common economic market is taking shape due to both competition and collaboration among states for a share of common resources and private investment both domestic and foreign due to globalization. The rise of new regional elites in all states

with common goals and desire for a modern economy has made this possible.

Yet, due to their distinct historical–cultural past as regions, differential impact of colonial rule and particularly the pattern of political and economic governance after independence, dissimilar trajectories have emerged giving each state an individual character. Consequently, today, generalization by scholars about politics across the states is no longer possible. Cultural differences have remained and in some cases deepened, though with the rise of a mobile professional middle class, there has been simultaneous strengthening of both regional and national identities. Regional and class inequalities in terms of both income and human development have become more marked particularly between the states lying in the Hindi heartland and states in southern and western India. While in many large states, there are demands for formation of smaller states, the underlying reasons are distinct due to different historical paths, patterns of governance, and levels of development. These need to be dealt with individually. There are clear differences in the nature, direction, and implementation of economic reform in the states. All this has rendered the nature and type of politics in terms of movements, party politics, and elections distinct in each state. Collectively, these seminal changes have created space for a new kind of democratic politics across and within the states that has not yet been fully understood or examined.

At the same time, it is necessary to consider the impact these momentous changes in the states have had on the larger project of building a democratic, federal nation state. While the larger prognosis is positive, some negative features require correction. The dual transformation of political party realignment in the late 1980s and economic liberalization in the early 1990s have altered the structure of India's federalism thus weakening the centre. At times, regional parties have been a moderating force, but in recent years, they have made irresponsible demands and successfully blocked the passage of central legislation if it does not suit their interests. The growing demand for smaller states is also driven by the desire on the part of national and regional parties to control subregions and thereby improve their clout within parliament. Economic liberalization has contributed to widening of regional inequalities with implications for the future economic development and political influence of the backward states as investment has tended to be concentrated disproportionately in the middle and high income states. Studies based on experience of other developing countries suggest that while gradual, incremental reform, through a democratic process, increases its legitimacy by fostering a consensus driven transition, at the same time, successful reform requires state intervention and cannot be left either to the market or to regional governments within a federation.

In sum, there is little doubt that India's federal democracy has undergone transformation due to change in the states in the three areas that have been examined. While these changes have strengthened Indian democracy giving voice to disadvantaged and marginalized sections. In this redefined federal system with a region-based party system and competitive market economy there is need for strengthening of the centre so that it can play a more active role in holding together India's federal democracy.

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BUREAUCRACY

How study of the state is the study of bureaucracy; recent efforts to measure the quality of government; variance in the quality of government across countries and the need for a historical understanding of these outcomes

For many people around the world, the central problem of contemporary politics is how to constrain powerful, overweening or, indeed, tyrannical governments. The human rights community seeks to use law as a mechanism for protecting vulnerable individuals from abuse by states—not just authoritarian regimes but also liberal democracies that are sometimes motivated to bend the rules in pursuit of terrorists or other threats. Prodemocracy activists, such as those that led the Rose and Orange Revolutions in Georgia and Ukraine, and the Tunisian and Egyptian protesters at the start of the Arab Spring, hoped to use democratic elections to hold rulers accountable to their people. In the United States, citizens are constantly vigilant against real and perceived abuses of government power, from excessively onerous environmental requirements to restrictions on guns to domestic surveillance by the National Security Agency.

As a consequence, much of the discussion of political development has centered in recent years on the institutions of constraint—the rule of law and democratic accountability. But before governments can be constrained, they have to generate the power to actually do things. States, in other words, have to be able to govern.

The existence of states able to provide basic public services cannot be taken for granted. Indeed, part of the reason many countries are poor is precisely that they don't have effective states. This is obvious in failed or failing states including Afghanistan, Haiti, and Somalia, where life is

chaotic and insecure. But it is also true in many better-off societies with reasonably good democratic institutions.

Take the case of India, which has been a remarkably successful democracy since its creation in 1947. In 1996, the activist and economist Jean Drèze produced a Public Report on Basic Education that surveyed the state of primary education in a number of Indian states. One of the most shocking findings was that in rural areas, fully 48 percent of teachers failed to show up for their jobs. This understandably caused a huge outcry, and the Indian government launched a major program in 2001 to improve the quality of basic education. Although this reform effort led to a great deal of apparent activity, a follow-up study in 2008 showed that teacher absence rates were exactly what they had been more than a decade earlier, 48 percent.[1]

India, of course, had been a star performer among emerging market countries, with growth rates in the range of 7–10 percent per year up until 2010.[2] But alongside the billionaire tycoons and high-tech industries, contemporary India is characterized by shocking levels of poverty and inequality, with certain parts of the country on a par with the worst places in sub-Saharan Africa. This inequality has bred, among other things, ongoing Maoist insurgencies in its poorest states. The fact that education is grossly inadequate for so many citizens will ultimately be a constraint on growth as the country industrializes and looks for better-educated workers. With respect to providing such basic services, the country has done less well than neighboring giant China, not to speak of Japan and Korea, which have broken into first world status.

India's problem is not an absence of rule of law—indeed, many Indians would argue that the country has too much law. Its courts are clogged and slow, and plaintiffs often die before their cases come to trial. The Indian Supreme Court has a backlog of more than sixty thousand cases. The government often fails to invest in infrastructure because it, like the United States, is hamstrung with lawsuits of various sorts.

Nor is India's problem inadequate democracy. There is a free media that is perfectly happy to criticize the government for shortcomings in education, health, and other areas of public policy, and plenty of political competition to hold incumbents accountable for failure. In an area like education, there is no political conflict over the ends of public policy—everyone agrees that children should be educated and that teachers should show up for their jobs if they are to get paid. And yet, provid-

ing this basic service seems to be beyond the capacity of the Indian government.

The failure here is a failure of the state—specifically, the bureaucracies at local, state, and national levels that are tasked with providing basic education to children in rural India. Political order is not just about constraining abusive governments. It is more often about getting governments to actually do the things expected of them, like providing citizen security, protecting property rights, making available education and public health services, and building the infrastructure that is necessary for private economic activity to occur. Indeed, in very many countries democracy itself is threatened because the state is too corrupt or too incompetent to do these things. People begin to wish for a powerful authority—a dictator or savior—that will cut through the blather of politicians and actually make things work.

WHY GOVERNMENTS ARE NECESSARY

Someone of a libertarian bent (more often than not an American) will interject that the problem here is one of government itself: all governments are hopelessly bureaucratic, incompetent, rigid, and counterproductive, and the solution is not to try to make government better but to get rid of it altogether in favor of private or market-based solutions.

There are indeed reasons why government agencies are intrinsically less efficient than their private-sector counterparts. It is also the case that governments have often taken on tasks better left to the private sector, such as operating factories and businesses, or else have interfered with private decision making in destructive ways. The boundary between public and private will always be a matter up for renegotiation in every society.

But in the end, there has to be a public sector, because there are certain services and functions—what economists label public goods—that only governments can provide. A public good is, technically, one where my enjoyment of it does not prevent you from enjoying it as well, and which cannot be privately appropriated and thereby depleted. Classic examples are clean air and national defense. They fit these categories because neither can be denied to specific individuals within a society, nor does their use by some diminish the total stock available to others. No private actors have

an incentive to produce public goods because they cannot prevent everyone from using and benefiting from them, and therefore cannot appropriate any income arising from them. Hence even the most committed free-market economist would readily admit that governments have a role in providing pure public goods. Besides clean air and defense, public goods include public safety, a legal system, and the protection of public health.

In addition to pure public goods, many goods are produced for private consumption that entail what economists call externalities. An externality is a benefit or harm imposed on third parties, such as the benefit an employer gets when I have paid for my own education, or the pollution that fouls the drinking water of a community downstream from a factory. In other cases, economic transactions may involve information asymmetries; for example, the seller of a used car may know about defects not readily apparent to the buyer, while a drug maker may be aware of clinical studies that show its products are ineffective or even harmful, which are unavailable to potential patients. Governments have classically played a role in regulating externalities and information asymmetries. In the case of education and basic infrastructure such as roads, ports, and water, the positive externality associated with it is great enough that governments traditionally provide a basic level to citizens for free or else at highly subsidized prices. In such cases, however, the extent of necessary government subsidy or regulation is often debatable, since excessive state intervention can distort market signals or choke off private activity altogether.

In addition to providing public goods and regulating externalities, governments engage in greater or lesser degrees of social regulation. There are many forms that this can take. Governments want their citizens to be upstanding, law-abiding, educated, and patriotic. They may want to encourage home ownership, small businesses, gender equality, physical exercise, or discourage cigarette smoking, drug use, gangs, or abortion. Most governments, even ones committed ideologically to free markets, end up doing things they believe will encourage investment and economic growth beyond the bare provision of necessary public goods.

Finally, governments have a role to play in controlling elites and engaging in a certain amount of redistribution. Redistribution is a basic function of all social orders: as Karl Polanyi noted, most premodern social systems revolved around the ability of the leader or Big Man in a

group to redistribute goods to his followers, a practice that was much more common historically than market exchange.[3] As we saw in Volume 1, many early governments, from the post–Norman Conquest kings of England to the Ottomans to any number of Chinese emperors, saw their function as the protection of ordinary citizens against the rapacity of oligarchic elites. They did this not, in all likelihood, out of a sense of fairness, and certainly not because they believed in democracy, but rather out of self-interest. If the state did not control the richest and most powerful elites in society, the latter would appropriate and misuse the political system at everyone else's expense.

The most basic form of redistribution that a state engages in is equal application of the law. The rich and powerful always have ways of looking after themselves, and if left to their own devices will always get their way over nonelites. It is only the state, with its judicial and enforcement power, that can make elites conform to the same rules that everyone else is required to follow. In this respect, the state and the rule of law work together to produce something like the equality of justice, whether in the form of an English king's court finding in favor of a vassal against his lord in a tenancy dispute, or the federal government intervening to protect black schoolchildren against a local mob, or the police protecting a community against a drug gang.

There are other more overtly economic forms of redistribution that modern governments practice, however. One of the most common is mandatory insurance pools, in which the government forces the community to contribute to insurance plans which, in the case of social security, redistribute income from young to old, and in the case of medical insurance, from the healthy to the sick. Many American conservatives denounced President Obama's 2010 Affordable Care Act as "socialism," but the fact was that at the time, the United States was alone among rich democratic countries in the world in not having some form of mandated universal health insurance.

Liberal theorists from John Locke to Friedrich Hayek have always been skeptical of government-mandated redistribution, since it threatens to reward the lazy and incompetent at the expense of the virtuous and hardworking. And indeed, all redistributive programs incur what economists call "moral hazard": by rewarding people based on their level of income rather than their individual effort, the government discourages work. This was of course the case in former Communist countries

such as the Soviet Union, where "the government pretended to pay us and we pretended to work."

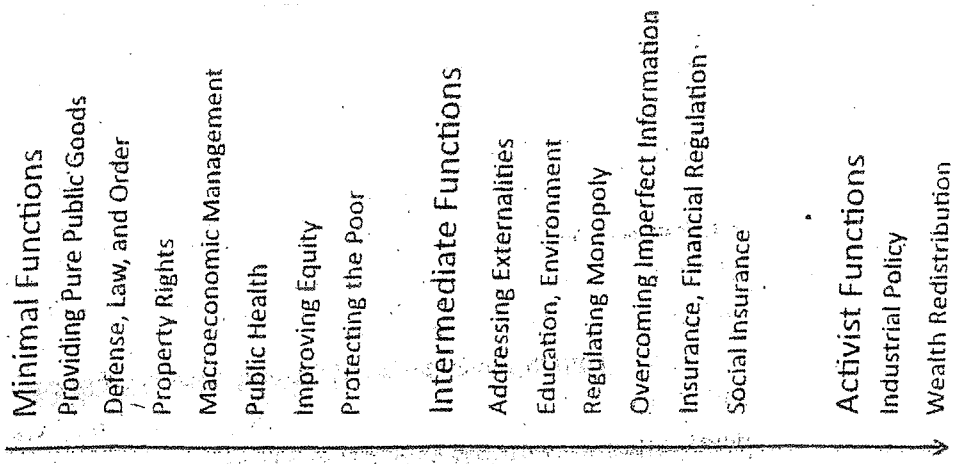
On the other hand, it is morally difficult to justify a minimalist state that provides no safety net whatsoever for its less fortunate citizens. This would work only in a society where the playing field was always perfectly level, and in which accidents of birth or simple luck had no role in determining the life chances, wealth, and opportunities faced by individuals. But such a society has never existed in the past, and does not exist today. The real question facing most governments, then, is less whether to redistribute than at what level to do so, and how to redistribute in ways that minimize moral hazard.[11]

The problem of inherited advantages usually increases over time. Elites tend to get more entrenched because they can use their wealth, power, and social status to get access to the government, and to use the power of the state to protect themselves and their children. This process will continue until nonelites succeed in mobilizing politically to reverse it or otherwise protect themselves. In some cases a reaction takes the form of violent revolution, as in the French and Bolshevik Revolutions; in others it can take the form of populist policies of redistribution as in Argentina under Juan Perón, or Venezuela under Hugo Chávez. Ideally, constraints on the power of elites should be exercised through democratic control of the state, where the state's policies reflect a broad consensus on the part of the population as to what constitutes a fair distribution of the resources at the state's disposal. As in the case of redistribution, the trick is to prevent the overrepresentation of elites without punishing them for their ability to generate wealth.

There is today a wide range of views on the appropriate scope of the state, ranging from those who believe it should provide only the most basic of public goods, to those who think it should actively shape the nature of society and engage in substantial redistribution. As noted, all modern liberal democracies engage in some degree of redistribution, but the extent of state intervention varies significantly from the social democracies of Scandinavia to the more classically liberal United States. Figure 3 shows a spectrum of state functions from minimal to activist in which modern governments can engage.

But while many contemporary political arguments concern how far state intervention should go, there is an equally important question about state capacity. Any given function, from fighting fires to providing

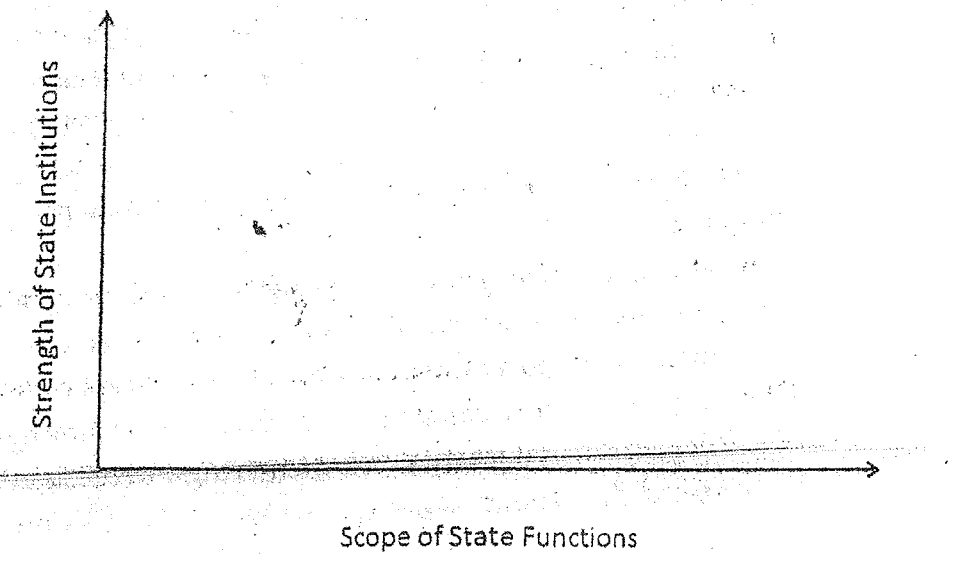
FIGURE 3. The Scope of State Functions



SOURCE: World Bank, *The State in a Changing World*

health services to undertaking industrial policy, can be done better or worse depending on the quality of the state bureaucracy charged with performing that function. Governments are collections of complex organizations; how well they perform depends on how they are organized and the resources, human and material, at their disposal. In evaluating states, then, there are two axes of importance, a horizontal axis defining the scope of state functions, and a vertical axis defining the capacity of the state to undertake a given function (see Figure 4 below).

FIGURE 4. State Scope and State Strength



There are a number of rough measures for how far out on the horizontal axis a given state is. The one most typically used by economists is the proportion of total GDP taken in through taxes; alternatively, one could measure public spending as a proportion of GDP since that amount is often larger than taxes and covered by borrowing. These measures are not wholly adequate, however, since some activist functions, like regulation and industrial policy, have large impacts on society without necessarily affecting fiscal policy.

MEASURING THE QUALITY OF GOVERNMENT

Measuring the strength or quality of the state—that is, its position on the vertical axis—is far more complex. Max Weber famously identified a modern state with a set of procedures, the most important of which had to do with the strict functional organization of offices and the selection of bureaucrats based on merit and technical competence rather than patronage.[4] Some of Weber's criteria are not necessarily conditions that we would today accept as necessary for good bureaucratic functioning, such as the office constituting a lifetime career and the need for strict discipline and control through an administrative hierarchy. The idea, however, that bureaucrats should be chosen according to their technical qualifications and promoted on the basis of merit rather than through personal connections is both widely accepted and correlated with positive governance outcomes like low corruption and economic growth.[5] Whereas Weber highlighted bureaucratic form, political scientist Bo Rothstein has suggested the use of "impartiality" as a measure of government quality, a normative characteristic that he argues correlates strongly with efficient performance.[6] Conversely, one could also assess the quality of government through measures of dysfunction, such as perceived levels of government corruption like Transparency International's Corruption Perception Index.[7]

Measuring the strength of government through procedures alone is unlikely to capture its real quality, however. Weber's classic definition assumes that modern government is a rigid, rule-bound institution that is mechanically tasked with carrying out the functions set it by the principal. But in fact procedural rigidity, rather than being a virtue, is at the core of what people dislike about modern government. Weber himself spoke of

bureaucratic administration as an "iron cage" in which people were trapped.[8]

An alternative method to a procedural approach is an assessment of the capacity of a government to formulate policies and carry them out, or what Joel Migdal calls the ability of a state to "penetrate" the society over which it presides.[9] Capacity, in turn, is defined by a number of factors, including the size of the bureaucracy, the resources at its disposal, and the levels of education and expertise of government officials. Some scholars use the rate at which a government can extract taxes from its population as a capacity measure, the same used to measure scope. The reason for this is that taxes, particularly direct ones like an income tax, are hard to collect and also represent resources at the government's disposal. However, the ability of an organization to perform its functions is never simply a matter of measurable resources. Organizational culture also matters—the degree to which the individuals who make up the organization can function cooperatively, engender trust, take risks, innovate, and the like. A Weberian bureaucracy defined only by formal procedures may or may not have the intangible qualities necessary to make it function effectively.

A different approach to measuring the quality of government would be to look not at what the government is, but rather at what it does. The purpose of government, after all, is not to follow procedures but to provide the population with basic services including education, defense, public safety, and legal access; an output measure like the degree to which children were being educated by the public school system would be more informative than data about teacher numbers, recruitment, or training. Lant Pritchett, Michael Woolcock, and Matt Andrews have argued that one of the big problems with developing countries' governments is that they engage in what they term "isomorphic mimicry," that is, copying the outward forms of developed countries' governments, while being unable to reproduce the kinds of outputs, like education and health, that the latter achieve.[10] Measuring what the government actually does rather than how it does it would avoid this problem.

Appealing as output measures are, however, they can be misleading. Good outcomes, like quality public education, are a complex mixture of inputs provided by governments (teachers, curriculum, classrooms, etc.) as well as characteristics of the population being served, including their income, social habits, and culture (that is, the degree to which learning is

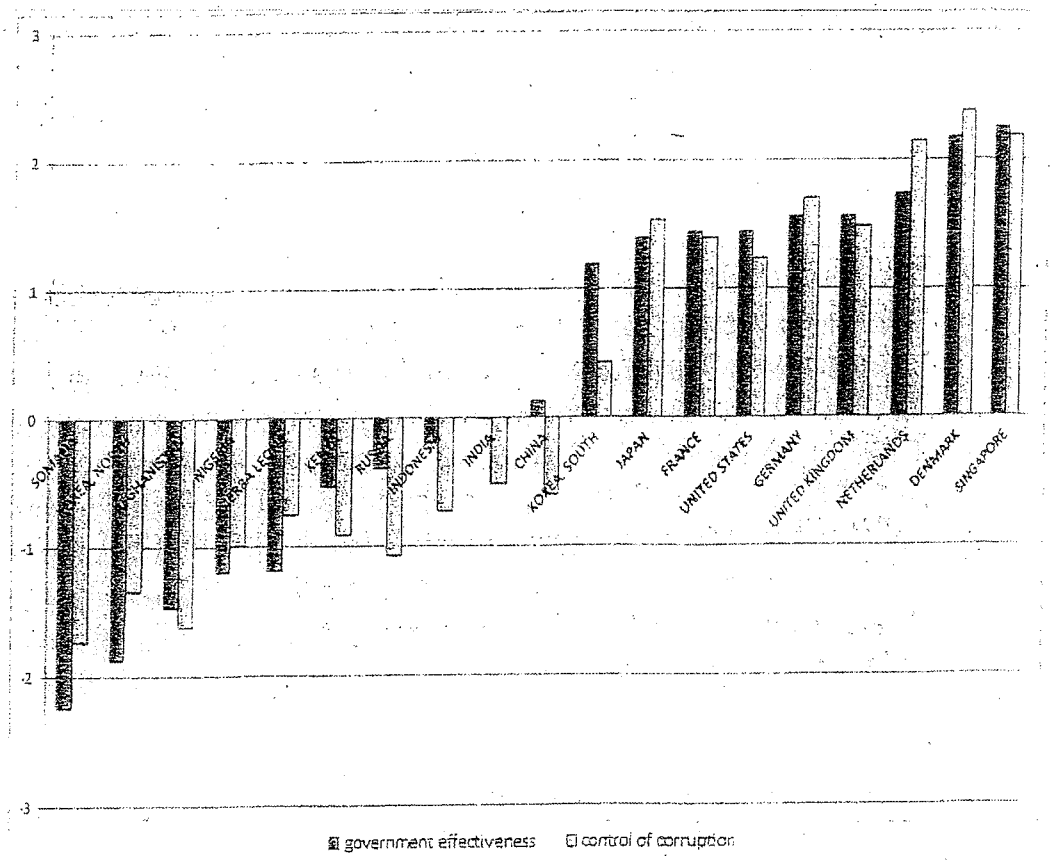
valued in the home). A classic study of educational outcomes in the United States was the 1966 Coleman Report, whose statistical analysis showed that quality education was much more a reflection of a student's friends and family than of the inputs being supplied by the government.[11] In any event, measuring outcomes is often difficult for the kinds of complex services offered by modern governments. For example, how does one measure the quality of a judicial system? Clearly a gross output measure of the number of cases closed or the number of convictions is meaningless in the absence of qualitative measures of whether the courts were adjudicating cases fairly, or using torture to extract confessions. Absent such judgments, police states will always seem to perform better than those that adhere to a strict rule of law.

In addition to considering procedural and output functions, there is a final dimension of government quality that is relevant when assessing the functioning of a state: the degree of autonomy that a government enjoys. All governments serve a political master, whether a democratic public or an authoritarian ruler, but they can be granted more or less autonomy in their ability to carry out their tasks. The most basic form of autonomy concerns the right to control the government's own staff and hire personnel based on professional rather than political grounds. But autonomy is important also for implementation, since highly complex or contradictory mandates seldom produce good results. Too much autonomy, on the other hand, can also lead to disaster, either in terms of corruption or bureaucracies that set their own agendas beyond any type of political control.

Good procedures, capacity, outputs, and bureaucratic autonomy are thus all possible ways of defining where a state lies on the vertical axis of Figure 4. It would be nice if there were scholarly agreement on a standardized way of measuring state quality, but no such measure exists. In recent years, a number of economists have tried to devise quantitative measures of the quality of government, with varying success. Comprehensive comparison is made more difficult by the fact that the quality of government within each country varies tremendously depending on region, function, and level (national, state, or local).

Despite these challenges, one commonly used cross-national measure of government performance is the World Bank Institute's Worldwide Governance Indicators (WGI), which has been produced annually since the early 2000s. These indicators measure six dimensions of governance

FIGURE 5 Government Effectiveness and Control of Corruption, Selected Countries, 2011



SOURCE: World Bank Institute, Worldwide Governance Indicators, 2011

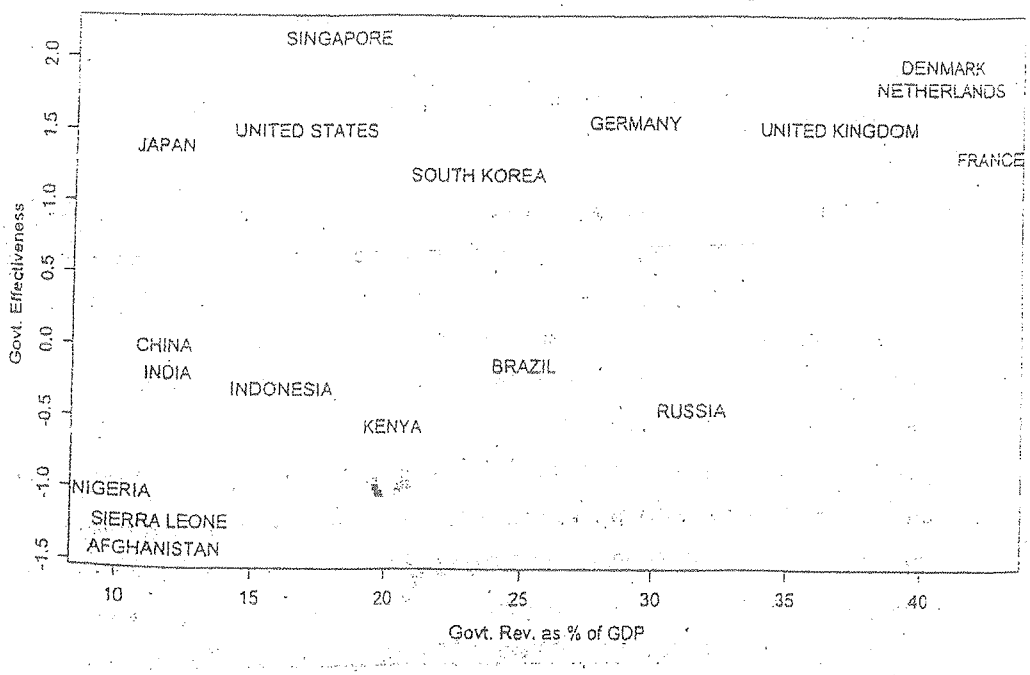
for a wide range of countries (voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption). Figure 5 extracts two of these dimensions, control of corruption and government effectiveness, for a selected group of developed and less developed countries, ranked in order of their scores on the effectiveness indicator.

It is hard to know what the WGI numbers actually represent, since they are a mixture of procedural, capacity, and output measures, often based on surveys of experts. The measures also fail to capture the variance in the quality of government that exists within each country; the U.S. Marine Corps is very different from a local police force in rural Louisiana, just as the quality of education differs greatly between Shanghai and a poor county in the interior of China. Nonetheless, these indi-

cators broadly suggest the tremendous degree of variance in the quality of government that exists across the world, and the fact that government effectiveness and level of corruption are correlated. As any number of studies have indicated, the quality of government correlates very strongly with a country's degree of economic development.

We can fill in the two-dimensional matrix of state scope versus state strength from Figure 4 with some real data, using tax revenues as a percentage of GDP as a proxy for scope and the World Bank government effectiveness indicator as a proxy for strength (see Figure 6). Developed countries vary considerably in the size of their governments, but we see that they all lie in the upper portion of the matrix. That is, you can become a high-income country with a large state—Denmark, the Netherlands—or with a relatively small one—Singapore, the United States. But no country can get rich without an effective government. There are a number of emerging market countries, such as China, India, and Russia, that are at approximately the midpoint of the vertical axis;[12] the poor countries in the sample are all nearer the bottom, and the weakest states are closer to zero.

FIGURE 6. State Scope vs. State Strength



SOURCE: World Bank, Worldwide Governance Indicators, OECD

Taxes are for central governments only, excluding fines, penalties, and social security contributions.

Americans love to argue endlessly about the size of government. But what the cross-national data suggest is that the quality of government matters much more than its size for good outcomes.

What accounts for this variance in the performance of governments around the world? Why do some, like those in Northern Europe, provide a wide range of services with reasonably high effectiveness, engendering a high degree of social trust on the part of citizens, while others seem permanently mired in corruption and inefficiency, and as a consequence are regarded as parasites rather than facilitators by the population? And what is the relationship between good government and the other dimensions of development: the rule of law, accountability, economic growth, and social mobilization?

The following chapters will try to explain why some countries developed strong and capable states and why others did not. I will compare five cases: Prussia/Germany, Greece, Italy, Britain, and the United States. Prussia/Germany and Greece and Italy stand as bookends within the contemporary European Union. Germany has always had a reputation for strong and effective bureaucracy, and, after its disastrous performance in the first half of the twentieth century, has maintained sound macroeconomic policies throughout the postwar period. Greece and Italy, by contrast, have been known for high levels of clientelistic and corrupt government, and both have had problematic public finances that erupted during the 2010 euro crisis. Where this divergence came from and how it persisted into the present will be the topic of the comparison.

Britain and the United States constitute intermediate cases. Britain began the nineteenth century with an unreformed and patronage-ridden civil service. It cleaned up its bureaucracy beginning in the middle decades of the century, however, laying the foundations for a modern civil service that remains in place to this day. The United States similarly developed a party-led patronage system beginning in the 1820s, in which political appointees dominated the government at federal, state, and local levels. The American phenomenon is more accurately labeled clientelism rather than patronage, since it involved the mass distribution of individual benefits by politicians to supporters in a way that the less open British system did not. Yet the United States also by the second and third decades of the twentieth century succeeded in reforming this system, creating the core of a modern civil service. Britain and the United

States were able to eliminate one form of corruption in public administration in a way that Greece and Italy were not.

Key to these different outcomes was the sequence by which different countries reformed their bureaucracies relative to the moment they opened up their political systems to wider democratic contestation. Those countries that created strong bureaucracies while they were still authoritarian, like Prussia, created enduring autonomous institutions that survived subsequent changes of regime into the present. On the other hand, countries that democratized before a strong state was in place, such as the United States, Greece, and Italy, created clientelistic systems that then had to be reformed. The United States succeeded in this; Greece did not; and Italy was only partly successful.

One of the first European countries to acquire a modern state was Prussia, unifier of modern Germany. Prussia began to put together an effective bureaucracy before it industrialized and well before democratic accountability was introduced. I will therefore begin an account of the rise of the modern state with this story.

19 Political Leadership

Ramachandra Guha

Among the major democracies of the world, India stands out for the sheer size of its electorate. Many of its states are larger than a large European country. At the same time, India stands out also for the social and cultural diversity within this electorate, with voters speaking many different languages, following many different faiths, and divided into thousands of different endogamous groups. Due to its size, it is likely that India has produced many more political leaders than other countries—leaders who have won and lost elections, run and mis-run governments, and exercised the political imagination of their constituents in myriad other ways. As a result of its diversity, it is also likely that the political leaders in India reflect, represent, and act upon a far greater variety of social and economic issues than elsewhere.

In the first weeks of 1952, India held its first general elections. This was an exercise that attracted great interest within and outside the country. Never before had elections been held in a nation where so many of its citizens could not read and write. Some observers were cynical; thus, a British official in the service of the government of free India wrote to his father that 'a future and more enlightened age will view with astonishment the absurd farce of recording the votes of millions of illiterate people'.[1] Others were more hopeful; thus, an American political scientist covering the polls remarked that 'the leading Indian parties and party workers are surpassed by those of no other country in electioneering skill, dramatic presentation of issues, political oratory, or mastery of political psychology' (Park 1952).

In that first election, voters had their choice of parties from across the political spectrum. On the Left, there was the Communist Party of India (CPI), whose cadres had recently come overground after a failed insurrection; on the Right, there was the newly formed Jana Sangh, whose professed policy was to defend and advance the Hindu interest. In the middle was the Congress party, the great legatee of the freedom struggle. But no longer was the Congress as unified as it had once been; in fact, in the lead-up to the elections, some of its most important leaders had left to start parties of their own, such as the Kisan Mazdoor Praja Party (KMPP) and the Socialist Party.

Also contesting the elections were several regional parties, and a party calling itself the Scheduled Caste Federation (SCF).

Each of these parties had gifted and charismatic leaders, each skilled in 'the dramatic presentation of issues' and 'political oratory', and perhaps also in 'mastery of political psychology'. They included the Communist A.K. Gopalan and the Socialist Jayaprakash Narayan, S.P. Mookerjee of the Jana Sangh, B.R. Ambedkar of the SCF, and J.B. Kripalani of the KMPP. The Congress had its own array of stalwarts, spread across the states—they included Gobind Ballabh Pant in Uttar Pradesh, B.C. Roy in Bengal, K. Kamaraj in Madras, S. Nijalingappa in Mysore, and Morarji Desai in Bombay. Towering above his party men, and above all the others, was the Congress President and Indian Prime Minister, Jawaharlal Nehru.

Since those epochal polls of 1952, India has witnessed fourteen further general elections, as well as countless elections to state assemblies. These elections, and the governments they have given rise to, have produced a variety of leaders, professing a variety of ideologies and using a variety of political methods with varying degrees of effectiveness. Because of its size, India has probably produced *more* political leaders than other democracies; because of its diversity, it has almost certainly produced more *interesting* ones.

For all this, the academic literature on political leadership in India is scarce. There was a promising beginning, when a conference was organized in 1956 at the University of California under the title 'Leadership and Political Institutions in India'. The proceedings were later published; the articles included explorations of the traditional Hindu ideas of leadership; appreciations of the great nationalist leaders Subhas Chandra Bose, Jawaharlal Nehru, and Vallabhbhai Patel; analyses of the major political parties then active in India; and ethnographic accounts of leaders and factions within castes and villages (Park and Tinker 1959).

Unfortunately, this volume of the 1950s remains the sole published contribution to the subject. In subsequent decades, political scientists have written with insight and depth about the functioning of parties and the process of voting in India, but less so about Indian political leaders. If we except those two long-serving Prime Ministers, Jawaharlal Nehru and Indira Gandhi, there have been few biographies of our major politicians. Major politicians of major states have been relegated to the status of 'provincial' leaders, even when their province consists of forty or fifty million people. There are no serious studies, for example, of the life and work of Sheikh Abdullah of Kashmir, or E.M.S. Namboodiripad of Kerala, or Master Tara Singh of Punjab, or C.N. Annadurai of Tamil Nadu—each of whom had a defining influence on the history and politics of his state.

In the absence of biographies to build upon, scholars have shied away from analytical exercises as well. What have been the major forms of political leadership in independent India? What have been the styles of rhetoric and forms of social mobilization associated with each of these forms? How do these change in and out of office? How do different kinds of leaders and leadership strategies interact with one another? These and related questions are scarcely touched upon in the literature.

This chapter draws upon research conducted over a number of years on the social and political history of independent India. The object of that exercise was empirical rather than analytical—its object being to narrate a history (in fact, multiple histories) rather than frame or design concepts (Guha 2007).[1] Drawing on that research, this chapter offers a preliminary typology of the forms of political leadership in independent India. It takes as its point of departure an earlier—but apparently failed—attempt to open up the field. This was an essay by W.H. Morris-Jones, which distinguished between three political idioms in India, which he called the 'modern', the 'traditional', and the 'saintly', respectively.

In Morris-Jones's definition, 'the modern language of politics is the language of the Indian Constitution and the Courts, of parliamentary debate, of the higher administration...' It 'is a language of ... programmes and plans'. On the other hand, the traditional idiom of politics 'knows little or nothing of the problems of anything as big as India and its vocabulary scarcely includes policies and Plans'. Its concerns are local and sectarian: thus, 'caste (or subcaste or "community") is the core of traditional politics'. Finally, there was

the saintly idiom, illustrated at the time Morris-Jones was writing by the work of Acharya Vinoba Bhave, 'the "Saint on the March" who tours India on foot preaching the path of self-sacrifice and love and polity without power' (Morris-Jones 1963).

Morris-Jones's framework, suitably modified and elaborated, is still useful in understanding the styles of political leadership that have been on display in independent India. The paradigmatic 'modern' leader, of course, was India's first Prime Minister, Jawaharlal Nehru. He thought and acted as if he spoke for India as a whole; not merely or even principally for any section of it. The claim was widely accepted, and endorsed by the three successive victories enjoyed by his Congress party in general elections.

If one tries to read Nehru's political philosophy in Western terms, then the label that probably fits best—or least badly—is 'social democratic'. He was simultaneously a believer in free elections and a free press, and in the state occupying the 'commanding heights' of the economy. His political vision was probably universal and certainly national; and his political practice, in the sense Morris-Jones uses the term, was unquestionably 'modern'. That is, he paid respect to the ideals of the Constitution, to the autonomy of the courts, and to the procedures of parliamentary debate. There was a telling incident early in the procedures of the Constituent Assembly, when a Congress parliamentarian entered the well and started shouting at the President of the Assembly. It was Nehru who got up and persuaded the errant member to return to his seat and maintain the discipline of the House. Afterwards, Nehru told him that 'this is not a public meeting in Jhansi that you should address "Bhaio aur Behno" [brothers and sisters] and start lecturing at the top of your voice.'[3]

Nehru also thought in terms of 'programmes and plans'; the Planning Commission was never more important than in his day. All in all, he was a political leader whose style can perhaps be described as 'national-*constitutionalist*'. On the other hand, the style of India's other long-serving Prime Minister, Indira Gandhi, is more accurately described as 'national-populist'. Like Nehru, she took as their theatre of operation the country as a whole—notably, she also led the Congress party to victory in three general elections. However, she paid far less respect to the formal institutions of a constitutional democracy. Rather than plans and programmes being discussed and debated in Parliament, they were designed and implemented from the Prime Minister's Office. When the Courts and the Constitution raised impediments, the Courts were re-staffed and the Constitution amended. These changes were justified by the claim that the political leader in question had the support of the people. Hence my preferred term of description for this style of political leadership: 'national-*populist*'.

Where Nehru and Indira claimed to act for India as a whole, other political leaders have had a more restricted sphere of operation. Some of the most interesting leaders have operated at the level of the state or province. They have based their politics on the claim that they, and the party they led, most fully represented the interests of the people of their state.

Consider thus the careers of Sheikh Abdullah, from the state of Jammu and Kashmir in the far north; and of C.N. Annadurai, from the state of Tamil Nadu (previously Madras) in the deep south. Both led political parties—the National Conference in the first case, the Dravida Munnetra Kazhagam in the latter—that professed to represent the interests of a specific, vulnerable, linguistic group against a powerful and unfeeling Centre. Both were brilliantly gifted orators, with an ability to hold an audience spellbound, and to leave them with words and phrases that circulated for weeks afterwards. Both spent long periods as rebels (Abdullah was in jail for eleven years), but both also had spells as rulers, as elected Chief Ministers of their states. Both toyed with the idea of independence, yet both eventually abandoned secessionism for a place within the Indian Constitution.

A near-contemporary of Abdullah and Annadurai was the Sikh leader, Master Tara Singh. Unlike them, he never fought elections to the state assembly. He was simultaneously a mentor of a political party, the Akali Dal, and the leader of an influential and wealthy religious body, the Shiromani Gurdwara Parbandhak Committee. Like Abdullah and Annadurai, he inveighed against the domination of New Delhi and the Congress party. His main demand was for a separate state of Punjabi-speakers, a demand fulfilled only after his death.

The movements led by Abdullah and Annadurai were based on the identities of language and region; that led by Tara Singh on the identities of language, region, and religion. Contemporaneous with these movements was the struggle for Jharkhand, which was based on the claims of territory and ethnicity. This aimed to create a separate state within the Indian Union to protect the interests of the tribals of central India in general, and the tribals of the Chotanagpur Plateau in particular. The initiator of the Jharkhand movement was Jaipal Singh, another gifted orator who was deeply revered by his followers, who bestowed upon him the title of 'Marang Gomke' (Great Leader). Jaipal formed a Jharkhand Party, which fought both assembly and parliamentary elections. However, it was only in 1998, long after his death, that a Jharkhand state was created out of the tribal districts of Bihar.

In later years, among the more important regional leaders in India have been the film stars-turned-politicians N.T. Rama Rao (NTR) of Andhra Pradesh and M.G. Ramachandran (MGR) of Tamil Nadu. Linguistic nationalism was perhaps at its most intense in south India. It found its fullest expression in the field of films. Among largely illiterate populations, cinema quickly became the chief form of popular entertainment. The leading film stars emerged as the symbols and embodiments of the people's tongue. Their success on the silver screen prepared NTR and MGR for their second, and equally successful, career in the sphere of politics, where, like the Sheikh and Anna before them, they were able to persuade the electorate that they best embodied the interests of the state against the Centre.

It is tempting also to see E.M.S. Namboodiripad and Jyoti Basu as essentially 'regional' leaders. The ideology they professed faith in, Communism, was in theory not confined to the region, nor indeed to the country even. It stood, indeed, for a *world* proletarian revolution, to be brought about by armed struggle. In practice, however, the bullet was abandoned in favour of the ballot box, through which success was found, episodically, in three states of the Indian Union, Kerala, West Bengal, and Tripura.

For long stretches of time, Communism in Kerala was identified with E.M.S. Namboodripad, and Communism in West Bengal with Jyoti Basu. In power and out of power, they spoke out against the domination of the Congress party and of the Central government. Jyoti Basu's government, it was said, began every discussion on federalism with the words, 'Centre *kom diyé ché*' (the Centre has given us less than our rightful share).

In these respects, the rhetoric of Namboodiripad and Basu was akin to that used by other regional leaders. However, within their states they followed a more actively redistributive agenda, favouring the interests of the landless against the propertied classes. On the other hand, the policies of the more conventional kind of regional leader (such as MGR and NTR) were based on subsidies and hand-outs. Perhaps we may define these styles of political leadership as 'Communist-regional' and 'populist-regional' respectively.

The most influential and pervasive forms of Indian regionalism have been based on language. This is a traditional or ascriptive identity, into which one is born. Another traditional identity with a powerful political resonance is, of course, religion. As we have seen, the politics of the Akali Dal has been based on the claims of language *and* religion. Before Independence, a powerful political party based exclusively on the claims of faith was the Muslim League, whose leader, Muhammad Ali Jinnah, presented himself as the 'sole spokesman' of the Muslims of the subcontinent (Jalal 1985).

After Independence, the most successful party based on religion has been the Bharatiya Janata Party (or BJP), which was known in an earlier incarnation as the Jana Sangh. Working with its affiliated organizations, the Rashtriya Swayamsewak Sangh (RSS), the Vishwa Hindu Parishad, and the Bajrang Dal, this has sought to construct a unified 'Hindu' community, and then present itself as the most authentic and reliable defender of its interests.

For the first four decades of Indian Independence, this construction had limited success. However, the Ayodhya campaign of the 1980s and 1990s brought much electoral benefit to the BJP. In the 1989 general elections, the party won 11.5 per cent of the votes; in the 1998 elections it won 25.6 per cent. As the largest single party in Parliament, it headed a coalition

that ran the Union government for the next six years at a stretch.

In the period of its greatest influence, *c.* 1989–2004, the two most influential BJP leaders were L.K. Advani and Atal Bihari Vajpayee. The former was the 'hard' face of the Hindutva ideology, projected when the party needed to assert a militant and unforgiving image, hard on India's 'evil' neighbour Pakistan and harder still on its 'unreliable' minorities. The latter was the 'soft' or benign face, projected when political compulsions called for dialogue with Pakistan or for tolerance towards the minorities.

More recently, a BJP leader has combined two varieties of 'traditional' politics—the one based on the identity of region or language, and the other based on the identity of religion. This is the Gujarat Chief Minister, Narendra Modi. His policies and practices sometimes seek to pose Hindus against Muslims, and at other times Gujarat against the rest of India.

Language and religion are important markers of identity; so too is caste. In recent years, in fact, caste has probably played as crucial a role in political mobilization as those other forms of group attachment. As the joke goes: 'Elsewhere, you cast your vote; in India, you vote your caste.'

Here, it is necessary to distinguish between two meanings of caste: *jati*, the endogamous group one is born into; and *varna*, the place that group occupies in the system of social stratification mandated by Hindu scripture. There are four varnas, with the former 'untouchables' constituting a fifth (and lowest) strata. Into these varnas fit the 3000 and more jatis, each challenging those in the same region that are ranked above it, and being in turn challenged by those below.

In the sphere of democratic politics, those belonging to the three top strata constitute the 'forward' castes, and those belonging to the fourth and fifth stratas the 'backward' castes. Although no precise figures are available, those in the fourth strata (known generally as the Other Backward Classes or OBCs) are probably little more than 50 per cent of the Hindu population, and those in the fifth strata (known as Scheduled Castes [SCs] or Dalits) a little less than 20 per cent.

Despite their numerical preponderance, the OBCs and Dalits had historically been denied political, administrative, economic, and social power. The Congress, which ran the government at the Centre from 1947 to 1977 and was also in office in many states, was dominated by the forward castes. Its main leaders, with rare exceptions, were Brahmins, Kayasths, and Kshatriyas. Again, the Jana Sangh was once known, not without reason, as a 'Brahmin-Bania' party. The CPI claimed to fight for the downtrodden, yet (as its critics never failed to point out) its most influential leaders were often Brahmins.

In the 1950s, B.R. Ambedkar tried to build a political platform for the Dalits; in the 1960s, the socialist theoretician Rammanohar Lohia attempted to do the same for the OBCs. Their successes were limited; however, in the 1980s and 1990s their ideas were revived and amplified by a new generation of caste-based parties. The Bahujan Samaj Party founded by Kanshi Ram (and later led by Mayawati) has provided a powerful vehicle for the political aspirations of the Dalits. Likewise, Mulayam Singh Yadav's Samajwadi Party and Lalu Prasad Yadav's Rashtriya Janata Dal have projected themselves as parties that represented the interests of backward castes against the forwards. All these parties enjoyed spells—sometimes lengthy ones—in the government.

These three varieties of politics—based on language or region, religion, and caste, respectively—have a great deal in common. They all seek to define a political community on a basis of a single, primordial, identity. They all claim that their party alone represents the interests of the community so defined. Sometimes the interests are defensive: the resisting of other political communities that seek to swamp it. At other times the interests are offensive: the claiming by the community of a dominant position for itself.

Political leadership, in this context, is likewise both defensive as well as offensive. As an opposition leader, C.N. Annadurai sought to fight for his Tamil people against the encroachments of the Centre; as the Chief Minister, he sought instead to consolidate Tamil pride. Likewise, Mayawati progressed from attacking the upper castes when out of power to affirming the importance of the Dalits when in power, as for example, by constructing dozens of statues of their revered leader B.R. Ambedkar. Hindutva politicians have also alternated between postures that appear

defensive and even at times paranoid (as in the talk of ever increasing Muslim birth rates), and policies that aggressively portray their party as willing to take on the world (as in the atomic tests of 1998).

These three varieties of politics are also akin in the forms of patronage they practice when in office. When, in 1967, the Jana Sangh joined a coalition government in Madhya Pradesh, they asked for the education portfolio, so that 'they could build up a permanent following through the primary schools'. They eventually got Home, where they maintained the communal peace by keeping their followers in check, yet took great care 'to see that no key post in any department went to a Muslim' (Noronha 1976: Ch. 8). Likewise, Dalit officials appear to get many of the key administrative posts in Uttar Pradesh when Mayawati is in power, to be replaced by Yadav officials if Mulayam comes to replace her as Chief Minister.

The modern idiom of politics was based on a wider vision, one that went beyond the sectarian demands of caste, language, and religion. I use the past tense advisedly, for with the fragmentation of the polity, the Government of India is increasingly influenced by the claims of parties based on these identities. Wider visions, whether 'national-constitutionalist' or 'national-populist', have lost their significance and importance. In contrast, sectarian identities have grown in political influence.

The rise of smaller parties which effectively articulate a sectarian identity has led to a deepening of the democratic process. Groups that were previously excluded from decision-making have thrown up chief ministers and even Prime Ministers. Writing in the 1970s, the journalist and old India hand, James Cameron, pointed out that the prominent women in Indian public life all came from upper-class, English-speaking backgrounds. 'There is not and never has been a working-class woman with a function in Indian politics,' remarked Cameron, 'and it is hard to say when there ever will be' (Cameron 1974: 122). Within two decades there was an answer, or perhaps one should say a refutation, when a lady born in a Dalit home became chief minister of India's most populous state.

However, this deepening of democracy has come at a cost, namely that there is now no political leader who can really think of or act for the country as a whole. When a single party was dominant at the Centre, it was possible to design long-range policies; now, when the government is constituted by a coalition of a dozen or more parties, each representing a specific sectarian interest—these based variously on caste, language, region, or religion—its policies are determinedly short-term, aimed at placating or satisfying one or the other of those interests. It is possible that the wide-ranging policies of economic and social development that Jawaharlal Nehru crafted in the 1950s—among them the boost to heavy industrialization, the reform of archaic personal laws, and an independent foreign policy—would not have been feasible in the fragmented and divided polity of today. Even programmes focused on specific sectors, such as the thrust to agricultural development that Lal Bahadur Shastri and Indira Gandhi provided in the 1960s, would now be difficult to bring to fruition. In the past, in allotting portfolios to ministers, their relevant experience and abilities were taken into account. Now, the distribution of ministries is dictated more by the compulsions of having to please alliance partners, who demand portfolios seen either as prestigious or profitable. And in the execution of their duties, cabinet ministers are prone to think more of the interests of their caste, community, party, or state, rather than of India as a whole.

The pattern is reproduced in the states, where ministerial assignments are likewise made not on the basis of aptitude or ability, but according to caste and religious quotas. In Karnataka, Lingayat, and Vokkaliga claims are balanced against one another and against those of the Dalits and the Muslims; in Kerala, Nairs, Ezhavas, Christians, and Muslims all demand representation in proportion to their share of the population. Here, too, while in office, ministers are expected to attend first of all to the interests of their community. In both the Centre and the states, *policy* has therefore become hostage to *patronage*; this is a consequence of the growing assertion of the traditional idiom over the modern. This assertion has led to a significant change in the style and substance of political leadership in India. Arguably, Indira Gandhi was the last genuinely *national* leader in India; after her death, no leader has had a comparable

countrywide appeal, cutting across the divides of caste and religion and language.

What, then, of the third idiom of Indian politics, the saintly? W.H. Morris-Jones thought that this operated at the margins of formal politics. His exemplar here was Vinoba Bhave, who never joined a party or campaigned during an election. However, even as he wrote, the saintly idiom was radically reshaping party and electoral politics in one state of the Union, Kerala. Here, the CPI had come to power in the assembly elections of 1957. However, its social and educational policies were controversial and became the target of protest. The opposition to the CPI government was initiated by the Congress—who were not reconciled to their loss of office in the state—yet it was transformed into a widespread popular movement under the leadership of a social worker named Mannath Padmanabhan. An austere, dhoti-clad man, Mannath was greatly respected because of his work in running the schools and colleges of the Nair Service Society. Now, at the age of eighty, he assumed the leadership of a campaign aimed, as he put it, to dispatch 'these Communists, bag and baggage, not merely from Kerala, but from India and driv[e] them to their fatherland—Russia.'[4]

The people of Kerala followed Mannath in part for the same reasons that the people of India had once followed Mahatma Gandhi; namely that his personal integrity was unimpeachable, and that he had never sought or held political office. Under his leadership the movement's message was carried into schools and colleges, churches and temples, into the homes of fisherfolk, peasants, merchants, and workers. The protests spilled out into the street, forcing the government to crack down, the beatings and arrests in turn giving the Centre in New Delhi (where the Congress was in control) an excuse to dismiss the state government and impose President's Rule. In the mid-term elections held in 1960, the Congress was returned to power.

Fifteen years after Mannath Padmanabhan helped transform the political landscape of his state, another 'saint' abandoned social work to help transform the political landscape of his country. This was Jayaprakash Narayan. An authentic hero of the freedom struggle, 'JP' left the Congress after Independence to help start the Socialist Party. Then he left party politics altogether to join Vinoba Bhave in his 'Sarvodaya' movement. He worked on Bhave's land redistribution schemes, but also involved himself in matters of wider import. Through the 1960s, for example, JP worked tirelessly to help reconcile the rebellious Nagas to the Union of India, and to compel New Delhi to grant genuine autonomy to the people of Jammu and Kashmir.

Jayaprakash Narayan commanded respect because of his social work, and also because it was believed that Jawaharlal Nehru had pleaded with him to rejoin politics and become his successor as Prime Minister. That he had turned down high office added greatly to the aura around him. Ever since he had left the Socialists in 1957 he had stayed scrupulously clear of party politics. However, in the spring of 1974, the students of Bihar launched a struggle against corruption in the state administration. The police came down hard; many protestors were badly injured, and several died. Now the students asked JP to join and lead the movement. He agreed, on two conditions—that it be non-violent, and that it not restrict itself to Bihar.

In August 1974, Narayan toured the Bihar countryside, to a rapturous reception. After his tour, he called for a conference of all opposition parties to 'channel the enthusiasm among the people into the nation-wide people's movement'. The Bihar struggle, wrote JP, had 'acquired an all-India importance and the country's fate has come to be bound up with its success and failure'. He appealed to Trade Unions, peasant organizations, and professional bodies to come aboard to help him 'fight corruption and misgovernment and blackmarketing, profiteering and hoarding, to fight for the overhaul of the educational system, and for a real people's democracy' (Bhattacharjea 2004; *Everyman's Weekly* 1974).

The appeal was successful, and through the winter of 1974–5 the opposition to the Central government grew. Notably, this opposition was conducted—as in Kerala in 1958–9—not in the legislature, but in the streets. As the protests intensified, the Allahabad High Court passed a judgement against Prime Minister

Indira Gandhi, who responded by declaring a state of Emergency and jailing her political opponents, Jayaprakash Narayan among them. Strikingly, while the Emergency was at its height, the Prime Minister sought, and obtained, a certificate of approval from Vinoba Bhave, seeking thus to neutralize the moral halo of the saint on the other side.

In 1977 the Emergency was lifted, and fresh elections called. Four Opposition groupings combined to form the Janata Party; with Jayaprakash Narayan as its main campaigner, it won the elections. In this respect, too, JP was Mannath Padmanabhan writ large: like him, he claimed he had no political ambitions of his own; like him, he yet led a movement that successfully brought down an elected government and helped replace it with one that he could bless.

Our three idioms of politics may be differentiated in terms of styles of rhetoric. The modern idiom is often expressed through a rhetoric of *hope*—the offer of a better and fuller life, whether expressed in material terms or otherwise. The traditional idiom, on the other hand, privileges a rhetoric of *fear*—warning the members of a caste, or religion, or region, that they would be swamped by their enemies if they do not bind together. Finally, the saintly idiom expresses itself through a rhetoric of *sacrifice*—the need to give up on worldly ambitions to bring down an immoral regime.

Thus far, I have analysed political leadership in independent India in terms of sociology and ideology—namely the social bases of a leader's support, and the ideas and policies used to legimitize his or her leadership. But the attractions of the leader are often so great, and the devotion of his (or her) flock often so complete, that sociology and ideology are inadequate in understanding them. One must take recourse, therefore, to the Weberian category of 'charisma', where charismatic leaders are the 'bearers of specific gifts of body and mind that were considered "supernatural" (in the sense that not everybody could have access to them)' (Weber *et al.* 1978: 1111–12).

In his pomp, which ran roughly from 1947 to 1957, Jawaharlal Nehru was certainly considered by many (perhaps most) Indians to possess gifts of body and mind that few others had access to. The reverence he commanded was extreme. Thus, when he travelled through India while campaigning in the 1952 general elections,

> almost at every place, city, town, village or wayside halt, people had waited overnight to welcome the nation's leader. Schools and shops closed: milkmaids and cowherds had taken a holiday; the kisan and his helpmate took a temporary respite from their dawn-to-dusk programme of hard work in field and home. In Nehru's name, stocks of soda and lemonade sold out; even water became scarce ... Special trains were run from out-of-the-way places to carry people to Nehru's meetings, enthusiasts travelling not only on foot-boards but also on top of carriages. Scores of people fainted in milling crowds. (Anonymous 1952: 23)

Some of Nehru's charisma was inherited, based on the fact that Gandhi, the Father of the Nation, had nominated him as his political heir; some of it based on his own personal attributes (real or imagined). Likewise, in her pomp—which ran for a much shorter period, say from 1969 to 1973—Indira Gandhi also commanded love and veneration from all social classes and all parts of the nation. Her charisma was also in part inherited (from her father), and in part her own. It was at its height during the elections of 1971, fought and won by Mrs Gandhi on the slogan *Garibi Hatao*! (let's end poverty). In asking for votes, she exploited her 'charming personality', her 'father's historical role', and, above all, that stirring slogan, Garibi Hatao. The message strung a strong chord, for, as one somewhat cynical journalist wrote:

> The man lying in a gutter prizes nothing more than the notion pumped into him that he is superior to the sanitary inspector. That the rich had been humbled looked like the assurance that the poor would be honoured. The instant 'poverty-removal' slogan was an economic absurdity. Psychologically and politically, for that reason, it was however a decisive asset in a community at war with reason and rationality.[5]

The charisma enjoyed by regional and caste leaders is less 'supernatural'. Here, the leader is not bestowed gifts beyond the reach of the ordinary man or woman; rather, he or she is seen as most consistently embodying the aspirations of that ordinary man (or woman). It was said of Master Tara Singh, for example, that he was viewed by many

Sikhs as 'the only consistent and long-suffering upholder of the Panth as a separate political entity, as the one Sikh leader who relentlessly pursued the goal of political power territorially organized for the Sikh community, and as a selfless leader without personal ambition' (Nayar 1960: 143). Many Tamils saw Annadurai in the same way. Backward caste leaders have likewise presented themselves as consistent and long-suffering upholders of the interests of their community.

