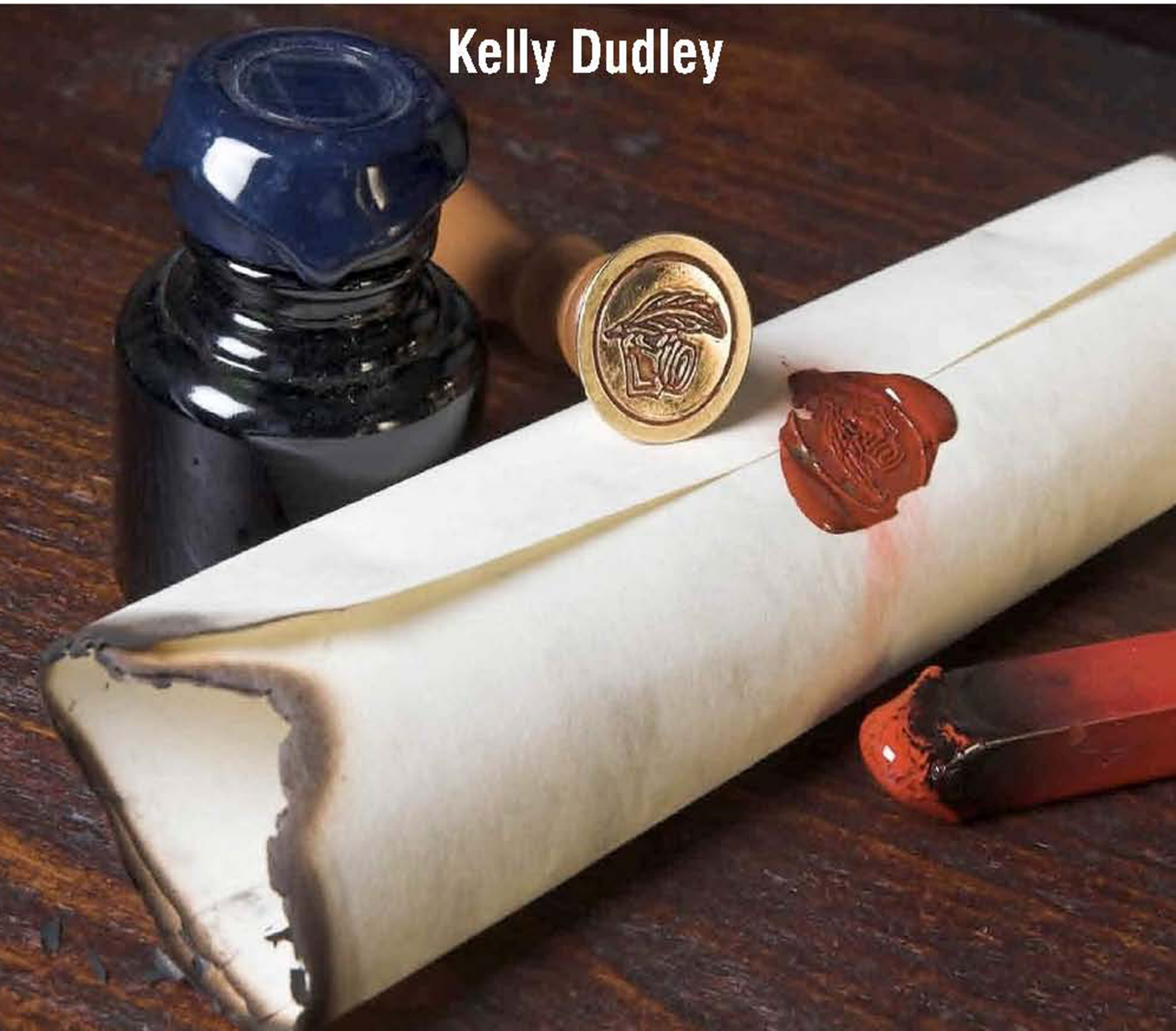
STATE
A DEFINITION AND ELEMENTS



Kelly Dudley

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by Kelly Dudley

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Chapter 1

Introduction

State

Pre-State to State in Early North India

There are several sources for the revise of the transition from pre-state to state in early North-India. One of the troubles we side is in figuring out whether and how the Harappan proof can be brought to bear on the issue. It is now usually conceded that there was state — like organizations in the Harappan context. Though, in the absence of textual customs, reconstruction of the specific nature of the Harappan state tend to range from reasonable, imaginative possibilities, to more speculative ventures. What is more, it is well-nigh impossible to trace continuities in political procedures from the Harappan to post-Harappan civilizations.

Pre-State Situation in South India

The conventional historiography has always attributed dynastic and kingly status to the ruling rows described the Cera-s, Pandya-s, and Cola-s in the Tamil macro area that broadly corresponds to the landmass flanked by Tiruvenkatam in the north and Kanyakumari in the south. An inescapable contingent of the South Indian historiography, this assumption continues to power the students of history. Recent historiography has made a departure through identifying the aforesaid ruling rows since chiefdoms, quite typical of pre-

state civilizations. This departure is founded on studies that illustrate the socio-economic and political set-up of the area mainly undifferentiated and non-stratified, enabling to categories the aggregate since a pre-state social formation.

The pre-state social formation of Tamilakam was a combination of four dissimilar shapes of existence viz., the hunting – gathering, cattle keeping, plough agriculture and crafts manufacture, notwithstanding sure overlapping situations. Primitive agriculture and animal husbandry had politico-cultural dominance. The notion of *aintinai* based physiographic division and their respective existence patterns and socio-cultural ideas and organizations embedded in the Tamil heroic poetics, is the perennial source for characterizing the social formation.

The overall socio-economic milieu was that of hunting – gathering and agriculture in the ecotypes of hilly backwoods, agro-rustic existence in the grasslands, plough agriculture in the wetlands, fishing and salt creation in the littoral and predatory dependence on others in the parched zones. Interspersed beside these ecotypes few people occupied in some metal and ceramic works. The peoples in the dissimilar ecotypes interacted with one another by formal and informal means of swap and predatory dealings. Peoples of these several economies existed in clusters of kindred descendants, each in the self-sustaining resolution described *Ur*, the vital element of manufacture with varying degrees of growth depending upon its technology and productivity. Despite the developmental unevenness, all of them were mainly undifferentiated economies of reciprocity and redistribution. The old Tamil word and a diversity of shared beliefs and instituted practices

rendered the economically diverse peoples to be linguistically and culturally homogeneous. The political building of the social formation was characterized through chiefdoms of dissimilar sizes.

The Formation of the State

With the sixth century AD we see the new agrarian organization articulating its political manage since manifested in the Pallava, Pandya, Cera and Cola ruling homes. The new political formation represented through the Simhavarman row of the Pallavas and the Kadungon row of the Pandyas owed itself to the developing agrarian community whose expansion was connected to royal patronage. The Colas of the Vijayalaya row at a later era represented the similar type of political power engendered through the paddy based economy. However it is not clear whether the Ceras represented a comparable royal row of inheritance, the political power represented through them too was engendered through the paddy economy. With the expansion of the new dealings of manufacture and the spread of wet-rice agriculture that characterized the era from 6th – 7th centuries, the community became class-structured and the birth of the state plausible.

