Sovereignty and Political Authority

Lucas Porter

SOVEREIGNTY AND POLITICAL AUTHORITY

SOVEREIGNTY AND POLITICAL AUTHORITY

Lucas Porter

BIBLIOTEX
Digital Library

Sovereignty and Political Authority
by Lucas Porter

www.bibliotex.com

Ebook ISBN: 9781984662286

Published by:
Bibliotex
Canada
Website: www.bibliotex.com

Contents

Chapter 1

Introduction

Sovereignty

Sovereignty is the supreme authority within a territory. Sovereignty entails hierarchy within the state, as well as external autonomy for states. In any state, sovereignty is assigned to the person, body, or institution that has the ultimate authority over other people in order to establish a law or change an existing law. In political theory, sovereignty is a substantive term designating supreme legitimate authority over some polity. In international law, sovereignty is the exercise of power by a state. *De jure* sovereignty refers to the legal right to do so; *de facto* sovereignty refers to the factual ability to do so. This can become an issue of special concern upon the failure of the usual expectation that *de jure* and *de facto* sovereignty exist at the place and time of concern, and reside within the same organization.

The term arises from the unattested Vulgar Latin's **superanus*, (itself derived form of Latin *super* – "over") meaning "chief", "ruler". Its spelling, which varied from the word's first appearance in English in the fourteenth century, was influenced by the English reign.The concepts of sovereignty have been discussed throughout history, and are still actively debated. Its definition, concept, and application has changed throughout, especially during the Age of Enlightenment. The current notion of state sovereignty contains four aspects consisting of territory, population, authority and recognition.

According to Stephen D. Krasner, the term could also be understood in four different ways:

- Domestic sovereignty – actual control over a state exercised by an authority organized within this state,
- Interdependence sovereignty – actual control of movement across state's borders, assuming the borders exist,
- International legal sovereignty – formal recognition by other sovereign states,

Westphalian sovereignty – lack of other authority over state other than the domestic authority (examples of such other authorities could be a non-domestic church, a non-domestic political organization, or any other external agent).

Often, these four aspects all appear together, but this is not necessarily the case – they are not affected by one another, and there are historical examples of states that were non-sovereign in one aspect while at the same time being sovereign in another of these aspects. According to Immanuel Wallerstein, another fundamental feature of sovereignty is that it is a claim that must be recognised by others if it is to have any meaning:

Sovereignty is more than anything else a matter of legitimacy requires reciprocal recognition. Sovereignty is a hypothetical trade, in which two potentially conflicting sides, respecting de facto realities of power, exchange such recognitions as their least costly strategy.

Classical

The Roman jurist Ulpian observed that:

The people transferred all their *imperium* and power to the Emperor. *Cum lege regia, quae de imperio eius la* Ulpian's statements were known in medieval Europe, but sovereignty was an important concept in medieval times. Medieval monarchs were *not* sovereign, at least not strongly so, because they were constrained by, and shared power with, their feudal aristocracy. Furthermore, both were strongly constrained by custom.

Sovereignty existed during the Medieval period as the *de jure* rights of nobility and royalty, and in the *de facto* capability of individuals to make their own choices in life.

Around 1380–1400, the issue of feminine sovereignty was addressed in Geoffrey Chaucer's Middle English collection of *Canterbury Tales*, specifically in *The Wife of Bath's Tale.*

A later English Arthurian romance, *The Wedding of Sir Gawain and Dame Ragnell* (c. 1450), uses many of the same elements of the Wife of Bath's tale, yet changes the setting to the court of King Arthur and the Knights of the Round Table. The story revolves around the knight Sir Gawain granting to Dame Ragnell, his new bride, what is purported to be wanted most by women: sovereignty.

Reformation

Sovereignty reemerged as a concept in the late 16th century, a time when civil wars had created a craving for stronger central authority, when monarchs had begun to gather power onto their own hands at the expense of the nobility, and the modern nation state was emerging. Jean Bodin, partly in reaction to the chaos of the French wars of religion, presented theories of

sovereignty calling for strong central authority in the form of absolute monarchy. In his 1576 treatise *Les Six Livres de la République* ("Six Books of the Republic") Bodin argued that it is inherent in the nature of the state that sovereignty must be:

Absolute: On this point he said that the sovereign must be hedged in with obligations and conditions, must be able to legislate without his (or its) subjects' consent, must not be bound by the laws of his predecessors, and could not, because it is illogical, be bound by his own laws.

Perpetual: Not temporarily delegated as to a strong leader in an emergency or to a state employee such as a magistrate. He held that sovereignty must be perpetual because anyone with the power to enforce a time limit on the governing power must be above the governing power, which would be impossible if the governing power is absolute.

Bodin rejected the notion of transference of sovereignty from people to the ruler (also known as *the sovereign*); natural law and divine law confer upon the sovereign the right to rule. And the sovereign is not above divine law or natural law. He is above (*ie.* not bound by) only positive law, that is, laws made by humans. He emphasized that a sovereign is bound to observe certain basic rules derived from the divine law, the law of nature or reason, and the law that is common to all nations (jus gentium), as well as the fundamental laws of the state that determine who is the sovereign, who succeeds to sovereignty, and what limits the sovereign power. Thus, Bodin's sovereign was restricted by the constitutional law of the state and by the higher law that was considered as binding upon every human being. The fact that the sovereign must obey divine and natural

law imposes ethical constraints on him. Bodin also held that the *lois royales*, the fundamental laws of the French monarchy which regulated matters such as succession, are natural laws and are binding on the French sovereign.

Despite his commitment to absolutism, Bodin held some moderate opinions on how government should in practice be carried out. He held that although the sovereign is not obliged to, it is advisable for him, as a practical expedient, to convene a senate from whom he can obtain advice, to delegate some power to magistrates for the practical administration of the law, and to use the Estates as a means of communicating with the people. Bodin believed that "the most divine, most excellent, and the state form most proper to royalty is governed partly aristocratically and partly democratically". With his doctrine that sovereignty is conferred by divine law, Bodin predefined the scope of the divine right of kings.

During the Age of Enlightenment, the idea of sovereignty gained both legal and moral force as the main Western description of the meaning and power of a State. In particular, the "Social contract" as a mechanism for establishing sovereignty was suggested and, by 1800, widely accepted, especially in the new United States and France, though also in Great Britain to a lesser extent.

Thomas Hobbes, in *Leviathan* (1651) put forward a conception of sovereignty similar to Bodin's, which had just achieved legal status in the "Peace of Westphalia", but for different reasons. He created the first modern version of the social contract (or contractarian) theory, arguing that to overcome the "nasty, brutish and short" quality of life without the cooperation of

other human beings, people must join in a "commonwealth" and submit to a "Soveraigne Power" that is able to compel them to act in the common good. This expediency argument attracted many of the early proponents of sovereignty. Hobbes strengthened the definition of sovereignty beyond either Westphalian or Bodin's, by saying that it must be:

- Absolute: because conditions could only be imposed on a sovereign if there were some outside arbitrator to determine when he had violated them, in which case the sovereign would not be the final authority.
- Indivisible: The sovereign is the only final authority in his territory; he does not share final authority with any other entity. Hobbes held this to be true because otherwise there would be no way of resolving a disagreement between the multiple authorities.

Hobbes' hypothesis—that the ruler's sovereignty is contracted to him by the people in return for his maintaining their physical safety—led him to conclude that if and when the ruler fails, the people recover their ability to protect themselves by forming a new contract.

Hobbes's theories decisively shape the concept of sovereignty through the medium of social contract theories. Jean-Jacques Rousseau's (1712–1778) definition of popular sovereignty (with early antecedents in Francisco Suárez's theory of the origin of power), provides that the people are the legitimate sovereign. Rousseau considered sovereignty to be inalienable; he condemned the distinction between the origin and the exercise of sovereignty, a distinction upon which constitutional monarchy or representative democracy is founded. John Locke,

and Montesquieu are also key figures in the unfolding of the concept of sovereignty; their views differ with Rousseau and with Hobbes on this issue of alienability.

The second book of Jean-Jacques Rousseau's *Du Contrat Social, ou Principes du droit politique* (1762) deals with sovereignty and its rights. Sovereignty, or the general will, is inalienable, for the will cannot be transmitted; it is indivisible, since it is essentially general; it is infallible and always right, determined and limited in its power by the common interest; it acts through laws. Law is the decision of the general will in regard to some object of common interest, but though the general will is always right and desires only good, its judgment is not always enlightened, and consequently does not always see wherein the common good lies; hence the necessity of the legislator. But the legislator has, of himself, no authority; he is only a guide who drafts and proposes laws, but the people alone (that is, the sovereign or general will) has authority to make and impose them.

Rousseau, in the *Social Contract* argued, "the growth of the State giving the trustees of public authority more and means to abuse their power, the more the Government has to have force to contain the people, the more force the Sovereign should have in turn in order to contain the Government," with the understanding that the Sovereign is "a collective being of wonder" (Book II, Chapter) resulting from "the general will" of the people, and that "what any man, whoever he may be, orders on his own, is not a law"– and furthermore predicated on the assumption that the people have an unbiased means by which to ascertain the general will. Thus the legal maxim, "there is no law without a sovereign."

According to Hendrik Spruyt, the sovereign state emerged as a response to changes in international trade, which led to the formation of new coalitions that wanted sovereign states. He rejects that the emergence of the sovereign state was inevitable; "it arose because of a particular conjuncture of social and political interests in Europe."

An important factor of sovereignty is its degree of absoluteness. A sovereign power has absolute sovereignty when it is not restricted by a constitution, by the laws of its predecessors, or by custom, and no areas of law or policy are reserved as being outside its control. International law; policies and actions of neighboring states; cooperation and respect of the populace; means of enforcement; and resources to enact policy are factors that might limit sovereignty. For example, parents are not guaranteed the right to decide some matters in the upbringing of their children independent of societal regulation, and municipalities do not have unlimited jurisdiction in local matters, thus neither parents nor municipalities have absolute sovereignty. Theorists have diverged over the desirability of increased absoluteness.

A key element of sovereignty in a legalistic sense is that of exclusivity of jurisdiction. Specifically, the degree to which decisions made by a sovereign entity might be contradicted by another authority. Along these lines, the German sociologist Max Weber proposed that sovereignty is a community's monopoly on the legitimate use of force; and thus any group claiming the same right must either be brought under the yoke of the sovereign, proven illegitimate, or otherwise contested and defeated for sovereignty to be genuine. International law, competing branches of government, and authorities reserved

for subordinate entities (such as federated states or republics) represent legal infringements on exclusivity. Social institutions such as religious bodies, corporations, and competing political parties might represent *de facto* infringements on exclusivity.

De jure, or legal, sovereignty concerns the expressed and institutionally recognised right to exercise control over a territory. *De facto*, or actual, sovereignty is concerned with whether control in fact exists. Cooperation and respect of the populace; control of resources in, or moved into, an area; means of enforcement and security; and ability to carry out various functions of state all represent measures of *de facto* sovereignty. When control is practiced predominantly by military or police force it is considered *coercive sovereignty*.

Sovereignty and independence

State sovereignty is sometimes viewed synonymously with independence, however, sovereignty can be transferred as a legal right whereas independence cannot. A state can achieve *de facto* independence long after acquiring sovereignty, such as in the case of Cambodia, Laos and Vietnam. Additionally, independence can also be suspended when an entire region becomes subject to an occupation such as when Iraq had been overrun by the forces to take part in the Iraq War of 2003, Iraq had not been annexed by any country, so its sovereignty during this period was not contested by any state including those present on the territory. Alternatively, independence can be lost completely when sovereignty itself becomes the subject of dispute. The pre-World War II administrations of Latvia, Lithuania and Estonia maintained an exile existence (and considerable international recognition) whilst their territories

were annexed by the Soviet Union and governed locally by their pro-Soviet functionaries. When in 1991 Latvia, Lithuania and Estonia re-enacted independence, it was done so on the basis of continuity directly from the pre-Soviet republics. Another complicated sovereignty scenario can arise when regime itself is the subject of dispute. In the case of Poland, the People's Republic of Poland which governed Poland from 1945 to 1989 is now seen to have been an illegal entity by the modern Polish administration. The post-1989 Polish state claims direct continuity from the Second Polish Republic which ended in 1939. For other reasons however, Poland maintains its communist-era outline as opposed to its pre-World War II shape which included areas now in Belarus, Czech Republic, Lithuania, Slovakia and Ukraine but did not include some of its western regions that were then in Germany.

At the opposite end of the scale, there is no dispute regarding the self-governance of certain self-proclaimed states such as the Republic of Kosovo or Somaliland (see List of states with limited recognition, but most of them are puppet states) since their governments neither answer to a bigger state, nor is their governance subjected to supervision. The sovereignty (i.e. legal right to govern) however, is disputed in all three cases as the first entity is claimed by Serbia and the second by Somalia.

Internal

Internal sovereignty is the relationship between a sovereign power and the political community. A central concern is legitimacy: by what right does a government exercise authority? Claims of legitimacy might refer to the divine right of kings, or to a social contract (i.e. popular sovereignty). Max

Weber offered a first categorization of political authority and legitimacy with the categories of traditional, charismatic and legal-rational.

With Sovereignty meaning holding supreme, independent authority over a region or state, Internal Sovereignty refers to the internal affairs of the state and the location of supreme power within it. A state that has internal sovereignty is one with a government that has been elected by the people and has the popular legitimacy. Internal sovereignty examines the internal affairs of a state and how it operates. It is important to have strong internal sovereignty in relation to keeping order and peace. When you have weak internal sovereignty, organisations such as rebel groups will undermine the authority and disrupt the peace. The presence of a strong authority allows you to keep agreement and enforce sanctions for the violation of laws. The ability for leadership to prevent these violations is a key variable in determining internal sovereignty.

The lack of internal sovereignty can cause war in one of two ways: first, undermining the value of agreement by allowing costly violations; and second, requiring such large subsidies for implementation that they render war cheaper than peace. Leadership needs to be able to promise members, especially those like armies, police forces, or paramilitaries will abide by agreements. The presence of strong internal sovereignty allows a state to deter opposition groups in exchange for bargaining. It has been said that a more decentralized authority would be more efficient in keeping peace because the deal must please not only the leadership but also the opposition group. While the operations and affairs within a state are relative to the

level of sovereignty within that state, there is still an argument over who should hold the authority in a sovereign state.

This argument between who should hold the authority within a sovereign state is called the traditional doctrine of public sovereignty. This discussion is between an internal sovereign or an authority of public sovereignty. An internal sovereign is a political body that possesses ultimate, final and independent authority; one whose decisions are binding upon all citizens, groups and institutions in society. Early thinkers believe sovereignty should be vested in the hands of a single person, a monarch. They believed the overriding merit of vesting sovereignty in a single individual was that sovereignty would therefore be indivisible; it would be expressed in a single voice that could claim final authority. An example of an internal sovereign or monarch is Louis XIV of France during the seventeenth century; Louis XIV claimed that he was the state. Jean-Jacques Rousseau rejected monarchical rule in favor of the other type of authority within a sovereign state, public sovereignty. Public Sovereignty is the belief that ultimate authority is vested in the people themselves, expressed in the idea of the general will. This means that the power is elected and supported by its members, the authority has a central goal of the good of the people in mind. The idea of public sovereignty has often been the basis for modern democratic theory.

Modern internal sovereignty

Within the modern governmental system, internal sovereignty is usually found in states that have public sovereignty and rarely found within a state controlled by an internal sovereign.

A form of government that is a little different from both is the UK parliament system. John Austin argued that sovereignty in the UK was vested neither in the Crown nor in the people but in the "Queen-in-Parliament". This is the origin of the doctrine of parliamentary sovereignty and is usually seen as the fundamental principle of the British constitution. With these principles of parliamentary sovereignty majority control can gain access to unlimited constitutional authority, creating what has been called "elective dictatorship" or "modern autocracy". Public sovereignty in modern governments is a lot more common with examples like the US, Canada, Australia and India where government is divided into different levels.

External

External sovereignty concerns the relationship between a sovereign power and other states. For example, the United Kingdom uses the following criterion when deciding under what conditions other states recognise a political entity as having sovereignty over some territory;

"Sovereignty." A government which exercises de facto administrative control over a country and is not subordinate to any other government in that country or a foreign sovereign state. *(The Arantzazu Mendi, [1939] A.C. 256), Stroud's Judicial Dictionary* External sovereignty is connected with questions of international law – such as: when, if ever, is intervention by one country into another's territory permissible?

Following the Thirty Years' War, a European religious conflict that embroiled much of the continent, the Peace of Westphalia in 1648 established the notion of territorial sovereignty as a

norm of noninterference in the affairs of other states, so-called Westphalian sovereignty, even though the actual treaty itself reaffirmed the multiple levels of sovereignty of the Holy Roman Empire. This resulted as a natural extension of the older principle of *cuius regio, eius religio* (Whose realm, his religion), leaving the Roman Catholic Church with little ability to interfere with the internal affairs of many European states. It is a myth, however, that the Treaties of Westphalia created a new European order of equal sovereign states.

In international law, sovereignty means that a government possesses full control over affairs within a territorial or geographical area or limit. Determining whether a specific entity is sovereign is not an exact science, but often a matter of diplomatic dispute. There is usually an expectation that both *de jure* and *de facto* sovereignty rest in the same organisation at the place and time of concern. Foreign governments use varied criteria and political considerations when deciding whether or not to recognise the sovereignty of a state over a territory. Membership in the United Nations requires that "[t]he admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council."

Sovereignty may be recognized even when the sovereign body possesses no territory or its territory is under partial or total occupation by another power. The Holy See was in this position between the annexation in 1870 of the Papal States by Italy and the signing of the Lateran Treaties in 1929, a 59-year period during which it was recognised as sovereign by many (mostly Roman Catholic) states despite possessing no territory

– a situation resolved when the Lateran Treaties granted the Holy See sovereignty over the Vatican City. Another case, *sui generis*, though often contested, is the Sovereign Military Order of Malta, the third sovereign entity inside Italian territory (after San Marino and the Vatican City State) and the second inside the Italian capital (since in 1869 the Palazzo di Malta and the Villa Malta receive extraterritorial rights, in this way becoming the only "sovereign" territorial possessions of the modern Order), which is the last existing heir to one of several once militarily significant, crusader states of sovereign military orders. In 1607 its Grand masters were also made Reichsfürst (princes of the Holy Roman Empire) by the Holy Roman Emperor, granting them seats in the Reichstag, at the time the closest permanent equivalent to a UN-type general assembly; confirmed 1620). These sovereign rights were never deposed, only the territories were lost. 100 modern states still maintain full diplomatic relations with the order (now *de facto* "the most prestigious service club"), and the UN awarded it observer status.

The governments-in-exile of many European states (for instance, Norway, Netherlands or Czechoslovakia) during the Second World War were regarded as sovereign despite their territories being under foreign occupation; their governance resumed as soon as the occupation had ended. The government of Kuwait was in a similar situation *vis-à-vis* the Iraqi occupation of its country during 1990–1991. The government of Republic of China was recognized as sovereign over China from 1911 to 1971 despite that its mainland China territory became occupied by Communist Chinese forces since 1949. In 1971 it lost UN recognition to Chinese Communist-led People's Republic of China and its sovereign and political status as a

state became disputed; therefore, it lost its ability to use "China" as its name and therefore became commonly known as Taiwan.

The International Committee of the Red Cross is commonly mistaken to be sovereign. It has been granted various degrees of special privileges and legal immunities in many countries, including Belgium, France, Switzerland and soon in Ireland. Similarly for Australia, Russia, South Korea, South Africa and the US. that in cases like Switzerland are considerable, The Committee is a private organisation governed by Swiss law.

Shared and pooled

Just as the office of head of state can be vested jointly in several persons within a state, the sovereign jurisdiction over a single political territory can be shared jointly by two or more consenting powers, notably in the form of a condominium.

Likewise the member states of international organizations may voluntarily bind themselves by treaty to a supranational organization, such as a continental union. In the case of the European Union member-states, this is called "pooled sovereignty".

Another example of shared and pooled sovereignty is the Acts of Union 1707 which created the unitary state now known as the United Kingdom. It was a full economic union, meaning the Scottish and English systems of currency, taxation and laws regulating trade were aligned. Nonetheless, Scotland and England never fully surrendered or pooled all of their governance sovereignty; they retained many of their previous national institutional features and characteristics, particularly

relating to their legal, religious and educational systems. In 2012, the Scottish Government, created in 1998 through devolution in the United Kingdom, negotiated terms with the Government of the United Kingdom for the 2014 Scottish independence referendum which resulted in the people of Scotland deciding to continue the pooling of its sovereignty with the rest of the United Kingdom.

In a federal system of government, *sovereignty* also refers to powers which a constituent state or republic possesses independently of the national government. In a confederation, constituent entities retain the right to withdraw from the national body and the union is often more temporary than a federation.

Different interpretations of state sovereignty in the United States of America, as it related to the expansion of slavery and fugitive slave laws, led to the outbreak of the American Civil War. Depending on the particular issue, sometimes both northern and southern states justified their political positions by appealing to state sovereignty. Fearing that slavery would be threatened by results of the 1860 presidential election, eleven slave states declared their independence from the federal Union and formed a new confederation. The United States government rejected the secessions as rebellion, declaring that secession from the Union by an individual state was unconstitutional, as the states were part of an indissolvable federation.

The modern world includes some features of state sovereignty. In opinion of public law scientists, the sovereignty of a state includes tax sovereignty. Yevhen Marynchak argue that "fiscal

sovereignty is a potential opportunity for a sovereign formation to generate tax relations, create public funds and allocate them to certain areas of state and social development."There exist vastly differing views on the moral basis of sovereignty. A fundamental polarity is between theories that assert that sovereignty is vested directly in the sovereigns by divine or natural right and theories that assert it originates from the people. In the latter case there is a further division into those that assert that the people transfer their sovereignty to the sovereign (Hobbes), and those that assert that the people retain their sovereignty (Rousseau).

During the brief period of absolute monarchies in Europe, the divine right of kings was an important competing justification for the exercise of sovereignty. The Mandate of Heaven had some similar implications in China.

A republic is a form of government in which the people, or some significant portion of them, retain sovereignty over the government and where offices of state are not granted through heritage. A common modern definition of a republic is a government having a head of state who is not a monarch.

Democracy is based on the concept of *popular sovereignty*. In a direct democracy the public plays an active role in shaping and deciding policy. Representative democracy permits a transfer of the exercise of sovereignty from the people to a legislative body or an executive (or to some combination of legislature, executive and Judiciary). Many representative democracies provide limited direct democracy through referendum, initiative, and recall.

Parliamentary sovereignty refers to a representative democracy where the parliament is ultimately sovereign and not the executive power nor the judiciary.

Classical liberals such as John Stuart Mill consider every individual as sovereign.Realists view sovereignty as being untouchable and as guaranteed to legitimate nation-states.Rationalists see sovereignty similarly to realists. However, rationalism states that the sovereignty of a nation-state may be violated in extreme circumstances, such as human rights abuses. Internationalists believe that sovereignty is outdated and an unnecessary obstacle to achieving peace, in line with their belief of a 'global community'. In the light of the abuse of power by sovereign states such as Hitler's Germany or Stalin's Soviet Union, they argue that human beings are not necessarily protected by the state whose citizens they are, and that the respect for state sovereignty on which the UN Charter is founded is an obstacle to humanitarian intervention.

Anarchists and some libertarians deny the sovereignty of states and governments. Anarchists often argue for a specific individual kind of sovereignty, such as the Anarch as a sovereign individual. Salvador Dalí, for instance, talked of "anarcho-monarchist" (as usual for him, tongue in cheek); Antonin Artaud of *Heliogabalus: Or, The Crowned Anarchist*; Max Stirner of *The Ego and Its Own*; Georges Bataille and Jacques Derrida of a kind of "antisovereignty". Therefore, anarchists join a classical conception of the individual as sovereign of himself, which forms the basis of political consciousness. The unified consciousness is sovereignty over one's own body, as Nietzsche demonstrated (see also Pierre

Klossowski's book on *Nietzsche and the Vicious Circle*). *See also sovereignty of the individual and self-ownership.*

Imperialists hold a view of sovereignty where power rightfully exists with those states that hold the greatest ability to impose the will of said state, by force or threat of force, over the populace of other states with weaker military or political will. They effectively deny the sovereignty of the individual in deference to either the 'good' of the whole, or to divine right.