When it comes to charisma, the great low-caste leader, B.R. Ambedkar, stands in a class of his own. For the charisma he enjoys has grown exponentially since his death. While he lived, Ambedkar was admired for the acuity of his mind and his commitment to social reform. But his political base was limited; he could not even win a reserved seat to the Lok Sabha. Only his fellow Mahars followed him without question, other Dalit sections instead choosing to cast their lot with Gandhi and the Congress. On the other hand, Ambedkar is now venerated in Dalit homes and hamlets all across India. One anthropologist writes that 'across Tamil Nadu, statues, portraits, posters and nameplates bearing the image of Dr Ambedkar proliferate. Halls, schools, and colleges named after him abound and even his ideological opponents feel obliged to reproduce his picture and lay claim to his legacy' (Gorringe 2005: 112). Pretty much the same is true of most other states of the Union. Wherever Dalits live or work, photographs of Ambedkar are ubiquitous: finely framed and lovingly garlanded, placed in prominent positions in hamlets, homes, shops, and offices. Meanwhile, due to pressure from Dalit groups, statues of Ambedkar are put up at public places in towns and cities—at major road intersections, outside railway stations, in parks.

Fifty years after his death, B.R. Ambedkar is worshipped in parts of India which he never visited and where he was completely unknown in his own lifetime. Wherever there are Dalits—which means, pretty much, almost every district in India—Ambedkar is remembered and, more importantly, revered.[6]

One danger of charismatic authority is that it may, if unchecked, lead to the assertion of dictatorial tendencies. As a consequence of her victory in the 1971 elections, wrote Khushwant Singh, 'Indira Gandhi has successfully magnified her figure as the one and only leader of national dimensions'. Then he added, ominously:

> However, if power is voluntarily surrendered by a predominant section of the people to one person and at the same time opposition is reduced to insignificance, the temptation to ride roughshod over legitimate criticism can become irresistible. The danger of Indira Gandhi being given unbridled power shall always be present. (Singh 1971)

In fact, even before the elections Mrs Gandhi had been charged with fostering a cult of personality. As her critic, S. Nijalingappa, pointed out, the history of the twentieth century

> is replete with instances of the tragedy that overtakes democracy when a leader who has risen to power on the crest of a popular wave or with the support of a democratic organisation becomes a victim of political narcissism and is egged on by a coterie of unscrupulous sycophants who use corruption and terror to silence opposition and attempt to make public opinion an echo of authority.[7]

Long before Khushwant Singh and Nijalingappa, B.R. Ambedkar had also warned against the unthinking submission to charismatic authority. Speaking in the Constituent Assembly of India, Ambedkar quoted John Stuart Mill, who cautioned citizens not 'to lay their liberties at the feet of even a great man, or to trust him with powers which enable him to subvert their institutions'. This warning was even more pertinent here than in England, for, as Ambedkar argued,

> in India, Bhakti or what may be called the path of devotion or hero-worship, plays a part in its politics unequalled in magnitude by the part it plays in the politics of any other country in the world. Bhakti in religion may be the road to the salvation of a soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship. (*Constituent Assembly of India, Debates* 1988: 979)

These were prescient anticipations of the Emergency of 1975–7, when Indira Gandhi chose to suspend all democratic rights and silence all Opposition. Her ability to do so had been greatly

strengthened by her earlier transformation of the Congress into an extension of her will. Once the party was run autocratically, and once it had been given a mandate by the people, it was easy then to equate the interests of the individual with the interests of the nation as a whole. (As a Congressman of the time famously put it: 'Indira is India, and India is Indira'.) Jawaharlal Nehru, on the other hand, could not always get his way even within the Congress party. It must also be said that, unlike Mrs Gandhi, Nehru was conscious of the need to suppress the authoritarian instincts within him, and aware also that political popularity was 'often the handmaiden of undesirable persons; it was certainly not an invariable sign of virtue and intelligence' (Nehru 1936 [1949]: 204; Fischer 1959).

The conversion of charisma into authoritarianism, carried out at an all-India level by Indira Gandhi, has been manifested by other Indian political leaders working in their own, more restricted, spheres. Sheikh Abdullah, Bal Thackeray, Lalu Prasad Yadav, Mayawati, Mulayam Singh Yadav, and J. Jayalalithaa have all been the object of great adoration on the part of their followers; they have then used this personal charisma to gain total control over the apparatus of their respective parties. Further, they have encouraged their followers to threaten and intimidate independent journalists, judges, officials, and professionals. Finally, rather than allow their successor to be chosen by a process of democratic election, they have anointed a close kin as their successor. (The exceptions here are Jayalalithaa and Mayawati, who are both unmarried.)

This survey of political leadership in independent India has focused on the domain of party politics. However, some of the most interesting (and effective) political leaders have refused to engage with parties and elections altogether. Consider thus the careers and influence of the Naga separatist, Angami Zapu Phizo, and the Sikh separatist, Jarnail Singh Bhindranwale. Both were imbued by their followers—these mostly young men—with a quasi-saintly image; both inspired their followers to lay down their lives for the cause. Both qualified, in Weberian terms, as 'charismatic'. Also very influential in his day was the RSS leader M.S. Golwalkar, whose following also consisted chiefly of young men, devoted to the ideal of the Hindu *rashtra* in part because their chief mentor was a austere, ascetic individual who shunned material reward or political power. While Golwalkar did not himself ever speak at election rallies or formally identify himself with a particular political party, the RSS did actively help the Jana Sangh during Assembly and Lok Sabha elections. On the other hand, the followers of Phizo and Bhindranwale rejected constitutional politics altogether.

Nor has this survey considered individuals active in civil society and social movements. One such figure, endowed with a certain degree of charisma, is the social worker and environmentalist, Medha Patkar. Originally the leader of a movement to stop a dam on the Narmada river, she has emerged as the spokesperson for displaced people everywhere. Her commitment to Gandhian non-violence and her eschewing of party politics have enhanced the respect and credibility she commands.

As a preliminary attempt to open up a field that requires more intensive and more skilled tilling, this essay had a limited purpose—namely to point to the sheer variety of political leadership in independent India. For the history of Indian democracy has been peopled with colourful characters. They have claimed sometimes to represent a specific caste cluster or religious group, at other times a specific province or linguistic group, at yet other times the nation as a whole. They have used different idioms—the modern, the traditional, the saintly—and different strategies of political action, some centred on the street, others in the legislature. Their methods and policies have sometimes worked to deepen democracy in India, but at other times to undermine it.

NOTES

1. Penderel Moon to his father, 29 January 1952, letter in Mss. Eur. F. 230/26, Oriental and India Office Collections, British Library, London.

2. The empirical evidence in this essay draws from that larger work.

3. *Hindustan Times*, 11 December 1946.

4. Cf profiles of Mannath in *The Illustrated Weekly of India*, 28 June 1959, and in *The Current*, 16 September 1959.

5. See reports in *Thought*, issues of 20 March and 20 May 1972.

6. The posthumous political importance of Ambedkar awaits a serious scholarly analysis. For clues to how important he is to the Dalit consciousness today, see, among other works, Prasad (2004); Franco *et al.* (2004).

7. S. Nijalingappa to Indira Gandhi, 11 November 1969, in Zaidi (1972), p. 231.

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10 Caste and Politics

Surinder S. Jodhka

Analysing democratic political processes in terms of castes and communities has become commonplace in contemporary India. From the lay public to psephologists of the popular media and serious academic analysts, almost everyone treats caste as an important variable influencing the working of the Indian political process. Caste communities are presented as determining electoral outcomes; and they work as pressure groups and influence the governance agenda of the Indian state at the local, regional, and national levels. Caste considerations also tend to structure political parties, their leaderships, and programmes. This reality of the working of the democratic political process is, interestingly, very different from the visions of those who laid the foundations and framed the Constitution of the Indian republic.

Notwithstanding the ambivalent attitude of the early nationalist leadership on the subject of caste, and the frequent disputes that arose about its 'real' value for the social and cultural life of the Indian people during the freedom struggle,[1] the post-Independence political leadership took a clear position against giving it any legitimate place in the political organization of the new democratic nation (Kaviraj 1997; Mehta 2003: 58–9). Articulating the then 'mainstream' position on the subject among the middle-class elite of the country in his well-known book *The Discovery of India*, Pandit Jawaharlal Nehru, India's first Prime Minister, wrote in 1946:

> In the context of society today, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive, and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy... . Between these two conceptions conflict is inherent and only one of them can survive. (p. 257)

The Chairman of India's Constituent Assembly and the first Law Minister of independent India, B.R. Ambedkar, was even more emphatic on this. He wrote:

> You cannot build anything on the foundations of caste. You cannot build up a nation; you cannot build up a morality. Anything you will build on the foundations of

> caste will crack and will never be a whole. (Ambedkar 2002: 102)

The opening pages of the Indian Constitution, its Preamble, envisaged a nation where the values of equality, liberty, and fraternity would be supreme. Drawn mostly from the historical experience and cultural traditions of the West, these ideas reflected a vision of liberal democracy and a modern society that were to ensure a dignified existence to each and every individual, and endow them with certain fundamental rights vis-à-vis the state and fellow citizens. They contradicted very fundamentally the spirit of caste and hierarchy as principles of social organization. The Directive Principles of State Policy (Article 38) of the Indian Constitution made it clear further by explicitly stating 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 national life. (as in Shah 2002: 2)

Any form of discrimination on grounds of religion, race, caste, gender, or place of birth was made punishable by law.

Following the practices in democratic regimes of the Western world, the Indian Constitution invested all legislative powers in certain institutions of governance, which were to be made up of elected representatives of the Indian people. Representatives to these bodies were to be chosen by strictly following the principle of universal adult franchise.

While caste was decried by the middle-class leaders of independent India, they did not simply take a moral position against this 'traditional' institution. The 'mainstream' Indian political leadership recognized the 'crippling' impact that the working of the system over the centuries would have had on the subordinated sections of the Indian people, and the implications of this 'ancient' system on building a true democracy and individual citizenship. It was to address these concerns that the Indian Constitution instituted certain legal and institutional measures, albeit temporarily, to enable groups and communities of people who had been historically disadvantaged in the given social system to participate in the game of democratic politics on equal terms (Galanter 1984).

There will be little dispute about the positive effects the Indian policies and programmes of affirmative action have had in enabling the historically deprived sections of Indian people to participate in the economic and political life of the nation. India has also been exceptionally successful in having been able to institutionalize a healthy system of democratic governance at different levels of its political system. However, while these achievements are certainly commendable, they have not meant an end of caste in the social or political life of the nation. In fact, many would argue that politically, caste is a much more active institution today than it ever was in the past, and this is largely thanks to the electoral processes and competitive politics. Though it may appear that the democratic and electoral experience has belied the hopes of the founders of the modern nation, the survival of caste, or its increased involvement with politics, is no reflection on the working of democracy in India, or an evidence of its failure. The available literature on electoral systems and other aspects of political life clearly points towards a process that has been described by the Indian political scientist as the deepening of democracy (see Yadav 1999; Palshikar 2004) and it is becoming more inclusive of social groups and categories of the Indian population (Jayal 2001).

How does one make sense of this apparently contradictory reality? The contemporary Indian political experience also raises questions about the manner in which the institution of 'caste' and its relationship with modernity and democracy have been imagined and theorized by sociologists and social anthropologists, an imagination that has become part and parcel of the middle-class commonsense on the subject of caste and its place in modern-day India. In other words, this 'survival' of caste clearly points to a flawed understanding of the reality of caste, and that of the sociology of democratic politics. Thus, it may be worth our while to begin this chapter with a critical overview of the popular and sociological/anthropological understandings of the caste system.

CASTE WITHOUT POLITICS: ORIENTALIST IMAGININGS AND ANTHROPOLOGY OF INDIA

As it came to be popularly understood by the early twentieth century, there was something simple and straightforward about the Indian caste system. The Orientalists and colonial administrators had worked out its ethnographic details and theories quite well. In fact, the idea of Scheduled Castes (SCs) or 'Depressed Classes' had also been worked out by the colonial rulers. According to this understanding, caste derived its legitimacy from classical Hindu scriptures. The framework of the *varna* hierarchy, as worked out so meticulously by Manu, was the beginning and the ultimate explanation of the caste system. Though the varna theory did not provide any specific position to the 'untouchables' in the Hindu rankings of social grouping, they could easily be accommodated at the bottom of the caste hierarchy, outside the varna system, by using the larger logic of the system.

More recent historical research on the subject has seriously undermined this 'commonsense' about the caste system. Not only did the colonial rulers, through a process of enumeration and ethnographic surveys, raise consciousness about caste, they also produced the conditions where 'caste became the single term capable of expressing, organizing, and above all "synthesizing" India's diverse forms of social identity, community and organization' (Dirks 2001:5). A similar point has also been made by Peter Mayer about the notion of the *jajmani* system, which, he argues, is popularly believed to be an ancient and pan-Indian reality, but in fact originated in northern India during the late nineteenth century (Mayer 1993).

The influence of *colonialism and its forms of knowledge*, to use Bernard Cohn's expression (Cohn 1996), was quite fundamental to the way sociology and social anthropology developed in India. The three central categories through which colonial rulers had tried to make sense of India were those of the village, caste, and religious communities. Notwithstanding its cultural and religious diversity, India for them was a land of Hinduism. Though Islam and Christianity were also practised by a large number of Indians, these were essentially foreign religions. As is well known, Orientalist scholars identified some of the classical Brahmanical scriptures as canonical texts for understanding the Indian tradition and its past history. This Indological 'book-view' of India continued to be an important reference point and a source of knowledge about the 'natives' throughout the colonial period, and greatly influenced the nationalist understanding of Indian society (Cohn 1996; Dirks 2001; Das 2003; Breckenridge and van der Veer 1993).

Interestingly, the disciplines of sociology and social anthropology in India also began with empirically documenting the dynamics of village society and the caste system. Even while they advocated a shift away from the 'book-view' towards a 'field-view' of India, the categories through which India was to be imagined remained, more or less, the same. For example, the village typically became a convenient entry point for anthropologists interested in understanding the dynamics of Indian society (Jodhka 1998). Similarly, sociologists and social anthropologists universally assumed that the caste system was a peculiarly Indian reality, and an aspect of Hindu religion.

Caste was not merely an institution that characterized the structure of social stratification; it represented the core of India. It was both an institution and an ideology. Institutionally, 'caste' provided a framework for arranging and organizing social groups in terms of their statuses and positions in the social and economic system. As an ideology, caste was a system of values and ideas that legitimized and reinforced the existing structures of social inequality. It provided a worldview around which a typical Hindu organized his/her life.

Apart from being an institution that distinguished India from other societies, caste was also an epitome of the traditional society, a 'closed system', where generation after generation of individuals did similar kinds of work and lived more or less similar kinds of lives. In contrast, modern industrial societies of the West were projected as 'open systems' of social stratification, societies based on class, where individuals could choose their occupations according to their abilities and tastes. If they worked for it, in such open systems of stratification they could move

up in the social hierarchy and change their class position. Such mobility at the individual level was impossible in the caste system.

Putting it in a language of social science textbooks, G.S. Ghurye (1991) identified six different features of the Hindu caste system, namely, segmental division of society; hierarchy; restrictions on feeding and social intercourse; civil and religious disabilities and privileges of different sections; lack of unrestricted choice of occupation; and restrictions on marriage.

Though seemingly simple and obvious, this list represented caste as a total and unitary system. Thus, it was possible to define caste and to identify its core features, which were presumably present everywhere in the subcontinent. Similarly, caste was also not merely about occupational specialization or division of labour. It encapsulated within it the features of a social structure and normative religious behaviour, and even provided a fairly comprehensive idea about the personal lives of individuals living in the Hindu caste society. Indian sociologists also pointed to the difference between varna and *jati*. While in the popular understanding there were only four varnas, the actual number of caste groups was quite large. According to one estimate, in each linguistic region 'there were about 200 caste groups which were further sub-divided into about 3000 smaller units each of which was endogamous and constituted the area of effective social life for the individual' (Srinivas 1962: 65).

Perhaps the most influential theoretical work on caste has been of Louis Dumont. He approached the Hindu caste system from a structuralist perspective that focused on the underlying structure of ideas of a given system, the 'essential principles', which may not be apparent or visible in its everyday practice. Caste, according to Dumont, was above all an ideology, and the core element in the ideology of caste for Dumont was hierarchy. Hierarchy was not merely another name for inequality or an extreme form of social stratification, but a totally different principle of social organization. Such a principle, Dumont suggests, was 'the opposition of the pure and the impure'. Hierarchy, defined as superiority of the pure over the impure, was the keystone in Dumont's model of the caste system (Dumont 1998: 43). An important aspect of his theory was the specific relationship that existed between status and power in Hindu society. Unlike in the West, where power and status normally went together, in the caste system there was a divergence between the two. In caste society, status as a principle of social organization was superior to power. 'Status encompassed power.'

Such theorizations of caste have been further extended by works of scholars like Moffatt (1979) who emphasized upon the underlying ideological unity and cultural consensus across caste groups in its governing normative order. Srinivas's concept of sanskritization will also fit well in such a theory. Sanskritization was a

> ...process by which a 'low' Hindu caste, or tribal or other group, changes its customs, ritual, ideology, and way of life in the direction of a high and frequently, 'twice-born' caste. Generally such changes are followed by a claim to higher position in the caste hierarchy than that traditionally conceded to the claimant caste by the local community. (Srinivas 1972: 6)

Such theorizations of caste were extensively criticized for their ideological bias and weak empirical groundings (see Berreman 1971; Mencher 1974; Béteille 1979; Gupta 1984). However, they have continued to be popular and influential. Why does this happen? As I have argued elsewhere (Jodhka 2004) the idea of caste has been very deeply embedded in the modern Indian self-image, which is itself a mirror reflection of the Orientalist and colonial images of India. The Indian past is thus constructed as an unchanging tradition, and its future is imagined through an evolutionary schema where the Western society is presented as a model for imitation in the name of modernization.

In such an evolutionary imagining of India, caste is expected to disappear with the unfolding of the processes of industrialization, urbanization, and modernization. Politics has no place in such an understanding of caste or processes of social change. Even when mainstream anthropologists of this genre talked about social inequality and untouchability, it was rarely described as being an oppressive system, with an agency that enforced codes of behaviour and reproduced regimes of subordination and domination.

In such a framework, caste was also seen as being fundamentally different from class. While caste was traditional, class was to emerge with the process of secularization of occupations and industrialization/urbanization. While caste was seen as a social institution, class represented an open system of economic opportunities.

CASTE, MODERNITY, AND DEMOCRATIC POLITICS IN 'DEVELOPING' INDIA

Notwithstanding their personal predispositions towards a liberal view of democratic politics and faith in evolutionist notions of social change, the inevitability of the Western style of modernization, or their preoccupation with categories inherited from colonial and Orientalist writings on India, social anthropologists recognized the tremendous resilience that the institution of caste was showing on the ground. Quite early on they had begun to report on the likely impact that caste could have, on the working of 'modern' institutions, and in turn the implications of a new form of politics for the system of caste hierarchy. For example, some of them were quick to recognize the fact that instead of completely replacing the traditional 'ascriptive structures' of caste society with an open system of social stratification based on individual choice and achievement, new modes of governance and the growing use of modern technology could in some ways strengthen caste, while weakening its structural logic.

Commenting on the nature of the change being experienced in caste with the rise of non-Brahmin movements in southern provinces, G.S. Ghurye had argued as early as 1932 that the attack on hierarchy by such mobilizations did not necessarily mean the end of caste. These mobilizations generated a new kind of collective sentiment, 'the feeling of caste solidarity', which could be 'truly described as caste patriotism' (Ghurye 1932: 192).

M.N. Srinivas developed this point further in his writings during the late 1950s. Focusing specifically on the possible consequences of modern technology and representational politics, both of which were introduced by the colonial rulers in India, he argued that far from disappearing with the process of modernization, caste was experiencing a 'horizontal consolidation'. Commenting on the impact of modern technology on caste, he wrote:

> The coming in of printing, of a regular postal service, of vernacular newspapers and books, of the telegraph, railway and bus, enabled the representatives of a caste living in different areas to meet and discuss their common problems and interests. Western education gave new political values such as liberty and equality. The educated leaders started caste journals and held caste conferences. Funds were collected to organize the caste, and to help the poorer members. Caste hostels, hospitals, co-operative societies etc., became a common feature of urban social life. In general it may be confidently said that the last hundred years have seen a great increase in caste solidarity, and the concomitant decrease of a sense of interdependence between different castes living in a region. (Srinivas 1962: 74–5)

Similarly, the introduction of certain kinds of representational politics by the British helped in this process of the horizontal consolidation of caste.

> The policy which the British adopted of giving a certain amount of power to local self governing bodies, and preferences and concessions to backward castes provided new opportunities to castes. In order to be able to take advantage of these opportunities, caste groups, as traditionally understood, entered into alliances with each other to form bigger entities. (Srinivas 1962: 5)

However, this was not a one-way process. The caste system too was undergoing a change. The horizontal solidarity of caste, which also meant a kind of 'competition' among different castes at the politico-economic plane, eventually weakened the vertical solidarity of caste (Srinivas 1962: 74; Bailey 1963). This process received a further impetus with the introduction of democratic politics after India's Independence.

Faced with the question of change in the caste order, Louis Dumont too followed Srinivas and speculated on similar lines. Castes, he argued, did not disappear with the process of economic and political change, but their logic was altered. He described this process as change from 'structure' to 'substance'. This substantialization of caste indicated:

> ...the transition from a fluid, structural universe in which the emphasis is on interdependence and in which there is no privileged level, no firm units, to a universe of improbable blocks, self-sufficient, essentially identical and in competition with one another, a universe in which the caste appears as a collective *individual* (in the sense we have given to this word), as a substance. (Dumont 1998: 222, emphasis in original)

These attempts at theorizing about the changing realities of caste opened up many new possibilities for looking at the dynamic relationship between caste and the democratic political process. Thus, by the 1960s, sociologists and political scientists began talking about caste and politics in a different language. Discussions shifted from a predominantly moral or normative concern with the corruption that caste had brought into the democratic political process to more empirical processes of interaction between caste and politics. The gradual institutionalization of democratic politics changed caste equations. Power shifted from one set of caste groups, the so-called ritually purer upper castes, to middle level 'dominant castes'. Democratic politics also introduced a process of differentiation in the local levels of the power structure. As Béteille reported in his study of a village in Tamil Nadu during the late 1960s:

> ...a vast body of new structures of power have emerged in India since Independence. Today traditional bodies such as groups of caste elders (which are functionally diffuse) have to compete increasingly with functionally specific structures of power such as parties and statutory panchayats. (Béteille 1970: 246–7)

However, this differentiation did not mean that these new structures were free of caste. Caste soon entered in their working, but the authority of these institutions had to be reproduced differently. Though traditional sources of power continued to be relevant, introduction of universal adult franchise also made the 'numbers' of caste communities in a given local setting critical. Power could be reproduced only through mobilizations, vertically as well as horizontally. This also gave birth to a new class of political entrepreneurs. Over the years, some of them have begun to work successfully without confining their political constituency to a single caste cluster, thus undermining the logic of caste politics (Krishna 2001).

Caste Associations

While sociologists and social anthropologists talked about the horizontal consolidation of castes or its substantialization into 'ethnic communities', political sociologists worked on the phenomenon and possible roles of caste associations in democratic politics. Beginning in the late nineteenth century, different parts of the subcontinent saw the emergence of 'caste associations'. While on the face of it caste associations appeared to be a typical case of Indian tradition trying to assert itself against the modernizing tendencies unleashed by colonial rule, they in fact represented a different kind of process. Lloyd and Susanne Rudolph were among the first to study the phenomenon of caste associations in democratic India. They looked at caste associations as agents of modernity in a traditional society like India. They argued that caste association was

> ...no longer an ascriptive association in the sense in which caste taken as jati was and is. It has taken on features of the voluntary association. Membership in caste association is *not* purely ascriptive; birth in the caste is a necessary but not a sufficient condition for membership. One must also 'join' through some conscious act involving various degrees of identification....(Rudolph and Rudolph 1999[1967]: 33, emphasis in original)

Through his study of *The Nadars of Tamilnad*, Robert Hardgrave further reinforced their thesis by arguing that the caste association of Nadars worked like a pressure group, and had played an important role in the upward social mobility of the community (Hardgrave 1969). M.N. Srinivas, too, similarly argued that caste associations came up as agents of social mobility for caste communities at the time when British rulers introduced the enumeration of castes (Srinivas 1966).

A little later, Rajni Kothari also argued more or less along similar lines while writing on caste and the democratic political process in India. In the introduction to the celebrated volume, *Caste in Indian Politics* (1970) that he edited, Kothari argued against the popular notion that democratic politics was helping traditional institutions like caste to 'resuscitate and re-establish their legitimacy'. This could lead to 'disintegrative tendencies' and could potentially

'disrupt the democratic and secular framework of Indian polity'. In reality, however,

> ...the consequences of caste-politics interactions are just the reverse of what is usually stated. It is not politics that gets caste-ridden; it is caste that gets politicised. Dialectical as might sound, it is precisely because the operation of competitive politics has drawn caste out of its apolitical context and given it a new status that the 'caste system' as hitherto known has eroded and has begun to disintegrate ... (Kothari 1970: 20–1)

Caste federations, he argued,

> once formed on the basis of caste identities go on to acquire non-caste functions, become more flexible in organization, even begin to accept members and leaders from castes other than those with which it started, stretches out to new regions, and also makes common cause with voluntary organizations, interest groups and political parties. In course of time, the federation becomes a distinctly political group'. (Kothari 1970: 21–22)

Speaking in a less enthusiastic language, Ghanshyam Shah also made a similar point. Although in the long run caste associations did promote competitive politics and participation, they also exacerbated parochialism, he argued (Shah 1975). Notwithstanding the deviation they brought into the process of democratic politics—as understood in the classical Western textbooks on democracy—caste associations did play a role in spreading the culture of democratic politics in areas that were hitherto governed exclusively by tradition. As argued by Arnold *et al.*

> The caste association was a social adapter, improvised to connect two sets of social and political forms. It helped to reconcile the values of traditional society with those of new order by continuing to use caste as the basis for social organization, but at the same time introducing new objectives—education and supra-local political power ... (1976: 372)

In their comparative study of caste associations in different parts of south India, they found that, interestingly, leaders of these associations did not come from the traditional caste authorities but from 'the most enterprising of the misfits—the western educated, the lawyer, the urban businessmen, the retired government servants. These men were few in number; but they looked back over their shoulders, hoping that the rest of their community supported them and would help the misfits to establish themselves more firmly in their non-traditional careers' (ibid.: 372).

Although caste associations have continued to be important actors in politics and the community life of Indian citizens, the interest of social science research in the subject declined during the ensuing decades. More important and interesting trends emerged in Indian politics during the 1980s and 1990s, which changed the matrix of the caste-politics relation, as I have discussed below. However, before we come to that, it may be useful to also point to some other factors or processes that impacted the caste-politics relation. Perhaps the most important of these was the process of development planning initiated by the Indian state during the post-Independence period. Though 'caste' was rarely treated as a relevant variable in the visualization, designing, or administration of various developmental schemes and programmes initiated by the Indian state during the post-Independence period, they did have far-reaching implications for social and political arrangements at the local and regional levels.

One of the most important developmental initiatives taken by the Indian state soon after Independence was the introduction of land reform legislations. These legislations were designed to weaken the hold of the non-cultivating intermediaries by transferring ownership rights to the tillers of the land. Even though land reform legislations were invariably subverted by locally dominant interests, they ended up weakening the hold of the traditionally powerful but numerically small groups of upper castes (Moore 1966; Frankel and Rao 1989/1990; Jaffrelot 2000; Stern 2001). In a village in Rajasthan, for example, though the 'abolition of *jagirs*' (intermediary rights) was far from satisfactory, it made considerable difference to the overall landownership patterns, and to the local and the regional power structures. The Rajputs, traditionally upper-caste and the erstwhile landlords, possessed far less land after the land reforms than they had done before. Most of the village land had moved into the hands of those who

were the tillers of land, from 'Shudra' caste categories (Chakravarti 1975: 97–8).

Other similar initiatives of the Indian state aimed at rural social change, such as the Community Development Programme (CDP), Panchayati Raj, and the Green Revolution, directly helped the rich and powerful in the village, who mostly belonged to the locally dominant castes groups, to further consolidate their hold over local and regional politics.

THE THIRD MOMENT OF CASTE: DALIT MOVEMENTS AND AFTER

As I have tried to show above, a large majority of those who led the freedom movement and inherited power from the colonial masters came from urban, upper-caste families. The rise of middle-level castes during the 1960s also meant a change in the political landscape of India. While in some regions the Congress party was able to accommodate the growing aspirations of these middle-level caste groups (see, for example, Weiner 1967; Manor 1989; Lele 1990), it could not do so everywhere (Jaffrelot 2003). It was in this context that regional politics began to acquire increasing significance. The socialist parties also played a role in making caste an issue in their struggle against the 'hegemonic' Congress party (Vora 2004).

The general election of 1967 is believed to have been the turning point in Indian politics. For the first time during the post-Independence period, the Congress party was defeated in as many as eight states. From then on, the flavour of regional politics changed significantly. While in some cases these agrarian castes formed their own political parties, elsewhere they emerged as powerful factions within the Congress party, invariably around a caste identity. Over the years, they were able to virtually oust the ritually upper castes from the arena of state/regional politics. Scholars working on Indian politics have documented this story quite well (see, for example, Nayar 1966; Kothari 1970; Frankel and Rao 1989/1990; Brass 1990; Hasan 1998; Kohli 2001; Vora and Palshikar 2004).

However, by the 1980s India began to witness new trends in the domain of caste politics. The introduction of separate quotas for the Other Backward Classes (OBCs) by the then Prime Minister, V.P. Singh, on the recommendations of the Mandal Commission in 1990 revived the question of 'caste and politics', and gave a new political legitimacy to caste, normalizing it as a mode of doing politics. However, this resurgence of caste in its new *avatar*, as Srinivas (1996) famously put it was not merely a consequence of the act of the wily politicians who, on one fine morning, decided to implement the Mandal Commission Report on reservations for 'OBCs' in an attempt to consolidate their votes. It was also not simply a case of tradition reasserting itself due to the oft-quoted weaknesses of Indian modernity. Caste appeared in a very different mode during the 1990s. In fact, some important processes that began to unfold themselves around this time expanded the meanings of democratic politics in the country.

Castes are unequal not merely in the ritual domain. Their inequalities are far more pervasive. In most of mainland rural India where caste seemingly matters more, it is also a reality that conditions social and economic relations (Chakravarti 2001). The political economy of Indian agriculture, for example, has been closely tied to caste. Thus, apart from asking questions like 'what happens to caste when it participates in modern democratic politics' or 'what happens to democracy when caste communities act like vote-banks', one should also examine the question about whose, or which caste groups', participation in politics is being talked about.

The existing formulations on the subject of caste and democracy are mostly based on the experience of middle-level caste groups (as discussed above). It was these caste groups whom Srinivas had described as the 'dominant castes' (Srinivas 1959). Although some of them were at one time quite marginal to the local power structure, they were mostly above the line of pollution, and, more significantly, had traditionally been cultivators and landowners. When electoral politics based on the principle of universal adult franchise offered them new opportunities, they were able to politicize themselves rather easily.

Notwithstanding considerable regional differences, the first three decades after Independence saw a growing consolidation of the middle-level caste groups at the local and regional levels of Indian politics. While those at the middle levels of the traditional caste

hierarchy gained from the developmental process and democratic politics, those at the bottom of the caste hierarchy continued to experience social and political exclusion. In fact, in some regions, the rise of middle-level caste groups in state politics meant a stronger master to deal with for the Dalits at the local level.

Indian society and polity witnessed several shifts during the 1980s and 1990s. These shifts have also transformed the paradigm for understanding caste-politics relationships. The growing consolidation of democratic politics at the grassroots brought about some important changes in the grammar of Indian politics. Political scientists described this as a shift from the 'politics of ideology' to the 'politics of representation' (Yadav 1999; Palshikar 2004).

This shift was clearly reflected in the nature of social and political mobilizations that appeared during the 1980s. These 'new social movements' questioned the wisdom of the developmental agenda being pursued with much enthusiasm by the postcolonial state in India. The following decade saw the beginning of liberalization policies and a gradual withdrawal of the state from the sphere of economy, and eventually a disenchantment with the Nehruvian framework of development and social change (see Jodhka 2001).

Coupled with the changes in the geopolitics of the world following the collapse of the Soviet Union, the end of the Cold War, the unleashing of new technologies of telecommunications, this period also saw the beginning of a new phase in the reach of global capital. This process of 'globalization', as it came to be known, was not confined to the economy alone. It also influenced culture and politics everywhere, and opened up new possibilities for social action and networking. It was around this time that 'new' political questions like environment, gender, and human rights came up almost simultaneously in different parts of the world. Networking across national boundaries gave them a different kind of legitimacy and strength. For example, the movement against the construction of the dam across the Narmada river invested considerable amount of energy in mobilizing internal public opinion and global funding agencies against the project. Similarly, the question of human rights violations is watched and commented upon by global agencies. The question of gender rights is articulated more or less similarly at the global level, and women's organizations working in India actively network with their counterparts in other parts of the world.

It was in this new context that the question of caste and politics began to be articulated in the language of identity politics by Dalit groups in different parts of the country. A common identity of the SCs or ex-untouchable communities was that of 'a constructed, modern identity' (Kaviraj 1997: 9) which was mobilized by a new leadership that arose from within the Dalit groups, and used the language of equality and democratic representation.

The questions of caste oppression and untouchability were first raised from below during the freedom movement by people like Jyotirao Phule and B.R. Ambedkar. Dalit groups also launched movements for dignity and development during the first half of the twentieth century (Juergensmeyer 1982; Omvedt 1994). The British colonial rulers also introduced some special provisions for the welfare of the 'depressed classes'. Following the initiatives of colonial rulers, independent India also institutionalized some special provisions for the SCs to enable them to participate in the democratic political process, and share the benefits of development through reservations or quotas in jobs and educational institutions.

Until the 1980s, the Dalit question had remained subsumed within the nationalist agenda for development. In electoral politics, too, the SC communities were mostly aligned with the 'mainstream' political formation, the Congress party. The question of autonomous Dalit politics and identity was confined to only a few pockets, in states like Maharashtra, Karnataka, or Andhra Pradesh and was largely a concern of urbanized individuals who articulated the question of Dalit identity through literature and other cultural forms (Mendelsohn and Vicziany 2000).

However, over the years the size of the Dalit middle class grew, thanks largely to the policy of reservations in government jobs and educational institutions. As they grew in numbers, they also felt more confident in articulating their experiences of discrimination at the workplace, and the continued caste-based prejudice against their communities in the society

at large. They began to form separate associations of SC employees, and mobilized themselves during events of discrimination suffered by their caste fellows (Mendelsohn and Vicziany 2000). It was around this time that Ambedkar was rediscovered as a universal icon of Dalit identity and a symbol of their aspirations (Zelliot 2001).

These new developments in the larger ideological and social environment were happening at a time when rural India was experiencing disintegration in its traditional social and power arrangements. The ritually 'pure' dominant castes who had gained from the institutionalization of democratic politics and rural development programmes initiated by the Government of India during the first three decades of Independence also began to experience internal differentiation. Those in the upper segments of the rural economy began to look towards cities for further mobility (Jodhka 2006) and those at the bottom began to question their subordination. Continued experience of participation in the democratic political process over three or four decades also gave those at the bottom a sense of self-worth.

As discussed above, even though traditionally upper castes were politically marginalized with the introduction of universal adult franchise after Independence, it did not lead to a democratization of rural society. In caste terms, rural power revolved around the landowning dominant caste and in class terms, it was the rich landowners and moneylenders who continued to control the rural economy (Thorner 1956; Jodhka 2003). Independent studies by scholars from different regions tended to suggest that panchayats too became an arena of influence and power for the already dominant groups in rural India (Frankel and Rao 1989/1990).

However, more recently studies have pointed to a process of loosening of the traditional structures of power/domination. On the basis of his work in Rajasthan, Oliver Mendelsohn, for example, argued that while Srinivas was right in talking about 'dominant caste' during 1950, such a formulation made less sense in present-day rural India. The 'low caste and even untouchable villagers were now less beholden to their economic and ritual superiors than was suggested in older accounts' (Mendelsohn 1993: 808). Similarly, 'land and authority had been de-linked in village India and this amounted to an historic, if non-revolutionary transformation' (ibid.: 807).

Writing on the basis of his field experience in Karnataka, Karanth argued that the traditional association of caste with occupation was weakening, and that jajmani ties were fast disintegrating (Karanth 1996). In an extensive survey of fifty-one villages of Punjab, I too found a similar change taking place in rural Punjab, where the older structure of jajmani or *balutedari* relations had nearly completely disintegrated (Jodhka 2002). As was also argued earlier by Karanth in the case of Karnataka, with the exception of a few occupations, no longer was there any association between caste and occupation in rural Punjab. Further, Dalits in Punjab had also begun distancing themselves from the village economy, and disliked working in farms owned by local Jats. They were also trying to construct their own cultural centres like religious shrines and community halls in order to establish their autonomy in the rural power structure. In the emerging scenario, local Dalits have begun to assert for equal rights and a share of the resources that belonged commonly to the village, and had so far been in the exclusive control of the locally dominant caste groups or individual households. This new-found sense of entitlement and assertion among Dalit communities was directly responsible for the frequent caste-related conflicts and violence being reported from rural Punjab (Jodhka and Louis 2003). A study from rural Bihar also reported a similar erosion of traditional jajmani ties. Here, too, the village community's hold over the individuals' choice of occupation was virtually absent (Sahay 2004).

It is in this changed context of a combination of factors that one has to locate the new agency among Dalits. The new class of political entrepreneurs that has emerged from amongst the ex-untouchable communities used the idea of 'Dalit identity' and mobilized the SC communities as a united block on the promise of development with dignity. Some of them, such as Kanshi Ram and Mayawati, have been quite successful in doing so (Shah 2002; Pai 2002).

However, the point that emerges from the 'third moment of caste' is that caste collectivities do not participate as equals, even in modern democratic

politics. Historical experience shows that different caste groups participate in democratic politics with different sets of resources. While it has become quite difficult for locally dominant groups to prohibit the traditionally marginalized caste communities from participating in the political process, this has not meant an end of social inequalities or caste and rank. Being a Dalit, or in some cases OBC, continues to be a marker of disadvantage and social exclusion. Notwithstanding the rise of autonomous Dalit politics and their substantial empowerment in some contexts/pockets of the country, the realities of caste in terms of power and dominance have not disappeared. Even when ideologically caste has weakened considerably and older forms of untouchability are receding, atrocities committed on Dalits by the locally dominant castes have in fact increased (Béteille 2000; Shah 2000). The fact that caste violence is almost always a one-way process where Dalits end up at the receiving end also says enough about the continued inequalities of caste groups. It is in this context that any analysis of caste and politics should always begin with the question: whose caste and politics are we talking about?

CASTE AND FUTURE OF CASTE POLITICS

Social science discourse on the subject of caste and democracy has indeed been able to go beyond the rather simplistic notions of modernity and democracy that guided the visions of the nationalist leadership at the time of India's Independence from colonial rule. Looking back, we can now understand that their over-enthusiastic faith in the project of modernity and change, and the belief that 'all relations active in Indian society could be erased and entirely new ones written down through a heroic, comprehensive legislative act' (Kaviraj 2000: 98) had its origin in the then prevalent flat functionalist and evolutionary notion of democracy. As has been convincingly argued by social scientists over the last three decades or so, even the ideas of tradition and modernity are of little value when presented as dichotomous categories. They tend to de-historicize the experience of change.

Notwithstanding its pan-Indian character, caste relations had divergent structures and regional specificities. As I have tried to show elsewhere (see Jodhka 2004), even ideologically they were not completely identical. More important for us is to recognize the fact that participation in the political process does not mean the same thing for everyone. Caste, after all, is not a monolithic unit, a single static identity. As the social scientific writings on caste and politics discussed above show, caste and democratic politics can coexist and support each other, while also changing the assumed essential logic of the two. As Sudipta Kaviraj, writing in a slightly different context, argued, 'caste groups instead of crumbling with historical embarrassment, in fact, adapted themselves surprisingly well to the demands of the parliamentary politics.' Their participation in electoral politics also transformed 'the structural properties of caste in one fundamental respect: it created a democracy of castes in place of a hierarchy' (Kaviraj 2000: 103). In competitive electoral politics, what mattered for a political party was the number of votes a given caste group had, and the extent of its spatial concentration. Thus, in the Indian case 'democratic equality', the experience of participating in electoral politics, 'has mainly been translated *as equality between caste groups*, not among caste-less individuals' (ibid.: 109, emphasis added).

While it is true that in electoral politics the number of votes a particular caste group has matters much more than its ritual status in the 'traditional' hierarchy, such arguments need to be qualified. Do caste groups vote *en bloc* for a specific party or a candidate? How are cross-caste alliances worked out, making them viable for the electoral process? How do the processes of internal differentiation within caste categories—along caste, sub-caste, and class lines—influence voting behaviour and electoral outcomes? What could be the future of caste in democratic politics?

While popular interest in elections has grown, as have the sponsorships of surveys of voting behaviour, much of this is being done by and for the popular media. Although these surveys point to a positive relationship between caste and voting behaviour[2] they also show that no caste or religious community votes for a single political formation. In terms of structural variables, class and rural–urban differences also matter. Also, much more work needs to be done on the subject to evolve methodological tools that can tell us

about the complex relationship of caste with electoral politics. The electoral victory of the Bahujan Samaj Party (BSP) in Uttar Pradesh in 2007 also pointed to the role of the political leadership, and their ability to build viable cross-caste alliances.

According to some commentators, it is the leaders and media experts who present/analyse electoral politics in caste terms, and make caste appear to be the single determining sociological variable in electoral politics. While the BSP is popularly seen as a political party of the Dalits and is led by a Dalit woman, in its electoral mobilizations 'it did not pay too much attention to caste arithmetic and it did very well by imaginatively bringing a coalition of interest between different groups' (Gupta 2007: 3388).

More importantly, however, such alliances, of caste-based political parties or caste communities, inevitably also end up introducing an element of fluidity in the electoral process. Apart from creating an ambiguity regarding the political strength of a particular caste group, such alliances increase the role of individual political entrepreneurs. While in the short run such a process could give the impression of a heightened sense of caste identity, in the long run it is bound to erode the logic of caste politics. At the social and economic levels, too, caste groups are undergoing processes of internal differentiation and dispersion through migration. Such processes are bound to fragment and weaken caste identity and the sentiment of caste solidarity. In other words, the future of caste in politics is anything but bright.

NOTES

1. For a useful exposition of contestations on the subject of caste among the Indian social reformers during the colonial period, and later among the leaders of the nationalist freedom movement, see Bayly (1999).

2. See, for example, the surveys carried out by the Centre for the Study of Developing Societies, New Delhi (http://www.lokniti.org).

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12

Left in the Lurch

*The Demise of the World's Longest Elected Regime?**

Dwaipayan Bhattacharyya

A series of poll debacles following a thumping victory in the West Bengal assembly elections in 2006 has left the ruling Left Front in West Bengal completely shell-shocked. It did not quite anticipate the tide of popular mood to cause almost a lateral shift in its electoral base in the urban, and most dramatically in the rural, areas of the state. Initially, the left leaders reacted with disbelief. A leader of its peasants' organization explained the drubbing in the panchayat (rural local government) election in 2008 as 'a grave and momentary mistake that the people have committed'. When such 'mistakes' kept repeating in the municipal polls and by-elections, the realization that the house of the left is not quite in order and that an overwhelming popular resentment is on the rise, sunk in. For years, a fragmented opposition had kept such resentment practically invisible and electorally ineffective. Following the left's withdrawal of support from the United Progressive Alliance (UPA) at the centre and the Congress decision to form an alliance with the Trinamool Congress (a decade-old party that broke away from the Congress itself), a united opposition managed to throw up a rainbow coalition spearheaded by the mainstream anti-left forces, but also supported by disgruntled and marginal left radical formations. This now threatens to bring arguably the world's longest surviving elected left government to a grinding halt in the state legislature election slated for 2011.

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THE LEFT'S RURAL CONSTITUENCY

For most observers of West Bengal's politics, the key to the left's long electoral standing could be found, primarily, in its rural popularity. As is widely known, following the formation of its government in 1977, the left broke the concentration of land in few hands and arrested the process of rapid de-peasantization by offering small plots to the rural proletariat. It also secured the interests of the sharecroppers by offering them an official status, and installed a system of elected local governance that helped largely to bypass the rural population's overwhelming dependence either on the local elite or the lower rung of the bureaucracy. While these were significant achievements under the circumstances, and gave left wing politics an impetus within the parliamentary set-up, with the changing economic conditions in the state and the country, they called for newer imagination, initiative, and mobilization. These, however, did not quite follow.

Rather, the left remained in government on account of a well-knit organization pitted against a divided and dispirited opposition whose local leadership, especially in the countryside, was identified in public memory with the exploitative landlord classes that had been removed from power by land reforms. It was mainly with such ethical capital on the side of its politics that the left managed to turn one of India's most volatile political sites—rural West Bengal—into a relatively peaceful and governable space amenable to procedural interventions by the local government during a good part of the 1980s and 1990s. While in appearance it presented a near-perfect picture of a genteel social landscape, in reality (as several ethnographic accounts have frequently demonstrated) such social peace was maintained often by accommodating the existing social and cultural practices, however exploitative, unjust or exclusionary they might have been.

Early signs of serious disturbances were visible with three momentous changes. First, due to the rapid commercialization of the rural economy, agricultural income, as a share of family income, was declining in many parts of West Bengal's countryside causing new class-relations to emerge by the side of age-old land-centric class relations. Second, as the new economy withdrew most support structures that were available in the forms of input and output subsidies, income from agriculture declined generating the need to find opportunities outside agriculture especially by the younger generations. New demands were placed for education, skill, network, and food supply, in all of which the infrastructure was thoroughly inadequate. Finally, the small peasant economy came under tremendous stress with the left's drive for industrialization and urbanization: the possibility of de-peasantization (that too in the hands of the completely alien big corporate capital) loomed large.

CRUCIAL MISTAKES

In the face of these changes, the left made a series of crucial mistakes. It failed to comprehend the new class equations in which the ethical stock of its land reform measures was fast depleting. It failed to generate a new wave of struggle, of popular surge, for better primary education, health care facilities, nutrition, agricultural as well as non-agricultural wages, compensation due to displacement, and regular supplies as well as proper distribution of food through the public distribution system (PDS). It failed to address the new anxieties of the rural population. Instead, it mistakenly treated the electoral triumph in 2006 as a mandate for rapid industrialization, and took its rural support—unwavering for three decades—for granted in its grand plans to seize large tracts of fertile land for setting factories, establishing special economic zones, expanding urban territories, etc.

As a result, the left was increasingly perceived as an ally of capital's surging spree for primitive accumulation, for dislocating the close tie between labour, and the means of production in the countryside.

Democracy, as demonstrated time and again, has little patience for those who claim to be supreme custodians of public good without any genuine and demonstrable action to protect such good at the ground level. People tend to treat such claims as arrogant and false. A good number of the left's traditional constituencies—small cultivators and sharecroppers—switched their allegiance, mainly from the Communist Party of India (Marxist) [CPI (M)] to the Trinamool Congress, as they perceived that the left had ceased to be a protector of their interests. Several village-level committees were set up to resist the government and its policies. In such waves of resistance politics, a united opposition managed to considerably destabilize not only the left's electoral base but more crucially its organizational grid. Beneath such electoral shifts, however, a deeper process is at work involving the structures of mediation, legitimacy, control, and autonomy. This chapter hopes to capture some issues that explain the changing character of the social and the political in contemporary West Bengal.

'PARTY-SOCIETY'

To understand the left's current crisis, it is important to explain its uninterrupted electoral triumph for more than three decades in West Bengal. During this long period, the coalition of left forces continued to receive nearly half the votes polled in every election, but won more than two-third seats in the state legislature on account of an opposition in splits and the incredibly strong rural support in its favour. I argue in this chapter that such a long governmental tenure of the left aided by a centralized organizational apparatus [which include mainly the CPI (M) and the mass organizations of the left] produced in the countryside a unique kind of social environment very different from other states in India. I call it 'party-society'. The modes of party-society's operations can best be understood by drawing upon as well as differentiating from the theoretical resources of 'political society', a concept introduced and elaborated in Partha Chatterjee's (2004) reflections on what he called 'popular politics in most of the world'.

Political society is made of population groups on the edge of society who are compelled to use both solidarity and number to press the governmental agencies for protecting or availing their livelihood demands. These demands are routinely denied within an elitist regime of rights that uphold the juridical sanctity of private property. As these groups are historically disadvantaged, are excluded from civil society due to lack of education, wealth, and associated social and cultural capital, they need to constitute communities to negotiate their entitlements with the state and civil society. Such communities are formed for contingent and strategic purposes, in response to or for inducing governmental policies; they have strong moral elements but no necessary purchase in any ascriptive identity. Consequently, a political party's popular appeal largely depends on its capacity to represent and manage political society on a daily basis. With the help of its well-orchestrated, locally embedded, and vertically connected party machinery, the CPI (M) in West Bengal has been better than others in fulfilling this crucial function. This explains to a large extent the left's long and unbeaten innings in West Bengal.

Nevertheless, the idea of political society has some limits, especially in understanding the changes in rural West Bengal where the social conditions are markedly different from the urban and peri-urban settings, from

where Chatterjee drew most of his empirical instances. First, political parties dominate the socio-political sphere of rural West Bengal to the extent that other competing channels of public transactions are either weak or non-existent. This is markedly different from the urban situation where the presence of competing corporate or civil societal associations is far more pronounced.

Second, no major political party in rural West Bengal—until very recently—showed special interest in representing a caste, class, ethnic, or religious group. Though divisions around these identities are common in society, the parties tend to transcend them. Unlike in most other parts of the country, political parties in rural West Bengal not only monopolized the social space, they also enjoyed a good deal of autonomy from the fault lines of the society.

Third, although in rural West Bengal there are many places where a single political party is dominant, local opposition to that party is rarely absent. So, partisan contestation on almost every political issue is not only frequent here, rather more significantly, all types of opposition (familial, social, or cultural) tend rapidly to assume partisan forms.

Fourth, political parties—at least until recently—acted as accepted moral guardians in the public life of the society and the private lives of the families. It was not rare to solicit intervention of the parties even in the most intimate and private affairs.

Fifth, even the government institutions—such as the panchayats—are intertwined with the political parties in their functioning. It has long been suggested that due to the frequent violation of their institutional norms by the political parties, these local bodies have lost their capacity to take independent decisions.

These conditions have produced in West Bengal a specific form of sociability—that of 'party-society'. Party-society, I think, is the modular form of political society in West Bengal's countryside.

PARTY-SOCIETY VERSUS POLITICAL SOCIETY

If one takes a closer look at how the party-society actually operates at ground level, however, one finds a number of sharp differences with the working principles of political society. These are important because they have significant bearing upon the availability of democratic options in the rural areas of the state. Many such differences will get clearer later, when empirical illustrations of party-society will emerge. In political society one finds a preference for those values that highlight shared and community-oriented interests among the poor and the marginal, in party-society, instead, a deep division between groups ('we' versus 'they') frequently turn out to be the vital criterion to carry out various functions, including the distribution of public resources. So intra-group bonding is often found rather strong in party-society in the absence of any countervailing inter-group bridging, which is among the ontological foundations of political society.

One of the key elements of democratic public action in political society is the availability of not just several political parties which compete—with their own strategic interests—to address the entitlement needs of the poor, but also of a host of agencies, including non-governmental organizations (NGOs) and civil society associations, individual members of the professional classes, the media, and so on. Here, electoral calculus of a political party depends on a number of uncontrollable factors; the parties cannot hope to pose themselves as exclusive patrons of a given constituency. In rural party-society, on the other hand, the population at large has only a narrower choice

as the political parties monopolize the entire social space. Other associations are either weak or play only a subsidiary role to the competing parties. Consequently, public action in party-society tends to be election-centric, appealing directly to the strategies of enlarging the share of votes by different political parties.

Finally, the street hawkers, pavement dwellers, informal workers, migrant labourers, shanty-town dwellers, etc., in the urban settings wage a common fight for security and livelihood by way of forming communities bounded by interests and demands that heightens their sense of solidarity. By contrast, the rural settings are mostly habitus for pre-given communities settled spatially in different locations within the village along caste, ethnic, or religious lines. As no major political party uphold the demands of any particular identity group in West Bengal, the parties generally attempt to appeal to the entire population in a village locality, thus undermining the role of particular communities as social and political agents. So, while political society produces contingent communities, party-society tends to supersede settled community structures either by suppressing them, or rendering them irrelevant to the organizational domain of government and politics.

CONSOLIDATION OF PARTY-SOCIETY

If party-society truly offers a more appropriate conceptual tool for understanding West Bengal's rural politics, we are faced with a series of specific queries. How does party-society consolidate itself? What are its modes of persuasion and coercion? In what way does it relate with the left wing politics in the state? To what extent is it relatively autonomous of class, caste, religious, or ethnic divisions? What are the major challenges it encounters today? When and how do these challenges signal a crisis? In this section I will address some of these questions on the basis, primarily, of three field-based studies of political change in six villages that Rajarshi Dasgupta (2009), Manabi Majumdar (2009), and I (Bhattacharyya 2009a) conducted in 2005–6, immediately before a series of rural protests shook the state and unsettled the ruling coalition. These six villages were Sitai (Kochbihar), Uttar Harishchandrapur (Malda), Jagatpur (South 24 Parganas), Chatma (Purulia), Galsi (Bardhaman), and Adhata (North 24 Parganas). My purpose in this chapter is very different from what these studies originally intended. I will draw empirical instances from them as illustrations to feed into my conceptual framework and, simultaneously, use my framework to tease out different meanings for some of these instances.

HOW DID PARTY-SOCIETY EVOLVE?

Party-society has its roots in the violent class-based movements of the poor peasants as they fought against the domination of the landlords. Such domination was founded on a violation of the basic norms of reciprocity in the social order. These movements—facilitated by the left parties—for food, land, security of tenure, and freedom from excessive rent and high rates of interests, made room for 'the intrusion of the excluded'. The peasants rose against the foundations of an agrarian society based on structurally unequal and economically exploitative relations of power. The movements combined the issues of material deprivations and symbolic representation as the rural poor, belonging mainly to Dalit, tribal, or minority communities, were mobilized for social justice against indignity, humiliation, and segregation. The left parties, under the circumstances, offered them a more disciplined, equal, and democratic alternative. So the story of party-society is inseparable from the story of peasant movements in the state, the left's organizational support to such movements, and the key role that the left activists played in them.

The party's ascendancy in the rural society was established by sacrifice and dedication of a group of left leaders who almost always came to the village from outside and mobilized the peasants on some local issues of economic exploitation or social exclusion. In Adhata, for instance, Hemanta Ghosal and Ashok Bose, who were leaders of the Tebhaga movement, came and stayed when the then undivided Communist Party of India (CPI) launched a campaign against the *nagade* system of labour hiring in the late 1950s (Bhattacharyya 2009a). In Sitai, Bijay Ray, the Forward Bloc leader of the 'food movement' (1959–60) played a vital role in the left's gaining popularity in the region (Dasgupta 2009). In Dayabati Roy's (2009) ethnography in Kalipur village of Hooghly district, Pakhi Murmu, an elderly tribal leader said: 'Those days were different when we established the party here by shedding our blood. We were tortured severely by the Congress, the zamindars, and the police. The leaders were also made of different stuff then.'

By contrast, he observed, politics has now turned into 'a kind of entertainment' (ibid.: 120). Arild Ruud's village study in Bardhaman also shows how the left leaders expanded their popular base by using what Pierre Bourdieu called 'symbolic capital' mobilized not in the spirit of accumulation, but of personal sacrifice for common good, drawing upon the cultural elements of power with a lasting effect (Ruud 2003: 162).

Once elected to government in 1977, the left parties started implementing legal reforms—land reforms and decentralization—that created scope for better social condition for the poor. These initiatives—undoubtedly ahead of what was happening in most other Indian states in the late 1970s—would soon have faltered if these parties did not act as genuine custodians of the legal rights of the beneficiaries. While both land reforms and panchayat were critical legislative steps, they also clearly demonstrated the limits of laws (Bhattacharyya 1994). It soon became evident that reform laws do not work unless backed by a robust political will (by 'lathi, guns, and flags' as an old landless labourer told us) at the ground level. The local chieftains, lower bureaucracy, and the landed classes violently opposed these moves. A strong and coherent organization of the left parties was necessary to counter the brutality of their resistance. As the CPI (M) had the best organizational 'machinery' among the left parties, it eventually gained the largest popular base in the countryside.

With these institutions beginning to mediate between rural classes and communities, social and political interaction in the village changed substantially. Now political parties, assuming centrality in the rural public life, foreshadowed other actors—such as caste and religious organizations, sports and social welfare clubs, as well as the propertied classes—who had considerable control over the local society on account of their easy access to cash, police, and bureaucracy. The 'party' began to play a vital role in almost every sphere of social life ranging from the panchayat to the school, from the sports clubs to the family. This indeed affected the autonomy that the communities and social bodies asserted for themselves. Few, however, complained about it as the left parties acted as facilitators for the access that the poor gained into the institutions of government. The underprivileged and illiterate rural population also found in these parties an instrument to deal with the complex web of administrative regulations and judicial processes. Most importantly, they needed these parties to protect their rights and entitlements, achieved after a series of violent campaigns, if not legally then by the deployment of the force of number. Not surprisingly, the rural poor perceived such consolidation of party-society as a favourable change of regime.

That party-society marked a distinct political phase in the life of the peasants became apparent in the course of our interviews with the elderly people in the villages. The Dalits in Galsi frequently drew a clear line of distinction between 'the past' and 'the time since the Left Front'. The 'time since' has obviously not been uniformly good when all basic rights were protected and prosperity grew. Far from that, there have been experiences of betrayal that eventually made a significant part of the left's pro-poor rhetoric sound either hollow, not backed by enough action on the ground, or ritualistic, in which actions—such as the strikes of the landless for higher wages—were performed routinely merely to appear as credible. The 'time since', nevertheless, made an unmistakable sense of difference. Deenabandhu Majhi, a sharecropper in his mid-fifties, who was an elected member of the village panchayat, told us how he worked as a *munish* (agricultural worker) for the upper caste babus for 12 hours a day for a meagre 12 rupees and a *sher*[1] of rice or often less. 'I was offered my *khoraki* [meal] in broken utensils that the members of the babu's family wouldn't even touch.' Though beaten up under any pretext, people like him were 'grateful' to the babus for the short-term *dadan* (advances) they offered—the going monthly interest rates were often as high as 100 per cent. He believed that his conditions have doubtless improved once a *garib-dorodi-dal* (literally, a party sympathetic to the poor) came to power. At present, however, his needs have changed: 'The party should pay more attention to our children's education,' he asserted, 'that's the only way we can climb the steps of society.'