The birth of a new political building dissimilar from that of the chiefdom was a biggest simultaneous procedure with the growth and expansion of wet-rice agriculture. Its antecedents involved the transition from kin-labour to non-kin labour, multiple functionaries to hereditary job clusters, clans to castes, easy clannish settlements to structured agrarian villages, and chiefdom to monarchy. A perceptible institutional characteristic of agrarian expansion was the proliferation of

brahmadeya villages during the fertile tracts of biggest river valleys in the area. This was an organized affair under the royal initiative. Some copper plates, say Velvikkuti plates for example, speak in relation to the restoration of the villages originally gifted to brahmanas since *ekabhoga* and subsequently lost by misappropriation through others. All such lost villages were later restored since *brahmadeyas* under the corporate manage since the cases like the Velvikkuti vouch for. This shift from individual holding to communal holding is significant in the context of the insecurity of the former. The proliferation of the latter meant the successful growth of the new organization of productive dealings under a new institutional shape and political patronage.

The social dealings began to be further structured throughout the sixth-seventh centuries with the steady expansion of plough agriculture crossways the wetland. Expansion of agrarian settlements by the making of *brahmadeyas* often involved the superimposition of the larger rights of the brahmans in excess of the communal holdings and the clan families of the locality. It necessity have been a complex procedure of transformation of primitive agriculture and clan settlements into advanced agriculture and farmer settlements, respectively. The largest characteristics of the procedure were differentiation, stratification, and political formation leading to the growth of the state-organization and power buildings. These were simultaneous growths taking lay since supplementary and complimentary to one another, resulting from the development of agrarian economy. Such growths were in their turn ensuring the further development of the economy.

The dealings of manufacture in plough agriculture were expanding towards power of the total community. This was an extensive institutional procedure involving the proliferation of occupational specialization and its ordering into a hierarchy. The formation of agrarian localities was an ongoing procedure, and everywhere it accomplished a uniform building of social dealings. Since agrarian expansion advanced, human settlements originally bound through kinship got penetrated through the mechanisms of stratification. In short the transformation of non-brahman villages into productive dealings transcending kinship was a continuous procedure. The non-brahman villages are described *vellanvakai* in modern inscriptions. Such settlements began to be integrated since agrarian localities. This *nadu* was hence fundamentally dissimilar from the *nadu* that figures in the heroic poems. Since agrarian localities of hierarchically structured social dealings, the *nadus* subsequently acquired great political significance in the monarchical organization.

Irrespective of the information whether the villages were brahman or non-brahman settlements, the social building remained the similar everywhere. It was a hierarchy with landholders at the apex. The big number of leaseholders who were mostly artisans and craftsmen, constituted the intermediary. At the bottom of the community remained the primary producers. Approximately similarity to the leaseholders there appeared a category of self-governing agricultural families who held little strips of land since hereditary holdings. Kani rights were also assigned to several intermediary holders either from the temple lands or since family holdings. They became hereditary in due course. Such holdings originally tilled through the holders themselves too

began to be tilled through the primary producers. The hierarchy became more elaborate throughout the 7th and 8th centuries. There appeared dissimilar categories of people with diverse kinds of hereditary rights on land. The agricultural produce circulated in determinate shares from the bottom to the top. It took a structured path by all the dissimilar categories of people enjoying the dissimilar stages of entitlement. The mainly benefited were the landholders who were ensured of goods and services through the settlers in their land while the mainly exploited were the primary producers. The state in South India was the structured outcome of the Brahmanas agrarian community and polity.

Territorial States to Empire

Pre-State to State

It is hard to generalize in relation to the origin of states because they are products of the convergence of numerous procedures of transform. Nevertheless, one has to address the issue because the state since an organization did not exist from time immemorial. Before proceeding any further on the matter one may briefly dwell on the question of what are the core issues. One may begin through defining the term state, search for its correlates in ancient Indian texts and then move on to see how and when the constitutive units came jointly, leading to the emergence of states. The saptanga theory of state in the Arthasastra can be a convenient point of reference and, flowing from it, one could investigate the emergence of kingship, crystallization of varna divided community, development of private property in land, the thought of a sense of belonging to a territory and the introduction of taxes,

fortified settlements, administrative machinery and the standing army to create the common point that these variables promoted the reason of the state. Alternatively, one can focus on the procedures to illustrate how intricate were the growths and why and how ultimately the Brahmanas and Kshatriyas appeared since the domination elite, enjoying a significant section of the societal surplus, while others agreed to pay taxes and render labour.

Early Vedic Level

Throughout the early section community was characterized through kin organisation. Conditions such since gotra, vratya, sraddha and even grama denoting clusters of people were actually kinship conditions. Such clusters reared their cattle, went for a hunt and fought the enemy since an element. These kin clusters, perhaps resembling group livelihood, were based on require for communal existence. Each of these elements was headed through its chief, who require not be confused with the later day king. In the later section of the Rig Vedic level, we are told, one encounters superior kin elements like jana and vis, which are comparable to tribes and clans respectively. The chiefs came to be recognized since janasya gopta, gopa janasya or vispati. These conditions accentuated their role since herdsmen or protectors.

There is proof for intra-tribal and inter-tribal disagreements which, it is said, strengthened the location of the chiefs because of the role they were described upon to play in such situations. Both in the event of victory and defeat, since also the weakening of kin loyalty, the chiefs had to give for little type of order and cohesion. Such role separately, the chiefs

also presided in excess of the Rig Vedic assemblies viz., the Sabha, Samiti, Vidhatha and Gana. Society wealth, including the booty from successful raids, was distributed equally in the middle of the members of the tribe. Individual members on several occasions gave a section of what they had to the chief mainly owing to the latter's leadership functions. The chiefs generally redistributed such gifts throughout society feasts. As the economy was predominantly rustic and it was hard to accumulate wealth, so, Rig vedic community was mainly egalitarian in nature. Notwithstanding the reference to the four varnas in the Purushasukta at the end of the Rig Veda, which is generally measured to be a later interpolation, community sustained to be egalitarian. Though, in therefore distant since the political growths were concerned the chiefs gained in status both owing to their leadership role since well since the hymns collected in their praise through bards who received gifts from them.