According to Matteo Laruffa "sovereignty resides in every public action and policy as the exercise of executive powers by institutions open to the participation of citizens to the decision-making processes"

Another topic is whether the law is held to be sovereign, that is, whether it is above political or other interference. Sovereign law constitutes a true state of law, meaning the letter of the law (if constitutionally correct) is applicable and enforceable, even when against the political will of the nation, as long as not formally changed following the constitutional procedure. Strictly speaking, any deviation from this principle constitutes a revolution or a coup d'état, regardless of the intentions.

Political authority

In political philosophy and ethics, **political authority** describes any of the moral principles legitimizing differences between individuals' rights and duties by virtue of their relationship with the state. Political authority grants members of a government the right to rule over citizens using coercion if necessary (i.e., political legitimacy), while imposing an obligation for the citizens to obey government orders (i.e.,

political obligation). A central question in political philosophy is "To what extent is political authority legitimate?" Views range from political authority having no legitimacy (philosophical anarchism) to political authority being virtually unlimited in scope (totalitarianism).

The Attributes Of Sovereignty

We may enumerate the distinguishing attributes of sovereignty as permanence, exclusiveness, all-comprehen- siveness, absoluteness, inalienability, and unity. By the quality of permanence or perpetuity, we mean that quality in virtue of which the sovereignty of the state continues without interruption so long as the state itself exists. It does not cease with the death or dispossession of the temporary bearer, or the reorganization of the state, but shifts imme- diately to a new bearer, as the centre of gravity shifts from one part of a physical body to another whenever it undergoes external change.

By exclusiveness we mean that quality in virtue of which there can be but one supreme power in the state, entitled to the obedience of the inhabitants. To hold otherwise would be to deny the principle of the unity and organic nature of the state and to recognize the possibility of an imperium in imperio.

Sovereignty is coextensive in its operation with the jurisdiction of the state and comprehends within its scope all persons and things in the territory of the state. The modern state does not recognize the existence of any staatlos person within its jurisdiction. For reasons of public policy and international comity civilized states voluntarily re- linquish the exercise of jurisdiction over the diplomatic representatives of foreign

states residing within their ter- ritories, but this rule of extraterritoriality, as it is called, is no exception to the principle stated above. The fact that states have until comparatively recent times declined to recognize the principle of extraterritoriality, and that even now any state may expel a diplomatic representative from its territory and thus deprive him of his immunity, are evidences of the truth of the proposition that the sover-eignty of the state is all-embracing and all-comprehensive.

By the quality of absolutism we mean simply that sovereignty is legally unlimited, that is, it is subject to no higher power — an attribute which results from the very nature of the thing itself. To hold otherwise would be to assume the existence of a higher power by which the sovereign is limited.

By the quality of inalienability we mean that attri-bute of the state by virtue of which it cannot cede away any of its essential elements without self-destruc-tion. Sovereignty can no more be alienated, says Lieber, than a tree can alienate its right to sprout, or a man can transfer his life or personality to another without self- destruction. Rousseau holds the same view, though he admits that *power* may be transferred. A few writers, however, take the contrary view. Professor Ritchie, for example, declares that the doctrine of inalienability is belied by the facts of history.

Of course it is not meant that where a state parts with a portion of its territory it retains its sovereignty over the territory alienated. His-tory abounds in examples of territorial cessions involving the alienation of the sovereignty of the state over the territory ceded, but that is a different thing from

saying that the state may cede away its sovereignty as such; that is, part with a constituent element without which it could no more exist than a man without heart or blood. Nor does the principle of inalienability mean that the person or per- sons in whom the sovereignty is for the time reposed may not abdicate.

The British Parliament, for example, might dissolve itself without making any provision for calling another Parliament, or the Czar of Russia might voluntarily relinquish his rights of sovereignty in favor of a Duma, as he seems to have in fact lately done; but there would not be in either case an alienation, but only a shifting of the re-pository or abiding place.

Implied in the principle of inalienability of sovereignty is that of imprescriptibility, according to which sover-eignty cannot be lost by mere lapse of time, as prop-erty in land may be lost by prescription at private law. There is an old doctrine held by some writers that originally the people were sovereign everywhere, but through the long and uninterrupted usurpation of sovereign power by kings it was gradually lost to the people by operation of the principle of prescription. But the theory has little evidence to support it.

The Absolutism Of Sovereignty;
Theory Of Limitations

Among the characteristics of sovereignty which merit a more extended consideration than we have given in the preceding section is the quality of absolutism. Sover-eignty cannot be limited; it is an original, not a de- rived power. As it is the supreme power in the state, there cannot, legally speaking, be any authority above it, and to speak of it as being limited by

some higher power is a contradiction of terms. Sovereignty, as Jellinek re- marks, can be bound only by its own will, that is, it can only be self-limited.

While from the very nature of the case sovereignty cannot be subject to legal restrictions, many writers rec- ognize the existence of certain moral limitations on the power of the sovereign, arising from the natural and inherent rights of man — rights which, according to the views of some authorities, exist independently of the state and cannot therefore be restricted or limited by it.

Thus, observes a well-known writer, “although... some of those who have written on sovereignty described the sov-ereign as being subject to no restraint whatever, his sole will being absolutely dominant over all his subjects, there has never really existed in the world any person or even any body of persons enjoying this utterly uncontrolled power, with no external force to fear and nothing to regard except the gratification of mere volition. “The same assertion is made by Bluntschli, who declares that “there is no such thing on earth as absolute independence.... Even the state as a whole is not almighty, for it is limited externally by the rights of other states and internally by its own nature and by the rights of its individual members. “

Some writers maintain that the sovereignty of the state is limited by the prescriptions of the divine law, or by the power of some superhuman authority. The Russian publicist Martens, for example, in his definition of sovereignty recognizes in God a “legal superior “over a state otherwise “entirely sovereign. “Bluntschli asserts that nations are “respon-sible to the

eternal judgments of God “as well as to “the facts of history. ““There is above the sovereign, “says the German writer Schulze, “a higher moral and natural order, the eternal principle of the moral law. “

The doctrine that the state is absolutely supreme and incapable of do-ing wrong is, he says, fallacious and dangerous. Other alleged limitations on sovereignty are those arising from the law of nature, the principles of morality, the teachings of religion, the principles of abstract justice, immemorial custom, long-established traditions, etc. To these have been added the limitations imposed by the rules of inter-national law, the particular restrictions imposed by conventions between states, and limitations imposed by states themselves by their fundamental law, such, for example, as the method of procedure for altering their constitutions.

It must of course, be admitted that in a certain sense the exercise of sovereignty is subject to restrictions. The most despotic monarch respects the opinions of his subjects on certain questions and often bows to their wishes. Probably no sovereign, whether monarch or assembly, ever existed who assumed and exercised the right to change any law, custom, or institution at his pleasure without regard to the opinions of the mass of the popula- tion.

All sovereignty, in short, must be conditioned upon the ready obedience or acquiescence of those over whom it is exercised. The sultan of Turkey, for example, abso- lute as he is, would hardly dare interfere with the religion of his subjects; the British Parliament, with power legally unlimited, would hesitate to tax the colonies, or to pass a decennial act, or to

establish the Episcopal Church in Scot- land; it is doubtful if any Roman emperor would have dared to subvert the national religion of Rome; Louis XIV, who is credited with having boasted that he was the state, would probably never have been able to force Protestant- ism on his subjects.

An examination of these limitations, however, will show that legally they are no restrictions on sovereignty at all. The law of nature, the principles of morality, the laws of God, the dictates of humanity and reason, the law of nations, the fear of public opinion, and all the other alleged restric- tions on sovereignty have no legal effect, except in so far as the state chooses to recognize them and give them force and validity. They are not such limitations as the courts will ordinarily enforce in the decision of legal controversies.

Thus, if the English Parliament, which is the legal sover- eign in the British Empire, should pass an act opposed tothe principles of morality or contrary to the rules of inter- national law, however repugnant the statute might be to the moral sense of the people or their ideas of justice and good faith, it would not be legally invalid. The courts would presume that Parliament did not intend to violate the rules of morality or the principles of international law, and they would not listen to an argument which rested on the assumption that Parliament had exceeded its author- ity.

If in any case the limitations of the divine law are recognized, the state in the last analysis must be the inter- preter of the divine will, so that in fact the restriction is nothing but a self-limitation. In other words the principles of morality, of justice, of religion, etc., so far as they constitute limitations on the

sovereign, are simply what the consciousness of the state decides them to be, for there can be no other legal consciousness than that of the state.

Regarding the so-called limitations on sovereignty imposed by the principles of international law, we are forced to the same conclusion, namely, that in the last analysis they are nothing more than “self-limitations. “The subjects of international law are sovereign states, and in the last resort they must be considered as the interpreters of their own rights and of their obligations to other states.

There is no higher legal power to enforce the obligations which the public opinion of the civilized world may declare to be binding upon them. States are subject only to their own wills, not to any outside will. Juristically speaking, the state has an undoubted right to refuse to be bound bya particular usage of international law, and as a matter of fact the courts of most countries are bound to give prece- dence to municipal statutes in preference to the prescrip- tions of international law, even though the former are contrary to the latter.

And so as regards the obligations of the state which it may have imposed upon itself by ex- press convention with other states. They are not legal limitations on the sovereign power, but conventional agree- ments which the state may disregard or even repudiate so far as its legal right to do so is concerned. The same may be said of the alleged limitations set by the state upon the manner in which its powers shall be exercised, such, for example, as the method of procedure which it may have prescribed for making changes in its own constitutional or- ganization.

Such rules of procedure cannot be considered as legal restrictions upon the sovereignty of the state, and it is a matter of common knowledge that such provisions have in the past been time and again set aside for other methods.

The inevitable conclusion, therefore, to which we are led, is that all attempts to place legal restrictions upon sovereignty are futile and useless. Whoever or whatever can impose limitations on the power of the state is itself the sovereign, and not until we reach that power which is unlimited do we come into the presence of the sovereign. Supreme power, limited by positive law, says Austin, is a flat contradiction in terms.

The doctrine of unlimited sovereignty is sometimes criti- cised on the ground that it leads to the legal despotism of the state. But granting *arguendo* that sovereignty may be limited in the interest of liberty or good government, we are no better off. We are still brought face to face with another sovereign, namely, that which imposes the limitation – the very thing from which we are seeking to escape. John Austin, with his usual clearness and incisiveness, stated the matter correctly when he said:

"The power of the superior sov- ereign imposing the restraints on the power of some other sovereign superior to that superior would still be absolutely free from the fetters of positive law. For unless the imagined restraints were ultimately imposed by a sovereign not in a state of subjection to a higher or superior sovereign, a series of sovereigns ascending to infinity would govern the imagined community, which is impossible and absurd. "

It is difficult to see what is to be gained by trying to avoid such a conclusion. It is necessary to recognize in the state a power to which all things and all wills are po- tentially subject, otherwise the state is no different funda- mentally from the other associations and organizations into which mankind is grouped. But this recognition does not imply an admission of the moral right of the state to control and regulate all the interests and activities of the people over whom sovereign power potentially exists.

In all modern states there is a large group of interests, a wide domain of human conduct, which are in fact exempt from all governmental interference. There is no likelihood that the state will ever exercise all of the power which legally belongs to it. Considerations of expediency, to say nothing of justice, require that in practice the greater part of its power should exist only *in potentia*, and that the individual should be left free from governmental control within a certain sphere. Any sovereign, whether monarch or assembly, which should attempt to exercise its un- doubted legal power to regulate all the interests and relations of human life would soon be overthrown by revolution.

It is difficult to see how the doctrine of unlimited sover-eignty is inconsistent with the idea of the widest liberty. It does not require profound thinking to we that the more fully and completely sovereign the state, the more secure and permanent must be the liberty of the people. During the eighteenth century the sovereignty of the state was generally confused with the absolutism of particular kings, and therefore the doctrine of unlimited sovereignty had few defenders except among those who, like Hobbes, were the apologists of certain

princes who sought to rule with- out regard to constitutional restrictions. With the dis-appearance of absolutism in government and the general introduction of constitutionalism, however, the theory of the unlimited sovereignty of the state came to have more advocates than opponents. When the state came to be organized outside of the government and sovereignty was understood in its true light, namely, as an attribute of the former rather than of the latter, it became an easy matter to reconcile the doctrine of an unlimited sovereignty with that of a limited government.

The Indivisibility of Sovereignty

Another characteristic of sovereignty which requires more detailed consideration is the quality of unity. Being the highest will in the state, it cannot be divided without producing several wills, which is, of course, inconsistent with the notion of sovereignty. The existence of several supreme wills, each capable of issuing commands and of exacting obedience, would obviously result in conflicts and an ultimate paralysis of the state.

If the several supposed wills were co-ordinate, obviously neither could be sovereign; if one were superior and the others subordinate, manifestly the former would be sovereign and the latter subject, and what would appear to be a division of sovereignty would in fact be no division. By no one has this truth been more forcibly set forth than by the American statesman John C. Calhoun, in his

“Disquisition on Government, “written in 1851. “Sovereignty, “he declared, “is an entire thing; to divide it is to destroy it. It

is the supreme power in a state, and we might just as well speak of half a square or half a triangle as of half a sovereignty. “But this view is by no means universally accepted by publicists and politi- cal writers of to-day. The existence of a large number of petty states on the continent of Europe during the six- teenth and seventeenth centuries, which were practically, though not theoretically, independent, contributed to the spread of the popular belief in the distinction between part-sovereign and fully sovereign states — a distinction which rests in fact on the notion of a divided sovereignty. In more recent times the organization of so-called composite states, confederations, real unions, and federal states, and the establishment of such relationships as are involved in the creation of protectorates, have powerfully strengthened the divisibility theory.

The question of a dual sovereignty first became a con-troversy of practical politics in the United States of America toward the middle of the nineteenth century. Under the Articles of Confederation each member of the union expressly retained its own sovereignty, so that the possibility of misunderstanding was avoided.

But the constitution of the federal union of 1789 was silent on this all-important subject, hence, the questions were left open as to whether sovereignty remained in the individual states where it had formerly rested, whether it was in the united state created by their joint agency, or whether it was divided between the individual states on the one hand and the union on the other. This casus omissus was doubtless the result of a compromise between the conflicting forces of particularism and nationalism in the convention which framed the con- stitution.

The theory of a dual sovereignty under the American federal system was generally held by publicists in America at the time of the adoption of the constitution, it was enunciated in the “Federalist “by Hamilton and Madison, and was adopted at an early date by the Supreme Court, which held that the United States was sovereign as to the powers which had been conferred upon it, and that the states were sovereign as to those which were reserved to them, and this view is still maintained by the court.

It has received the approval of such eminent constitutional lawyers as Judges Cooleyand Storyand political writers like De Tocqueville, Wheaton, Halleck, Hurd, Bliss, and many others.

“There is no question, “says Hurd,. “that the statesmen of all sections who made the constitution of the United States understood that political sovereignty was capable of division according to its subject and powers. “Their view was that the sovereignty was divided between what they called the “nation “on the one hand and the states on the other; that is, each was sovereign within the sphere marked out for it by the constitution of the union.

This theory of a dual sovereignty was vigorously combated by the Southern statesman John C. Calhoun, in his “Disquisition on Government, “where, as already stated, he enunciated the doctrine that sovereignty was a unit, in- capable of division, and that it existed unimpaired and in its entirety in the separate states composing the union. The question, so far as the United States was concerned, was finally settled by the armed conflict of 1861-1865, but there is still a difference of

opinion among able writers as to whether the power which is left to the states is sover-eignty or mere local autonomy.

Among foreign publicists we find the same diversity of opinion regarding the divisibility of sovereignty. The Eng- lish historian Freeman asserts that "the complete division of sovereignty we may look upon as essential to the absolute perfection of the federal ideal. "The French scholars De Tocqueville, Esmein, and Duguit have expressed substan- tially the same views; and many German publicists support the theory so far as it relates to sovereignty in federal states.

The "father "of the divisibility doctrine in Germany was the noted scholar Waitz, and among his followers may be men- tioned the names of Von Mohl, Bluntschli, Brie, Wester- kamp, Jellinek, Bornhak, Schulze, Rüttiman, and others. After the founding of the empire, however, and the triumph of nationalism over particularism, the theory of a divided sovereignty found less favor among the German jurists and philosophers, and the unity theory has come to have more advocates than formerly.

According to the latter view, sovereignty in the German Empire reposes in the totality of the German states regarded as a single personality instead of being divided between the empire, on the one hand, and the states composing it, on the other. When the latter became members of the empire, they gave up their sovereignty, receiving in exchange, as Bismarck ex- pressed it, a share in the joint sovereignty of the empire.

While the better opinion is in favor of the theory that sovereignty is a unit and therefore incapable of division, there is no reason why the expression of the powers of sovereignty,

its emanations or manifestations, cannot be divided and expressed through various mouthpieces and carried out through a variety of organs.

Thus, said Rous- seau, power may be divided, though will never can be. It is a unit and indivisible. Those who maintain the divisibility theory, as Rousseau points out, really confuse sovereignty with its emanations. The same idea was expressed by Calhoun, who said with evident truth: “There is no difficulty in understanding how powers appertaining to sovereignty may be divided and the exercise of one portion be delegated to one set of agents and another portion to another, or how sovereignty may be vested in one man, in a few, or in many. But how sovereignty itself, the supreme power, can be divided... it is impossible to conceive. “

Applying this principle to the so-called federal state, we shall find that the sovereign will expresses itself on certain subjects through the medium of a central government, and on certain other subjects through the organs of the indi- vidual political units composing the federation. But there is no partition of sovereignty, no division of the supreme will. There is a division by the sovereign itself of governmental powers and a distribution of them among two sets of organs, but no division of the will itself.

To say that the component members of a federal union are partly sovereign, or sovereign within their particular spheres, is an abuse of the term “sovereignty. “Juristically it is just as logical to say that a municipal corporation or a religious society is sovereign within the sphere assigned to it by the law. “There is no middle ground, “says an able writer, speaking of

the nature of sovereignty in the American federal system; “sovereignty is indivisible, and either the central power is sovereign and the individual mem- bers not, or vice versa. They are not states, for that would be imperia in imperio, but they are administrative districts with larger powers of autonomy than are given others — an autonomy which amounts to practical local self-government in matters not of general concern.

“Legally this is an absolutely correct statement of the status of the so-called states of the American federal republic. That power and that power alone is sovereign in a federal union which can in the last analysis determine the competence of the central authority and that of the component states, and which can redistribute the powers of government between them in such a way as to enlarge or curtail the sphere of either. That power is not in the cen- tral government nor in the states; it is over and above both, and wherever it is, there is the sovereign. The task of “running the sovereign to cover, “especially in the “composite “states of to-day, is not always easy, and when discovered it is not always recognized.

It is extremely difficult to place one’s finger on the exact spot where it reposes. The constitutional lawyer and the lay- man do not always travel the same path in the search for it, and they do not always find it in the same place. But it is always present somewhere in the state; and if in the search we push our inquiry until we find that authority which has the power to say the last word in all matters of authority, we shall find ourselves in the presence of the sovereign.

Internal Versus External Sovereignty

The fact that the state has an international personality and exerts a will in relation to other states has given rise to the common distinction between external and internal sovereignty, between sovereignty as a concept of inter- national law and sovereignty as a concept of constitutional law. Those who recognize the distinction conceive internal sovereignty to mean the supremacy of the state within its own territory as over against the wills of all persons or associations of persons therein; while external sovereignty is conceived to be the supremacy of the state as against all foreign wills, whether of persons or states.

The one has reference to the exclusive power of the state viewed from within, the other to the immunity of the state from outside control. Many writers, especially those on inter- national law, maintain that the two sovereignties are separate and distinct, and that the state may possess one without the other; that is, the state may be internally sovereign without being sovereign in its external relations.

The logical conclusion is that states may be sovereign as to certain things and non-sovereign as to others; in other words, that sovereignty is divisible and admits of differ- ent degrees of perfection — a conclusion which we have already shown to be untenable. Georg Meyer, a noted German scholar, distinguishes between constitutional sov-ereignty and international sovereignty; the former being the power of "unrestrained political action, "as regards internalaffairs, the latter being independence of foreign control. But if a state possesses the power of unrestrained po-litical activity in

internal affairs, it cannot at the same time be dependent upon an outside will. That would, as Jellinek remarks, be a contradiction adjecto..

The distinction between international or external sovereignty on the one hand, and internal or constitutional sovereignty on the other, is, according to strict logic, unsound. The former is but the outward reflex action of the highest power in the state, the manifestation of its supremacy in a particular direction. In other words, external and internal sovereignty are simply different aspects or manifestations of one and the same thing. One may be considered the positive side of sovereignty, the other its negative side. Or, to state it in a different form, one is the supremacy of the state viewed from the exterior, the other the same supremacy looked at from within.

IS Sovereignty an Essential Element Of The State

Many able writers, particularly among the Germans, maintain that while sovereignty is a common attribute of the state it is not an essential constituent; in other words, that states and sovereign states are not necessarily identical concepts. Sovereignty, they assert, may or may not be present in the state; it may constitute the basis of recognition in international law, but is in itself an insuffi- cient test of statehood.

They distinguish between sover- eignty, the power of the state to determine the limits of its own competence, and state power, or the right to rule, which is possessed by every state, while only certain states possess the former. Communities, like the

component members of federal unions, for example, which were once independent and which have never surrendered their essential marks of existence, but have only delegated certain powers of gov- ernment to a central authority, are cited as examples of states without sovereignty. In becoming parts of a new union they have ceased to be sovereign but have not ceased to be states.

Thus Jellinek maintains that a community which exercises political power according to its own right, that is, power which is original rather than de- rived and which can lay down binding legal norms, is in a juristic sense a state, whether it possesses full sovereignty or not. They are, he says, public law corporations, have their own constitutions, their own independent spheres of action, and retain their magisterial rights. Other authorities who hold the view that sovereignty is not a vital principle in the constitution of the state are Laband, Rehm, Georg Meyer, There are sovereign and non- sovereign states. “von Mohl, Le Fur und Posener, Hermann Schulze, Brie, Anschütz, Bluntschli, and the French writers Michoudand Lapra- delle.

According to these writers the distinguishing characteristic of the state is, as has been Intimated, not sov- ereignty, not the original power of the state to deter- mine its own competence, but the power to command and compel obedience. A community which rules and governs in its own right, says Jellinek, is a state, and non-sovereign as well as sovereign communities may do that. There were many communities during the Middle Ages, he says, which were tributary or vassal, like the great feudal seignories of France, yet were recognized as states.

But if the possession of political power is a sound test of statehood, it is difficult to see why provinces possessing large autonomy, or self-governing colonies like Australia, Canada, or New Zealand, do not equally possess the quality of states. Whether sovereignty is an essential characteristic of the state depends mainly upon our notion of the thing itself and our conception of the nature of the state.

If we accept the theory of a divided sover-eignty, or the distinction between perfect and imperfect states, we need have no trouble in accepting the doctrine that a community in which sovereignty is partly lacking may nevertheless be considered as a state. But if we ad- here to the test laid down elsewhere in this work, no non- sovereign community, however great its local autonomy, is entitled to be treated as a state. We agree with Zorn and Burgess that sovereignty is not only an essential element, but the first and highest conceivable mark of the state; and with Willoughby that it is the one characteris-tic which serves to distinguish the state *in toto genere* from all other human associations.

There are many communities, among them the constituent members of some federal unions and the great English self-governing colonies, which have an autonomy amounting almost to independ- ence in the management of their local affairs, yet they are not free to determine their own competence or the limits of their own autonomy. It would seem, therefore, more accurate to treat such communities not as states, but as parts of states, possessing some, but not all, of the marks of real states.

Austin's Theory of Sovereignty

A conception of sovereignty which has been the subject of wide discussion and which has exerted an important influence upon the legal thought of the last half century is that enunciated by the analytical school of jurists of which John Austin was the most conspicuous representative. Austin's views were based largely on the teachings of Hobbes and Bentham, and were first made public in his "*Lectures on Jurisprudence,* "published in 1832. His theory was conditioned mainly upon his view of the nature of law, which he defined in a general way as a "com-mand given by superior to an inferior. ""If a determi-nate human superior, "he declared, "not in a habit of obedience to a like superior receive habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society (including the superior) is a society political and independent. ""Furthermore, "he continued, "every positive law, or every law simply and strictly so-called, is set, directly or circuitously, by a sovereign person or body to a member or members of the independent political society wherein that person or body is sovereign or supreme. "

The test of sovereignty, then, according to Austin, is habitual obedience to a superior who owes no obedience to a like superior — not obedience by all the inhabitants, but by the "bulk "of the members of the community. This superior cannot be the general will, as Rousseau taught, nor the people in the mass, nor the electorate, nor some abstraction like public opinion, moral sentiment, the common rea-son, the will of God, and the like; but it must be some "determinate "person or authority which is itself subject to no legal restraints.