Such changes in the status of the poor, of achieving social dignity, were associated with the rise of the party in Adhata as well. Here, a repressive system of labour contract—nagade—demanded complete attachment of the agricultural worker to his landlord without the possibility of any wage hike or mobility. Resembling bonded labour in agriculture, the nagade worker was typically either a poor *namasudra* or a landless Muslim peasant, and the employer an upper-caste Hindu or prosperous Muslim landlord almost always aligned to the Congress party. Though it is unclear exactly when the system ceased, or maybe because of that, the elderly poor in the village associated the system and its unfreedom with the 'previous regime'. The 'new regime' was one of better wages, of moderate improvement in the living conditions, and, most importantly, of the replacement of the landlord families by the institutional order of the village panchayat. Manabi Majumdar (2009) has observed in her study that the change was perceived as 'the eclipse of the erstwhile feudal ethos of power, yielding place to institutional politics with a broader social base'. In Galsi, a member of an upper-caste landed family that has lost its pre-eminence following the reforms vented his anger: 'Democracy has made things upside down: the lower classes are now the rulers and the middle classes their agents!' (*'nichu sreni raja hoechhe, modhyobittwa hoechhe dalaal'*) (Bhattacharyya 2009a).

Interestingly, in our village interviews, the change in regime—or what we call the making of party-society—was narrated through the prism of troubled relationship between the locally dominant families. We recorded a number of such intriguing stories of conspiracy, falsity, and injustice. What we found fascinating was how these stories sought to capture the changes underway in the institutional domain of rural politics, how they narrated the transformation of social disputes between some important families into political differences between the major parties in the village. Earlier, the dominant families indeed supported rival political parties. However, their social standing rather than their partisan identity was the decisive

factor in the way they were treated by the state and its institutions—such as the police or the local bureaucracy. In the new regime, on the contrary, partisan identity of a family tended to override the correlates of status and social standing.

Take the case of the Duttas, a powerful landowning family in Galsi, who wielded enormous influence by combining coercion (falsely implicating rivals, subjecting them to police atrocities) and benevolence (spending for community welfare, offering loans, repairing the local temple, etc.). The Congress party put such influence to good use: the Duttas helped the party with men and money before every election. The principal rival of the Duttas was the Ganguly family. Anupam Ganguly was only 17 when he joined Srijib and Debdas (in the mid-1960s)—the sons of the local priest Dayaram Mishra—to organize a dal (group) against the 'highhandedness' of the Dattas. The Dattas, in turn, slapped a case of robbery against the three and tried to get them arrested. The case fell only because nobody could be convinced—not even the police—that Dayaram's sons could have any criminal association. On another occasion, in 1972, some people were captured as they were stealing fish from Ganguly's pond. Anupam and some of his friends allegedly beat them up and handed them over to the police. When one of them—a man in his twenties—later died, some Congress supporters brought a case of murder against Anupam and his friends. The local police, however, 'helped' the latter to escape as they had a good social standing in the village.

Unlike the Duttas, who were uneducated and dependent on land, the Gangulys were educated and had some members in the government services. So the ceiling laws hit the Duttas more than the Gangulys. Active in the CPI (M)'s employees' associations, the Gangulys were involved in the party's entry into the village. In the new political climate, their political connections became crucial; the correlations between landholding and political influence collapsed. Power now was an effect of organizational and popular support for a family, rather than its location in the caste or economic hierarchy. This did not necessarily offer room for the poor or the Dalits to occupy leadership. Rather, the leadership now shifted to a new elite—that was less dependent on land and wielded educational and cultural capital—typified in the figure of the rural schoolteacher. With the village beginning to get bounded in a web of legal formalities of the panchayat, education, and the resultant ability to understand and interpret the government's rules and regulations became a new marker of distinction.

NEW POLITICAL CLIMATE

In the initial years, the rural schoolteachers had a significant part in the making of the new regime. As members of the party or the left's teachers' associations, a young generation of teachers, were the most trusted leaders in the village. Socially embedded, the teachers had a good grasp over the local complexities, and a relationship of trust with the parents of their students. So the schoolteachers wielded enough influence. The left parties drew moral and political authority from the image of its activist teachers to hegemonize the countryside. At a time when the urban civil society was steadily losing its relevance in West Bengal's democratic politics with the rural as the focus of the state's political landscape, the village schoolteachers constituted the outer reach of the civic community, the only domain in a popular constituency where sensibilities of the civil society were valued. Such pre-eminence of the rural teacher as the only bridge between a receding civil society and an emerging party-society was short-lived. I have discussed elsewhere how eventually the rural teachers lost their touch with the

community on account of excessive income from salaries and private sources, how their political activism that ate into their teaching time was detested, and how they turned from assets to liabilities for the left parties which eventually decided to ban nomination of the teachers for panchayat bodies (Bhattacharyya 2004).

To sum up, born out of strident peasant movements against the oppressive dominance of the rural propertied classes, party-society required a good deal of correspondence between party and society, between the organized domain of politics and the informal world of the communities. This enabled the communities to use political parties as conduits to pose their demands to the institutions of government, and allowed the party, in turn, to transfer policies to the society by dissemination within the communities. Politics is seldom confined to the contractual relations of power, a large invisible domain exists beyond the boundaries of formal institutions where negotiations are held, deals struck, and disputes resolved within population groups as well as between these groups and the government agencies with the parties' mediation. Due to the popular trust that the left parties elicited in the course of their campaigns for the struggle of the under-classes between the 1950s and 1970s, and the legal reforms they subsequently implemented once in government which benefited a large chunk of Dalit and Muslim sharecroppers and landless agricultural workers, these parties could legitimately lead the marginal communities and provide leadership for several years at a stretch. Support of these communities to the left parties, on the other hand, was a vital precondition for a close and intimate relationship between party and society, based on a consensual mode of reciprocity, and an important component in the formation of party-society which, as we shall see shortly, is in the midst of a severe crisis today.

So the Dalits seldom felt estranged even though the top leadership of the left parties was overwhelmingly upper caste, they never publicly reckoned it as a hindrance for achieving larger social equality. In both Adhata and Galsi, the bulk of the namasudra, *bagdi*, or *kaibarta* peasants were with the CPI (M), although the party's local leadership had few prominent Dalits. The party, in turn, charged by the radical rhetoric of class struggle, saw the society as a potential subject of reform so that the issues of its hierarchies could be 'objectively' addressed and resolved. As late as in the parliamentary elections of 2004, a large sample survey conducted in the state showed that the left parties received the maximum Dalit (57 per cent), Other Backward Classes or OBCs (55 per cent) and Muslim (45 per cent) votes in the state, far more than their political competitors. In fact, such support from the OBCs carried an element of surprise for some observers, as the Left Front government was among the last state governments to recognize the OBC as an official category (Bhattacharyya 2009b). So it can be argued with some conviction that though the reformist party did not transcend other community identities (such as caste, ethnic, or religious), it nonetheless reasonably foreshadowed them—rendering them largely invisible—in the organized domain of politics.

Crucial to the making of party-society, therefore, was something akin to the hegemonic moment of the reformist party in the Gramscian sense, where consent was deployed over coercion, persuasive politics over regulatory idioms of power, and moral force of the community over the might of the sovereign state. In effect, it helped to convert a volatile people into a systematized, manageable population, extending and deepening the technological hold of government in the society. The hegemonic moment, as we will discuss below,

was short-lived. Within a few years of its power, maintaining social peace became the overriding agenda for the left in the countryside as it started to distance itself from the impulses of popular protests against social and economic injustice. Party-society, consequently, began to change into an instrument for balancing a congeries of interests, a device for negotiating and reconciling the irreconcilables. In other words, striking a middle ground turned into the left's running anxiety. Despite such de-radicalization, the moral resources of party-society lasted for several years in the form of succeeding electoral renewals—the reformist party's 'permanent incumbency'—another unique product of party-society made in West Bengal in violation of the iron law of India's democracy.

INSTABILITY IN PARTY-SOCIETY

What causes instability in party-society and how does it recast the political? Party-society, under conditions in which it was born, was destined to die young. Once established, it faced a classic dilemma: on the one hand, it was unable to reproduce its initial conditions of being, it could not regain the spirit of movement as governing the population became its primary objective; on the other hand, this inability steadily, but surely, pushed the organized domain of politics away from the community mode of power (based on structural solidarity of the classes in communities in struggle for establishing rights and entitlements over material and non-material objects) and closer to the structural logic of the state power (highly formalized with a set of established legal-rational allocation of material and non-material objects and acutely corrosive for the hegemonic component of a reformist party). As the logic of state power in the moment of passive revolution of capital seeks to appropriate in the name of accommodation, integrate in the name of inclusion, homogenize in the name of normalization, make policies targeted in the name of identification, the reformist party being a party of the government (as against that of movement) got increasingly transformed into an instrument of such a revolution. Its energy to counter the revolution sapped. The reformist party strove to avoid this dilemma by clutching on to its populist rhetoric and hoisting it as a screen before the masses. Such a screen, however, also had a short lifespan.

Various factors worked in tandem to dissolve the screen. Detached from movement and comfortable with the munificence of administrative power, a section of the party's leadership acquired bureaucratic habits of conducting itself, various corrupt and accumulative tendencies thrived, the reformist party's organic linkage with the everyday lives of the masses and communities snapped. Over the years, governmental institutions (such as the panchayat), which once helped the party to innovatively respond to popular demands, despite several attempts of administrative reforms, became dated and ineffective. They not only failed to handle new aspirations and demands of the population, what is worse, for maintaining order and peace the party began to exercise its control over them so much so that they became non-participatory and secretive, often acting in contravention to the welfare of the population. In the realm of praxis, the reformist party faced an acute crisis: its interventions became increasingly indefensible from its professed ideology. In the short run the gap was filled by rhetoric, in the medium run by pragmatism, and in the long run by a complete lack of imagination. Such deficiencies became starkly visible in the most dynamic social sphere—the economy. Especially in the context of the strengthening of market forces in the local society (commercialization of the peasant economy), and their spread across the national economy (to shrink the state and the public sector), the imprudence

of the reformist party was glaring. In the local economy it failed to build any mechanism for monitoring the unregulated cash-nexus, in the global economy it virtually turned itself into an apologist for corporate capital. All these, in conjunction, left the carefully crafted rhetorical screen of the old reformist party in tatters.

As people started to see through the screen, the link between the reformist party and the communities began to disappear triggering off a series of processes over which the party had no control. The communities realized that the party had lost moral authority to represent them. They now found the proximity of the party with the local society as intrusive, totalizing, and threatening for their sensitized autonomy. Once the deficit of legitimacy afflicted the party, a substantial section of the popular segment sought substitute mechanisms to continue its negotiations in the organized domain of politics. Such substitutes can be alternative political parties, or caste and religious associations, or a combination of both.[2] In response, the reformist party attempted either to retain a sense of purpose by drawing from the moral resources of the past and inducing the promise of 'development' for the future, or deployed a politics of sheer force in the form of arrogance, violence, and suppression using state machinery on an overdrive to 'manage' an increasingly defiant population. Such responses, however, failed to bridge the widening gulf between the population groups and the policies of the government. Particularly critical were the policies that involved large-scale displacement or dispossession of the peasant population. With the party's ability to negotiate taking a back seat, its politics of force made headway, pushing the party further into the spiral of a legitimacy-crisis. A party of hegemony eventually transformed into a party of violation.

THE TRANSFORMATION

In our village studies, conducted before the major protests against the government's acquisition of peasants' land in the state, we came across several instances that can suitably be interpreted as multiple symptoms of such violations. I will mention only few from three different institutional spheres of rural society to understand the transformation. These are the public sphere of the school, the administrative sphere of the panchayat, and the productive sphere of agricultural land.

It is widely accepted that the school cannot be a repository only of cultural capital, that political wind blows through and about it, that teachers are key political actors in a rural society. We have mentioned already how the reformist left found public trust in teachers useful during the initial years of its spread, and how such a pillar of authority over the years became unstable. Once the teachers were removed from local politics, it entered the premises of the school with a vengeance, wrecking any semblance of autonomy from within.

In Rishi Bankim village panchayat of Jagatpur mauja, a schoolteacher complained that a Rs 140,000 building grant was denied to the local secondary school just because the school board had majority members from the opposition parties. He went on to list other discriminations including denials of money from MP Local Area Development (MPLAD) and MLA Local Area Development (MLALAD) funds, keeping teachers' positions vacant for years despite repeated appeals, and the block development officer's indifference to provide drinking water for 900 odd students (Majumdar 2009: 84–5). In Adhata, we got some details from a local Trinamool leader of how darkly the political parties interfere into the affairs of the school. According to him, a local committee member of the CPI (M) was known in the locality for

finding suitable duplicates to sit for the board examinations, which nobody dared to stop. In the school committee elections, the secretary was invariably a party's nominee and since the parents were the voters, the parties allegedly made every effort to ensure that only children from their 'trusted' families got admission on priority.

West Bengal was among the pioneers in installing elected panchayats for governing the localities. Without them, as we mentioned before, several provisions of the land reform laws could not have been implemented at the ground level. These institutions, because they organized the village into a geography of representation, had tremendous potential to make debates over welfare and development both engaging and participatory. Instead, something very different happened. Participation was reduced to staged-attendance, debates to commands, various committees to facets of partisan directives. Instead of inching towards enacting self-government, the panchayat was turned into an extension of bureaucracy under partisan control.

We have several examples to draw from our village studies to illustrate this. In Galsi, we witnessed a crucial gram sansad meeting in which the village development council was constituted. The meeting, attended by about 45 people, was presided over by the pradhan in presence of the elected member from the booth. Though the villagers were expected to propose names for the village development council, they did not. The pradhan read out names from a piece of paper, and those present simply ratified the list. Of the 20 members selected, 10 were very close to the CPI (M). In Harishchandrapur, Tajkera Begum was elected as the pradhan only because the seat was reserved; her husband was the de facto pradhan, dictating each of her steps. More surprisingly, the party rarely proposed names of its superior functionaries such as Muslima Bibi or Dilera Bibi to any office of the panchayat (Dasgupta 2009: 80). Such a member, of course, cannot be directed by the 'pradhan chalak', literally one who drives the pradhan, as a CSSSC survey (2006) noted earlier.

Land has always been a politically contested issue. Land reforms discontinued the process of widespread de-peasantization, caused by the gross violation of ceiling and tenancy laws by landlords during the Congress regime, and offered either ownership rights or tenancy rights to small peasants and *bargadars* (sharecroppers). While such democratization of ownership enhanced cropping intensity leading to agrarian growth in the 1990s; the rising input costs, receding fertility and depressed market have since drastically reduced income from land. In many places of southern West Bengal, land has also become an attractive commodity for trade, for agricultural but most frequently non-agricultural and speculative purposes. Land is being bought and sold at a high volume through murky dealings especially in the villages close to the urban settlements or highways. In Adhata, we saw a tussle between two factions of the CPI (M) over a piece of *barga* (sharecropped) land.

The dispute was over 20 bighas next to National Highway 34 owned by an influential Congress leader who stayed in town and his agent in the village used to collect shares from 11 tribal, Dalit, and Muslim bargadars who were registered. A section close to the CPI (M) in the village contacted the owner and persuaded him to sell the land to a Barasat-based real estate promoter, who agreed to buy it for Rs 16 lakh. When the bargadars refused to release the land the promoter contacted the CPI (M) pradhan of the village panchayat, who had considerable popularity in the locality, to convince the bargadars. The pradhan initially refused, saying

that the deal was illegal and he would not risk his political credibility. After several appeals the pradhan agreed to reconsider only if a factory was built on the plot and jobs assured to the bargadars. He also demanded that the promoter pay a sum of Rs 32 lakh to the bargadars as the market price of the plot would not be anything less than Rs 60 lakh. The promoter, however, slapped a case against the bargadars at the Block Land Revenue Office, demanding their eviction alleging non-payment of share. The revenue officer, however, recorded the bargadars (now 13) afresh following a field enquiry. As the promoter realized that he was on sticky ground, he used his cash. He offered Rs 30,000 to the poor bargadars per bigha, merely a tenth of the market price. Some bargadars fell prey, and the promoter quickly moved to take possession of those parts to put up a makeshift shed. When the pradhan went with his men to pull it down, the promoter sent armed goons to protect it. At the time of fieldwork, the stalemate continued with the possibilities of a violent factional feud imminent.

COLLAPSE OF PARTY-SOCIETY

Where, then, does the crisis lead us?

As we approach the conclusion, I briefly refer to a massive rural unrest that broke out against the corrupt ration dealers in August–September 2007. The unrest revealed, in a flash, what the collapse of the party-society signifies. Kumar Rana and I visited many of the villages that had experienced peaceful as well as violent protests against the dealers and published our observations (Bhattacharya and Rana 2008). Some characteristics were found to be present in all cases. The protests were triggered off by rumours from 'another village' carried by mobile phones. Ranajit Guha in his study of peasant insurgency in colonial India called rumours 'insurgent communication', simultaneously a subversive and parallel discourse to power. Rather than heading the protests, the political parties—the ruling, but also the opposition—were forced to follow the masses—a clear sign that the bridging role of the parties was being rejected across the board. Although the above poverty line (APL) population initially carried the protests, the below poverty line (BPL) segments also joined them either in the hope of being compensated or to avenge the maltreatment they received from the dealers on a daily basis. Importantly, villagers rejected the BPL/APL distinction, claiming that the list—drawn by the agents of the political parties—were full of exclusion errors. Almost always the APL section wanted cash—instead of grain—as the mode of compensation (and got the dealer sign a written document to this effect in front of a state or panchayat official) and never attempted to share the compensation with the BPL although that was promised at the early stage of the movement. Everywhere, the BPL was told that its needs would be addressed later (*'pore dekha jabe'*). No political party sought to build a conscious campaign during or after the agitation to address the basic issues that plagued the public distribution system. No political party—either the ruling or the opposition—attempted to turn the spontaneity of the movement into a more orchestrated critique of the deep-rooted corruption inherent in delivery mechanisms. There was no debate or discussion, no partisan investment to root out the basic malaise and insist on social monitoring by institutions like panchayat.

Several crucial elements of the protest do not readily meet the eyes. Particularly intriguing was the protesters' insistence that the dealer signed an official stamp paper promising compensation though the entire negotiation was taking place outside the formal and established structure of governance. The villagers tried to

negotiate with a moral economic understanding of what was just, for there were no available criteria (legal/juridical) to determine the amount of cash to be compensated by the dealer. While villagers must have lost trust in the formal structure of governance (otherwise they would have operated through the panchayat), they still had a fear about these structures, which they sought to inflict on the dealer by using the ritual of the state, so that the dealer could not go back on his words. What it shows is a complex and highly interesting amalgam of legal–juridical and moral–economic governmental practices. They are sequential only conceptually, one does not replace the other; rather they coexist in a very peculiar way.

In a number of places the people turned violent, assaulted dealers, ransacked their property, or torched their houses. In some cases the police retaliated, fired at the crowd causing injuries, even death. As protests were spreading, the crowd was getting increasingly determined and volatile. They justified violence as a necessity to counter the dealer's arrogance and corruption. The dealer could afford to be so indifferent to the rest of the village, they claimed, simply because he had surreptitious ways of gratifying the political parties, the lower bureaucracy and the police. The violence that we witnessed was targeted and tactical, ruthless and rhetorical, and retributive as well as spectacular. It sought to reinstate a moral order by cleansing the public space of the governmentality of organized politics, of the state and its agents.

The collapse of the left's control over the party-society, therefore, offers a momentary opportunity for democratic retrieval of the autonomy of community, a community that not only makes an instrumental use of kinship bonds as in political society, but also functions resolutely within the moral economic framework.

WHITHER WEST BENGAL'S POLITICS?

With the receding credibility of the reformist party and its reduced ability to maintain social peace at a time when popular perception of being grossly violated is on the rise, oppositional politics can hope to build in three principal directions: within party-society, in violation of party-society, and in the short-circuit between the popular resources of party-society and the cultural capital of civil society.

Opposition politics within party-society is primarily riding the tide of resentment against the violation perpetrated by the dominant political party. The organized support that the opposition parties offered to the peasants in their recent struggle against the government's seizure of agricultural land has created a genuine space for moral politics translatable to electoral gains. Such gains, however, are likely to be short-term and perfunctory, as the principal opposition—that of the Trinamool Congress—is based on a contingent alliance of forces cemented together on purely rhetorical gestures of populism, and led by an autocratic leader with a high momentary charisma concealing a deep insecurity of leadership. At a deeper level, as the present situation does not only signify a crisis of legitimacy of a particular political formation, but of a structure of modular politics itself, it is only a matter of time before the major opposition parties get sucked into its vortex.

Opposition politics from outside party-society can have two possible strands: One of them, which I believe is going to rise in influence, draws its inspirations from identitarian politics of the community. It aims to undermine the autonomy of all existing parties and bring them under the control of locally constituted networks of caste, ethnic, and religious associations, or form new community-based political parties to press for a larger share of the state's

resources.[3] The other strand makes gross use of violence against the workers and leaders of the ruling formation and seeks to justify it as a necessity to counter what it calls a repressive regime of domination. This strand, however, is more prominent in areas inhabited by a marginal population excluded from the mainstream agricultural communities, who drew subsistence from forest resources or pastoral occupations. This is unlikely to pose a serious challenge to party-society.

Civil society, having rediscovered itself in West Bengal's public sphere after decades of political irrelevance, has lent a powerful voice of opposition. New bridges are built with urban and rural popular segments especially by a section of the intelligentsia, to achieve a politics that it claims as ethical, universal and free from the darker sides of party-society. It remains to be seen, however, if this newly charged civic activism can move beyond the confines of middle class cynicism about 'too much politics' and the screens and pages of the mass media run by big corporate houses.

For the mainstream left, therefore, the party-society offered a productive moment for consolidation in West Bengal when it was capable of imagining a combination of institutional innovations with the spirit of massive mobilization of the under-classes in the countryside. Three pillars that defined the moment were the left's distancing from the state-power while running a government in a federal unit, the left's use of anti-capital rhetoric as a fulcrum of its ideology, and the left's solidarity with the marginal urban and rural workforce. For about a decade following the Emergency the left had invested in organizing a political alliance against the centrist and authoritarian tendencies of the Indian state, in building a domain of rights and dignity for labour, and in creating a general ambience of distrust for big monopoly capital. However, since the middle of 1980s, with the changing parameters of the state's role in the economy, the advent of market-fundamentalism, the lure of globalized consumerism, and the neo-liberal transformation of a centrist polity into one of competitive federalism (in which federal units try to outsmart each other to turn themselves into more attractive destinations for private capital) the leadership of the mainstream left was found sadly wanting in readjusting its lens of criticality. It gave in to the consensus. Consequently, in public perception, the left became dangerously indistinguishable from the right in all three spheres of its distinction. It appeared as mimicking the interests of state-power and big capital rather than voicing the demands of the endangered informal workers and small cultivators in carving a developmental path for the economy. The deficit of trust could not be bigger leading, under the pressure of a cloistered party-society, to unprecedented public disapprovals hammered in as blows after blows in repeated electoral debacles.

The left cannot do any greater harm to itself if it continues to be a victim of its received wisdom, frayed jargons, and dated practices. The need is to revitalize an idea of politics that produces a new social coalition capable of negotiating with the incursion of the coercive state and capital in a globalized world, and energize an expanded and inclusive domain of rights, dignity and welfare. It is by addressing the issues of primary education, nutrition, basic healthcare, environmental sustenance, rights of the social minorities, cultural freedom to debate and differ, and protection of the informal working classes in the face of an onslaught by the predatory global capital that the left can hope to build an imaginative politics of inclusion. An optic geared narrowly to electoral contestations can ill-afford to offer such perspectives.

EPILOGUE

The analysis shown in this volume was done in the end of 2009. Since then the state has undergone a substantial political change.

In May 2011, an alliance of Trinamul Congress (TMC) and Congress led by Mamata Banerjee brought to an end the 34-year-long tenure of the Left Front government. The winning alliance received 48.35 per cent of popular votes, significantly higher than the Left, which got its lowest in history—merely 41.05 per cent. In such a highly polarized state of politics as West Bengal, a lead by 7 per cent or so catapulted the TMC–Congress to a huge advance in terms of seats in the legislature. Out of the 294 members in the legislature, the TMC won 184, the Congress 42, and the Left Front merely 62 [with the Communist Party of India (Marxist) or CPI (M) with 40]). The previous lowest tally of the Left Front since 1977 was 199. A substantial section of the state's electorate responded resolutely to Mamata's call for a 'change'. On earlier occasions, in 2001 and 2006, however, such a call did not find popular approval. Analysts have given various reasons as to why the call was heeded this round, why the Left was shunted out of power in such a decisive manner. They pointed at the Left's ideological failure to be resolutely anti-capitalist, its inability to link practice within a larger theoretical framework of political understanding, its administrative and organizational follies, its arrogance and complacency, its overt dependence on the bureaucracy rather than the party organizations, its suppression of dissidence within its own ranks, and spread of corruption and highhandedness among the leadership at various levels of the party.

Almost all these analyses acknowledge the Left's [primarily the CPI (M)'s] inability to grasp the potentials of protest that Mamata galvanized against the ruling regime on the issue of seizure of agricultural land (whether actual or proposed) for setting up corporate industries and Special Economic Zones (SEZs) principally in Singur and Nandigram. Added to all this was the alienation of the Muslim minorities following the publication and propagation of the report of the central government-appointed Sachar Committee, which argued that the Muslims in the state were economically worse-off even when compared to regions which have had communal polarization in the last couple of decades. As we indicated earlier, various marginal voices on the lines of social and ethnic identities became more distinctly audible in this period, undermining the carefully orchestrated social equilibrium that the Left had maintained for decades. In response to these discontents, the state government displayed a classic case of policy paralysis while Mamata extended her moral support to each of these issues, promising immediate resolution once she occupied the seat of power. In short, Mamata swiftly took over the space left empty by the Left, appropriated the latter's symbols and rhetoric, reaped benefits from being the most credible anti-CPI (M) figure, and built up through her remarkable perseverance a coalition of cross-class popular interests which she called the 'Ma–Mati–Manush' (literally, 'Mother–Land–Mankind'). West Bengal witnessed the emergence of Mamata as a messiah with extraordinary promises of delivery, on the one hand, and the spectacular drop in the Left's credibility among the electorate, on the other.

This shift among various electoral segments was clearly evident in the results of the post-poll survey conducted by the Centre for the Study of Developing Societies (CSDS/Lokniti) in the aftermath of the assembly election in April–May 2011. We have no space for a detailed presentation of these results, but

it will be rewarding to look at some emerging trends. Three observations are of relevance to this discussion. First, in making their electoral choice, the voters in West Bengal were always guided primarily by their support for a political party, and surprisingly, this choice was less familial and more individual in this election. For a vast majority (77.7 per cent) the party was more important than the candidate contesting, and 38 per cent made their preference in response to overall programme of the party or its leadership, significantly more than those who voted out of considerations such as caste/community (5.2 per cent), neighbourhood (3.3 per cent), benefits received (5.6 per cent) or even family preference (22.3 per cent). About 66 per cent voters decided which party to vote for pretty much in advance, either at an early stage of the campaign or even before that, showing that for a majority it was a determined voting. Almost half (49.6 per cent) the voters voted for the party they preferred individually, refusing to vote on family-lines (as the political parties traditionally calculate their probable votes by treating families as units, a trend such as this may be considered instructive).

Second, the main reason for the Left's defeat was not a popular dissatisfaction with its governance. Merely 37 per cent said they were variously dissatisfied, while about 50 per cent expressed satisfaction. Indeed, 60 per cent or more believed that conditions of roads, electricity supply, drinking water, education, and public transport have improved in the last five years of the Left Front government. The past government received a marginally negative reaction only for medical facilities in government hospitals and for the law and order conditions in general. When the respondents were asked to compare Buddhadeb Bhattacharya and Mamata Banerjee as administrators, the approval for the former was marginally higher (38 per cent) than the latter (34 per cent). What, then, explains the defeat of Bhattacharya and his team?

The defeat signifies—and this is the third point—a rejection of the preceding government's model of 'development', on which, ironically, the Left Front had banked on for public support. More than 75 per cent voters had heard about the disputes in Singur and Nandigram, making them clearly the most deliberated issues in the election. While 44 per cent believed that the demand for returning 400 acres to the farmers from the land seized in Singur was justified, only 18 per cent thought it was not. On Nandigram, 35 per cent maintained that the CPI (M) was wrong, while just 19 per cent supported the party. A third of the respondents opposed the Left's land acquisition policies, only a quarter supported it (about 40 per cent expressed no opinion). Though a substantial section (53 per cent) believed that the flight of Tata Nano from the state was a big loss for the common people, only 35 per cent were ready to blame Mamata Banerjee for the slowing down of the state's economy. In fact, Mamata scored higher than Buddhadeb in approval ratings for catering to the needs of the poor, the Muslims, the state's industrialization, and overall development. She also was found more trustworthy than Buddhadeb (34.2 per cent against 28.8 per cent). Though people had doubts about her administrative skills, close to 70 per cent believed that she was a successful railway minister, an image that must have gone a long way to present her as a credible chief-ministerial candidate. These figures show more than anything else that people at large in West Bengal are not persuaded so much by the calculus of good governance or drives for industry as their perception of a morally just method of achieving these goals. Through her persistent critique of the Left's defense of

capitalist industrialization and land acquisition, and her ample promises to every oppositional force in the state, Mamata touched the moral cord of the electorate and achieved to present herself as a more credible, sensitive and hegemonic force than the elaborate coalition machinery of the Left.

We would conclude this section by referring back to the central objective of this Epilogue: to understand the political processes in West Bengal through the prism of the conceptual tool of 'party–society'. Now the obvious question would be: What happens to that framework in the new conditions that marked the exit of the left parties and the assumption of power by the coalition of the TMC and the Congress? Can we still make sense of the operations of the new regimes through the structure of power which evolved in the state, especially in rural West Bengal, over the last three decades?

Indeed, after coming to power, the new regime has declared its mission to clean public institutions of what it calls '*dala-tantra*' or 'party-cracy'. However, in practice even the newspapers and television channels, which are most generous to the new regime, are finding it difficult to hide their embarrassment at the manner in which new people are nominated in these bodies on singularly partisan considerations or how elected representatives of the opposition parties (even of the Congress) are being completely sidestepped in violation of established norms from key official activities. Such a clear division of the public sphere on partisan lines, which is marker of party–society, is a continuation of a system set in the earlier decades. What is new, it seems, is the growing absence of even a pretense of inclusive politics, legitimized by the declared goal to fight an alleged 'party-cracy', within the formal ambit of governmental or administrative operations. It perhaps would not be an exaggeration to suggest that Mamata Banerjee not only wants the mode of party–society to work for her now that she is the Chief Minister, in doing so she has rather unwittingly imbibed the mode that had already run out of its productive course and entered a phase of severe crisis and had lost the initial impulses of popular approval borne out of a successful campaign for distributive reforms and decentralization. More, she wants to inherit the benefits of the system though her party is no match for the cohesive and expansive organizational grid of the Left.

Such a style of operation, geared exclusively to 'expose' and blame the previous regime without any constructive and well thought-out agenda for reconstruction of the state's economy and polity is likely to meet severe challenges—both within and without—once the halo of her messianic abilities gets tarnished. Mamata has enchanted the electorate and put the Left juggernaut to a grinding halt after a record run, but it remains to be seen if the fortification by the mobilized community of her Ma–Mati–Manush remains in place once her myriad promises to every disgruntled political entity fail to fructify.

NOTES

1. A sher is a local measure for weight. It is almost a kilogram (about .93 kg).

2. In the recent panchayat and Lok Sabha elections in West Bengal the caste groups—especially those of the Dalits and the OBCs—played a far more active role than in the recent past. So have the minority religious bodies. It seems that in the near future these groups and organizations will play a more emphatic partisan role in the state's politics and the established political parties will have to address them in order to enlist support on the basis of identity mobilizations.

3. Recent stridencies of Kamtapur People's Party, Gorkha Janmukti Morcha, and Jamiyat-e-Ulema-e-Hind are examples of ethnicity and religion-based mobilizations of the Gorkhas, Rajbanshis and the minority Muslims.

POLITICAL CONCEPTS.

Chapter 3

Politics, Government and the State

Introduction

In the early stages of academic study, students are invariably encouraged to reflect on what the subject itself is about, usually by being asked questions such as 'What is Physics?', 'What is History?' or 'What is Economics?'. Such reflections have the virtue of letting students know what they are in for: what they are about to study and what issues and topics are going to be raised. Unfortunately for the student of politics, however, the question 'What is Politics?' is more likely to generate confusion than bring comfort or reassurance. The problem with politics is that debate, controversy and disagreement lie at its very heart, and the definition of 'the political' is no exception.

The debate about 'What is Politics?' exposes some of the deepest and most intractable conflicts in political thought. The attempt to define politics raises a series of difficult questions. For example, is politics a restricted activity, confined to what goes on within government or the state, or does it occur in all areas of social life? Does politics, in other words, take place within families, schools, colleges and in the workplace? Similarly, is politics, as many believe, a corrupting and dishonest activity, or is it, rather, a healthy and ennobling one? Can politics be brought to an end? Should politics be brought to an end? A further range of arguments and debates are associated with the institution of government. Is government necessary or can societies be stable and successful in the absence of government? What form should government take, and how does government relate to broader political processes, usually called the political system? Finally, deep controversy also surrounds the nature and role of the state. For instance, since the terms 'government' and 'state' are often used interchangeably, can a meaningful distinction be established between them? Is state power benevolent or oppressive: does it operate in the interests of all citizens or is it biased in favour of a narrow elite or ruling class? Moreover, what should the state do? Which responsibilities should we look to the state to fulfil and which ones should be left in the hands of private individuals?

Politics

There are almost as many definitions of politics as there are authorities willing to offer an opinion on the subject. Politics has been portrayed as the exercise of power or authority, as a process of collective decision-making, as the allocation of scarce resources, as an arena of deception or manipulation and so forth. A number of characteristic themes nevertheless crop up in most, if not all, these definitions. In the first place, politics is an activity. Although politics is also an academic subject, sometimes indicated by the use of 'Politics' with a capital letter P, it is clearly the study of the activity of 'politics'. Second, politics is a social activity; it arises out of interaction between or among people, and did not, for example, occur on Robinson Crusoe's island – though it certainly did once Man Friday appeared. Third, politics develops out of diversity, the existence of a range of opinions, wants, needs or interests. Fourth, this diversity is closely linked to the existence of conflict: politics involves the expression of differing opinions, competition between rival goals or a clash of irreconcilable interests. Where spontaneous agreement or natural harmony occurs, politics cannot be found. Finally, politics is about decisions, collective decisions which are in some way regarded as binding upon a group of people. It is through such decisions that conflict is resolved. However, politics is better thought of as the search for conflict-resolution rather than its achievement, since not all conflicts are, or can be, resolved.

However, this is where agreement ends. There are profound differences about when, how, where, and in relation to whom, this 'politics' takes place. For instance, which conflicts can be called 'political'? What forms of conflict-resolution can be described as 'political'? And where is this activity of 'politics' located? Three clearly distinct conceptions of politics can be identified. In the first place, politics has long been associated with the formal institutions of government and the activities which take place therein. Second, politics is commonly linked to public life and public activities, in contrast to what is thought of as private or personal. Third, politics has been related to the distribution of power, wealth and resources, something that takes place within all institutions and at every level of social existence.

The art of government

Bismarck declared that 'politics is not a science . . . but an art'. The art he had in mind was the art of government, the exercise of control within society through the making and enforcement of collective decisions. This is perhaps the classical definition of politics, having developed from the original meaning of the term in Ancient Greece. The word 'politics' is

derived from *polis*, which literally means city-state. Ancient Greek society was divided into a collection of independent city-states, each of which possessed its own system of government. The largest and most influential of these was Athens, often portrayed as the model of classical democracy. All male citizens were entitled to attend the Assembly or *Ecclesia*, very similar to a town-meeting, which met at least ten times a year, and most other public offices were filled by citizens selected on the basis of lot or rota. Nevertheless, Athenian society was based upon a rigidly hierarchical system which excluded the overwhelming majority – women, slaves and foreign residents – from political life.

In this light, politics can be understood to refer to the affairs of the *polis*; it literally means 'what concerns the *polis*'. The modern equivalent of this definition is 'what concerns the state'. This is a definition which academic political science has undoubtedly helped to perpetuate through its traditional focus upon the personnel and machinery of government. Furthermore, it is how the term 'politics' is commonly used in everyday language. For example, a person is said to be 'in politics' when they hold a public office, or to be 'entering politics' when they seek to do so. Such a definition of 'the political' links it very closely to the exercise of authority, the right of a person or institution to make decisions on behalf of the community. This was made clear in the writings of the influential American political scientist, David Easton (1981), who defined politics as the 'authoritative allocation of values'. Politics has therefore come to be associated with 'policy', formal or authoritative decisions that establish a plan of action for the community. Moreover, it takes place within a 'polity', a system of social organisation centred upon the machinery of government. It should be noted, however, that this definition is highly restrictive. Politics, in this sense, is confined to governmental institutions: it takes place in cabinet rooms, legislative chambers, government departments and the like, and it is engaged in by limited and specific groups of people, notably politicians, civil servants and lobbyists. Most people, most institutions and most social activities can thus be regarded as 'outside' politics.

For some commentators, however, politics refers not simply to the making of authoritative decisions by government but rather to the particular means by which these decisions are made. Politics has often been portrayed as 'the art of the possible', as a means of resolving conflict by compromise, conciliation and negotiation. Such a view was advanced by Bernard Crick in *In Defence of Politics* ([1962] 2000), in which politics is seen as 'that solution to the problem of order which chooses conciliation rather than violence and coercion'. The conciliation of competing interests or groups requires that power is widely dispersed throughout society and apportioned according to the importance of each to the welfare and survival of the whole community. Politics is, then, no utopian solution,

but only the recognition that if human beings cannot solve problems by compromise and debate they will resort to brutality. As the essence of politics is discussion, Crick asserted that the enemy of politics is 'the desire for certainty at any cost', whether this comes in the form of a closed ideology, blind faith in democracy, rabid nationalism or the promise of science to disclose objective knowledge.

Once again, such a definition of politics can clearly be found in the common usage of the term. For instance, a 'political' solution to a problem implies negotiation and rational debate, in contrast to a 'military' solution. In this light, the use of violence, force or intimidation can be seen as 'non-political', indeed as the breakdown of the political process itself. At heart, the definition of politics as compromise and conciliation has an essentially liberal character. In the first place, it reflects a deep faith in human reason and in the efficacy of debate and discussion. Second, it is based upon an underlying belief in consensus rather than conflict, evident in the assumption that disagreements can be settled without resort to naked power. In effect, there are no irreconcilable conflicts.

The link between politics and the affairs of the state has, however, also generated deeply negative conceptions of what politics is about. For many, politics is quite simply a 'dirty' word. It implies deception, dishonesty and even corruption. Such an image of politics stems from the association

Niccolò Machiavelli (1469–1527)

Italian politician and author. The son of a civil lawyer, Machiavelli's knowledge of public life was gained from a sometimes precarious existence in politically unstable Florence. He served as Second Chancellor, 1498–1512, and was despatched on missions to France, Germany and throughout Italy. After a brief period of imprisonment and the restoration of Medici rule, Machiavelli embarked on a literary career.

Machiavelli's major work, *The Prince*, written in 1513 and published in 1531, was intended to provide guidance for the ruler of a future united Italy, and drew heavily upon his first-hand observations of the statecraft of Cesare Borgia and the power politics that dominated his period. His 'scientific method' portrayed politics in strictly realistic terms and highlighted the use by the political leaders of cunning, cruelty and manipulation. This emphasis, and attacks upon him that led to his excommunication, meant that the term 'Machiavellian' subsequently came to mean scheming and duplicitous. His *Discourses*, written in 1513–17 and published in 1531, provides a fuller account of Machiavelli's republicanism, but commentators have disagreed about whether it should be considered as an elaboration of or a departure from the ideas outlined in *The Prince*.

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between politics and the behaviour of politicians, sometimes said to be rooted in the writings of Niccolo Machiavelli. In *The Prince* ([1531] 1961), Machiavelli attempted to develop a strictly realistic account of politics in terms of the pursuit and exercise of power, drawing upon his observations of Cesare Borgia. Because he drew attention to the use by political leaders of cunning, cruelty and manipulation, the adjective 'Machiavellian' has come to stand for underhand and deceitful behaviour.

Politicians themselves are typically held in low esteem because they are perceived to be power-seeking hypocrites who conceal personal ambition behind the rhetoric of public service and ideological conviction. A conception of politics has thus taken root which associates it with self-seeking, two-faced and unprincipled behaviour, clearly evident in the use of derogatory phrases like 'office politics' and 'politicking'. Such an image of politics also has a liberal character. Liberals have long warned that, since individuals are self-interested, the possession of political power will be corrupting in itself, encouraging those 'in power' to exploit their position for personal advantage and at the expense of others. This is clearly reflected in the British historian Lord Acton's (1834–1902) famous aphorism: 'power tends to corrupt, and absolute power corrupts absolutely.'

Public affairs

In the first conception, politics is seen as a highly restricted activity, confined to the formal exercise of authority within the machinery of government. A second and broader conception of politics moves it beyond the narrow realm of government to what is typically thought of as 'public life' or 'public affairs'. In other words, the distinction between 'the political' and 'the non-political' coincides with the division between an essentially public sphere of life and what is thought of as a private sphere. Such a view of politics is rooted in the work of the famous Greek philosopher, Aristotle (see p. 69). In *Politics* (1958), Aristotle declared that 'Man is by nature a political animal', by which he meant that it is only within a political community that human beings can live 'the good life'. Politics is therefore the 'master science'; it is an ethical activity concerned ultimately with creating a 'just society'. According to this view, politics goes on within 'public' bodies such as government itself, political parties, trade unions, community groups and so on, but does not take place within the 'private' domain of, say, the home, family life and personal relationships. However, it is sometimes difficult in practice to establish where the line between 'public' life and 'private' life should be drawn, and to explain why it should be maintained.

The traditional distinction between the public realm and the private realm conforms to the division between the state and society. The characteristics of the state are discussed in more detail in the final section of this chapter, but for the time being the state can be defined as a political association which exercises sovereign power within a defined territorial area. In everyday language, the state is often taken to refer to a cluster of institutions, centring upon the apparatus of government but including the courts, the police, the army, nationalized industries, the social security system and so forth. These institutions can be regarded as 'public' in the sense that they are responsible for the collective organisation of community life and are thus funded at the public's expense, out of taxation. By contrast, society consists of a collection of autonomous groups and associations, embracing family and kinship groups, private businesses, trade unions, clubs, community groups and the like. Such institutions are 'private' in the sense that they are set up and funded by individual citizens to satisfy their own interests rather than those of the larger society. On the basis of this 'public/private' dichotomy, politics is restricted to the activities of the state itself and the responsibilities which are properly exercised by public bodies. Those areas of life in which individuals can and do manage for themselves – economic, social, domestic, personal, cultural, artistic and so forth – are therefore clearly 'non-political'.

However, the 'public/private' divide is sometimes used to express a further and more subtle distinction, namely, between 'the political' and 'the personal'. Although society can be distinguished from the state, it nevertheless contains a range of institutions that may be thought of as 'public' in the wider sense that they are open institutions, operating in public and to which the public has access. This encouraged Hegel (see p. 59), for example, to use the more specific term, 'civil society', to refer to an intermediate socio-economic realm, distinct from the state on one hand and the family on the other. By comparison with domestic life, private businesses and trade unions can therefore be seen to have a public character. From this point of view, politics as a public activity stops only when it infringes upon 'personal' affairs and institutions. For this reason, while many people are prepared to accept that a form of politics takes place in the workplace, they may be offended and even threatened by the idea that politics intrudes into family, domestic and personal life.

The importance of the distinction between political and private life has been underlined by both conservative and liberal thinkers. Conservatives such as Michael Oakeshott (see p. 139) have, for instance, insisted that politics be regarded as a strictly limited activity. Politics may be necessary for the maintenance of public order and so on, but it should be restricted to its proper function: the regulation of public life. In *Rationalism in Politics* ([1962] 1991), Oakeshott advanced an essentially non-political view of

human nature, emphasizing that, far from being Aristotle's 'political animals', most people are security-seeking, cautious and dependent creatures. From this perspective, the inner core of human existence is a 'private' world of family, home, domesticity and personal relationships. Oakeshott therefore regarded the rough-and-tumble of political life as inhospitable, even intimidating.

From a liberal viewpoint, the maintenance of the 'public/private' distinction is vital to the preservation of individual liberty, typically understood as a form of privacy or non-interference. If politics is regarded as an essentially 'public' activity, centred upon the state, it will always have a coercive character: the state has the power to compel the obedience of its citizens. On the other hand, 'private' life is a realm of choice, freedom and individual responsibility. Liberals therefore have a clear preference for society rather than the state, for the 'private' rather than the 'public', and have thus feared the encroachment of politics upon the rights and liberties of the individual. Such a view is commonly expressed in the demand that politics be 'kept out of' private activities or institutions, matters that can, and should, be left to individuals themselves. For example, the call that politics be 'kept out of' sport implies that sport is an entirely 'private' affair over which the state and other 'public' bodies exercise no rightful responsibility. Indeed, such arguments invariably portray 'politics' in a particularly unfavourable light. In this case, for example, politics represents unwanted and unwarranted interference in an arena supposedly characterized by fair competition, personal development and the pursuit of excellence.

Not all political thinkers, however, have had such a clear preference for society over the state, or wished so dearly to keep politics at bay. There is, for instance, a tradition which portrays politics favourably precisely because it is a 'public' activity. Dating back to Aristotle, this tradition has been kept alive in the twentieth century by writers such as Hannah Arendt (see p. 58). In her major philosophical work *The Human Condition* (1958) Arendt placed 'action' above both 'labour' and 'work' in what she saw as a hierarchy of worldly activities. She argued that politics is the most important form of human activity because it involves interaction among free and equal citizens, and so both gives meaning to life and affirms the uniqueness of each individual. Advocates of participatory democracy have also portrayed politics as a moral, healthy and even noble activity. In the view of the eighteenth-century French thinker, Jean-Jacques Rousseau (see p. 242), political participation was the very stuff of freedom itself. Only through the direct and continuous participation of all citizens in political life can the state be bound to the common good, or what Rousseau called the 'general will'. John Stuart Mill (see p. 256) took up the cause of political participation in the nineteenth century, arguing that involvement

German political theorist and philosopher. Arendt was brought up in a middle-class Jewish family. She fled Germany in 1933 to escape from Nazism, and finally settled in the United States, where her major work was produced.

Arendt's wide-ranging, even idiosyncratic, writing was influenced by the existentialism of Heidegger (see p. 8) and Jaspers (1883–1969); she described it as 'thinking without barriers'. In *The Origins of Totalitarianism* (1951), which attempted to examine the nature of both Nazism and Stalinism, she developed a critique of modern mass society, pointing out the link between its tendency to alienation and atomization, caused by the breakdown of traditional norms, and the rise of totalitarian movements. Her most important philosophical work, *The Human Condition* (1958), develops Aristotle (see p. 69) in arguing that political action is the central part of a proper human life. She portrayed the public sphere as the realm in which freedom and autonomy are expressed, and meaning is given to private endeavours. She analysed the American and French revolutions in *On Revolution* (1963), arguing that each had abandoned the 'lost treasure' of the revolutionary tradition, the former by leaving the mass of citizens outside the political arena, the latter by its concentration on the 'social question' rather than freedom. In *Eichmann in Jerusalem* (1963), Arendt used the fate of the Nazi war criminal Adolf Eichmann as a basis for discussing the 'banality of evil'.

in 'public' affairs is educational in that it promotes the personal, moral and intellectual development of the individual. Rather than seeing politics as a dishonest and corrupting activity, such a view presents politics as a form of public service, benefiting practitioners and recipients alike.

A further optimistic conception of politics stems from a preference for the state rather than for civil society. Whereas liberals have regarded 'private' life as a realm of harmony and freedom, socialists have often seen it as a system of injustice and inequality. Socialists have consequently argued for an extension of the state's responsibilities in order to rectify the defects of civil society, seeing 'politics' as the solution to economic injustice. From a different perspective, Hegel portrayed the state as an ethical idea, morally superior to civil society. In *Philosophy of Right* ([1821] 1942), the state is regarded with uncritical reverence as a realm of altruism and mutual sympathy, whereas civil society is thought to be dominated by narrow self-interest. The most extreme form of such an argument is found in the fascist doctrine of the 'totalitarian state', expressed in Gentile's formula, 'Everything for the state, nothing against the state, nothing outside the state'. The fascist ideal of the absorption of

Georg Wilhelm Friedrich Hegel (1770–1831)

German philosopher. Hegel was the founder of modern idealism and developed the notion that consciousness and material objects are in fact unified. In *Phenomenology of Spirit* ([1807] 1977), he sought to develop a rational system that would substitute for traditional Christianity by interpreting the entire process of human history, and indeed the universe itself, in terms of the progress of absolute Mind towards self-realisation. In his view, history is, in essence, a march of the human spirit towards a determinant end-point.

Hegel's principal political work, *Philosophy of Right* ([1821] 1942), advanced an organic theory of the state that portrayed it as the highest expression of human freedom. He identified three 'moments' of social existence: the family, civil society and the state. Within the family, he argued, a 'particular altruism' operates, encouraging people to set aside their own interests for the good of their relatives. He viewed civil society as a sphere of 'universal egoism' in which individuals place their own interests before those of others. However, he held that the state is an ethical community underpinned by mutual sympathy, and is thus characterised by 'universal altruism'. This stance was reflected in Hegel's admiration for the Prussian state of his day, and helped to convert liberal thinkers to the cause of state intervention. Hegel's philosophy also had considerable impact upon Marx (see p. 371) and other so-called 'young Hegelians'.

the individual into the community, obliterating any trace of individual identity, could be achieved only through the 'politicization' of every aspect of social existence, literally the abolition of 'the private'.

Power and resources

Each of the earlier two conceptions of politics view it as intrinsically related to a particular set of institutions or social sphere, in the first place the machinery of government and, second, the arena of public life. By contrast, the third and most radical definition of politics regards it as a distinctive form of social activity, but one that pervades every corner of human existence. As Adrian Leftwich insists in *What is Politics?* (1984): 'politics is at the heart of *all* collective social activity, formal and informal, public and private, in *all* human groups, institutions and societies'. In the view of the German political and legal theorist Carl Schmitt (1888–1985), politics reflects an immutable reality of human existence: the distinction between friend and enemy. In most accounts, this notion of 'the political' is linked to the production, distribution and use of resources in the course of

social existence. Politics thus arises out of the existence of scarcity, out of the simple fact that while human needs and desires are infinite, the resources available to satisfy them are always limited. Politics therefore comprises any form of activity through which conflict about resource-allocation takes place. This implies, for instance, that politics is no longer confined, as Crick argued, to rational debate and peaceful conciliation, but can also encompass threats, intimidation and violence. This is summed up in Clausewitz's famous dictum, 'War is nothing more than the continuation of politics by other means'. In essence, politics is power, the ability to achieve a desired outcome, through whatever means. Harold Lasswell neatly summed up this aspect of politics in the title of his book *Politics: Who Gets What, When, How?* (1936). Such a conception of politics has been advanced by a variety of theorists, amongst the most influential of whom have been Marxists and modern feminists.

The Marxist concept of politics operates on two levels. On the first, Marx (see p. 371) used the term 'politics' in a conventional sense to refer to the apparatus of the state. This is what he and Engels meant in *The Communist Manifesto* ([1848] 1976) when they referred to political power as 'merely the organised power of one class for oppressing another'. In Marx's view, politics, together with law and culture, was part of a 'superstructure', distinct from the economic 'base', which was the real foundation of social life. However, he did not see the economic 'base' and the political and legal 'superstructure' as discrete entities, but believed that the 'superstructure' arose out of, and reflected, the economic 'base'. At a deeper level, in other words, political power is rooted in the class system; as Lenin (see p. 83) put it, 'politics is the most concentrated expression of economics'. Far from believing that politics can be confined to the state and a narrow public sphere, Marxists may be said to hold that 'the economic is political'. Indeed, civil society, based as it is on a system of class antagonism, is the very heart of politics. However, Marx did not think that politics was an inevitable feature of social existence and he looked towards what he clearly hoped would be an end of politics. This would occur, he anticipated, once a classless, communist society came into existence, leaving no scope for class conflict, and therefore no scope for politics.

Particularly intense interest in the nature of politics has been expressed by modern feminist thinkers. Whereas nineteenth-century feminists accepted an essentially liberal conception of politics as 'public' affairs, and focused especially upon the campaign for female suffrage, radical feminists have been concerned to extend the boundaries of 'the political'. They argue that conventional definitions of politics, in effect, exclude women. Women have traditionally been confined to a 'private' existence, centred upon the family and domestic responsibilities; men, by contrast, have always

dominated conventional politics and other areas of 'public' life. Radical feminists have therefore attacked the 'public/private' dichotomy, proclaiming instead the slogan 'the personal is the political'. Although this slogan has provoked considerable controversy and a variety of interpretations, it undoubtedly encapsulates the belief that what goes on in domestic, family and personal life is intensely political. Behind this, however, stands a more radical notion of politics, defined by Kate Millett in *Sexual Politics* ([1970] 1990) as 'power-structured relationships, arrangements whereby one group of persons is controlled by another'. Politics therefore takes place whenever and wherever power and other resources are unequally distributed. From this viewpoint, it is possible to talk about 'the politics of everyday life', suggesting that relationships within the family, between husbands and wives or between parents and children, are every bit as political as relationships between employers and workers, or between government and its citizens. Such a broadening of the realm of politics has, on the other hand, deeply alarmed liberal theorists, who fear that it will encourage public authority to encroach upon the privacy and liberties of the individual.

However, if politics is conceived as the allocation of scarce resources, it takes place not so much within a particular set of institutions as on a number of levels. The lowest level of political activity is personal, family and domestic life, where it is conducted through regular or continuous face-to-face interaction. Politics, for example, occurs when two friends decide to go out for the evening but cannot agree about where they should go, or what they should do. The second level of politics is the community level, typically addressing local issues or disputes but moving away from the face-to-face interaction of personal politics to some form of representation. This will certainly include the activities of community, local or regional government, which in countries as large as the USA may well encompass two or more distinct levels of government. It also, however, includes the workplace, public institutions and business corporations, within which only a limited range of decisions are made by direct face-to-face discussions. The third level of politics is the national level, focusing upon the institutions of the nation-state and the activities of major political parties and pressure groups. This is the level to which conventional notions of politics are largely confined. Finally, there is the international or supranational level of politics. This is concerned, quite obviously, with cultural, economic and diplomatic relationships between and amongst nation-states, but also includes the activities of supranational bodies, such as the United Nations and the European Union, multinational companies, NGOs and even international terrorists. Politics, in this view, is everywhere; indeed, given the widespread potential for power-related conflict, politics may come to be seen as coextensive with social existence itself.

Feminism

Feminism is characterised primarily by its political stance: the attempt to advance the social role of women. Feminists have highlighted what they see as a political relationship between the sexes, the supremacy of men and the subjection of women in most, if not all, societies. The 'first wave' of feminism was closely associated with the women's suffrage movement, which emerged in the 1840s and 1850s. The achievement of female suffrage in most Western countries in the early twentieth century meant that the campaign for legal and civil rights assumed a lower profile and deprived the women's movement of a unifying cause. The 'second wave' of feminism arose during the 1960s and expressed, in addition to the established concern with equal rights, the more radical and sometimes revolutionary demands of the growing Women's Liberation Movement. Although feminist politics has fragmented and undergone a process of de-radicalisation since the early 1970s, feminism has nevertheless gained growing respectability as a distinctive school of political theory.

Feminist political thought has primarily been concerned with two issues. First, it analyses the institutions, processes and practices through which women have been subordinated to men; and second, it explores the most appropriate and effective ways in which this subordination can be challenged. Feminist thought has rejected the conventional view that politics is confined to narrowly public activities and institutions, the most famous slogan of second-wave feminism being 'The personal is the political.' The central concept in the feminist theory of sexual politics is patriarchy, a term that draws attention to the totality of oppression and exploitation to which women are subject. This, in turn, highlights the political importance of gender, understood to refer to socially imposed rather than biological differences between men and women. Most feminists view gender as a political construct, usually based upon stereotypes of 'feminine' and 'masculine' behaviour and social roles.

Nevertheless, feminist theory and practice is highly diverse. The earliest feminist ideas derived largely from liberalism (see p. 29), and reflected a commitment to individualism and formal equality. In contrast, socialist feminism, largely derived from Marxism (see p. 82), has highlighted links between female subordination and the capitalist mode of production, drawing attention to the economic significance of women being confined to the family or domestic life. On the other hand, radical feminists moved beyond the perspectives of existing political traditions. They portray gender divisions as the most fundamental and politically significant cleavages in society, and call for the radical restructuring of personal, domestic and family life. However, the breakdown of feminism into three traditions – liberal, socialist and radical feminism – has become increasingly redundant since the 1970s as feminist thought has become yet more sophisticated and diverse. Among its more recent forms have been black feminism, psychoanalytic feminism, ecofeminism (see p. 193) and postmodern feminism (see p. 7).

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The major strength of feminist political theory is that it provides a perspective on political understanding that is uncontaminated by the gender biases that pervade conventional thought. Feminism has not merely reinterpreted the contribution of major theorists and shed new light upon established concepts such as power, domination and equality, but also introduced a new sensitivity and language into political theory related to ideas such as connection, voice and difference. Feminism has nevertheless been criticized on the grounds that its internal divisions are now so sharp that feminist theory has lost all coherence and unity. Postmodern feminists, for example, even questioned whether 'woman' is a meaningful category. Others suggest that feminist theory has become disengaged from a society that is increasingly post-feminist, in that, largely thanks to feminism, the domestic, professional and public roles of women, at least in developed societies, have undergone a major transformation.