Later Vedic Level

The Later Vedic era was a significant middle level, marked through the sharpening of growths in sure regions, leading to the threshold of state systems. The scene of action shifted eastward, to western Uttar Pradesh and the adjoining areas of Haryana and Rajasthan. Based on the chronological and spatial similarity flanked by later vedic literature and the painted Grey Ware civilization which are dated to the first half of the first millennium B.C., it is envisaged that the authors of the texts and the archaeological civilization were the similar people. Flowing from it the material civilization of the times is constructed on the foundation of the combined testimony of the two sources. The people practiced agriculture and reared

cattle. Wheat, rice, pulses, lentil etc., were recognized. The assured food supplies continued biggest and minor sacrifices, and the Doab became the cradle of sacrifices. Royal sacrifices such since the rajasuya and asvamedha went on to power kingship ideology for more than a thousand years. Separately from the fertility unit inherent in these rituals, which had something to do with placating the earth and augmenting manufacture, they also helped to raise the status of the chief and his associates. One comes crossways the term rajan and its expanded shapes such since rajanya, rajanya-bandhu, since also kshatriya. While ranjan meant the chief, the term kshatriya, deriving from the word kshatra represented the cluster of the people wielding domination. The sacrifices involved society feasts which the rajan alone could organize and the successful performance of these rituals implied the bestowal of divine boons and attributes on the performer i.e., the rajan. These growths accentuated his importance.

The rajan or kshatriya's rise to domination was not all that smooth, it was the result of extensive drawn procedures. An entire range of imageries and rituals were played out in public to achieve the ascendancy of the rajan and subordination of the society. The king ritually lent his hand to agricultural operations at the beginning of the season and practiced commensality with the members of the vis to signify general identity. Simultaneously the texts by the clever exploit of similes highlighted his exalted location. For instance, the rajan and vis were compared with deer and barley or the horse and other ordinary animals respectively. The rajan was a section of the society and yet had to be above it to execute decisions of general interest.

Such compulsions were attempted to be overcome by ritual means. With the rise of the rajanya/kshatriya there was a corresponding enhancement in the status of the brahmana. It was they who officiated at the rituals and were therefore instrumental in the elevation of the rajan. That possibly explains the brahmana-kshatriya connection and the emergence of the domination elite in early India. The proper conduct of sacrifices was prescribed in the Brahmana texts to ensure brahmana kshatriya dominance and the subservience of the vis. Rituals such since the upanayana ceremony was performed to emphasize varna and gender inequality. Women like sudras were kept out of it. There were variations in observance of the matters related to detail through the upper three varnas, signifying hierarchy. Likewise, clusters from outside the kin were ritually roped in which weakened kin ties and helped the procedure of the emergence of differentiation, which was necessary for state formation. Though, given the dependence of the elite on the lower varnas, pretensions of solidarity were maintained through involving members of the lower varnas in characteristics of rituals or, for instance, referring to the vaisyas since arya.

These, though, did no prevent the emergence of varna divided community. While in theory chiefs sustained to be elected the Brahmanical literature prescribed formulas for preserving the office of chief in excess of generations in the similar family. It suggests that the thought of hereditary succession was gaining ground. Though, it was the favored son, and not necessarily the eldest, who succeeded the father. That the thought of territory or territorial affiliation was acquiring currency can be seen from the prevalence of conditions such since rashtra and janapada. Though, taxes were not yet formally composed. Bali,

the gift of affection of the earlier era, was perhaps acquiring an obligatory character. The absence of officials and administrative functionaries to assess and collect revenues is quite clear. It is hard to perceive the ratnins, who had a role to play in the coronation ceremony, since few type of nascent officialdom. When it came to the protection of the realm the vis in the absence of an organized army, did it collectively. At the end of the later vedic era sure attributes of the state were in lay or to put it differently peasant societies were on the threshold of state formation, but the state had not yet fully appeared. It is argued that iron was yet to enter the productive procedure, agriculture had still not acquiesce the necessary surplus and sacrifices like the Asvamedha and Vajapeya, in the middle of others, involved the slaughter of animals and wasteful consumption. Jointly they held back the rise of the state.

Age of Buddha: Origin of Territorial States

Since one enters the age of the Buddha several of these limitations were overcome. The introduction of iron in agriculture helped deeper ploughing and the breaking of the difficult soil in the mid-Ganga plains. Iron was also used in several crafts and the creation of metallic money, i.e., the punch Marked coins. Approximately simultaneously wet paddy transplantation came to be practiced in this naturally rice rising region. Cumulatively these growths led to surplus produce, which in turn continued deal, taxes and the emerging stratified community, with its administrative functionaries, ideologues and wage laborers. Dharmasutra literature justified varna divisions and institutionalized inequality. Vaisyas and sudras bore the brunt of carrying out manufacture and

provided the necessary revenue and labour to maintain the king's men, army personnel, priests, ideologues and therefore on. Buddhism too recognized and endorsed several of these growths. There are references to ministers and armies in the context of Magadha and Kosala. The attendance of officials such since balisadhaka and karakara, for instance, suggests that taxes like bali and kara were composed. Therefore, through the sixth-fifth centuries B.C. territorial states appeared in northern India.

The perspective had been criticized mainly on two counts. First, it is said that the final emergence of states has been explained with reference to few type of technological determinism in what seems to be an iron-productivity surplus-state formation row of argument. Secondly, the emergence of the varnas and their assigned roles, either since receivers of taxes and gifts or providers of produce and labour, has not been fully explained. That brings us to Romilla Thapar's account of the emergence of states. She refers to anthropological concepts like lineage community and home-holding economy to explain the development of the hierarchically structured varna community, and her emphasis is on the interplay of multiple procedures of transform, bearing on state formation. It is said that Vedic literature is replete with references to lineage conditions, viz., gotra, vraja, etc. Lineage clusters comprised members of the senior and junior lineage. The senior lineage both controlled and had greater access to society possessions, however in principle there was communal ownership of land through the lineage cluster. In course of time through characterizing the seniority based on genealogical superiority since one premised on the ideology of patrilineal descent the rajanya asserted its power. It

accentuated endogamy to claim purity, and flowing from it asserted its exclusivity and superiority. The differentiation flanked by members of the senior and junior lineage increased with the transition to the later vedic era.

The emergence of a socio-economic shape approximating what is recognized since house holding economy is seen to have hastened the procedure of internal differentiation and the dissolution of lineage organisation throughout the later vedic times. The household comprised three to four generations of family members who may have resided in one or more than one home, but for purposes of manufacture, consumption and rituals shaped one single element. The extended family slowly began to exercise right on the land it cultivated, theoretically however such land was initially allotted to the society for its exploit in farming. In situations where the extended family labour was not enough to job the land, the non-kin members who were not related to the family through Kinship ties were roped in for agricultural behaviors. These people require not be confused with wage labour. They were practically a section of the family, participated in all family behaviors except for the family rituals. In the extensive-term since land allotted for farming was transformed into private property such retainers, who were few sort of family inheritance and may have appeared out of defeated and dispossessed peoples, were reduced to family servants. The rajanya/kshatriya and vaisya evolved from the senior and junior lineages respectively. Those relegated to the location of laborers and artisans become Sudras. Because the extended families within the given socio-economic building usually included three-four generations it allowed younger generations to move out, clear and settle in new lands in circumstances of population pressure. There are literary

references to the visioning off in the middle of societies since a consequence of such growths. Such tendencies facilitated the procedure of agrarian expansion and extended the boundary of peasant action. Therefore, within the framework of the home-holding economy one comes to understand the transition from lineage community to an intricate community and the state.