Austin's theory that sovereignty must reside in a determi-nate body has found many critics among the historical ju-rists like Maine, Clark, Sidgwick, and others. In the first place, the theory is criticised on the ground that it is inconsistent with the present-day idea of popular sovereignty — is in fact the complete antithesis of Rousseau's doctrine that sovereignty is the general will, a doctrine which lies at the basis of the modern democratic state.

Again, it ignores the power of public opinion, and takes no account of what we have described as political sovereignty. Thus, says Sir Henry Maine, it is a historic fact that sovereignty has repeatedly been for a time in the hands of a number of persons not determinate, and, he adds, "it is asserted by some writers that this is true of the abiding place of sover-eignty in the republic of the United States. "Furthermore, Austin's notion of law as a command emanating from a determinate superior — a conception which lies at the basis of his theory of sovereignty — has been criticised by the historical jurists on the ground that it ignores the great body of customary law which has grown up through usage and interpretation, and which never had its source in the will of a determinate superior; that it errs in treating all law as being merely command; and that it exagger-ates the single element of force to the neglect of obvious historical facts with which Austin could not have been unacquainted.

Austin apparently foresaw the objections that would be urged against his definition of law, and he sought to antici-pate them by one of those legal fictions common among lawyers, namely, by extending the scope of his definition to include customary law. Custom, he argued, is law only when sanctioned by the

sovereign, and what the sovereign permits he commands; hence, customary law is a legal command, and he who permits it to continue as law is the sovereign. But, like most legal fictions, this is rather unsatisfactory, if indeed it does not prove too much for his doctrine.

Another objection sometimes urged against the Austinian theory is the absolutism which it attributes to sovereignty. Like Hobbes, Austin held that the fountain and source of law could not be limited by any higher law, and hence sovereignty involved legal despotism.

There cannot, he said, be a hierarchy of supremacies nor a coordination of creators nor a series of sovereigns ascending to infinity. He frankly admitted that there was no escape from the conclusion that sovereignty is legally unrestrainable, and hence the sovereign is, legally speaking, a despot, however benevolent he may be in fact. But he pointed out, what is obviously true, that it does not follow that because the sovereign is unlimited in its powers the government through which it expresses itself is necessarily subject to no restriction.

Of the merits of Austin's theory we venture the opinion that his chief error consisted in unduly emphasizing the purely legal aspects of sovereignty, and in overlooking the forces and influences which lie back of the formal law — a very natural mistake for a lawyer to make. It may also be said that his theory was probably inapplicable to all states of society, such, for example, as Maine described in his work on the "*Early History of Institutions.* "But as a conception of the strict legal nature of sovereignty, Austin's theory is, on the whole, clear

and logical, and much of the criticism directed against it has been founded on misapprehension and misconception.

The nature of sovereignty has not always been understood, nor is it now.

It has often been the subject of much loose thinking by statesmen and of dogmatism by political writers. Powerful constitutional controversies concerning its location have shaken more than one state in the past and have some- times even led to civil commotion.

While there is now a substantial consensus of opinion among the best political writers concerning its fundamental characteristics, there are still differences of opinion regarding its place of abode. in some of the complex states of the present day.

Chapter 2

Principles of Government

People's Participation in Administration

The people are generally ignorant and unorganized and are therefore incapable of exercising any regular and definite impact over public administration. However, Warner goes on to say that in spite of ignorance of the people they ultimately determine what the public administration is going to be. He, observed, "In the least resort, the final words remain with the public in all democratic countries, since they are the electorate by whom the whole mechanism of the Government must be set in motion. Indirectly, therefore in the long run, the p-public controls public administration absolutely and completely". The influence and control of the people over the administration has to be channeled in some sort of an organised way.

It is very rare that an unorganized mass of people are able to influence the administration to any significant extent. In this Stage, we propose to study the various means of people's participation in administration. In other words, we would explore the manner in which the people are able to influence the administration.

Modes of Public Influence on Administration

The public influence on administration is mostly in an indirect and informal manner. There are formal modes of influencing the administration.

These are:

- System of election;
- System of Recalls;
- Advisory and Consultative Committees;
- Pressure Groups.

We would discuss in brief as to how these modes of influence operate in actual practice.

System of Elections

The highest officials of the State namely, the political executives are always elected by the people directly/indirectly. The top administrations are appointed by the political executives and are responsible to them. The influence of the people on the administration is therefore through the political executives who are responsible to the people. Since the political heads have to seek re-lection after a fixed period of time they have to take care of the problems of their constituency. The people are, therefore, able to influence the political executives in his functioning.

They are able to bring pressure on them by virtue of their voting power. The political executives have to listen to them as they have to return to them periodically for their election. However, in practice, the systme of elections has not been very effective instrument pf the exercise of people influence over administration. The elections are held at long intervals say once in five years. After getting elected to their administration,

the Ministers can afford to ignore their electorate for a considerable period of time. In some countries, there is also a system of electing the administration officials. The Canton Government in Switzerland and some States in the USA and local government have elected officials. The system is had from the administrative point of view, but ensures direct and close control and influence of people over administration. However, it leads to favouritism and patronage. The system is also impracticable in a large country where elections for a large body of administrators are not possible. The system has therefore fallen into disuse. Most of the modern democratic have appointed administrators rather than elected ones.

System of Recall

This system of recall of officials is a corollary to the system of election of officials. It is based on the premises that the whole of democracy is more democracy.

Under this system, the officials have to retire from his office even before the expiry of his term of office, if he is defeated in a recall poll. The system of recall is as rare as the system of elected administrative officers. In any big democracy this type of system is impractical.

Advisory Committees

The methods of people's influence over administration are a general nature. In these methods individual citizens hardly find an opportunity of being able to sue their wisdom and knowledge to influence the decisions of the Government. The most important mode of exercising peoples influence on

demonstration is that provided by advisory committees. In India, the Advisory Committees are generally a post independence innovation in administration. In 1957, there were not more than dozen advisory committees in existence. Moreover the committees that exist do not have the distinct complexion that such bodies under democratic set up normally acquire. Moreover, the colonial government has very few development function sot perform.

There was therefore not much need to have advisory committees. With the advent of independence the government took upon itself a large number of functions requiring policy initiatives in many new directions. Since these policies were meant for the development of the people, their participation was considered essential in the successful implementation of these policies.

A number of committees have therefore multiplied enormously after independence. There are a number of such advisory committees in each ministry. The Ministries are not even able to indicate the exact number of advisory committees they have. A tentative list of advisory committees in 1961 indicates there were more than 500 such committees in Government of India.

Types of Advisory Committees

The advisory committees may be classified into the following types:

- Representative advisory committees
- Expert Committees

- Advisory Committers for independent administration
- Territorial advisory committees
- Zonal Committees.

The most important of these committees are the territorial committees and expert committees. A representative advisory committee is an extension to the democratic principle. It provides representatives to the various interests and this enlists the participation of concerned people in the administrative process, broadening thereby the democratic base.

Since modern democracies deny having been representative, the representative advisory committees provide the government an opportunity of ascertaining the connected people with the decision making process. For this reason, the use of representative advisory committees is becoming more and more widespread in public administration. The expert committees as their names suggest enable the government to associate various experts in professional bodies with the decision making in areas where their advice may be useful. For example, Planning Commission appoints a number of panels of experts from outside the government. Some of the reports of these expert committees have been found very useful to the Government in framing polities in complicated technical areas.

The advisory committees may be really useful if their function remains only advisory. Otherwise, there is a danger of public responsibility being impaired. It is also necessary that the members of these committees have a broad and representative perspective of their function rather than a narrow and personal

use. On the other hand, the system of advisory committees also requires that their suggestions and advice should be given due weight and consideration by the Government. Their members should be appointed with great care and attention.

If their influence and advice is not given proper consideration, no self-respecting people will join these advisory bodies. Even those working on these advisory committees will lose all interests if they know that their advice carried no weight with the administration. It may also lead them to make irresponsible suggestions in the belief that the government is not serious about the implementation of the advice rendered by the committees. If properly used, the system of advisory committees can prove as the most effective one for ensuring people's participation in administration. It is true that the system does not give an opportunity for each and every citizen to participate in the decision making process, nor does it appear possible to do so.

Pressure Groups

Another method of exercising peoples influence over public administration is through the operation of pressure groups. "Pressure Group" is an American term, which means a part of people organized and active in the pursuit of some special interests which its members join to promote. Usually, they are groups of industrialists, traders, businessmen with organized commercial interests.

The various chambers of commence and industry, trade unions, caste and religious groups etc, belong to the category of pressure groups. Although the pressure groups are more

prominent in the United States they also exist in other countries and influence the public policy to varying extent. Some people have criticized pressure groups for promoting their narrow interest.

However, if properly organized, the pressure groups may also serve that following useful functions:

- To put its own point of view of the policy making organizations of the Government that is legislature and the administrative agencies.

- To keep its members informed about the new rules and regulations etc., framed by the Government about its activities.

- To resist unduly restrictive policies of the Government which may have and adverse effect on the economic activities pursued by the group.

- To explain to the people the view point of the group so that favourable opinion is formed a bout their activities.

However, sometimes the pressure groups may employ unlawful means for securing official favour. This may give rise to various malpractices in administration like corruption and favouritism. In many case, the pressure groups are important instrument in ensuring peoples participation in the administrative process. The advice can be used both for legitimate and illegitimate purposes. It is for the administration to interact with it and channelize it in the right direction.

Public Opinion

Besides the organized methods of people's participation in public administration, there are some informal methods also. One such method is the formation of public information which is expressed through various publicity media like press, television, radio etc. while in India, radio and television are government controlled, press is an important independent medium through which people can exercise their influence on public administration. This is done through various means like giving press statements, writing letters to the editors etc. The government can also interact with people through its public relations machinery which explains to the people the Governments policies and programmes in a constructive way.

They can also use the various media for their interaction with the people. For example, the Government may organize an open national debate on important issues concerning public administration. One may recall the issue of Parliamentary versus Presidential form of Government which was widely discussed in the newspapers.

The newspaper discussion did appear to have made a lot of impact on the Government about this question. In any democratic government people's participation in the public administration is very important from the point of view of making Government policies, a success. Even the best of programmes launched by the Government cannot be successful unless people participate in them willingly. It is also the endeavor of the Government to ensure people's participation because most of their programmes are meant for the benefits of the people.

Without active cooperation and participation of the beneficiaries, the Government programmes cannot be effectively implemented. It is therefore necessary for the Government to associate the people with the decision making process in the Government by various forms of informal ways.

Relationship between Political and Permanent Executives

The Parliament form of Government postulates the political executive to be a part of the legislature. The highest decision making level in the Government is the Minister who is a part of the parliament and is jointly and individually responsible to it. The minister being a political person does not have the time or the expertise to run the day-to-day affairs of the Government. In this function he is assisted by the permanent executive headed by the Secretary. Besides finding the best methods of carrying out the policies laid down by political executive, the secretary provides the necessary information and analysis to enable the Minister to formulate the policy. The policy formation is, therefore, also a collective process in which the political executives as well as the permanent executive *i.e.*

Minister and the secretary jointly participate. The relationship between the Minister and the secretary is a very crucial one for the effective functioning of the Government. Both compliment each other's functions and none probably could do without the other.

The minister is a professional politician who brings to his office knowledge of what people expect from the Government and what they would not stand. He has to credit legislative

experiences and may be some governmental experiences also. The secretary on other hand is a permanent civil servant, who possesses wide administrative experience. In a normal and healthy functioning of the Government both of them should supplement each other.

Further, when any one of them tries to over-step his limits, the conflicts are bound to occur. Such conflicts have risen in the past and they continue to recur in the functioning of the government from time to time. In this stage, we propose to study some of the important aspects connected with the relation between the political executive and the permanent executive *i.e.* between the Minister and his Secretary.

Historical Perspective

Historically, the politician-Minister in the present form appeared on the Indian scene in 1921 when the Montague Chelmsford reforms of 1919, established the system of hierarchy. Under the system some of the transferred subjects were placed for the first time under the elected Ministers. The relationship did not come off entirely without friction and conflict.

Generally, the permanent executive *i.e.* Secretaries tried to adjust to their new role of serving the political masters who were till recently adversaries. A number of civil servants who could not adjust to the new situation did seek retirement and went away to England. The remaining ones; however, made a remarkable job of adjusting with the new situations. Still there were many instances of strained relations between the two. L.K. Rushbrokk William contemplated that “despite the general

harmony which seems to have marked the relationship between the Ministers and the permanent officials of the department under their control, the position has not been free from difficulty and there is reason to believe that some Ministers have considered themselves unduly upset".

It may be noted that C.Y. Chiatamani, who was holding the portfolio of Education in the United Provinces, resigned on the issue of having been by passed in a certain matter which was directly communicated to the Governor.

The Government of India Act 1935 established the provincial autonomy under which fully responsible government was provided in the provinces. This brought to fore very prominently the question of relationship between the Secretary and the Minister.

The Committee on Organization and Procedure set up in 1937, under the Chairmanship of R.M. Maxwell, examined the question of proper relationship between them. It pointed out that the Minister has a right to accept advice based on widest administrative experience available under the department, and further more, the Secretary was the only officer in the department qualified by experience to render such advice. The Minister, who was naturally not in a position to attend to the day-to-day business of administration, expected the Secretary to carry on this work efficiently.

The Secretary should, therefore, be consulted by the Minister in regard to the administrative matters in the Ministry/Department. The committee also held that the Minister had the freedom to consult experts or other department officers on technical or even administrative

questions, but, the Secretary was to be invariably associated with such consultations, and final decisions should not be taken without consulting the Secretary.

The Maxwell Committee also recommended that in view of the political, parliamentary and public pre-occupations the Minister, the matters of major importance should be referred to the Minister for his decisions. With this in mind, the committee suggested the following classes of business to be submitted to the Minister.

- Cabinet cases;
- Business which is likely to have political repercussions;
- Parliamentary business;
- Patronage
- Any other class of business which in the opinion of the Secretary is sufficiently important to be submitted to the Minister.

Obviously, the committee was in favour of giving maximum, possible discretion to the Secretary in running the affairs of the department. He was supposed to refer to the Minister only the cases of dispose off most of the business which he thought he could dispose off. The Committee also felt that for efficient functioning of the Government, it was necessary that the relationship between the Secretary and the Minister must run smoothly. This relationship must be characterized by mutual confidence and trust.

After Independence

Even after the independence, the intransigence of some of the civil servants caused awkwardness in the relationship between the political and permanent executives. Shri Prakash, the former High Commissioner of India in Pakistan, recalled the difficulties he had encountered in getting his instructions implemented by an ICS officer who was his deputy in the High Commission. He also narrated an instance of being told by Prime Minister, Pandit Nehru of similar experience of having difficulties with the ICS officers. It has been pointed out by many that at least during the early days of independence some of these officers had entertained somewhat strange view about their own position in the newly emerging administrative set up and found it rather difficult to act in complete harmony and cooperation with the political elements in the Government *i.e.* the Ministers. There were a number of cases of open rift between the Ministers and their Secretaries. One such case was about the purchase of shares of certain private companies by the nationalized Life Insurance Corporation. Finance Minister Mr. T.T. Krishnamachari's disowning responsibility for a decision taken by him after an oral decision by him with the Finance Secretary, Mr. H.M. Patel erupted into a great controversy. Justice Vivian Bose enquiry commission found the working relationship between the two rather strange.

As a result of the controversy, Mr. T.T. Krishnamachari had resigned and Mr. Patel sought voluntary retirement. In 1966 another important case of ministers-secretary conflict was noted. Mr. Gulzlzari Lal Nanda, the Home Minister, complained to the Prime Minister that he was not getting full cooperation from his secretary, Mr. L.P. Singh. The Prime Minister did not

change the Secretary and the Minister resigned. Another almost comic case of minister- secretary conflict, occurred in 1971, Mr.K. Hanumanthayya, Railway Minister did not see eye to eye with the Chairman of the Railway Board, Mr. Ganguli.

The Minister created an ugly situation by refusing the tour programme of the chairman and got his bogie detached from the railway train. Mr. Ganguli also created as scene by continuing to sit in his bogie. However the government terminated the services of Mr. Ganguli who claimed that the reason for the wrath of the Minister was Mr. Ganguli's attack on some vested interests. Equally comic was the recent conflict between railway minister Mr. Ghani Khan Chaudhary and the Chairman of the Railway Board.

Reasons for Conflict

The most important reason for conflict between the Ministers and the Secretaries is that either one or both of them wish to transgress their limits. Usually, the Minister being a political figure cannot give detailed attention to the government work. The Minister, therefore, should give the secretary full freedom to advice on the policy and decision making.

The Secretary should ideally be left free to express whatever opinion he wishes to express on any matter he placed before the Minister.

The ultimate decision has to be taken by the Minister as he alone is responsible to the legislature, this relationship has to the reinforced by the loyalty of the Secretary to his Minister. The Secretary should appreciate the concerns of the Minister which arise from his being a political person. He has to ensure

that the decisions of the Minister do not make him unpopular on account of remaining within the four corners of the legal and constitutional provisions.

The Minister on the other hand has to give full freedom to the Secretary to express his views and take decisions just as to his likes. The Secretary then has to execute the orders of the Minister even if they are contrary to his advice. It is the responsibility of the Minister to defend the Secretary and the administrative machinery below him for their actions in executing the policies laid down by him. He has to act as their leader and inspire them to perform their jobs, in a most efficient and motivated manner. This is more or less the ideal relationship that should exist between the Minister and his Secretary. However, the ideal conditions do not always prevail and the conflict between the Minister and the Secretary occasionally comes to surface.

The main reasons for this conflict are:

- The Minister does not, remain satisfied with his policy making functions. He wants to interfere in the day-to-day working of the department. He takes interest in even petty transfers and postings leaving the Secretary and the head of the department with no control over their subordinates. At times, he interferes even in the disciplinary matters affecting the normal disciplinary control of the permanent executive.

- The Minister does not permit the Secretary to express his views freely. He wants the Secretary to tender the advice which is palatable to him. Ministers like Pandit Jawarhalal Nehru and Sardar Patel appreciated their

Secretaries to express themselves freely and had the courage to take decisions contrary to their advice. Today's Ministers desire that the advice of the Secretary should be just as to their liking so that they can hold the Secretary responsible for every decision.

- Being political persons many Ministers want their Secretaries to take decisions which are contrary to laws, rules and regulations. Sometimes they do not even take responsibility for these decisions. This tendency of the Ministers to distribute patronage against the rules, and norms laid down by the Government is often resented by the Secretaries who are responsible for the observance of these rules and norms.

- On the other side, it has also been observed that many Secretaries do not coordinate with the Minster and do not comply with the orders lawfully passed by him. If their advice is rejected they tend to sabotage its implementation through the machinery which they also control. No Minister would be able to appreciate this situation.

- Some Secretaries do not give their undivided loyalty to their Ministers. In coalition governments or even in one party government where factionalism prevails, some Secretaries tend to play one Minister against the other, or a Minister against the Chief Minster, etc. It means that they depart from their role of neutral bureaucrats, advising the Minister without fear or favour.

Some of the Secretaries often adopt a very rigid attitude and do not take a human view of various situations. They tend to

follows the rules and regulations blindly without regard to the effect it has on human beings. The Minister being the representative of the people cannot adopt and appreciate such an attitude. The biggest cause of conflict between the Minster and the Secretary appears to be this charge of redtapism against the bureaucracy.

Minister and the Field Officers

The Minister-Secretary relationship is not the end of relationship between political and permanent executives. It should include the relationship between the Minister and head of the department as well as relationship between the Minister and the district and divisional level functionaries. Here again the problem arises for not following the norms of proper conduct. Very often, the Ministers bypasses a Secretary and deals directly with the head of the department or even a district or divisional officer.

The conflict cannot be one sided. Some of the heads of departments and the divisional level officers try to build direct relationship with the Minster over the head of their Secretary, if these informal relationships are used for the purposes of patronage and personal gains.

The Minister wishes the head of the department and lower functionaries to carry out his wishes against the rules and regulations etc. These officials in turn take advantage of the patronage of the Minster giving him in return some undue favours. This type of relationship is specially detrimental to the functioning of the parliamentary democracy like ours. The relationship between the political and the permanent executive

is a delicate one. It requires an understanding of their respective role by both of them. Usually, no conflict should arise if they perform their roles within the norms expected of them.

Generalists vs. Specialists

The controversy about the respective role of generalists and specialists in administration is age-old. The question has, however, acquired new dimensions due to the increasing role being played by science and technology in all walks of life. For example, fifty years back the department of Space or Ocean Development of Atomic Energy would have not even been thought of.

But, today developments in these fields are simply overwhelming. The role of specialists in administration has, therefore, acquired a new significance. At the same time even the traditional roles of maintaining communal harmony and peace and order are also acquiring new dimensions. There have, therefore, been attempts to redefine the roles of generalists and specialists in different countries.

For example, Fulton Committee of England has made wide-ranging recommendations on the subject. Similarly, Administrative Reforms Commission of India (1966-69) has also examined the question at length and made a series of recommendations on the subject. In this stage we propose to begin by attempting to define the terms “generalists” and “Specialist”. We would then examine the important arguments for and against both and see if any reconciliation of the two views is possible.

Definition of Generalist

There is no precise definition of the term Generalist. Usually, it is taken to mean a public servant who does not require any specialist qualification for entry into the service. He is supposed to have had a liberal education in classics, literature and humanities. He is supposed to be an all-round man who can perform jobs of managerial class. It means that he performs the usual POSDCORB functions. In the USA, a generalist is a person who rises from early specialization to broad administrative assignments in later years.

Definition of Specialist

On the contrary a specialist is an officer who requires some practical professional or vocational knowledge for entry into service. His professional and vocational qualifications are to be certified by a University degree or some other recognized training course. He usually performs a job in which his specialist knowledge is required. Again specialist is a very relative term.

For example, a general medical practitioner is a specialist by profession. However, when it comes to more specialized fields in the medical profession like Orthopedics, Gynecology, etc, a general medical practitioner becomes almost a Generalist in comparison. Administrative Reforms Commission of India distinguished between professional services in the field from those in the laboratory. They called the specialist services in the field as functional services. In this definition of functional services, they also included those services where officers have to specialize after joining the service. For example, the officers

joining services like Income Tax, Audit and Accounts, Defence Accounts, etc. do not require any specialized degree at the time of entry.

However, over a period of time in their service they tend to specialize in their particular fields. Fulton Committee used the term specialist administrators for those whose career provides opportunities for the exercise of their specialist skills. The IIPA Conference on Public Administration attempted a detailed definition of the term "Generalist Officer", and "Specialist or Technical Officer". They defined the Generalist Officer as a bright young man who has received a liberal college education in any subject.

He is appointed at the middle level supervisory post for which no educational qualifications in technical or professional subjects is prescribed. He is appointed to higher administrative positions irrespective of his previous experience and training. The Specialist Officer is appointed to middle level supervisory post for which technical or professional educational qualifications are prescribed. He is excluded from posting in the areas where his specialized knowledge or training does not find direct application.

The Controversy

In performing various Government jobs, services of both the Generalists and Specialists are required. Their relative position has long been a matter of controversy among the scholars and administrators alike. We now study the views expressed in the favour of Generalists and Specialists and later consider ways of getting over this controversy.

Case for Generalist

Several arguments have been given in favour of the supremacy of the Generalists. Examples of such supremacy are usually drawn from the UK and other countries influenced by the British connection.

The major arguments in favour of generalists are summarized below:

- In UK the Generalist administrative class always had a superior position. Its origin can be traced to the Northcote-Trevelyn Report (1853) on "organization of Permanent Civil Service" and Macaulay Report of Indian Civil Services (1984). The philosophy of those reports is that a person with liberal education and varied multi-functional experience is much better than the specialist who has deep knowledge of a very narrow field. The same traditions have been carried over to other countries like India, Canada, Australia, etc, which were connected with England. In India also the Generalists occupied superior positions during the British rule and to some extent even after that.