Key figures

Mary Wollstonecraft (see p. 000): Wollstonecraft's *A Vindication of the Rights of Women* (1792) is usually regarded as the first text of modern feminism and was written against the backdrop of the French Revolution, many years before the emergence of the women's suffrage movement. In arguing that women should be entitled to the same rights and privileges as men on the grounds that they are 'human beings', she established what was to become the core principle of liberal feminism.

Simone de Beauvoir (1906–86): A French novelist, playwright and social critic, Beauvoir helped to reopen the issue of gender politics and foreshadowed some of the themes later developed in radical feminism. She highlighted the extent to which the masculine is represented as the positive or the norm, while the feminine is portrayed as 'other'. Such 'otherness' fundamentally limits women's freedom and prevents them from expressing their full humanity. Beauvoir placed her faith in rationality and critical analysis as the means of exposing this process and giving women responsibility for their own lives. Her key feminist work is *The Second Sex* (1949).

Kate Millett (1934–): A US writer and sculptor, Millett developed radical feminism into a systematic theory that clearly stood apart from established liberal and socialist traditions. She portrays patriarchy as a 'social constant' running through all political, social and economic structures, and grounded in a process of conditioning that operates largely through the family, 'patriarchy's chief institution'. She supports consciousness-raising as a means of challenging patriarchal oppression, and has advocated the abolition and replacement of the conventional family. Millett's major work is *Sexual Politics* (1970).

Juliet Mitchell (1940–) A New Zealand-born British writer, Mitchell is one of the most influential theorists of socialist feminism. She has adopted a modern Marxist perspective that allows for the interplay of economic, social, political and cultural forces in society, and has warned that, since patriarchy has cultural and ideological roots, it cannot be overthrown simply by replacing capitalism with socialism. Mitchell was also one of the first feminists to use psychoanalytical theory as a means of explaining sexual difference. Her major works included *Women's Estate* (1971), *Psychoanalysis and Feminism* (1974) and *Feminine Sexuality* (1985).

Shulamith Firestone (1945–) A Canadian author and political activist, Firestone developed a theory of radical feminism that adapted Marxism to the analysis to the role of women. She argues that sexual differences stem not from conditioning but from a 'natural division of labour' within the 'biological family'. Society is thus structured not through the process of production, but through the process of reproduction. Women can, then, achieve emancipation only if they transcend their biological natures and escape from the 'curse of Eve' by the use of modern technology such as test-tube babies and artificial wombs. Firestone's best known work is *The Dialectic of Sex* (1970).

Catherine A. MacKinnon (1946–) A US academic and political activist, MacKinnon has made a major contribution to feminist legal theory. In her view, law in a liberal state is one of the principal devices through which women's silence and subordination is maintained. In the absence of gender equality, the 'normal' status of women is inevitably defined through the application of male values and practices. She has also argued that female oppression is based in sexuality and that pornography is the root cause of that oppression. MacKinnon's major works include *Sexual Harassment and Working Women* (1979), *Towards a Feminist Theory of the State* (1989) and *Only Words* (1993).

Further reading

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Government

However politics is defined, government is undoubtedly central to it. To 'govern', in its broadest sense, is to rule or exercise control over others. The activity of government therefore involves the ability to make decisions and to ensure that they are carried out. In that sense, a form of government can be identified within most social institutions. For instance, in the family it is apparent in the control that parents exercise over children; in schools it operates through discipline and rules imposed by teachers; and in the workplace it is maintained by regulations drawn up by managers or employers. Government therefore exists whenever and wherever ordered rule occurs. However, the term 'government' is usually understood more narrowly to refer to formal and institutional processes by which rule is exercised at community, national and international levels. As such, government can be identified with a set of established and permanent institutions whose function is to maintain public order and undertake collective action.

The institutions of government are concerned with the making, implementation and interpretation of law, law being a set of enforceable rules that are binding upon society. All systems of government therefore encompass three functions: first, legislation or the making of laws; second, the execution or implementation of laws; and third, the interpretation of law, the adjudication of its meaning. In some systems of government these functions are carried out by separate institutions – the legislature, the executive and the judiciary – but in others they may all come under the responsibility of a single body, such as a 'ruling' party, or even a single individual, a dictator. In some cases, however, the executive branch of government alone is referred to as 'the Government', making government almost synonymous with 'the rulers' or 'the governors'. Government is thus identified more narrowly with a specific group of ministers or secretaries, operating under the leadership of a chief executive, usually a prime minister or president. This typically occurs in parliamentary systems, where it is common to refer to 'the Blair Government', 'the Schröder Government' or 'the Howard Government'.

A number of controversial issues, however, surround the concept of government. In the first place, although the need for some kind of government enjoys near-universal acceptance, there are those who argue that government of any kind is both oppressive and unnecessary. Moreover, government comes in such bewildering varieties that it is difficult to categorize or classify its different forms. Government, for instance, can be democratic or authoritarian, constitutional or dictatorial, centralized or fragmented and so forth. Finally, government cannot be understood in isolation, separate from the society over which it rules. Governments

operate within political systems, networks of relationships usually involving parties, elections, pressure groups and the media, through which government can both respond to popular pressures and exercise political control.

Why have government?

People in every part of the world recognize the concept of government and would, in the overwhelming majority of cases, be able to identify institutions in their society that constitute government. Furthermore, most people accept without question that government is necessary, assuming that without it orderly and civilized existence would be impossible. Although they may disagree about the organization of government and the role it should play, they are nevertheless convinced of the need for some kind of government. However, the widespread occurrence of government and its almost uncritical acceptance worldwide does not in itself prove that an ordered and just society can only exist through the agency of government. Indeed, one particular school of political thought is dedicated precisely to establishing that government is unnecessary, and to bringing about its abolition. This is anarchism, anarchy literally meaning 'without rule'.

The classic argument in favour of government is found in social-contract theories, first proposed by seventeenth-century philosophers like Thomas Hobbes (see p. 123) and John Locke (see p. 268). Social-contract theory, in fact, constitutes the basis of modern political thought. In *Leviathan* ([1651] 1968), Hobbes advanced the view that rational human beings should respect and obey their government because without it society would descend into a civil war 'of every man against every man'. Social-contract theorists develop their argument with reference to an assumed or hypothetical society without government, a so-called 'state of nature'. Hobbes graphically described life in the state of nature as being 'solitary, poor, nasty, brutish and short'. In his view, human beings were essentially power-seeking and selfish creatures, who would, if unrestrained by law, seek to advance their own interests at the expense of fellow humans. Even the strongest would never be strong enough to live in security and without fear: the weak would unite against them before turning upon one another. Quite simply, without government to restrain selfish impulses, order and stability would be impossible. Hobbes suggested that, recognizing this, rational individuals would seek to escape from chaos and disorder by entering into an agreement with one another, a 'social contract', through which a system of government could be established.

Social-contract theorists see government as a necessary defence against evil and barbarity, based as they are upon an essentially pessimistic view of

human nature. An alternative tradition however exists, which portrays government as intrinsically benign, as a means of promoting good and not just of avoiding harm. This can be seen in the writings of Aristotle, whose philosophy had a profound effect upon medieval theologians such as St Thomas Aquinas (see p. 158). In 'The Treatise of Law', part of *Summa Theologiae* (1963), begun in 1265, Aquinas portrayed the state as 'the perfect community' and argued that the proper effect of law was to make its subjects good. He was clear, for instance, that government and law would be necessary for human beings even in the absence of original sin. This benign view of government as an instrument which enables people to cooperate for mutual benefit has been kept alive in modern politics by the social-democratic tradition.

In the anarchist view, however, government and all forms of political authority are not only evil but also unnecessary. Anarchists advanced this argument by turning social-contract theory on its head and offering a very different portrait of the state of nature. Social-contract theorists assume, to varying degrees, that if human beings are left to their own devices rivalry, competition and open conflict will be the inevitable result. Anarchists, on the other hand, hold a more optimistic conception of human nature, stressing the capacity for rational understanding, compassion and cooperation. As William Godwin (see p. 338), whose *An Enquiry Concerning Political Justice* ([1793] 1976) gave the first clear statement of anarchist principles, declared: 'Man is perfectible, or in other words susceptible of perpetual improvement'. In the state of nature a 'natural' order will therefore prevail, making a 'political' order quite unnecessary. Social harmony will spontaneously develop as individuals recognize that the common interests that bind them are stronger than the selfish interests that divide them, and when disagreements do occur they can be resolved peacefully through rational debate and discussion. Indeed, anarchists see government not as a safeguard against disorder, but as the cause of conflict, unrest and violence. By imposing rule from above, government represses freedom, breeding resentment and promoting inequality.

Anarchists have often supported their arguments by the use of historical examples, such as the medieval city-states revered by Peter Kropotkin (see p. 26) or the Russian peasant commune admired by Leo Tolstoy, in which social order was supposedly maintained by rational agreement and mutual sympathy. They have also looked to traditional societies in which order and stability reign despite the absence of what would normally be recognized as government. Clearly, it is impossible to generalize about the nature of traditional societies, some of which are hierarchic and repressive, quite unappealing to anarchists. Nevertheless, sociologists have also identified highly egalitarian societies, such as that of the Bushmen of the Kalahari, where differences appear to be resolved through informal

processes and personal contacts, without the need for any formal government machinery. The value of such examples, however, is that they highlight precisely why, far from dispensing with the need for organized rule, modern societies have become increasingly dependent upon government.

The difference between traditional communities like that of the Kalahari Bushmen and the urban and industrialized societies in which the world's population increasingly lives could not be more marked. Traditional societies solve the problem of maintaining order largely through the maintenance of traditions and customs, often rooted in religious belief. Social rituals, for instance, help to entrench a set of common values and pass on rules of conduct from one generation to the next. Tradition therefore serves to ensure consistent and predictable social behaviour and to maintain a clearly defined social structure. Such societies, moreover, are relatively small, enabling social intercourse to be conducted on a personal, face-to-face level. By contrast, modern societies are large, complex and highly differentiated. Industrial societies consist of sprawling urban communities containing many thousands of people and sometimes several million. As a result of the decline of religion, ritual and tradition, modern societies typically lack a unifying set of common values and cultural beliefs. Industrialization has also made economic life more complex and generated an increasingly fragmented social structure. In short, the hallmarks of modern society are size, diversity and conflict. The informal mechanisms that underpin social order among the Kalahari Bushmen either do not exist or could not cope with the strains generated by modern society. It is therefore not surprising that the anarchist dream of abolishing government has been frustrated. The clear trend during most of the twentieth century has in fact been in the opposite direction: government has been seen to be increasingly necessary. Although anarcho-capitalists such as Murray Rothbard (see p. 339) have tried to reverse the growth in government by demonstrating that complex economies can be entirely regulated by the market mechanism, few modern societies are not characterized by extensive government intervention in economic and social life.

Governments and governance

Although all governments have the objective of ensuring orderly rule, they do so in very different ways and have assumed a wide variety of institutional and political forms. Absolute monarchies of old are, for instance, often distinguished from modern forms of constitutional and democratic government. Similarly, during the cold war period it was

common for regimes to be classified as belonging to the First World, the Second World or the Third World. Political thinkers have attempted to establish such classifications with one of two purposes in mind. In the case of political philosophers, they have been anxious to evaluate forms of government on normative grounds in the hope of identifying the 'ideal' constitution. Modern political scientists, however, have attempted to develop a 'science of government' in order to study the activities of government in different countries without making value judgements about them. Ideological considerations, nevertheless, tend to intrude. An example of this is the use of the term 'democratic' to describe a particular system of government, a term that indicates general approval by suggesting that in such societies government is carried out both *by* and *for* the people.

One of the earliest attempts to classify forms of government was undertaken by Aristotle. In his view, governments can be categorized on the basis of 'Who rules?' and 'Who benefits from rule?'. Government can be placed in the hands of a single individual, a small group or the many. In each case, however, government can be conducted either in the selfish interests of the rulers or for the benefit of the entire community. As a result, Aristotle identified six forms of government. Tyranny, oligarchy and democracy are all, he suggested, debased or perverted forms of rule in

Aristotle (384–322 BCE)

Greek philosopher. Aristotle was a student of Plato and the tutor of the young Alexander the Great. He established his own school of philosophy in Athens in 335 BCE. This was called the 'peripatetic school' after his tendency to walk up and down as he talked.

Aristotle's twenty-two surviving treatises were compiled as lecture notes and range over logic, physics, metaphysics, astronomy, meteorology, biology, ethics and politics. His best known political work is *Politics* (1958), a comprehensive study of the nature of political life and the forms it might take. In describing politics as the 'master science', he emphasized that it is in the public not private domain that human beings strive for justice and live the 'good life'. Aristotle's taxomony of forms of government led him to prefer those that aim at the common good over those that benefit sectional interests, and to recommend a mixture of democracy and oligarchy, in the form of what he called polity. The communitarianism (see p. 35) of *Politics*, in which the citizen is portrayed as strictly part of the political community, is qualified by an insistence upon choice and autonomy in works such as *Nicomachean Ethics*. In the middle ages, Aristotle's work became the foundation of Islamic philosophy, and it was later incorporated into Christian theology.

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which, respectively, a single person, a small group and the masses govern in their own interests and therefore at the expense of others. By contrast, monarchy, aristocracy and polity are to be preferred because the single individual, small group or the masses govern in the interests of all. Aristotle declared that tyranny is clearly the worst of all possible constitutions since it reduces all citizens to the status of slaves. Monarchy and aristocracy are, on the other hand, impractical because they are based upon a god-like willingness to place the good of the community before one's own interests. Aristotle accepted that polity, rule by the many in the interests of all, is the most practicable of constitutions, but feared that the masses might resent the wealth of the few and too easily come under the sway of a demagogue. He therefore advocated a 'mixed' constitution which would leave government in the hands of the 'middle classes', those who are neither rich nor poor.

Modern government, however, is far too complex to be classified simply on an Aristotelian basis. Moreover, the simplistic classification of regimes as First World, Second World and Third World has become impossible to sustain in the light of the political, ideological and economic changes that have occurred since the collapse of communism in the revolutions of 1989–91. What used to be called first world regimes are better categorised as 'liberal democracies'. Their heartland was the industrialized West – North America, Europe and Australasia – but they now exist in most parts of the world as a result of the 'waves of democratization' that occurred in the post-1945 and post-1989 periods.

Such systems of government are 'liberal' in the sense that they respect the principle of limited government; individual rights and liberties enjoy some form of protection from government. Limited government is typically upheld in three ways. In the first place, liberal democratic government is constitutional. A constitution defines the duties, responsibilities and functions of the various institutions of government and establishes the relationship between government and the individual. Second, government is limited by the fact that power is fragmented and dispersed throughout a number of institutions, creating internal tensions or 'checks and balances'. Third, government is limited by the existence of a vigorous and independent civil society, consisting of autonomous groups such as businesses, trade unions, pressure groups and so forth. Liberal democracies are 'democratic' in the sense that government rests upon the consent of the governed. This implies a form of representative democracy in which the right to exercise government power is gained by success in regular and competitive elections. Typically, such systems possess universal adult suffrage and secret-ballot elections, and respect a range of democratic rights such as freedom of expression, freedom of assembly and freedom of movement. The cornerstone of liberal democratic government is political

pluralism, the existence of a variety of political creeds, ideologies or philosophies and of open competition for power amongst a number of parties. The democratic credentials of such a system are examined in greater depth in Chapter 8.

There is, however, a number of differences among liberal democratic systems of government. Some of them, like the USA and France, are republics, whose heads of state are elected, while countries such as the UK and the Netherlands are constitutional monarchies. Most liberal democracies have a parliamentary system of government in which legislative and executive power is fused. In countries such as the UK, Germany, India and Australia, the government is both drawn from the legislature and accountable to it, in the sense that it can be removed by an adverse vote. The USA, on the other hand, is the classic example of a presidential system of government, based as it is upon a strict separation of powers between the legislature and the executive. President and Congress are separately elected and each possesses a range of constitutional powers, enabling it to check the other. Some liberal democracies possess majoritarian governments. These occur when a single party, either because of its electoral support or the nature of the electoral system, is able to form a government on its own. Typically, majoritarian democracies possess two-party systems in which power alternates between two major parties, as has traditionally occurred, for instance, in the USA, the UK and New Zealand. In continental Europe, on the other hand, coalition government has been the norm, the focal point of which is a continual process of bargaining among the parties that share government power and the interests they represent.

In the aftermath of the collapse of communism, and with the steady emergence of competitive and electoral processes at least in the newly industrialized states of the developing world, 'end of ideology' theorists such as Francis Fukuyama (1992) proclaimed that government throughout the world was being irresistibly remodelled on liberal-democratic lines. However, despite the advance of democratization since the 1980s, a number of alternatives to the Western liberal model of government can be identified. These include postcommunist government, East Asian government, Islamic government and military government. Postcommunist government has generally assumed an outwardly liberal-democratic form, with the adoption of multi-party elections and the introduction of market-based economic reforms. Nevertheless, to varying degrees, government in postcommunist states is distinguished by factors such as the absence or weakness of a civic culture that emphasizes participation, bargaining and consensus; instabilities arising from the transition from central planning to some form of market capitalism; and the general weakness of state power, particularly reflected in the re-emergence of ethnic and nationalist tensions or the rise of organized crime.

Government forms in East Asia, notably in Japan and the so-called 'tiger' economies of South Korea, Taiwan, Hong Kong, Singapore and Malaysia, have tended to be characterized by the priority given to boosting growth and delivering prosperity, over considerations such as individual freedom in the Western sense of civil liberty. They often exhibit broad support for 'strong' government, sometimes exercised through powerful leaders or 'ruling' parties, underpinned by widely respected Confucian principles such as loyalty, discipline and duty. Islamic government contains both fundamentalist and pluralist forms. The fundamentalist version of political Islam is most commonly associated with Iran and Afghanistan under the Taliban, where theocracies have been constructed in which political and other affairs have been structured according to 'higher' religious principles and political office has been closely linked to religious status. By contrast, in states such as Malaysia, Islam has the status of an official state religion but operates alongside a form of 'guided' democracy. Despite a general trend towards civilian government and some form of electoral democracy, military government continues to be important in Africa, the Middle East and parts of South-East Asia and Latin America. The classical form of military government is the junta, a clique of senior officers that seizes power through a revolution or *coup d'état*. Other forms of military government include military-backed personalized dictatorships and regimes in which military leaders content themselves with 'pulling the strings' behind the scenes.

In the modern period, political analysts have often shifted their attention from the structures of government to the broader activities and processes of governing. This has been reflected in wider interest in the phenomenon of governance. Although it still has no settled or agreed definition, governance refers, in its widest sense, to the various ways in which social life is coordinated. Government can therefore be seen as merely one of the institutions involved in governance; it is possible to have 'governance without government' (Rhodes, 1996). From this perspective, a number of modes of governance can be identified, each of which helps to coordinate social life in its own way. Hierarchies, markets and networks (informal relationships and associations) offer alternative means of making collective decisions. The growing emphasis upon governance has resulted from two important shifts in modern government and, indeed, the larger society. In the first place, the boundaries between the state and civil society have become increasingly blurred through, for example, the growth of public/private partnerships, the wider use within public bodies and state institutions of private-sector management techniques, and the increasing importance of so-called policy networks. Second, in the process of managing complex modern societies, government itself has become increasingly complex, leading to the idea of multi-level governance. Not only do

supranational and subnational bodies now vie with national institutions, but government must deal with a growing array of non-state actors, ranging from the mass media to the institutions of global economic governance such as the WTO. The traditional image of government as a command and control system has thus been displaced by one which emphasizes instead bargaining, consultation and partnership.

Political systems

Classifications of government are clearly linked to what are called 'political systems'. However, the notion that politics is a 'system' is relatively new, only emerging in the 1950s, influenced by the development of systems theory and its application in works like Talcott Parsons's *The Social System* (1951). It has, nevertheless, brought about a significant shift in the understanding of governmental processes. Traditional approaches to government focused upon the machinery of the state and examined the constitutional rules and institutional structure of a particular system of government. Systems analysis has, however, broadened the understanding of government by highlighting the complex interaction between it and the larger society. A 'system' is an organized or complex whole, a set of interrelated and interdependent parts that form a collective entity. Systems analysis therefore rejects a piecemeal approach to politics in favour of an overall approach: the whole is more important than its individual parts. Moreover, it emphasizes the importance of relationships, implying that each part only has meaning in terms of its function within the whole. A political system therefore extends far beyond the institutions of government themselves and encompasses all those processes, relationships and institutions through which government is linked to the governed.

The seminal work in this area was David Easton's *The Political System* ([1953] 1981). In defining politics as 'the authoritative allocation of values', Easton drew attention to all those processes which shape the making of binding decisions. A political system consists of a linkage between what Easton called 'inputs' and 'outputs'. Inputs into the political system consist of both demands and supports. Demands can take the form of the desire for higher living standards, improved employment prospects or welfare benefits, greater participation in politics, protection for minority and individual rights and so forth. Supports, on the other hand, are the ways in which the public contributes to the political system by paying taxes, offering compliance and being willing to participate in public life. Outputs consist of the decisions and actions of government, including the making of policy, the passing of laws, the imposition of taxes and the allocation of public funds. Clearly, these outputs generate 'feedback' which in turn will shape further demands and supports. As Easton conceived it, the political

system is thus a dynamic process, within which stability is achieved only if outputs bear some relationship to inputs. In other words, if policy outputs do not satisfy popular demands these will progressively increase until the point when 'systemic breakdown' will occur. The capacity to achieve such stability is based upon how the flow of inputs into the political system is regulated by 'gatekeepers', such as interest groups and political parties, and the success of government itself in converting inputs into outputs.

Some political systems will be far more successful in achieving stability than others. It is sometimes argued that this explains the survival and spread of liberal-democratic forms of government. Liberal democracies contain a number of institutional mechanisms which force government to pay heed to popular demands, creating channels of communication between government and the governed. For instance, the existence of competitive party systems means that government power is gained by that set of politicians whose policies most closely correspond to the preferences of the general public. Even if politicians are self-seeking careerists, they must respond to electoral pressures to have any chance of winning office. Demands that are not expressed by parties or articulated at election time can be championed by interest groups or other lobbyists. Further, the institutional fragmentation typically found in liberal democracies offers competing interests a number of points of access to government.

On the other hand, stress can also build up within liberal-democratic systems. Electoral democracy, for example, may degenerate into a tyranny of the majority, depriving economic, ethnic or religious minorities of an effective voice. Similarly, parties and interest groups may be far more successful in advancing the demands of the wealthy, the educated and the articulate than they are in representing the poor and disadvantaged. Nevertheless, by comparison with liberal democracies, communist regimes operated within political systems that were clearly less stable. In the absence of party competition and independent pressure groups, the dominant party-state apparatus simply lacked mechanisms through which demands could be articulated, so preventing policy outputs from coming into line with inputs. Tensions built up in these systems, first expressed in dissent and later in open protest, fuelled by the emergence of better educated and more sophisticated urban populations and by the material affluence and political liberty apparently enjoyed in Western liberal democracies.

The analysis of government as a systemic process is, however, not without its critics. Although systems analysis is portrayed as a neutral and scientific approach to government, normative and ideological biases undoubtedly operate within it. Easton's work, for example, reflects an essential liberal conception of politics. In the first place, it is based upon a consensus model of society that suggests that any conflicts or tensions that

occur can be reconciled through the political process. This implies that an underlying social harmony exists within liberal capitalist societies. Furthermore, Easton's model assumes that a fundamental bias operates within the political system in favour of stability and balance. Systems are self-regulating mechanisms which seek to perpetuate their own existence, and the political system is no exception. Once again, this reflects the liberal theory that government institutions are neutral in the sense that they are willing and able to respond to all interests and groups in society. Such beliefs are linked not only to a particular conception of society but also to a distinctive view of the nature of state power.

The state

The term 'state' can be used to refer to a bewildering range of things: a collection of institutions, a territorial unit, a historical entity, a philosophical idea and so on. In everyday language, the state is often confused with the government, the two terms being used interchangeably. However, although some form of government has probably always existed, at least within large communities, the state in its modern form did not emerge until about the fifteenth century. The precise relationship between state and government is, nevertheless, highly complex. Government is part of the state, and in some respects is its most important part, but it is only an element within a much larger and more powerful entity. So powerful and extensive is the modern state that its nature has become the centrepiece of political argument and ideological debate. This is reflected, in the first place, in disagreement about the nature of state power and the interests it represents, that is, competing theories of the state. Second, there are profound differences about the proper function or role of the state: what should be done by the state and what should be left to private individuals.

Government and the state

The state is often defined narrowly as a separate institution or set of institutions, as what is commonly thought of as '*the* state'. For example when Louis XIV supposedly declared, '*L'état c'est moi*', he was referring to the absolute power that was vested in himself as monarch. The state therefore stands for the apparatus of government in its broadest sense, for those institutions that are recognizably 'public' in that they are responsible for the collective organization of communal life and are funded at the public's expense. Thus the state is usually distinguished from civil society. The state comprises the various institutions of government, the bureaucracy, the military, police, courts, social security system and so forth; it can

be identified with the entire 'body politic'. It is in this sense, for instance, that it is possible to talk about 'rolling forward' or 'rolling back' the state, by which is meant expanding or contracting the responsibilities of state institutions and, in the process, enlarging or reducing the machinery of the state. However, such an institutional definition fails to take account of the fact that, in their capacity as citizens, individuals are also part of the political community, members of the state. Moreover, the state has a vital territorial component, its authority being confined to a precise geographical area. This is why the state is best thought of not just as a set of institutions but as a particular kind of political association, specifically one that establishes sovereign jurisdiction within defined territorial borders. In that sense, its institutional apparatus merely gives expression to state authority.

The defining feature of the state is sovereignty, its absolute and unrestricted power, discussed at greater length in Chapter 4. The state commands supreme power in that it stands above all other associations and groups in society; its laws demand the compliance of all those who live within the territory. Thomas Hobbes conveyed this image of the state as the supreme power by portraying it as a 'Leviathan', a gigantic monster, usually represented as a sea creature. It is precisely its sovereignty which distinguishes the modern state from earlier forms of political association. In medieval times, for instance, rulers exercised power but only alongside a range of other bodies, notably the church, the nobility, and the feudal guilds. Indeed, it was widely accepted that religious authority, centring upon the pope, stood above the temporal authority of any earthly ruler. The modern state, however, which first emerged in fifteenth- and sixteenth-century Europe, took the form of a system of centralized rule that succeeded in subordinating all other institutions and groups, spiritual and temporal. Although such a state is now the most common form of political community worldwide, usually taking the form of the nation-state, there are still examples of stateless societies. Traditional societies, for instance, found amongst semi-nomadic peoples and sometimes settled tribes, may be said to be stateless in that they lack a central and sovereign authority, even though they may possess mechanisms of social control that may be described as government. Furthermore, a state can break down when its claim to exercise sovereign power is successfully challenged by another group or body, as occurs at times of civil war. In this way, Lebanon in the 1980s, racked by war among rival militias and invaded by Israeli and Syrian armies, and the former Yugoslavia in the early 1990s, can both be described as stateless societies.

In addition to sovereignty, states can be distinguished by the particular form of authority that they exercise. In the first place, state authority is territorially limited: states claim sovereignty only within their own borders

and thus regulate the flow of persons and goods across these borders. In most cases these are land borders, but they may also extend several miles into the sea. Second, the jurisdiction of the state within its borders is universal, that is, everyone living within a state is subject to its authority. This is usually expressed through citizenship, literally membership of the state, which entails both rights and duties. Non-citizens resident in a state may not be entitled to certain rights, like the right to vote or hold public office, and may be exempt from particular obligations, such as jury service or military service, but they are nevertheless still subject to the law of the land.

Third, states exercise compulsory jurisdiction. Those living within a state rarely exercise choice about whether or not to accept its authority. Most people become subject to the authority of a state by virtue of being born within its borders; in other cases this may be a result of conquest. Immigrants and naturalized citizens are here exceptions since they alone can be said to have voluntarily accepted the authority of a state. Finally, state authority is backed up by coercion: the state must have the capacity to ensure that its laws are obeyed, which in practice means that it must possess the ability to punish transgressors. Max Weber (1864–1920) suggested in 'Politics as a Vocation' (1948) that 'the state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory'. By this he meant not only that the state had the ability to ensure the obedience of its citizens but also the acknowledged *right* to do so. A monopoly of 'legitimate violence' is therefore the practical expression of state sovereignty. The link between coercion and the state is also underlined by Philip Bobbitt's (2002) portrayal of the state as essentially a 'warmaking institution'.

Nevertheless, the relationship between the state and government remains complex. The state is an inclusive association, which in a sense embraces the entire community and encompasses those institutions that constitute the public sphere. Government can thus be seen as merely part of the state. Moreover, the state is a continuing, even permanent, entity. By contrast, government is temporary: governments come and go and systems of government are remodelled. On the other hand, although government may be possible without a state, the state is inconceivable in the absence of government. As a mechanism through which collective decisions are enacted, government is responsible for making and implementing state policy. Government is, in effect, 'the brains' of the state: it gives authoritative expression to the state. In this way, government is usually thought to dictate to and control other state bodies, the police and military, educational and welfare systems and the like. By implementing the various state functions, government serves to maintain the state itself in existence.

The distinction between state and government is not, however, simply an academic refinement; it goes to the very heart of constitutional rule. Government power can only be held in check when the government of the day is prevented from encroaching upon the absolute and unlimited authority of the state. This is particularly important given the conflicting interests which the state and the government represent. The state supposedly reflects the permanent interests of society – the maintenance of public order, social stability, long-term prosperity and national security – while government is inevitably influenced by the partisan sympathies and ideological preferences of the politicians who happen to be in power. If government succeeds in harnessing the sovereign power of the state to its own partisan goals, dictatorship is the likely result. Liberal-democratic regimes have sought to counter this possibility by creating a clear divide between the personnel and machinery of government on the one hand, and the personnel and machinery of the state on the other. Thus the personnel of state institutions, like the civil service, the courts and the military, are recruited and trained in a bureaucratic manner, and are expected to observe strict political neutrality, enabling them to resist the ideological enthusiasms of the government of the day. However, such are the powers of patronage possessed by modern chief executives like the US president and the UK prime minister that this apparently clear division is often blurred in practice.

Theories of the state

In most Western industrialized countries the state possesses clear liberal-democratic features. Liberal-democratic states are, for instance, characterized by constitutional government, a system of checks and balances amongst major institutions, fair and regular elections, a democratic franchise, a competitive party system, the protection of individual rights and civil liberties and so forth. Although there is broad agreement about the characteristic features of the liberal-democratic state, there is far less agreement about the nature of state power and the interests that it represents. Controversy about the nature of the state has, in fact, increasingly dominated modern political analysis and goes to the very heart of ideological and theoretical disagreements. In this sense, the state is an 'essentially contested' concept: there is a number of rival theories of the state, each offering a different account of its origins, development and impact.

Mainstream political analysis is dominated by the liberal theory of the state. This dates back to the emergence of modern political theory in the writings of social-contract theorists such as Hobbes and Locke. These thinkers argued that the state had risen out of a voluntary agreement, or

social contract, made by individuals who recognized that only the establishment of a sovereign power could safeguard them from the insecurity, disorder and brutality of the 'state of nature'. In liberal theory, the state is thus a neutral arbiter among competing groups and individuals in society; it is an 'umpire' or 'referee', capable of protecting each citizen from the encroachment of his or her fellow citizens. The state is therefore a neutral entity, acting in the interests of all and representing what can be called the 'common good' or 'public interest'.

This basic theory has been elaborated by modern writers into a pluralist theory of the state. Pluralism is, at heart, the theory that political power is dispersed amongst a wide variety of social groups rather than an elite or ruling class. It is related to what Robert Dahl (see p. 223) termed 'polyarchy', rule by the many. Although distinct from the classical conception of democracy as popular self-government, this nevertheless accepts that democratic processes are at work within the modern state: electoral choice ensures that government must respond to public opinion, and organized interests offer all citizens a voice in political life. Above all, pluralists believe that a rough equality exists among organized groups and interests in that each enjoys some measure of access to government and government is prepared to listen impartially to all. At the hub of the liberal-democratic state stand elected politicians who are publicly accountable because they operate within an open and competitive system. Non-elected state bodies like the civil service, judiciary, police, army and so on, carry out their responsibilities with strict impartiality, and are anyway subordinate to their elected political masters.

An alternative, neo-pluralist theory of the state has been developed by writers such as J.K. Galbraith and Charles Lindblom. They argue that the modern industrialized state is both more complex and less responsive to popular pressures than the classical pluralist model suggests. While not dispensing altogether with the notion of the state as an umpire acting in the public interest or common good, they insist that this picture needs qualifying. It is commonly argued by neo-pluralists, for instance, that it is impossible to portray all organized interests as equally powerful since in a capitalist economy business enjoys advantages which other groups clearly cannot rival. In *The Affluent Society* ([1962] 1985), Galbraith emphasized the ability of business to shape public tastes and wants through the power of advertising, and drew attention to the domination of major corporations over small firms and, in some cases, government bodies. Lindblom, in *Politics and Markets* (1977), pointed out that, as the major investor and largest employer in society, business is bound to exercise considerable sway over any government, whatever its ideological leanings or manifesto promises. Although neo-pluralists do not describe business as an 'elite group', capable of dictating to government in all areas,

still less as a 'ruling class', they nevertheless accept that a liberal democracy is a 'deformed polyarchy' in which business usually exerts pre-eminent influence, especially over the economic agenda.

New Right ideas and theories became increasingly influential from the 1970s onwards. Like neo-pluralism, they built upon traditional liberal foundations but now constitute a major rival to classical pluralism. The New Right, or at least its neo-liberal or libertarian wing, is distinguished by strong antipathy towards government intervention in economic and social life, born of the belief that the state is a parasitic growth which threatens both individual liberty and economic security. The state is no longer an impartial referee but has become a self-serving monster, a 'nanny' or 'leviathan' state, interfering in every aspect of life. New Right thinkers have tried, in particular, to highlight the forces that have led to the growth of state intervention and which, in their view, must be countered. Criticism has, for instance, focused upon the process of party competition, or what Samuel Britten (1977) called 'the economic consequences of democracy'. In this view, the democratic process encourages politicians to outbid one another by making vote-winning promises to the electorate, and encourages electors to vote according to short-term self-interest rather than long-term well-being. Equally, closer links between government and major economic interests, business and trade unions in particular, has greatly increased pressure for subsidies, grants, public investment, higher wages, welfare benefits and so forth, so leading to the problem of 'government overload'. Public choice theorists such as William Niskanen (1971) have also suggested that 'big' government has been generated from within the machinery of the state itself by the problem of 'bureaucratic over-supply'. Pressure for the expansion of the state comes from civil servants and other public employees, who recognize that it will bring them job security, higher pay and improved promotion prospects.

Pluralism has been more radically rejected by elitist thinkers who believe that behind the façade of liberal democracy there lies the permanent power of a 'ruling elite'. Classical elitists such as Gaetano Mosca (1857–1941), Vilfredo Pareto (1848–1923) and Robert Michels (1876–1936) were concerned to demonstrate that political power *always* lies in the hands of a small elite and that egalitarian ideas, such as socialism and democracy, are a myth. Modern elitists, by contrast, have put forward strictly empirical theories about the distribution of power in particular societies, but have nevertheless drawn the conclusion that political power is concentrated in the hands of the few. An example of this was Joseph Schumpeter (see p. 223), whose *Capitalism, Socialism and Democracy* ([1944] 1976) suggested the theory of democratic elitism. Schumpeter described democracy as 'that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive

struggle for the people's vote'. The electorate can decide which elite rules, but cannot change the fact that the power is always exercised by an elite. Radical elite theorists have gone further and decried the importance of elections altogether. In *The Managerial Revolution* (1941), James Burnham suggested that a 'managerial class' dominated all industrial societies, both capitalist and communist, by virtue of its technical and scientific knowledge and its administrative skills. Perhaps the most influential of modern elite theorists, C. Wright Mills, argued in *The Power Elite* (1956) that US politics is dominated by big business and the military, commonly referred to as the 'military-industrial complex', which dictated government policy, largely immune from electoral pressure.

Marxism offers an analysis of state power that fundamentally challenges the liberal image of the state as a neutral arbiter or umpire. Marxists argue that the state cannot be understood separate from the economic structure of society: the state emerges out of the class system, its function being to maintain and defend class domination and exploitation. The classical Marxist view is expressed in Marx and Engels' often-quoted dictum from *The Communist Manifesto* ([1848] 1976): 'the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie'. This view was stated still more starkly by Lenin (see p. 83) in *The State and Revolution* ([1917] 1973), who referred to the state simply as 'an instrument for the oppression of the exploited class'. Whereas classical Marxists stressed the coercive role of the state, modern Marxists have been forced to take account of the apparent legitimacy of the 'bourgeois' state, particularly in the light of the achievement of universal suffrage and the development of the welfare state. For example, Gramsci (see p. 84) emphasized the degree to which the domination of the ruling class is achieved not only by open coercion but also by the elicitation of consent. He believed that the bourgeoisie had established 'hegemony', ideological leadership or domination, over the proletariat, and insisted that the state plays an important role in this process. Other Marxists have found in Marx himself the more sophisticated notion that the state can enjoy 'relative autonomy' from the ruling class and so can respond at times to the interests of other classes. Nicos Poulantzas (1973) portrayed the state as a 'unifying social formation', capable of diluting class tensions through, for example, the spread of political rights and welfare benefits. However, although this neo-Marxist theory echoes liberalism in seeing the state as an arbiter, it nevertheless emphasises the class character of the modern state by pointing out that it operates in the long-term interests of capitalism and therefore perpetuates a system of unequal class power.

The most radical condemnation of state power is, however, found in the writings of anarchists. Anarchists believe that the state and indeed all forms of political authority are both evil and unnecessary. They view the

Marxism

Marxism as a theoretical system developed out of, and drew inspiration from, the writings of Karl Marx. However, 'Marxism' as a codified body of thought came into existence only after Marx's death. It was the product of the attempt by later Marxists to condense Marx's ideas and theories into a systematic and comprehensive world view that suited the needs of the growing socialist movement. However, a variety of Marxist traditions can be identified, including 'classical' Marxism (the Marxism of Marx), 'orthodox' Marxism or 'dialectical materialism', the mechanistic form of Marxism that served as the basis for Soviet communism, and 'Western', 'modern' or 'neo' Marxism, which tend to view Marxism as a humanist philosophy and are sceptical about its scientistic and determinist pretensions.

The cornerstone of Marxist philosophy is what Engels called the 'materialist conception of history'. This highlights the importance of economic life and the conditions under which people produce and reproduce their means of subsistence, reflected, simplistically, in the belief that the economic 'base', consisting essentially of the 'mode of production', or economic system, conditions or determines the ideological and political 'superstructure'. Marxist theory therefore explains social, historical and cultural development in terms of material and class factors. The basis of the Marxist tradition is Marx's teleological theory of history, which suggests that history is driven forward through a dialectical process in which internal contradictions within each mode of production are reflected in class antagonism. Capitalism, then, is only the most technologically advanced of class societies, and is itself destined to be overthrown in a proletarian revolution which will culminate in the establishment of a classless, communist society.

Marxism has constituted for most of the modern period the principal alternative to liberalism (see p. 29) as the basis for political thought. Its critique of liberalism amounts to an attack on individualism and the narrow concern with civic and political rights, on the grounds that it ignores wider social and historical developments and thereby conceals the reality of unequal class power. Liberalism is thus the classic example of bourgeois ideology, in that it serves to legitimise capitalist class relations. Nevertheless, modern Marxists, repelled by the Bolshevik model of orthodox communism, have sometimes sought to blend Marxism with aspects of liberal democracy, notably political pluralism and electoral democracy. Marxist theories have influenced feminism (see p. 62) and provide the basis of socialist feminism, which highlights links between capitalism and patriarchy. Marxism, further, provided the basis for critical theory (see p. 279), which attempted to blend Marxist political economy with Hegelian philosophy and Freudian psychology. Attempts have also been made to fuse Marxism with certain rational choice theories (see p. 246), notably in the form of so-called analytical Marxism.

The intellectual attraction of Marxism has been that it embodies a remarkable breadth of vision, offering to understand and explain virtually all aspects of social and political existence and uncovering the significance of

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processes that conventional theory ignores. Politically, it has attacked exploitation and oppression, and had a particularly strong appeal to disadvantaged groups and peoples. However, Marxism's star has dimmed markedly since the late twentieth century. To some extent, this occurred as the tyrannical and dictatorial features of communist regimes themselves were traced back to Marx's ideas and assumptions. Marxist theories were, for instances, seen as implicitly monistic in that rival belief systems are dismissed as ideological. The crisis of Marxism, however, intensified as a result of the collapse of communism in the revolutions of 1989–91. This suggested that if the social and political forms which Marxism had inspired (however unfaithful they may have been to Marx's original ideas) no longer exist, Marxism as a world-historical force is effectively dead. Although so-called 'post-Marxists' have attempted to salvage certain key Marxist insights by trying to reconcile Marxism with aspects of postmodernism (see p. 7), in renouncing historical materialism and class analysis they have, arguably, abandoned the very ideas that made Marxist theory distinctive.

Key figures

Karl Marx (see p. 373) The breadth and complexity of Marx's own writings has made it difficult to establish the 'Marxism of Marx'. A distinction is sometimes drawn between the 'young Marx' and the 'mature Marx'. Marx's early writings portray him to be a humanist socialist, concerned about alienation, the commodification and depersonalisation of labour under capitalism, and interested in human self-realisation under communism. However, in his later writings, Marx undertook a highly detailed examination of the economic conditions of capitalism, leading some to describe him as an economic determinist and the progenitor of later orthodox Marxism.

Friedrich Engels (1820–95) A German industrialist and life-long friend and collaborator of Marx, Engels elaborated Marx's ideas and theories for the benefit of the growing socialist movement in the late nineteenth century. He emphasised the role of the dialectic as a force operating in both social life and nature, helping to give rise to dialectical materialism as a distinct brand of Marxism, and portraying Marxism in terms of a specific set of historical laws. Engels also extended materialist analysis to the family, arguing that monogamous marriage involves the subjection of women by men and has its origins in the institution of private property. Engels' major works include *Anti-Dühring* (1877–8), *The Origins of the Family, Private Property and the State* (1884) and *Dialectics of Nature* (1925).

Vladimir Illyich Lenin (1870–1924) A Russian revolutionary and leader of the Soviet Union, 1917–24, Lenin was the most influential Marxist theorist of the twentieth century. He was primarily concerned with the issues of organisation and revolution, emphasising the central importance of a tightly-organised 'vanguard' party to lead and guide the proletarian class. Lenin analysed colonialism as an economic phenomenon and highlighted the

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possibility of turning world war into class war. He was also firmly committed to the 'insurrectionary road' to socialism and rejected electoral democracy as 'parliamentary cretinism'. Lenin's best known works include *What Is to Be Done?* (1902), *Imperialism, the Highest Stage of Capitalism* (1916) and *The State and Revolution* (1917).

Leon Trotsky (1879–1940) A Russian revolutionary and political thinker, Trotsky was an early critic of Lenin's theory of the party, but joined the Bolsheviks in 1917. His theoretical contribution to Marxism centres on the theory of permanent revolution, which suggested that socialism could be established in Russia without the need for the bourgeois stage of development. Trotskyism is usually associated with an unwavering commitment to internationalism and with a denunciation of Stalinism that portrays it as a form of bureaucratic degeneration. Trotsky's major writings include *Results and Prospects* (1906), *History of the Russian Revolution* (1931) and *The Revolution Betrayed* (1936).

Antonio Gramsci (1891–1937) An Italian Marxist and social theorist, Gramsci tried to redress the emphasis within orthodox Marxism upon economic and material factors. He rejected any form of 'scientific' determinism by stressing, through the theory of hegemony (the dominance of bourgeois ideas and beliefs), the importance of the political and intellectual struggle. Gramsci highlighted the degree to which ideology is embedded at every level in society and called for the establishment of a rival 'proletarian hegemony', based upon socialist principles, values and theories. Gramsci's major work is *Prison Notebooks* ([1929–35] 1971).

Mao Zedong (1893–1976) A Chinese Marxist theorist and leader of the People's Republic of China, 1949–76, Mao adapted Marxism–Leninism to the needs of an overwhelmingly agricultural and still traditional society. His ideological legacy is often associated with the Cultural Revolution, 1966–70, a radical egalitarian movement that denounced elitism and 'capitalist roaders'. Maoism emphasizes the importance of politics in the form of the radical zeal of the masses, acknowledges the necessity of opposition and conflict, and stresses community rather than hierarchic state organization. Mao's main works include *On the People's Democratic Dictatorship* (1949), *On the Ten Major Relationships* (1956) and *On the Correct Handling of Contradictions Among People* (1957).

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state as a concentrated form of oppression: it reflects nothing more than the desire of those in power, often loosely referred to as a 'ruling class', to subordinate others for their own benefit. In the words of the nineteenth-century Russian anarchist, Michael Bakunin (1814–76), the state is 'the most flagrant, the most cynical and the most complete negation of humanity'. Even modern anarcho-capitalists such as Murray Rothbard simply dismiss the state as a 'criminal band' or 'protection racket', which has no legitimate claim to exercise authority over the individual. Modern anarchists, however, are less willing than the classic anarchist thinkers to denounce the state as nothing more than an instrument of organised violence. In *The Ecology of Freedom* (1982), for instance, Murray Bookchin (see p. 197) described the state as 'an instilled mentality for ordering reality', emphasising that in addition to its bureaucratic and coercive institutions the state is also a state of mind.

Role of the state

With the exception of anarchists, all political thinkers have regarded the state as, in some sense, a worthwhile or necessary association. Even revolutionary socialists have accepted the need for a proletarian state to preside over the transition from capitalism to communism, in the form of the 'dictatorship of the proletariat'. Thinkers have, however, profoundly disagreed about the exact role that the state should play in society. This has often been portrayed as the balance between the state and civil society. The state, as explained earlier, necessarily reflects sovereign, compulsory and coercive authority. Civil society, on the other hand, embraces those areas of life in which individuals are free to exercise choice and make their own decisions; in other words, it is a realm of voluntary and autonomous associations.

At one extreme in this debate, classical liberals have argued that individuals should enjoy the widest possible liberty and have therefore insisted that the state be confined to a minimal role. This minimal role is simply to provide a framework of peace and social order within which private citizens can conduct their lives as they think best. The state therefore acts, as Locke put it, as a nightwatchman, whose services are only called upon when orderly existence is threatened. This nevertheless leaves the state with three important functions. The central function of the 'minimal' or 'nightwatchman' state is the maintenance of domestic order, in effect, protecting individual citizens from one another. All states thus possess some kind of machinery for upholding law and order. Secondly, it is necessary to ensure that the voluntary agreements or contracts which private individuals enter into are respected, which requires that they can be

enforced through a court system. Third, there is the need to provide protection against the possibility of external attack, necessitating some form of armed service. Such minimal states, with institutional apparatus restricted to little more than a police force, court system and army, commonly existed in the nineteenth century, but became increasingly rare in the twentieth century. However, since the 1980s, particularly in association with the pressures generated by globalization, there has been a worldwide tendency to minimize or 'roll back' state power. The minimal state is the ideal of the liberal New Right, which argues that economic and social matters should be left entirely in the hands of individuals or private businesses. In their view, an economy free from state interference will be competitive, efficient and productive; and individuals freed from the dead hand of government will be able to rise and fall according to their talents and willingness to work.

For much of the twentieth century, however, there was a general tendency for the state's role progressively to expand. This had occurred in response to electoral pressures for economic and social security, supported by a broad ideological coalition including social democrats, modern liberals and paternalistic conservatives. The principal field of government activism had been the provision of welfare designed to reduce poverty and social inequality. The form which social welfare has taken has, however, varied considerably. In some cases, the social security system operates as little more than a 'safety net' intended to alleviate the worst incidents of hardship. In the USA, Australia and, increasingly, the UK, welfare provision usually emphasizes self-reliance, and targets benefits on those in demonstrable need. On the other hand, developed welfare states have been established and persist in many Western European countries. These attempt to bring about a wholesale redistribution of wealth through a comprehensive system of public services and state benefits, financed though progressive taxation. The concept of welfare and controversies about it are examined in greater depth in Chapter 10.

The second major form state intervention has taken is economic management. As industrialized economies develop they require some kind of management by a central authority. In most Western societies this has led to the emergence of 'managed capitalism'. From the viewpoint of the New Right, however, government's economic responsibilities should be restricted to creating conditions within which market forces can most effectively operate. In practice, this means that the state should only promote competition and ensure stable prices by regulating the supply of money. Others, however, have accepted the need for more far-reaching economic management. Keynesian economic policies have, for instance, been endorsed by social democrats and modern liberals in the hope that they will reduce unemployment and promote growth. Under their

influence, public expenditure grew and the state became the most influential of economic actors. Nationalization, widely adopted in the early post-1945 period, led to the development of so-called 'mixed economies', allowing the state to control certain industries directly and to have an indirect influence over the entire economy. Although there is now a widespread recognition of the need for a balance between the state and the market in economic life, party politics in much of the industrialized West boils down to a debate about where that balance should be struck. Ideological battles often focus upon precisely how far the state should intervene in economic and social life as opposed to leaving matters to the impersonal pressures of the market. These issues are discussed more fully in Chapter 11.

A more extensive form of state intervention, however, developed in orthodox communist countries such as the Soviet Union. These sought to abolish private enterprise altogether and set up centrally planned economies, administered by a network of economic ministries and planning committees. The economy was thus transferred entirely from civil society to the state, creating collectivized states. The justification for collectivizing economic life lies in the Marxist belief that capitalism is a system of class exploitation, suggesting that central planning is both morally superior and economically more efficient. The experience of communist regimes in the second half of the twentieth century, however, suggests that state collectivization struggled to produce the levels of economic growth and general prosperity that were achieved in Western capitalist countries. Without doubt, the failure of central planning contributed to the collapse of orthodox communism in the Eastern European revolutions of 1989–91.

The most extreme form of state control is found in totalitarian states. The essence of totalitarianism is the construction of an all-embracing state, whose influence penetrates every aspect of human existence, the economy, education, culture, religion, family life and so forth. Totalitarian states are characterised by a pervasive system of ideological manipulation and a comprehensive process of surveillance and terroristic policing. Clearly, all the mechanisms through which opposition can be expressed – competitive elections, political parties, pressure groups and free media – have to be weakened or removed. The best examples of such regimes were Nazi Germany and the Soviet Union under Stalin. In effect, totalitarianism amounts to the outright abolition of civil society, the abolition of 'the private', a goal which only fascists, who wish to dissolve individual identity within the social whole, are prepared openly to endorse. In one sense, totalitarianism sets out to politicize every aspect of human existence: it seeks to establish comprehensive state control. However, in another sense, it can be regarded as the death of politics, in that its goal is a monolithic society in which individuality, diversity and conflict are abolished.

Summary

1. Politics involves diversity, conflict and attempts to resolve conflict. While some have seen politics as narrowly related to the affairs of government or to a public sphere of life, others believe that it reflects the distribution of power or resources and so can be found in every social institution.
2. Government refers to ordered rule, a characteristic of all organised societies. First world liberal-democratic forms of government can be distinguished from state socialist second world and various forms of third world government, though such distinctions have been blurred by developments such as the fall of communism.
3. The state is a sovereign political association operating in a defined territorial area. In the view of pluralists, the liberal democratic state acts impartially and responds to popular pressures. However, others suggest that the state is characterised by biases which either systematically favour the bureaucracy or state elite or benefit major economic interests.
4. The role of the state is perhaps the dominant theme of party political disagreement, reflecting different views about the proper relationship between the state and the individual. While some wish to roll back the state and leave matters in the hands of individuals and the market, others want to roll it forward in the cause of social justice and widespread prosperity.

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CHAPTER 7

Democracy

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CHAPTER OUTLINE

INTRODUCTION

The concept of democracy is at the centre of fierce debates in political theory as well as in commonplace discussions on politics. This chapter examines the ways in which democracy has been conceptualized, defended and critiqued. In doing so, it discusses the evolution of democracy as a concept, the various criticisms levelled against the concept, followed by perspectives and debates in contemporary democratic theory. It concludes with some of the key debates which characterize democratic theory today.

Consider situations in your everyday life where you are part of a group and decisions have to be made for the group as a whole: whether it is a group of friends deciding if they should watch a movie or a family deciding where to go for a vacation. Suppose that among a group of ten friends, seven want to see a movie but three want to go for an art exhibition. What should the group decide to do? Consider another situation where a university class has been asked by their teacher to arrive at a convenient date for having a class debate. And here, in a class of thirty, everyone is agreed on a date except for five students. These five, however, have important and unavoidable reasons why that particular date is not convenient to them. What should the class do? Should it go by the decision of the majority? But doing so will deprive those five students from the chance to take part in the debate. Would that be a fair decision? Now, suppose the class has to decide on the topic of the debate. The number of opinions and suggestions made increase manifold and decision making becomes that much more difficult.

In all such situations of collective existence, there is a constant need to arrive at common decisions. Who takes these decisions and how? How do we judge whether these decisions are fair or the best possible? The idea of democracy provides one basis for making such judgements. A democratic decision is one that takes into account and reflects the wishes of the people who come under the purview of that decision. There are, of course, other ways to take decisions. A father can decide where the family will go for a vacation without taking the opinion of other family members, or a teacher can give no choice to the students on the topic or the date for the class debate. But advocates of democracy argue that a decision-making procedure which reflects a commitment of taking into equal consideration the preferences of members of the concerned group/s is a legitimate one. Democracy is, thus, both a method to arrive at collective decisions and a set of values and behaviour with which people approach decision making.

THE CONCEPT

How should a political community then arrive at collective decisions? In other words, who should rule? What should be the principle guiding government formation and what are

the institutional arrangements required for this purpose? Democracy is now the universally accepted answer to this question, so much so that everyone—even military juntas, dictators and monarchs—claim to be democrats. The charge of being called 'undemocratic' is taken seriously now. However, this positive value accorded to democracy is recent in history; for a long time it was associated with 'mob-rule' and inefficient governments. The term democracy translates as 'rule by the people'. Who are the 'people' and how do they rule? On what matters? To what extent? Through what institutions? To secure which goals? Is this a desirable arrangement?

There are varied views on the nature, purpose, extent, effectiveness and desirability of democratic rule, as well as varied critiques on the practice of functioning democracies. Indeed, democracy is often called an 'adjectival concept' because of the endless number of 'types' or 'models' into which democracies are classified, for example; liberal, social, people's, direct and indirect, radical, associational, deliberative, strong and weak, procedural and substantive, pluralist and elitist ... the list goes on. Before we examine some of these debates, let us briefly discuss the concept and look at the various theories and types in the light of their differences and areas of consensus.

At the heart of all democratic theories is the concept of popular power. According to Anthony Arblaster (1994), it refers to a situation where power and authority ultimately rest with the people. A democratic government is contrasted with an authoritarian one where decisions are imposed on the people and exercised without their consent. Democracy ensures the accountability of those holding power to the people who are the ultimate source of that power. It is the *consent* of the people which makes government authority legitimate.

How is this consent to be given? The question of consent immediately connects with that of participation. How much participation is desirable? In a *direct* democracy, there is a high degree of participation as citizens collectively decide, often through mass meetings, on almost all major issues. In effect, people rule themselves. This form of democracy is associated with the classical Athenian model. In India, the *gram sabha* is such an institution of direct democracy as are a number of devices like *referendum*, *initiative* and *recall* practised in contemporary societies. In contrast, in an *indirect* or *representative democracy*, government functions through representatives who are chosen through popular elections. These representatives provide a link between the governments and the people and elections allow the people to control the action of the representatives and prevent abuse of power. Liberal democracy is a representative form of government. While these two methods are seen in opposition to each other, we shall see in the last section how contemporary debates on the question of participation seek to combine the two.

Democracy refers to a government based on political equality, i.e. consent is required of all the individuals who form part of the political community. It is informed by the belief that all people are equally capable of, and have a stake in making, collective decisions that shape their lives. In a democracy, no one person's opinion or interest is of more value than the other, hence the principle of 'one person one vote'. It is based on the idea of the equal moral worth of all individuals and against the exclusion of anyone from the political process. Thus, it is against hierarchy or inherited privileges and discrimination. Today, when we say 'the people' we usually refer to all adult citizens in a polity. This was not always so

and a long struggle was waged by hitherto excluded groups demanding the right of suffrage. From being initially restricted to the property-owning white men in Europe and America, eventually educated men, working-class white men, black men, and women (in that order) were subsequently recognized as full citizens with the right to vote and contest elections. Meanwhile, in the colonies of Asia and Africa, democratic struggles took on a specifically anti-colonial character and the peoples of colonies like India claimed the right of self-government as a people.

In a democracy it is assumed that there will be a diversity of opinions and interests on almost every matter of common concern. Indeed, this diversity is seen as its main strength and it calls for tolerance for all shades of opinion. A democratic society is also called an 'open society' where there is space for all voices, however unpopular or conventional they may be, to be heard. This requires a range of political freedoms like freedom of expression, association and movement among others, which are protected by the state. People must have access to information and be able to protest and freely criticize the government and others in order to make informed uncoerced choices and intervene in the decision-making process. Thus, the practice of democracy is unthinkable without rights.

But do these freedoms by themselves ensure that all voices are in fact heard, and heard equally? Equal distribution of political power, however, does not mean that everyone manages to have equal influence on the decision-making process. Is it the same for an influential industrialist and a poor farmer or a slum-dwelling labourer to have the right to vote? Do they have equal influence on policy making? For democracy to be effective, then those factors which discriminate against sections of people and hinder their effective intervention in collective decision making need to be addressed. The presence of structures of power that are sources of inequality in a society are an impediment to democracy.Equality, thus, is a condition of democracy and democratic societies are expected to devise arrangements which further equality.

What is the nature of a democratic decision? There has been much debate on this. As a conflict-resolution model, democracy is often identified with majority rule and this raises the problem of oppression of minorities. On the other hand, democracies are expected to arrive at a consensus. But in plural and complex societies that are also unequal, consensus is difficult to achieve.

We will see in the last section how these very issues of equality, participation, representation and diversity pose important questions and are the concerns of contemporary democratic theory. Before that we will now examine the two main models of democratic practice, namely, the direct participatory model and the liberal democratic models. Later, we examine some of the major critiques of democratic practice.