In the final levels leading to the emergence of the state Thapar, eschewing easy mechanical accounts, focuses on the mutually interactive nature of the procedures. Environment, technology, social stratification, surplus, urbanisation and ideology, in the middle of others, were significant factors in the creation of the state, but it is hard to prioritize them or identify the single mainly significant factor. Surplus, for instance, was related to social and political hierarchies and require of the non-producers to live off the produce of others. Likewise, it was connected to the sharing of the produce. In brief, community does not produce a surplus basically because of the availability of a given technology. It is the result of a combination of factors. The connection flanked by social differentiation, urbanisation and ideology too are quite intricate. Powerful modern religious ideas and systems played a significant role in shaping the nature of the emerging state systems – gana sanghas and monarchies. The Buddhist Sangha characterized through its egalitarian ideas was useful to the early states because it was able to integrate the varied clusters crossways caste and clan rows. The Sangha too depended for its sustenance on the subsistence of a strong state. Kings like Ajatsatru of Magadha and Ashoka Maurya extended patronage to Buddhism. In this analysis it is also argued that the mahajanapadas were either gana-sanghas or monarchies. While in the therefore described republics of Northeastern India the

procedure of transition to powerful centralized state was slow owing to the general ownership of land through the kshatriya clans whereas the territorial states in the upper Ganga plains could not easily shake off the later Vedic legacy of rituals, cattle sacrifice and wasteful consumption, those like Kosala and Magadha which were situated in the mid- Ganga plains were characterized through no such limitations. In addition, Magadha had the advantage of rich soil, gentle gradient towards Ganga, a history of rice farming, good rainfall, irrigated land, Bandhs used since water reserves, many rivers like the Son, Gandak, etc., which could also be used for communication and deal, and it was secure to the mines and minerals of Dhalbhum and Singhbhum. The forest of Rajmahal hills were used for procuring timber and were also the habitat of elephants. Magadha controlled the Dakshinapath and all circuits on the southern bank of the Ganga were connected to Magadha. The states that appeared in this section of northern India were evidently more viable and strong. They could sustain greater populations and generate the necessary taxes to meet the necessities of the state.

Chapter 2

Elections in India

Indian Electoral System

India has a quasi federal government, with elected officials at the federal (national), state and local levels. On a national level, the head of government, the Prime Minister, is elected indirectly by the people, through a general election where the leader of the majority winning party is selected to be the Prime Minister. All members of the federal legislature, the Parliament, are directly elected. Elections in India take place every five years by universal adult suffrage.

In 2009, the elections involved an electorate of 714 million (larger than both EU and US elections combined). Declared expenditure has trebled since 1989 to almost $300 million, using more than one million electronic voting machines.

The size of the huge electorate mandates that elections be conducted in a number of phases (there were four phases in 2004 General Elections and five phases in 2009). It involves a number of step-by-step processes from announcement of election dates by the Election Commission of India, which brings into force the 'model code of conduct' for the political parties, to the announcement of results and submission of the list of successful candidates to the executive head of the state or the centre.

The submission of results marks the end of the election process, thereby paving way for the formation of the new government.

The Parliament of India comprises the head of state—the president of India—and the two Houses which are the legislature. The President of India is elected for a five-year term by an electoral college consisting of members of federal and state legislatures. Parliament of India has two chambers.

The House of the People (*Lok Sabha*) has 545 members, 543 members elected for a five-year term in single-seat constituencies and two members appointed to represent the Anglo-Indian community (as envisaged by the Constitution of India, as of now the members of Lok Sabha are 545, out of which 543 are elected for 5-year term and 2 members represent the Anglo-Indian community). The 550 members are elected under the plurality ('first past the post') electoral system.

Council of States (*Rajya Sabha*) has 245 members, 233 members elected for a six-year term, with one-third retiring every two years. The members are indirectly elected, this being achieved by the votes of legislators in the state and union (federal) territories.

The elected members are chosen under the system of proportional representation by means of the Single Transferable Vote. The twelve nominated members are usually an eclectic mix of eminent artists (including actors), scientists, jurists, sportspersons, businessmen and journalists and common people.

History of Elections in India

Lok Sabha is composed of representatives of the people chosen by direct election on the basis of the adult suffrage. The maximum strength of the House envisaged by the Constitution is 552, which is made up by election of up to 530 members to represent the States, up to 20 members to represent the Union Territories and not more than two members of the Anglo-Indian Community to be nominated by the President, if, in his/her opinion, that community is not adequately represented in the House.

- 1st Lok Sabha (1952)
- 2nd Lok Sabha (1957)
- 3rd Lok Sabha (1962)
- 4th Lok Sabha (1967)
- 5th Lok Sabha (1971)
- 6th Lok Sabha (1977)
- 7th Lok Sabha (1980)
- 8th Lok Sabha (1984-85)
- 9th Lok Sabha (1989)
- 10th Lok Sabha (1991)
- 11th Lok Sabha (1996)

- 12th Lok Sabha (1998)
- 13th Lok Sabha (1999)
- 14th Lok Sabha (2004)
- 15th Lok Sabha (2009)

History of Political Parties

The dominance of the Indian National Congress was broken for the first time in 1977, with the defeat of the party led by Indira Gandhi, by an unlikely coalition of all the major other parties, which protested against the imposition of a controversial Emergency from 1975–1977. A similar coalition, led by VP Singh was swept to power in 1989 in the wake of major allegations of corruption by the incumbent Prime Minister, Rajiv Gandhi. It, too, lost its steam in 1990.

In 1992, the heretofore one-party-dominant politics in India gave way to a coalition system wherein no single party can expect to achieve a majority in the Parliament to form a government, but rather has to depend on a process of coalition building with other parties to form a block and claim a majority to be invited to form the government.

This has been a consequence of strong regional parties which ride on the back of regional aspirations. While parties like the TDP and the AIADMK had traditionally been strong regional contenders, the 1990s saw the emergence of other regional players such as the Lok Dal, Samajwadi Party, Bahujan Samaj Party and the Janata Dal. These parties are traditionally based on regional aspirations, *e.g.* Telangana Rashtra Samithi or are

strongly influenced by caste considera-tions, *e.g.* Bahujan Samaj Party which claims to represent the Dalits.

Presently, the United Progressive Alliance led by the Congress Party is in power, while the National Democratic Alliance forms the opposition. Manmohan Singh was re-elected the Prime minister of India.

Election Commission

Elections in India are conducted by the Election Commission of India, the authority created under the Constitution. It is a well established convention that once the election process commences; no courts intervene until the results are declared by the election commission. During the elections, vast powers are assigned to the election commission to the extent that it can function as a civil court, if needed.

Electoral Process

Electoral Process in India takes at least a month for state assembly elections with the duration increasing further for the General Elections. Publishing of electoral rolls is a key process that happens before the elections and is vital for the conduct of elections in India.

The Indian Constitution sets the eligibility of an individual for voting. Any person who is a citizen of India and above 18 years of age is eligible to enroll as a voter in the electoral rolls. It is the responsibility of the eligible voters to enroll their names. Normally, voter registrations are allowed latest one week prior to the last date for nomination of candidates.