- The most important argument in favour of the Generalist civil service, as it developed in India, is that it established contact of higher echelons of Civil Service with the grass root administration. It is a unique system in which the Generalist administrative service is organised as an All India Service borne on the permanent cadres of the State Governments. These officers serve in the districts and come in contact with the people at grass

root level. They are then moved to the various positions in the State Secretariat and get an idea of the working of the State Governments. These very officers are deputed to the Government of India to man senior positions there. Lord Curzon introduced the tenure system in which these officers serve in the Government of India for a fixed tenure and go back to the State Government and to the Field. These officers serving at senior levels in Government of India have the advantage of vast experience of working at the State Headquarters and in the field. This gives a touch of realism and inter-connectedness to the entire system of administration. The vision provided by this kind of experience cannot be equaled by the limited technical experience of the Specialists.

- The administration in India is organised on area basis. Each area requires a generalized administrator to coordinate the activities of the various technical departments working in that area.

- By their education, training and experience the Generalists have a broad view of the problems facing the society. The Specialists, on the other hand, have a very narrow view of their own specialty. They tend to exaggerate the imports of their specialty in the whole scheme of things. If they were to occupy senior positions at the policy level, it would be difficult to reconcile the view points of various specialists. Appleby has emphasized this point when he said that parochialism is the price that he pays for specialization.

- In a Parliamentary Democracy like Britain and India the Ministers are usually amateurs and have to spend a lot of time in their political work. They have to keep contact with the legislators, their constituents and have to answer questions in Parliament. Apart from carrying out the administrative work, they have an overload of political work. They, therefore, need generalists to advise them on administrative and policy matters.

- At the senior levels, Government gets a greater flexibility in the placement of officers if these positions are manned by Generalists.

- It is well know that USA has a strong preference for specialists in their administration. Even there, it is being realised that too much of specialization is causing a lot of fragmentation and creating problems of integration. They are also feeling the need for coordinators who can make sense out of the myriad technical advice that is available from the specialists. The problem is less acute there because Ministers need not be politicians. They may be experts in their own lines. However, in practice they are also feeling the need for Generalist Coordinators.

- It has also been argued that it is wrong to call these senior administrators as Generalists. They are also professionals in their own field. To understand the general political and administrative situation to appreciate the aspirations of the people as expressed by their political masters as well as the legislature, to advise the political executive in their policy formation functions are specialized tasks in themselves. Anybody performing

these onerous tasks has to develop a professional expertise to become successful. These Generalists can in that sense be called administrative professionals.

- At higher levels of administration, very little technical knowledge is required. As would be clear to anyone with knowledge of management, the need for technical knowledge is highest at the operating level and lowest at the top-most level. The skills required at the top level are in the field of conceptualization, forming informed judgements etc. Very little technical knowledge is required for acquiring these skills.

- When the specialists are required to do the job of a Generalist, they lost both works. They neither remain specialists nor do they become good generalists.

- In any decision making process, technical inputs form only a small part. Other matters like financial, administrative, legal and political issues are of equal, if not more importance. The Generalists with a broad background of working in various departments is better suited to perform these jobs.

- In developing countries like India which have adopted a federal democratic constitution, the Generalist services provide an integrating force also. They are woven in the entire fabric of the administrative system and provide the necessary cohesion to its working.

Case for Specialist

The case of specialists starts with a grievance from their side that for no fault of theirs, they are excluded form the top policy making positions. It may be worthwhile to examine the argument given to substantiate these grievances.

- In the colonial period or even during early post-independence period the administrative tasks were relatively simple. The main functions of administration were maintenance of law and order, collection of taxes and revenues and providing a modicum community services. However, the tasks of the administration have now become very complex and cannot be given their due importance in performing these jobs from the highest to the lowest levels.

- Specialists feel that generalists are not required to intervene between them and the Ministers. In fact they have a better knowledge of their subjects and can explain it better to the Minster.

- The Generalists do not understand the implications of the technical proposals. There are inordinate delays in the clearance of the proposals submitted to them. They have, all the time, to depend on the advice of the specialists and in the absence of their expert knowledge are unable to make up their minds.

- Fulton Committee in England recommended greater role for the specialists in administration. The Committee also observed that to meet the challenge of the scientific and technical developments, the specialists have to be given

due place in the administration. The same arguments apply to the conditions prevailing in India.

- Administrative Reforms Commission of India (1969) recommended that the senior posts in functional areas should be held by the specialists in those functional areas. They also recommended that non-functional posts should be thrown open to all the cadres including the Specialists and the Generalists.

- In other countries like Sweden, USA, Australia, France, etc., the specialists and professional cadres are not precluded from occupying the top administrative posts. In fact, in most of the countries a large number of top positions are manned by technical people.

Scholars' View

After examining the views expressed on behalf of the Generalists and Specialists, it may be worthwhile to consider what the prominent scholars of public administration have to say about the question.

Braibanti feels that in the new States where national integration is still a very important matter, the proliferation of specialists in administration adds to the centrifugal forces that already exist.

He says that the functional expertise is needed in the administration to promote economic development. But he also cautions that the generalist administrator has a critical coordinating role as well which should not be ignored. The

developing countries need a generalist service to provide cohesion in the administrative framework of the country.

Joseph La Palombara also felt that it is not wise to give too much of importance to the specialist in administration. It may create the problems of control over the bureaucracy. In the developing countries who have adopted a democratic framework, the political control over the administration is likely to be weakened in the face of specialist bureaucrats. He cautioned that the new States who emphasize functional expertise in public administration often tend to ignore the possible political price that may have to be paid for such a system, sums up the argument by saying that one of the great dilemmas of many of the developing countries is that they tend to value economic development more than freedom.

F.M. Marx also thought that the growth of functional exercise in bureaucracy seriously weakened the integrating functions of the generalist administrators. The specialists do not have the knowledge of the whole organization. This results in the loss of spirit de corps. The specialist is insular in his outlook. He reveals in the techniques of his own specialty. The Government then gets involved with too many technical view points which become difficult to synthesize. The insularity of specialist limits his vision of the broader national problems and reduces his capacity to tender policy advice. It would thus be seen that the scholars have tended to emphasize the integrating role of the Generalist and decry the narrow view promoted by the specialists.

The most important question now is as to what is the way out of this situation. No country can afford such a war going on

among its generalist and specialist administrators. Some solutions have been suggested from time to time. A few of them are mentioned below.

- Better status may be ensured for the specialists by creating more All India Service and Class-I Central Services. Some new services like Indian Economic Service and Indian Statistical Service have already been created.

- Appointment to the top positions should not be denied to the specialists. It is not necessary to presume that all generalists will have a broad view and all specialists will have a narrow view. Such of the specialists who acquire the necessary breadth of vision should not be debarred from occupying senior most positions. To a great extent this is already being done in our country. More than 50 per cent of the posts of the level of Joint Secretary, and filled by the specialists or functional services.

- Creation of parallel hierarchy. This is a system prevalent in Australia where the Generalists and the Specialists have a parallel hierarchy carry similar pay scales and status.

- It has also been suggested that some post in the senior most Generalist service should be filled up by lateral entries from other services. This will give all the services an opportunity to enter the senior most generalist service. To some extent such an opening has been pro vided in our country.

- Unified Civil Service. This is a radical suggestion of completely revamping the administrative system. At lower

level the services should be organized on functional lines. Entry to the top positions should be opened for everyone by the process of selection. Such a change has already been affected in Pakistan Civil Service. However, it appears that it is too radical a suggestion to be implemented in our country immediately.

A Synthesis

If we could look at the administrative system prevailing in different countries, as suggested, find Britain at one extreme where Generalist Services predominate and the USA on the other extreme where specialization has reached extreme proportions. Both of them have realised that such a situation is not conducive for efficient functioning of the Government. The Fulton Committee in England has suggested a synthesis. They have argued that the Generalist administrators should now try to get more training and specialize in certain broad functional areas.

They have also argued that the specialist should be given training in broad general management principles. This should make it possible to have a happy expertise of the specialist in the USA. The second Hoover Commission pointed towards the need of greater coordination of the technical specialties. They had therefore, suggested that creation of Senior Executive Service which would be blend of both the Generalists and the Specialists. The other countries can take a hint from the shift which is taking place in the UK and the USA from the extreme positions. Some sort of a middle path should be worked out where generalists and specialists should play a meaningful role in the national development.

Neutrality and anonymity of Civil Service

The twin concepts of neutrality and anonymity make sense in a democratic context. The concepts assume greater significance in the context of the assumption of welfare functions by the State. The functions assumed by the Government have proliferated so much that the citizen at every point in life comes in contact with the Government. But, with regard to discharge of its functions, the Government to the citizen must mean bureaucracy or civil service. When it comes to the provision of services or distribution of benefits, the civil servant has to be given a lot of discretion as not all the contingencies can be foreseen by the rule makers. In many laws, the civil servants have been given direct adjudicatory functions.

It is natural for the citizens to expect that the civil servants will use their discretion without fear or favour. They should neither be influenced by the partisan consideration on political grounds nor should they be guided by selfish motives, whether, for self or for relatives or friends. Ideally, therefore, the civil service should be impartial and neutral as between citizens always basing actions on the consideration of rule of law. In practice, however, this does not happen.

Neither the civil servants always remain neutral nor the citizens in totality always desire them to be so. What then is the concept of neutrality? What are its advantages and disadvantages? What are the conditions under which neutrality can prevail? These are some of the questions that arise while thinking about neutrality. We propose to study some of the answers to these questions attempted by some eminent

scholars. The concept of anonymity by and large goes with the concept of neutrality. Only some distinguishing features of the former will, therefore, be considered separately.

The Concept of Neutrality

The concept of neutrality was first developed by Max Weber. The bureaucrats/public administrators have to discharge impersonal official obligations. They have to be selected and promoted on merits. They have to act strictly just as to the rules and regulations. The bureaucracy consisting of such impersonal bureaucrats/administrators has obviously got to be politically neutral.

Positive and Negative Views of Neutrality

F.M. Max and others examined the positive and negative views of neutrality. Actually speaking the administrators should not pass on the problems to the political masters without making his own contribution. In other words the administrator does not have to indulge in an ostrich like behaviour.

Positively speaking the neutrality means working without reservation. It means working with devotion for the success of the political Government which the bureaucracy is serving. It is a two-way phenomenon involving the political executives as well as the bureaucracy. The political execute has to lay down the policy with the help of the expertise of the bureaucracy. The bureaucracy on its part has to execute the policy without reservation even if its views have not been considered and over ruled.

British Concept of Neutrality

In practice, the concept of neutrality developed most in Great Britain. The British concept of neutrality was highlighted by Masterman Committee when it said. "The characteristic which has long been recognized in his impartiality and, in his public capacity, a mind unhinged by political pre-possession". Regarding the neutrality of civil service there is a consensus between the public, the Government, the political parties and the bureaucracy.

Every one is agreed that bureaucracy has to serve with impartiality whatever Government is in power. The personal view of the bureaucrats has to be subordinated to the requirements of the constitution and the law.

In short, it is characterized by:

- The public confidence in the freedom of civil service from all political bias;
- Minister's confidence in obtaining loyal service;
- High staff morale based on confidence that promotions and other rewards do not depend upon their political views or partisan activities but on merit alone. These are the salient points of the British concept of Neutrality.

The American Concept of Neutrality

The US concept of neutrality has been highlighted by the Hoover Commission.

This involves the following:

- The civil servants should keep clear of all political activity. They have to keep a neutral posture in respect of policy matters.

- Civil servants have to avoid emotional attachments to the policies of any administration. This will come in their way of harmonizing their actions when a new Government comes to power and initiates new policies.

- Senior civil servants have to refrain from all political activities which may interfere with their work. There is a tendency in the senior civil servants to identify themselves with the politicians with whom they work closely. This tendency has to be completely avoided.

- The senior civil servants should make no public or private statements to the press except those of a purely formal nature. They should not make any speeches of a political or controversial nature. It may be observed that the doctrine of anonymity has crept in above, meaning thereby that it is an integral part of doctrine of anonymity.

Rationale of Neutrality

Karl Marx rejected the idea of neutrality. He said that the civil service has to be an instrument of the ruling party. Similarly single party authoritarian states also accept the civil service to be an instrument of carrying out the will of the party. In fact, in these types of systems the party and the state become almost synonymous. The concept of neutrality has, however,

been extolled in USA and Britain. It would thus be observed that neutrality of civil service is not a universally accepted concept. However, it has a tremendous appeal.

The basic assumptions behind this concept are:

- It is a product of the merit system and secures natural political public service.

- Advantages are permanence, continuity, reliability, professionalism. Disadvantages are conservatism, devotion to routine and resistance to change. Obviously the advantages of neutral bureaucracy far out weight its disadvantages.

- Neutrality of bureaucracy appears to be an essential requirement of a multi-party system. If bureaucracy aligns itself with any particular party it may find it difficult to adjust with another party which may later come to power.

- The alternatives to the neutral bureaucracy are:

  - Spoils system in which bureaucracy changes with every change in Government.

  - A bureaucracy totally aligned to a particular party and perpetrating injustice on all those opposed to that particular party.

Obviously none of these alternatives is a better substitute for a neutral bureaucracy.

Traditional Concept Challenged

The traditional concept of the neutrality of bureaucracy grew in Britain and flourished in a favourable climate.

This probably happened because of the following reasons:

- The British concept of ministerial responsibility encompasses the neutrality and anonymity of civil service.

- In Great Britain power was shared between two political parties which were evenly matched in their strength. There was always a possibility of a change in Government by electoral verdict. The bureaucracy obviously had to keep a neutral stance between them.

- The political parties also realised that any attempt to draw the civil service towards their party may ultimately be counterproductive. When the other party came to power, things would go against them. Both the parties, therefore, thought it better to have an impartial or neutral civil service which acted just as to laws and rules set by the legislature and the Government of the time.

- The political parties, the members and the people in general were wedded to the democratic principles which meant that the Government was based on rule of law, rather than rule of an individual or party. There was general agreement that the parties in power had a right to change the policy as well as the rules but had no right to act on the personal whims of the individual leaders. There was an agreement on the role of the civil servants to follow rules and regulations.

- Backgrounds of the civil servants, legislators and the political executives were almost similar. They were highly educated and shared the same beliefs.

- The ultimate principles of action of bureaucrats were not in conflict with those of their political masters. There was a twoway acceptance of the principle of neutrality of civil service in dealing with individual cases.

The same principles were implemented in Australia, Canada, India, etc. In India an added reason for keeping the principle of neutrality of civil service completely sacrosanct was that any kind of politicization could only be anti-Britain.

Other Countries

A lot theoretical and empirical work has shown that the same conditions do not prevail in other countries and bureaucracy is no longer remaining neutral in most of the countries.

Some reasons for this phenomenon are indicated below:

- The concept of neutrality of the civil service is based on politics-administration dichotomy which meant that the political executive lays down the general policy which the civil service executes impartially. The decision making now is well distributed all over the organization and no longer remains a prerogative of only the political executive. It is true that the final seal on the policy is put by the political masters, but the whole process of policy making involves so much of data gathering, expert analysis etc., that it has become a collective process involving political executives

as well as civil service. The civil service is, therefore, getting more and more involved in the political process.

- The civil service in developing countries has to perform more of a leadership role. This obviously involves it in some sort of political process.

- Party politics is different from policy politics. The civil service has definitely to take part in the process of policy formulation which cannot avoid touching the political issues.

- The concept of neutrality is said to mean that civil servant should not have emotional attachment with any political party to such an extent that it cannot adjust itself to the change in the Government. However, when development issues are involved, how can a civil servant implement such programmes unless he has some sort of faith in them? The question often asked is that political attachment to party may be given up but what about professional and moral attachment to the development programmes?

- The performance appraisal of the civil servants at higher levels is done by the political executives. It is, therefore, difficult to avoid the political pressures, may be very subtle, on the civil servant.

- The whole upbringing and experience of civil servant can also not be ignored. Taking an extreme example of civil servant brought up in liberal democratic system may find it extremely difficult to work if a new government based on autocratic principles comes to take over.

- When the political parties of widely different views may make alternative governments, it may be difficult for the civil servants to make the necessary adjustments.

- The bureaucracy has ultimately to operate in a particular social and political milieu. While advising the political executives on policy matters the civil servant cannot keep himself aloof from the live issues of the time. Politicians and intellectuals desire change while the bureaucracy may resist it. This may create conflicts and may involve the civil service into politics.

- Sometimes the civil service develops its own vested interests and may dabble into politics to serve its interests.

- Individual bureaucrats attempt to tag on to a particular party or to a politician to serve their personal ends.

- Some people argue that the bureaucracy in the grab of neutrality wants autonomy. They, therefore, advocate that such a tendency should be curbed by the political executive. This explains the attitude of some politicians in trying to impose their will on civil servants often for their partisan ends.

- If carried to the extreme, neutrality may also lead to moral corruption. For example, a question can ultimately be asked whether a civil servant should serve the commands of a dictator like Hitler to annihilate his enemies by using criminal methods.

Politicization of Bureaucracy

Since the very concept of strict neutrality has been challenged, people have started talking of a politicized bureaucracy.

It means the bureaucracy which is involved in or influences or is influenced to any degree consciously or unconsciously by overt or by covert actions in the stream of the politics of the day whether the party in power or of the party in opposition.

Such type of bureaucracy has been classified just as to the degree of politicization into the following categories:

- *De-politicized bureaucracy*: This is the usual neutral anonymous, a political bureaucracy. It is not at all involved in political activity.

- *Semi-politicized bureaucracy*: In this type, the political executives dominate the civil service to take decisions on party lines. There is some interference in personnel matters. The civil servants have a right to vote and can join a political party after resignation or retirement.

- *Committed bureaucracy*: Such a bureaucracy is committee t the programmes of the party in power. The public servants are allowed to become members of the political parties and participate in their meetings. There is a lot of interference in personnel matters. Public thinks such a bureaucracy to be corrupt and a stooge of the party in power.

- *Fully politicized bureaucracy*: Such a bureaucracy exists in a single party authoritarian structure. Such a civil

service is very powerful and serves its own ends while serving the party. There is a no difference between the party and the government.

Measures of Neutrality

While neutrality has been discussed by many, it has not been found easy to measure the extent of neutrality prevailing in any political system.

However, some measures of neutrality have been devised, which we mention below:

- The degree of influence in decision-making.
- The degree of segregation of the political executive from bureaucracy.
- The extent of political interference in the administrative work.
- The degree of its involvement in politics.
- The extent of confidence bureaucracy enjoys with the public.

Extent of Permissible Political Activity

The dilemma before a political system is that:

- A civil servant happens to be a citizen and as a citizen he has certain fundamental rights, which include the right to form association and taking part in political

activities. As a civil servant he is also supposed to maintain impartiality in his public dealings.

This is not compatible with his fundamental rights of forming association, freedom of expression and freedom to take part in political and social activities of the society. Joining a political party and taking part in its activities may commit a civil servant to a particular course of action.

This obviously compromises his impartiality in dealing with the citizens. Even if he acts impartially his commitment to a political party will not inspire confidence in public mind about the impartiality.

It leads us to the crucial question how to maintain a correct balance between the rights of the civil servant as a citizen and the need for impartiality in public work. Different countries have resolved this problem differently.

In U.K. the civil servants have been divided into three categories:

- Free;
- Intermediate,; and
- Restricted.

The civil servants of (a) category belong to lower levels of hierarchy and do not have much discretion in dealing with the public. They have been given full political rights to vote, to become members of the political parties, participate in political activities like contesting elections; etc. Civil servants of (b)

category are the middle level officials. They are subject to some restrictions. They can vote and take part in the political activities, but cannot contest elections to Legislatures. The civil servants in (c) category are denied most of the political rights except for voting and passive party membership. Individual workers are not subjected to any restriction with regard to political activities. In spite of this liberalization, the civil servants in U.K have behaved in a discreet and restrained way and have not allowed their political activity to become an embarrassment for the Government. In USA the civil servants are not allowed to take part in any political activity except voting and restricted expression of opinion.

In India there is a total prohibition on the political activities of Government employees except that they can vote and that too without letting anybody knows about the preference exercised by them.

In Belgium and Switzerland the public servants are free to contest elections for Parliament by having to resign their seats if elected. France and Germany go a step further. There the civil servants have to resign their post only on their election to the Legislature. They can, however rejoin their post in case they cease to be members of Legislature.

This part is more or less a summary of the previous parts and tries to briefly describe to the changing concept of neutrality in relation to the changing political environment. The concept was probably first expounded during French Revolution where the neutral bureaucracy suited the changing political power equations. A non-partisan bureaucracy emerged as a bulwark against the instable political conditions in the Western Europe.

In England a non-partisan civil service was created for preventing the monarch and aristocracy from manipulating the electoral system and official patronage against the Parliament. Thus by a different route Britain and Western Europe reached the same destination *viz.* a depoliticized and non-partisan civil service.

The merit system was gradually introduced to keep partisan politics out of the civil services. The process was aided by the complexity of administrative work introduced by modern technology as a part of the industrial revolution. The politicians could no longer handle the complex administrative problems which required full-time specialized attention. The concept of neutral bureaucracy, therefore, came to be supported by the political elite as well as the masses who were wiling to pay the civil service well if they were prepared to work efficiently and stay neutral. This enlisted the support of the bureaucracy also to the concept of their neutrality.

The condition were, however, different in USA where the spoils system prevailed for quite some time after the emergence of neutral and depoliticized civil service in Western Europe. However, pubic pressure for efficiency and integrity of civil service forced the demonstrative reforms that introduced merit system which ultimately established depoliticized and neutral civil service.

The concept of de-politicization and neutrality of civil service, very simply stated means that the politicians should lay down the policy and the bureaucracy should passively implement it. This presumes absolute loyalty to the political masters of the day. This no longer holds true.

Today the civil servant faces a conflict of loyalties some of which are:

- *Humanity*: Public bureaucracy should be an instrument to serve the entire humanity.
- Nation
- State of Polity
- Constitution
- Social Class, Tribe, Caste Etc.
- Party
- Trade Union
- Profession of Programme
- Clientele or citizens

Which one of the loyalties will dominate at a point of time is difficult to say. It may also be seen that all of them may not be reconcilable with each other. Moreover the public bureaucracies have become highly specialized and professionalized. They face a lot of challenges and have to act with drive and initiative and cannot act as more passive instruments of political power. Of course, most of the Governments have maintained some taboos on direct participation of public servants in partisan political activities to maintain public confidence in them. But, the participation of public bureaucracies in the political process has been growing rapidly. The separation of the role of the politician and

the public servant is no longer valid. There is a fusion of the two. For example, the politician never likes to feel that he only makes policies which others have to administer.

He wants to accept responsibility for policy making as well for policy implementation. No administrative matter is too small for them to interfere, because they feel that they have been elected by the people to represent them. The doctrine of Ministerial responsibility buttresses this claim of the politician. When the minister is responsible for every action of every subordinate, he may as well keep everything in view. The civil servant on the other hand is called upon to perform many political functions even while implementing policy decisions. While the politician does lay the policy, the civil servant has to provide the rationale for it.

He has to gather and analyses a lot of data and present before the politician for deciding policy. The politician is thus not so independent in deciding policy as he appears to be and similarly the public servant is not a docile passive implementer of decisions. The politician being busy with so much public contact does lean on the civil servant to advise him effectively about the pros and cons of various policy alternatives.

The civil servant is of course dependent on the politician for supporting his actions. There is thus a lot of intermingling. There are no clear cut lines of demarcation between the politics and public administration. The former subsumes the latter, but cannot subsume it completely. The concept of de-politicization and neutrality of civil service has thus undergone a charge over time.

Anonymity

The principle of anonymity flows directly from the doctrine of ministerial responsibility which is a feature of the Parliamentary democracy as prevalent in England. As is well known the doctrine of ministerial responsibility means that the Minister in-charge of a department is responsible for the actions of the civil service subordinates to him.

He has to defend their actions in the Parliament and before the general public. In case he cannot defend them he has to resign his post. This obviously means that the civil servants can neither address the Legislature nor the public through press to present their case.

They have to act just as to the policy of the Minister impersonally and impartially. This impersonal exercise of power means that his name is not to be involved in any decisions.

The decision is to be taken strictly just as to the rules and regulations and policies laid sown by the political executive. Every civil servant is supposed to take the same action in similar circumstances. His name, therefore, does not have to appear anywhere before the public or the Legislature. His actions are the actions of the Government for which the Minister is responsible.

The doctrine of anonymity fits well with the doctrine of civil service neutrality. The civil servant who is neutral is to act just as to the impersonal application of rules and regulations and hence has to act anonymously.