DIRECT PARTICIPATORY DEMOCRACY

The most celebrated form of direct participatory democracy was the one practised in the Athenian city-state of ancient Greece during the 5th and 4th centuries B.C. Athenians prided themselves on the 'happy versatility' of citizens and their ability to perform all tasks of

governance, i.e. in enacting, implementing and adjudicating of laws. They met in open assemblies to debate and deliberate on all matters and shared magisterial and judicial offices. All major decisions were made by the assembly to which all citizens belonged. Citizens were also meant to sit on juries and adjudicate on disputes. Offices were filled by either election or draw of lots and no officer was to enjoy perpetual tenure. The idea was to ensure that at least the short-term offices went to as many people as possible. What is remarkable in this model is that it ensured a high level of political accountability and political activity of the citizen.

Indeed, citizenship entailed participation; it was a sacred duty and the full-time occupation of the citizen. The purpose of political participation was the common good of the state. This common good was independent of and prior to individual interests and desires. It is when citizens set aside their private interests, completely identify with the community, and give it their best that common good can be achieved. The underlying philosophy was that there was a single, shared, substantive idea of good life for the whole community; the separation between state and society did not exist. Participation in the collective affairs of the community was considered important for the rational self-development of the citizens; it was the highest form of good life that they could hope to achieve, fulfil themselves, and live honourably.

Republican Rome shared some features of Athenian democracy, namely, the notion of popular participation in civic life, a strong sense of duty to the community, the idea of public good and civic virtue as being of higher value than private individual interests. This is also called civic republicanism.

Rousseau, an early critic of liberal democracy, was heavily inspired by this model. Writing in the 18th century, Rousseau was critical of electoral democracy and representative mechanisms which were emerging in various European states. For Rousseau, democracy was the way by which citizens could achieve freedom. By freedom he did not mean the absence of constraints on the individual's pursuit of self-interest. Instead, he articulated a positive notion of freedom. (See Chapter 3 on liberty for the distinction between negative and positive freedom.) Individuals are free only when they participate directly, actively and continuously in shaping the life of the community, especially in the making of laws. For him, law-making was an exercise of sovereignty—which cannot be transferred or represented by anyone else—and an expression of the will of the people.

For Rousseau, participation was essential for the self-development of the individual and democracy was a means of individual development, but not the pursuit of selfish interests.

Rousseau made a distinction between private will and what he called 'general will'. General will is not an aggregation of private will or interests of individual citizens. Instead, general will is that which emerges when people set aside their selfish interests and deliberate on the collective common good of the community. Freedom lies in obedience to the general will; by doing so they are obeying their own true nature. Rousseau goes to the extent of saying that people can be 'forced to be free', i.e. obey the general will.

Such conceptions of participatory self-governance, active citizenship and community life have been an attractive one for all those critical of liberal democracy. Socialists, feminists, radical and deliberative democrats have drawn on this legacy. However, the very conditions in which this model has been practised provides a note of caution. The successful operation

of the Athenian democracy depended on a system of exclusivity and inequality. Only citizens were worthy of the good life and a majority of the population—women, slaves and resident aliens—were kept out of citizenship. Indeed, it was on the basis of their labour and economic activities that the free adult male could be freed for citizenship. Aristotle, even as he was critical of democracy, justified this denial of political equality to women and slaves both on the grounds of necessity and the latter's natural inferiority. (We shall examine Plato and Aristotle's critique of democracy in a later section.) Rousseau, too, explicitly kept out women from political participation. He argued that women were primarily meant to perform sexual and domestic roles and their public presence would be a distraction.

Rousseau did, however, consider a certain measure of economic equality essential for the exercise of citizenship. For any renewal of strong and active participation a society has to work out a balance between the satisfaction of material needs and political participation in a framework which treats all adults equally. A further point of debate is whether present societies can work with a single notion of common good which can be oppressive not just to individual freedom, as liberals fear, but also to the diverse groups and cultures which comprise most societies. In other words, a participatory system is seen to put pressure on attaining homogeneity. Rousseau's theory, as we observed, has totalitarian implications.

LIBERAL DEMOCRACY

Today, when we talk of democracy, we often have what is known as liberal democracy in mind. It is the dominant form of democracy as most countries seen to practise this model in one form or the other. However, it is important to remember that liberal democracy is a product of a long history and it contains many strands.

Protective Democracy

For early liberals, democracy was meant to be protective, in the sense that it was meant to protect the rights of citizens and safeguard them from the tyranny of state power. The 'liberal' element in liberal democracy preceded the democratic element and has shaped its nature. Liberalism emerged in the context of the transition from feudalism to capitalism. In this process, the newly emerging bourgeoisie/middle class sought to put limits on the absolute powers of the monarchs and the feudal aristocracies in European states from the 16th century onwards. (See the chapters on Liberalism and the State.)

Underlying this challenge to absolute and unaccountable power is the new doctrine of individualism. According to this notion, all individuals are free and autonomous, masters of themselves, and makers of their own destiny. Individuals are primarily rational and self-interested beings, intent on pursuing their desires and goals. Each individual has his/her own preferences, values and goals, i.e. his/her own conception of a good life. What individuals require are the basic conditions to pursue these self-defined goals. Liberals identify these conditions as rights, namely, of life, liberty and property, which are fundamental and inviolable in nature. What binds individuals to each other is a common interest in protecting these rights which would allow them the maximum freedom for free exchange among themselves.

The emergence of liberalism is linked to that of capitalism and market society. That is why property is understood as a fundamental right. An individual's property is considered an extension of the self and an individual is the master of his/her own self. According to liberal thinkers like Hobbes and Locke, individuals do not derive their identity from the community and are not bound to it by any sense of duty, nor do they see themselves as part of a hierarchical system or a divine plan. Thus, liberalism's lasting contribution to political thought is a radical notion of equality among human beings. This view on human nature meant a re-conceptualization of the role and purpose of government.

Liberals make a distinction between the state and civil society or the public and the private life of individuals. The public realm is the realm of politics; this is where they are bound to take collective decisions. The economy, family, associations, etc., are part of the civil society, the realm where individuals interact with each other in the pursuit of their interests. This is the realm of competition, conflict and co-operation among them. It is in order to resolve these conflicts that a regulated framework is required. Thus, the role of the government is to create and maintain a system of individual rights, and undertake activities to that end. The coercive power of the state is required to ensure that individuals in their interaction with each other in a civil society do not encroach on each other's rights. Governments were not meant to arrive at or promote a common good, since individuals do not share a substantive notion of good life. The state is a neutral arbiter; it is not supposed to interfere in the functioning of civil society.

At the same time, liberals share a deep fear that governments will abuse this power and encroach on these rights. Liberals were giving voice to the struggle by the bourgeoisie to unshackle the restrictions of feudal and aristocratic authority. In other words, there is need for a strong but limited government. Moreover, among free and equal individuals any institution of authority over them requires their consent, otherwise it will be illegitimate. Thus, there is need for a mechanism through which people can consent to a government and retain control over it to ensure the performance of the tasks entrusted to it and restrain it from exceeding its limits. This is where liberals turn to democracy as a solution.

Liberals advocate a representative democracy. The task of governance requires expertise, but those in power must be made accountable. Political participation is not considered a good in itself, like in Athenian democracy, but a means to control the government and ensure the protection of individual liberties. Through franchise and competitive elections, individuals choose representatives who then form governments on the majority principle. Political decisions can be made only by these representatives, because only they enjoy the consent of the people. This ultimate authority of the people is affirmed, and people can keep a check on the representatives through periodic elections. The powers and tasks of the government are defined through the constitution, especially by including within the provision of fundamental rights, and through the principle of rule of law and the presence of an independent judiciary (for example, the Bill of Rights in the U.S. Constitution and the Fundamental Rights in the Indian Constitution). The separation of powers among different branches of government is meant to provide a system of checks and balances, preventing the concentration of power.

Even though the model of representative democracy was based on the principle of equality, in early liberal democracies, franchise or political equality was in effect restricted to a few. They were more in the nature of oligarchies. Early liberals were as fearful of the 'tyranny of the masses' as they were of the tyranny of state power. Locke, James Mill, Madison and Montesquieu were all opposed to universal franchise. For example, John Locke, who was the first to articulate the key ideas of liberal democracy, restricted franchise to property owners, defended property as a 'natural' right as well as the unequal distribution of property, and modified his powerful notion of consent to mean 'active' consent of the propertied and 'tacit' consent of the rest. Even John Stuart Mill, who supported universal adult franchise and was among the first to support enfranchisement of women, sought to restrict the right to vote to those with basic educational qualifications and desired provisions for giving extra votes to educated and better qualified individuals. It was feared that if vested with political freedoms, the majority would not use their right to vote responsibly but would overturn the distribution of (unequal) property in society. In Indian courts, a series of cases came up after the adoption of the Constitution which challenged the land redistribution policies of the government as being violations of the fundamental right to property. Understood as popular rule without the restrictions of individual rights, democracy, thus, becomes a threat to liberty. There is a conflict between the 'liberal' and 'democratic' components.

It was in the aftermath of the French and the American Revolutions that popular democratic struggles emerged. The 19th and 20th centuries were marked by increasing and often violent struggles by the working class, African Americans, and women, demanding the extension of suffrage on the basis of the very ideas of individualism that had been invoked by the propertied male to win freedom from aristocracies and monarchies. The implicit radical potential of the notion of individualism, rights and equality was realized by these struggles. It is only with this acceptance of universal adult franchise that liberal democracy acquired its current form.

John Stuart Mill and Developmental Democracy

Predominantly, liberal democracy is concerned with the protection of individual rights and prevention of abuse of power. Participation in this context is of value because it allows the individual to put forward his/her interests and keep a check on the activities of those in positions of power. It is of no intrinsic value in terms of the self-development of the individual. James Mill controversially claimed that since individuals find political activity a distraction from the pursuit of self-interest, franchise need not be extended to those whose interests are subsumed under those of others. Not only did he exclude women in this way but also men under the age of 40, whose fathers could represent their interests.

The views of John Stuart Mill, known as the best advocate of liberal representative democracy, present a contrast to this. For Mill, a representative system must create maximum space for people to take part in the functioning of the government and not restrict their involvement by merely allowing them to vote. He considered participation important because it develops the confidence of the people in their ability to govern themselves. Mill,

thus, understood democracy as a system which allows for the development of an individual's personality. It develops the intellectual talents of people and is the best condition for liberty to flourish. Participation makes informed and intelligent debate possible. It is through thorough debate and discussion, where there is space for rational persuasion of each other, that the best argument emerges and this helps in solving the problems affecting the whole community. This is why he regarded the parliament as the forum where all kinds of opinion should find a space and be vigorously debated. Mill considers a measure of socio-economic equality as necessary for democracy and liberty to be actualized. Despite his insistence on the value of participation, he was sceptical of the capability of every citizen to govern and considered governance a task requiring expertise. He sought to balance this by recommending maximum participation at the local level so that people get educated in the task of governance. In the next section, we shall see how he suggested institutional measures to counter the ills of democracy.

Policy Making and the Pluralist View

Decision making in a liberal democracy is an outcome of the aggregation of individual preferences or choices. In a protective model, these choices are aggregated over the choice of government personnel and not over the activities of the government. That is, the vote and electoral processes allow people to choose or reject a representative or a political party but not to determine what policies the government should undertake. This is because protective democracy offers minimal scope to government activity.

However, as the functions and activities of the government increased, the focus turned to the policy-making process itself. Utilitarian thinkers like Bentham and James Mill propounded the principle of 'greatest happiness of the greatest number' (see the chapter on liberty) as the basis of determining functions of the government. While they advocated minimal government and free market, they did make space for selective state intervention in the economy for welfare activities like education and wage reforms. But the idea that government policies must reflect the aggregate choices of the majority became important for liberal democracies. The welfare state model of liberalism assigns more tasks to the government in the economy and these tasks, like the provisions for social security, education, regulation of industry and making employment opportunities available, are justified in the name of democracy. John Rawls, for example, justifies extensive intervention in the economy to provide equality of opportunity to all (for more details see chapter on justice), but most liberals are sceptical of extensive redistribution of wealth.

How do people influence policy? The pluralist theory provides an answer. The pluralist view, associated with the work of Robert Dahl, is a specifically American understanding of political processes, but still has relevance for understanding liberal democratic practice in general. Power, according to Dahl, is the capacity to influence ... the process and outcome of decision-making. People form groups and associations based on their specific interests; so in any society there will be a wide variety of interest groups. Interest or pressure groups are the mechanisms that people adopt in order to advance their interest, promote their causes and achieve preferred policy outcomes. For example, *kisan sabhas*, teachers' and students' unions,

women's organizations, trade unions, associations of industries like FICCI or CII in India. and The policy making arena is like the market, where different groups pursue their interests and the outcomes are not pre-determined, but a balance is achieved out of conflicts; through a sort of an 'invisible hand' mechanism. Political decision making is a complicated process and involves bargaining between various actors. In the process, people use a wide range of means at their disposal like economic and social position, education, organization skills, reputation, religion, etc. Unlike elitist and Marxist views, pluralists understand power as not concentrated in a particular class, but as spread throughout society.

It is a democracy that provides opportunities for everyone to articulate interests, mobilize support and seek representation. A vigorous interest group activity keeps the wielders of political power in check. Democracy here is identified with certain institutional mechanisms and procedures, representative institutions, accountability of executive to elected assemblies, basic liberties for all including the freedom of expression and organization and an independent judiciary. As long as these procedures are followed, a system can be referred to as being democratic. This is also called procedural democracy as distinguished from a substantive democracy. The latter is concerned with the attainment of certain ends, like equality or justice.

The chief merit of the pluralist analysis is that all modern democracies do have a plurality of forces struggling and competing for their interests. However, procedural democracy is compatible with the results which are always skewed in favour of particular interests and groups. Social and economic inequalities reduce the opportunity of disadvantaged groups to influence policy outcomes. Thus, an agricultural landless labourer's collective effort cannot hope to match CII or FICCI either in resources or in influence. In his later writing, Dahl does acknowledge the fact that inequalities can be debilitating and consistently leave certain groups out of the political process, despite the formal freedoms of a democracy, in which every citizen has the right to participate in the decision-making process. Thus, there are structural and ideological constraints which prevent democracies from operating as an open, equal marketplace of competing interests.In this process, the existence of democratic procedures and its openness to conflicting views, interests and methods of influence is valuable for a democracy, but the outcomes are liable to be undemocratic.

Thus, in the liberal view, the aim of democracy is to aggregate individual choices and preferences in the best possible way. This aggregation of choices could be restricted to the choice of government (by voting for a representative who usually belongs to a political party) or should constitute a mechanism of policy making. In the first view, the role of democracy is to basically provide a defence against arbitrary and unaccountable government through elections and constitutional government. In the second view, democracy has a more direct link with choosing and influencing the activities of the government. This is usually done through a wide range of interest groups, political parties and pressure groups.

Today, liberal democracy is both at a moment of triumph and crisis. On the one hand, the collapse of the communist bloc, introduction of liberal democratic institutions in the former communist countries as well as the military intervention of the USA in West Asia to introduce democratic regimes signal its near universal acceptance as the only practical

model of democracy. Indeed, the key ideas and institutions of liberal democracy like representative governments, rule of law, individual rights, electoral competition and multi-party system have become central to any conception of democracy. Francis Fukuyama in his 'end of history' thesis argues that there is no credible alternative to liberal democracy. On the other hand, liberal democracy continues to be subjected to a scathing critique by socialists, feminists, multiculturalists and deliberative democrats for not being democratic enough and these critiques have sharpened in the context of globalization. They observe how the form of liberal democracy currently advocated is minimalist or what Benjamin Barber calls a 'weak democracy' emphasizing elections and a choice of political parties. Before we examine these critiques, let us look at some of the common objections to democracy.

OBJECTIONS TO DEMOCRACY

Critics of democracy can be classified into two groups—those who are dissatisfied with a particular kind of democratic practice and seek to deepen it and those who are critical of the democratic principle as such. We have observed how the positive value attached to democracy is a recent one in history. The very principle of popular power continues to be subjected to trenchant critiques. Let us examine the main objections to democracy.

A key objection to democracy is that it produces incompetent and inefficient governments. In his critique of Athenian democracy, Plato argues that governance is a matter of skill and expertise and therefore should be left to experts. Human beings are by nature fundamentally unequal. However, democracy presumes that every-one can handle complex matters of governance and is, therefore, based on a false understanding of human nature. Thereby, it substitutes ignorance and incompetence for excellence and expertise. Because it allows non-experts to rule, democracy is an irrational form of government. He recommended a strict division of tasks depending on one's ability. Matters of the state would thereby be left to a particular class of people who by nature and training were most fit to rule—whom he called 'philosopher-kings'. To rule meant ensuring that everybody else performed tasks they were most fit for.

A distinction is made here between popular rule and public interest, whereby governments are prevented from functioning in public interest and taking strong purposive action due to the compulsions of democracy. In India, for example, democracy is often blamed for the ills afflicting the country. Common middle-class assessments blame the government for following 'populist' policies (and not 'correct' or 'rational' policies), like providing slum-dwellers with ration cards because of the compulsion to seek votes. A deep fear and distrust of the 'masses' runs through the history of democracy. Aristotle in his classification of governments placed democracy as an 'impure' system where the multitude rule in their own interest.

As already observed, early liberals were sceptical of mass suffrage and considered political equality a threat to liberty. Constitutionalism and an elaborate system of checks and balances were devised to prevent majoritarianism. Writing in the 19th century in the context of the emerging democratic society in Europe and America, Tocqueville coined the phrase 'tyranny

of the majority' to describe the threat that democracy posed to minorities and individual liberty. He particularly feared its cultural repercussions. Since the cultural standards of the majority are dominant, general morals, manners and creativity are debased in a democracy. For example, when Bollywood films are discussed a distinction is often made between films for the 'masses' and those for the 'classes', or between 'popular' and 'art' films.

Even J. S. Mill for all his defence of democracy and political participation considered majoritarianism and mediocre government as the biggest weaknesses of democracy. Not only does majoritarianism exclude minority voices but it lowers the standards of the government. Subsequently, people with a lower level of intelligence perform the most important task of legislation and administration. Mill suggested a number of institutional mechanisms to counter these ills. Through proportional representation, minorities can obtain a place in the legislative assembly and, through plural voting, educated and intellectually superior individuals can have more say in the choice of representatives. He was particularly concerned about the opinion of minorities the experts and the geniuses—who get sidelined when the majority principle is applied. Majority rule has a tendency to promote uniformity and conformity, whereas the main catalysts of progress are the non-conformist geniuses. This system of plural voting, in fact, violates the basic democratic principle of political equality. He also recommended a separation of the tasks of government, wherein the all-important task of law formulation would be done by an expert constitutional committee, and the administrative tasks were to be carried out by a skilled bureaucracy. The task of the representative assembly was to debate and deliberate on the legislation and to monitor the functioning of the government.

Mill's philosophy, thus, combines a value for participation and equality (which is unique among liberal thinkers) with elitism, where governance is seen as the task of the educated and the experts. Moreover, despite his egalitarianism, he did not recommend representative governments for colonies like India. Democracy was possible only in 'civilized' countries and not in 'barbaric' ones and, therefore, despotic rule was suitable till the time the people of the colonies were ready and capable of democracy.

While Plato and Mill draw attention to the dangers of majority rule, elite theorists consider a functioning democracy impossible because of the inevitability of concentration of power. While Mill and Plato among others are elitist in their views, elitist theory is attributed to a specific critique developed by Pareto, Mosca, Mills and Michels about the inevitability of elite rule. Classical elite theorists like Pareto and Mosca say that political power in every society has always been in the hands of a minority, the elite, which has ruled over the majority in its own interest. These elite manage to dominate because they possess exceptional skills, especially the psychological attributes and political skills of manipulation, and coercion. They are far better organized than the masses and also possess qualities which are considered valuable and hence use it to justify their privileged position in the society. C. Wright Mills' study of the American political system refers to a 'power elite' which dominated executive power and members of this class were closely knit, sharing the same background and common values. Thus, they dispute the pluralist contention that power is widely distributed in society. In his study of socialist parties, Michels noted how despite socialist principles, the actual working of the decision-making process tended to

concentrate power in the leadership due to bureaucratization and centralization. Not only did the leaders not consult the working-class members, the decisions taken were often contrary to their interests. This led Michels to postulate an 'iron law of oligarchy' which applied to all organizations resulting in undemocratic outcomes.

In India, we note the wide prevalence of dynastic rule and the involvement of all members of a family in politics. This phenomenon is observed in almost all countries and is an evidence of the tendency of concentration of power among a few who have access to the political system.

The merit of these critiques lies insofar as they expose the myths of democratic practice by exposing who actually wields power. But in considering this concentration of power as inevitable, these critiques affirm a belief in the natural inequality among human beings, and are pessimistic in nature.

In this view, the value of democracy, given the inevitability of elite rule, is that it allows people to choose among the elites. Joseph Schumpeter in his influential work *Capitalism, Socialism and Democracy* puts up a model of competitive elitism as the most workable one in modern industrial societies. He has a low opinion of the ability of people to develop an informed opinion on key issues and opines that it is better to let experts rule. Passive citizenship is good for governance. The only role that people have is in the selection of the government among rival competing political elites through voting. Democracy, thus, performs the crucial function of legitimating a government. The unanswered question is one of how people who are incapable of reflecting on key issues can make an informed choice among political groups.

PERSPECTIVES ON DEMOCRACY

Let us now examine those perspectives on democracy that affirm it as an ideal but critique its practice. Since liberal democracy has been the dominant form of democratic practice in modern times, critics who seek a deepening of democracy begin with an assessment of liberal democracy and develop their alternative with reference to it.

Socialist View

Socialists share the elitist view that even in a democracy, political power is used to protect and advance the interests of a minority. While elitists attribute psychological, social and economic attributes to the elite which allow them to dominate, for socialists, the power of the minority derives from their economic class position, that is, their control over the means of production. The inequality then is not 'natural' but a product of specific social and economic arrangements. The capitalist market economy produces systemic inequality. All strands of socialism draw attention to the incompatibility between democracy that is based on political equality, and capitalism which is based on the right to private property and market economy. In a market economy people have unequal access to economic resources

and this also is the source of unequal access to knowledge and information. Thus, the existence of private property and the unequal distribution of wealth is the source of socio-economic inequality in society and this prevents most people from effectively exercising their political freedoms. In a market economy most people neither have the time nor the resources for more political involvement.

Marxists challenge the liberal conception of the state as a neutral body. The state insofar as it is committed to securing the right to private property is deeply implicated in civil society. There are two strands of thinking about political power in the writings of Marx and Engels. In the first instance, the state and its agencies are the instruments of dominant class interest. As Marx declared in *The Communist Manifesto* (1848), 'the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie'. In the second instance, Marx and Engels talk about the 'relative autonomy of the state' from the dominant class. The practice of parliamentary democracy and the compulsions of elections do lead governments to respond to some demands of the working class majority. Many liberal democracies do undertake policies to correct the uneven outcomes of the market, like restrictions on wealth, employment guarantees, etc. But for Marxists this is at best a short-term measure because the state cannot go against the long-term interests of capital. This is why, for Marxists, the vote cannot be used to transform the system, because any welfare policies will be corrective at best and will not address the structural reasons of inequality. The ability of the governments to undertake welfare policies is constrained by the constitution.

Marxists acknowledge the emancipatory potential of liberalism because it rejects hierarchy and affirms the equal moral worth of all individuals. However, the liberal distinction between the state and the civil society, or the public and the private marks the economy out as the private realm of freedom and therefore, out of the purview of political decision making. The socio-economic divisions generated in civil society render the political equality guaranteed by the state ineffective. A democracy which does not tackle the inequities of class power is inadequate at best and a sham at worst. As against the fear of people like Tocqueville that democracy can lead to the tyranny of the masses, Marxists fear that it will not. The ideological and cultural hegemony of bourgeois values secure the consent of the working classes. This includes telling the poor that the reasons for poverty are because they are not hard-working enough. (See Chapter 9 on power for the concept of hegemony.) Liberal democracy and its institutions thus provide an ideological facade of equality and thereby act as a legitimizing shell for capitalism. While democracy provides the 'road to socialism' it is incompatible with capitalism.

Marxists and socialists are further critical of the nature of individualistic rights which are the corner stone of liberal democracy. Marx terms these the rights of the egoistic man, separated from his community and perceiving everyone else as a competitor and a threat. The socialist aim is a situation where the free development of each is compatible with the free development of all. Thus, they endorse a more participatory democracy where democracy extends to the management of all collective affairs, including the workplace. The idea of a cooperative without the divisions of owner and wage labour informs socialist conceptions of economic democracy.

Communist countries seek to achieve socialist aims through a revolutionary break and they advocate a model of people's democracy where a single party—the communist party—assumes leadership and directs the country in its transition to socialism. Social democracy, on the other hand, seeks to reconcile socialist aims and liberal democratic institutions. It perceives the establishment of socialism as a longer gradual process in which electoral democracy can be used to correct the injustices of capitalism. This is to be done by extensive regulation of the economy, provision of employment and educational opportunities including affirmative action and social security measures. We shall elaborate on social democracy in the next section.

Marxists have usually ignored the concentration of power in the party and the state. The experience of one-party communist states, the distortions of the communist bloc in Eastern Europe and the fall of USSR have led to a reappraisal of democracy within Marxist thought. The debate had usually been structured as prioritizing between political freedom and economic freedom. Contemporary thinkers on the left, on the other hand, affirm that socialism and the attainment of economic equality do not necessitate giving up the gains of liberal democracy, and particularly those of individual rights. What is needed is a deepening of democracy which can both tackle inequalities and allow more participation. They also draw attention to the rise of corporate power and the unaccountable nature of international financial organizations that dominate world economy. They understand neo-liberal globalization as posing the biggest threat to democracy in present times.

Indian Debates on Democracy

In India and the rest of the Third World, democratic ideas emerged as part of anti-colonial struggles which claimed that colonial rule was a violation of the principle of self determination and that the people had a democratic right to self-rule. These movements further claimed that the backwardness of their countries was because of colonial exploitation wherein the resources of the colonies were used not for the benefit of its people but for those of the colonizer. With independence all Third World countries had to address the need for rapid economic development and social transformation. The possibility and desirability of democracy and the nature of democratic arrangements were debated in this context. The Indian Independence movement was inspired by socialist ideas and impressed by the achievements of the Soviet Union. Thus, socialist analysis was sought to be applied to understand Indian problems. In this section, we will examine the views of two thinkers, Jawaharlal Nehru and Ram Manohar Lohia, both of whom sought to adapt socialism to the Indian context, and see how their understanding of socialism had an impact on their approach towards democracy.

Jawaharlal Nehru is credited for the strong foundation of India's constitutional and democratic institutional traditions. He was influenced both by the liberal democratic traditions of the 19th century and the Fabian socialism of the early 20th century. At the same time, he was also impressed by the rapid economic transformation achieved by the Soviet Union. His views on democracy reflect all these influences.

He considered democracy a peaceful way to achieve the goals of individual freedom and social justice. For Nehru, the well-being of the individual was of principal value and the highest goal of the society and the state. His thought reflected respect for the freedom and dignity of the individual and the need to allow all individuals to grow and develop their potential. He had faith in the power of debate and discussion in the pursuit of truth and the possibility to educate and persuade people through rational means to think in terms of common interests. This required free public discussion, tolerance for differing points of view and dissent. He advocated the institutional framework of liberal democracy for India, i.e. fundamental political and civil rights of the individual, freedom of the press, secularism in terms of the separation of religion and the state, rule of law, parliamentary government and an independent judiciary.

Nehru shared the socialist critique of capitalism. He defined equality not just in terms of political equality but as equal opportunity for all and progressive economic equality. He recognized that in the context of economic inequalities the democratic machinery can be hijacked by the ruling class. As he said, equality before law cannot make a millionaire and a pauper equal. Democracy can flourish only in the context of social and economic equality. So, political democracy can be of value only if it can be used to achieve what he called economic democracy. This meant active involvement of the state in the economy and he advocated a state-led economic development programme through the device of planning as well as redistributive mechanisms like land reforms. While he admired the prosperity and equitable redistribution of wealth achieved by the Soviet Union, he was critical of communism because it had a tendency to become authoritarian, violent and to suppress political dissent. He did consider that political liberties slow the pace of growth and achieve lesser redistribution, but he preferred slower growth and lesser equity to the sacrifice of political liberties.

In this way, democracy was to make possible both economic justice and individual freedom. Thus, Nehru advocates a model of social democracy. Democracy in the international scenario was another area of concern for him and the policy of non-alignment was formulated in order to secure independence in foreign affairs and equality in international forums, especially for weaker countries.

Lohia's views are significantly different from Nehru's. He is critical of both communism and Nehru's democratic socialism. Both, according to him, understand socialism as involving only a transformation of capitalist relations of production. That is, they are concerned primarily with redistributive mechanisms. However, the inequalities of capitalism lie not just in its production relations but in its technology. Capitalism specifically requires large-scale industrialization and a centralized production process. In the political domain, this requires a centralized state apparatus. Thus, capitalism has a tendency towards centralization of power and this makes it authoritarian. Nehruvian socialism was nothing but state capitalism with some welfare features. While Nehru recognized the tendency towards centralization, he considered the provision of fundamental rights and universal franchise as guarantees of the freedoms of the individual. Lohia considered electoral and parliamentary mechanisms as important but inadequate to achieve either the active involvement of the people or in

achieving social transformation. Lohia, thus, drew attention to the way communist states concentrated power in the state apparatus.

Socialist transformation can be achieved only with the active participation and struggles of the people. Democracy involves people taking control over their lives. It is a process of empowerment. This means preventing the concentration of power and energizing the civil society's constant struggles against oppressive social and cultural injustices. Lohia advocated a two-pronged strategy to tackle centralization and concentration of power decentralization of political power through the four-pillar framework and decentralization of the economic production process through the small-unit machine. Use of the latter along with appropriate technology would help technology address the specific needs of Indian society. This meant rejecting a singular model of economic development based on the experience of the Western capitalist countries. With the four-pillar framework, the sovereign power of the state would be constitutionally diffused into four levels—namely, village, district, province, and the Centre. Areas like the army or core industries would come under the Centre, smaller industries under the district, and agriculture under the village level. What is significant about this decentralization was that it was meant to be decentralization not just in executive powers but in the legislative and planning process, too. This would ensure decision making by the smallest of communities in human activities like production, ownership, administration and education. Lohia was particularly concerned about the interlinked structures of caste and gender oppression that characterized Indian society. Empowerment of this majority and making them take an active and effective part in the affairs of the country required decentralization.

Lohia's views assume importance because there is a renewed focus on participation and decentralization as a way to tackle bureaucratization and centralization of power. We will look at this issue in the last section.

Feminist View

Feminists have further critiqued the liberal distinction between the public and the private. They characterize relations between men and women as one of unequal power relations. In the sphere of the family and the household, the division of labour is unequal as the bulk of the child-rearing and household tasks is done by women. Further, these tasks are devalued and not considered productive enough to constitute paid labour. Thus, the domestic arena is a site of unequal power structures and is, therefore, an arena of democratization. In liberal theory, the family is part of the private sphere and hence kept out of politics and therefore, out of democratization. This is one dimension of the feminist slogan 'the personal is political'. The other dimension is that this gendered division of labour and power in the private sphere is linked to the unequal distribution of political status and power in the public sphere. In Western countries, which have the longest history of democracy, women were the last category to get the right to vote. Switzerland, for instance, enfranchised women as late as 1971. Most political thinkers explicitly excluded women from the category of citizenship

on the grounds of their natural inferiority and incapability. Despite formal political equality, women continue to be grossly underrepresented in political institutions and decision-making structures. In India, for example, the proportion of women in the Lok Sabha has never exceeded 12 per cent.

Further, political equality has been undermined on the grounds of sexual, social and economic inequality. Thus, specific policies are required to enhance participation and representation and deliver equality, for instance, redistribution of domestic work (both through sharing and through public provisions for child care) and electoral reforms. In India, the proposal to reserve 33 per cent seats for women in the Parliament and the Legislative Assemblies is a proposal of the latter kind.

Feminists, however, note that the measures to ensure substantive equality for women have to be of a distinctive kind; they have to incorporate a notion of difference. Typically, democratic theory understands equality as the removal of differences. So, formal political equality recognizes no difference among people and socio-economic equality understands difference as a disadvantage, and seeks to remove them. But the idea of disadvantage is based on a notion of comparison which is always based on a particular standard. The concept of the individual that is central to liberalism is that of an independent, rational, self-interested person. Understanding differences between men and women solely as a disadvantage is to adhere to a male norm. For example, politics has always been construed as a male domain and women politicians have to prove they are 'tough' and 'strong' according to this standard. At the level of policy too, for example, pregnancy is understood as a disease or illness because it is the male body which is the standard of normality. Understanding differences as disadvantages has meant that democratic theory has been insensitive to the realities of women's lives. Using a particular norm as the standard and imposing it on others is an act of discrimination. This disadvantages women as a group. Thus, feminists contend that there is a gender bias in the democratic theory itself. In order to ensure substantive equality, democracy has to think in terms of recognizing and accommodating differences.

Like the deliberative democrats (see next section), feminists have also been critical of liberal democracies for taking people's preferences as given and for the restrictive view it has of participation. If interests and preferences are taken as given, then democratic decision making will simply reproduce the status quo. Unequal power structures sustain themselves through ideologies and socialization. Thus, for women, the process of democracy is also a process of empowerment, where they become aware of exploitation, gain confidence, and seek to transform their conditions. This, however, calls for a more active and participatory democratic practice.

Deliberative View

In contemporary political theory, a key idea is that of deliberative democracy. It is associated with people like David Miller, J. Drysek and Joshua Cohen, among others. Liberal democracy views decision making as an outcome of aggregating the preferences of individuals. In this

sense, it is believed that people's preferences and interests are formed independently and the political process only negotiates between the conflicting interests. Deliberative democrats, on the other hand, believe that people's preferences are formed *during* the political process and not prior to it. Democracy, then, is a process of arriving at an agreed upon judgement or a consensus. Such an agreement is an outcome of deliberation, i.e. a process where people try to persuade each other through the give-and-take of rational arguments. In this way, people become aware of information and perspectives that they are previously unaware of and then they can question each other's views. In this process, preferences or interests get transformed to reflect a common agreement. Deliberation, thus, reinvents a participatory model of democracy and the key idea is that of a dialogue. Through open participation and unlimited discourse, a better argument emerges. But this needs what Habermas calls 'an ideal speech situation', i.e. a situation where free and equal participants are able to communicate with each other without discrepancies of power and constraints of particular circumstances. There is an inherent danger of preferring certain dominant forms of communication and knowledge as more authoritative. Moreover, deliberative democrats hope for a consensus which is difficult, if not impossible to achieve in diverse and complex societies.

KEY DEBATES IN DEMOCRATIC THEORY

In this section, we briefly discuss those issues which have emerged as areas of debate in contemporary democratic theory.

Democracy and Difference

Historically, democracy has been a movement that has aimed at the removal of differences. It was assumed that equal political rights and recognition of citizenship would counter the discrimination people faced on account of differences on the grounds of caste, race, ethnicity, and gender. This idea of eliminating differences in consideration of equality has been important for emancipatory politics because it affirms the idea of equal moral worth of all individuals. We have seen how feminists consider that a substantial notion of equality must incorporate a notion of difference.

On the notion of difference, feminists are joined by multiculturalists who argue that in culturally plural societies, treating all differences among people as a disadvantage is to use the dominant group's culture as a norm. Most contemporary societies are culturally diverse and are composed of many communities, for example, immigrants, indigenous people, racial minorities. India itself is multireligious, multilingual, multicultural, and also has *adivasi* communities. Not only are communities socially and culturally different, they are often in relations of domination and subordination with each other. Further, liberal democracies claim to be neutral with respect to conceptions of good life and leave these to individual choice. However, the laws and practices of a country reflect the cultural bias of the

majority. Feminists and multiculturalists say that liberalism, which values the abstract self-interested individual, is itself a particular notion of the good life. For an *adivasi* group, where property is common, the insistence on private property is alien.

Liberalism values diversity, but in terms of opinions it recognizes diversity only at the individual level. But an individual's identity is formed in a cultural context, and ignoring or devaluing the culture is discriminatory both to the individual and to the group. Thus, a commitment to the equal worth of all individuals means equal respect to their culture and equal treatment of all groups. It is only when this diversity is valued and respected that people can develop their capacities and contribute to collective life meaningfully.

Not recognizing the differences among groups is to ignore the diversity of the ways of life and experiences among people. Such a democracy assimilates and evaluates everyone, keeping the culture of the privileged groups as the standard. Those not conforming to this standard either have to lose their identity to assimilate or get marked out as the 'other'. Ignoring the specificity of a minority group is to marginalize it.

Democracy involves equality in setting standards, too. Thus, according to the late Professor Iris Marion Young of the University of Chicago, asserting the value of group differences provides a standpoint to both point out that the norm presented as universal is culturally specific, and criticize them by presenting an alternative. Some feminists say that care and nurture, which women have been associated with, are desirable values for everyone. Tribal communities and forest-dwellers compare their harmonious co-existence with the environment to the destructive industrialization which is presented as 'development'.

As democracies are concerned with equality, it must have procedures and mechanisms which recognize difference. Iris Marion Young recommends procedures that ensure additional representation for all oppressed groups, affirmative action and public funding to promote the self-organization of groups, consultation with the groups on policy matters affecting them and a veto power over specific policy decisions which directly affect the group. The meaning of representation in this context requires that a democratic polity must be representative of the diversity within it. Will Kymlicka recommends self-governance rights for indigenous peoples and cultural rights for ethnic groups. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Right) Bill, 2005, passed in the Lok Sabha in December 2005, likewise proposes that forest-dwellers have a right to the forest and mineral resources.

These proposals, however, raise significant issues. There is a danger of freezing identities and privileging a particular identity of an individual over the other identities s/he may have. Further, there is the question of internal democracy in the groups. Whose views are to be seen as representative of the group? In India, for example, in the debate over the uniform civil code, personal laws of religious communities are sought to be replaced on the lines of the Hindu Code Bill, which ignores the differences among communities. However, all personal laws are discriminatory to women. The right of a group to maintain its identity conflicts with the equal rights of women within the group.

Thus, the recognition of difference is both a requirement of and poses important issues for democratic theory.

Representation and Participation

Most practising democracies are indirect or representative in nature. However, what does it mean to represent? Are representatives meant to be delegates, i.e. give voice to the wishes of their electors? In territorial constituencies, however, the process of amalgamating the interests of a diverse electorate is a challenge. J. S. Mill rejects the idea that representatives are delegates because that would tie them down to the preferences of the electorate. Instead, he says, representatives must be free to act according to their own judgement. However, they are meant to act on behalf of the people and not merely reflect their views. In that case, what kind of control can people hope to have over their representatives? The other view of representation is that people mandate a person or a political party to carry out a specific set of policies, and thus direct the government. But in most countries the election manifestos tend to be very general in nature and are not concrete policy documents. Moreover, elections are fought and won on a variety of grounds as political parties try to incorporate all sections. Political parties, which are the main players in an electoral system, themselves constitute the political elite and are often deliberatively vague about policies. Elections are media-orchestrated events.Besides, in most countries either a first past the post (FPTP/FPP) or a proportional system of election is followed. In the former system in particular, the victorious party that forms the government has most often not secured the majority of votes. There is, hence, a mismatch between the number of seats won and the percentage of vote secured by the party. Thus, an election, which is the main vehicle of representation, is an inadequate mechanism to convert people's views into policy directives.

All these developments have meant a renewed attention to participation. Even in order to ensure that there is a check on representatives, and to prevent abuse of power (protective democracy), there is need for more active citizen involvement. The remedy for bureaucratization, corruption, centralization, lack of transparency, and accountability is sought in participation. In that sense, the traditional line dividing a direct and indirect democracy is being redrawn. The recent Right to Information Act, which seeks to make government functioning open, is one such initiative in India. Critics of centralized government also advocate decentralization through local self-government institutions like *panchayats*.

The main objection to participation has been that it is difficult to make it work in a large and diverse society. However, the advancement of technology, the spread of the reach of the media and the Internet, devices like the *jan sunvai* or public hearing, devolution of powers to local bodies wherever possible, and involvement of citizen groups like resident welfare associations, make increased participation possible. The point being made is that both representative and participatory mechanisms can be combined.

Democracy and Development

Indian democracy has often been analysed as a miracle because it has survived in the context of widespread inequality, poverty and unemployment. Democracy is often blamed for the slow rate of development achieved by India. We often hear popular calls for a 'strong

political leadership' or even a 'dictator' who can lead the country towards economic growth. Democracy here is seen as a luxury that poor countries cannot afford. It is also seen as an impediment to development and so suspension of democratic rights or political freedoms is desirable. This is popularly known as the 'Lee Thesis' attributed to Lee Kuan Yew, the former Prime Minister of Singapore, who held that the denial of political and civil liberties and a measure of authoritarianism is advantageous to economic growth. The notion that democracy slows growth is popular and we saw how communist regimes made it a choice between political freedom and economic rights.

Amartya Sen contests this thesis and says that it is not supported by satisfactory empirical evidence. He further argues that in poor societies, democracy has both an instrumental and a constructive role to play in promoting development. In a democracy where the rulers have to face the electorate, there is an incentive to listen to the needs of the people. Political freedoms and civil rights, a free press, the presence of opposition parties—all of these mean that the actions of the government are subject to the evaluation and criticism of society and that has a direct impact on the political fortunes of those in power. Democracy, thus, plays an instrumental role in promoting the economic needs of the people. Additionally, he argues that democratic arrangements play a constructive role in the sense that they even allow for the conceptualization of what constitutes economic needs. Democracies create a set of opportunities, and through open debate, discussion and dissenting opinions, people get involved in formulating their needs and priorities.

This view is important because there are contending views on what constitutes development. The idea that economic growth constitutes development is contested not just by those critical of the way the benefits of growth are concerned by the powerful but also by environmentalists. Movements like the Narmada Bachao Andolan contest the claims of benefits that high-level industrialization and multipurpose river projects are supposed to bring. Many tribal and local communities claim the right to use natural resources in a way that is beneficial to the community. They contest the notion that there is a single model of development which is applicable to all. Social and environmental movements assert the need to formulate alternative, people-centred, sustainable models of development. If by development one means improvement of living conditions, then the precise mode of development to be adopted by a society is a matter of democratic decision making.

The Scope of Democracy

Socialist, feminist and multicultural critiques as well as anti-race and anti-caste movements draw attention to the presence of various structures of power and inequity in society. Since these power structures affect the way people exercise their political freedoms and their ability to influence collective decisions, removal of these structures becomes a concern for democracy. That is, a democratic society is the basis for democratic political arrangements. Chantal Mouffe and Ernesto Laclau identify the task of radical democracy as a struggle against all modes of oppression and subordination in society by fully realizing the ideals of liberty and equality for all. As the concept of equality expands from formal equality to

include equality of opportunity and equal treatment of culturally diverse communities, thus requiring a notion of difference, the scope of democracy will widen.

Democracy, conceived in this form, is of relevance to all spheres of human collective life, be it the family, association, workplace, community or the nation. Within the framework of the nation-state, the agenda of deepening democracy involves enhancing participation and the devolution of power to regional and local levels. However, the principle of democracy is relevant beyond the level of the nation-state as well. Our globalized world is characterized by a high degree of interdependence among nation-states due to changes in production, communication, and trade. International financial agencies like the International Monetary Fund and World Bank, and transnational corporations, are powerful players in the world economy and exercise much influence over Third World states. They are not subject to any transparent system of accountability. On the other hand, many pressing issues like environmental protection and human security require co-operation among states, and on issues like violation of human rights and peace, international intervention in nation-states is required. The current UN system and international organizations like the World Trade Organization are skewed in favour of the most powerful states. These underline the need for effective and democratic global systems of governance. David Held suggests a cosmopolitan model of democracy as a way to respond to these changes and democratize the global system. It envisages setting up political, legal, administrative and regulatory institutions at global and regional levels, which would help create methods to ensure transparency and accountability in international government and non-government institutions; secure world-wide consultation and referenda on certain issues; and enforce peace and human rights within nation-states. This model of democracy is not meant to be an alternative to the nation-state but a system that complements democracy at the national and local levels.

CONCLUSION

Everybody's for democracy in principle. It's only in practice that the thing gives rise to stiff objections.

—Noam Chomsky

The history of political theory is witness to divergent views on the desirability of democracy as well as its nature and extent. These differences emerge from what one expects democracy to achieve. In this chapter, we examined the key ways in which democracy is understood and the dilemmas faced when it is sought to be applied.

Points for Discussion

1. Movements for self-determination exist in many parts of the world. Can democratic principles be applied to resolve them, and how?
2. Is it possible to combine the political participation valued in the classical model with equality of all individuals in the community? What sort of changes in the life of the society and the arrangement of its activities would be required for this purpose?

3. World War I was fought to make the world safe for democracy. Similarly, today we face a situation where the US leads an attempt to introduce democratic regimes in many parts of the world. Given this situation, do you think democracy can be imposed from above?
4. In your opinion how can the conflict between the cultural rights of a community and the equal rights of women be democratically resolved, as in the case of the Uniform Civil Code in India?

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21

Liberalism and the Concept of Equality*

Ronald Dworkin

Editor's Note: *Is equality an important concern for the liberal? Ronald Dworkin's answer is an unequivocal yes. In fact, he makes a distinction between the liberals and the conservatives on this point and clarifies that equality of opportunity, rather than equality of results is what the liberals seek. By emphasizing equality of opportunity Dworkin reaffirms the need to address the question of distributive justice. One might even say, that within democracy his arguments place the concern for social justice back on the agenda.*

...Is there a thread of principle that runs through the core liberal positions, and that distinguishes these from the corresponding conservative positions? There is a familiar answer to this question that is mistaken, but mistaken in an illuminating way. The politics of democracies, according to this answer, recognizes several independent constitutive political ideals, the most important of which are the ideals of liberty and equality. Unfortunately, liberty and equality often conflict: sometimes the only effective means to promote equality require some limitation of liberty, and sometimes the consequences of promoting liberty are detrimental to equality. In these cases, good government consists in the best compromise between the competing ideals, but different politicians and citizens will make that compromise differently. Liberals tend relatively to favour equality more and liberty less than conservatives do, and the core set of liberal positions I described is the result of striking the balance that way.

* Excerpted from R. Dworkin, *A Matter of Principle*, Clarendon Press, Oxford, 1986.

This account offers a theory about what liberalism is. Liberalism shares the same constitutive principles with many other political theories, including conservatism, but is distinguished from these by attaching different relative importance of different principles. The theory therefore leaves room, on the spectrum it describes, for the radical who cares even more for equality and less for liberty than the liberal, and therefore stands even farther away from the extreme conservative. The liberal becomes the man in the middle, which explains why liberalism is so often now considered wishy-washy, an untenable compromise between two more forthright positions.

No doubt this description of American politics could be made more sophisticated. It might make room for other independent constitutive ideals shared by liberalism and its opponents, like stability or security, so that the compromises involved in particular decisions are made out to be more complex. But if the nerve of the theory remains the competition between liberty and equality as constitutive ideals, then the theory cannot succeed. In the first place, it does not satisfy condition (2) in the catalog of conditions I set out. It seems to apply, at best, to only a limited number of the political controversies it tried to explain. It is designed for economic controversies, but is either irrelevant or misleading in the case of censorship and pornography, and indeed, in the criminal law generally.

But there is a much more important defect in this explanation. It assumes that liberty is measurable so that, if two political decisions each invades the liberty of a citizen, we can sensibly say that one decision takes more liberty away from him than the other. That assumption is necessary, because otherwise the postulate, that liberty is a constitutive ideal of both the liberal and conservative political structures, cannot be maintained. Even firm conservatives are content that their liberty to drive as they wish (for example, to drive uptown on Lexington Avenue) may be invaded for the sake, not of some important competing political ideal, but only for marginal gains in convenience or orderly traffic patterns. But since traffic regulation plainly involves some loss of liberty, the conservative cannot be said to value liberty as such unless he is able to show that, for some reason, less liberty is lost by traffic regulation than by restrictions on, for example, free speech, or the liberty to sell for prices others are willing to pay, or whatever other liberty he takes to be fundamental.

That is precisely what he cannot show, because we do not have a concept of liberty that is quantifiable in the way that demonstration

would require. He cannot say, for example, that traffic regulations interfere less with what most men and women want to do than would a law forbidding them to speak out in favour of Communism, or a law requiring them not to fix their prices as they think best. Most people care more about driving than speaking for Communism, and have no occasion to fix prices even if they want to. I do not mean that we can make no sense of the idea of fundamental liberties, like freedom of speech. But we cannot argue in their favour by showing that they protect more liberty, taken to be an even roughly measurable commodity, than does the right to drive as we wish; the fundamental liberties are important because we value something else that they protect. But if that is so, then we cannot explain the difference between liberal and conservative political positions by supposing that the latter protect the commodity of liberty, valued for its own sake, more effectively than the former.

It might now be said, however, that the other half of the liberty-equality explanation may be salvaged. Even if we cannot say that conservatives value liberty, as such, more than liberals, we can still say that they value equality less, and that the different political positions may be explained in that way. Conservatives tend to discount the importance of equality when set beside other goals, like general prosperity or even security; while liberals value equality relatively more, and radicals more still. Once again, it is apparent that this explanation is tailored to the economic controversies, and fits poorly with the noneconomic controversies. Once again, however, its defects are more general and more important. We must identify more clearly the sense in which equality could be a constitutive ideal for either liberals or conservatives. Once we do so, we shall see that it is misleading to say that the conservative values equality, in that sense, less than the liberal. We shall want to say, instead, that he has a different conception of what equality requires.

We must distinguish between two different principles that take equality to be a political ideal. The first requires that the government treat all those in its charge *as equals*, that is, as entitled to its equal concern and respect. That is not an empty requirement: most of us do not suppose that we must, as individuals, treat our neighbour's children with the same concern as our own, or treat everyone we meet with the same respect. It is nevertheless plausible to think that any government should treat all its citizens as equals in that way. The second principle requires that the government treat all those in

its charge *equally* in the distribution of some resource of opportunity, or at least work to secure the state of affairs in which they all are equal or more nearly equal in that respect. It is conceded by everyone that the government cannot make everyone equal in every respect, but people do disagree about how far government should try to secure equality in some particular resource, for example, in monetary wealth.

If we look only at the economic-political controversies, then we might well be justified in saying that liberals want more equality in the sense of the second principle than conservatives do. But it would be a mistake to conclude that they value equality in the sense of the first and more fundamental principle any more highly. I say that the first principle is more fundamental principle because I assume that, for both liberals and conservatives, the first is constitutive and the second derivative. Sometimes treating people equally is the only way to treat them as equals; but sometimes not. Suppose a limited amount of emergency relief is available for two equally populous areas injured by floods; treating the citizens of both areas as equals requires giving more aid to the more seriously devastated area rather than splitting the available funds equally. The conservative believes that in many other, less apparent, cases treating citizens equally amounts to not treating them as equals. He might concede, for example, that positive discrimination in university admissions will work to make the two races more nearly equal in wealth, but nevertheless maintain that such programmes do not treat black and white university applicants as equals. If he is utilitarian, he will have a similar, though much more general, argument against any redistribution of wealth that reduces economic efficiency. He will say that the only way to treat people as equals is to maximize the average welfare of all members of community, counting gains and losses to all in the same scales, and that a free market is the only, or best, instrument for achieving that goal. This is not (I think) a good argument, but if the conservative who makes it is sincere, he cannot be said to have discounted the importance of treating all citizens as equals.

So we must reject the simple idea that liberalism consists in a distinctive weighting between constitutive principles of equality and liberty. But our discussion of the idea of equality suggests a more fruitful line. I assume (as I said) that there is broad agreement within modern politics that the government must treat all its citizens with

equal concern and respect. I do not mean to deny the great power of prejudice in, for example, American politics. But few citizens, and even fewer politicians, would now admit to political convictions that contradict the abstract principle of equal concern and respect. Different people hold, however, as our discussion made plain, very different conceptions of what that abstract principle requires in particular cases.

What does it mean for the government to treat its citizens as equals? That is, I think, the same question as the question of what it means for the government to treat all its citizens as free, or as independent, or with equal dignity. In any case, it is a question that has been central to political theory at least since Kant.

It may be answered in two fundamentally different ways. The first supposes that government must be neutral on what might be called the question of the good life. The second supposes that government cannot be neutral on that question, because it cannot treat its citizens as equal human beings without a theory of what human beings ought to be. I must explain that distinction further. Each person follows a more-or-less articulate conception of what gives value to life. The scholar who values a life of contemplation has such a conception; so does the television-watching, beer-drinking citizen who is fond of saying 'This is the life', though he has thought less about the issue and is less able to describe or defend his conception.

The first theory of equality supposes that political decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value of life. Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful group. The second theory argues, on the contrary, that the content of equal treatment cannot be independent of some theory about the good for man or the good of life, because treating a person as an equal means treating him the way the good or truly wise person would wish to be treated. Good government consists in fostering or at least recognizing good lives; treatment as an equal consists in treating each person as if he were desirous of leading the life that is in fact good, at least so far as this is possible.... This distinction is very abstract, but it is also very important.

I now define a liberal as someone who holds the first, or liberal, theory of what equality requires. Suppose that a liberal is asked to

found a new state. He is required to dictate its constitution and fundamental institutions. He must propose a general theory of political distribution, that is, a theory of how whatever the community has to assign, by way of goods or resources or opportunities, should be assigned. He will arrive initially at something like this principle of rough equality: resources and opportunities should be distributed, so far as possible, equally, so that roughly the same share of whatever is available is devoted to satisfying the ambitions of each. Any other general aim of distribution will assume either that the fate of some people should be of greater concern than that of others, or that the ambitions or talents of some are more worthy, and should be supported more generously on that account.

Someone may object that this principle of rough equality is unfair because it ignores the fact that people have different tastes, and that some of these are more expensive to satisfy than others, so that, for example, the man who prefers champagne will need more funds if he is not to be frustrated than the man satisfied with beer. But the liberal may reply that tastes as to which people differ are, by and large, not afflictions, like diseases, but are rather cultivated, in accordance with each person's theory of what his life should be like. (The most effective neutrality, therefore, requires that the same share be devoted to each, so that the choice between expensive and less expensive tastes can be made by each person for himself, with no sense that his overall share will be enlarged by choosing a more expensive life, or that, whatever he chooses, his choice will subsidize those who have chosen more expensively.

But what does the principle of rough equality of distribution require in practice? If all resources were distributed directly by the government through grants of food, housing, and so forth; if every opportunity citizens have were provided directly by the government through the provisions of civil and criminal law; if every citizen had exactly the same talents; if every citizen started his life with no more than what any other citizen had at the start; and if every citizen had exactly the same theory of the good life and hence exactly the same scheme of preferences as every other citizen, including preferences between productive activity of different forms and leisure, then the principle of rough equality of treatment could be satisfied simply by equal distributions of everything to be distributed and by civil and criminal laws of universal application. Government would arrange for production that maximized the mix of goods, including jobs and leisure, that everyone favoured, distributing the product equally.

Of course, none of these conditions of similarity holds. But the moral relevance of different sorts of diversity are very different, as may be shown by the following exercise. Suppose all the conditions of similarity I mentioned did hold except the last: citizens have different theories of the good and hence different preferences. They therefore disagree about what product the raw materials and labour and savings of the community should be used to produce, and about which activities should be prohibited or regulated so as to make others possible or easier. The liberal, as lawgiver, now needs mechanisms to satisfy the principles of equal treatment in spite of these disagreements. He will decide that there are no better mechanisms available, as general political institutions, than the two main institutions of our own political economy: the economic market, for decisions about what goods shall be produced and how they shall be distributed, and representative democracy, for collective decisions about what conduct shall be prohibited or regulated so that other conduct might be made possible or convenient. Each of these familiar institutions may be expected to provide a more egalitarian divisions than any other general arrangement. The market, if it can be made to function efficiently, will determine for each product a price that reflects the cost in resources of material, labour, and capital that might have been applied to produce something different that someone else wants. That cost determines, for anyone who consumes that product, how much his account should be charged in computing the egalitarian division of social resources. It provides a measure of how much more his account should be charged for a house than a book, and for one book rather than another. The market will also provide, for the labourer, a measure of how much should be credited to his account for his choice of productive activity over leisure, and for one activity rather than another. It will tell us, though the price it puts on his labour, how much he should gain or lose by his decision to pursue one career rather than another. These measurements make a citizen's own distribution a function of the personal preferences of others as well as of his own, and it is the sum of these personal preferences that fixes the true cost to the community of meeting his own preferences for goods and activities. The egalitarian distribution, which requires that the cost of satisfying one person's preferences should as far as is possible be equal to the cost of satisfying another's, cannot be enforced unless those measurements are made.

We are familiar with the anti-egalitarian consequences of free enterprise in practice; it may therefore seem paradoxical that the liberal as lawgiver should choose a market economy for reasons of equality rather than efficiency. But, under the special condition that people differ only in preferences for goods and activities, the market is more egalitarian than any alternative of comparable generality. The most plausible alternative would be to allow decisions of production, investment, price, and wage to be made by elected officials in a socialist economy. But what principles should officials use in making those decisions? The liberal might tell them to mimic the decisions that a market would make if it was working efficiently under proper competition and full knowledge. This mimicry would be, in practice, much less efficient than an actual market would be. In any case, unless the liberal had reason to think it would be much more efficient, he would have good reason to reject it. Any minimally efficient mimicking of a hypothetical market would require invasions of privacy to determine what decisions individuals would make if forced actually to pay for their investment, consumption, and employment decisions at market rates, and this information gathering would be, in many other ways, much more expensive than an actual market. Inevitably, moreover, the assumptions officials make about how people would behave in a hypothetical market reflect the officials' own beliefs about how people should behave. So there would be, for the liberal, little to gain and much to lose in a socialist economy in which officials were asked to mimic a hypothetical market.

But any other instructions would be a direct violation of the liberal theory of what equality requires, because if a decision is made to produce and sell goods at a price below the price a market would fix, then those who prefer those goods are, *pro tanto*, receiving more than an equal share of the resources of the community at the expense of those who would prefer some other use of the resources. Suppose the limited demand for books, matched against the demand for competing uses for wood pulp, would fix the price of books at a point higher than the socialist managers of the economy will charge: those who want books are having less charged to their account than the egalitarian principle would require. It might be said that in a socialist economy books are simply valued more, because they are inherently more worthy uses of social resources, quite apart from the popular

demand for books. But the liberal theory of equality rules out that appeal to the inherent value of one theory of what is good in life.