Pre Elections

At first before the elections the dates of nomination, polling and counting takes place. The model code of conduct comes in force from the day the dates are announced. No party is allowed to use the government resources for campaigning. The code of conduct stipulates that campaigning be stopped 48 hours prior to polling day.

Voting Day

Government schools and colleges are chosen as polling stations. The Collector of each district is in charge of polling. Government employees are employed to many of the polling stations. Electronic Voting Machines (EVMs) are being increasingly used instead of ballot boxes to prevent election fraud via booth capturing, which is heavily prevalent in certain parts of India. An indelible ink is applied usually on the left index finger of the voter as an indicator that the voter has cast his vote. This practice has been followed since the 1962 general elections to prevent bogus voting.

"None of the above" Voting Option

"None of the above" is a proposed voting option in India that would allow voters who support none of the candidates available to them to register an official vote of "none of the above", which is not currently allowed under India election regulation. The Election Commission of India told the Supreme Court in 2009 that it wished to offer the voter a None of the above button on voting machines; the government, however, has generally opposed this option.

Post Elections

After the election day, the EVMs are stored in a strong room under heavy security. After the different phases of the elections are complete, a day is set to count the votes. The votes are tallied typically, the verdict is known within hours. The candidate who has mustered the most votes is declared the winner of the constituency.

The party or coalition that has won the most seats is invited by the President to form the new government. The coalition or party must prove its majority in the floor of the house (Lok Sabha) in a vote of confidence by obtaining a simple majority (minimum 50%) of the votes in the house.

Voter Registration

For few cities in India, the voter registration forms can be generated online and submitted to the nearest electoral office.

Absentee Voting

As of now, India does not have an absentee ballot system. Section 19 of The Representation of the People Act (RPA)-1950 allows a person to register to vote if he or she is above 18 years of age and is an 'ordinary resident' of the residing constituency *i.e.* living at the current address for 6 months or longer. Section 20 of the above Act disqualifies a non-resident Indian (NRI) from getting his/her name registered in the electoral rolls. Consequently, it also prevents a NRI from casting his/her vote in elections to the Parliament and to the State Legislatures.

In August 2010, Representation of the People (Amendment) Bill-2010 which allows voting rights to NRI's was passed in both Lok Sabha with subsequent gazette notifications on Nov 24, 2010. With this NRI's will now be able to vote in Indian elections but have to be *physically present* at the time of voting.

Several civic society organizations have urged the government to amend the RPA act to allow NRI's and people on the move to cast their vote through absentee ballot system. People for Lok Satta has been actively pushing combination of internet and postal ballot as a viable means for NRI voting.

Election Commission of India

Elections enable every adult citizen of the country to participate in the process of government formation. You must have observed that elections are held in our country frequently. These include elections to elect members of the Lok Sabha, Rajya Sabha, State Legislative Assemblies (Vidhan Sabhas) Legislative Councils (Vidhan Parishad) and of, President and Vice-President of India. Elections are also held for local bodies such as municipalities, municipal corporations and Panchayati Raj justifications.

If you have attained the age of 18, you must have voted in some of these elections. If not, you will have the opportunity to vote in the next round of elections. These elections are held on the basis of universal adult franchise, which means all Indians of 18 years of age and above have the right to vote, irrespective of their caste, colour, religion, sex or place of birth.

Election is a complex exercise. It involves schedules rules and machinery. This chapter will give you a clear depiction of the voting procedure, as also about filing of nominations, their scrutiny and the campaigns carried out by the parties and the candidates before actual polling. In this chapter you will read about the Election Commission, electoral system in India and also some suggestions for electoral reforms.

Election Commission of India

The architects of the Indian Constitution attached special significance to an independent electoral machinery for the conduct of elections. The Constitution of India provides for an Election Commission of India which is responsible for superintendence direction and control of all elections.

It is responsible for conducting elections to both the Houses of Parliament and State Legislatures and for the offices of President and Vice-President. Besides, it is also responsible for the preparation revision, updation and maintenance of lists of voters. It delimits constituencies for election to the Parliament and the State Legislatures, fixes the election programme and settles election disputes. It performs many other functions related to elections.

Composition

The Election Commission consists of the Chief Election Commissioner and such other Election Commissioners as may be decided by the President from time to time. Ever since the first Chief Election Commissioner was appointed in 1950, there was no other Election Commissioner till 1989.

The Chief Election Commissioner was assisted by a larger number of officials. The Election Commission became a multi-member body on 16 October 1989 when the President appointed two more Election Commissioners. The senior of the two Election Commissioners is appointed as the Chief Election Commissioner.

Tenure and Removal

Chief Election Commissioner and other Election Commissioners are appointed for a term of six years, or till the age of 65 whichever is earlier. It is important that Chief Election Commissioner and other Election Commissioners should be free from all political interferences.

Therefore, even if they are appointed by the President, they cannot be removed by him. And no changes can be brought in the conditions of service and the tenure of office after their appointment.

The Chief Election Commissioner cannot be removed from office, except on the grounds and in the manner on which the Supreme Court judges can be removed. However, since the other Election Commissioners and the Regional Election Commissioners work under the Chief Commissioner, they may be removed by the President on his recommendations.

Powers and Functions of the Election Commission

The primary function of the Election Commission is to conduct free and fair elections in India. For this purpose, the Election Commission has the following functions:

Delimitation of Constituencies

To facilitate the process of elections, a country has to be divided into several constituencies.

- *Constituency*: It is territorial area from where a candidate contests elections

The task of delimiting constituencies is generally performed by the Delimitation Commission consisting of five serving or retired judges of the Supreme Court and the Chief Election Commissioner who is its ex-officio member. All secretarial assistance (at all levels, national, state, district) is provided to the Delimitation Commission by the Election Commission. The Delimitation Commission is constituted by the Government from time to time.

Preparation of Electoral Rolls

Each constituency has a comprehensive list of voters. It is known as the Electoral Roll, or the Voters' List. The Commission prepares the Electoral Roll for Parliament as well as Legislative Assembly elections. The Electoral Roll of every constituency contains the names of all the persons who have right to vote in that constituency. The electoral roll is also revised from time to time generally before every general election, by-election and mid-term election in the constituency.

General Election Election to constitute a new Lok Sabha or Assembly is called General Election.

By-Election If at any time there is a mid-term vacancy due to the death or resignation of a member either in Lok Sabha or

Legislative Assembly only one seat falls vacant. The election for that seat is known as by-election.

Mid-term Election If the Lok Sabha or State Assembly is dissolved before completion of five years and the election is held to constitute new Lok Sabha or new State Assembly, etc. is called midterm election.

The revision is carried out from house to house by the enumerators appointed by Election Commission and all eligible voters are registered.

A person can be registered as a voter if he/she fulfils the following conditions:

- He/she is a citizen of India.
- He/she is 18 years of age.
- He/she is resident of the constituency.

Recognition of Political Parties

One of the important functions of the Election Commission is to recognise political parties as all India (National) or State (Regional) Political Parties.