Integrity in Public Administration

These days, we hear a log about the lack of integrity in public life. Public administration is a part of the general social system and similar conditions appear to prevail there. The tax payer, out of whose money the public servants are paid expects them to do an honest job for the remuneration they receive. The Public Servants on the other hand complain that their emoluments have not kept pace with the rising prices. This acts as a tremendous pressure on their integrity specially when the severely controlled economy provides them with immense opportunities to make money on the sly. Corruption is no longer a peripheral phenomenon. It is so widespread that it threatens to eat into the vitals of the system. Everyone appears to be concerned, but no one appears to be able to do anything about it. What are the causes of this widespread lack of integrity in public administration? What can be done and what has been done to combat the problem of corruption. What kind of institutional arrangements are necessary to contain the evil of corruption? An attempt will be made here to answer these and some other related questions about corruption. This will only be an attempt as no one has been able to answer all the questions about corruption.

Meaning

The dictionary meaning of integrity is “soundness of moral principles: character of uncorrupted virtue, uprightness; honesty; sincerity”. The concept of integrity is one of the fundamental features of modern public administration. It is a natural outcome of the modern legal system based on “rule of law”. In earlier societies favours from the Government were as

a matter of rule obtained on payments or gifts etc. Anybody going to Government functionaries had to make some gifts with him. Favours were often given to the highest bidder. With the development of the modern concepts of state sovereignty and citizenship, this system started changing. The Government servants were to be compensated for government work by payment of salaries and not by receiving gifts from the citizens. The citizen on the other hand had to pay taxes to the Government to receive protection and other services. The taxes were to be imposed on the basis of laws and not in the form of gifts to the officials.

Gradually, this developed into the modern concept of the integrity of public servants just as to which they are not supposed to use their official position and status for obtaining any financial or other advantages for themselves or for their relatives or for their friends. If they are given any powers, these are meant to help them in discharging their duties towards the public and not for self-aggrandizement. In this modern concept of civil service integrity, it is also understood that the civil servants will be recruited on merit and will receive their salaries, promotions etc. on the basis of merit as long as they perform their functions just as to the laws, rules and regulations of the state with efficiency and honesty.

Those who do not do so violate the essential conditions of their service and render themselves liable for action. Integrity is a wide concept which includes intellectual, honesty, courage, as well as cleanliness in pecuniary matters. Lack of integrity has, however, come to be mainly associated with corruption which by and large, means obtaining pecuniary benefits which are not sanctioned by the laws, rules and regulations or norms.

The great Historian, Writer, Philosopher Edward Gibbon, when after completion of his famous book 'The Decline of Roman Empire' was confronted to reply in one word the reason for the decline of Roman Empire, he remarked–"Corruption".

The Corruption not only adversely affects the social, economical and political structure of the State, but destroys the democratic values and ideals. Corruption impedes the development and investments. In absence of the accountability and transparency corruption ultimately destroys the moral, social and political values of the civil society. When economic structure is polluted by corruption, the progress and development is largely effected.

A survey conducted by the Transparency International and ORG Mark India, reveals that in Corruption perception index, India is considered to be one of the corrupt nation of the world. It earned 2.7 marks out of 10 in honesty. It is the duty of the State and all its limbs as well as the people at large, to fight against this menace. Arbitrary, unjust, unfair, improper and selfish exercise of power by public servants who enjoy power, result into advantage to one and disadvantage to another. Corrupt public servants penalizes the honest person and encourage dishonest people.

This become possible only because of the influence and power, a Public Servant holds. Corruption and mal-administration are like twin sisters. Corruption results into mal-administration. Corruption creeps into administration when public servants enjoy unbridled, uncanalised and absolute power ignoring the laws and the rules.

When administration lacks accountability and transparency, corruption take its shape in various forms *e.g.* delays in movement of files, delays in decision making process, arbitrary, unjust and unfair actions.

Good governance requires accountability through transparency, right to information, proper check and balance, financial control, effective internal and external audit, official competency, free from corruption, nepotism and undue influence, impartial and just decision in accordance with laws and rules. Wherever any of the principle of good governance is eroded, corruption not only penetrates, but, ultimately wrecks the system.

A Consultation Paper on 'Probity in Governance' prepared the National Commission to Review the Working of the Constitution for generating a public debate and eliciting public response says the following on corruption:

Menace of Corruption in Public Life

Corruption is an abuse of public resources or position in public life for private gain. The scope for corruption increases when control on the public administrators is fragile and the division of power between political, executive and bureaucracy is ambiguous. Political corruption which is sometimes inseparable from bureaucratic corruption tends to be more widespread in authoritarian regimes where the public opinion and the Press are unable to denounce corruption. The paradox of India, however, is that in spite of a vigilant press and public opinion, the level of corruption is exceptionally high.

This may be attributed to the utter insensitivity, lack of shame and the absence of any sense of public morality among the bribe-takers. Indeed, they wear their badge of corruption and shamelessness with equal élan and brazenness. The increase of opportunities in State intervention in economic and social life has vastly increased the opportunity for political and bureaucratic corruption, more particularly since politics has also become professionalized. We have professional politicians who are politicians on a full time basis, even when out of office.

India is rated at 73 out of 99 countries in the corruption perception index prepared by a non-governmental organisation, Transparency International. Corruption today poses a danger not only to the quality of governance but is threatening the very foundations of our society and the State.

Corruption in defence purchases, in other purchases and contracts tend to underme the very security of the State. Some of the power contracts are casting such financial burden upon some of the States that the very financial viability of those States has fallen into doubt. There seems to be a nexus between terrorism, drugs, smuggling, and politicians, a fact which was emphasized in the Vohra Committee Report.

Corruption has flourished because one does not see adequately successful examples of effectively prosecuted cases of corruption. Cases, poorly founded upon, half-hearted and incomplete investigation, followed by a tardy and delayed trial confluence a morally ill-deserved but a legally inevitable acquittal. The acceptance of corruption as an inexorable reality has led to silent reconciliation and resignation to such wrongs.

There needs to be a vital stimulation in the social consciousness of our citizens.

It is true that the present process of withdrawing the State from various sectors in which it should have never entered or in which it is not capable of performing efficiently may reduce the chances of corruption to some extent but even if we migrate to a free market economy, there has to be regulation of economy as distinct from restrictions upon the industrial activity. The requirements of governance would yet call for entering into contracts, purchases and so on. The Scandinavian economist-sociologist, Gunnyar Myrdal, had described the Indian society as a 'soft society'. He also clarified what the expression 'soft society' means.

A soft society is: (a) one which does not have the political will to enact the laws necessary for its progress and development and/or does not possess the political will to implement the laws, even when made, and (b) where there is no discipline. In fact, he has stressed the second aspect more than the first. If there is no discipline in the society, no real or meaningful development or progress is possible. It is the lack of discipline in the society-which expression includes the administration and structures of governance at all levels-that is contributing to corruption. Corruption and indiscipline feed upon each other. One way of instilling the discipline among the society may be to reduce the chances of corruption and to deal with it sternly and mercilessly wherever it is found. For this purpose, the inadequacies in the criminal judicial system have to be redressed. Corruption is also anti-poor. Take, for example, the Public Distribution System (PDS) and the welfare schemes for the poor including Scheduled Castes (SCs) and Scheduled

Tribes (STs). It is well-known that a substantial portion of grain, sugar and kerosene oil meant for PDS goes into black-market and that hardly 16 per cent of the funds meant for STs and SCs reach them–all the rest is misappropriated by some of the members of the political and official class and unscrupulous dealers and businessmen. The famous economist, Late Mehbub-Ul-Haq succinctly and poignantly set out the ill-effects of corruption in a South Asian country like ours.

He said:

- "Corruption happens everywhere. It has been at the center of election campaigns in Italy and the United Kingdom, led to the fall of governments in Japan and Indonesia, and resulted in legislative action in Russia and the United States. But, if corruption exists in rich, economically successful countries, why should South Asia be worried about it? The answer is simple: South Asian corruption has four key characteristics that make it far more damaging than corruption in any other parts of the world.

- First, corruption in South Asia occurs up-stream, not down-stream. Corruption at the top distorts fundamental decisions about development priorities, policies, and projects. In industrial countries, these core decisions are taken through transparent competition and on merit, even though petty corruption may occur down-stream.

- Second, corruption money in South Asia has wings, not wheels. Most of the corrupt gains made in the region are immediately smuggled out to safe havens abroad. Whereas there is some capital flight in other countries as well, a

greater proportion goes into investment. In other words, it is more likely that corruption money in the North Asia is used to finance business than to fill foreign accounts.

- Third, corruption in South Asia often leads to promotion, not prison. The big fish–unless they belong to the opposition–rarely fry. In contrast, industrialised countries often have a process of accountability where even top leaders are investigated and prosecuted. For instance, former Italian Prime Minister Bettino Craxi was forced to live in exile in Tunisia to escape extradition on corruption charges in Rome. The most frustrating aspect of corruption in South Asia is that the corrupt are often too powerful to go through such an honest process of accountability.

- Fourth, corruption in South Asia occurs with 515 million people in poverty, not with per capita incomes above twenty thousand dollars. While corruption in rich rapidly growing countries may be tolerable, though reprehensible, in poverty stricken South Asia, it is political dynamite when the majority of the population cannot, but to massive human deprivation and even more extreme income meet their basic needs while a few make fortunes through corruption. Thus corruption in South Asia does not lead to simply Cabinet portfolio shifts or newspaper headlines inequalities. Combating corruption in the region is not just about punishing corrupt politicians and bureaucrats but about saving human lives. There are two dimensions of corruption. One is the exploitative corruption where the public servant exploits the helpless poor citizen. The other is collusive corruption where the

citizen corrupts the public servant by a bribe because he gets financially better benefits. Collusive corruption depends on black money."

Mahatma Gandhiji had understood the gathering crisis of corruption and prophesied that the public would need to be in the forefront in exposing corrupt practices and taking to task those who were involved in them. As early as 1928 Mahatma Gandhi wrote in Young India, 'Corruption will be out one day, however much one may try to conceal it; and the public can, as its right and duty, in every case of justifiable suspicion, call its servants to strict account, dismiss them, sue them in a law court or appoint an arbitrator or inspector to scrutinise their conduct, as it likes.'

Just five months after Independence, Mahatma Gandhi had said, 'Today politics has become corrupt. Anybody who goes into politics gets contaminated. The greater the inner purity, the greater shall be our hold on the people, without any effort on our part'. We have to cultivate 'the inner purity' at all levels-of the individual, of the society and of the nation-for enlisting people's support for purging the system of corruption, inefficiency and sluggishness. While Lokayuktas and Uplokayuktas are of paramount importance in our daunting struggle for creating such an India of our dreams, we have to build a national movement and public opinion for hastening the process of ensuring probity in public life. I am confident that your Conference is a step in that direction and I have, therefore, great pleasure in extending my greetings and good wishes to all of you for your future success."

Corruption had been defined in Section 161 of the Indian Penal Code which reads as follows: "Where being or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person with the Central or any State Government or Parliament or the Legislature of any State or with Local Authority, Corporation or Government Company referred to in Section 21 or with any public servant as such shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both".

The Prevention of Corruption Act, 1947 calls it criminal misconduct and defines it as follows:

- If he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Indian Penal Code; or

- If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration which he knows to be inadequate, from any person, whom he knows to have been or to be, or likely to be concerned in any proceeding or business transacted or about to be transacted by him or having any connection with the

official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so connected; or

- If he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other persons so to do; or

- If he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantages; or

- If he or any person on his behalf is in possession or has at any time, during the period of his office, been in possession, for which the public servant cannot satisfactorily account of pecuniary resources or property disproportionate to his known source of income.

- Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall be liable to fine. Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

Forms of Corruption

The report of the Santhanam Committee identifies following forms of corruption: Securing pecuniary benefits: The Committee felt that the most common form of corruption was

securing some kind of pecuniary or other material advantages directly or indirectly for oneself or family or relatives or friends by misusing one's official position. Another widespread form of corruption is "speed money". With the complexity of the modern welfare state, a number of laws, rules and regulations have come into force.

For example, for getting any services from the government or having any transactions which the government requires the observance of government procedures and formalities which take time; often the administrating officials cause deliberate delay in completing this process or charge some "speed money" for shortening it. Another form of corruption is embodied in the liaison men who try to cultivate close social relations with senior officers who are in a position to influence the government policies in their favour. Needless to say that tries to give a number of favours to win them over. A number of other forms of corruption have been pointed out in various reports of different committees and commissions which examined the question of corruption from time to time.

Some of them are indicated below:

- Donations by rich individuals and big companies to the political parties are a very important and widespread form of corruption. Since the major beneficiary is the ruling party, it influences the administrators in passing on some undue benefits to the donors.

- Sometimes the private companies offer jobs to retired officials. This may lead to corruption in as much as an officer may bestow undue favour to the company in the expectation of future employment. To some extent a

remedy has been provided for this by prohibiting the government servants and their family members from taking up private employment within two years of their retirement.

- In all contracts of construction, purchases, sales and other regular business on behalf of the Government, there is a chance of money being passed on to the Government officers for showing some favours in relaxing the specifications, etc.

- Sometimes the corruption operates at lower levels also when money is demanded for helping a person in his service matters like promotions, transfers etc.

- At times, the performance evaluation of an honest officer is distorted for not meeting the pecuniary demands of the superior officers. The resulting damage on the moral of honest officers can be well-imagined.

- Then there are some minor forms of corruption like availing of the facilities of private guest houses, lavish expenditure during the tours of Ministers and senior officers, etc.

No list of mode of corruption can ever be complete. The methods give only a small sample. A dishonest officer can discover methods of corruption in almost any situation.

Harmful effects of Corruption

Corruption in high places affects the very fabric of the social system. It has many direct and indirect harmful effects.

Some of the important ones are described below:

- Corruption in high places reduces the faith of the people in the Government. The people expect high standards of morality from their rulers. When these standards are not met, it may result in the alienation of people from the Government.

- Corruption increases the effective cost of administration. The people who are in any case paying to the Government for its services in the form of taxes are unofficially required to pay more to its officers.

- The widespread corruption in the bureaucracy causes cynicism and social disunity. This may reduce the willingness of the people to make sacrifices for the economic development of the society.

- Corruption comes in the way of making decision on merits. When the decisions are made on the basis of pecuniary benefits to be obtained from the transactions, the merit naturally gets the second place. There is even a possibility of sacrificing the national interest for the sake of these benefits. This may for example, happen in case of purchase of sub-standard arms, which may not be effective during a battle.

- Corruption has a very adverse effect on the morale of the honest officers. In fact, it militates against the very basis of the principles of a pure bureaucracy. When the evaluation of work, placement and promotion are dependent on consideration other than merit, the whole system may be vulgarized and demoralized. Corruption

has often resulted in a tremendous waste of national resources. For example, purchased goods not used for years result in the depreciation of goods as well as increase in inventory cost.

Causes of the Decline of Integrity

Decline in integrity is a complex phenomenon, which naturally has complex causes. A curious mixture of historical, social, political and economic factors causes the phenomenon of corruption.

We describe below some of these causes:

- *Historical Causes*:

  – The colonials Government paid their own senior officers handsomely. The local officers, working mainly at lower levels, were paid very poor salaries. This definitely affected their integrity.

  – During World War II, there was scarcity of goods; even articles of common consumption like food, clothing etc. were available on ration cards. All these controls provided opportunities for corruption.

  – The climate for integrity which had been rendered unhealthy by war time control and scarcity was further aggravated by the post-war flush of money and inflation. The salaries of the employees did not keep pace with inflation. The increasing economic activity with excessive Government controls created the climate for corruption on a large scale.

- *Post-independence Problems*: The administrative machinery of the independent India was considerably weakened by

  – War-time neglect;

  – Sudden departure of a large number of British and Muslim Officers.

A large number of promotions of people of unproved merit had to be done. A large scale recruitment also brought down the quality of the staff recruited.

All this resulted in a great turmoil in the administrative system. The stability and the continuance of traditions received a jolt.

- *Environmental Causes*: A very important cause of corruption is the vast urbanization and industrialization. This created an environment in which material possession and economic power determine the status and prestige of a person in the society. Since the salaries of the Government servants were not enough to afford this ostentatious living, this created a lot of strain on the integrity of the administrative officers.

- *Economic causes*: Inadequate compensation to the Government servants in the form of low salaries and benefits is by far the most important cause of corruption in the society. The increasing prices have brought down the real income of the Government employees, especially those in a higher position whose salaries have not at all been protected against inflation. When the salaries are

not enough to meet even the basic needs of the employees, they naturally succumb to the temptations of illegal money.

- *Lack of Strong Public Opinion against Corruption*: The correct officials, even when they are known to be corrupt are often not looked down upon in the society. In fact, they are often more respected than their honest counterparts because of their ability to help and entertain their friends and relatives. Sometimes the corrupt politicians are re-elected to high offices by the people even when corruption charges against them are established by judicial enquiry. Very often corruption is accepted by the people as a way of life and they do not complain against it.

- *Corrupting influence of big industrial magnates*: A number of big businessmen try to oblige the Government servant in many ways to obtain some favours in future. They take it as an investment for the future. This acts as a temptation to the Government servants.

- *Complicated and Cumbersome Procedure*: The procedure of the Government even in respect of simple things like getting a ration card has unnecessarily been complicated. This provides the Government employees an opportunity to extract money from the clients. The situation probably can be remedied by simplifying procedures and reducing the discretion of the lower staff.

- *Existence of influence peddlers*: The cumbersome procedures of the Government and all pervasiveness of Government controls have created a tribe of influence

peddlers. These people maintain liaison in the Government offices. They get the work of the clients done through their contacts in the Government. They operate at all levels. In fact, they are the middlemen of the corruption between the Government employees and their clients.

- *Inadequate Provisions and Enforcement of the Law*: The Indian Penal Code and Prevention of Corruption Act do not provide adequate framework for punishing the guilty officers. Moreover, the administration of these laws leaves much to be desired. Not many prosecutions are launched. Out of the prosecutions launched not many are pursued vigourously. The result is that a number of guilty persons do not get punished. This encourages the dishonest employees in continuing their corrupt practices.

- *Undue Protection Given to the Govt. Employees*: The constitution of our country as well as the disciplinary procedures etc., make it almost impossible to take action against corrupt employees. Naturally, there is nothing to deter them from following their corrupt practices with a vengeance if they are so inclined.

Growth of Anti-corruption Machinery in India

Due to scarcity and controls during World War II, corruption became rampant. To cope with this problem, the Government of India constituted the Special Police Establishment (SPE) in 1941. Starting with the transactions of the War and Supply Department, the jurisdiction of SPE was extended to cover

other departments and also the affairs connected with the States and UTs. In 1963, Central Bureau of Investigation was created and SPE was made one of its divisions.

They now have a big establishment and can investigate cases of corruption all over India. In spite of SPE, the corruption could not be controlled and the Govt. of India appointed Santhanam Committee in 1962.

Some of the recommendations of the Committee were:

- That Article 311 of the Constitution should be amended to make judicial process in the corruption cases more speedy;

- Government servants conduct rules should be amended restricting the employment of retired Government servants by private business.

- The committee also suggested certain amendments in Defence of India Bill, 1962.

- SPE should be strengthened to speed up the investigation of corruption cases

Legal and Institutional Framework to check Corruption in India

Indian Penal Code and Prevention of Corruption Act, 1947 are the major enactment to combat corruption in India. Several institutions have also been set up by the Govt. of India and state Governments to investigate the corruption cases and take legal action just as to law.

An inventory of this framework is given below:

- Section 161 of the Indian Penal Code
- Prevention of Corruption Act, 1947
- Government Servant Conduct Rules.
- Central Vigilance Commission (CVC)
- State Vigilance Commissions
- Central Bureau of Investigation (CBI/SPE)
- Lok Ayuktas in Some States

Vigilance Machinery at the Administrative Level

There are two levels of vigilance organizations in Government of India.

- The administrative vigilance division in the Ministry of Home Affairs; and
- The Vigilance Units in the respective Ministries and Departments and their counterparts in public sector undertakings.

Each Ministry has a Chief Vigilance Officer and attached offices have a vigilance officer. They maintain a close liaison with the Administrative Vigilance Division of Home Affairs Ministry and the Central Vigilance Commission.

Central Vigilance Commission (CVC)

The Central Vigilance Commission (CVC) is the body which is independent of the Govt. of India and advises it on all matters connected with vigilance. It has jurisdiction and powers in respect of all matters. It came into existence by an executive resolution of the Govt. of India. It is headed by a Central Vigilance Commissioner who is appointed by the President and cannot be removed from office except in the manner provided for the removal of Chairman or members of the UPSC.

Functioning of the Commission

The Commission receives complaints from the citizens and has the following alternatives of dealing with them:

- It may entrust the matter for enquiry to the Administrative Ministry/Department concerned.
- It may entrust the matter to CBI to make an enquiry
- It may ask the Director of CBI to register case and investigate it.

The Chief Vigilance Officer of the Ministry provides a link between the CVC and the Head of the Department. The CVC is an advisory body, which makes recommendations to the Govt. for taking action against the erring officers. The report of the CVC along with the cases where its advice is not accepted by the Government is placed on the Table of both the Houses of the Parliament.

State Vigilance Commission

The State Governments have organised the State Vigilance Commission on the same lines as the Central Vigilance Commission. The Vigilance Commissions also have their own investigating agencies.

Lokpal and Lokayuktas

The stride to have a mechanism to curb corruption was first time realised in Sweden by appointing Ombudsmen in the year 1809. There-after in most countries of the world Ombudsmen were appointed to eradicate mal-administration and corruption. After India became free, eminent personalities like Hon'ble Mr. Justice Gajendra Gadkar, former Chief Justice of India, Shri C.M.Setalwad, former Attorney General of India, etc. raised their voice for evolving such a machinery to curb the corruption.

Parliamentary Committee headed by Late Shri K.Santhanam was constituted to submit his report to the Parliament to control this menace, which recommended to constitute Vigilance Commissions in every State. Soon as it was realised that such a machinery, which is part and parcel of the State Govt., can not inspire confidence of the people. On 30 December, 1963 the former Home Minister, Shri Gulzari Lal Nanda expressed the view that the old methods will not eradicate corruption. The Administrative Reforms Commission headed by Late Shri Morarji Desai recommended for the creation of the Lokpal/Lokayukta at the Centre and as well as in other States. The Lokpal Bill thereafter was introduced in Lok Sabha in the year 1968 but till now it has not been

passed. Since the nineteen sixties, almost every party has not only accepted the need for an ombudsman to keep a vigilant eye on the political decision-making process in the country but has actually introduced the necessary legislation in the house. The Congress did it not once but thrice' Janata Party, Janata Dal, the United Front, the NDA all have introduced the legislation in the house. And, allowed it to lapse.

It must be a history of sorts for a bill to have been introduced and suffered to lapse so many times. More so when the bill does not need any special passage. It is an ordinary legislation that can be passed by a simple majority. Every Government that introduced the bill at various times could have got it passed by the house, but chose to let it pause in the select committees to get ultimately lapsed.

Clearly the consensus was not there to see it through. As far as the Lokayukta is concerned, many States have created the office of the Lokpal/Lokayukta/Upa-Lokayukta. It is significant to note the Lokpal Acts or the Lokayukta Acts which are enforced in several States are not uniform in nature. For example Madhya Pradesh and Karnataka Lokayukta and Up-Lokayukta Acts include the Chief Minister as well into the definition of 'Public Servant'.

The Lokayukta has been given suo-moto powers to investigate into the matters falling within his jurisdiction. Under the provisions of the Karnataka Lokayukta Act, the public servant should not continue to hold the post held by him, if the charges made against him are established and the Lokayukta has directed for the same. As per provisions of the Madhya Pradesh and Karnataka Lokayukta and Up-Lokayukta Act, the

Vigilance Commission has been abolished and all the work of Vigilance Commission and Anti-Corruption have been vested to Lokayukta. Special Police Force has been established which investigates the matter under the direction, control and supervision of the Lokayukta.

To examine the technical aspects of the complaints, the technical wing is also functional under the direction, control and supervision of the Lokayukta. The District Vigilance Committees have been set up to report all the matters of corruption against public servants/public functionaries to the Lokayukta. The Gujarat Lokayukta Act provides for the appointment of Lokayukta for the investigation of allegations/complaints against the public functionaries and also provides for safeguarding the dignity and prestige of public functionaries against false and frivolous complaints.

Functions of the Lokayukta is, thus dual, on one hand, he has to investigate the complaints received from public and on other hand, he has to act as a protecting wall against false, malicious, frivolous and irresponsible allegations which may have the effect of impairing the dignity and image of public functionaries. All Ministers, Chairmen and Vice-Chairmen of Government Companies/Statutory Boards/Corporations and Vice Chancellors of Universities have been brought under the jurisdiction of Lokayukta. The Lokayukta is fully empowered to initiate investigation proceedings against any public functionary on his own evaluation of the fact of the case.