In a society in which people differed only in preferences, then, a market would be favoured for its egalitarian consequences. Inequality of monetary wealth would be the consequence only of the fact that some preferences are more expensive than others, including the preference for leisure time rather than the most lucrative productive activity. But we must now return to the real world. In the actual society for which the liberal must construct political institutions, there are all the other differences. Talents are not distributed equally, so the decision of one person to work in a factory rather than a law firm, or not to work at all, will be governed in large part by his abilities rather than his preferences for work or between work and leisure. The institutions of wealth, which allow people to dispose of what they receive by gift, means that children of the successful will start with more wealth than the children of the unsuccessful. Some people have special needs, because they are handicapped; their handicap will not only disable them from the most productive and lucrative employment, but will incapacitate them from using the proceeds of whatever employment they find as efficiently, so that they will need more than those who are not handicapped to satisfy identical ambitions.

These inequalities will have great, often catastrophic, effects on the distribution that a market economy will provide. But, unlike differences in preferences, the differences these inequalities make are indefensible according to the liberal conception of equality. It is obviously obnoxious to the liberal conception, for example, that someone should have more of what the community as a whole has to distribute because he or his father had superior skill or luck. The liberal lawgiver therefore faces a difficult task. His conception of equality requires an economic system that produces certain inequalities (those that reflect the true differential costs of goods and opportunities) but not others (those that follow from differences in ability, inheritance, and so on). The market produces both the required and the forbidden inequalities, and there is no alternative system that can be relied upon to produce the former without the latter.

The liberal must be tempted, therefore, to a reform of the market through a scheme of redistribution that leaves its pricing system relatively intact but sharply limits, at least, the inequalities in welfare

that his initial principle prohibits. No solution will seem perfect. The liberal may find the best answer in a scheme of welfare rights financed through redistributive income and inheritance taxes of the conventional sort, which redistributes just to the Rawlsian point, that is, to the point at which the worst-off group would be harmed rather than benefited by further transfers. In that case, he will remain a reluctant capitalist, believing that a market economy so reformed is superior, from the standpoint of his conception of equality, to any practical socialist alternative. Or he may believe that the redistribution that is possible in a capitalist economy will be so inadequate, or will be purchased at the cost of such inefficiency, that it is better to proceed in a more radical way, by substituting socialist for market decisions over a large part of the economy, and then relying on the political process to insure that prices are set in a manner at least roughly consistent with his conception of equality. In that case he will be a reluctant socialist, who acknowledges the egalitarian defects of socialism but counts them as less severe than the practical alternatives. In either case he chooses a mixed economic system—either redistributive capitalism or limited socialism—not in order to compromise antagonistic ideals of efficiency and equality, but to achieve the best practical realization of the demands of equality itself.

Let us assume that in this manner the liberal either refines or partially retracts his original selection of a market economy. He must now consider the second of the two familiar institutions he first selected, which is representative democracy. Democracy is justified because it enforces the right of each persons to respect and concern as an individual; but in practice the decisions of democratic majority may often violate that right, according to the liberal theory of what the right requires. Suppose a legislature elected by a majority decides to make criminal some act (like speaking in favour of an unpopular political position, or participating in eccentric sexual practices), not because the act deprives others of opportunities they want, but because the majority disapproves of those views or that sexual morality. The political decision, in other words, reflects not just some accommodation of the *personal* preferences of everyone, in such a way as to make the opportunities of all as nearly equal as may be, but the domination of one set of *external* preferences, that is, preferences people have about what others shall do or have. The decision invades rather than enforces the right of citizens to be treated as equals....

Though liberalism is often discussed as a single political theory, there are in fact two basic forms of liberalism and the distinction between them is of great importance. Both argue against the legal enforcement of private morality—both argue against the Moral Majority's views of homosexuality and abortion, for example—and both argue for greater sexual, political, and economic equality. But they disagree about which of these two traditional liberal values is fundamental and which derivative. Liberalism based on neutrality takes as fundamental the idea that government must not take sides on moral issues, and it supports only such egalitarian measures as can be shown to be the result of that principle. Liberalism based on equality takes as fundamental that government treat its citizens as equals, and insists on moral neutrality only to the degree that equality requires it.

The difference between these two versions of liberalism is crucial because both the content and appeal of liberal theory depends on which of these two values is understood to be its proper ground. Liberalism based on neutrality finds its most natural defense in some form of moral skepticism, and this makes it vulnerable to the charge that liberalism is a negative theory for uncommitted people. Moreover it offers no effective argument against utilitarian and other contemporary justifications for economic inequality, and therefore provides no philosophical support for those who are appalled at the Reagan administration's economic programme. Liberalism based on equality suffers from neither of these defects. It rests on a positive commitment to an egalitarian morality and provides, in that morality, a firm contrast to the economics of privilege.

I shall set out what I believe are the main principles of liberalism based on equality. This form of liberalism insists that government must treat people as equals in the following sense. It must impose no sacrifice or constraint on any citizen in virtue of an argument that the citizen could not accept without abandoning his sense of his equal worth. This abstract principle requires liberals to oppose the moralism of the New Right, because no self-respecting person who believes that a particular way to live is most valuable for him can accept that this way of life is base or degrading. No self-respecting atheist can agree that a community in which religion is mandatory is for that reason finer, and no one who is homosexual that the eradication of homosexuality makes the community purer.

So liberalism as based on equality justifies the traditional liberal principle that government should not enforce private morality of this sort. But it has an economic as well as a social dimension. It insists on an economic system in which no citizen has less than an equal share of the community's resources just in order that others may have more of what he lacks. I do not mean that liberalism insists on what is often called 'equality of result', that is, that citizens must each have the same wealth at every moment of their lives. A government bent on the latter ideal must constantly redistribute wealth, eliminating whatever inequalities in wealth are produced by market transactions. But this would be to devote *unequal* resources to different lives. Suppose that two people have very different bank accounts, in the middle of their careers, because one decided not to work, or not to work at the most lucrative job he could have found, while the other single-mindedly worked for gain. Or because one was willing to assume especially demanding or responsible work, for example, which the other declined. Or because one took larger risks which might have been disastrous but which were in fact successful, while the other invested conservatively. The principle that people must be treated as equals provides no good reason for redistribution in these circumstances; on the contrary, it proves a good reason *against* it.

For treating people as equals requires that each be permitted to use, for the projects to which he devotes his life, no more than an equal share of the resources available for all, and we cannot compute how much any person has consumed on balance, without taking into account the resources he has contributed as well as those he has taken from the economy. The choices people make about work and leisure and investment have an impact on the resources of the community as a whole, and this impact must be reflected in the calculation equality demands. If one person chooses work that contributes less to other people's lives than different work he might have chosen, then, although this might well have been the right choice for him, given his personal goals, he has nevertheless added less to the resources available for others, and this must be taken into account in the egalitarian calculation. If one person chooses to invest in a productive enterprise rather than spend his funds at once, and if his investment is successful because it increases the stock of goods or services other people actually want, without coercing anyone, his choice has added more to social resources than the choice of

someone who did not invest, and this, too, must be reflected in any calculation of whether he has, on balance, taken more than his share.

This explains, I think, why liberals have in the past been drawn to the idea of a market as a method of allocating resources. An efficient market for investment, labour, and goods works as a kind of auction in which the cost to someone of what he consumes, by way of goods and leisure, and the value of what he adds, through his productive labour or decisions, is fixed by the amount his use of some resource costs others, or his contributions benefit them, in each case measured by their willingness to pay for it. Indeed, if the world were very different from what it is, a liberal could accept the results of an efficient market as *defining* equal shares of community resources. If people start with equal amounts of wealth, and have roughly equal levels of raw skill, then a market allocation would ensure that no one could properly complain that he had less than others, over his whole life. He could have had the same as they if he had made the decisions to consume, save, or work that they did.

But in the real world people do not start their lives on equal terms; some begin with marked advantages of family wealth or of formal and informal education. Others suffer because their race is despised. Luck plays a further and sometimes devastating part in deciding who gains or keeps jobs everyone wants. Quite apart from these plain inequities, people are not equal in raw skill or intelligence or other native capacities; on the contrary, they differ greatly, through no choice of their own, in the various capacities that the market tends to reward. So some people who are perfectly willing, even anxious, to make exactly the choices about work and consumption and savings that other people make end up with fewer resources, and no plausible theory of equality can accept this as fair. This is the defect of the ideal fraudulently called 'equality of opportunities'; fraudulent because in a market economy people do not have equal opportunity who are less able to produce what others want.

So a liberal cannot, after all, accept the market results as defining equal shares. His theory of economic justice must be complex, because he accepts two principles which are difficult to hold in the administration of a dynamic economy. The first requires that people have, at any point in their lives, different amounts of wealth insofar as the genuine choices they have made have been more or less expensive or beneficial to the community, measured by what other

people want for their lives. The market seems indispensable to this principle. The second requires that people not have different amounts of wealth just because they have different inherent capacities to produce what others want, or are differently favoured by chance. This means that market allocations must be corrected in order to bring some people closer to the share of resources they would have had but for these various differences of initial advantage, luck, and inherent capacity.

Obviously any practical programme claiming to respect both these principles will work imperfectly and will inevitably involve speculation, compromise, and arbitrary lines in the face of ignorance. For it is impossible to discover, even in principle, exactly which aspects of any person's economic position flow from his choices and which from advantages or disadvantages that were not matters of choice; and even if we could make this determination for particular people, one by one, it would be impossible to develop a tax system for the nation as a whole that would leave the first in place and repair only the second. There is therefore no such thing as the perfectly just programme of redistribution. We must be content to choose whatever programme we believe bring us closer to the complex and unattainable ideal of equality, all things considered, than the available alternatives, and be ready constantly to re-examine that conclusion when new evidence or new programmes are proposed.

Nevertheless, in spite of the complexity of that ideal, it may sometimes be apparent that a society falls far short of any plausible interpretation of its requirements. It is, I think, apparent that the United States falls far short now. A substantial minority of Americans are chronically unemployed or earn wages below any realistic 'poverty line' or are handicapped in various ways or burdened with special needs, and most of these people would do the work necessary to earn a decent living if they had the opportunity and capacity. Equality of resources would require more rather than less redistribution than we now offer.

This does not mean, of course, that we should continue past liberal programmes, however inefficient these have proved to be, or even that we should insist on 'targeted' programmes of the sort some liberals have favoured—that is, programmes that aim to provide a particular opportunity or resource, like education or medicine, to those who need it. Perhaps a more general form of transfer, like a

negative income tax, would prove on balance more efficient and fairer, in spite of the difficulties in such schemes. And whatever devices are chosen for bringing distribution closer to equality of resources, some aid undoubtedly goes to those who have avoided rather than sought jobs. This is to be regretted, because it offends one of the two principles that together make up equality of resources. But we come closer to that ideal by tolerating this inequality than by denying aid to the far greater number who would work if they could. If equality of resources were our only goal, therefore, we could hardly justify the present retreat from redistributive welfare programmes....

IV

Social Justice through Positive Discrimination

22

Discrimination and Morally Relevant Characteristics*

James W. Nickel

Editor's Note: *The effects of discrimination were visible long after equality before the law had been achieved in democracies. This was conspicuous at various levels: stratification on account of vast disparities in wealth and position continued; and, more importantly, only a few members of the discriminated communities made it to the economically advantageous and socially prestigious jobs. Studies revealed that the opening of public institutions to all persons, irrespective of their religion, race and gender, had not provided equality of opportunity. Equality of treatment ensured that no one is discriminated against or excluded from the public and political domain on account of their social and cultural attributes. However it did not take into account the disadvantages that some sections of the population encounter on account of previous discrimination. To take stock of the inequalities between people at the start of the race, several democracies adopted policies of affirmative action and positive treatment.*

The attempt to increase representation of marginalized groups in professional life by giving special consideration to them in educational institutions and public jobs raise several questions, the most important being the appropriateness of using race and gender as grounds for differential treatment. The critics of positive discrimination maintain that the use of community identity may legitimize racism and forms of social discrimination. Could one distinguish between these two forms of discrimination?

James W. Nickel and Paul W. Taylor address this issue. While both of them defend the programme involving affirmative action, they give different answers to the above question. Nickel maintains that race and gender are not the relevant categories; the subjects of affirmative action are 'victims' of discrimination. Taylor, on the other hand, asserts that race and gender become relevant categories according to the principles of compensatory justice. Since these categories were the basis of the original discriminatory

* Excerpted from *Analysis*, 32.4, March 1972.

social practices, their relevance in the present programme could not be doubted.

Suppose that a characteristic which should be morally irrelevant (e.g. race, creed or sex) has been treated as if it were morally relevant over a period of years, and that injustices have resulted from this. When such a mistake has been recognized and condemned, when the morally irrelevant characteristic has been seen to be irrelevant, can this characteristic *then* properly be used as a relevant consideration in the distribution of reparations to those who have suffered injustices? If we answer this question in the affirmative, we will have the strange consequence that a morally irrelevant characteristic can become morally relevant if its use results in injustices.

The context in which this difficulty is likely to arise is one in which a group has been discriminated against on the basis of morally irrelevant properties, but in which this discrimination has been recognized and at least partly come to an end; and the question at hand concerns how the members of this group should now be treated. Should they now be treated like everyone else, ignoring their history, or should they be given special advantages because of past discrimination and injustices? There are a variety of considerations which are pertinent in answering this question, and I will deal with only one of these, the 'reverse discrimination argument'. This argument claims that to extend special considerations to a formerly oppressed group will be to persist in the mistake of treating a morally irrelevant characteristic as if it were relevant. For if we take a morally irrelevant characteristic (namely the characteristic which was the basis for the original discrimination) and use it as the basis for granting special considerations or reparations, we will be treating the morally irrelevant as if it were relevant and still engaging in discrimination, albeit reverse discrimination. And hence, it is argued, the only proper stance toward groups who have suffered discrimination is one of strict impartiality.

To state the argument in a slightly different way, one might say that if a group was discriminated against on the basis of a morally irrelevant characteristic of theirs, then to award extra benefits now to the members of this group because they have this characteristic is simply to continue to treat a morally irrelevant characteristic as

if it were relevant. Instead of the original discrimination *against* these people, we now have discrimination *for* them, but in either case we have discrimination since it treats the irrelevant as relevant. Hence, to avoid discrimination we must now completely ignore this characteristic and extend no special considerations whatsoever.

The objection which I want to make to this argument pertains to its assumption that the characteristic which was the basis for the original discrimination is the same as the one which is used as the basis for extending extra considerations now. I want to suggest that this is only apparently so. For if compensation in the form of extra opportunities is extended to a black man on the basis of past discrimination[1] against blacks, the basis for this compensation is not that he is a black man, but that he was previously subject to unfair treatment because he was black. The former characteristic was and is morally irrelevant, but the latter characteristic is very relevant if it is assumed that it is desirable or obligatory to make compensation for past injustices. Hence, to extend special considerations to those who have suffered from discrimination need not involve continuing to treat a morally irrelevant characteristic as if it were relevant. In such a case the characteristic which was the basis for the original discrimination (e.g. being a black person) will be different from the characteristic which is the basis for the distribution of special considerations (e.g. being a person who was discriminated against because he was black).

My conclusion is that this version of the 'reverse discrimination argument' has a false premise, since it assumes that the characteristic which was the basis for the original discrimination is the same as that which is the basis for the granting of special considerations. And since the argument has a false premise, it does not succeed in showing that to avoid reverse discrimination we must extend no special considerations whatsoever.

NOTES

1. I do not mean to imply that we are in this situation, where discrimination against blacks is a thing of the past. We are not.

12 Regionalism and Secessionism

Sanjib Baruah

Not all states are hardwired to respond to secessionist demands the same way. Were the majority of Quebecois to vote to secede from Canada, the split would probably occur peacefully. A break-up would be bitter for sure, but it is hard to imagine Canadian tanks rumbling through the streets of Montreal trying to prevent this outcome. China, on the other hand, is likely to react differently: regions aspiring to nationhood there routinely face the full might of the Chinese state. Indeed, China does not rule out the use of force even in the case of Taiwan—a separate country, though not universally recognized. From its perspective, the wishes of the people of Taiwan are quite immaterial (Bert 2004).

Secession—that is, when regions seek separate nationhood—has been aptly called a 'state-shattering form of self-determination' (Wohlforth and Felgenhauer 2002: 251). In order to explain the difference in attitudes among states towards secession, Wayne Bert points to a distinction made by Richard Rosecrance between traditional states 'anchored in the 19th century and focused on territory, sovereignty, material production, nationalist rhetoric and national defence', and virtual states that are 'based on mobile capital, labour and information, or a "negotiating entity" that depends as much on economic access abroad as on economic control at home'. However, while Canada may not be a 'traditional state', it can hardly be called a 'virtual state'. Bert brings in Kenneth Waltz's notion of the 'perilous lives' of weak states to explain Chinese attitudes (Bert 2004: 122–3, 129). However, the 'weakness' reflected in Chinese attitudes towards secession is very particular. A classification that might deal better with the difference is perhaps Robert Cooper's categories: 'postmodern' states that perceive no security threats in the traditional sense, traditional 'modern' states that 'behave as states always have, following Machiavellian principles and *raison d'état*', and the failed states in the 'pre-modern' zone (Cooper 2002: 12–15). None of these taxonomies are satisfactory. Yet the need for such distinctions suggests that a convincing explanation must take the national identities of states seriously, and that 'they cannot be stipulated deductively. They must be investigated empirically in concrete historical settings'

(Katzenstein 1996: 24). Chinese insecurity vis-à-vis claims to nationhood by regions can be understood only through a historical understanding of Chinese state identity. With the century of national humiliation being the 'master narrative of modern Chinese history', the notion of reclaiming and reunifying lost 'sacred territory' as a means to 'cleansing national humiliation' (Callahan 2004: 205, 212) is central to the identity of the Chinese state.

Indian attitudes are closer to the Chinese, and not to the Canadians. In the history of postcolonial India, a number of regional or ethnonational movements have turned into armed independentist[1] movements. Confrontations between security forces and militant regionalists have been deadly. Civilians have paid a heavy price, accounting for serious blots in India's human rights record. Yet, India has also been relatively successful in taming independentist aspirations. The best-known success story is the Dravidian movement of the 1960s. The contrast with Sri Lanka, as Linz *et al.* (2007) point out, is striking. If Tamil separatism in India became a non-issue by the 1970s, in Sri Lanka, from a non-issue it became one of the world's most violent and intractable conflicts. India's success is explained this way:

> Virtually all the strategic decisions facing multinational India, the rejection of a unitary state, the acceptance of multiple but complementary political identities, the upgrading of regional languages and the maintenance of English as a link language, the maintenance of polity-wide careers, the constitutional espousal of 'equal distance and respect' for all religions, and the creation of mutually beneficial alliances between polity-wide and regional parties, India, unlike Sri Lanka, made choices and alliances, especially in South India, that...increased the chances of peaceful democracy in a potentially conflictual setting. (Linz *et al.* 2007: 93–4)

Regional—or self-determination—movements in India are said to have followed an inverse 'U' curve. Heightened mobilization of group identities are followed by negotiations, and eventually such movements decline 'as exhaustion sets in, some leaders are repressed, others are co-opted, and a modicum of genuine power sharing and mutual accommodation between the movement and the central state authorities is reached'. Whether particular regional movements have gone through this inverse 'U' curve has been a function of the level of institutionalization of the authority of the state, and whether leaders have been secure enough to seek accommodation and compromise. The different trajectories of the Tamil, Sikh, and Kashmiri movements—the first being accommodated, and the latter two turning into violent confrontations between the state and militant regionalists—is the result of changes in the level of institutionalization of the Indian state, and the sense of security of leaders at the helm (Kohli 1997: 326–9).

Whether a government is democratic or authoritarian does not determine attitudes towards secession. Democratic India and authoritarian China both reject plebiscite as an instrument to decide the claims of regions to nationhood. Their positions vis-à-vis such claims are based on legal and historical arguments, and not on the wishes of the people living in the region. Thus, if China were to take a turn towards democracy, it is unlikely that attitudes towards its restive regions would change. If anything, politicians uncertain of popular support might be more inclined to pursue an aggressively nationalistic agenda, and view all regional claims as threats to national unity. But in the case of Canada, since its political discourse acknowledges 'the remedial theory of secession', the polity might find it easier to accept the Independence of Quebec (Bert 2004: 118–19).[2]

International factors are important in determining the success or failure of a region's claims to nationhood. Successful secessions do not occur only because regional movements, with aspirations for independence, gain strength and emerge victorious. Changes in the international environment play a decisive role. In South Asia, this became apparent in 1971 when India intervened in Bangladesh's liberation struggle and ensured its success. Changes in the international institutional environment have in recent years made available attractive alternatives to state-shattering forms of self-determination. The political space for regions in the European Union and paradiplomacy—international activities on the part of regions and stateless nations—has taken the wind out of some long-standing demands for nationhood. There are a number of regional 'embassies' in Brussels

engaged in lobbying the European Commission and networking with each other. For regions such as the Basque Country, Catalonia, Scotland, or the Tyrol, this form of international recognition compensates for the relatively marginal status within the nation-states in which they are located. Even in the case of China, Hong Kong's two-systems-one-country model hardly fits the standard conception of indivisible sovereignty, and its potential success might have implications for Tibet and Taiwan as well (Pei 2002: 332). A solution to the Kashmir crisis might also ultimately lie in thinking outside the box of absolute and indivisible national sovereignty.

The rest of this chapter will have four sections. I will first present a constructivist view of regions and argue that like nations, regions are contested constructs. Second, I will look at how the postcolonial Indian state has tried to stabilize regional identities through three waves of reorganizing states. Third, I will look at the implications of the growing influence of regional parties in India's national politics. The fourth section has a few reflections on the tensions between the nation and the region in South Asia.

REGIONS AND NATIONS: CONTESTED CONSTRUCTS

Neither regions nor nations are self-evident and pre-political realities on the ground. Regionalism and aspirations of regions to independent statehood can be located in the process that some geographers describe as the territorialization of political life; it never becomes 'fully accomplished once and for all, but remains a precarious and deeply contentious outcome of historically specific state and non-state projects' (Jones and MacLeod 2004: 447). Regions are 'relatively permeable, socially constructed, politically mediated and actively performed "institutional accomplishments"' (Philo and Parr, cited in Jones and MacLeod 2004: 434). Defined in this manner, one would hardly expect a sharp dividing line between regions and nations—they are both territorializing projects, and sometimes there may exist tension between the two.

'The retrospectively constructed official nationalisms of India and Pakistan,' writes historian Ayesha Jalal, 'have sought to ignore, if not altogether delegitimate, the multiple alternative strands of popular nationalism and communitarianism that lost out in the final battle for state power' (Jalal 2001: 741). Indeed, the foundational myths of India and Pakistan deliberately obscure the fact that these two national projects developed in explicit opposition to alternative regional imaginings. The fate of *Punjabiyat* or Punjabi regional identity under the pressures of the politics of the Partition of 1947 illustrates the tension. Western Punjab today is the core of Pakistan, providing 'a sharp counterpoint to any conception of Punjabi identity founded on regionalism' (Singh 2006: 17). Muslims constituted more than half the total population of pre-Partition Punjab, but today they rarely represent 'themselves through the idiom of *Punjabiyat*'. Instead, they identify themselves as Pakistanis and as speakers of Urdu—Pakistan's national language. Punjabi Hindus too deserted the cause of Punjabiyat (Jodhka 2006: 13). They mostly identify as Hindi speakers, and are on the forefront of Indian nationalism—both in its secular and Hindu variants. Thus in north India, religion, not language, has been the primary line of cleavage, though political elites 'seeking to advance the interests of their religious communities' have made language into a 'symbolic barrier', even when it was not really a barrier to communication (Brass 1974: 22, 27). So in a diminished post-Partition Punjab, it was left to the Sikhs to carry on the mantle of Punjabiyat. Indian attitudes towards Punjabi regionalism cannot be separated from the historically constituted identity of the postcolonial Indian state. This is even more the case with Indian attitudes towards Kashmiri regionalism.

Students of regionalism in postcolonial India cannot entirely exclude from their consideration the two Partitions in the subcontinent: the contested process of imagining and constructing two, and subsequently three, nation-states. The resistance to cross-border regions, as well as the erasure of the historical memories of some of these regions from the public discourse of the post-Partition states, and the facts of the continuous movement of people, goods, and ideas through the porous post-Partition borders, are part of the politics of regionalism in

the post-Partition subcontinent. So are the regional conflicts within each post-Partition nation-state, as well as the efforts to create new intra-state regions, the phenomenon of regional parties, and tensions between the region and the nation.

The uneasy relationship between region and nation is nicely illustrated through the political history of India's largest state, Uttar Pradesh (UP). In the years immediately following the Partition and Independence, when there was considerable fear of further fragmentation, UP became a counterpoint to the idea of linguistic states, and was constructed as postcolonial India's 'heartland'. Apparently Jawaharlal Nehru believed that there was less 'provincialism' in UP than in any other part of the country. There was an effort to use the Hindi-speaking states of northern India as 'a buffer to contain the linguistic principle as the basis for statehood' (Kudaisya 2006: 22, 381). Ironically, representing itself as India's heartland has not been rewarding for UP. Due to this self-image, says Gyanesh Kudaisya, UP 'has failed to develop a regional identity of its own; its public life has been marked by a lack of cohesiveness; and the state's successive political leadership has failed to develop a regional agenda'. Kudaisya believes that it is time for UP to rethink its status as India's heartland. He favours breaking up UP into regions. The separation of Uttaranchal from UP in 2000 is, for him, a step in the right direction (ibid.: 411–14).

In discussions of Indian politics, the terms 'region' and 'regional' are sometimes used quite loosely. Thus, a regional party can be any political party with a 'regional' political presence, that is, a party that contests and wins elections in only one or two states. However, not all such parties have regional agendas. Parties like the Asom Gana Parishad (AGP) of Assam, the Akali Dal of Punjab, the National Conference of Jammu and Kashmir, the Telegu Desam of Andhra Pradesh, and the Dravida Munnetra Kazagham (DMK) and its various offshoots in Tamil Nadu have regional agendas, or at least they did during some phases of their political careers. But the small Marxist parties of West Bengal do not. The Shiv Sena in Maharashtra may have started from a regional platform. However, today, while its electoral profile may be regional, its ideology is indistinguishable from a pan-Indian party of the Hindu right. But while it is important to find a more precise way of defining terms like 'region' and 'regional', this essay takes a constructivist view. Regions cannot be defined objectively.

It may be useful to distinguish *regional spaces* and *spaces of regionalism* (Jones and MacLeod 2004: 435). A good example of a regional space may be the category northeast India, which points to little more than directional location. Following Peter Sahlins' insight, it can be said that this official identification has not 'stuck' as vernacular practice (Sahlins 2003). Therefore northeast India is a regional space, but not a space of regionalism. When state identifications do not 'stick', insurgent spaces of regionalism can thrive in civil society (Jones and MacLeod 2004: 441–2). This has been made abundantly clear in northeast India. For the state is not the only actor in the territorialization of political life. Regional projects often originate in society and in order to 'stick', state identifications have to resonate in society. But states have an interest in stabilizing territorial identifications, and such a territorialization of political life can be the foundation for a federal polity capable of generating legitimate policy outcomes. On the other hand, state attempts at stabilizing territorial identification are always open to challenges (Sahlins 2003).

Regions are political projects and contested constructions, even when they appear to be pre-political and almost 'natural'. For instance, as a 'territory inhabited by the Telegu-speaking people Andhra has a history stretching back more than a millennium', although Andhra Pradesh, as a state of the Indian Union, goes back only to 1953, with significant new areas added in 1956 (Talbot 2001: 4). As far back as the early centuries of the second millennium, 'regional societies' in the Deccan had 'matured and became more self-confident', and regional languages such as Telegu began performing roles that were earlier reserved for Sanskrit. Thus, 'well before the modern age' language was 'important in Indian conception of culture, region, and community' (ibid.: 7–9). Many other regions in India—not always language-based—have similar long histories. Manipuris, for instance, claim that theirs is one of the oldest instances of state formation in Asia. The *Cheitharol Kumbaba*, or the royal chronicle, lists a

continuous lineage of kings that supposedly goes as far back as the year AD 33.

However, antiquity does not explain why some regional identities are more resilient than others. Benedict Anderson's lament about nations celebrating 'their hoariness but not their astonishing youth' (Anderson 1986: 659) applies to regions as well. The medieval Telegu linguistic region bore 'little resemblance to the bounded enumerable community of modern Telugu speakers'. Linguistic ties of the medieval era did not have 'the focus and intensity of modern linguistic nationalisms' (Talbot 2001: 9). The connection between language and regional or national identity is quite contingent. In the Tamil case, it was the particular discursive practices around the theme of love and devotion for the Tamil language that enabled Tamil speakers to imagine themselves as 'a singular community and a potential nation unto themselves'. Thus, when the intensity of 'language devotion' led a young 'devotee' to burn himself alive in 1964, says Sumathi Ramaswamy, it was a case of ideology transforming 'its speakers, who ought to have been masters of the language, into its subjects, a critical reversal of the patrimonial imagination it inherited from European modernity' (Ramaswamy 1997: 243–4, 256).

The historical factors that animate particular regionalisms are contingent, though not the conditions that made regional and national imaginings the global norm (Anderson 1983; Gellner 1983). Once the history of 'language devotion' had engendered the Tamil regional narrative with powerful notions of community and homeland, it became possible for Tamil regionalism to take an independentist turn in the 1950s and early 1960s. But subsequently the demand for a separate Dravida Nadu became more moderate, and eventually the theme of independence disappeared altogether. Tamil speakers acquired a state of their own and regional political parties—offshoots of the Dravidian movement—have continuously formed the state government in Tamil Nadu since 1967. Hence the frequent reference to the Tamil case, as evidence of India's ability to contain regionalism (see Linz *et al.* 2007: 50–106; Kohli 1997).

The territorialization of political life involves state as well as non-state actors, and thus even the most powerful of regional narratives can be contested. This would not come as a surprise to most contemporary students of identity, who subscribe to the constructivist position that identities are 'ultimately fluid, chosen, instrumentalizable, responsive to change in relevant incentive structures, and susceptible to manipulation by cultural or political entrepreneurs' (Lustick *et al.* 2004: 213). Nor would changes in the saliency of particular regional identities surprise those who take a more objectivist view of ethno-cultural landscapes. Rather than hierarchical or parallel, the predominant pattern of ethnic groups' relations in India has been described as one of segmentation. Within 'language, tribal, or religious groups', there are supposedly 'parallel ethnic structures' with 'internal hierarchical ethnic group relations' and 'a complete societal division of labour'. There are thus 'ethnic groups within ethnic groups' in India (Brass 1974: 11–12).[3]

As I will elaborate in the next section, the Indian Constitution makes breaking up and creating new states relatively easy. While this might have allowed the accommodation of regionalism in some cases, it also provides incentives for political projects built around alternative regional narratives. It makes exit options available to regions within regions. Thus, even in ancient Telegu country, the demand for a separate Telengana has been recently revived. Other examples of contested regional narratives include that of the Bodos in Assam. While the Bodos appear to have settled for a compromise—in the form of the Bodoland Territorial Autonomous Council—the Bodo narrative fundamentally challenges the ethnic Assamese construction of Assam (see Baruah 1999: 173–98). Meiteis and the Nagas have diametrically opposite views about Manipur's past, present, and future. Contested regional narratives are a persistent theme in the political conflicts of northeast India today.

Contested constructions of regions also produce irredentist claims. Thus, as recently as 2004, the Government of Maharashtra approached the Supreme Court of India about transferring the Marathi-speaking Belgaum area from Karnataka to Maharashtra. The dispute goes back to 1956, when boundaries drawn by the States' Reorganization Commission had left some predominantly Marathi-speaking areas in Karnataka, and some predominantly Kannada-speaking areas in

what subsequently became Maharashtra. The Naga demand for Nagalim—greater Nagaland—can also be seen as the irredentist face of the contested nature of regions, though it also marks the rejection by Nagas of the unilateral determination of the boundaries of Nagaland, without taking into account the wishes of the people.

STABILIZING REGIONS AS A STATE PROJECT

During the early years after Independence—following the Partition and the merger of what were 'native states' during British colonial rule—India's provinces and their boundaries seemed incoherent. There was an unmistakably provisional quality to those borders. The provinces were classified into Parts A, B, and C states: colonial era provinces, former 'native states' or groups of 'native states', and a third mixed category of smaller territories. It was generally expected that these units would be reorganized. During India's anti-colonial resistance, the Indian National Congress had committed itself to a postcolonial political order of linguistically defined regions. As far back as 1922, it began organizing the branches of the movement not along the colonial structure of presidencies and provinces, but along language lines. In 1928 a committee headed by Motilal Nehru outlined a vision of a future polity organized into linguistic states. But after Independence, the Congress rejected linguistic reorganization despite its previous commitment to it. Under the leadership of Jawaharlal Nehru, the post-Independence Congress party was initially unwilling 'to bring these identities into the decision-making process at the center and politicise them' (Adeney 2002: 25) fearing that it might threaten the unity of the fledgling new nation. However, the Constituent Assembly had left the task of reorganizing state boundaries to future Parliaments, giving it unlimited powers to take on the task. Eventually, pushed by powerful political pressures from below, Nehru reversed his position on linguistic reorganization because of electoral considerations.

Alfred Stepan's *Arguing Comparative Politics*, puts Indian federalism in a very different context from the older literature on comparative federalism. Distinguishing between 'holding together' and 'coming together' federations, he argues that US-style 'demos constraining' federalism is unsuitable for a 'robustly politically multinational' country like India. Requirements of supermajorities—the support of two-thirds of state legislatures for constitutional amendments—make the United States an extreme outlier on the demos-constraining end of federations, and far from the norm (Stepan 2001: 315–61). Stepan showers praise on Article 3 of the Indian Constitution, which allows Parliament to create new states and redraw state boundaries with a simple majority, barely consulting the relevant state. This is unthinkable in a 'coming together' federation, which must be 'demos constraining' in order to protect state rights. Stepan has a highly positive assessment of the way India's political classes have used the Constitution's demos-enabling feature. He marvels at the 'relatively consensual manner' in which 'most of the boundaries of the states in India were redrawn between 1956 and 1966, and later a process of creating new tribal states in the North-east was begun'. The demos-enabling features of Indian federalism, Stepan believes, explain 'the survival of India as the world's largest multi-cultural, multi-national democracy'. This feature has 'allowed the majority at the center, to respond to minority demands from states for greater linguistic and cultural autonomy'. Had India been a unitary state, 'neither the majority, nor the minorities, would have had this constitutional flexibility available to them' (ibid.: 354).

By the 1960s, it appears that a few discernible rules, albeit not formally articulated, had emerged in the Indian Central government's approach to regional demands. Such demands had to first, stop short of secession; second, groups making demands had to be linguistically or culturally defined—and not defined by religion; third, be backed by popular support; and fourth, be acceptable to linguistic minorities when it is a matter of breaking up a multilingual state (Brass 1974: 18–19). However, there were exceptions; and in any case these rules were not applied to the two later waves of reorganization. The special regional dispensation of small and financially dependent states in northeast India, for instance, was the product of a national

security-driven policy process in a border region inhabited by many minority groups (Baruah 1999: 91–115). The considerations were also very different when the states of Jharkhand, Chhattisgarh, and Uttaranchal were created in 2000. While the demands were old, the interests of political parties in the highly competitive political environment of the period pushed the process. According to one scholar, the fact that no transborder regional community was invoked and that there were no perceived national security threats facilitated the process. 'Ethnic communities in the three new states,' writes Maya Chadda, 'were unconnected with foreign enemies or cross border nationalities, unlike in Punjab, Kashmir, and Assam.' To her, this latest wave of states reorganization illustrates the value of the flexibility that the Constitution gives to the Parliament. The Constitution, she points out approvingly, 'said little about the kind of federal units the Indian Union was to have, or the basis on which they would be created, i.e., geography, demography, administrative convenience, language, or culture. That decision was left entirely to the wisdom of Parliament' (Chadda 2002: 46–7).

The argument for a holding together federation being demos enabling is based on the idea of reconciling diversity with policymaking efficacy (Stepan 2001: 338–9). However, efficacy can sometimes be in conflict with legitimacy. The idea of divided sovereignty and citizens with dual allegiance—to the national and regional political communities—is central to the federal vision of a legitimate political order. Federalism, as a political principle understood as an aggregate of politically organized territories (Piccone and Ulman 1994: 5) is arguably the opposite of the nation-state. In that sense federation building, and not nation building, is the appropriate project for India (Baruah 1999: 200–13). The relative success of the first wave of states reorganization in India was because it was built on the principles of the 'security for territorially concentrated linguistic groups' and dual, but complementary, allegiances. However, later reorganizations, including 'the belated recognition of a Punjabi state', were not based on the same principles (Adeney 2003: 57–8). A Punjabi Punjab was not acknowledged till 1966, when Haryana was separated from Punjab, because the demand came from a religiously defined—and not a language-based—group. Arguably, the decisions and non-decisions of India's central political elites, made possible by the demos-enabling features of Indian federalism, account also for some of most serious regional challenges that India has faced. The persistent political turmoil in northeast India provides another example. The national security-driven process of making and breaking states has reinforced the idea of de facto ethnic homelands, in the imaginations of both local activists and tacticians of conflict management, perpetuating a politics of violent displacement and ethnic cleansing (Baruah 2005: 183–208)

REGIONALIZATION OF NATIONAL POLITICS?

The so-called regionalization of Indian politics—which refers to the increasing role of regional parties in national politics—has often confused outside observers. The phenomenon is often miscast 'as a force tending towards the disintegration of the Indian Union'. But in India, regional parties are not even all regionalist 'in the sense of representing demands for cultural autonomy or grievances against the central state'. Many of them are no more than 'merely personality-driven offshoots of parties that were once nominally national in scope' (Jenkins 2000: 62–3).

Yet, whatever their agendas, regional parties increasingly share the same political space as polity-wide parties. They are electoral allies of polity-wide parties, and not only do they form governments at the state level, they also participate in coalition governments at the Centre. India has come a long way since the period immediately following Independence, when regionalism was viewed as a challenge to national unity. But while politics in India may have made its peace with regionalism, its implications in terms of public policy and the health of the polity are far from clear.

While many of India's current crop of regionalist politicians are not secessionist, they do not have a 'coherent view of Indian identity'. They view the economy as 'a cluster of regional units, each engaged in zero-sum relations with one another, and with the

Centre'. In matters of culture they are 'parochial—devoted to tending their own vernacular gardens' (Khilnani 2004: 26). This is hardly a satisfactory situation. Under these conditions, it is easy to see why in Indian politics the label 'regional' says so little about policy preferences. Few would argue that regional issues have moved up on the national policy agenda because of the growing influence of regional parties. Regional parties have formed state governments, while participating in coalition governments at the Centre during India's economic reforms. Yet they have rarely questioned the economic agenda of the Central government, even though many states may have faced a fiscal crisis as a result of those policies. Instead, regional parties prefer getting financial deals for their states, in exchange for political support to the government in New Delhi (Sridhar 2004). Indeed, the most significant impact of the Congress party's fall from dominance in 1989 has been not on economic policy, but on the politics of patronage. In the period of Congress dominance, voting for a regional party may have jeopardized Central government allocations for roads or schools. But voters no longer have to make this trade-off. Even by voting for 'parties espousing an aggressive regional, ethnic, or linguistic agenda' they stand 'a reasonable chance of that party gaining access to discretionary expenditures' (Rodden and Wilkinson 2004).

The logic of a 'patronage-democracy' (Chandra 2004: 258) explains this paradox. Basic public goods, such as the security of life and property, access to education and public health, and a minimum standard of living, have become market goods rather than entitlements. Elections are 'auctions for the sale of government services'. Individual politicians are more important in patronage politics than the political party or party ideology, because groups of supporters are beholden to them. A collective allocation of resources through policy might be credited to a party or its leadership, but credit for goods delivered through patronage goes to individual politicians. They use patronage to develop their power base, which in turn gives them leverage in negotiations with political parties for positions within the party and the government (ibid.). This also explains the phenomenon of dynastic politics—a son, a daughter, or a spouse following a parent or a spouse as a Member of Parliament or a state legislature.

The dynamics of a patronage democracy are apparent during election campaigns. The allocation of tickets by political parties—especially by resourceful polity-wide parties—is the most intense part of an election campaign. Parties dispense resources to fight elections, and being a candidate of a winning party means access to governmental patronage resources, and even direct control of such resources through ministerial positions. Individual politicians may generally prefer contesting as candidates of polity-wide parties because they control more resources compared to regional parties, given their countrywide fund-raising abilities. Considerations of electability, and ties to personalistic networks that connect the party 'grassroots' to the Centre shape the selection of party candidates.

Parties realize that in order to win, they have to be tuned in to local realities, and when possible, even understand the nuances of regional issues. Under these conditions, a polity-wide party may sometimes decide not to go it alone, and instead form an electoral alliance with a regional party. In the 1990s, politicians in Assam in their political rhetoric sought to blur the distinction between polity-wide and regional parties. The AGP tried to present itself as 'a regional party with a national outlook'. But the local Congress party leader responded by saying that while the Congress may be a national party, it has 'a regional outlook' (Prabhakara 2004). While the AGP, with its roots in a social movement, was trying to improve its access to institutional channels and widen its appeal as an electoral party, the Congress was not willing to be an inert player either. It understood the challenge presented by the electoral appeal of its regional competitor, and tried to adjust its political rhetoric accordingly. Indeed, when regionalism is successfully mobilized, the logic of India's patronage democracy can even turn polity-wide and regional parties into natural allies, with little consequence for public policy.

REGION AND THE NATION

Today the Indian polity faces no clear and imminent danger from either the garden-variety regionalism

that is now part of mainstream Indian politics, or from claims of regions to nationhood. But trust and understanding between citizens is a necessary condition for making policies using universalistic criteria. Trust, in this context, is the willingness to wait: certain regions or groups can be helped more than others because of the 'expectation that other policies another time will have the effect of benefiting other groups' (Barry 1999: 263). Given the agendas of India's mainstream regional parties, one can legitimately ask: with friends like these, who needs enemies? Indian attitudes towards its restive regions are those of a traditional 'modern' state outlined at the beginning of this essay. They are somewhat dissonant with India's current image as a mature democracy, a dynamic economy, and an emerging major power. A hyper-nationalist militarist reaction to regions claiming nationhood is especially incongruous when the claim involves an implicit critique of the modular nation form.

A scholar of the Punjab conflict has proposed an alternative reading of South Asian history, focusing on constitutional designs that could have averted the Partition of 1947 (Singh 2000). Such alternatives, he maintains, might have been 'more attuned with the provincial realities of sub-continental India' than what the postcolonial Indian state could offer in terms of regional autonomy (Singh 2003: 52). In a more recent essay, he acknowledges that undivided Punjab may now be a hopelessly romantic idea. Watching the changing-of-guards ceremony at the Wagah border, which divides the Indian from the Pakistani side of Punjab, left him with 'unsettling thoughts' about the transnational academic project of Punjab Studies, with which he is associated. With 'the symbolism, the aggression, and the choreographed Punjabi machismo', the daily ritual on the Wagah border, he writes, had all the hallmarks of the Balinese cockfight—the subject of a famous essay by Clifford Geertz (1973). Even considering the ritual nature of this display of a 'highly charged sense of nationhood', the ceremony at Wagah made apparent that 'however much West Punjab resembles the East, it is also now part of a distinct cultural and religious tradition with a strong sense of difference' (Singh 2006: 17).

The early 1990s saw the end of the movement for an independent Khalistan: the militant assertion of Punjab regionalism. It was not a political settlement that brought it to an end, but a successful counter-insurgency campaign that killed thousands of rebels—actual and suspected—and their sympathizers. Between 35,000 and 70,000 people were victims of the troubles in Punjab. Human rights groups have documented political killings, enforced disappearances, torture, arbitrary arrests, unlawful detentions, and secret cremations of victims (Kumar *et al.* 2003). An activist describes the condition in Punjab, after the end of the movement for Khalistan, as the peace of the graveyard (Bose 2003).

This was an extraordinarily violent response to a regional movement, which has its roots in the tensions between the region and the nation in the subcontinent's modern history, and—considering the significant support that the movement enjoyed in the Sikh diaspora—also had the mark of our post-national times.

NOTES

1. Independentist is a more neutral term than 'separatist' or 'secessionist'. The term is commonly used in Puerto Rico to refer to political groups that stand for Puerto Rican Independence.

2. Some critics, however, challenge the notion that there is a consensus in Canada about secession being 'no big deal'. The 'admirable Canadian placidity,' as André Liebich puts it, was 'briefly shattered' just before Quebec's second referendum on Independence in 1995, when polls indicated that the Independence option might win (Liebich 2002, p. 9).

3. Brass here elaborates the ideas of Donald Horowitz and Myron Weiner.

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4 Federalism*

Subrata K. Mitra and Malte Pehl

Federalism is best understood as a method of promoting self-rule and shared rule and of balancing the interests of a nation with that of its regions. Typically, this is done for a dual purpose—that of limiting the possibility of a tyranny of the majority, and of generating strength through union. A durable federal design thus aims at the contradictory goals of reconciling freedom with cohesion, and a diversity of political cultures and identities with effective collective action. Usually, one can assume such a design to be the product of a context with a tradition of political bargaining among autonomous units, and of a political culture leavened with a history of a social contract. None of these *a priori* conditions prepares the student of comparative federalism for the Indian case. With its history of colonial subjecthood and a constitution that is more the result of a transfer of power than of a concerted, organized, violent quest for independent statehood, based on a contract, India stands apart from the world's major federations. The history of the evolution of India's federalism is a striking contrast to the union of pre-existing political units jealous of their identity, as in the case of the USA. India, not least with its more recent, ambiguous history of crisis government (*State of Emergency* and *President's Rule*), is hardly a model candidate for an optimal path towards a robust federal system. This chapter will show how in India, though it is not among the world's oldest federal political systems, federalism is nevertheless steadily emerging as a key feature of its political system, and as an interesting example of the innovative potential of federalism more generally. The success of India's federal arrangement, as argued in this chapter, derives from a combination of sometimes diverging factors such as its constitution, other institutional arrangements, political practice, and public opinion on these matters.

With a formally relatively clear, constitutionally guaranteed division of power between the Central government and the constituent states,[1] nowadays

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effectively policed by an independent Supreme Court, separate, direct elections to the Central and regional legislatures, monitored by an independent Election Commission, and the capacity of the political process to sustain a dynamic balance between the jurisdictions of the two sets of governments. India exhibits many of the features of federalism. However, India's membership of this exclusive club remains a matter of some dispute.[2] Indians themselves, as the findings of surveys ranging from 1967 to 1999 indicate,[3] do not appear to share these doubts about the existence and effectiveness of a federal government along with regional and local governments. The political evidence with regard to the characteristics of a federal process[4] is present, and appears to support the conjectures based on the survey data, as shown later in this chapter. Scholarly scepticism persists, nevertheless, and surfaces as part of a larger question: with her multi-ethnic society, structural asymmetry of constituent units, mass illiteracy and poverty, and the uphill task of state-formation and nation-building, why does federalism not lead to a disintegration of the political community and system as a whole?[5] This chapter addresses some of these issues through its analysis of the innovative character of Indian federalism.

Since the indiscriminate use of the concepts of federalism, federal systems, and the federal process might lead to confusion, following Watts and building on notions from Elazar (Watts 1998; Elazar 1994; Elazar 1987), the terms will be defined at the outset. Federalism, for the purpose of this inquiry, and thus differing slightly from Watts' definition, is both a descriptive and a normative category, implying the opposite of unitary rule, and embodying the normative ideal of a division of substantive areas over which power is exercised between at least two sets of governments. A federal system is the constitutional arrangement that gives federalism its institutional form. It is typically identified with the existence of four institutional characteristics. First, there should be two sets of governments, each with its independent spheres of administrative and legislative competence; second, each set of governments should have independent tax bases; third, there should be a written constitution from which each side derives its legislative power; and finally, in case of conflict, there should be a system of independent judicial courts to arbitrate between the Centre and the constituent units. The federal process, then, is the ensemble of actual participatory, legislative, and policy interactions that relate the structure of the federal system to the dynamics of everyday political life.

This chapter describes the features of India's federal system and process, and seeks to explain their effectiveness in terms of their symbiosis with the projects of nation-building and state-formation in India. This is done through a presentation of the basic structure of federalism in India and its political constraints. Next, the main role that the federal system and process have played in transforming a mere collection of disjointed British-administered territories and former princely states, set free to follow their destiny by their British 'allies' at the end of colonial rule, and the Indian provinces into an effective 'Union of States' is discussed.[6] The flexibility of the federal process has made it possible for the state in India to accommodate ethno-national movements in the form of new regions, thus gradually increasing both the number of states and the governability of the Union. In addition, the vertical expansion of the federal structure, to which a third tier was added through the constitutionally mandated authority and some financial autonomy accorded to village-level political institutions by the Seventy-third and Seventy-fourth Constitutional Amendment Acts of 1993, along with a mandatory quota of 33 per cent of seats for women in bodies of local self-government, deserves careful attention. This has turned the federal process into a major source of legitimization and democratization of power in India, even though some might argue that it has made governing unnecessarily complex and that policy performance did not clearly improve. However, as the example of Kashmir indicates, this success story has its limitations, for the juxtaposition of religion and geopolitics defines the limits of the integrative potential of federalism in India.

THE FEDERAL PROCESS: THREE PHASE OF DEVELOPMENT SINCE INDEPENDENCE

The framers of the Indian Constitution, as we saw above, were keen on federalism as a functional instrument for the creation of an Indian nation and a strong, cohesive state. The leading politicians of the immediate post-Independence state were besieged by threats to India's security both from outside and inside, and faced the challenge of development through having perceived and chosen centralized economic planning as an optimal method by which to reach that objective. Thus, both for constitutional and political reasons, the institutionalization of a strong federalism in the Indian system appears to have been seriously compromised from the outset. Nonetheless, the political process has been able to adapt to this design, and in many, though not all, cases mollify it when necessary to safeguard regional interests.

The first phase of federalization of the political process extended from the time of Independence to the mid-1960s. Prime Minister Jawaharlal Nehru took democracy seriously enough to face the enormously expanded Indian electorate (in 1951, in the first general election held both to the national Parliament and the provincial assemblies), providing for full and free participation in the election. He took the chief ministers (all of whom, with rare exceptions, were members of the Indian National Congress (INC), the party of which he was for part of this period the President and, of all this period, leader of the parliamentary party) seriously enough to write to each of them every month in an effort to keep them informed of the state of the nation and the world, and to solicit their opinion in an attempt to build a national consensus.[7] The INC, which had already embraced the federal principle back in the 1920s by organizing itself on the basis of Provincial Congress Committees based on linguistic regions, institutionalized the principle of consultation, accommodation, and consensus through a delicate balancing of the factions within the 'Congress System' (Kothari 1970). It also practised the co-optation of local and regional leaders in the national power structure,[8] and the system of sending out Congress 'observers' from the Centre to mediate between warring factions in the provinces, thus simultaneously ensuring the legitimacy of the provincial power structure in running its own affairs as well as the role of Central mediation.

The second phase of the development of Indian federalism began with the fourth general elections (1967), which drastically reduced the overwhelming strength of the Congress party in the national Parliament to a simple majority and saw nearly half the states moving out of Congress control and into the hands of opposition parties or coalitions, and led to a radical change in the nature of centre–state relations. No longer could an imperious Congress Prime Minister afford to 'dictate' benevolently to a loyal Congress Chief Minister. However, even as the tone became more contentious, the essential principles of accommodation and consultation held between the crucial 1967–9 period of transition. The Congress-dominated Centre began cohabiting with opposition parties at the regional level. The balance was lost once the Congress party split (1969), and Prime Minister Indira Gandhi took to the strategy of radical rhetoric and strong centralized personal leadership. In consequence, the regional accommodation, which had been possible by way of the internal federalization of the Congress party, was subsequently eroded. However, after the authoritarian interlude of 1975–7, which, in both law and fact, reduced India's federal system to pretty much a unitary state, the system reverted to the earlier stage of tenuous cooperation between the Centre and the states.

With the prolonged period of coalition governments at the Centre, the third phase in the federalization of Indian politics began at the end of the 1980s. Regional parties, such as the Dravida Munnetra Kazhagam (DMK) of Tamil Nadu or the Rashtriya Janata Dal (RJD) of Bihar, have asserted their interests more openly over the past one-and-a-half decades of coalition and minority governments. This increased assertion on the part of regional parties at the Central level had forced even the Hindu nationalist Bharatiya Janata Party, which led the ruling coalition in the thirteenth Lok Sabha until 2004, to

be solicitous in its, at least symbolic, adherence to the norms of centre–state relations established by its predecessors, including such hallowed principles of the Indian Union as the three-language formula, in spite of its advocacy of Hindi as India's national language during its long years in the opposition.[9]

INSTITUTIONAL DESIGN: STRENGTHS AND WEAKNESSES

When compared to the relatively longer existence of four key federal states, namely the United States (1789), Switzerland (1848), Canada (1867/1931), and Australia (1901), their comparative ethnic and cultural homogeneity during long periods of their existence, and the high literacy and standards of living considered necessary for the sophisticated power-sharing that a federal system requires, India presents a set of apparently insurmountable obstacles against a likely federal solution. Wheare, reflecting this and other reservations, describes the Indian case as '[...]a quasi-federation—a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features'.[10]

The Institutional Set-up of Indian Federalism

The fact that academic debates have arisen over time around the question of the character of Indian federalism is rooted in the very constitutional framework that constitutes its basis. While this framework at first glance meets the basic normative requirements of federalism, a number of additional provisions have the potential of diluting their effects in reality and transforming the system into a unitary one instead.

India's system of government is divided between the Central level and the federal units (currently twenty-eight states and seven Union Territories, including the National Capital Territory of Delhi).[11] The Constitution of India provides for a relatively clear *vertical* division of powers between the Central legislature (referred to in Indian usage as the Union government) and the state legislatures, both constituted through direct elections, respectively, in the Seventh Schedule (see Table 4.1). The Union controls the 'Union list', consisting of areas that involve inter-state relations, national security, and foreign affairs. Subjects of primary interest to the regions, called the 'State list', encompassing law and order, culture and education, are under the jurisdiction of the states. The 'Concurrent list' holds subjects of overlapping interest, like land reform laws or issues relating to cultural or religious minorities, where both Centre and state can make laws with the understanding that in case of conflict, the Central laws will take precedence. Subjects not specifically mentioned in the Constitution, called the residuary subjects, come under Central legislation. Each list also mentions how the two governments can raise income through taxation. In case of a conflict of jurisdiction, the Centre or the state can move the Supreme Court to have the point of law authoritatively interpreted.

A number of formally constituted organizational units execute the responsibilities allocated to them under this constitutional framework, sharing power over the affairs of a political territory in two senses, namely having joint or competing powers over the same matters on the one hand, and having separate powers over separate matters on the other. Ideal typically, in a multi-level system of government such as a federal political system, the sharing of powers of this kind can be conceived of as involving three types of sharing (in the sense of separation, but also fusion): vertical power-sharing, horizontal power-sharing, and transversal power-sharing. The term *vertical power-sharing* describes the allocation of certain issue areas and competences in decision-making to be handled by either the Central, sub-national or the local level of government, denoting the division aspect of the allocation of powers, rather than the fusion aspect. Thus, the vertical division of powers is depicted in Table 4.1, allocating specific matters to either one of the three levels of government. The term *horizontal power-sharing* describes the sharing of competences at the Central and the sub-national levels between the branches of government, denoting the fusion as well as the separation-aspect of sharing mechanisms, as well as the sharing of powers between sub-units in a federal political system in its separation and fusion variants. By *transversal power-sharing* is meant, among other things, a structural and processual sharing of powers between levels of government, such that it involves, in addition to the superior-level unit, one or more or all

Table 4.1: Important Legislative Competences

LEVEL	COMPETENCES	ENABLING PROVISION
Centre	Defence, Atomic Energy, Foreign Affairs, Citizenship, Transport Infrastructure, Currency, Postal Service, Banking/Insurance, Electoral Laws, Organization of the Supreme Court, Taxation in various areas, Natural Resources, Union Territory matters, Residual Competences	Art. 246 + Seventh Schedule (List I), Constitution of India
State	Public Order/Police, Public Health, Local Government, Agriculture, Water, Land, State Public Services, Taxes (on agricultural income, on land, etc.)	Art. 246 + Seventh Schedule (List II), Constitution of India
Local	Economic Development, Social Justice (subject to state laws allocating powers of local self-government to village councils)	Art. 243 G + respective State legislation
Centre + States (Concurrently)	Criminal Law/Criminal Procedure Law, Marriage and Divorce Law, Transfer of Non-agricultural Property, Civil and Commercial Law, Economic/Social/Family Planning	Art. 246 + Seventh Schedule (List III), Constitution of India

Source: GoI 1991

lower-level units (such as the states in the Indian case) in its fusion-variant. The non-hierarchical and informal modes of joining levels and units through coordinating mechanisms are part of the phenomenon that has been described in another regional context as 'political interlocking' in cooperative federalism.[12] These three types of power-sharing involve, respectively, both hierarchical and non-hierarchical modes of coordination of action, as represented in Table 4.2, and also both formal and informal institutions.

At the Union level, a tripartite sharing out of power, referred to here as a *horizontal* allocation of powers, allocates different functions of government to the executive (President and Council of Ministers/ Prime Minister), the legislative (Union Parliament, consisting of Lok Sabha and Rajiya Sabha), and the judicial branches of government (Supreme Court of India), although there is significant overlap in personnel between the legislative and the executive branches, with the requirement being that the Prime Minister and all other ministers must be members of either House of Parliament or lose their office after a period of six months (Article 75, Constitution of India). This division is mirrored to some extent at the state level with the institutions of chief ministers and their cabinets, state legislatures (unicameral in most, bicameral in some states) and the respective high courts (although high courts apply Union, as well as state laws, and their organization is highly centralized).