If in a general election, a particular party gets four per cent of the total valid votes polled in any four states it is recognised as an all India (National) Party. If a party gets four per cent of the total valid votes in a state, it is recognized as a State or regional party. The Indian National Congress, the Bharatiya Janata Party (BJP), the Communist Party of India (CPI), The

Communist Party of India (Marxist) the Bahujan Samaj Party (BSP) and the Nationalist Congress Party are at present major recognised national parties.

Allotment of Symbol

Political Parties have symbols which are allotted by the Election Commission. For example, Hand is the symbol of the Indian National Congress, Lotus is the symbol of the Bharatiya Janata Party (BJP) and Elephant is the symbol of Bahujan Samaj Party.

These symbols are significant for the following reasons:

- They are a help for the illiterate voters who cannot read the names of the candidates.

- They help in differentiating between two candidates having the same name.

Officers on Election Duty Structure of Government

To ensure that elections are held in free and fair manner, the Election Commission appoints thousands of polling personnel to assist in the election work.

These personnel are drawn among magistrates, police officers, civil servants, clerks, typists, school teachers, drivers, peons etc. Out of these there are three main officials who play very important role in the conduct of free and fair election. They are Returning Officer, Presiding Officer and Polling Officers.

Returning Officer

In every constituency, one Officer is designated as Returning Officer by the Commission in consultation with the concerned State government. However, an Officer can be nominated as Returning Officer for more than one constituency. All the nomination papers are submitted to the Returning Officer. Papers are scrutinised by him/her and if they are in order, accepted by him/her.

Election symbols are allotted by him/her in accordance with the directions issued by the Election Commission. He/she also accepts withdrawal of the candidates and announces the final list. He/she supervises all the polling booths, votes are counted under his/her supervision and finally result is announced by him/her. In fact, the Returning Officer is the overall incharge of the efficient and fair conduct of elections in the concerned constituency.

Presiding Officers

Every constituency has a large number of polling booths. Each polling booth on an average caters to about a thousands votes. Every such booth is under the charge of an officer who is called the Presiding Officer.

He/she supervises the entire process polling in the polling booth and ensures that every voter gets an opportunity to cast vote freely. After the polling is over he/she seals all the ballot boxes and deliver them to the Returning Officer.

Polling Officers

Every Presiding Officer is assisted by three to four polling officers. They check the names of the voters in the electoral roll, put indelible ink on the finger of the voter, issue ballot papers and ensure that votes are secretly cast by each voter.

[*Indelible Ink:* This ink cannot be removed easily. It is put on the first finger of the right hand of the voter so that a person does not come again to cast vote for the second time. This is done to avoid impersonation.]

Electoral Process

Elections in India are conducted according to the procedure laid down by law. The following process is observed.

Notification for Election

The process of election officially begins when on the recommendation of Election Commission, the President in case of Lok Sabha and the Governor in case of State Assembly issue a notification for the election. Seven days are given to candidates to file nomination. The seventh day is the last date after the issue of notification excluding Sunday.

Scrutiny of nomination papers is done on the day normally after the last date of filing nominations. The candidate can withdraw his/her nomination on the second day after the scrutiny of papers. Election is held not earlier than twentieth day after the withdrawal.

Filing of Nomination

A person who intends to contest an election is required to file the nomination paper in a prescribed form indicating his name, age, postal address and serial number in the electoral rolls. The candidate is required to be duly proposed and seconded by at least two voters registered in the concerned constituency. Every candidate has to take an oath or make affirmation. These papers are then submitted to the Returning Officer designated by the Election Commission.

Security Deposit

Every candidate has to make a security deposit at the time of filing nomination. For Lok Sabha every candidate has to make a security deposit of `10,000/- and for State Assembly `5,000. But candidates belonging to Scheduled Castes and Scheduled Tribes are required to deposit `5,000/– for if contesting the Lok Sabha elections and `2,500/– for contesting Vidhan Sabha elections. The security deposit is forfeited if the candidate fails to get at least 1/6 of the total valid votes polled.

Scrutiny and Withdrawal

All nomination papers received by the Returning Officer are scrutinised on the day fixed by the Election Commission. This is done to ensure that all papers are filled according to the procedure laid down and accompanied by required security deposit.

The Returning Officer is empowered to reject a nomination paper on any one of the following ground:

- If the candidate is less than 25 years of age.
- If he/she has not made security deposit.
- If he/she is holding any office of profit.
- If he/she is not listed as a voter anywhere in the country

The second day after the scrutiny of nomination papers is the last date for the withdrawal of the candidates. In case that day happens to be a holiday or Sunday, the day immediately after that is fixed as the last day for the withdrawal.

Election Campaign

Campaigning is the process by which a candidate tries to persuade the voters to vote for him rather than others. During this period, the candidates try to travel through their constituency to influence as many voters as possible to vote in their favour.

In the recent times, the Election Commission has granted all the recognised National and Regional Parties, free access to the State-owned electronic media, the All India Radio (AIR) and the Doordarshan to do their campaigning. The total free time is fixed by the Election Commission which is allotted to all the political parties. Campaigning stops 48 hours before the day of polling. A number of campaign techniques are involved in the election process.

Some of these are:

- Holding of public meetings

- Distribution of handbills, highlighting the main issues of their election manifesto (election manifesto is a document issued by political party. It is declaration of policies and programmes of the party concerned.

- Door to door appeal by influential people in the party.

- Broadcasting and telecasting of speeches by various political leaders.

Model Code of Conduct

During the campaign period the political parties and the contesting candidates are expected to abide by a model code of conduct evolved by the Election Commission of India on the basis of the consensus among political parties. It comes into force the moment schedule of election is announced by the Election Commission.

The code of conduct is as follows:

- Political Parties and contesting candidates should not use religious places for election campaign.

- Such speeches should not be delivered in a way to create hatred among different communities belonging to different religions, castes and languages, etc.

- Official machinery should not be used for election work.

- No new grants can be sanctioned, no new schemes or projects can be started once the election dates are announced.

- One cannot misuse mass media for partisan coverage.

Scrutinisation of Expenses

Though the Election Commission provides free access for a limited time to all the recognised National and State parties for their campaign, this does not mean that political parties do not spend anything on their elections campaign. The political parties and the candidates contesting election spend large sum of amount on their election campaign. However, the Election Commission has the power to scrutinise the election expenses to be incurred by the candidates.

There is a ceiling on expenses to be incurred in Parlia-mentary as well as State Assembly elections. Every candidate is required to file an account of his election expenses within 45 days of declaration of results. In case of default or if the candidate has incurred (expenses) more than the prescribed limit, the Election Commission can take appropriate action and the candidate elected may be disqualified and his election may be countermanded.

Polling, Counting and Declaration of Result

In order to conduct polling, large number of polling booths are set up in each constituency. Each booth is placed under the charge of a Presiding Officer with the Polling Officers to help the process. A voter casts his/her vote secretly in an enclosure, so that no other person comes to know of the choice he/she has made.

It is known as secret ballot. After the polling is over, ballot boxes are sealed in the presence of agents of the candidates.