There are several important provisions in some Acts like initiation of Criminal proceedings, payment of compensation, power to punish for contempt, furnishing of property

statements, disproportionate assets being ground of enquiry, power of search and seizure, independent Investigating and prosecuting agency etc. Comparative study of the Lokayukta Acts of different States reveals that the role of Lokayukta is advisory and not adjudicatory.

A study of the legislations of those States who have taken the initiative in this direction also reveals their legislations are not in the true spirit of the concept. Only a handful of functionaries were brought under the domain of Lokayukta. The serious drawback against this legislation of various States is that the Lokayukta after investigating the complaints has no power to suggest action for remedy. He has only to make report of his findings to the competent authority and the rest will depend on such authority. It is for the competent authority to decide what sort of action is to be taken or not to be taken against his report.

If the competent authority does not take any action against the culprit within the reasonable time, there is no remedy available in the present law for the Lokayukta. Therefore, the law should prescribe the minimum time limit for taking action on the report of the Lokayukta. The law should also define the offences which may be constituted by the facts proved and nature of appropriate punishment.

Some Suggested Remedies

Apart from anti-corruption measures which are in the nature of a deterrent, some suggestions have been made to reduce the extent of corruption in Government servants.

Some of these are examined below:

- *Making Conditions of Service Attractive*: More government servants, especially those at lower levels are getting very low salaries. They are not even able to make their both ends meet and educate their children. Some of these are driven to corruption due to these difficulties. The obvious remedy appears to give them better salary and facilities so that their temptation to indulge in corrupt practices is reduced.

- *Creation of Public Opinion against Corruption*: Public opinion must be created against the corrupt officers. Unless people take up cudgels against corruption, no amount of anti-corruption measures can succeed. Even in corruption cases people do not easily come forward to tender evidence. This apathy has to be tackled appropriately.

- *Simplification of the Procedures*: One of the main causes of corruption is the existence of very complicated and involved procedures in the working of the Government. If the procedures are simplified, it may not be necessary for the people to approach many functionaries to get their jobs done. To that extent the opportunities for corruption would be reduced.

- *Ensuring High Standards of Conduct in Top Personnel*: The tone has to be set by the political executive at the highest level. It is often said that the corruption flows from the top. If the Ministers are clean in their public life, it will not be possible for their top advisors to indulge in

corruption. The chain will come down and reduce the extent of corruption even at lower levels.

In the case of Vineet Narain vs. Union of India (AIR 1998 SC 889), the Supreme Court, in its decision, referred with approval the recommendations of Lord Nolan Committee on Standards in Public Life in the United Kingdom. The following principles of public life, of general application, were commended by the court:

Principles of Public Life

The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership are set out.

Codes of Conduct

All public bodies should draw up codes of conduct incorporating these principles.

Independent Scrutiny

Internal systems for maintaining standards should be supported by independent scrutiny.

Education

More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training."

The Seven Principles of Public Life are stated in the Report by Lord Nolan, thus:

The Seven Principles of Public Life

- *Selflessness*: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

- *Integrity*: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

- *Objectivity*: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

- *Accountability*: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

- *Openness*: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

- *Honesty*: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

- *Leadership*: Holders of public office should promote and support these principles by leadership and example.

Chapter 3

The State's Political Authority

The Governor

In our Federal Structure, Parliamentary form of Government has been adopted for the Central as well as the State Governments. Like the President at the Centre, there is a Governor for every state or for a group of states. The real power is exercised by the Council of Ministers, headed by the Chief Minister, responsible to the state legislature.The Governor of a state is appointed by the President and holds office during his pleasure. Any person who is citizen of India and is not below 35 years of age can be appointed Governor of a State. There is no other qualification laid down for such appointment. Of course, the President takes into consideration the personal qualities and experience in public affairs of a person who is appointed to the high office of the Governor of a State.

The manner of appointment of a Governor has, however, raised a lot of controversy. The question was discussed at length in the Constituent Assembly. Initially an elected Governor was proposed for every state. But, the proposal was not finally accepted as it was not found suitable for conditions prevailing in the country at that time. While the question was being debated in the Constituent Assembly, the country was witnessing the holocaust of partition.

It underscored the need for a strong centre to ensure coordinated action to meet any danger to the security and integrity of the country. The Constituted Assembly, therefore, opted for a nominated Governor, who would be able to ensure better control of Union Government over the State Governments whenever the need arose. In fact, the whole approach of the Constituent Assembly got titled in favour of a strong centre. The provision for a nominated Governor was a part of this over all stand.Apart from the principle of having a nominated Governor, a great deal of controversy has also raged over selection of persons for appointment as Governors. it has been said that the quality and standard of some of the persons, appointed as Governors, has not been befitting the dignity of the high office.

Several State Governments complained to the Sarkaria Commission that Ministers resigned on Court strictures have been appointed as Governors. Some of the Governors have returned to active politics.

Discarded and disgruntled politicians from the party in power in the Union, who cannot be accommodated elsewhere, have got appointed Governors. Such persons cannot be expected to display the qualities of integrity, impartiality and statesmanship required of a person holding the high office of the Governor.

The Administrative Reforms Commission had also found that many Governors had fallen short of the standards expected. It recommended that a person to be appointed as Governor should be capable of rising above party prejudice and preferences. Although this recommendation was accepted by

the Government of India, there has not been a noticeable improvement in the selection of persons to be appointed as Governors.

The Sarkaria Commission has suggested the following criteria for selecting a person for the office of the Governor:

- He should be eminent in some walk of life, not necessarily politics.
- He should be a person from outside the State.
- He should be a detached figure, not too intimately connected with the local politics of the state.
- He should be a person who has not taken too great a part in politics generally and particularly in the recent past.
- Persons belonging to minorities and disadvantaged parts of the society, having the qualifications, should be given a chance, as hitherto given.

Term of Office and Conditions of Appointments

The Governor is appointed for a period of five years.

His appointment may, however, be terminated due to the following:

- *By resignation*: Under Article 156(2) of the Constitution.
- *Dismissal by the President*: The Governor holds office during the pleasure of the President. His appointment may, therefore, be terminated by the President at any

time. The grounds on which the Governor can be removed by the President are not specified by the constitution. No procedure is prescribed for the purpose. Clearly, the Governor can be removed by the President at any time without any notice and without assigning any reason for the same.

Reappointment

On completion of his term of five years, the Governor may be reappointed to the same office. He may also be appointed as a Governor of a different state. On completion of his term, the Governor continues in office until his successor is appointed. Consequently, there have been several cases in which the Governors have continued their employment in conditions of uncertainty after the completion of their terms of five years.

Other Conditions of Appointment

A Governor is paid a fixed monthly salary and other allowances which are chargeable to the Consolidated Fund of India. He gets a free furnished residence along with servants. Power has been given to the Parliament to make laws relating to these matters, subject to the condition that the emoluments and allowances to the Governor cannot be diminished during his term of office.

Security of Tenure for Governors

It may be interesting to note that as compared to the other constitutional functionaries like Comptroller and Auditor General of India or Supreme Court or High Court Judges the

tenure of the office of the Governor is most uncertain and insecure. He can be removed form office without giving any notice or any reason of the withdrawal of the pleasure of the President.

Restrictions of Further Holding of Office

At present there are no restrictions on the Governors regarding holding any office after the completion of their tenure. This may make them vulnerable to the lure of future office thus impairing their integrity and impartiality.

Powers of the Governor

The Governor has no diplomatic or military powers like the President.

His other powers can be classified under the following heads:

- Executive powers;
- Legislative Powers;
- Judicial Powers;
- Emergency Powers.

Executive Powers

The Governor has the power to appoint his council of Ministers, Advocate General and the members of the State Public Service Commission. The Ministers as well as the Advocate General hold office during the pleasure of the

Governor but the members of the State Public Service Commission cannot be removed by him. They can be removed only by the President on the report of the Supreme Court and in some cases on the happening of certain disqualifications.

The Governor has no powers to appoint judges of the State High Court, but he is to be consulted by the President before such appointments are made. Like the President, the Governor also has the power to nominate one member of Anglo-Indian community to the Legislative Assembly of the State, if he is satisfied that they are not adequately represented in the Assembly. (Article.333). As regards the Legislative Council, the Governor has the power of nomination of members, corresponding to the powers of the President in case of the Council of States(Article 171/5).

Legislative Powers

The Governor is a part of the State Legislature (Article 164) just as the President is a part of the Parliament. Again he has a right of addressing and sending massages to and of summoning, proroguing the State Legislature and dissolving the lower House just as the President has in relation to the Parliament. He also has the power of getting laid before the State Legislature, the annual financial statement (Article 202) and of making demands for grants and recommending money bills (Article 207).

Veto Over State Legislation

The Governor has power to exercise a kind of veto in respect of the State Legislations presented to him for his assent. The

Governor may withhold his assent to the Bill passed by the Legislators and send it back to the Legislature for reconsideration. If the Bill is again passed by the Legislature with or without modifications, the Governor has to give his assent.

The power of veto given to the Governor is a real veto and can have the effect of thwarting the legislative power of the State Legislature. It has, however, been used in a very few cases like Kerala Education Bill where again the President sought the Advisory opinion of the Supreme Court.

Power to Issue Ordinance

The Governor has the power to make laws by ordinance when the Legislature is not in session. The ordinance have to be placed before the Legislature within six weeks of its reassembly. If this is not done, the ordinance lapses.

Judicial Powers

The Governor has the power to:

- Grant pardon, reprieve, respite, remission of punishment or to suspend, remit of commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends (Article 161). This is a power similar to that enjoyed by the President subject to some minor difference.

- Under Article 201, the Governor may reserve for the assent of the President, any Bill passed by the state legislature. The President then may or may not give his

assent to the Bill. He is under no obligation to give his assent if the bill is again passed by the state legislature with or without some modifications.

Emergency Powers

The Governor has no emergency powers to meet the situation arising from internal or external aggression as the President has. However, he can report to the President whenever he is satisfied that situation has arisen in the State whereby the administration of the State Government cannot be carried out in accordance with the provisions of the Constitution (Article 156).

On receipt of such a report, the President may assume to himself the functions as the Governor and may revert to the Parliament the powers of the State Legislature.

Exercise of Executive Powers

It has been said that the executive powers of the State Government vests in the Governor. However, in the exercise of his powers, he is constrained by the provisions of the Constitution. Article 163(1) of the Constitution, there is a Council of Ministers to aid and advise the Governor who is to act just as to their advise except in matters in respect to which the Governor is empowered by the Constitution to act in his discretion.

Thus under normal circumstances, the Governor has to act just as to the advice of the Council of Ministers. However, unlike the President, the Constitution makes provisions for the exercise of discretionary power by the Governor. By the 42nd

Amendment Act to the Constitution, a provision was made making it obligatory on the part of the President to act just as to the advice of the Council of Ministers. Even in this amendment the provisions regarding the exercise of executive powers of the Governor have not been touched. Nor has it been made obligatory on the part of the Governor to always accept the advice of the Council of Ministers. The provisions for exercise of discretionary powers by the Governor have also not been amended.

Discretionary Functions

There are certain provisions of the Constitution which specifically give certain discretionary functions to the Governor:

- Para 9(2) of the Schedule VI gives powers to the Governor of Assam, in his discretion, to determine the amount of royalty to the district councils.

- Article 239(2) authorizes the President to appoint the Governor of a State as the Administrator of the adjoining Union Territory. When the Governor is so appointed he exercises his functions as such administrator independently of the Council of Ministers.

Special Responsibilities

Besides the functions to be exercised by the Governor in his discretion, there are certain functions under the Constitution which are to be exercised by the Governor for his special responsibility which practically means in his discretion. He has to consult the Council of Ministers, but the final judgement is to be exercised by him.

Such functions are:

- Under Article 371(20) the President may direct that the Governor of Maharashtra or Gujarat shall have the Special responsibility to take steps for the development of certain areas in the State such as Vidarbha, Saurashtra, etc.

- The Governor of Nagaland shall under Article 371A (1) (b) have similar responsibility with respect to law and order in the State so long as internal disturbances caused by the hostile Nagas in the State continue.

- Similarly Article 371 (c) empowers the President to direct the Governor of Manipur shall have special responsibility to secure the proper functioning of the Committee of Legislative Assembly of State consisting of the members elected from the Hill Areas of that State.

- Article 371F (g) imposes a special responsibility on the Governor of Sikkim for peace and for equitable arrangement for ensuring the social and economic advancement of different parts of the population of Sikkim.

In discharging of such special responsibilities, the Government has to act just as to the directions issued by the President from time to time and subject thereto he has to act in his discretion.

Discretion by Implication

Besides the provisions, the Governor may be required to discharge some functions in his discretion where the tenor of constitutional provision, the nature of the function or the exigencies of the situation may so warrant.

Some examples are given below:

- A Governor has to act in his discretion where the advice of the Council of Ministers is not available *e.g.* in the appointment of a Chief Minister soon after an election.

- A Governor may have to act against the advice of his Council of Ministers *e.g.* he may have to dismiss a Ministry which refuses to resign even when defeated on a vote of no–confidence in the Assembly.

- A Governor may have to send a report to the President under Article 356 that the administration of the state cannot be carried out in accordance with the provisions of the constitution. Obviously, this cannot be on the advise of the Council of Ministers against which the report is being sent.

- A Governor may have to decide in his discretion whether any decision taken by a Minister should be required to be sent for the consideration of the Council of Ministers.

- A Governor has to exercise his discretion to judge whether an Act of legislature should be reserved for the assent of the President.

The list of such cases can by its very nature not be exhaustive. The, therefore, be treated as illustrative.

Exercise of Discretion in Practice

Functioning of the Governors in normal circumstances, when a party with absolute majority in the Assembly forms the Government, has been normally a smooth affair. However, the conduct of the Governors in abnormal or exceptional circumstances *e.g.* when no party can claim absolute majority in the Assembly or when a Chief Minister has lot majority support, has caused a lot of friction in Centre-State relations. Some illustrative cases where the discretion of the Governor, in these circumstances, has been actually exercised.

Appointment of Chief Minister

The constitution, the Governor appoints the Chief Minister and on his advice other Ministers. When a party gains absolute majority in the State Assembly its leader is automatically appointed the Chief Minister by Governor. However, in the past 1967 scenario many occasions arose when no party could claim absolute majority in the Assembly. In these situations, the Governors were required to exercise their discretion in choosing the Chief Ministers.

For example, in 1970, Shri S. S. Dhawan, Governor of West Bengal invited Jyoti Basu, the leader of the largest single party to discuss formation of the Government. But, the Governor wanted him to prove his majority before being invited to form the Government. Mr. Jyoti Basu refused to do so and was not then invited. But, as early as in 1952, the Governor of Madras,

Mr. Sri Prakash invited the single largest party (Congress) Mr. C. Rajagopalachari even though the other parties had formed a majority coalition under the leadership of Mr. T. Prakasham. At times, the Governors have insisted on a head count for deciding the question of appointing Chief Ministers. Different Governors have thus followed different course of action under similar circumstances.

Dismissal of a Ministry

The constitution a Minister holds office during the pleasure of the Governor. But, in the constitutional scheme, the pleasure of the Governor can be withdrawn from a Ministry only if it loses the confidence of the Assembly to whom it is responsible. It means that the Governor has to withdraw the pleasure as soon as the Ministry loses the confidence of the legislature. Normally, the Chief Ministers resign under these circumstances or face the Assembly. The Chief Minister of West Bengal (1967) did neither. The Governor gave a fortnights time and extended it by a week to the end of the November 1967.

The Chief Minister refused to call the Assembly before 18th December 1967. In the case of U.P (1970) the Chief Minister was asked to resign though he was prepared to face the Assembly within two days. Thus, here again the Governors have tended to follow different courses in similar circumstances.

Dissolution of State Assemblies

Governors have not followed any uniform course of action in regard to the dissolution of Assemblies. It is of course clear

that the advise of a Chief Minister enjoying majority support is binding on the Governor. But, when the Chief Minister appeared to have lost such support, some Governors refused to dissolve the Assembly on his advice while others in similar circumstances accepted the Chief Minister's advice to dissolve the Assembly.

For example, when the Chief Minister of Kerala appeared to have lost majority support in 1970, the Governor dissolved the Assembly on his advise. The same thing happened in Punjab in 1971. But, a contrary course was followed by Governors in similar circumstances in Punjab (1967), U.P (1968), M.P (1969) and Orissa (1971). The Assembly was not dissolved and attempts were made to install alternative Ministries. It is obvious that no consistent policies have been followed in such cases by the Governors. It has very often led to the charges that the Governors have acted in a partisan manner, very often at the instance of the ruling party at the centre.

Recommending President's Rule

It has been alleged that the Governors have made an imprudent use of Article 356 of the Constitution to recommend imposition of President's rule in the State. They have often not given enough chance for the formation of alternative stable Ministries, nor have they dissolved the Assemblies to give a chance to the electorate to install an alternative Government. Very often, the Governors have used peculiar methods to ascertain the majority of the Government.

The cases of Jammu and Kashmir and A.P ('1984) were of this nature. There have been allegations that the Governors have

not acted in their best judgement, but to further the interests of the ruling party at the centre at the behest of Central Government.

Summoning of the Assemblies

When a Government enjoys majority support in the Assembly, the Governor should summon the Assembly on the advice of the Chief Minister. There can be one exception to this rule. When the Chief Minister does not advice summoning of the Assembly within six months of its last sitting, the Governor may summon the Assembly without his advice to ensure compliance with constitutional requirement. There may be some other situations where the Governor may be justified in summoning the Assembly without the advice or contrary to the advice of the Chief Minister.

For example:

- When a Chief Minister is installed who does not lead a party with a majority in the Assembly, he may be advised by the Governor to prove his majority in the Assembly within thirty days of his appointment. If the Chief Minister does not advise summoning the Assembly during this period, the Governor should himself summon the Assembly.

- When there is reason for Governor to believe that a Government has lost majority support in the Assembly, he may ask the Chief Minister to prove his majority within a reasonable period of 30 to 60 days. If the Chief Minister does not advise summoning of the Assembly within this period, the Governor should do so on his own.

Dissolution of the Assembly

When a Chief Minister enjoying majority support advises dissolution of the Assembly to seek a fresh mandate, the Governor must accept the advice. But, if the advice is tendered by a Chief Minister who appears to have lost majority support, it should not be accepted. Instead, the Chief Minister should be asked to prove his majority within a reasonable time of 30 to 60 days.

If a viable Government cannot be formed, the Governor may either dissolve the Assembly and order fresh election or recommend President's rule under Article 356. If elections are ordered, the outgoing Ministry may normally be continued. But, if the outgoing Ministry is unwilling to do so or is responsible for serious mal administration or corruption the Governor should recommend President's rule without dissolving the Assembly. This should also be done when for some reason elections cannot be held for a long time as a caretaker Ministry should not function for a long period.

General Observations

- It would be seen from the foregoing discussion that a Governor has to perform dual functions. On the one hand he is the constitutional head of the State Government whereby his role is that of a "friend, philosopher and guide" as long as the elected Government functions within the frame work of the constitution. On the other he is also the guardian of the constitution. He has to ensure that the State Government is run just as to the Constitution. If it does not, he has to act in his discretion to dismiss the Government, dissolve the

Assembly, or to recommend President's rule. In his latter role, the Governor is often seen as acting as an agent of the Central Government. The fact that the Governors appear to have acted at the behest of the Central Government confirms the suspicion in public mind that the Governor is really an agent of the Central Government. The provisions of the constitution regarding the appointment and dismissal of the Governor and the way the Governor have been transferred, forced to resign or dismissed, provide further proof that the Governor has to carry out the wishes of the Central government and can hardly act just as to the best of his judgement based on goods conscience. The temptation of using the office of the Governor for partisan political purpose is too great for the Central Government. No political party has been able to resist it.

The Chief Minister

While the Governor is the Constitutional head of the State, the real executive power vests in the Council of Ministers headed by the Chief Minister. The Office of the Chief Minister is one of great authority and prestige.

The Chief Minister performs the same functions in respect of the State Government as the Prime Minister does in respect of the Union Government. Although the powers of the executive Government are really vested in the council of Ministers, the Chief Minister has a very important role in the exercise of this executive power. He is not the first among equals, but the prime mover of the executive Government in the State.

Appointment and Term of Office of the Chief Minister

The Chief Minister is appointed by the Governor of the State. No guidelines are given in the Constitution or in any law about the criteria to be used by the Governor in the selection of the Chief Minister. Legally speaking, the Governor can appoint any body as the Chief Minister of the State. However, just as to the functions of the Parliamentary Government, the leader of the majority party in the State Assembly has to be invited by the Governor to form the Government.

So long as any particular political party enjoys an absolute majority in the Assembly, the Governor does not have much of a choice. The leader of the majority party in the Assembly has to be invited by him to form the Government because the Chief Minister and the Council of Ministers have to be responsible to the Assembly. However, the situation becomes rather fluid when no political party holds an absolute majority in the Assembly.

No clear convention has been established in this regard and the Governors have used their discretion to certain extent in appointing the Chief Ministers. This point has already been discussed while studying the discretionary powers of the Governor.

Term of Office

There is no particular term of office prescribed for the Chief Minister under the Constitution. He continues to be the Chief Minister as long as he enjoys the pleasure of the Governor. As already mentioned the pleasure of the Governor obtains as long

as the Chief Minister and the Council of Ministers enjoy the Confidence of the State Assembly. Of course, the term of the Assembly being only five years, the Chief Minister would naturally hold office only up to the end of the term of the Assembly. There is, however, nothing to prevent him from getting re-elected after the new Assembly is constituted as a result of fresh general election.

There is, however, another contingency when the Chief Minister may have to quit the office even when the party which elected him continues to enjoy the absolute majority in the Assembly. This may happen when the majority party chooses to elect another leader and requests the Governor to appoint him as the Chief Minister. This contingency has arisen in a number of cases in the past.

For example, in 1972, Mr. P.C. Sethi became the Chief Minister of Madhya Pradesh in place of Mr. S.C.Shukla, although both of them belonged to the Congress party and the party continued to enjoy an absolute majority in the Assembly. In 2001 Shri Narendra Modi became the Chief Minister of Gujarat in place of Shri Keshubhai Patel, although both of them belonged to the BJP and the party continued to enjoy an absolute majority in the Assembly.

Other Conditions

The Chief Minister is entitled to a free furnished residence in addition to fixed monthly salary and allowances, as laid down by a law, such laws have been amended from time to time.

Dismissal of the Chief Minister

An unseemly controversy has arisen on the question whether the Governor has the power to dismiss the Council of ministers headed by the Chief Minister. The question has already been discussed while studying the discretionary powers of the Governor. The legal positions that the Chief Minister and the Council of Ministers hold office during the pleasure of the Governor which is to be conditioned by the responsibility of the Chief Minister to the Assembly.

Obviously, as long as the Chief Minister and the Council of ministers enjoy the confidence of the Assembly, the Governor has no power to dismiss them. The general contention of the experts is that it is, the Assembly which should determine whether the Chief Minister enjoys the confidence of the House or not. The Governor should not take up on himself these powers of the Assembly as was done by Dharam Veera in West Bengal in 1967 and by Governor Gopala Reddy in U.P. in 1970.

Chief Minister as Head of the Council of Ministers

The Chief Minister is the leader of his legislature party and also that of the Council of Ministers. He is to distribute the executive function among the Ministers. He is responsible for coordinating their activities and making the Council of Ministers functions as a team.

In other words, he is to ensure the collective responsibility of his Council of Ministers to the State Assembly. In the functioning of the Executive Government there are many subjects which are reserved for his concurrence before the

individual Ministers an act on them even in respect of the portfolios allotted to the Ministers. Besides, it is the Chief Minister who decides the agenda of the Cabinet and largely influences its decisions. With the passage of time, the position of the Chief Minister has, therefore, strengthened vis-à-vis his council of Ministers. As long as a cohesive party is in power in the State, the Ministers are usually afraid of or at least respectful to the Chief Minister.

The situation, however, changes when a Coalition Government is in power or the Chief Minister's Party is very much faction ridden. In that case, the Chief Minister is to try to carry together the various factions or parties.

Chief Minister and the Party

The Chief Minister apart from being the head of the Executive Government also belongs to a political party. He is to retain the support of his party in the Assembly as well as outside. For this purpose, he is to distribute a lot of patronage in the form of various political offices and other advantages to his party workers and legislators. To stay in power, the Chief Minister has to maintain the balance between his duties to the party and to the State.