Another set of units, such as the Finance Commission, the Inter-state Council, the inter-state

Table 4.2: Typology of Power-sharing Arrangements in Multi-level Systems

TYPE	MODE OF COORDINATION	LEVELS/UNITS INVOLVED
Vertical	Non-hierarchical	Centre-State levels State-Local levels
Horizontal	Non-hierarchical	Centre (branches) States
Transversal	Hierarchical and Non-hierarchical	Centre-State levels

Source: Authors' depiction

Tribunals, the National Development Council, and a number of informal fora serve as bridging mechanisms between the levels of government and between states, thus enabling *transversal* as well as *horizontal* power-sharing. The *Inter-state Council*, which was set up for the first time in accordance with Article 263 in 1990, is a body that aims, despite not having legislative or administrative powers, at enabling consultation between governments at the state and the Union levels. It is constituted according to the Presidential Order of 1990, under which it was set up by the Prime Minister, chief ministers of states and those Union Territories which have legislative assemblies, governors of states under President's rule, and eight Union cabinet ministers.[13] Although its primary function to date has been the debate on reforming centre–state relations, the Inter-state Council also functions as an important policy forum for informal discussions on other political issues affecting the states.

The *Finance Commission* is an organizational unit performing the task of providing recommendations to the President of India regarding the distribution of taxes between the Centre and the states, and between the states (Article 280, Section 1, Constitution of India). It is appointed regularly by the President of India every five years and consists of five members. Its importance in the process of regulating inter-governmental fiscal relations is enhanced by the fact that the recommendations, although not formally binding, have a quasi-binding character, and by the fact that many of the most expensive tasks of government, such as social matters or public orders are, directly or indirectly (through local government programmes financed from state funds), state-level matters. This issue will be taken up once more in a later section. The *Inter-state Tribunals* are ad hoc bodies infrequently constituted under the Inter-state Water Disputes Act of 1956 in order to solve disputes over the use of water resources that cross the boundaries between states, such as rivers. In the past, these tribunals had been slow in their decision-making and ineffective in the area of implementation of decisions. With the Amendment Act of 2002, the period within which decisions now have to be reached has been shortened to a combined maximum of six years. Due to the increase in the need for, and the depletion of, freshwater resources on account of increasingly rapid agricultural and industrial expansion as well as urbanization, and the more frequent disputes arising from inter-state competition for this resource, these bodies can be expected to acquire increasing importance and visibility in the future.

Another institution which served informally as a mechanism for the coordination of political action between the central and sub-national levels

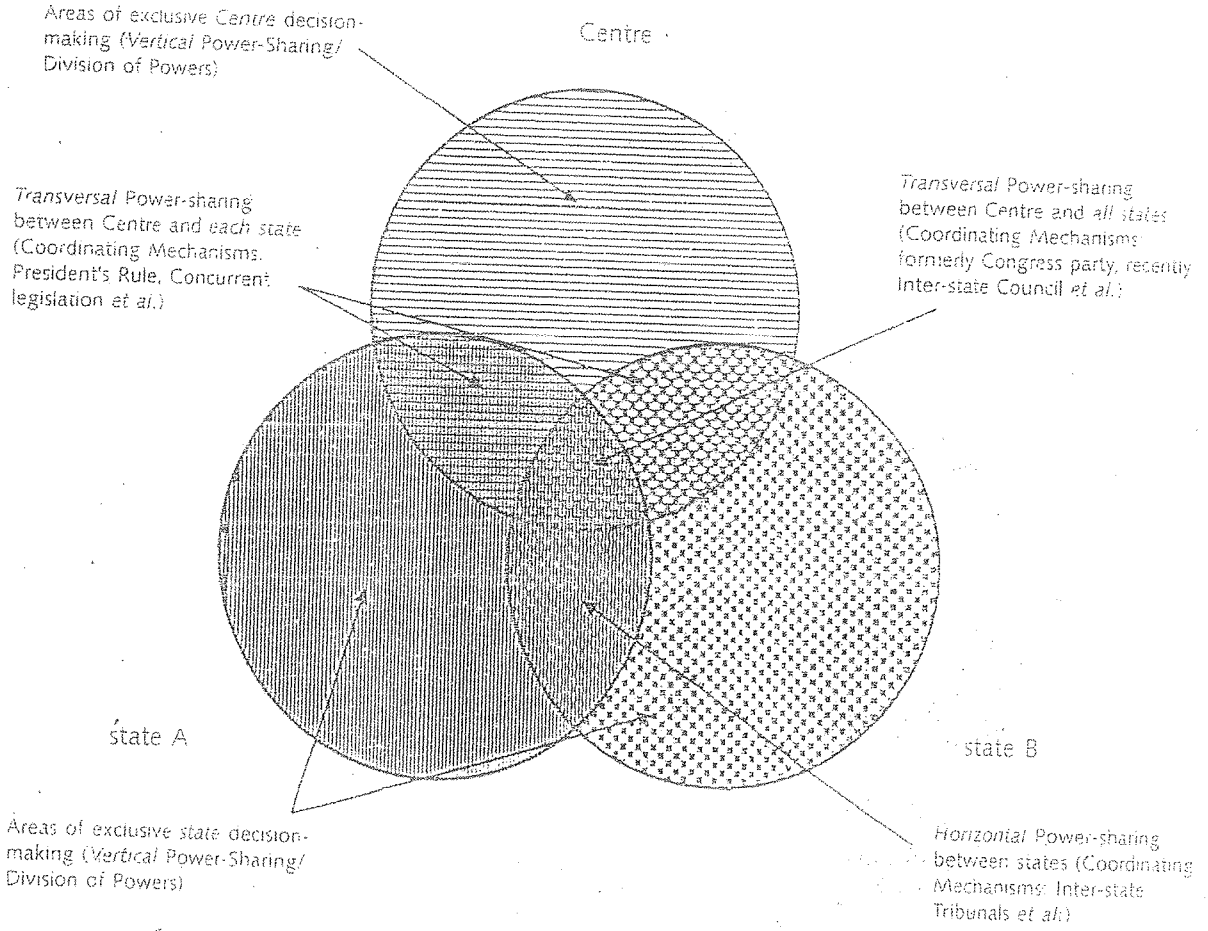

Figure 4.1: Issue-overlap, Power-sharing, and Coordination of Action of Centre and States

Source: Own depiction

of government in the past was the *Indian National Congress*, during the period of its electoral and administrative dominance.[14] Through its internal processes of decision-making and channels of communication, this system facilitated coordination between the leading politicians at the Centre and in the regions until the second half of the 1960s, thus joining decision-making elites at the national and state levels and enabling some degree of *transversal power-sharing*. Figure 4.1 illustrates the areas of issue-overlap in decision-making by the Union and the state governments, and the location of the various formal and informal institutions and coordinating mechanisms serving as instruments of policy coordination.

Nonetheless, doubts about the authenticity of Indian federalism arise from the constraints placed upon it by a number of institutions. These constraints are in part elements of the transversal type of power-sharing, which employ a hierarchical mode of coordination of action. One of these features, which has repeatedly come under intense criticism, is the role played by the Governors within India's states, and the use of *President's Rule*.[15] While the framers of the Indian Constitution intended the Governors to play a rather minimal role in the political process, mainly confined to extreme crisis situations, they have often intervened at the behest of the Central government in the political affairs of states.[16] The institution of the Governor has added a veto player to the democratic set-up of state politics, one who is appointed by the President on the advice of the Union Cabinet (Article 155), and is not accountable to any legislature either at the state or at the Central level. In essence, the Governor occupies the same constitutional position as the President at the Central level, as the Indian Supreme Court noted in *Ram Jawaya Kapoor vs State of Punjab*.[17] The influence of the Union within the constitutional framework of Indian politics is comparatively strong, and this fact has led to claims of Governors acting as the 'long arm' of the Centre and their neglect of state interests, especially in the area of decisions which the Governor takes at his discretion and not on the advice of the respective state's Council of Ministers. One arena in which this double-edged sword—of the formal obligation to uphold constitutional government in the states on the one hand and the accountability to the Centre on the other—has played out is that of President's Rule in the Indian states, that is, the supplanting of state governments by rule of the Central government in certain crisis situations in accordance with Article 356 of the Constitution of India. This issue will later resurface as part of the discussion on the interaction of institutional design and the political process.

Another constitutional peculiarity that has attracted commendation and scepticism alike with regard to India's federal character is the issue of the territorial integrity of the constituent units of the Indian Union, the states. Early authors such as Wheare (1964) noted that the fact that the constituent units within India did not enjoy a guarantee of territorial integrity, which could be waived only with their express consent, was one of the reasons why India was merely a 'quasi-federation'. This now dated assessment invites scrutiny of this particular arrangement among the constituent units. As Articles 2 and 3 of the Indian Constitution stipulate, the power to form, alter or dissolve states lies with the Parliament of India. The states' indirect role in this process is therefore confined to the vote in the Rajya Sabha, where debate ensues, in particular at the initiation of members from the respective regions in question, and to the expression of non-binding opinion on the issue of alteration of boundaries by the state Assemblies to the President (Article 3). On the other hand, however, the Indian Supreme Court, vindicating the claims of Watts (1998: 126) regarding the importance of an institutional arrangement to guarantee the autonomy of the constituent units, declared that 'the fact that under the scheme of our Constitution greater power is conferred upon the Centre vis-à-vis the states does not mean that states are mere appendages of the Centre. Within the sphere allotted to them, states are supreme. The Centre cannot tamper with their powers.'[18] It also confirmed the status of Indian federalism as part of the basic structure of the Indian Constitution. A different arrangement can be found in the German Constitution (the *Grundgesetz* or Basic Law), which does not specify the number of states that constitute Germany and also allows for the alteration of boundaries, albeit only with the consent of the people living in the territory concerned (Article 29), but declares the

abolition of federalism, that is, the division of the country into constituent units as such, as beyond the scope of parliamentary amendment power (Article 79, Sec. 3, Grundgesetz)."[19] Thus, this institutional designing, which was not expressly laid out in the Constitution of India, has been done procedurally by the Supreme Court. Nonetheless, the alterations of boundaries, not least in the cases of the creation of the state of Jharkhand out of Bihar, or Uttaranchal out of Uttar Pradesh, have invited protest on several occasions; and this instrument, while creating opportunities for greater autonomy to be afforded to certain ethnic or linguistic groups, has also placed constraints on the political process.

Institutional Design and the Political Process

The ambivalent legal position that the Indian Constitution accords to the constituent states of the Union must appear startling to the federalist. Not only did the construction of the Union not follow from a decision by a group of independent political units to shed parts of their sovereign powers out of mutual interest and create a federal state, but the Union and the states were also formally a simultaneous creation of the Constituent Assembly, in which the provinces did not have any special representation. Further, the Central government gradually dissolved the political character of the units that existed at the time of Independence, and started creating new units. The first major redesigning of state boundaries was undertaken in 1956–7 through the States' Reorganization Act, 1956, after prolonged agitation in some regions, notably in south India, for a reorganization of states along linguistic and cultural boundaries.[20] The process has continued unabated, facilitated by the fact that the consent of the states, especially those forced to cede territory, is not required for alteration of the names or boundaries of the states.

Further, even though in normal times the states have the exclusive power to make laws in the areas allocated to them (which are far less numerous than those given to the Centre), the Central Parliament has an extraordinary power of legislation on state subjects in the national interest when authorized by the Rajya Sabha, the Upper House of the Parliament, to do so (Article 249). The Rajya Sabha, which was meant to be the states' representative at the Centre, is far from being the equal of the Lok Sabha, the Lower House. It has fewer legislative functions, particularly with regard to finance. Traditionally, the Prime Minister and other important members of the national Cabinet are members of the Lok Sabha. In view of its size, which is less than half of that of the Lok Sabha, it runs the risk of being outvoted in a joint session, that is, the prescribed method of decision-making in case of a serious difference of opinion between the two Houses. Nor does the composition of the Rajya Sabha reflect the equality and dignity that is accorded to all members of a federation which are, in the cases of many other federal systems, treated as equals. This is because the number of seats allocated to the states, in spite of the weighting added to the smaller members of the Union, still reflects the inequality that flows from the fact that the population of Uttar Pradesh is now nearly 170 million, compared to three million for Nagaland.

There are other points that continue to question the trust of those who believe in states' rights. The Governor of each state, head of state under the Constitution and the ceremonial head, is an appointee of the President of India, most of the time acting on the advice of the Prime Minister. The Governors of India, invariably political appointees of the ruling party at the Centre, have continued to act as the Centre's eyes and ears. Their role becomes crucial if no majority party or coalition emerges from the election, in which case the Governor is obliged to organize a viable government coalition. In the event of a loss of support of the majority for the state government in the legislature, in the past often due to defection or splits, or if law and order declines precipitously, the Governor's report becomes the basis of the declaration of President's Rule. The modes of emergency government (Articles 352, 356, 360, Constitution of India), if and when employed, can hold the federal character of the division of powers in temporary abeyance. However, a distinction needs to be made between (*a*) the breakdown of constitutional government in a state leading to President's Rule and what President's rule implies—that is, administration by the Centre rather than by a popularly elected state government, and (*b*) a national emergency.

As outlined above, President's Rule at the state level can be declared by the President at the recommendation of the Governor (again, Central appointee and not, as in the United States, a political leader elected by the voting population of the respective state) under Article 356. The same article authorizes the President to dismiss the government of a state and dissolve or suspend its legislature when he receives a report from the state Governor, or in any other way, that 'the government of the state cannot be carried on in accordance with the provisions of the Constitution'. He may then 'assume all or any of the powers' vested in the government of the state with the exception of the function of the state legislature, which is then exercised by the Union Parliament, which in turn can delegate this power to the President in accordance with Article 357. As far as federalism is concerned, the negative implications of this article became clear as early as 1959, when the elected Communist government of Kerala was dismissed by the Congress-ruled Central government. Once again, safeguards such as approval of the national Parliament are provided for, but the use of this power under the prime ministership of Indira Gandhi, which drastically reduced the autonomy of the states, serves as a reminder of the potential threat to federalism from this angle. The instrument of a declaration of President's Rule in the states was used 10 times between 1951 and 1966, 65 times between 1967 and 1988, and on 13 occasions between 1989 and 1997.[21] This means that on an average, President's Rule in the states was declared 1.5 times per year between 1951 and 1966, 3.1 times per year between 1967 and 1988, and on an average 2.3 times between 1989 and 1997, the latter being the period of minority and coalition governments at the Union level.

The proclamation of President's Rule, and also a national state of Emergency as a form of exceptional or crisis government, used to hang above the heads of India's regional governments like the sword of Damocles in the early decades of independent India.[22] The national Emergency of 1975–7 deeply scarred India's democratic and federal record. Once proclaimed by the President under Article 352, it can in principle reduce India to a unitary state with an authoritarian government. If the President is satisfied that the security of India or any part of India is threatened by war or external aggression or armed rebellion, and issues a declaration to this effect, the Emergency provisions are applicable to the whole of India or any part (Article 352).[23] Article 353 specifies the implications of a national state of Emergency, of which two are relevant to federalism. During the state of Emergency 'the executive power of the Union shall extend to the giving of directions to any state or as to the manner in which the executive power thereof is to be exercised'. Further, 'the power of Parliament to make laws with respect to any matter includes the power to make laws conferring powers and imposing duties, or authorizing the conferring of powers and the imposition of duties, upon the Union or officers and authorities of the Union, notwithstanding the fact that it is one that is not enumerated in the Union List' (Article 353).

The Constitution now provides safeguards against the abuse of this provision. Thus, after the constitutional revisions in the second half of the 1970s, the President may act only at the written recommendation of the Cabinet, and the proclamation of Emergency needs to be approved by the Parliament. Still, the experience of 1975 continues to be a reminder of the potential threat. Ultimately, however, this institutional feature, as well as the instrument of President's Rule, as means of Central intervention in times of crisis, are in themselves not sufficient to warrant the claim that India is merely a 'quasi-federation', since similar provisions exist in many countries' constitutions. It is the process of employment of this instrument that calls the federal arrangement into question at certain times, when it is used for apparently party political considerations rather than crisis management.[24]

Finally, the problem of structural asymmetry, implying a great difference in the size of the members of a federation, is a key feature of the Indian case, affecting the political process. In terms of their presence in the Lok Sabha, for example, the contingent from Uttar Pradesh, with 85 Members of Parliament (MPs), is a much more significant presence than tiny Tripura with just two. Many of the Prime Ministers of India and many important members of the Central Cabinet have come in the past from Uttar Pradesh. Watts mentions India along with Spain, Belgium, Malaysia, and Russia as a federation that shows the presence of

structural asymmetry either in its constitution or in political practices. Drawing on the work of Tarlton (1965), who first drew attention to the phenomenon of structural asymmetry in federations, Watts shows how 'political asymmetry, arising from the impact of cultural, economic, demographic and social conditions [could affect] the relative power and influence of different constituent units, as well as their relations with each other and with the federative institution.'[25] The dominance of some groups in the political systems of neighbouring South Asian countries, both in terms of language and area of origin, are enough evidence of the potential consequences of structural asymmetry in terms of relativizing the federal quality of the Union.

FISCAL AND DEVELOPMENTAL FEDERALIZATION AND CENTRE-STATE RELATIONS

Another characteristic of Indian federalism is the fact that the Central government possesses superior financial powers. The more lucrative sources of revenue in the past and of the future like import or export duties, non-agricultural income tax, and corporate taxes are allocated to the Centre (Part XII, Constitution of India). The revenue of the states, on the other hand, constitutes a shrinking base in some of the states because, under pressure of populism, they have done away with or drastically reduced the taxation on land and income from agriculture. In addition to this, the Indian states' capacity to collect taxes has traditionally been rather weak. This compounds the problems, especially at the state level.

States' revenues mainly accrue from four sources: tax and expenditure assignments derived from the Constitution of India (Seventh Schedule), transfers allocated by the Finance Commission (Article 275), transfers from the Planning Commission, and transfers from Central ministry budgets to the states. The transfers take the form of grants and loans to the states. Over the decades, the capacity of states to finance both revenue and capital expenditure from their own tax-based resources has declined substantially. Only 42 per cent of the states' total expenditure was covered by their own revenue receipts in 2000–1 (Singh 2004: 7–8). At the same time, a marked increase in the share of loans and advances in the total amounts of capital receipts of states from the Central government has also contributed, among other factors, to a further increase in the indebtedness of states (Saez 2002: 145).

The Union government alone, on the other hand, is empowered to regulate the money supply, contract foreign loans, charge income tax on non-agricultural income and on services, or collect import and export duties. Depending on the composition of the Central government of the day and its political inclinations vis-à-vis state autonomy, revenue centralization and subsequent decentralization have taken place during the first decades after Independence (Rao 2001: 2741–5). Also, compared to other federal systems, India's states had a relatively low level of revenue, which they could generate themselves (as opposed to the total revenue of states, which includes transfers from the Centre to the states) when measured against the total revenue of the states and Central government combined (ibid.: 2751–6). Part of the revenue levied at the Central level is of course redistributed among states, on the basis of the advice of the organizationally independent Finance Commission or through the Planning Commission, and constitutes a significant source of income for them. However, the impression that is thus created is one of profligate states, and a more careful and sophisticated Central financial management. The superior financial powers of the Centre are further reinforced by other functions relating to financial management that are allocated to it. For it is the Central leadership that appoints the Planning Commission as well as the Finance Commission, which generally set the priorities for the national government, allocate resources to the states, and act as a clearing house of economic policy.

Nevertheless, as studies have shown, since the liberalization of economic policies and the decentralization of policymaking to states from the early 1990s onwards[26] (and even before then[27]), states have been able to exercise some autonomy in regulating their own development trajectory. While this has increased the scope for competition among states and provided incentives for reform-oriented policies, disparities between states that are more and those that are less successful at coping with this changed policy environment have become apparent.[28]

While some states such as Andhra Pradesh, Karnataka, Tamil Nadu, and Kerala have shown signs of catching up as compared to early developers such as Gujarat, other states like Uttar Pradesh, Madhya Pradesh, Rajasthan, and Bihar have lost further ground when compared to the leading states. Thus, the trends of economic liberalization at the Centre, sub-national policy differentiation, and federalization of the overall political process have enabled some actors to use these new opportunities to their advantage, while others have fallen behind, compromising the relative comparability of living conditions for all Indian citizens. The picture today, then, is one of increasing differentiation among India's states in terms of their fiscal capabilities as well as their developmental potential, and a need for reform of inter-state mechanisms of coordination and equalization.[29]

THE FEDERAL PROCESS: PERCEPTION IN INDIA

It can be argued that the Indian political elite has demonstrated its trust in the Indian Union through participation in its electoral and everyday politics. Yet, the question raised by both Harrison and Moore (Harrison 1960; Moore 1966)[9] about the acceptance of the democratic and federal rule of the polity by ordinary people still remains. To measure the interest of the electorate in the political system at the Central, regional, and local levels, as well as the loyalty to the respective political arenas, questions were asked in the different National Election Studies of the Indian electorate.[30] The answers are presented in Tables 4.3 and 4.4.

Table 4.3: Interest in Central and State Government (in per cent)

	1971	1996	1999
Neither	24.9	39.7	26.0
Central Govt.	21.0	11.0	14.8
Both	14.5	20.9	26.7
State Govt.	18.9	23.0	25.6
DK, NA, Other	20.7	5.4	6.9

Source: Centre for the Study of Developing Societies (New Delhi), National Election Studies 1971, 1996, and 1999
Note: DK = Don't Know
NA = Not Available

Table 4.4. Loyalty to Region First and Then to India (in per cent)

	1967	1996	1999
Agree	67.1	53.4	50.7
Disagree	22.3	21.0	21.4
DK/No Opinion	8.4	25.6	27.8

Source: Centre for the Study of Developing Societies (New Delhi), National Election Studies, 1967, 1996, and 1999
Note: DK = Don't Know

An analysis of these findings reveals, first, a growing interest in regional matters from 1971 to 1999 (Table 4.3). After the peak in 1996, the group of respondents who expressed no interest in either state or Central governments' work reverted approximately to the same level as that of 1971. A notable and steady increase can be seen, however, in the group of respondents who express an equal interest in both levels of government.

Thus, while the Central government seems more remote from many respondents, the regionalization conjecture also requires caveats. While the concern for the politics of regional matters conducted by state governments has certainly grown, so has, in an even larger measure, the group of people who view both as equally important. This can be interpreted as evidence of the internalization of the federal norm in that section of the electorate that appears to view the power-sharing arrangement as a natural given.

Based on the results presented in Table 4.4, one could infer that loyalty first and foremost to the regions is in steady decline. This is a fairly safe assumption to make. Yet, the findings from the 1967 survey need to be viewed in light of the emergence of regional politics as a separate political sphere for the first time in the 1967 elections and the political campaigning of that year. Increasingly, however, it does indeed seem that a growing number of citizens no longer perceive national and regional politics, conducted in the states, as a trade-off. From both Tables 4.3 and 4.4 it becomes relatively clear that both arenas are being increasingly perceived as legitimate arenas of political action that need not be mutually exclusive. Regional political forces, having established themselves in the states as well as at the Central level, can be assumed to have turned the issue of the

relationship of national and regional identity from one of transcendence and an either-or type of choice into one that exists in the realm of transactional politics of the day in the eyes of respondents.

COALITIONS AND THE FEDERALIZATION OF NATIONAL POLITICS

The supportive empirical evidence concerning the overall functioning of the federal process that one gets from the opinion data presented in Tables 4.1 and 4.2, and the negative predictions of Harrison (1960) and Wheare (1964) suggest that India's federal system constitutes a puzzle. One is entitled to ask: if it 'works' relatively well in comparison with other postcolonial states, why does it do so? Drawing on the works of Friedrich (1968), Riker (1975), Dikshit (1975), and Hesse and Wright (1996), Watts suggests four general conditions to explain why federal processes work. The first and foremost, of course, is 'elite accommodation'. Next, reflecting the democratic trends of our times, comes 'public involvement', though it may 'complicate the patterns of negotiation for the establishment of a federal system' (Watts 1998: 128). An atmosphere of 'competition and collusion' between inter-governmental agencies is mentioned as a third condition (ibid.: 130). In the fourth place, drawing on Riker, Watts mentions 'the role and impact of political parties, including their number, their character, and the relations among federal, state and local branches' as helpful in explaining the dynamism of federal processes (ibid.).

Looking at the pattern of elite recruitment employed by the Congress party during the period of its hegemony (1952–67), where local and regional talent rose to prominence by rising within the party organization and moving horizontally to government, and the subsequent practice which saw new, upwardly-mobile social groups enter the electoral arena directly in the form of political parties organized under their own names, one could see a steady expansion of the social base of leadership in India. That satisfies the first two conditions mentioned by Watts. The competition among Indian states for scarce resources such as river waters, where the Centre often plays the role of mediator, involving bureaucrats and political leaders from competing regions, is a good example of the third condition at work. However, with the decline of the Congress party as the main party in the states and at the Centre, one of the main mechanisms, namely the fourth condition mentioned by Watts as an explanatory variable in the analysis of the federal process, intra-party federalization, has been supplanted by an entirely different intra-party and inter-party system. The Congress system encapsulated the expressions of local and regional interests and symbols at lower levels of the internally federalized system; the new element in Indian politics makes these processes of consultation a systematic way of bringing out bits of India's outlying areas and peoples, and weaves them into different ways of defining what the nation is about and who has the legitimate right to speak in its name. As Table 4.5 shows, even at the Centre, regional parties have gained

Table 4.5: National Parties in Lok Sabha Elections, Seats and Votes

Election Year	Seats (in per cent)[a]	Votes (in per cent)[b]
1952	82.6	67.8
1957	85.2	73.0
1962	89.0	78.4
1967	84.6	76.3
1971	85.1	77.8
1977	88.7	84.6
1980	91.7	85.1
1984	85.4	77.8
1989	89.0	79.3
1991	89.5	80.8
1996	76.6	69.6
1998	71.2	68.0
1999	68.0	67.1
2004	67.5	63.1
2009	69.4	n.a.

Notes: [a] Years 1952 to 1998 based on Butler *et al.* (1995) and the Election Commission of India, quoted in Mitra and Singh (1999). Years 1999 and 2004 are calculated based on figures supplied by the Press Information Bureau of India. Results for 2009 calculated on the basis of Election Commission of India (http://eci.gov.in/results/From Party Wise Trends And Results as pxii, accessed on 17 May 2009

[b] Years 1952 to 1998 based on Butler *et al.* (1995) and the Election Commission of India, quoted in Mitra and Singh (1999). Years 1999 and 2004 based on figures supplied by the Press Information Bureau of India

an ever increasing share of influence in comparison with national parties, as measured in the seat share in the successive Lok Sabha elections.

Nevertheless, just as regional parties emerge as champions of special and exclusive interests in the states, the next step on the career ladder of these leaders, which is aimed at Delhi, encourages them to place the region within the larger context of the nation. Eventually, as members of national coalitions of regional parties, they start striking the postures of national leaders, ready to bargain with and conciliate conflicting regional interests. Thus, even with the decline of the Congress as the once dominant party, the multi-party system that has replaced it has produced a similar institutionalized method of regional conflict resolution within a national framework.

Overall, the data from Lok Sabha electoral results and survey findings indicate the presence of a keen awareness of 'region' as an important level of the Indian political system. That the region is present in a distinctive way, in terms of support for regional parties even in national elections, does not of course suggest that it is exclusive, or that 'regionalists' necessarily pit the region and nation as polar opposites, separated by a chasm of distrust and conflict of loyalties. While the survey data support the existence of the two as separate and distinct entities on the basis of popular perceptions, the relationship of the two emerges as much more complex than is commonly supposed. The bark of regional chauvinists is louder than their bite: political scientists measuring the depth of national integration can accept the separatist rhetoric of regional leaders as an indicator of the imminent dissolution of national unity only with a number of caveats.

As one can see from the 1999 as well as the 2004 and 2009 Lok Sabha elections and the subsequent government coalitions,[31] regional parties have become part and parcel of government formation processes even at the level of the Central government. As in the case of the 2004 government formation process, however, some regional politicians have been able to secure more than their fair share of influence at the Central level, unlike what some key tenets of coalition theory would have led us to expect. While the twenty-one members strong RJD secured only two Cabinet-rank ministries, the DMK, despite its limited strength of only sixteen MPs, was allocated three Cabinet ministries. At the same time, the RJD was able to secure a first tentative success in the form of the inclusion of the idea of a 'Backward States Grant Fund' in the Common Minimum Programme of the government after the 2004 elections, of which Bihar would be the main beneficiary.[32] This points to the ambiguous nature of the federal bargaining process, where office means influence and a say above and beyond the limits of the portfolio which a politician is allocated. While some regions can thus hope to have their interests represented through regional power brokers at the Central government level, other states have to fear being left behind whenever regional parties from their respective states are not included in the national government coalition.

The political process of the 1990s shows the internalization of federal norms in the game plans of local and regional political leaders. Rather than taking a mechanical, anti-Delhi stance as their only *raison d'etre*, the new breed of ambitious, upwardly-mobile leaders of India have learnt to play by the rules even as they challenge them, and thus have developed for themselves a new federal space in which the nation and the region can coexist. However, as Mitra and Lewis (1996) show, the integrative power of this model is at its best in Tamil Nadu, where a federal 'deal' can be struck with a specific group of actors, such as the DMK. When, however, the actors themselves are fragmented, and some of the distant actors are not a part of the negotiation (as in Kashmir, Assam, or Nagaland), the effectiveness of this model in producing a legitimate federal solution is limited.[33]

INDIAN FEDERALISM: CHALLENGES AND ADAPTATIONS

With remarkable prescience, the framers of the Indian Constitution have equipped the Indian state to respond to the demands for autonomy through the double mechanism of individual and group rights, as well as the federal construction of political power. During the first phase of India's constitutional development, some of these instruments were useful in empowering political majorities below the level of

the national state through the effective enactment of provincial administrations. The second phase of constitutional development through the states' reorganization of 1956–7, which created linguistically homogeneous states and counterbalanced the likely chauvinism through the promotion of the three-language formula, requiring the use of Hindi, English, and the regional language, made it possible to institutionalize the multicultural nature of the Indian state, albeit with regional divergences of successes and failures in its implementation. In its third phase, the same process of constitutional development of federalism in the 1990s, India has witnessed the deepening of the principle of power-sharing by the constitutional and statutory powers accorded to village councils after 1993.[34]

These normative developments of the federal principle and their adaptation to India's cultural and historical context have been complemented by the political process. During the critical years of transition from British rule and the consolidation of popular democracy in India, the Congress party provided the link between the modern state and traditional society. Congress rule, both at the Centre and in the states, provided informal channels of communication, and a balancing of national, regional, and sectional interests. The politics of coalitions that has replaced Congress hegemony has given a public articulation to the process of integration of the local and regional for the purpose of launching a new debate on the nature of the nation, and for identifying the variable boundaries of the nation and the region. In consequence, looking for regional allies has now become an imperative for all national parties.

The new group of regional leaders of India, drawing on their power bases in the states, often consisting of people from India's periphery (in terms of religion, elite caste status, or geographic distance from the Centre), are able to generate a different and new construction of the Indian nation-state. In terms of the actual policies of the state, the regionalists are much more willing and (in view of their social base) able to listen to the minorities, to regions with historical grievances, to sections of society that entered post-Independence politics with unsolved, pre-Independence (in some cases, pre-modern) grievances. It is thanks to some of these 'regionalists' that the emerging multi-party democracy of India is not merely an anomic battle for power and short-term gain, but the releasing of pent-up creativity and visions that provide a fertile and cohesive backdrop to the realignment of social forces. Far from being its antithesis, region has actually emerged as a nursery of the nation. The rules of the federal system, rather than being exogenous to the federal process, have become endogenous to it.

Finally, the horizontal and vertical expansion of the federal process has brought greater legitimacy to the Indian state and cohesion to the Indian nation. Rather than grand design, the process has been based on a series of ad hoc decisions, based on the perceived benefits of the respective political actors of the day, sometimes against the advice of specialists who have made the conventional arguments based on the imperatives of modernization and the logic of economic viability.

One important weakness of institutional design and the federal process is clearly the lack of effective mechanisms for a coordinated interest aggregation of states versus the Central government. Coordination mechanisms, such as the informal conference of Chief Ministers and, to some extent, also the Inter-state Council,[35] have largely proven to be limited in their effectiveness. Nevertheless, coordination among Chief Ministers belonging to parties not included in the Central government coalition has taken place, as have collusion and coordination between the Central government and many of those Chief Ministers belonging to parties which support the Central government in the Lok Sabha. In its own way, therefore, the Indian experience with the unprecedented and unconventional expansion of the federal principle serves to enrich the theory of federalism in confirming or disconfirming received knowledge about the strengths and weaknesses of federal systems the world over.

NOTES

1. The constituent units of the Indian federation will be called states and State will refer to the Central state.

2. Watts, in his comprehensive study of federal systems (Watts 1998, p. 121), counts 23 states as full federal states;

however, one senses a certain reluctance to admit India as a full member of this club. 'India and Malaysia, marked by deep-rooted multilingual, multicultural and multiracial diversity, have nevertheless managed to cohere for half and a third of a century respectively, but are at a critical phase in their development' (ibid., p. 118).

3. The national opinion survey of 1996, in the course of which a sample of 10,000 men and women representing the Indian electorate was interviewed by trained investigators from the Centre for the Study of Developing Societies during May–June 1996, on the basis of a questionnaire designed by the Lokchintan, a group of scholars based at various Indian research institutes and universities. Financial assistance for this project extended by the Konrad Adenauer Foundation, the Indian Council for Social Science Research, and *The Hindu* (Delhi) is hereby gratefully acknowledged.

4. Following the usage of Watts (1998, p. 117), federal process is used in this chapter as a descriptive category referring to the presence of a 'broad genus of federal arrangements' in a political system. These characteristics, which could in principle be composed into a scale, are drawn from the definition of a federation as 'a compound polity combining constituent units and a general government, each possessing powers delegated to it by the people through a constitution, each empowered to deal directly with the citizens in the exercise of a significant portion of its legislative, administrative, and taxing powers, and each directly elected by its citizens' (ibid., p. 121).

5. Wheare (1951 [1964]) is the main source of such contestation of India's federal status. Watts (1998, p. 131) mentions India's multi-ethnicity as a possible factor in why federalism might be difficult to sustain. Indian writing on the theme (Bose 1986) pleads for more decentralization, but such arguments are based on the fact that a federation already exists, and has the necessary capacity to decentralize even further.

6. Article 1, Constitution of India, describes the Indian federation as follows: 'India that is Bharat shall be a Union of States'.

7. These letters are now available in the form of four volumes (Nehru 1985), which are a veritable treasure trove on the politics of the early post-Independence decades.

8. See Lijphart (1996, pp. 258–68) for a theoretical exploration of this consociational strategy.

9. See the telling quotation by the then President of the BJP, Atal Bihari Vajpayee, regarding this strategy of moving towards the middle of the political spectrum for the sake of recruiting coalition partners, quoted in Arora, 2000, p. 206, fn 34.

10. Wheare (1964, p. 28), cited in Basu (1985, p. 58).

11. See Appendix for a list and key characteristics of the states. The difference between state and Union Territories is the stronger control exercised by the Union government over the (mostly comparatively small) Union Territories. Although some Union Territories have an elected assembly, the executive function is exercised by an appointed Governor and not an elected Chief Minister, as would be the case in the states. Delhi was conferred a special status by the amendment of the Indian Constitution in 1991, being jointly administered by the Union, the three local municipal corporations, and the elected NCT government as the National Capital Territory of Delhi. Jammu and Kashmir enjoys a special status among the states in accordance with Article 370 of the Constitution of India, in that it is guaranteed its own constitution, and Article 356 regarding the imposition of President's Rule does not apply to it.

12. Scharpf *et al.* (1976) has thus described the German political system as one of political interlocking (German: *Politikverflechtung*) between levels of federal government and separate units at the same level by virtue of more or less non-hierarchical and informal coordinating institutions.

13. Ministry of Home Affairs, New Delhi, http://mha.nic.in/AR01CHP7.htm (accessed on 4 December 2006).

14. See Kothari (1964, pp. 1161–73) for a description of the 'Congress system' and its working until the mid-1960s.

15. See Brass (1994, pp. 117–18) for a further discussion on this issue in the context of regional–national relations.

16. See Iyer (2000) for a discussion of crisis government in India.

17. AIR 1955 SC 549, at p. 556.

18. *S.R. Bommai vs Union of India*, 1994 (3) SCC 1, 216.

19. See F.W. Scharpf *et al.*, as the *locus classicus* for the description of German-style cooperative federalism, and Pehl (2003, pp. 173–95) for a discussion of the German federal system in connection with the accommodation of diversity.

20. See Mitra 2001, p. 55, for an assessment of linguistic and cultural diversity and its impact on federalism in India.

21. The data are based on the Government of India report on President's Rule in the states and Union Territories, quoted in Iyer (2000, p. 349 seq). Exact figures were unavailable for the period following 1997.

22. Three national emergencies were declared in accordance with Article 352 in India: in 1962 (revoked only in 1968) on account of the Sino-Indian Border War; in 1971 (revoked in 1977) ostensibly on account of the Indo-Pakistani war over the Independence of Bangladesh; and in 1975 (revoked in 1977) on account of internal disturbances connected with popular unrest in two states.

23. The term 'armed rebellion' was inserted for 'internal disturbance' by the Forty-fourth and Forty-fifth Constitution of India (Amendment) Acts, 1978, after this ground had

been used as the basis for the declaration of Emergency in 1975, and had subsequently been found to be too vague and to be inviting abuse by the Union government.

24. For a critical assessment of Article 356 of the Indian Constitution and its use, refer also to the *Final Report of the National Commission for the Reworking of the Constitution* (2001), vol. II, book 2. The group of commissioners inquiring into this issue was headed by R.S. Sarkaria, who had previously also headed the Commission on centre–state relations, termed the Sarkaria Commission, in 1988.

25. See Tarlton (1965, pp. 861–74), in Watts (1998, p. 123).

26. Jenkins (1999) provides valuable insights into the political management of the economic reform process by virtue of employing India's federal structure as an institutional framework for a quasi-laboratory of competing policies, and as an enabling structure aiming at providing incentives for policy innovation. Saez (2000) argues, in a similar vein in his assessment of the transformation, of cooperative federalism in India to a system of inter-jurisdictional competition after liberalization.

27. See Sinha (2005) for an overview of policy differentiation between states even during the era of more centralized economic planning, and its impact on the differential development of India's regions.

28. See Montek Singh Ahluwalia (2000), quoted in Drèze and Sen (2002, p. 321), for evidence of this trend.

29. For the latter point, see Rao and Singh (2004). This issue is additionally problematic because, as survey results have shown, the Indian public looks especially to state-level governments for the solution to developmental problems, reflecting an awareness of the responsibility on the part of states in this area, and assigns the blame for failure in these areas accordingly. See Chibber *et al.* 2004, p. 350.

30. For details, refer to Mitra and Singh (1999).

31. The BJP-led NDA coalition under Prime Minister Atal Bihari Vajpayee consisted initially of sixteen parties in the Lok Sabha, out of which only the BJP was a national party, and the Cabinet included many veteran regional politicians. In the fourteenth Lok Sabha, the ten-party coalition led by the Congress party under the name United Progressive Alliance (UPA), supported by the Left parties, included only two national parties, INC and NCP. Of the Cabinet ministers, two key portfolios, IT (Dayanidhi Maran) and Railways (Laloo Prasad Yadav), were allocated to regional figureheads.

32. *The Hindu*, 28 May 2004, www.thehindu.com/2004/05/28/stories/2004052807371200.htm (last accessed 8 June 2004).

33. See, for example, the discussions on Kashmir in Mathew (2002), and on India's Northeast in Bhattacharyya (2003) and Chattopadhyay (2006).

34. See the chapter on local governance in this volume.

35. See Saez (2002, pp. 128–9), for a detailed assessment of inter-governmental mechanisms, and the extent and limits of their achievements under the conditions of party-system fragmentation at the national and state levels, coalition governance, and the increased impact of disparities in socio-economic development with the advent of globalization and liberalization in India.

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Appendix 4.1: A Profile of Indian States and Union Territories (arranged by population size)

NAME	CAPITAL	TYPE[a]	YEAR[b]	POPULATION ('000)[c]	AREA (KM^2)[c]	NSDP (RS BILLION)[d]
Uttar Pradesh	Lucknow	State	1950	190,891	240,928	2412.0
Maharashtra	Mumbai	State	1950	106,894	307,713	3862.4
Bihar	Patna	State	1950	93,823	94,163	710.1
West Bengal	Kolkata	State	1950	87,869	88,752	2140.0
Andhra Pradesh	Hyderabad	State	1956	82,180	275,045	2106.6
Madhya Pradesh	Bhopal	State	1950	69,279	308,245	1031.3
Tamil Nadu	Chennai	State	1956	66,396	130,058	1945.3
Rajasthan	Jaipur	State	1956	64,641	342,239	1106.7
Karnataka	Bangalore	State	1956	57,399	191,791	1528.0
Gujarat	Gandhinagar	State	1960	56,408	196,024	1866.4
Orissa	Bhubaneswar	State	1950	39,899	155,707	671.0
Kerala	Thiruvanantha-puram	State	1956	34,232	38,863	1025.1
Jharkhand	Ranchi	State	2000	30,010	79,714	555.1
Assam	Dispur	State	1950	29,929	78,438	525
Punjab	Chandigarh	State	1950	26,591	50,362	925.4
Haryana	Chandigarh	State	1966	23,772	44,212	898.6
Chhattisgarh	Raipur	State	2000	23,646	135,191	457.4
National Capital Territory of Delhi	Delhi	NCT	1992	17,076	1,483	978.4
Jammu and Kashmir	Srinagar/Jammu	State	1957	12,366	222,236	n.a.
Uttarakhand	Dehradun	State	2000	9,497	53,483	225.2
Himachal Pradesh	Shimla	State	1971	6,550	55,673	224.0
Tripura	Agartala	State	1972	3,510	10,486	83.8
Meghalaya	Shillong	State	1972	2,536	22,429	57.6
Manipur	Imphal	State	1972	2,627	22,327	51.2
Nagaland	Kohima	State	1963	2,187	16,579	n.a.
Goa	Panaji	State	1987	1,628	3,702	109.5
Arunachal Pradesh	Itanagar	State	1987	1,200	83,743	27.7
Puducherry	Pondicherry	UT	1963	1,074	479	51.5
Chandigarh	Chandigarh	UT	1966	1,063	114	94.3
Mizoram	Aizawl	State	1987	980	21,081	n.a.
Sikkim	Gangtok	State	1975	594	7,096	15.3
Andaman and Nicobar Islands	Port Blair	UT	1956	411	8,249	14.4
Dadra and Nagar Haveli	Silvassa	UT	1961	262	491	n.a.
Daman and Diu	Daman	UT	1987	188	112	n.a.
Lakshadweep	Kavaratti	UT	1956	69	32	n.a.

Notes: [a] Type refers to the current constitutionally defined status of the respective political territory as a state, Union Territory (UT), or the National Capital Territory (NCT).

[b] Year refers to the year in which the respective unit acquired its current status as a separate state, Union Territory or National Capital Territory, which may or may not coincide with its last territorial revision or name change.

[c] Population figures are the projected March 2008 figures based on an extrapolation of the 2001 Census of India and were taken from the Census of India website (http://www.censusindia.gov.in/Census_Data_2001/Projected_Population/Projected_population.aspx). Figures for the states' geographic areas were compiled from state profiles on the Ministry of Health and Famil Welfare's website (http://www.mohfw.nic.in/NRHM.htm, accessed on 17 May 2009).

[d] NSDP is the 2005–6 Net State Domestic Product at current prices and was taken from the Governent of India's Union Budget and Economic Survey 2008–9, http://indiabudget.nic.in/es2007-08/chapt2008/tab17.pdf (accessed 13 May 2009).

12

Transformation of the Indian Political Party System

M. P. Singh and Kyoung-Hee Koh

This chapter purports to analyse the transformation of the Indian political party system since the nation's independence in 1947. In doing so, this chapter does a historical review of the evolution of the party system between 1952 and 2009 Lok Sabha elections, followed by an empirical analysis of the pattern of fractionalisation of the party system and coalescence of political forces in federal Parliament. This analysis clearly demonstrates a long-term transition from one-party dominance to a multiparty configuration with coalitional governance. The latest general elections of 2004 and 2009 have confirmed that the year 1989 was indeed a turning point in Indian politics. Over half-a-century of parameter-altering changes in the society and party system discussed here have occurred under the federal Constitution that India adopted in 1949–50. This constitutional continuity in the midst of great political, social and economic changes must be rated as a rare, rather unique one for a developing polity. India joined the democratic odyssey during the 'second wave' of democracy at the end of World War II and remains committed to it. The world is now passing through a 'third wave' that set off in the mid-1970s and continued through

the political upheavals of the 1980s–90s, and our own immediate neighbourhood in the early years of the twenty-first century.[1]

TRANSITION OF THE PARTY SYSTEM

The transition of India's party system since Independence may be divided into three discernible phases of evolution: (a) the period of one party consensual dominance under the aegis of the Indian National Congress (INC) during the prime ministership of Jawaharlal Nehru, Lal Bahadur Shastri and Indira Gandhi (1952–67), (b) the erosion of Congress dominance and its personalisation around Indira Gandhi's personality cult, the gradual building up of oppositional politics within the party system, mass movements in the 1970s and the return to electoral politics in 1977 following the internal 'Constitutional Emergency' (1975–7), and (c) the onset of federal politics within the political framework of fragmented multipartism

Table 12.1: Rae Index and Effective No. of Parties in Relation To Lok Sabha Elections 1952–99

Election Year	Rae Index	Effective No. of Parties
1952	0.444	1.799
1957	0.440	1.786
1962	0.463	1.862
1967	0.686	3.185
1971	0.530	2.128
1977	0.620	2.632
1980	0.537	2.160
1984	0.410	1.694
1989	0.757	4.115
1991	0.722	3.597
1996	0.830	5.882
1998	0.814	5.376
1999	0.831	5.917

Note and source: The statistical indicators are computed on election data from Arend Lijphart, *Electoral System and Party Systems*. New York: Oxford University Press, 1994, 169–72; Robert L. Hardgrave and Stanley Kochanek, *India: Government and Politics in a Developing Nation*, Fort Worth: Harcourt College Publishers, 1993, 321; and Election Commission of India Statistical Reports of General Election, 1991–9, http://www.eci.gov.in.

under the Janata Dal (JD)-led Third Front coalition governments, or Bharatiya Janata Party (BJP)-led bipolar coalition governments (1989 onwards), or the INC-led bipolar coalition governments (2004 onwards). The computed statistical properties of the phases of this periodisation are presented in Table 12.1.

CONSENSUAL ONE-PARTY DOMINANCE

Multiparty general elections in 1952, 1957 and 1962 produced one-party majority governments under the INC, the party which spearheaded post-Independence economic development in a mixed economy, with the state undertaking the lead role in a planned strategy of industrialisation. The consensual nature of the Indian political enterprise during these defining decades was maintained through a rare synergy of the 1950 Constitution, the first three five-year plans, a carryover of much of the meritocratic bureaucratic structure of the British Raj, and a pluralist approach to the party system and trade union movement under the political dominance of INC at the Centre as well as in the states. The dominant party was still led by a collective national leadership under Nehru that had fought for and won India's freedom. These were the heady days of Prometheus Unbound, despite the pains of Partition and communal riots and the largest movement of refugees in history across newly-demarcated borders in the wake of India's 'tryst with destiny' that Nehru heralded at the midnight hour on 14–15 August, 1947. During these years robust optimism was sustained with reasonable measures of political and economic development in comparison to rudimentary advances made in these respects during the British Raj. The future looked good, and what is more important within grasp, given the right perspective and perseverance. The crisis of implementation and good governance had not yet become as glaring as it did later.

In the literature on politics in India, its party system until at least the mid-1970s was variously conceptualised and hypothesised as the 'Congress system' (Kothari 1964; 1970; 1974), 'one-party

dominant system' (Morris-Jones 1964, 1978) and 'predominant party system' (Sartori 1976). This means that despite legally-permitted multiparty elections, one party—the Indian National Congress—was repeatedly returned to power with an absolute majority during this period. The Congress, a colossal 'party of consensus' (in ideological as well as sociological terms) was surrounded by smaller 'parties of pressure' that functioned more like interest groups than parties due to their remote probability of coming to power singly or even as part of a coalition under the then prevailing political atmosphere. The pattern of interaction among the marginal opposition parties and the various factions in the dominant party was such that the opposition was more efficacious in concert with ideologically, regionally, and sociologically contiguous factions within the ruling party rather than in neat government-opposition demarcations. The 'middling' democratic centripetality of the dominant party also meant that die-hard right-left, centralist, regionalist, secular-communal, nationalist, communist and internationalist political forces were more distant from each other, and therefore discordant compared to the concordant/congenial factional elements within the ruling party. These qualitative features characterising the dynamics of the 'Congress system' in this phase of the Indian party system are insightfully sketched in the literature cited above. What we attempt in this chapter is to present some aggregate statistical measurements and analysis of some key political indicators pertaining to the evolution of the party system of India over half-a-century of electoral democracy. These elections were based on universal adult franchise introduced in a rush in a country lacking in the conventional socio-economic preconditions or correlations of political democracy conceptualised on the basis of the first wave of democracy in post-feudal Western Europe, North America, and Commonwealth of Nations. This we consider is a meaningful exercise and contribution to the current theoretical explorations of democratic consolidation in comparative political theory. For the party system has commonly been singled out as an important factor to explain the relatively better governmental stability in India in the early post-independence decades than in the past two decades. India is said to be slipping into a deepening crisis of governability.

Arresting this trend is crucial to democratic consolidation in the world's largest democracy and peace and stability in the South Asian region and the Afro-Asian macro-region.

Table 12.1 presents political indicators pertaining to the growth of the Indian party system since the first general elections in 1952. These are (a) effective number of parties computed by using Laakso-Taagepera index (1979) devised for this purpose, and (b) Rae index (1971) of fractionalisation of the parliamentary party system. These two measures validate our characterisation of the first phase of the Indian party system as 'consensual one-party dominance'. Even though the number of parties between 1952 and 1962 in gross terms is very large, their effective number in terms of the mean for the same period is only 1.82. The value of the Rae index of fractionalisation is also fairly low at 0.45. In other words, the party system is highly integrated and there is decisive dominance of one party, the Indian National Congress.

DOMINANCE WITH DISSENT

The fourth general elections in 1967 marked the first major electoral breach in the Congress system. This was the first post-Nehru electoral exercise after the first Prime Minister's demise on 27 May, 1964. Besides the cumulative anti-incumbency factor in place for over a period of two decades, several variables factored in to produce this first rout of the Congress in major north Indian states and Tamil Nadu, and a considerably reduced majority for the party in the Lok Sabha. In the backdrop of Nehru's failing health, the regional party bosses in the country took steps towards a kind of collective Congress leadership to take over once Nehru was gone from the political scene. The journalists nicknamed this emergent post-Nehru collective Congress leadership as the 'Syndicate'. The political atmosphere in the country at large was, however, changing fast in the backdrop of India's military debacle in the Indo-Chinese war in 1962 and a severe famine in north India a year before the 1967 elections. The war with communist China dealt a severe blow to Nehru's health as well as to the strength of the influential

left-wing within the Congress Party. The Union Defence Minister, V. K. Krishna Menon, a 'cryptocommunist', was sacrificed as a scapegoat. The Congress Chief Minister of Maharashtra, Y. B. Chavan, a former Congress Socialist, was drafted into the Union Cabinet as the new defence minister. This at least partly balanced the scales in favour of the Congress right-wingers who had been cooling their heels since 1963 when the Congress president, K. Kamaraj, manoeuvred a party re-organisation plan. Under this, all Union ministers and chief ministers were prompted to resign to give the shell-shocked Prime Minister a last opportunity to reshuffle his government, in which top right-wing Union ministers had borne the brunt of retirement from the Cabinet to make them available for organisational work.

Nehru's death in May 1964 prompted the right-wing old guard to reassert itself the first time since Vallabhbhai Patel's death in December 1950 in the affairs of the government and the party, which had become Nehru's prerogative after the passing into history of what Brecher (1966) called the 'Nehru-Patel diumvirate'. But with the old guard divided among themselves over the issue of Nehru's successor party president K. Kamaraj managed to play a balancing role of the kingmaker in the emergent collective leadership conclave that decided on the successor to the first Prime Minister in 1964 and to the second prime minister in 1966. Lal Bahadur Shastri was given the nod after Nehru, and on the former's death at Tashkent, Indira Gandhi was co-opted for the job. Morarji Desai, the strong-willed Gandhian patriarch and a known right-winger among the old guards, was bypassed on both these occasions.

Shastri's unexpectedly good showing as the Prime Minister in the Indo-Pakistan war of 1965 was washed away on account of his perceived capitulation under international pressure to return the territories conquered by the Indian army in its response to Pakistani aggression, a surrender that Indira Gandhi was not to repeat in 1971–2 during the wake of the Bangladesh war. The 1967 general elections held in this backdrop proved to be a veritable wet blanket for the ruling party, resulting in its defeat in half of the states. However, the patchwork catch-all coalition governments

which comprised political forces from the left through the centre to the right under the omnibus non-Congressional canopy did not offer much of an alternative to write home about.

Following Shastri's sudden death at Tashkent in the winter of 1965–6, Indira Gandhi, for her perceived amenability as a 'dumb-doll', was nominated by the party hierarchs to head the Congress parliamentary party and its government. Gandhi used the power and patronage of the premiership and the popularity of the Nehru dynasty decisively and dexterously to salvage the uncertain fortunes of the Congress and turned to populist economic policies and political ploys more appropriate to an illiberal democracy. She used the antlers of prime ministerial power and manoeuvred to force out the old guard from the party by splitting it in 1969. Two years later she registered a resounding electoral victory in the snap parliamentary elections of 1971 on the catchy slogan of *garibi hatao*. Towards the end of the same year the democratic experiment in Pakistan failed and the religion-based 'two-nation theory' on which it was founded unravelled causing an explosion of linguistic nationalism in East Bengal. India was forced to intervene militarily in the imbroglio as the Northeast came under a demographic 'aggression' due to a massive influx of refugees that exceeded the local population in Tripura and threatened to do so elsewhere.

But, despite overwhelming parliamentary and state legislative majorities, Indira Gandhi's illiberal behaviour provoked protests from the judiciary, students, party and non-party oppositional forces and socialist trade unions. The socialist-turned-Gandhian Jayaprakash Narayan was drafted from virtual political retirement to provide an overall leadership to this movement against the authoritarian Congress-Communist Party of India combine (minus Communist Party of India-Marxist that preferred to join the democratic populist thrust pitted against authoritarian populism led by Indira Gandhi). Both Gandhi and JP claimed to act democratically and invoked principles of periodicity of electoral mandate in a republican or representative democracy or recall in a participatory direct democracy. But under the specific context of the 1970s, actions of both these leaders were fraught with dangers of Third World

authoritarianism or a slide into fascist populism. In the event, both of these outcomes were averted, thanks to the electoral intervention of 1977 (Chandra 2003).

The four additional landmarks of the turbulent 1980s–90s were (a) the rout of the Indira Gandhi-led Congress in the post-Emergency elections of 1977–8 in the north; (b) the emergence of the de facto Janata Party coalition government comprising five non-Congress/non-Communist opposition parties in New Delhi and major north Indian states that gradually fizzled out by 1979–80; (c) the electoral restoration of Indira Gandhi's Congress in 1980; and (d) a massive electoral landslide in favour of Rajiv Gandhi following his mother's assassination in 1984 following a police/military action to flush out Sikh terrorists from the Golden Temple in Amritsar. Riding on the 'sympathy wave' for the fallen Congress matriarch, Rajiv Gandhi was voted to power in the centenary year of the Congress with an electoral mandate which surpassed even those for Nehru and Indira Gandhi. But, as it happened, it was an electoral tide that was gained without merit and was lost by 1989. Rajiv Gandhi was assassinated by the LTTE while impressively campaigning for his party in 1991 in Tamil Nadu.

The raw number of parties between 1971 and 1984 ranged between 26 and 17, averaging at 20.75. The mean value of the effective number of parties during this phase in terms of the Laakso-Taagepapra index was 2.36. The Rae index of party system fractionalisation meaned at 0.56. This degree of fragmentation would appear to be even more magnified if we bear in mind the high level of dissent and protest as evidenced by the extra-parliamentary mass protest movement mentioned above.

FRAGMENTED MULTIPARTISM

The elections of 1989 marked India's entry into the phase of fragmented multipartism as a systemic feature. Since then coalition and/or minority governments have governed India. This period featured the Janata Dal-led Third Front, National Front and United Front governments, a Congress minority government headed by

P. V. Narasimha Rao, the BJP-led National Democratic Alliance (NDA) governments, and Congress-led United Progressive Alliance (UPA) governments. The trend so far appears to be marked by a shift from (a) one-party minority government to multi-party coalitional minority governments, and (b) from Third Front coalitions without the Congress, on the one hand, and the BJP on the other, to bipolar coalitions led by the BJP and the Congress respectively. This has reduced the Third Front to a gradually dwindling third force. The Third Front comprised the Janata Dal, the communist parties, and myriad other regional parties. With the fragmentation of all-India parties like the Congress and Janata Dal having a middle-of-the road programmatic orientation and with a right-ward lurch in the party system, regional parties have mushroomed since 1989 and forced a change in the 'go-it-alone' temperament of the two larger national parties—the Congress and BJP—making them scramble for regional allies. Even though the Congress still continues as the single largest party in the system in terms of the electoral vote share in the Lok Sabha (not necessarily in Lok Sabha seats), the BJP has been relatively more successful in building bridges with the regional parties, since in many states the regional parties face the Congress as their main opponent. The Congress being the dominant political force for so long in the past initially repelled allies both due to its stiff upper lip and also because of the antipathy of its past victims.

The much maligned Hindu majoritarian temperament of the BJP is largely a political myth. This party was politically 'untouchable' until the other day due to its political sin of practicing 'communal' politics, but has subsequently overcome this handicap by dropping the more overtly communal items from its agenda due to compulsions of coalition politics. In any case, there is difference of degree in the communalism practiced by the BJP and its cultural allies—the Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP) and Bajrang Dal. The BJP is not above the temptation to exploit to the full its Hindu communal as well as secular constitutional connections. In fact, no political party in India today can claim to be conscientiously beyond the pale of this temptation of exploiting communalism, either in its 'soft' or 'hard' versions. Security threats,

the scare of 'religion in danger' among minorities as well as national provincial majorities, increasing replacement of populist politics by an Indian version of the spoils system in political as well as corporate governance, high incidence of societal violence, existence of draconian laws, and ambiguous civil rights situation at times have all tended to lend a halo of illiberality to Indian democracy in the post-Nehru phase. However, thanks to continuing multiparty elections, the pluralist rather than corporatist structure of pressure group politics, an independent mass media, a well-entrenched mass education system, excellent enclaves of natural and social science research establishments under public as well as private management, judicial independence and statutory framework of National Human Rights Commission and Minorities Commission, it would be wrong to write off India's credentials as a promising 'Third World' liberal democracy.