Agents ensure that no voter is denied right to vote, provided the voter turns up comes within the prescribed time limit.

Electronic Voting Machines (EVMs)

The Election Commission has started using tamper proof electronic voting machines to ensure free and fair elections. Each machine has the names and symbols of the candidates Structure of Government in a constituency. One Electronic Voting Machine (EVM) can accommodate maximum of 16 candidates. But if the number exceeds 16, then more than one EVM may be used. If the number of candidates is very large, ballot papers may be used.

The voter has to press the appropriate button to vote for the candidate of his/her choice. As soon as the button is pressed, the machine is automatically switched off. Then comes the turn of the next voter. The machine is easy to operate, and with this the use of ballot paper and ballot boxes is done away with.

When the machine is used, the counting of votes becomes more convenient and faster. The EVMs were used in all the seven Lok Sabha constituencies in Delhi in 1999, and later in all the State Assembly constituencies. In 2004 General Elections EVMs were used all over the country for Lok Sabha elections.

The sealed ballot boxes or EVMs are shifted in tight security to the counting centre. Counting takes place under the supervision of the Returning

Officer and in the presence of candidates and their agents. If there is any doubt about the validity or otherwise of a vote, decision of the Returning Officer is final. As soon as counting

is over, the candidate securing the maximum number of votes is declared elected (or returned) by the Returning Officer.

Re-poll

If at the time of polling, a booth is captured by some anti-social elements, the Election Commission may order holding of re-poll in either the entire constituency or particular booths.

Countermanding of Election

If a duly nominated candidate belonging to a recognised party dies at any time after the last date of nomination and before the commencement of polling, the Election Commission orders countermanding the elections. This is not just postponement of polling. The entire election process, beginning from nominations is initiated afresh in the concerned constituency.

Shortcomings of Indian Electoral System

There has been universal appreciation of the Indian electoral system. People have hailed the manner in which elections have been conducted in India. But there are its weaknesses. It has been seen that in spite of the efforts of Election Commission to ensure free and fair election, there are certain shortcomings of our Electoral system.

Money Power

The role of unaccounted money in elections has become a serious problem. The political parties collect funds from companies and business houses, and then use this money to

influence the voter to vote in their favour. The business contributions are mostly in cash and are not unaccounted. Many other corrupt practices are also adopted during election such as bribing, rigging or voters intimidation, impersonation and providing transport and conveyance of voters to and fro the polling stations. The reports of liquor being distributed in poor areas are frequent during election.

Muscle Power

Earlier the criminals used to support the candidates by intimidating the voter at a gunpoint to vote according to their direction. Now they themselves have come out openly by contesting the elections leading to criminalisation of politics. As a result violence during elections has also increased.

Caste and Religion

Generally the candidates are given tickets by the political parties on the consideration whether the candidate can muster the support of numerically larger castes and communities and possesses enough resources. Even the electorates vote on the caste and communal lines. Communal loyalties of the voters are used at the time of propaganda campaign.

Misuse of Government Machinery

All the political parties do not have equal opportunity in respect of access to resources. The party in power is always in advantageous position then the opposition parties. There is widespread allegation that the party in power accomplishes misuse of government machinery. All these features lead to

violence, booth capturing, rigging bogus voting, forcible removal of ballot papers, ballot boxes burning of vehicles, etc. which result into loss of public faith in elections.

Electoral Reforms

In order to restore the confidence of the public in the democratic electoral system, many electoral reforms have been recommended from time to time by Tarkunde Committee and Goswami Committee which were particularly appointed to study and report on the scheme for Electoral Reforms in the year 1974 and 1990 respectively. Out of these recommendations some have been implemented. In fact, it was under the chairmanship of the then Chief Election Commissioner, T.N. Seshan, that Election Commission initiated many more measures to ensure free and fair elections.

Some of the reforms which have been implemented so far are as follows:

- The voting age has been lowered from 21 years to 18 years. This has helped increase the number of voters and response confidence in the youth of the country.

- Another landmark change has been the increase in the amount of security deposit by the candidate to prevent many nonserious condidates from contesting elections with a ulterior motive.

- The photo identity cards have been introduced to eradicate bogus voting or impersonation.

- With the introduction of Electronic Voting Machine (EVM) the voting capturing, rigging, and bogus voting may not be possible. The use of EVM will in the long run result in reducing the cost of holding elections and also the incidence of tampering during counting of votes.

- If a discrepancy is found between the member of votes polled and number of total votes counted, the Returning officer away report the matter forthwith to Election Commission. Election Commission on such report may either declare the poll at the particular polling station as void and give a date for fresh poll or countermand election in that constituency.

There is no doubt that India needs drastic poll reforms but still the fact remains that Indian elections have been largely free and fair and successfully conducted. It gives the country the proud distinction of being the largest democracy in the world.

Chief Election Commissioner of India

The Chief Election Commissioner heads the Election Commission of India, a body constitutionally empowered to conduct free and fair elections to the national and state legislatures. Chief Election Commissioner of India is usually a member of the Indian Civil Service and mostly from the Indian Administrative Service or the Indian Revenue Service.

The President of India appoints the Chief Election Commissioner and two Election Commissioners. They have tenure of six years, or up to the age of 65 years, whichever is earlier. They enjoy the same official status and receive salary and perks as available to Judges of the Supreme Court of

India. The Chief Election Commissioner can be removed from office only through impeachment by Parliament.

Despite the recent changes in the hierarchy, the system always had powers to impose unambiguous rules and guidelines that applied across the entire nation *e.g.* as to how the ballots will be cast and counted, what will be regarded as 'unqualified' vote (something whose importance became very evident during US presidential election in 2000).

India was probably one of the first countries in the World to go for a completely electronic ballot in the last elections. What made this remarkable was the fact that the Office of the Chief Election Commissioner had successfully implemented this across the entire diverse Indian population that also consisted of the rural illiterate people.

While the office has always been an important one in the machinery of the Indian political process, it gained significant public attention during the tenure of T.N. Seshan, from 1990-1996. Mr. Seshan is widely credited with undertaking a zealous effort to end corruption and manipulation in Indian elections.

Though he made significant progress, several politicians attempted to derail these efforts. In particular, the expansion of the Election Commission to include the two Election Commissioners (in addition to the Chief Commissioner) was seen as a move to curtail the commission's ability to act aggressively.

Chapter 3

State: Origins and Development

Social Contract Theory

The origin and the development of the state have attracted a great deal of attention of practically all the important political thinkers. Like the other concepts in political theory, important changes are reflected in the understanding of the nature of the state with the changes in political order and the advancement in other areas of human knowledge. The social contract theory in the seventeenth century introduced a radical departure in analyzing the relationship between the ruler and the ruled challenging the traditional divine right theory, by arguing that the ruler and ruled are two parties of the agreement and as such essentially equal. The evolutionary theory provided a more plausible account of the gradual consolidation of the state in its present form.