Chief Minister as Head of the Administration

Besides being the political head of the executive, the Chief Minister controls the entire bureaucracy of the State. Of course, he does it through the Secretariat headed by a Chief Secretary who is his main instrument in performing this function. As Head of the Government and consequently as

Head of the Administration he has to take care of the interests of his employees and keep them working in a motivated state. He has to keep in direct touch with the senior civil servants and inspire them to perform their functions to the best of their capacities.

On the other hand he has also to keep a watch on their performance usually through the administrative channels. But, the Chief Minister has many other channels to be informed about the functioning of his administrators. He may either observe their work during his extensive tours of the state, or may learn about their performance through party workers or some aggrieved persons who come to him for redressal of their grievances etc.

Chief Minister and the Legislature

The Chief Minister is also the leader of the House. Apart from this formal position he is also to provide legislative leadership to the Assembly through his Council of Ministers. The various legislative measures have to be initiated by the Council of Ministers under the guidance of the Chief Minister. It is well known that the proposals for legislation brought in by the non-official members hardly have a chance of success. Moreover, it is only the Chief Minister and his Council of Ministers who have the support of necessary administrative machinery to be able to frame the proposals in proper fashion after considering all the pros and cons of the situation.

They are also in possession of more information than the members to be able to inform them about the various consequences.

The Chief Minister has also to keep the Assembly informed of the major activities of the Government through answering the Assembly questions, special Statements and through various discussions during presidential address, Budget, etc.

The Chief Minister has to assure that the input required from the side of the Government for the proper conduct of legislative business is provided by all the Ministers.

Chief Minister as a Public Relations Man

The continuance in office of any Government depends upon the support of the people. The Government has therefore, to project a good image before the people. For this purpose it is necessary that the information about the various programmes initiated by the Government is given to the public. The people have also to be kept informed about the success or failure of different programmes and the steps taken by the government to improve the conditions of the people.

The Chief Minister comes in daily contact with a large number of people including the persons representing various interests and members of the press with whom he has to maintain good relations and keep them supplied with the information necessary for projecting a proper image of the Government. Being in a very important position in the State, the Chief Minister gets a good media coverage if he is in a position to organize this work properly. Of course, in the performance of this function he is assisted by his staff in the public relations department as well as some of his political advisors.

Other Functions

Apart from the functions, the Chief Minister is also to keep the Governor informed of all the important decisions of the Government. He is to furnish him such information relating to the administrative affairs of the State as may be called for. If the Governor so requires, the Chief Minister has to submit for the consideration of the Council of Ministers any matter which has not been considered by the Council.

Besides the Chief Minister has to maintain a liaison with the Prime Minister and other Central Ministers so that the problems relating to his Government at the Central level may be attended to promptly. In this respect he can also take the help of the Members of Parliament from his State. Obviously he has to maintain a good working relationship with the Members of Parliament, even with those belonging to the opposition parties.

The Council of Ministers

The power to appoint the Council of Ministers including the Chief Minister vests in the Governor. As discussed earlier, the Governor can appoint any one as Chief Minister. Of course, he has to appoint the leader of the majority party as the Chief Minister. However, in the appointment of the Ministers, he has no choice.

In this respect, he has to act only on the advice of the Chief Minister. There are no particular qualifications prescribed for a person to be appointed as a minister. Initially, he need not be even a member of the State legislature. But any person

appointed as Minister ceases to be minister if he does not remain for a period of 6 consecutive months a member of the State Legislature. it means that if a non-legislator is appointed a Minister he has to get elected to the State Legislature within a period of 6 months. If he fails to do so, he would cease to be a minister.

Term of Office

There is no particular term of office prescribed for the Ministers. A Minister holds office during the pleasure of the Governor. As a member of the Council of Ministers, a Minister is collectively and individually responsible to the State Assembly. In addition, he is also responsible to the State Assembly. The Minister is additionally responsible to the Chief Minister. The Governor can at any time dismiss a Minister on the advice of the Chief Minister. There have been many cases where the Ministers have been dismissed by the Governor on the advice of the Chief Minister.

Functions of the Council of Ministers

All the Ministers comprising the Council of Minister are not of the same rank. Like the union Cabinet, the State Government also has a Cabinet. While the council of Ministers is a large body only a few of these Ministers are Cabinet Ministers.

The various categories of the Ministers are:

- Cabinet Ministers
- Minister of State

- Deputy Ministers
- Parliamentary Secretaries

The Categories of the Ministers are similar to those in the Union Government. There is however one significant difference. At the Centre Level, the ministers of State, Deputy Ministers and Parliamentary Secretaries do not attend the meetings of the Cabinet. Usually, only Cabinet Ministers attend. However, such of the other Ministers are invited whose subjects are likely to be discussed in a particular meeting. In the States, usually all categories of Ministers' attend the Cabinet meetings. This results in unwieldy gathering of a large body of Ministers in which it is very difficult to discuss serious matters.

Cabinet Committees

Like the union Government, some of the State Governments have also adopted the system of Cabinet Committees for efficient and expeditious transaction of Government business.

For example, Maharashtra Government in 1965 had the following Cabinet Committees:

- Integration Committee of the Ministers
- Sub-committee for war
- Committee on Food matters
- High Power Committee of Ministers for development of Bombay

- High Power committee of Agricultural Production

However, the numerical membership and composition of the Cabinet Committees differ from State to State and in the same State from time to time. While some of the committees may be Standing Committees, but most of them are ad hoc Cabinet Committees formed for certain specific purposes. These ad hoc Committees are dissolved as soon as the work allotted to them is completed.

It may also be noted that the system of Cabinet Committees is not as popular in the State Governments as in the Central Government. Many of the State governments have not set up any Cabinet Committees. Most of the important matters are placed before the Cabinet whose meetings are held frequently.

Transaction of Business in the Cabinet

The meetings of the Cabinet are called by the Chief Minister. The Chief Minister also decides as to the items which are to be placed before any meeting of the Cabinet. The Agenda Notes for individual items to be placed before the Committee are prepared by the concerned departmental secretaries with the approval of their Ministers.

The agenda notes are circulated to the members of the Council of Ministers with the approval of the Chief Minister. The Cabinet considers these items and takes a decision on each one of them and defers some items for future meetings. The decisions in the Cabinet are arrived at by consensus. Whenever an agreement cannot reach on any subject, it is usually deferred for the next meeting.

Record of Decisions of Cabinet

Along with the agenda notes, the files of concerned departments are also sent to the Cabinet. The decision of the Cabinet is recorded by the Chief Secretary on each case. The Chief Secretary is the Secretary of the Cabinet and remains present in all meetings. The Departmental Secretaries usually remain in attendance and are called inside the meetings whenever the Chief Minister or the Chief Secretary desires them for any clarification. Unlike the Central Government, there is no separate Cabinet Secretariat in the State Government. The Chief Secretary acts as the Secretary of the Cabinet. The decision of the Cabinet in each case is recorded by the Chief Secretary. The real work regarding the preparation of agenda notes is done by the respective departments. The remaining secretarial work is done by the personal staff of the Chief Secretary.

Allocation of Business

While the Council of Ministers is collectively responsible to the State Assembly, it is impossible for it to take all the decisions collectively. Most of the work relating to the portfolio allotted to a Minister is disposed of by him. Under our Constitution, the Governor has powers to make rules of more efficient conduct of business. Most of the States have therefore framed allocation of Business Rules just as to which the work is divided among different ministers. These rules can be changed from time to time. The different subjects are grouped differently at different times. Usually, the grouping of the subjects should be done either on the basis of the functions or on the basis of clientele or geographical areas etc. It is

observed that even in the case of Union Government, the grouping of different subjects was not very rational. In State Government the position is much worse. Very diverse subjects are often grouped together and allocation of work among the Ministers is based more on personal considerations rather than for efficient conduct of business. Most of the work in respect of the department allotted to a particular Minister is dispersed of by the Minister. However, just as to the rules of business, some matters are reserved for:

Consideration of the Chief Minister

These are called the coordination cases in which the files are submitted by the Minister to the Chief Minister for his orders in coordination. These are usually the matters in which more than one department are involved and cannot reach agreement among themselves. Some of these cases are of importance to the Government as a whole. Sometimes the Chief Minister by special instructions reserves some cases for his order. For example, to check the unnecessary transfer in individual departments the Chief Minister reserves some categories of transfers for his orders.

Presentation before Cabinet

These are cases which are required to be placed before the Cabinet for final decisions. These are important matters requiring overall policy divisions. The Allocation of Business Rules gives details of such cases which have to be placed before the cabinet.

A sample of such categories is given below:

- Proposals for the appointment or removal of Advocate General and relating to his remuneration;

- Proposals to summon, prorogue or dissolve the assembly;

- Proposals for legislation, including issue of an ordinance;

- Cases in which the attitude of the Government to any resolution or the bill be moved in the legislature is to be determined;

- Proposals relating to recruitment and conditions of service of Government servants including judicial officers;

- Proposals for making or amending regulations relating to the conditions of service of the members of State Public Service Commission and execution of specified matters from the purview of the State Public Service Commission. The proposals of appointment inconsistent with the recommendations of the State Public Service Commission are also to be put up before the Cabinet:

- Annual financial statements to be laid before the legislature and demands for supplementary, additional or excess grants;

- Action to be taken on the report of the State Public Service Commission;

- Proposals for imposition of new taxation or changes in taxation, including land and irrigation rates and for raising loans or giving guarantees by the State Government;

- Proposals affecting the State Finance which are not approved by the Finance Minister;

- Proposals for withdrawal of prosecution against the advice of law and justice department;

- Proposals of re-appropriation of funds to which the Finance Minister has withheld his assent;

- Proposals for creation of certain high level posts;

- Reports of Committees of enquiry;

- Proposals involving important changes in the policy of practices in the administrative system.

This is only an illustrative list of the cases to be placed before the Cabinet. There are many more, which can be seen in the Allocation of business Rules of the concerned State Government.

Size of the Cabinet

During the British period, the Governor had a small council which could function collectively on all matters. When the work expanded different members were allotted different portfolios. With the increase in work the number of portfolios went on increasing necessitating the appointment of a large

number of ministers to look after the new functions. Moreover, in a democratic Government there is a great deal of pressure on the Chief Minister to increase the patronage by increasing the number of Ministers. The size of the Council of Ministers has, therefore, been increasing. However, The Constitution (91st Amendment) Act, 2003, which limits the size of all ministries in India, came into force on July 7, 2003. This Act stipulates that the strength of a council of ministers should not exceed 15 per cent of the total number of members in the Lok Sabha (in case of the central government) or the relevant state assembly. An exception has been made only for smaller states such as Sikkim, Mizoram and Goa where the strength of the assembly is 40 or less. There, the state government can have a maximum of 12 ministers.

Functions of the Chief Secretary

Every state has a Chief Secretary who is more or less the head of the Civil Services. He is the King-pin of the Secretariat. His control extends to all the departments of the Secretariat, although he is in the direct charge of only the General Administration Department (GAD). He is more than primus inter pares among the secretaries.

He is in fact the chief of the Secretaries. He is the mentor and the conscience keeper of the civil servants of the state. The civil servants look to him to deal with all their problems concerning their conditions of service and work. He provides the leadership to the administrative system of the state. The office of the Chief Secretary is considered so important that it has been excluded from the operation of tenure system.

The Chief Secretary is supposed to retire as a Chief Secretary or moves to the Central Government to take up a more important position. There are, however, some exceptions to this rule. Since 1973, the post of Chief Secretary has been made equivalent to the Secretary to the Government of India. At present, he is usually the senior most civil servant of the state except when the senior most officer cannot be appointed for reason of unsuitability or for political unacceptability. In that situation, the unwanted senior most officer is shifted to some innocuous position. The Chief Secretary then is the next senior most officer and wields all the authority that the position commands.

Chief Secretary as an Advisor of Chief Minister

The Chief Secretary of the State is the principal advisor of the Chief Minister in all administrative matters. It is customary for the Chief Minister to consult the Chief Secretary in all matters concerning appointments to senior positions like those to Secretaries, Special Secretaries, Deputy Secretaries, Heads of the Departments, etc. Besides, the Chief Minister also consults the Chief Secretary on all important matters concerning the policy matters.

Chief Secretary as the Secretary of the Cabinet

The Chief Secretary is the Secretary to the Cabinet. He gets the agenda for the meetings of the Cabinet prepared by the department secretaries. He obtains the approval of the Chief Minister regarding the inclusion of the agenda items in the Cabinet meetings. He also makes arrangements for the Cabinet meeting with the approval of the Chief Minister. After the

meeting of the Cabinet, it is the Chief Secretary who records the minutes and the decisions of the Cabinet.

Chief Secretary as the Head of the Civil Service

The Chief Secretary is the head of the entire civil service in the State. He is consulted by the Chief Minster in the mattes of all the important appointments. Besides he is in charge of the General Administration Department which controls the transfers and positing of all the Indian Administrative Service and State Civil Service Officers.

The department is also responsible for the general control over the service conditions of the employees of different departments in the State. All the recruitment, rules and disciplinary matters are decided in consultation with the General Administration Department only. The General Administration department also controls the Secretariat Services and arranges the maintenance and upkeep of the Secretariat. In this way the entire staff attached to the different Ministers is also under the control of the Chief Secretary.

Chief Secretary as the Main Coordinator

The Chief Secretary in fact is the Chief of all the Secretaries. He is to resolve the differences between the different secretaries to the State Government. He is the Chairman of so many committees of the Secretaries and in that way he is in a position to coordinate the activities of the entire Secretariat.

Chief Secretary During Emergency

In times of emergency or crisis, the Chief Secretary constitutes the nerve centre of the State. During these times his role as the Chief Coordinator comes into full play. During this period he is able to utilize his multifarious contacts in the Central Government as well as with his counterparts in other States. The States Reorganization Act, 1956 provides for setting up a number of Zonal Councils in the Country. These Zonal Councils are headed by the Union Home Minister. The other members of Zonal Councils are the Chief Minister and a couple of other Ministers from each state in the Zone.

The Chief Secretaries of the different states act as Secretaries to this Zonal Council by rotation.

General Superintendence

The Chief Secretary exercises general superintendence and control over the entire Secretariat and through the Secretariat over the entire field administration. He is to keep himself generally informed about the happenings in the State. He does this by keeping contact with his secretaries, heads of departments, commissioners, collectors, legislators and other members of the public. In this process, he comes in contact with various interests and maintains liaison between the administration and the people. The Chief Secretary is also to maintain a close liaison with the Central Government and the other State Governments. He is able to perform this function for two very special advantages which his service permits him. Due to the tenure system he normally has worked in various positions in the Central Government.

For this reason he would have come in contact with many officers of the other states who may now be holding senior positions in Government of India or the other State Governments. Besides he attends the Chief Secretaries conferences called by the Cabinet Secretary. In these conferences various matters connected with the State Governments and the Central Government may be sorted out.

During President's Rule

During the President's Rule the position of the Chief Secretary gets affected in two different ways. If no advisors are appointed, the Chief Secretary becomes very powerful. He becomes the direct advisor of the Governor and performs more or less all the functions of the Ministry. In case the Governor appoints a number of advisors, to that extent the Chief Secretary's position is undermined. However, even during President' rule, the Chief Secretary is to perform the all important functions of coordinating the functioning of the entire Government. Any failure of the Government of that time would be considered a direct failure of the administrative machinery as there is no popular Government in the State.

Residuary Functions

The rules of business, the Chief Secretary has to look after all matters which are not falling within the responsibilities of any other secretary. Usually, such instances are few and far between, but, they do occur as the functions of the Government are becoming more and more varied and complex.

Undermining the Position of the Chief Secretary

The political process have worked in such a fashion that the position of the Chief Secretary has been greatly undermined. The Chief Minister has so many political advisors that he very often does not seek the advice from the Chief Secretary in many administrative matters. He is rather guided by his political contacts or sometimes even by junior officers who happen to get the ear of the Chief Minister through some politicians. This has severely undermined the position of the Chief Secretary and reduced his control over the bureaucracy. The avoidable result has been the breakdown of the hierarchical system of the bureaucracy all along the line. This has adversely affected the morale of the civil services and their discipline.

Tenure of the Chief Secretary

It was stated earlier that the usual practice was to continue the Chief Secretary until he retires or move to a higher position in Government of India. Unfortunately, this is no longer the case.

The Chief Secretary does not enjoy the security of tenure now. Often the Chief Secretary is removed from his position unceremoniously and sent to unimportant job. The unfortunate position is that it happens for reasons not connected with any administrative failure on his part.

This again is undermining the position of the Chief Secretary with detrimental effect on the morale of administration.

The Secretariat

The expression Secretariat is used to refer to the complex of departments whose administrative heads are Secretaries and political heads the Ministers.

Organization of the Secretariat

The functions of the Government are organised in different departments. Each department is headed at the political level by the Minister and at the Administrative level by the Secretary. The Secretary is in turn assisted by a group of officers and an office.

Officers

The Officers in the Secretariat are grouped into various categories mentioned below:

- Secretary to the Government
- Special Secretary/Additional Secretary
- Joint Secretary
- Deputy Secretary
- Under Secretary

We shall be discussing here the functions of these officers briefly:

The Secretary is an overall charge of the department. He is the Chief Advisor to the Minister regarding the matters in his department. He allocates work among the different officers of his department. He represents his department before the committees of the Assembly. When the work in a particular department becomes too heavy, some posts of Special Secretaries/Additional Secretaries may be created to relieve the Secretary of some of the burden of his work. These officers can directly perform some of the functions of the Secretary and may submit files directly to the Minister in respect of the delegated functions performed by them.

Deputy Secretary

The real operating level below the Secretary is the Deputy Secretary. In some of the States the post of Joint Secretaries has been created to distinguish between the officers of different seniorities. Sometimes, the officers coming form the State Civil Services are designated as Deputy Secretaries while those coming from the Indian Administrative Services are known as Joint Secretaries. However, they perform the same functions. The Deputy Secretaries/Joint Secretaries are placed in charge of definite wing of the Department. This requires the supervision of the work of a number of Under Secretaries. A Deputy Secretary is also delegated some powers to dispose of certain routine cases at his level. He sends important cases to the Additional Secretary or the Secretary depending upon the scheme of delegation of work. The Deputy Secretaries are supposed to have a thorough knowledge of the wing controlled by them. They are supposed to analyse the various policy alternatives before sending the files upwards.

Under Secretary

These are the lowest level officers who perform the vital function of providing a link between the office and the officers. They are placed in charge of a number of parts each headed by a Section Officer.

Section is the lowest unit of work. It some states, the Section is headed by an Assistant Secretary while in others by a Section Officer. In some places, he is also included in the class of officers while in others he is included in the office.

The Section Officer is responsible for the distribution of work among the various functionaries of the Section and to ensure the timely submission of files to the officers. He supervises the work of the Assistant/UDCs working in his section and makes them present the cases suitably docketed and referenced. Precedents of similar cases have also to be cited while presenting the Files.

Office

While the officers analyse the case and suggest alternative courses of action, the function of the officer is to present cases in the proper form before the officers.

The office has the following categories of functionaries:

- Assistant Secretary/Section Officer
- Assistant

- Upper Division Clerk

- Lower Division Clerk/Typist

Functions of the Secretariat

Secretariat may be regarded as the extended personality of the Council of Ministers.

Its main functions are:

- To assist and advice the Minister in the formulation of Government policies and programmes;

- To frame the policies, it is necessary to collect a great deal of data from the field agencies and several other sources. The Secretariat performs the function of collecting the necessary data from different sources and analysing it with a view to suggest various courses of action necessary in the formulation of policies.

- The Secretariat gives general direction and guidance to the Directorates and other field agencies for the efficient implementation of the Government policies and the decisions. It may be noted that these are only broad policy guidelines and are not supposed to be in the nature of detailed instructions which are to be issued by the respective head of the executive departments.

- The Secretariat monitors the programmes regarding the implementation of various programmes and evaluates the performance of different field agencies. Finally, it

suggests the corrective action whenever it becomes necessary in view of the evaluation conducted by it.

- The Secretariat acts as the spokesman of the Government. It maintains contact with the Central Government and other State Governments and outside agencies.

The functions of the Secretariat have to be distinguished from the functions of the executive departments. The Secretariat is supposed to give only general policy guidelines while the actual execution of the policy is the work of the executive head of the departments.

Chapter 4

The Departments and the Secretariat Authoritative Work Functions

State Public Service Commission

Whereas the Secretariat is concerned mainly with the formulation of policies, the responsibility of their execution falls on the heads of the departments and their field formations. Usually there is a separate department for every important activity of the State. These departments provide the executive direction required in the implementation of the policies laid down by the Secretariat. The head of the departments from the Government and their officers draw their powers either from any statute or by delegation from the Government or both. For example, the Registrar of the Cooperative Societies derives his powers from the Cooperative Societies Act, whereas the Director of Agriculture derives his powers mainly by delegation form the State Government.

The Constitution makes it obligatory for the State Government to constitute a Public Service Commission to assist it in the recruitment, promotion and maintenance of discipline amongst the State Services. The exact strength of the Commission is not specified in the Constitution. The Governor of the State is empowered to determine the strength. However, the Constitution permits for constituting a Joint State Public

Service Commission for two or more States. If a resolution to this effect is passed by the Legislature; Parliament may, by law, provide for constituting such a Joint State Public Service Commission. In such a case the strength or a Joint State Public Service Commission is determined by the President of India.

The Governor appoints the Chairman and other members of the State Public Service Commission, while the Chairman and other members of a Joint State Commission are appointed by the President of India. The Constitution provides that, as nearly as may be, on behalf of the members must be persons who have held office for at least ten years either under the Government of India or under the Government of a State. If the office of the Chairman of the Commission falls vacant for any reason, the President, in case of Joint State Public Service Commission and the Governor in case of a State Public Service Commission, appoints a person from amongst the members to take charge until a new Chairman is appointed. A member of the Joint State Public Service Commission/State Public Service Commission holds office for a period of six years from the date he assumes his office or until he attains the age of sixty-two years, whichever is earlier.

A member of the Commission may resign by addressing a letter to the President in case of Joint State Public Service Commission or to the Governor of the State in case of State Public Service Commission. The Chairman or any other member of the Commission can be removed from his office by the order of President only on the ground of misbehaviour. The President may also, by order, remove from office the Chairman or any other member, as the case may be, if he is adjudged

insolvent or engages during his term of office in any paid employment outside the duties of his office or is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body. On ceasing to hold office, the Chairman of a State Public Service Commission, shall be eligible for appointment as the Chairman or a member of the Union Public Service Commission or as the Chairman of any other State Public Service Commission. He cannot take up any other employment either under the Government of India or under the Government of a State.

Functions of the Commission

It shall be the duty of the Commission to conduct examinations for appointments to the services of the State Government. The Commission shall be consulted on all matters relating to the methods of recruitment to civil services and for civil posts and the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.

The Commission is also consulted on all disciplinary matters affecting a person serving under the Government of India or the Government of a State, in civil capacity including memorials or petitions relating to such matters and on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State, in a civil capacity, and any question as to the amount of any such awards. It shall be the duty of the State Public Service Commission to present annually to the Governor a report as to the work done by the

Commission. The Governor shall cause it to lay its copy together with a memorandum explaining as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance, before the Legislature of the State.

Advocate-General

The Constitution provides for the office of an Advocate-General. He is appointed by the Governor on the advice of the State Ministry. He holds office during the pleasure of the Governor, but, in actual practice, he holds office during the tenure of the ministry appointing him. The only qualification laid down is that he should be qualified to be a judge of a High Court. Though he is not a member of the State Legislature, he is empowered to attend its meetings when called upon to explain certain legal technicalities. He has the right to speak and take part in the proceedings of the legislature but he cannot vote. He performs all such functions as are enjoined on him by law. He is the highest legal adviser to the State Government and appears on its behalf in almost all courts. He is also the public prosecutor in all case coming up before the High Court in exercise of its original criminal jurisdiction. He examines all the Bills drafted by different departments.

State Finance Commission

The Constitution (Seventy-third Amendment) Act of 1992 and the Constitution (Seventy-fourth Amendment) Act of 1992 have added Part IX and Part X respectively, to the Constitution of India regarding the constitution and empowerment of Panchayats and Municipalities respectively. These amendments

have provided for constituting and empowering Finance Commission in each of the States of India. The Governor of a State shall constitute a Finance Commission for the State every five years The Legislature of the State may (by law) provide for the composition of the Commission, the qualifications that shall be requisite for the appointment of its members, and the manner in which they shall be selected.