The raw number of parties since 1989 range between 27 in the base year (1989), 40 in 1998, and 39 in 1999. The number of effective parties computed by the Lasakso-Taagepara formula ranges between 4.115 in 1989 and 5.917 in 1999. The mean value of this index for the phase is 4.977. The Rae index of party system fractionalisation for this phase is also consistently higher, ranging from 0.757 in 1989 and 0.831 in 1999, meaning at 0.791.

Of the raw number of parties in the 1990s, seven or eight have been national parties, while there have been as many as 34 state and registered unrecognised parties in 1999 in terms of the Election Commission of India's classification. Once registered, parties fall into the category of state parties or fall into the nominal/residual category of a registered party by being denied classification as national or state parties until they qualify by virtue of electoral performance in the polls (Strangely, the commission does not weed out any party once it is registered!).

Following the two Lok Sabha elections in the 2000s—in 2004 and 2009—the ongoing pattern of the party system fragmentation more or less continued under the Congress-led UPA governing coalition, though the situation slightly improved in 2009. The raw number of parties represented in Parliament was 43 in 2004 and 34 in 2009. Between the two elections, the Congress-led

UPA consolidated itself considerably as its strength rose from 215 seats in 2004 to 261 in 2009. The position of the Congress also improved from 145 seats to 201, making it less vulnerable to internal armtwisting by its coalition partners. The BJP-led NDA continued to decline, going down from 186 seats to 159 during this period. The party's own lot went down from 138 seats to 121. Other parties outside these two major coalitions led by the two main national parties found their seats reduced from 136 in 2004 to 124 in 2009, the Left parties suffering a precipitous fall from 59 seats to 24. The effort to consolidate a third force in a Front before and during the 2009 election turned out to be infructuous. As it happened, the Third Front comprising the Left parties and some other regional players like the Bahujan Samaj Party (BSP), Biju Janata Dal, AIADMK, Telugu Desam Party (TDP), Janata Dal (Secular) won 79 seats, while a Fourth Front consisting of nine parties, mainly the Samajwadi Party and the Rashtriya Janata Dal (Bihar) bagged just 27 seats. The combined vote share of the UPA (37.22 per cent) and NDA (24.63 per cent) stood at 61.85 per cent. The vote share of the main national parties leading these alliances was 28.55 per cent for the Congress and 18.80 per cent for the BJP.

How do we explain the denouement of the system of fragmented multipartism since the 1990s, and the apparent passing into history of the earlier phases of one-party pluralist dominance in the Nehru era and the over centralised one-party dominance with mass movement dissent in the Indira Gandhi era? For one thing, it is difficult not to feel that the putative Congress dominance never really amounted to hegemony. For another, neither socio-economic nor political formations in India conform to either a mutually reinforcing cultural cleavage structure or to the polarised class structure of an advanced industrial society. Hence, with the legacy of the anti-colonial nationalist generation of leadership gone, it became increasingly difficult to aggregate the growing political differentiations and politicised identities and interests of the Indian society under the antecedently or a newly-emergent dominant party. It is not easy to quantify a discrete set of factors and values from a continuous range of causal probabilities to neatly

explain how the current phase of fractionalised multipartism has come into existence.

We attempt, however, an explanatory sketch here in terms of a set of sociological and politico-economic factors in a complex web of causation at work for over half-a-century of democratic politics in the country. There was, to begin with, a concomitant decline in the capacity of the Indian National Congress to accommodate increasingly differentiated multiple societal cleavages at the same time as in its ability to reconcile the vaulting political ambition of its post-Nehru leadership. The major Congress splits of 1969 and 1978 and after may be largely understood in these terms.

Something akin to an unraveling of the organic traditional unity of the social structure has been underway without a commensurate set of electoral and party reforms to help funnel societal differentiations into a viable party system functionally consistent with the structural requirements of parliamentary and federal governance in India. We will return to this reformist theme in a subsequent section of this chapter. Meanwhile, it is important to note the cumulative effects of the political and economic rise of the predominantly Other Backward Classes (OBC) peasantry reflected in the electoral outcomes in 1967, 1977 and 1989. This was symbolically demonstrated by the appointment of the Second, Backward Classes Commission (chaired by B. P. Mandal, a neo-rich agriculturist Yadav leader of Janata Party from Bihar) in 1978, and the implementation of its recommendation for OBC reservations (besides scheduled castes/tribes) in Central government jobs in 1990 by the Janata Dal-led National Front government in New Delhi. This decision extended a south Indian model of public reservation policy to the Union level. The Janata Party government led by Karpoori Thakur had already introduced OBC reservations in Bihar in 1978. The Janata Dal government headed by Mulayam Singh Yadav followed suit in Uttar Pradesh too in 1993. These events marked the ascendance of OBC peasant power that was to be checkmated by the mid-1990s and by the rise of Hindutva forces under the political leadership of BJP, and the assertion of dalit political power in Maharashtra, Punjab and ultimately Uttar Pradesh mainly under the BSP led by

the Kanshi Ram-Mayawati duo. Important also was the articulation of linguistic, religious and tribal regionalism in Assam and Andhra Pradesh in the 1980s–90s, in addition to such previously existing political phenomenon in Tamil Nadu, Punjab, Jammu and Kashmir and the Northeast.

The shriller temper of identity politics in India today has ethnicised and regionalised the party system, which in turn has considerably held in check the earlier trend of parliamentary/executive, centralisation of power in the Union government. It instead encouraged a process of political federalisation to a degree unknown in the past. In tune with the new federal fervour in the political system, the temper of judicial behaviour has also changed to interpret the Constitution in a way that has facilitated a more autonomous functioning for state governments. The Supreme Court's ruling in the S. R. Bommai and Others v. the Union of India (1994), for instance, marked a radical departure from the past inasmuch as the Union government's decision to proclaim President's Rule in a state under Article 356 of the Constitution was made subject to judicial review. The courts had previously considered this a 'political thicket', best left to the final discretion of the Government of India.

The Supreme Court was also called upon to arbitrate on OBC reservations in the Mandal Case (1993) to rationalise this controversial public policy. It ruled that (a) more advanced sections of the OBCs ('the creamy layer') must be excluded from the benefits of reservations, and (b) in order to balance the scale between past caste-based disadvantage and current discriminations, a complete dissociation of reservation from caste criterion (i.e., for economically backward upper castes) would be inconsistent with the Constitution. The latter point is presently under political review as the erstwhile Congress Chief Minister of Rajasthan Ashok Gehlot (summer 2003) voiced support for introducing reservations for the poor among the upper castes, while the BJP-led NDA government promised to set up a constitutional commission for considering the issue of reservations for economically backward classes and review of the list of OBCs. This was finally not done. The reservation

policy having grown into a sprawling federal jungle with myriad Union-State(s) variations and distortions, the judiciary may have a difficult job in its hands rationalising this.

The Hindu-Muslim row over Ayodhya has been at the hub of the Indian party system since the early 1990s and a BJP sheet-anchor in electoral mobilisation until at least the round of Assembly elections in the last quarter of the year 2003. The issue refuses to recede into the background both on account of the exacerbation of the politics of faith in South Asia, especially because of the India-Pakistan factor, which is a festering thorn in the regional flesh. But thanks to India's determined pursuit of the federal democratic option in Jammu and Kashmir and elsewhere, the People's Democratic Party (PDP)-Congress coalition government chaired by Mufti Mohammad Syed sat on the saddle in the aftermath of a free and fair election in the state towards the year-end 2002. The arrangement was that each party would alternatively head the ministry for a period of three years each. In the 2008 assembly election, the NC formed the government with the support of the Congress.

Finally since 1991, the Indian party system is adapting to a paradigm shift from a broadly Keynesian economic policy regime to a policy framework oriented towards neo-liberal economic reforms receptive to privatisation and capitalist globalisation. In the context of the deepening crisis of political or welfare liberalism of the state, the Congress government headed by P. V. Narasimha Rao accelerated the policy of enhanced business liberalism or marketisation. A broad consensus on these economic reforms is evident across party lines, and therefore the major direction of the policy has continued largely unaltered despite frequent change of guards from the centrist Congress through Janata Dal-led left-of-centre United Front to the right-of-centre BJP-led NDA and back to a Congress-led UPA coalition. The pace of reforms has, of course, varied under all these administrations, the slowdown mainly manoeuvered to trim the sails to real or apprehended electoral reprisals and disasters. The real test for the durability of the present policy consensus lies, however, in the future. Political or welfare liberalism has admittedly gone awry due to the crisis of political governability and the public sector failure in a large number of cases. Nonetheless, business liberalism

may be good primarily for the market, but it tends to accentuate inequities in society and polity in terms of class, ethnic, and regional disparities over time. Whether the new policy paradigm engenders a better quality of life and human development for all, and raises the party political processes and social movements, governmental and non-governmental organisations to a higher level of political and economic integration within and among the nations of South Asia is a big question mark for the future. Indeed, the emergence of a global recession in 2008 has had some effect on India, though India with its economy, still somewhat regulated, has fared relatively well.

ELECTORAL AND PARTY SYSTEM REFORMS

The Indian electoral and party system suffers from two dysfunctionalities that got aggravated in the post-Nehru period. First, corrupt and criminal elements among the political class have cast a shadow particularly over the past few decades (Singh 2002), and second, fragmentation of party system since 1989 has made formation and maintenance of federal coalition governments, comprising nearly a dozen or two dozen parties with jumbo size ministries, extremely difficult (Singh and Saxena 2003: chap 7).

A major critique of the plural electoral law that relates to the distortion between the vote and seat shares during the Congress party's dominance in the Nehru and Indira Gandhi era is now seldom made. For with the decline of one-party dominance, social and regional diversities of India are very inadequately aggregated into larger number of parties resulting into an extreme party system fragmentation. Thus, even without formally having proportional electoral law, India has come to have, for all practical purposes, the typical effect of proportional representation. Of course, formally adopting proportionality may aggravate party system fragmentation still more.[2]

It was symptomatic of the approach of the framers of the Indian Constitution that while they made the longest basic law for the country in the world, they left the party system entirely to be

evolved through convention.[3] Elections, to be sure got a chapter (Part XV), but rather a small one with only six articles that do not mention political parties at all. Even parliamentary statutes relevant in this context such as the Representation of the People Act, 1950 and 1951, the Companies Act 1956 (Section 293 A and B), the Income Tax Act, 1961 (Sections 13A and 139A and B), and Foreign Contribution (Regulation) Act, 1976 (Sections 4, 5, and 6) mention political parties incidentally in the larger framework of representation and economic laws. The Anti-Defection Act, 1985, and the related 52nd Constitutional Amendment refer to political parties directly, but only in the limited context of unprincipled floor-crossing of MPs/MLAs (Section 3). The Xth Schedule of the Constitution added by the 52nd Amendment has nothing to do with organisation and working of political parties as vital links between the state and the civil society.

Thus the founding fathers of the Indian Republic preferred not to legislate a party system. In adopting this approach, they were perhaps influenced by the British and the Commonwealth of Nations, where parties have grown as a matter of convention, without constitutional or legal fiat. The makers were also probably reassured by the vigour of the civic action which emanated from the civil society during the freedom struggle.

Given the growing pathology of the party system in India, at least two major reforms appear necessary. The first of these must address to the problem of corruption and criminality; and the second, the problem of extreme fragmentation often making governments chronically unstable. The Report of the National Commission to Review the Working of the Constitution (NCRWC Vol. I 2002: chap. 4) makes a radical departure from the previous approach to the party system as reflected in the Constituent Assembly in recommending a comprehensive legislation regulating organisations, electoral activities, and funding of political parties in a transparent, legitimate, and legally and socially accountable way. The commission also goes on to encourage political parties to adopt, on their own initiative, the national convention system for electing party leaders (as in Canada).[4] Besides being consistent with the parliamentary-

decades of the twentieth century (See Bakvis 1990). At the national party conventions, Canadian delegates vote as individuals, while in national party conventions in the federal-presidential USA all delegates from a state vote as a bloc.

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CHAPTER 1

THE REACH OF POLITICAL ECONOMY

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OVER its long lifetime, the phrase "political economy" has had many different meanings. For Adam Smith, political economy was the science of managing a nation's resources so as to generate wealth. For Marx, it was how the ownership of the means of production influenced historical processes. For much of the twentieth century, the phrase political economy has had contradictory meanings. Sometimes it was viewed as an area of study (the interrelationship between economics and politics) while at other times it was viewed as a methodological approach. Even the methodological approach was divided into two parts—the economic approach (often called public choice) emphasizing individual rationality and the sociological approach where the level of analysis tended to be institutional.

In this *Handbook*, we view political economy as a grand (if imperfect) synthesis of these various strands. In our view, political economy is the methodology of economics applied to the analysis of political behavior and institutions. As such, it is not a single, unified approach, but a family of approaches. Because institutions are no longer ignored, but instead are often the subject matter of the investigation, this approach incorporates many of the issues of concern to political sociologists. Because political behavior and institutions are themselves a subject of study, politics also becomes the subject of political economy. All of this is tied together by a set of methodologies, typically associated with economics, but now part and parcel of

political science itself.[1] The unit of analysis is typically the individual. The individual is motivated to achieve goals (usually preference maximization but in evolutionary games, maximization of surviving offspring), the theory is based in mathematics (often game theoretic), and the empirics either use sophisticated statistical techniques or involve experiments where money is used as a motivating force in the experiment (see Palfrey, this volume).

The purpose of this Introduction is to illustrate the intellectual excitement in political economy by covering some important elements on the scholarly frontier. As such, it neither provides an outline of the volume nor a summary of the major topics and results. In this chapter, we discuss a set of approaches and issues that have spawned interesting results and that are likely to spur considerable research in the next decade.

We divide our essay into five sections. In Section 1, we discuss research on endogenous institutions. The research agenda on institutions follows a natural progression. The first step is to determine how institutions affect behavior. Indeed, this step seems a necessary condition for a theory of endogenous institutions. Having built up a large literature on the effects of institutions, students of political economy have begun to treat institutions as endogenous (thereby incorporating some of the subject matter of sociology and anthropology). We focus our attention on legislative institutions because this is where much of the work has been done. The success of institutional analysis of legislatures is not surprising, as scholars have collected a large body of data and evidence (both quantitative and qualitative) on legislatures. For example, votes have been recorded with party affiliations and other attributes noted. These large data sets allow hypotheses to be tested and theory to be refined. Because the rules of the US Congress are internal to Congress, voting procedures, the type of committees, and committee assignments are all endogenous. So legislatures are fertile ground for exploring institutional choice.

One of the technically most challenging but at the same time one of the most exciting areas of research in political economy concerns the revelation and aggregation of information, the subject of Section 2. This work is exciting because many of the results contradict earlier beliefs based on decision-theoretic models and because this research answers many puzzles. Here, our focus is on voters, particularly voters who are uninformed in one way or another, but are nevertheless rational. Since this research area is still in its infancy, we expect much more to be done in the ensuing years.

Section 3 is devoted to evolutionary models of human and political behavior. Political economy is now at the confluence of two related paradigms: utility maximization and evolutionary fitness. Both employ survival arguments in the context of competitive forces—for example candidates need to win elections to survive. And both employ the concept of equilibrium. These two concepts of survival and equilibrium distinguish political economy from other approaches to political behavior. However, these two approaches at times provide contradictory insights. As we will

[1] See Austen-Smith, this volume.

show, some kinds of irrational behavior may improve evolutionary fitness. So at the same time that political economy is pushing the envelope of hyper-rationality (as illustrated in Section 2), it is also trying to incorporate elements of emotions and irrationality (Section 3). Furthermore, while political economy has traditionally been based on self-regarding behavior, a considerable body of research in evolutionary politics tries to explain other-regarding behavior, such as altruism and vengeance.

Scientific knowledge depends to a great extent on the interplay between empirical knowledge and theoretical development. Not surprisingly, our most comprehensive knowledge is about the advanced industrial democracies in general and legislatures in particular, where the great number of observations (of votes, party affiliation, etc.) allow for an extensive testing of hypotheses and considerable refinement of theory.[2] Our *Handbook of Political Economy* reflects this emphasis.

Nevertheless, over time, there has been a spread of knowledge from the core areas of research. This spread has occurred for several reasons. First, the same behavioral relations that we observe within democracies may occur across political systems once we account for the divergent institutional constraints on the actors. For example, authoritarians may not face elections, but they too need political support to remain in power (see Bueno de Mesquita, this volume). Second, more information is being collected so that cross-country comparisons can now be done.[3] Finally, the political phenomena in non-democratic countries raise a host of questions typically ignored in democratic countries that demand answers: why is there ethnic conflict? When is democracy a stable political system? What if any is the relationship between democracy and capitalism? And why are so many nations underdeveloped?[4]

In Section 4, we consider the spread of political economy to new areas of research. Here the empirical and theoretical answers are the least certain, but perhaps the most interesting because of their novelty. We use, as our illustrative example, work on the size and wealth of nations. A motivating reason for choosing the size of nations as our prime example of the spread of political economy is that rational choice models have often been (unfairly) accused of dealing with "epiphenomena" such as voting rather

[2] This disproportionate focus of political economy research has arisen for several reasons. First, the political economy tools were first developed studying democratic countries and are therefore more easily adapted to other democratic countries than to non-democratic ones. Second, close observation and data are more easily obtained in democratic countries so that theories applying to them have been honed the most. Third, the institutional tools of political economy are more readily applied to the more highly developed institutions of the advanced industrial democracies, in contrast to the less stable and less institutionalized politics in the developing world.

[3] Indeed, another defining characteristic of the political economy approach is the use of large data sets that enable econometric comparisons across a variety of countries, where the varieties are captured by different independent variables. For examples of cross-country comparisons, see Persson and Tabellini (this volume) and Glaeser (this volume). The econometric approach is in stark contrast to the older comparative politics literature, which compared two or three countries at a time.

[4] For *Handbook* surveys of these fields see, respectively: Fearon (this volume), Przeworski (this volume), Iverson (this volume), and both Acemoglu and Robinson (this volume) and Bates (this volume).

than with "deeper and more substantive" issues. The size and wealth of nations clearly passes the gravitas test.

1 Endogenous Institutions: The Structure of Congress

Institutions can be studied at three different levels. First, the most basic and common level takes institutions as given and studies their effects. Second, the first method can be used as a form of comparative institutional analysis to study the implications of different forms of institutions. Third, the deepest level of institutional analysis is to take the institutions themselves as endogenous; and to explain how and why institutions are structured in particular ways, and why some types of institutions survive but not others. The third approach is both the newest and the least explored of the three approaches to institutions and is therefore likely to be a major frontier in the coming years.

To illustrate the differences in the three approaches to institutions, we focus on legislatures, where scholars have made significant progress on institutional choice. We begin our discussion with models that take legislative institutions as given and study their effects. In a relatively 'institution-free' legislature with majority rule voting in one dimension, legislative choice will be the preference of the median legislator. By adding institutional features to this simple spatial model of legislative choice, scholars have studied the implications of a variety of institutional details. For example, several scholars have studied the effect of *committee* gatekeeping authority (Denzau and MacKay 1983; Shepsle and Weingast 1981) or *party* gatekeeping authority (Cox and McCubbins 2005) on legislative choice. The idea is that committees (during the mid-twentieth century) or parties (during the late twentieth century and early twenty-first century) held the power to keep issues within their jurisdiction from coming up for a vote. In contrast to the median voter model, the gatekeeping models show that some non-median status quos can be sustained: the gatekeeper will keep the gates closed for any status quo that she prefers to the median's ideal. This research agenda has produced a wealth of knowledge about how legislative institutions affect both legislative policy choices and policy decisions by the other branches. For example, Laver and Shepsle (1996; see Laver, this volume) show how parliamentary institutions affect policy choice; Krehbiel (1998, this volume) demonstrates the effects of internal congressional rules (notably, the filibuster) for policy-making, including how policy-making changes with various types of electoral change; Ferejohn and Shipan (1990; see Huber and Shipan, this volume) show how potential threats of legislation affect bureaucratic decision-making even without any legislation passing; and Marks (1988; see McCubbins and Rodriguez, this volume) demonstrates the close relationship between legislative preferences and judicial decisions that interpret the meaning of statutes.

The second type of institutional analysis utilizes the above methodology to make comparative statements about different institutions. For example, pivotal politics models show the differences in behavior between a unicameral majoritarian system, a bicameral system where each chamber uses majority rule, and a bicameral system in which one chamber employs a filibuster rule allowing a minority of legislators to prevent the passage of legislation. The first institution always results in the median legislature's ideal policy. The second institution creates a gridlock range of possible policy choices—the set of points between the ideal policies of the median in each chamber. Any status quo policy in this set is an equilibrium in that there does not exist a majority in each chamber that can overturn it. The third institution extends the set of status quo points that cannot be overturned even further: the possibility of a filibuster means that only policies commanding 60 per cent in one chamber and a majority in the other can overturn a policy, so more status quo policies are stable. For a further discussion of these issues see Krehbiel (this volume) and Cutrone and McCarty (this volume).

Third, a much smaller set of papers studies the structure of the legislature itself and treats its institutions as endogenous.[5] Four different approaches have been used to explain legislative structure: (1) legislator preferences, (2) committees as commitment devices, (3) parties as transactions cost reducers, and (4) committees as information providers.[6] We will now discuss each in turn.

1.1 Legislator Preferences

The simplest of the approaches bases legislative choice on legislator preferences and relies on the "majoritarian postulate," which holds that legislative policy and procedural choices are made by majorities (Krehbiel 1991). In the context of one-dimensional models of policy choice, the preference-based approach has the following implications (Krehbiel 1993). First, policy choice corresponds to that of the median legislator. Second, suppose that legislators join one of two parties, and, further, that those to the right of the median largely join one party while those to the left of the median largely join the other party.

Suppose that the status quo is to the right of the median and the proposed legislation seeks to move policy left toward the median voter's ideal. The "cutting line" divides the set of voters into those favoring the status quo and those favoring the proposal. In this context, the cutting line is that policy halfway between the status quo and the proposed alternative (assuming that legislator utility functions are symmetric). Since the status quo is to the right of the median, so too will be the cutting line. The proposal makes every legislator to the right of the cutting line worse off, so they vote against the policy; while every legislator to the left of the cutting line is better off under the proposal and will vote for it.

[5] Weingast 2002 surveys this mode of analysis in different contexts. Shepsle (this volume) provides a variant on these themes.

[6] Laver (this volume) covers some of these issues; see also the summary in Shepsle and Weingast 1995.

Given the assumption of how legislators choose parties, nearly all legislators from the left party vote for the proposal; while most of those of the right party vote against it. Indeed, if the status quo is not too far to the right relative to the distribution of legislature preferences, then most of the members of the right party will vote against the change. In other words, voting on this legislature will exhibit polarization by party even though the party exerts no pressure on its members to vote one way or another.

A lesson of this model is that polarized party voting can emerge as the combined result of legislative preferences and sorting into parties without being a function of any legislative institutions that advantage parties or that constrain member behavior.

Although this approach rationalizes only minimalist legislative institutions, it provides an important baseline from which to judge other models. While most approaches rely on legislator preferences to some degree, we term this approach a preference-based approach because it relies solely on legislative preferences and the median voter model to explain political phenomena, such as polarized party voting.

1.2 Committees as Commitment Devices

The second approach is exemplified by Weingast and Marshall's (1988) "Industrial organization of Congress." This approach built on previous theoretical and empirical work. Going back to Buchanan and Tullock (1962), many models of legislative choice emphasized logrolling and vote-trading. By logrolling and trading votes, members and the districts they represented were better off. Logrolling can thus be seen as a legislative institution parallel to market institutions in the economic sphere.

Empirically, the substantive literature on Congress emphasized the central importance of committees, which were seen to dominate the policy-making process. That literature emphasized committee specialization and self-selection onto committees by members most interested in the committee jurisdiction (Fenno 1966, 1973; Shepsle 1978). Clearly, this form of committee organization suited members' electoral goals (Mayhew 1974). So committee organization was seen as reflecting the preferences of the legislators and their constituents. In this view, the key to understanding legislative organization was legislative exchange.

Weingast and Marshall sought an explanation of congressional organization that accounted for the fundamental features then found in the substantive literature. They based their approach on two observations: first, the legislature faced many different issues that cannot be combined into a single dimension: agriculture is not commensurate with civil rights, banking, or defense. Second, vote-trading had significant enforcement problems as a means of legislative exchange. For example, suppose that one group of legislators seeks to build dams and bridges, another group seeks regulatory control of some market, and that neither group alone comprises a majority. The two groups could, per logrolling, agree to support one another's legislation. But this raises a problem: once their dams and bridges are built, what stops those receiving them from joining those locked out of the original trade to renege on the deal by passing

new legislation ending the regulation? Because of the possibility of reneging, some logrolls will fail *ex ante* as legislators fear their deals will ultimately fail.[7]

Enforcement problems imply that direct exchange of votes is not likely to provide a durable means of legislative exchange. Instead, Weingast and Marshall argued that legislators were likely to institutionalize their exchanges in the form of a legislative committee system (LCS) that granted legislators greater powers over policies within the committee's jurisdiction. They showed that, in the context of a mechanism to grant rights to committee seats in combination with self-selection onto committees, the LCS made members with different preferences better off.

Consider the problem of reneging noted above. Self-selection onto committees with gatekeeping power prevents this type of reneging. Suppose the group favoring dams and bridges seek to renege on their original deal and introduce legislation to undo the regulation. This legislation now goes to the committee with jurisdiction. Populated by those who favor maintaining the regulation, committee members prevent the legislation from coming before the legislature. This preserves both the status quo and the original legislative exchange.

This approach also addresses an important question raised by the majoritarian postulate. This postulate questions why a majority would ever vote to reduce or restrict its own powers in the future. In the context of a single dimension of legislative choice, it is hard to understand why the median (and hence a majority) would vote to restrict itself. In the context of multiple dimensions, however, no median exists. The exchange postulate underlying the LCS provides an answer to the question: a majority votes to restrict itself on a series of different policy issues simultaneously. Although this restricts the majority's actions on each dimension, if each member is assigned to a committee of higher value than the average, this exchange makes each better off (see also Calvert 1995).

In this model, committee organization solves the problem of legislative exchange. Given pervasive enforcement problems of direct exchange of votes, legislators instead choose to organize the legislature in such a way as to institutionalize a pattern of exchange that furthers the goals of all.

1.3 Legislative Parties as Solutions to Collective Dilemmas

The third approach uses legislative parties to explain legislative organization and behavior. In this view, parties are more than just a collection of people choosing the same party label. Cox and McCubbins (1993), for example, argue that legislators face a series of collective action problems that political parties can resolve. For example individual legislators have trouble passing their own legislation; and without coordinating, legislator activity fails to add up to enough to help each get

[7] A second enforcement problem is that exchange of votes over time creates additional opportunities for reneging, especially as bills evolve.

re-elected. In particular, all legislators face a common-pool problem in which they have incentives to shift costs onto each other. Parties overcome these problems by enforced coordination.[8]

In the face of various coordination and related problems, Cox and McCubbins argue that members have an incentive to use parties to coordinate the behavior of their members for several ends: to produce legislation more attractive to their members; to develop a national reputation or brand name; and, in combination, to use these tools to help re-elect their members (see also Wittman 1989, 1995). Committees in this view are a tool of the majority party used to further party goals; namely, to propose legislation benefiting party members and to prevent legislation that would make party majorities worse off. The majority party's delegation to each committee, rather than being composed of those most interested in the policy as in the Weingast and Marshall approach, were representative of the party. This particularly holds for gatekeeping committees, such as the budget committee where the members do not self-select. Tests of the representatives of committees tend to support the party view (see, e.g. Cox and McCubbins 1993). Also consistent with this view was the striking partisan aspect of congressional voting, particularly since 1980.

However, this party-centric approach has not been without its critics. Krehbiel (1993) presented a major challenge to this perspective by asking, 'where's the party?' Relying on the preference-based approach noted above, he showed that many of the findings of the party-centric perspective were consistent with the majoritarian perspective. We have already noted how polarized party voting, rather than being a product of the party organization of the legislature, can result from simple preferences in combination with legislator sorting into parties. Another aspect is the representativeness of committees. As noted, the party perspective emphasizes that each party's delegation to a committee is representative of the party; but if both parties do this, then the overall committee will be representative of the chamber, also consistent with the majoritarian perspective.

The debate about parties has spurned a remarkable empirical literature. See for example, Cox and McCubbins (2005), Krehbiel (this volume), and Groseclose and Snyder (2001). We do not have time in our introduction to cover this literature, but we do want to emphasize that the research in endogenous legislative institutions is empirical, as well.

1.4 Information Explanations for Structure

The final approach to legislative organization, associated with Gilligan and Krehbiel (1989) and Krehbiel (1991), emphasizes that legislators are uncertain about the impact of their choices on actual outcomes. Legislators therefore have an incentive to organize the legislature to reflect the task of gaining expertise and information that

[8] See also Cox (this volume) who shows how legislative parties arise endogenously as a means to resolve the problem of potential overuse of plenary time.

reduces this uncertainty. In this world, committees are bodies of legislative experts in the policies of their jurisdiction. Committee expertise allows committee members to reduce the uncertainty between legislation and actual outcomes.

This perspective has significant implications for legislative organization, including the choice of rules governing consideration of legislation on the floor. For example, because expertise requires costly investment, legislators will undertake this costly investment only if the system somehow compensates them for this. Krehbiel argues that restrictive rules that bias legislative choice in favor of committees are the answer. Although restrictive rules prevent legislators from choosing policy associated with the median voter *ex post*, legislators are better off *ex ante* because committee expertise allows committees to reduce the uncertainty associated with the difference between legislation and policy outcomes.

1.5 Concluding Thoughts

The debate about legislative institutions has been lively, and no consensus has yet emerged on the determinants of legislative organization. We cannot yet say whether one perspective will ultimately triumph (as Gilligan and Krehbiel 1995 suggest) or whether a synthesis of perspectives is likely to emerge (as Shepsle and Weingast 1995 suggest).

From a broader perspective, the study of legislative institutions provides a template for how research on institutions is likely to proceed in the future. The first stage is to see how a particular institution affects behavior; next, similar but somewhat different institutions are compared; then in the final stage, institutions are treated as being endogenous. If the history of research on endogenous legislative institutions is any guide, there will be disagreement on which institutions are endogenous to other institutions. These controversies, in turn, help shape our understanding of institutions and provide a deeper understanding of organizations.

2 Revelation and Aggregation of Information: Voting

In this section, we consider the revelation and aggregation of information. This is a game-theoretic, as opposed to a decision-theoretic, approach to information. An exciting aspect of this research is that it often turns the standard theoretic wisdom on its head. We illustrate by looking at voting behavior.[9]

Traditional democratic theory argues that, for democracy to work, voters should inform themselves about the candidates and the issues. Moreover, voters should be unbiased and rely on unbiased sources of information. Practice in all working

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[9] Ansolabehere (this volume) reviews the broad topic of voting behavior.

democracies differs greatly from this ideal. Voters appear to be notoriously uninformed (and, indeed, have little incentive to become informed). Some voters base their choice of candidate solely on party label, while other voters rely on biased sources of information, including information provided by pressure groups.

Does this apparent lack of information imply that democracy will fall far from its ideal? Possibly not, if the lack of information is more apparent than real. In the following pages, we show how voters can make logical inferences so that their behavior is similar to perfectly informed voters.

We start with an easy example to illustrate how information revelation arises. A number of articles study the endogenous timing of elections in parliamentary systems.[10] Because it has access to information, the ruling party is able to forecast future economic performance and other events that are likely to impact on voters' welfare. This information is not likely to be available to the voters. The party in power has an incentive to call an election when it is at the height of its popularity.

However, this decision-theoretic analysis does not consider the voter response to an early election call. Voters can infer from an early election call that the ruling party expects to do worse in the future. Voters can therefore infer that there is likely to be bad news in the future.[11] The ruling government realizes that voters will act this way. As a result, governments are less likely to call early elections than they would otherwise be, and when they do, voters will take this information into account and be less positively inclined towards the government. Smith (2003, 2004) provides empirical evidence in support of this argument. Polls taken after the announcement of an early election show a decline from polls taken before the announcement. Incorporating the voters' response made obsolete much of the earlier research on endogenous timing of elections that did not consider the possibility that voters could make inferences.

Let us now consider another area where earlier research assumed mechanical, uninformed voters, but more recent research assumes uninformed but rational voters, often with starkly differing results. Starting with Ben Zion and Eytan (1974) and continuing on into the recent past (see Baron 1994; Grossman and Helpman 1996), an extensive literature has assumed that the more money a candidate spends on advertising, the more votes the candidate receives from uninformed voters. Sources of money tend to come from interests on the extremes of the political distribution. To get contributions that pay for such advertising, candidates move their policies away from the median voter toward a pressure group's most preferred position.

Let us look at the Grossman and Helpman model in greater detail.[12] Grossman and Helpman assume the following: voters, candidates, and pressure groups are arrayed along a one-dimensional issue space. Each voter has a most preferred position with a concave utility function over policy; this means that voters are risk averse.[13] There are

[10] See for example, Cargill and Hutchison 1991 and the long list of citations found in Smith 2003, n. 6.

[11] Here, we ignore other reasons for calling an early election, in particular the desire of the ruling party in a coalition government to strengthen its hand.

[12] For heuristic purposes, we simplify their model.

[13] Risk aversion means that voters prefer a sure thing over a lottery having the same expected value as

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two types of voters: informed voters who know the positions of the candidates and uninformed voters who have no knowledge of the candidates' or pressure group's positions. Informed voters vote for the candidate closest to the voter's most preferred position. Uninformed voters respond only to political advertising—the more money spent on advertising by one of the candidates, the greater the percentage of uninformed voters voting for the candidate.

Each candidate wants to maximize the percentage of votes that he or she receives. There is one pressure group (say, on the extreme right). The pressure group is willing to donate money to one of the candidates if the candidate moves right from the median voter.

The election proceeds as follows:

1. The pressure group makes a one-time take-it-or-leave-it offer to one of the candidates. If the candidate agrees to move right of the median informed voter, then the pressure group provides funds to the candidate for political advertising. If the agreement is accepted, it is binding on both sides.
2. The candidate receiving the offer decides whether to accept or reject it.
   If the candidate accepts the offer, then the other candidate knows the position of the candidate accepting the offer. The other candidate will then choose a position between the candidate and the median informed voter to capture as many informed voters as possible.
   If the candidate rejects the offer, then the pressure group is out of the picture. Per the standard Downsian (1957) model, both candidates will then choose to be at the median of the informed voters.
3. The positions of the candidates are then made public to the *informed* voters. The candidate who received the donation then advertises.
4. The voters choose.

Given the set-up of the model, it is not hard to see that the candidate will be willing to move right from the median of the informed voters as long as the advertising from the campaign funds sufficiently increases the number of uninformed voters to compensate for the loss of informed voters caused by the movement to the right and away from the median informed voter.

The model seems to imply that pressure groups are likely to undermine the political process. But is it rational for uninformed voters to act in the way postulated? Let us consider the model more carefully.

In the above model, the candidates, pressure group, and informed voters are all rational, but not the uninformed voters. As already mentioned, uninformed voters vote mechanically. But being uninformed does not mean being irrational. Suppose instead that the uninformed do not vote mechanically but can make logical inferences. We consider two variants with different characterizations of uninformed voter behavior.

First, let us continue to assume that the uninformed voters know neither the positions of the candidates nor the position of the pressure group (the pressure group being equally likely to be on the left or the right). Campaign advertising is, by its very

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nature, public so that an ordinary person can infer which candidate received the most contributions by observing which candidate has the most political advertising. The uninformed voters can simply watch television and passively observe the candidate who has the most advertisements. Given the logic of the model, the uninformed can infer that the candidate doing the advertising is further away from the median informed voter than the candidate not doing the advertising.

Given our assumption that the uninformed voter does not even know whether the pressure group is on the left or the right, the uninformed voter faces a greater risk from the candidate who is doing the advertising. Both candidates will on average be at the median informed voter's most preferred position, but the candidate receiving the campaign funds will be more extreme. Thus the risk-averse uninformed voter should vote for the candidate not doing the advertising! The rational voter does not act like the mechanical voter in this case. Of course, if this behavior characterizes uninformed voters, then the candidate will not accept campaign donations from the pressure group in the first place.

Now suppose that the uninformed know something. For example, they may know that the National Rifle Association supports one of the candidates, and as a consequence these voters can infer that the candidate receiving the funds is closer than the median informed voter is to the position of the NRA. More generally, the uninformed voter may know whether the pressure group is on the right. If the uninformed voter also knows where he or she stands relative to the median voter, the uninformed voter to the left of the median voter can infer that he or she should vote for the other candidate, while those uninformed voters to the right will be inclined to vote for the candidate receiving funds from the right-wing pressure group.

Consider two cases: if uninformed voters tend to be to the right of the median informed voter, then the candidate may accept funds from the right-wing pressure group and even advertise this to be the case. This occurs when the candidate gets sufficiently more votes from the uninformed voters on the right than she loses from the uninformed voters on the left to make up for the reduced vote share from informed voters. Alternatively, if there are more uninformed voters to the left of the median informed voter, the candidate would lose if she accepted the deal from the pressure group. Hence she would not do so in the first place.

In this version of the model, pressure group contributions help the uninformed voters. If the mass of uninformed voters is to the right of the median of the informed voters (and hence, the overall median is to the right of the median of the informed voters), then one candidate will accept the funds and the effect of campaign donations will be to move the candidate to the right from the median of the informed voters. On the other hand, if more uninformed voters lie to the left of the median, neither candidate will accept funds from a pressure group on the right.[14] In short, pressure groups aid the political process, rather than undermine it!

We have just modeled the case where some voters are uninformed about the candidates' positions. Another possibility is that voters are informed about the candidates'

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[14] The exact result requires more technical specification and can be found in Wittman 2005a.

positions but not about their relative quality. Again, the voters are rational and the pressure group has private information (in this case, about the relative quality of the candidates). A number of recent papers consider this case but employ differing subsidiary assumptions: advertising has content (see Coate 2004; Wittman forthcoming); advertising has no content, but expenditures on advertising signal information (Prat 2002, this volume); pressure groups make the offers (Coate, Prat), candidates make the offers; there is one pressure group, there are multiple pressure groups; the candidates are only interested in winning, and the candidates have policy goals. These various modeling efforts do not all come to the same positive conclusion as the previous paragraph. In general, the results depend on whether the value of the revealed information is outweighed by the loss from inferior candidate positions when the candidates compete for pressure group funds. In turn, this balance depends to a great degree on the number of pressure groups and whether it is the candidates or the pressure groups that make the offer. All these various modeling efforts take into account that information valuable to uniformed voters is revealed by the pressure group's donation or endorsement and all of them assume rationality of the voters. This is the key methodological advance—how voters can incorporate information that others might want to distort or hide (see Prat, this volume).

We have shown how uninformed voters can make inferences from behavior and thereby become more informed. Because all of this is embedded in a game, all other players take this behavior and information into account when they make their decisions; and of course the uninformed take the other players' strategies into account when they make their own inferences.[15]

The final example for this section considers aggregation of information in the context of voting. Suppose a set of voters face a decision about how much money to spend. To gain intuition, we begin with an exceedingly simple example. Suppose that there are five voters with identical preferences: three have unbiased estimates of the correct action to take, while two are fully informed. The voters know whether they are informed or not. The uninformed know that there are informed voters, but not how many. Suppose further that the correct action is to spend $7 million and that, with equal probability, the uninformed players receive a signal that it should be 5, 7, or 9 million dollars. Assuming that the voters cannot communicate with each other, how likely is it that the majority rule decision is not 7? The answer is zero if the voters are rational: all the uninformed voters will rationally abstain. By doing so, they know that only informed voters will participate and that these informed voters will make the correct decision.

This example illustrates two important but related issues. First, the more informed people will choose to vote (here, at least, the argument does not go against conventional wisdom). Second, the potential voter asks: given that he will be pivotal, should

[15] There are other ways in which voters can be informed despite an apparent lack of information. Parties create brand names so that party labels are in fact informative about a candidate's position (Cox and McCubbins 1993, 2005). Relying on biased information can be rational for voters who have strong priors in favor of one of the parties (Calvert 1985). And, uninformed voters can learn from polls of informed voters (McKelvey and Ordeshook 1986).

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he vote, and if he votes, how should he vote. In other words, the decision to vote and how to vote does not just depend on whether the person will be pivotal, but also on the preferences and information structure of all of the voters. Our understanding of the problem is no longer in terms of decision theory but of game theory.

To illustrate this idea in terms of a more complicated, but more realistic model, assume that there are three voters (or three groups of voters), labeled V, V_i, and V_u; and two states of the world, labeled 1 and 2. Assume that voter V votes for candidate D regardless of the state of the world. The second voter is independent but informed and will be labeled V_i. This voter knows the state of the world and votes for D when the state of the world is 1 and votes for R when the state of the world is 2: given V_i's preferences, D makes a better president if the state of the world is 1 while R makes a better president if the state of the world is 2. The third voter, V_u, is also independent (with the same preference structure as V_i), but is uninformed. However, V_u knows the preferences and information sets of the other two voters.

How should V_u vote if the probability of state 1 (where D is V_u's preferred candidate) is more likely than the probability of state 2? The decision-theoretic model, where V_u's vote is based on the mostly likely state of the world (state 1), suggests that V_u vote for D. But the game-theoretic pivot model argues that V_u should vote for R. The reasoning is as follows. If the state of the world is 1, then both voter V and voter V_i vote for D, and D will win regardless of V_u's vote. When the state of the world is 2, then the other two voters will split their vote and V_u will be pivotal. Under such circumstances, V_u should vote for R since she prefers R to D in state 2. So V_u always votes for R.[16] Behaving in this way allows the informed voter, V_i, whose preferences are similar to V_u's, to be pivotal in all circumstances. This behavior results in better outcomes for V_u than those suggested by the decision-theoretic perspective. Because the latter tells V_u always to vote for D, V_u votes for D even in the state 2 when she prefers R.

These two examples show that uninformed voters can make inferences about how to behave that make them better off, even when they remain ignorant of critical aspects of the election. Now this particular example requires V_u to know a lot about the other voters, but the conceptual apparatus can be incorporated into other models where the information requirements are not so high. To get back to our earlier discussion of pressure groups where some voters are uninformed about the candidates' positions, Wittman (2005) shows that the uninformed voters to the right (left) of the median voter should always employ the following rule of thumb: vote for (against) the candidate endorsed by the right-wing pressure group.[17] Sometimes this could result in some of the uninformed voters on the right voting for the wrong candidate, and at other times this could result in some of the uninformed voters on the left voting for the wrong candidate. However, even if all the mistaken votes for one candidate were reversed this would not change the outcome. So fully rational but uninformed voters consider the effect of their behavior when pivotal even if their likelihood of being

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[16] For a more extended discussion see Fedderson and Pesendorfer 1996, 1999.

[17] The actual model employs additional assumptions that assure that certain pathologies do not arise.

pivotal is small. Indeed, in this example, by their rule of thumb, the uninformed make the informed median over all voters the pivot.

To summarize: democratic theory has long held that ignorant voters harm the operation of democracy. The force of this section is to demonstrate that uninformed voters and uninformed actors more generally can make inferences based on the behavior of others, the structure of their strategic situation, and signals received from other actors. These inferences make uninformed voters better off than predicted by decision-theoretic models; and they improve the workings of democracy more than predicted by traditional democratic theory.[18] We believe that in the next decade the aggregation and revelation of information will continue to be a very important mode of research and that it will continue to overturn received wisdom (see Moulin, this volume; and Ledyard, this volume; for further examples).

3 Evolutionary Models of Human and Political Behavior

Both economics and evolutionary models of human behavior employ the concepts of survival and equilibrium (Alchian 1950). Nonetheless, the implications of economic and biological models at times conflict. Although people who are capable of achieving their goals because of either their physical or mental prowess are more likely to survive and produce offspring, it is not clear that fitness would accrue to those who maximized utility and were happier. Furthermore, at times evolutionary fitness may be gained by being less rational; for example, the emotional may serve as a useful commitment device (see Hirshleifer 2001).

Humans are pre-eminently social animals. Political structures are one kind of social structure, and such structures need to be compatible for better or worse with the biology of human behavior. Are people naturally xenophobic, vengeful, or generally limited in their capacity for empathy? One can generate all kinds of hypotheses about human behavior. But economics and/or evolutionary biology demand that the hypothesized behavior survives in a competitive equilibrium. The principle of survival in equilibrium imposes discipline on modeling efforts because not all hypotheses satisfy this criterion.

Models of pure self-regarding preferences have generated considerable insight into the political process—as this *Handbook* attests—yet such an assumption is not requisite for rational behavior. People may be other regarding in that they care about their children or feel altruistic or vengeful towards others.[19] How other-regarding

[18] See Ansolabehere (this volume) who makes this point.

[19] The phrase "other regarding" gets around the problem that altruistic behavior may make the person feel good and therefore altruism could be termed selfish behavior.

behavior survives in equilibrium is a major research question that still has not been fully answered.

Let us start with an easy question. Why are human parents altruistic to their children? Infants and small children need care in order to survive. Parental altruism helps to ensure the genetic transmission. But genetic relatedness rapidly approaches zero as the population increases in size. So this simple explanation for altruism falters when we want to extend it to the population as a whole.

A significant number of researchers seek to understand the role of vengeance. The phenomenon of suicide bombers inspires some of this interest—being a suicide bomber hardly appears to improve genetic fitness. Further interest in vengeance is inspired by experiments demonstrating that the standard income-maximizing model does not work well in certain situations. For example, consider the ultimatum game in which person A is given a certain amount of money (say ten dollars); A then offers a share of this money to B; B then either rejects or accepts the offer. If B rejects the offer, neither gets any of the money and the game is over. A theory that is based on humans being purely self-regarding predicts that A should offer B a trivial amount, say one cent. Because one cent is better than nothing, B is better off accepting the offer than rejecting it. Experiments consistently reveal that B subjects often reject low offers even though this hurts them financially. Further, experiments also reveal that A subjects often offer significant amounts to B to forestall such a rejection.[20]

This vengeful behavior by B is contrary to income maximization. Thus, the key intellectual puzzle to resolve is how vengeful behavior can be evolutionarily stable.

Scholars provide two types of answers. One is that a reputation for vengeful behavior may enhance fitness because others may avoid provoking revenge by avoiding doing harm to the vengeful person in the first place. Following this intuition, some evolutionary models show that, under certain circumstances, two types of people, vengeful and non-vengeful, can survive in equilibrium (Friedman and Singh 2005).[21]

Here we will concentrate on the second approach—the co-evolution of memes (social constructs) and genes—because that is more relevant to our understanding of collective choice and social cooperation. Humans are more social than their ancestors, and many argue that this sociability evolved along with the social institutions that made such sociability result in greater reproductive success. Consider the following thought experiment. If chimpanzees had language (which in itself enhances sociability) and could do calculus, would chimpanzee society look like human society if they were able to observe our customs? The co-evolution argument says no. Shame, guilt, the ability to be empathetic or vengeful, and certain conceptual possibilities that make us human would all be much more circumscribed in chimpanzees, which themselves

[20] The explanation for the rejection is that the person dividing the money has not been "fair." For a further discussion of fairness in experiments and the implications for political behavior see Palfrey (this volume).

[21] To get this result, Friedman and Singh develop a new equilibrium concept—evolutionary perfect Bayesian equilibrium. Their paper, as is the case for much of the research on the evolutionary stability of vengeance, employs sophisticated mathematical modeling. This illustrates another theme of our chapter—that political economy, unlike other intellectual approaches to political science, emphasizes logical rigor, which often requires considerable mathematics.

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show more of these qualities than marsupials. Without pro-social emotions, all humans (rather than just a few) might be sociopaths, and human society as we know it might not exist despite the institutions of contract, government law enforcement, and reputation.[22]

Groups that overcome prisoner's dilemmas (and other social dilemmas) are likely to be more productive in gathering food and more successful in warfare against other groups. In turn, this leads to greater reproductive success. The central question for evolutionary models is how, if at all, evolutionary pressure keeps individual shirking in check. It seems, for example, that a person who is slightly less brave in battle is more likely to survive and have children than his braver compatriots. Bravery at once increases the risk for the brave while making it more likely that the less brave survive. If bravery/cowardice is genetic, how is a downward spiral of cowardice prevented?

The answer proceeds along the following lines: if the individuals are punished for shirking (in this case, being cowardly), this will keep them in line. But, because engaging in punishment is costly (possibly resulting in the would-be punisher's death), who will do the punishing? The evolutionary approach suggests that punishment, a kind of vengeance, will be a successful strategy for the punisher if he gains even a mild fitness advantage (status, more females, etc.). This is because, in equilibrium, the cost to the punisher is relatively small since punishment does not have to be meted out very often. Punishment need not be carried out frequently to be effective. It is the threat that is important. To the degree that shirkers by being punished (possibly by being banished from the tribe) become less fit, the need to engage in punishment decreases even more as there are fewer shirkers. And given that those who punish are more aligned with the interests of the society and therefore may be more likely to survive, there may be enough potential punishers so that the need for any individual to bear the costs of punishment is reduced still further (which of course means that the benefits received will also be reduced). If altruism and vengeance are gene based rather than meme based, there may have been a co-evolution of memes and genes. Over the eons, human society may have encouraged pro-social genetically based emotions.[23]

The force of this argument is that pro-social emotions bypass the cognitive optimizing process that is at the core of rational economic man. This cognitive difference implies that at times we should observe profound differences between the evolutionary model and the economic model. Under certain circumstances, seemingly irrational behavior, such as vengeance or shame, may be evolutionarily stable even if it runs counter to utility maximization. Moreover the relatively slow genetic evolution in comparison with meme evolution (especially in the last 100 years) yields a further

[22] For further discussion along these lines see Bowles and Gintis, this volume; Friedman and Singh 2000; Boyd et al. 2003; Gintis et al. 2005.

[23] This just gives the flavor of the argument. Once again, it is worthwhile to emphasize that the research summarized here employs very carefully specified models. The challenge for researchers in the field is to characterize a situation where vengeance survives, but does not become so intense that it undermines social relations. At the same time, the researcher must account for the possibility that non-vengeful types may want to mimic vengeful types. Finally, the researcher must mix the memes and genes so that they are in a stable equilibrium.

conclusion: it is quite possible that some of the pro-social emotions whose genetic basis evolved over the last 100,000 or more years are maladapted to the modern world.

At present the evolutionary study of genes and memes has produced very tentative results. Human behavior is part mammalian (possibly even reptilian), part primate, and part hominid. Although some have argued that much of human psychology developed in the savannah, it is not clear what part of human psychology developed then or earlier or, to a lesser degree, later. Also, we have only a rudimentary picture of human life in the savannah so evolutionary models of this period are very speculative. Furthermore, it is not clear whether the transmission of behavior is through memes or genes. On the other side of the coin, there appears to be much room for further research, and we believe that in the coming decade there will be many advances.[24]

4 Pushing the Envelope of Investigation

As political economy has matured, it has begun to tackle a wider range of topics. This work includes a series of larger questions, such as the origins of dictatorship and democracy. In this section, we consider one of these frontier topics—the size of nations.

Much of history reflects the expansion and contraction of nations. The conquests of Alexander the Great, the rise and decline of the Roman Empire, the aggressive expansions of Napoleon and Hitler, and the dissolution of the USSR are just a few examples. At the other end of the spectrum, many tiny countries, such as Singapore and Andorra, have survived a considerable length of time.

For over two millennia, historians and philosophers have asked why some nations have expanded, why others have contracted, and what is the optimal size of a polity (Plato, for example, said that the optimal size was 5,040 families). In this section, we discuss the political economy contribution to this area. In the process, we show how research in political economy builds upon earlier foundations.

The political economy approach to the size of nations starts with the basic Downsian characterization of voter preferences. In this case, voter or citizen preferences can be placed along a line (or a circle). This line or circle is then divided into n parts (not necessarily equal), each part representing a country. Each country chooses a policy position, X_j, which might be the median or mean of the citizens' preferences. A citizen's utility for her nation's policy is assumed to be decreasing in distance from her own preferred position, x (e.g. $-|x - X_j|$ or $-(x - X_j)^2$). Individuals at the

[24] Another group of social scientists employ a different strategy for generalizing about human behavior from the standard model of rationality, by drawing on cognitive science and psychology (e.g. North 2005). Space constraints prevent an adequate treatment.

boundary of two countries can choose in which country to reside (see Spoloare, this volume; Alesina and Spoloare 2003, for a more complete coverage.).[25]

Each citizen would like to have his or her country's policy as closely aligned as possible to her preferred policy. If policy were the only factor, all countries would be composed of only one citizen. But other factors run counter to such extreme decentralization. The most important are economies of scale in production and military power. When barriers to free trade exist between countries, a more populous country achieves greater economies of scale through its larger domestic market. A larger population also allows for greater military power, which may make war against smaller and weaker states more profitable because of the higher probability of success. At the same time greater military power makes predation by other states less profitable to these other states and therefore less likely (see Skaperdas, this volume).

These insights can readily be converted into a comparative statics analysis. When barriers to free trade are reduced (so that economies of scale can be achieved within a small country as long as it has sufficient international sales) and the returns to warfare are decreased, the number of countries will increase and the average country size will decrease. The returns to warfare depend greatly on the nature of the victim country's wealth. If the wealth is in oil, the predating county can expropriate most of the wealth; when the wealth is in human capital, the predating country can expropriate very little. In the latter case, the benefits to predation are reduced, the threat of war is less credible, and the benefits of being a large country are diminished.

In a simple model where wealth is distributed evenly among the citizens, those citizens at the periphery of the country will be most dissatisfied with their country's policy. They are therefore the most likely citizens to exit and join the adjacent country. Because of economies of scale in production and military power, this "migration" is costly to those citizens left behind. In order to forestall such migration, countries might institute a non-linear transfer scheme that grants citizens on the periphery greater resources. Le Breton and Weber (2001) make this argument and point to a number of cases, such as Quebec in Canada and some of the border states of India, where the center grants special rights to the peripheral states. This extension of the basic model affords a nice illustration of how political economy often grows. Instead of two competing models, the basic model is expanded so that we have a more general theory.

In the basic model, all of the countries have the same characteristics; and, when population is uniformly distributed on the line or circle, all countries are of the same size. Extensions of the basic model allow countries to have different characteristics. Nations are characterized as a nexus of public goods. A wise public policy choice may significantly increase the overall wealth of the citizenry. Successful countries create conditions for high productivity in the economic sphere by enforcing property rights and providing social overhead capital, while at the same time minimizing political costs by creating a system of rules that reduce influence costs and allow for

[25] Of course, individuals might not be free to migrate. See Friedman 1977 for an explanation for the Iron Curtain and the promotion of linguistic boundaries.

diverse preferences. Countries also need an effective military apparatus to protect their wealth from predation by other countries. Success in these endeavors may lead to immigration and geographical expansion, while failure to meet these goals may lead to extensive emigration or break-up of a country (see Wittman 2000).

Bolton and Roland (1997) consider another modification of the model. Until now we have assumed that the citizens are similar in all respects except for their preference for public policy, which has been given exogenously. Suppose instead that individuals differ in productivity and income, which determines their preference for redistributive public policy. Suppose further that there are two sections of the country and that each section votes by majority rule. Then two sections of a country may separate because of significant productivity differences. All of this is reflective of Tiebout's (1956) argument that jurisdictions specialize to reflect the preferences and wealth of their constituents.[26]

To summarize, political economy is making use of its basic tools to investigate an ever deepening set of questions. Ultimately, fewer institutions are treated as being exogenously determined and more institutions, including the nation state, are treated as variables to be explained. In this way, anthropology and history become part of political economy.

We conclude this section on pushing the envelope with a final observation. As the topics in this *Handbook* illustrate, the bulk of political economy research has focused on institutions and behavior within advanced industrial democracies. In these settings, the formal institutions of courts, legislatures, executives, bureaucracy, and elections can all be taken as given. Hundreds, if not thousands of papers have been written on these topics. Not surprisingly, the most progress has been made in these areas.

In contrast, political economy work that studies phenomena in countries outside of the advanced industrial democracies has made far less progress. Nevertheless, there are a number of exciting developments. We briefly mention a few areas of nascent research (posed as questions) that are likely to blossom in the future and that we cover in the *Handbook*:

- What do authoritarians maximize and why do they make the decisions they do? In past, many scholars assumed that they maximize their share of rents (e.g. North 1981, ch. 3; Olson 2001). Yet this approach remains inadequate because it takes as given that the authoritarian remains in power, something deeply problematic (as Tullock 1987 observed). Bueno de Mesquita et al. (2003; see Bueno de Mesquita, this volume, for a summary) provide a new approach arguing that authoritarians maximize their likelihood of staying in power. Haber (this volume) provides a program for future research on this topic.
- Why does democracy survive in some countries but not others? Przeworski (this volume) argues against some common answers and suggests that per capita wealth is an important reason.

[26] For an extensive discussion of the Tiebout hypothesis, see Wildasin (this volume). For ethnic causes of division, see Fearon (this volume).

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- And while we are on the subject of democracy, what is the relationship between democracy and capitalism? Iverson (this volume) surveys various political economy models that try to answer this question.
- Why do so many countries remain poor? And why did a handful of countries in the eighteenth and nineteenth centuries manage to rise well above the rest of the world? Here too we have important new political economy models that seek to answer these questions (see, for example Acemoglu and Robinson, this volume; and Bates, this volume).
- What are the sources and circumstances of ethnic coalitions and violence? Fearon (this volume) provides an overview of the political economy approach and an agenda for future research.

In short, the extension of political economy methods beyond the advanced industrial nations is rapidly developing, and this *Handbook* provides overviews that can serve as building blocks for further research.

5 The Intellectual Arms Race

Although we have characterized political economy as a set of agreed-upon methodological approaches, the set is quite large; different models and empirical studies frequently come to quite opposing conclusions. Scholarly works tend to play off each other so that there is an ever-increasing level of sophistication. Thus, while we have characterized political economy as a synthesis of fields, the synthesis will nonetheless provide sparks and an exciting research agenda for decades to come.

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