The Commission is empowered to review the financial position of the Panchayats and the Municipalities and to make recommendations to the Governor as to:

- The principles which should govern the determination, the distribution and allocation between the State and Panchayats as well as the State and the Municipalities of the net proceeds of the taxes, duties, tolls and fees leviable by the State; besides the decision about the grants-in-aid to the Panchayats/Municipalities from the consolidated fund of the State,

- The measures needed to improve the financial position of the Panchayats/Municipalities, and

- Any other matter referred to the Commission by the Governor in the interests of the Panchayats/Municipalities.

The Governor shall cause it to lay every recommendation made by the commission together with an explanatory memorandum as to the action taken on it before the Legislature of the State. To sum up, we can say that the real administration of the state is carried on by the Secretariat and the Executive Departments.

The policies of the Government are framed by the ministers on the advice of the Secretariat and the Executive Departments implement them.

Movements and activism

A peace movement is a social movement that seeks to achieve ideals such as the ending of a particular war, minimize inter-human violence in a particular place or type of situation, often linked to the goal of achieving world peace. Means to achieve these ends usually include advocacy of pacifism, non-violent resistance, diplomacy, boycotts, moral purchasing, supporting anti-war political candidates, demonstrations, and lobbying to create legislation.

Pacifism

Gaining advantage. Pacifism covers a spectrum of views ranging from the belief that international disputes can and should be peacefully resolved; to calls for the abolition of the institutions of the military and war; to opposition to any organization of society through governmental force; to rejection of the use of physical violence to obtain political, economic or social goals; to opposition to violence under any circumstance, including defence of self and others.

Pacifism may be based on moral principles or pragmatism. Principled pacifism holds that at some point along the spectrum from war to interpersonal physical violence, such violence becomes morally wrong. Pragmatic pacifism holds that the costs of war and inter-personal violence are so substantial

that better ways of resolving disputes must be found. Pacifists in general reject theories of Just War.

Theories

Many different theories of "peace" exist in the world of peace studies, which involves the study of conflict transformation, disarmament, and cessation of violence. The definition of "peace" can vary with religion, culture, or subject of study.

One definition is that peace is a state of balance and understanding in yourself and between others, where respect is gained by the acceptance of differences, tolerance persists, conflicts are resolved through dialog, people's rights are respected and their voices are heard, and everyone is at their highest point of serenity without social tension.

Game theory

The Peace War Game is a game theory approach to peace and conflict studies. An iterated game originally played in academic groups and by computer simulation for years to study possible strategies of cooperation and aggression.

As peace makers became richer over time, it became clear that making war had greater costs than initially anticipated. The only strategy that acquired wealth more rapidly was a "Genghis Khan", a constant aggressor making war continually to gain resources. This led to the development of the "provokable nice guy" strategy, a peace-maker until attacked, improved upon merely to win by occasional forgiveness even when attacked. Multiple players continue to gain wealth cooperating with each other while bleeding the constant aggressor. Such actions led

in essence to the development of the Hanseatic League for trade and mutual defence following centuries of Viking depredation.

Democratic peace theory

Democratic peace theory is the theory that democracies, for some appropriate definition of democracy, rarely, or even never, go to war with one another.

Some have preferred the term "inter-democracy non-aggression hypothesis" for the theory, to clarify that it is not the peace itself that is democratic, but rather the countries involved.

Among proponents of the theory, several explanations have been offered for it: that democratic leaders must answer to the voters for war, and therefore have an incentive to seek alternatives; that such statesmen have practice settling matters by discussion, not by arms, and do the same in foreign policy; that democracies view non-democracies as threatening, and go to war with them over issues which would have been settled peacefully between democracies; and that democracies tend to be wealthier than other countries, and the wealthy tend to avoid war, having more to lose.

Among those who dispute the theory, there are also several opinions: that the claim is a statistical artifact, explicable by chance; and that definitions of democracy and war can be deliberately cherry-picked to show a pattern that may not be there.

History

Although the philosophical idea has circulated since Immanuel Kant, it was not scientifically evaluated until the 1960s. Kant foreshadowed the theory in his essay *Perpetual Peace* written in 1795, although he thought that constitutional republics was only one of several necessary conditions for a perpetual peace. Kant's theory was that a majority of the people would never vote to go to war, unless in self-defence. Therefore, if all nations were republics, it would end war, because there would be no aggressors.

Dean Babst, a criminologist, was the first to do statistical research on this topic. He wrote an academic paper supporting the theory in 1964 in *Wisconsin Sociologist*; he published a slightly more popularized version, in 1972, in the trade journal *Industrial Research*. Both versions initially received little attention.

Melvin Small and J. David Singer responded; they found an absence of wars between democratic states with two "marginal exceptions", but denied that this pattern had statistical significance. This paper was published in the *Jerusalem Journal of International Relations* which finally brought more widespread attention to the theory, and started the academic debate. A 1983 paper by Michael Doyle contributed further to popularizing the theory. Rudolph J. Rummel was another early researcher and drew considerable lay attention to the subject in his later works.

Maoz and Abdolali extended the research to lesser conflicts than wars. Bremer and Maoz and Russett found the correlation

between democracy and peacefulness remained significant after controlling for many possible confounding variables. This moved the theory into the mainstream of social science. Supporters of realism in international relations and others responded by raising many new objections. Other researchers attempted more systematic explanations of how democracy might cause peace and of how democracy might also affect other aspects of foreign relations such as alliances and collaboration.

There have been numerous further studies in the field since these pioneering works. Most studies have found some form of democratic peace exists, although neither methodological disputes nor doubtful cases are entirely resolved.

Definitions

Research on the democratic peace theory has to define "democracy" and "peace". Similarly, the main criticism contends that the theory is an example of equivocation, particularly, the No true Scotsman fallacy.

Defining democracy

Democracies have been defined differently by different theorists and researchers; this accounts for some of the variations in their findings. Some examples:

Small and Singer define democracy as a nation that:

- Holds periodic elections in which the opposition parties are as free to run as government parties,

- Allows at least 10 per cent of the adult population to vote, and

- Has a parliament that either controls or enjoys parity with the executive branch of the government.

Doyle requires:

- That "liberal régimes" have market or private property economics,

- They have polities that are externally sovereign,

- They have citizens with juridical rights, and

- They have representative governments.

Either 30 per cent of the adult males were able to vote or it was possible for every man to acquire voting rights as by attaining enough property. He allows greater power to hereditary monarchs than other researchers; for example, he counts the rule of Louis-Philippe of France as a liberal régime. Ray requires that at least 50 per cent of the adult population is allowed to vote and that there has been at least one peaceful, constitutional transfer of executive power from one independent political party to another by means of an election. This definition excludes long periods often viewed as democratic. For example, the United States until 1800, India from independence until 1979, and Japan until 1993 were all under one-party rule, and thus would not be counted under this definition.

Rummel states that "By democracy is meant liberal democracy, where those who hold power are elected in competitive elections with a secret ballot and wide franchise; where there is freedom of speech, religion, and organization; and a constitutional framework of law to which the government is subordinate and that guarantees equal rights."

- Non-binary classifications: The above definitions are binary, classifying nations into either democracies or non-democracies. Many researchers have instead used more finely grained scales. One example is the Polity data series which scores each state on two scales, one for democracy and one for autocracy, for each year since 1800; as well as several others. The use of the Polity Data has varied. Some researchers have done correlations between the democracy scale and belligerence; others have treated it as a binary classification by calling all states with a high democracy score and a low autocracy score democracies; yet others have used the difference of the two scores, sometimes again making this into a binary classification.

- Young democracies: Several researchers have observed that many of the possible exceptions to the democratic peace have occurred when at least one of the involved democracies was very young. Many of them have therefore added a qualifier, typically stating that the peacefulness apply to democracies older than three years. Rummel argues that this is enough time for "democratic procedures to be accepted, and democratic culture to settle in." Additionally, this may allow for other states to actually come to the recognition of the state as a democracy. Mansfield and Snyder, while agreeing that there have been

> no wars between mature liberal democracies, state that countries in transition to democracy are especially likely to be involved in wars. They find that democratizing countries are even more warlike than stable democracies, stable autocracies or even countries in transition towards autocracy.

So, they suggest caution in eliminating these wars from the analysis, because this might hide a negative aspect of the process of democratization. A reanalysis of the earlier study's statistical results emphasizes that the above relationship between democratization and war can only be said to hold for those democratizing countries where the executive lacks sufficient power, independence, and institutional strength. A review cites several other studies finding that the increase in the risk of war in democratizing countries happens only if many or most of the surrounding nations are undemocratic. If wars between young democracies are included in the analysis, several studies and reviews still find enough evidence supporting the stronger claim that all democracies, whether young or established, go into war with one another less frequently, while some do not.

Defining War

Quantitative research on international wars usually define war as a military conflict with more than 1000 killed in battle in one year. This is the definition used in the Correlates of War Project which has also supplied the data for many studies on war. It turns out that most of the military conflicts in question fall clearly above or below this threshold.

Some researchers have used different definitions. For example, Weart defines war as more than 200 battle deaths. Russett when looking at Ancient Greece, only requires some real battle engagement, involving on both sides forces under state authorization.

Militarized Interstate Disputes in the Correlates of War Project classification, are lesser conflicts than wars. Such a conflict may be no more than military display of force with no battle deaths. MIDs and wars together are "militarized interstate conflicts" or MICs. MIDs include the conflicts that precede a war; so the difference between MIDs and MICs may be less than it appears. Statistical analysis and concerns about degrees of freedom are the primary reasons for using MID's instead of actual wars. Wars are relatively rare. An average ratio of 30 MIDs to one war provides a richer statistical environment for analysis.

Monadic vs. Dyadic Peace

Most research is regarding the *dyadic* peace, that democracies do not fight one another. Very few researchers have supported the *monadic* peace, that democracies are more peaceful in general.

There are some recent papers that find a slight monadic effect. Müller and Wolff in listing them, agree "that democracies on average might be slightly, but not strongly, less warlike than other states," but general "monadic explanations is neither necessary nor convincing". They note that democracies have varied greatly in their belligerence against non-democracies.

Possible Exceptions

Many scholars support the democratic peace on probabilistic grounds: since many wars have been fought since democracies first arose, we might expect a proportionate number of wars to have occurred between democracies, if democracies fought each other as freely as other pairs of states; but the number is much less than might be expected.

Historically, cases commonly cited as exceptions include the Sicilian Expedition, the Spanish-American War, the Continuation War and more recently the Kargil War. Doyle cites the Paquisha War and the Lebanese air force's intervention in the Six Day War. The data set Bremer was using showed one exception, the French-Thai War of 1940; Gleditsch sees the state of war between Finland and UK during World War II, as a special case, which should probably be treated separately: an incidental state of war between democracies during large multi-polar wars. Page Fortna discusses the 1974 Turkish invasion of Cyprus and the Kargil War as exceptions, finding the latter to be the most significant. However, the status of these countries as being truly democratic is a matter of debate.

One advocate of the democratic peace explains that his reason to choose a definition of democracy sufficiently restrictive to exclude *all* wars between democracies are what "might be disparagingly termed *public relations*": students and politicians will be more impressed by such a claim than by claims that wars between democracies are less likely.

Statistical Difficulties Due to Newness of Democracy

One problem with the research on wars is that, as the Realist Mearsheimer put it, "democracies have been few in number over the past two centuries, and thus there have been few opportunities where democracies were in a position to fight one another". Especially if using a strict definition of democracy, as by those finding no wars. Democracies have been very rare until recently. Even looser definitions of democracy, such as Doyle's, find only a dozen democracies before the late nineteenth century, and many of them short-lived or with limited franchise. Freedom House finds no independent state with universal suffrage in 1900.

Wayman, a supporter of the theory, states that "If we rely solely on whether there has been an inter-democratic war, it is going to take many more decades of peace to build our confidence in the stability of the democratic peace". Many researchers have reacted to this limitation by studying lesser conflicts instead, since they have been far more common. There have been many more MIDs than wars; the Correlates of War Project counts several thousand during the last two centuries. A review lists many studies that have reported that democratic pairs of states are less likely to be involved in MIDs than other pairs of states.

Another study finds that after both states have become democratic, there is a decreasing probability for MIDs within a year and this decreases almost to zero within five years.

When examining the inter-liberal MIDs in more detail, one study finds that they are less likely to involve third parties,

and that the target of the hostility is less likely to reciprocate, if the target reciprocates the response is usually proportional to the provocation, and the disputes are less likely to cause any loss of life. The most common action was “Seizure of Material or Personnel”.

Studies find that the probability that disputes between states will be resolved peacefully is positively affected by the degree of democracy exhibited by the lesser democratic state involved in that dispute. Disputes between democratic states are significantly shorter than disputes involving at least one undemocratic state. Democratic states are more likely to be amenable to third party mediation when they are involved in disputes with each other.

In international crises that include the threat or use of military force, one study finds that if the parties are democracies, then relative military strength has no effect on who wins. This is different from when non-democracies are involved. These results are the same also if the conflicting parties are formal allies. Similarly, a study of the behavior of states that joined ongoing militarized disputes reports that power is important only to autocracies: democracies do not seem to base their alignment on the power of the sides in the dispute.

Conflict Initiation

Most studies have looked only at who is involved in the conflicts and ignored the question of who initiated the conflict. In many conflicts both sides argue that the other side was initiator. Several researchers, as described in have argued that

studying conflict initiation is of limited value, because existing data about conflict initiation may be especially unreliable. Even so, several studies have examined this. Reiter and Stam argue that autocracies initiate conflicts against democracies more frequently than democracies do against autocracies. Quackenbush and Rudy, while confirming Reiter and Stam's results, find that democracies initiate wars against non-democracies more frequently than non-democracies do to each other. Several following studies, have studied how different types of autocracies with different institutions vary regarding conflict initiation. Personalistic and military dictatorships may be particularly prone to conflict initiation, as compared to other types of autocracy such as one party states, but also more likely to be targeted in a war having other initiators.

Internal Violence and Genocide

Most of this article discusses research on relations between states. However, there is also evidence that democracies have less internal systematic violence. For instance, one study finds that the most democratic and the most authoritarian states have few civil wars, and intermediate regimes the most. The probability for a civil war is also increased by political change, regardless whether towards greater democracy or greater autocracy. Intermediate regimes continue to be the most prone to civil war, regardless of the time since the political change. In the long run, since intermediate regimes are less stable than autocracies, which in turn are less stable than democracies, durable democracy is the most probable end-point of the process of democratization. Abadie study finds that the most democratic nations have the least terrorism. Harff finds that genocide and politicide are rare in democracies. Rummel finds

that the more democratic a regime, the less its democide. He finds that democide has killed six times as many people as battles.

Davenport and Armstrong lists several other studies and states: “Repeatedly, democratic political systems have been found to decrease political bans, censorship, torture, disappearances and mass killing, doing so in a linear fashion across diverse measurements, methodologies, time periods, countries, and contexts.” It concludes: “Across measures and methodological techniques, it is found that below a certain level, democracy has no impact on human rights violations, but above this level democracy influences repression in a negative and roughly linear manner.” Davenport and Armstrong states that thirty years worth of statistical research has revealed that only two variables decrease human rights violations: political democracy and economic development.

Explanations

These theories have traditionally been categorized into two groups: explanations that focus on democratic norms and explanations that focus on democratic political structures. Note that they usually are meant to be explanations for little violence between democracies, not for a low level of internal violence in democracies. Several of these mechanisms may also apply to countries of similar systems. The book *Never at War* finds evidence for an oligarchic peace. One example is the Polish-Lithuanian Commonwealth, in which the Sejm resisted and vetoed most royal proposals for war, like those of W³adys³aw IV Vasa.

Democratic Norms

One example from the first group is that liberal democratic culture may make the leaders accustomed to negotiation and compromise. Another that a belief in human rights may make people in democracies reluctant to go to war, especially against other democracies. The decline in colonialism, also by democracies, may be related to a change in perception of non-European peoples and their rights.

Bruce Russett also argues that the democratic culture affects the way leaders resolve conflicts. In addition, he holds that a social norm emerged towards the end of the nineteenth century; that democracies should not fight each other, which strengthened when the democratic culture and the degree of democracy increased, for example by widening the franchise. Increasing democratic stability allowed partners in foreign affairs to perceive a nation as reliable democratic. The alliances between democracies during the two World Wars and the Cold War also strengthened the norms. He sees less effective traces of this norm in Greek antiquity.

Hans Köchler relates the question of transnational democracy to empowering the individual citizen by involving him, through procedures of direct democracy, in a country's international affairs, and he calls for the restructuring of the United Nations Organization according to democratic norms. He refers in particular to the Swiss practice of participatory democracy. Mousseau argues that it is market-oriented development that creates the norms and values that explain both democracy and the peace. In less developed countries individuals often depend on social networks that impose conformity to in-group norms

and beliefs, and loyalty to group leaders. When jobs are plentiful on the market, in contrast, as in market-oriented developed countries, individuals depend on a strong state that enforces contracts equally. Cognitive routines emerge of abiding by state law rather than group leaders, and, as in contracts, tolerating differences among individuals. Voters in marketplace democracies thus accept only impartial 'liberal' governments, and constrain leaders to pursue their interests in securing equal access to global markets and in resisting those who distort such access with force. Marketplace democracies thus share common foreign policy interests in the supremacy—and predictability—of international law over brute power politics, and equal and open global trade over closed trade and imperial preferences. When disputes do originate between marketplace democracies, they are less likely than others to escalate to violence because both states, even the stronger one, perceive greater long-term interests in the supremacy of law over power politics.

Argues that liberal norms of conflict resolution vary because liberalism takes many forms. By examining survey results from the newly independent states of the former Soviet Union, the author demonstrates that liberalism in that region bears a stronger resemblance to 19th-century liberal nationalism than to the sort of universalist, Wilsonian liberalism described by democratic peace theorists, and that, as a result, liberals in the region are *more,* not less, aggressive than non-liberals.

Democratic Political Structures

The case for institutional constraints goes back to Kant, who wrote:

- "[I]f the consent of the citizens is required in order to decide that war should be declared, nothing is more natural than that they would be very cautious in commencing such a poor game, decreeing for themselves all the calamities of war. Among the latter would be: having to fight, having to pay the costs of war from their own resources, having painfully to repair the devastation war leaves behind, and, to fill up the measure of evils, load themselves with a heavy national debt that would embitter peace itself and that can never be liquidated on account of constant wars in the future"

Democracy thus gives influence to those most likely to be killed or wounded in wars, and their relatives and friends Russett. This monadic theory must, however, explain why democracies do attack non-democratic states. One explanation is that these democracies were threatened or otherwise were provoked by the non-democratic states. Doyle argued that the absence of a monadic peace is only to be expected: the same ideologies that cause liberal states to be at peace with each other inspire idealistic wars with the illiberal, whether to defend oppressed foreign minorities or avenge countrymen settled abroad. Doyle also notes liberal states do conduct covert operations against each other; the covert nature of the operation, however, prevents the publicity otherwise characteristic of a free state from applying to the question

Studies show that democratic states are more likely than autocratic states to win the wars. One explanation is that democracies, for internal political and economic reasons, have greater resources. This might mean that democratic leaders are unlikely to select other democratic states as targets because they perceive them to be particularly formidable opponents.

One study finds that interstate wars have important impacts on the fate of political regimes, and that the probability that a political leader will fall from power in the wake of a lost war is particularly high in democratic states.

As described in, several studies have argued that liberal leaders face institutionalized constraints that impede their capacity to mobilize the state's resources for war without the consent of a broad spectrum of interests. Survey results that compare the attitudes of citizens and elites in the Soviet successor states are consistent with this argument. Moreover, these constraints are readily apparent to other states and cannot be manipulated by leaders. Thus, democracies send credible signals to other states of an aversion to using force. These signals allow democratic states to avoid conflicts with one another, but they may attract aggression from non-democratic states. Democracies may be pressured to respond to such aggression—perhaps even pre-emptively—through the use of force. Also as described in, studies have argued that when democratic leaders do choose to escalate international crises, their threats are taken as highly credible, since there must be a relatively large public opinion for these actions. In disputes between liberal states, the credibility of their bargaining signals allows them to negotiate a peaceful settlement before mobilization.

An explanation based on game theory similar to the last two above is that the participation of the public and the open debate send clear and reliable information regarding the intentions of democracies to other states. In contrast, it is difficult to know the intentions of non-democratic leaders, what effect concessions will have, and if promises will be kept.

Thus there will be mistrust and unwillingness to make concessions if at least one of the parties in a dispute is a non-democracy.

The risk factors for certain types of state have, however, changed since Kant's time. In the quote above, Kant points to the lack of popular support for war - given that the populace will directly or indirectly suffer in the event of war - as a reason why republics will not tend to go to war. The number of American troops killed or maimed versus the number of Iraqi soldiers and civilians maimed and killed in the American-Iraqi conflict is indicative. This may explain the relatively great willingness of democratic states to attack weak opponents: the Iraq war was, initially at least, highly popular in the United States. The case of the Vietnam War might, nonetheless, indicate a tipping point where publics may no longer accept continuing attrition of their soldiers.

Criticism

There are several logically distinguishable classes of criticism. Note that they usually apply to no wars or few MIDs between democracies, not to little systematic violence in established democracies.

Statistical Significance

Only one study appears to have argued that there have been as many wars between democracies as one would expect between any other couple of states. However, its authors include wars between young and dubious democracies, and very small wars. Others state that, although there may be some evidence for

democratic peace, the data sample or the time span may be too small to assess any definitive conclusions. For example, Gowa finds evidence for democratic peace to be insignificant before 1939, because of the too small number of democracies, and offers an alternate explanation for the following period. Gowa's use of statistics has been criticized, with several other studies and reviews finding different or opposing results. However, this can be seen as the longest-lasting criticism to the theory; as noted earlier, also some supporters agree that the statistical sample for assessing its validity is limited or scarce, at least if only full scale wars are considered.

According to one study, which uses a rather restrictive definition of democracy and war, there were no wars between jointly democratic couples of states in the period from 1816 to 1992. Assuming a purely random distribution of wars between states, regardless of their democratic character, the predicted number of conflicts between democracies would be around ten. So, Ray argues that the evidence is statistically significant, but that it is still conceivable that, in the future, even a small number of inter-democratic wars would cancel out such evidence.

Definitions, Methodology and Data

Some authors criticize the definition of democracy by arguing that states continually reinterpret other states' regime types as a consequence of their own objective interests and motives, such as economic and security concerns. For example, one study reports that Germany was considered a democratic state by Western opinion leaders at the end of the 19th century; yet in the years preceding World War I, when its relations with the

United States, France and Britain started deteriorating, Germany was gradually reinterpreted as an autocratic state, in absence of any actual regime change. Shimmin moves a similar criticism regarding the western perception of Milosevic's Serbia between 1989 and 1999. Rummel replies to this criticism by stating that, in general, studies on democratic peace do not focus on other countries' perceptions of democracy; and in the specific case of Serbia, by arguing that the limited credit accorded by western democracies to Milosevic in the early '90s did not amount to a recognition of democracy, but only to the perception that possible alternative leaders could be even worse. Some democratic peace researchers have been criticized for *post hoc* reclassifying some specific conflicts as non-wars or political systems as non-democracies without checking and correcting the whole data set used similarly. Supporters and opponents of the democratic peace agree that this is bad use of statistics, even if a plausible case can be made for the correction. A military affairs columnist of the newspaper *Asia Times* has summarized the above criticism in a journalist's fashion describing the theory as subject to the no true Scotsman problem: exceptions are explained away as not being between "real" democracies or "real" wars.

Some democratic peace researchers require that the executive result from a substantively contested election. This may be a restrictive definition: For example, the National Archives of the United States notes that "For all intents and purposes, George Washington was unopposed for election as President, both in 1789 and 1792". Spiro made several other criticisms of the statistical methods used. Russett and a series of papers described by Ray responded to this, for example with different methodology.

Sometimes the datasets used have also been criticized. For example, some authors have criticized the Correlates of War data for not including civilian deaths in the battle deaths count, especially in civil wars. Weeks and Cohen argue that most fishing disputes, which include no deaths and generally very limited threats of violence, should be excluded even from the list of military disputes. Gleditsch made several criticisms to the Correlates of War data set, and produced a revised set of data. Maoz and Russett made several criticisms to the Polity I and II data sets, which have mostly been addressed in later versions. These criticisms are generally considered minor issues.