The distinction that the Greeks made between nature and convention was considered by many as the source of the social contract theory. One can find in the writings of the Sophists Antiphon, Hippias, Thrasymachus and Glaucon, the idea of an agreement as the beginning of the origin and organization of political society. Socrates (469-399 BC) in the Crito, showed the idea that implied contract and its concomitant obligations between the citizen and the state. Having remained and enjoyed the benefits of Athens as an adult he had thereby implicitly entered into an agreement with the state to abide by with its laws and thereby accept its authority over him in

exchange for those benefits. The ancient Chinese did not look upon political authority as supernatural and the Emperor as divine. They justified and defended revolution. Government for Confucius (K'sung Fu Tzu, 551-479 BC) was not a divine institution but a product of human reason and sound virtue. Mencius (Meng Tzu, 372-289 BC) even declared that a ruler who departed from reason and virtue could be executed. A ruler was responsible for the quality of governance and was accountable to his subordinates. Throughout Chinese thought runs an ideal of a ruler who has to ensure the safety and the prosperity of his people.

For the Hebrews, the monarch was both an agent of God and a symbol of the people, implying that besides divine sanction the monarch needed the support of his people. Hebrew thinkers repudiated the idea that the same person exercised both priestly and kingly functions. They advocated separation, so that the priest checked and criticized the king, if and whenever necessary. The idea of voluntarism, a crucial idea in the social contract tradition comes to western social thought with Augustine who borrows Cicero and Seneca, L. Annaeus'(c. 4 BC-65 AD) bona voluntas and broadens it into a pivotal moral concept.

Though not a voluntarist or a contractarian, Augustine stresses on a strong nexus between consent and will, thus paving the way for the social contract theory. An Alsatian Monk, Manegold of Lautenbach, wrote in 1080 that 'if in any way the king transgresses the contract by virtue of which he is chosen, he absolves the people from the obligation of submission'. For Manegold, political authority exists for meeting certain needs of the people.

Aquinas in whose writings the 'theory of Contract is finally hatched' also speaks of artificial relationships, such as agreements among a group of individuals to certain legal, economic and political standards. He explains the origin of the state as being a 'kind of pact between king and people'. Marsilius argues that people constitute the only legitimate source of all political authority and make laws either by themselves or through elected representatives, and it is the people who elect, correct and, if necessary, depose the government, an idea that Locke subsequently develops elegantly and cogently.

Engelbert of Volersdorf (1250-1311) was the first to state the idea of what came to be referred to as an original contract or pactum subiectionis, that implies the existence of a pre-political phase in human history. William of Ockham (1280/5-1349) and Nicholas of Cusa (1401-64) explicitly highlight the fact that a legitimate political authority depends on the free consent of subjects. Later writers refer to this as the state of nature. Salamonio in De Principatu (1511-13) like Manegold uses contractarian arguments to place limits on the power of princes. He claims that God and nature create all individuals as equals and the latter finds it necessary to establish kingdoms by an agreement between persons. Salamonio's importance lay in his conception of the political community or state {civitas) in Roman law which he terms as a civilis societas to mean a partnership made by free contract among individuals. The civil society is a partnership among individual citizens made possible by a contract between them.

He considers political society and its laws prior to the creation of the prince. The original contract is between the individual

citizens and not between the ruler and people. George Buchanan (1506-82), during the Reformation, endorses the idea of the contract. Franciso Suarez (1548-1617) argues that free will and consent are the cause of the state; that people will form one political body only on common consent that is voluntary. Richard Hooker (1554-1600) argues that the monarchs and bishops derive their authority from the consent of the community rather than from the divine right.

Junius Brutus', (a pseudonymous French Huguenot) Vindiciae Contra Tyrannos, written in 1570s, reiterates the existence in all domains of a mutually obligatory contract between the king and his subjects that requires the people to obey faithfully and the king to govern lawfully. A transgression of faith by the prince frees people from their obligation of obedience. Prior to this is also another contract(s) that focusses on the role of the individuals and government in the divine plan of the universe, as visualized by the Calvinists. This is covenant between God and the ruler and the people in, which the people undertake to honour and serve God, according to His will revealed in His word. A ruler who destroys true religion shall be resisted for the breach of the fundamental authorizing covenant. Johannes Althusius (1557-1638) establishes the authority of all princes and kings on an original contract between each people and its first ruler with a prior contract, the covenant of God that obliges the ruler to establish true religion and the people to resist him, if he does not do so.

This is also preceded by a contract by which the political community itself—the people, commonwealth or realm— is first established. Like Salamonio, Althusius argues that these laws bound the ruler, being a part of the original contract between

ruler and people. For Althusius, the parties to the commonwealth-forming contract are not individuals but provinces and cities, lesser political units with their government and laws.

These were formed prior to the commonwealth by private associations and eventually contracting individuals. Through this hierarchy of contracts Althusius makes the authority of the commonwealth and in particular its ruler, the supreme magistrate a conditional delegation from its component units and their representatives. This leads to the derivation of the Calvinist doctrine that the lesser magistrates have a duty to resist a tyrannical and ungodly king. Till the time of Althusius the 'contract theory in politics was mainly invoked in order to justify resistance to rulers'. The exception to this is Hobbes.

Contract Doctrine in Modern Times

Hugo Grotius (1583-1654), Hobbes, Samuel Pufendorf (1632-94), Locke, Rousseau and Immanuel Kant (1724-1804) in the seventeenth and eighteenth centuries, used the idea of the social contract to explain the origins and nature of the state and search for philosophical basis to moral and political obligation. Some like Kant used the idea of contract to characterize a form of political association and regard it as a rational criterion of the just polity. The crux of the social contract theory is the idea that legitimate government is artificially and voluntarily agreed upon by free moral agents and it rejects the argument that there is something like natural political authority.

Wayper calls it the 'Will and the Artifice Tradition'. Hobbes, Locke and Rousseau, the classical exponents of the doctrine of the social contract produce political prescriptions that are profoundly at variance with one another. Hobbes places premium on order and through the contract justifies an all-powerful absolute state. Locke considers consent as the basis of a legitimate political authority and defends a minimal constitutional state. Rousseau regards freedom as supreme, which is possible in community based on common interest and, thus he advances the notion of a moral state. However, common to their perceptions is the idea that an agreement made by all individuals who compose a state is the true foundation of the body politic.

It is not a pact between ruled and rulers but one that establishes rule explained with reference to a transition from the state of nature to a civil state. The idea of the social contract advances the notion of human equality as a result of the Protestant Reformation, the civil wars that raged in Europe between 1560 and 1660 and the rapid expansion of the commercial economy and market relations. This idea of equality implies that all rule— just and legitimate are constituted by the ruled who are free and equal thereby rejecting the notion of rule by right of birth, by divine right, by charisma, and by physical force. Most importantly it rejects the contention, which can be traced back to Plato, that only certain people are qualified to rule over the rest because they have an access to 'truth' whether religious revelation or scientific truth of ideology. Through an agreement between or by a multitude of individuals embedded in the notion of the social contract, isolated individuals voluntarily incorporate themselves into an acting unity, by creating a permanent union

between the present contractors and with the successors of the original contractors. The classic contractualists also contrast the pre-political—the state of nature —from the political order, to explain the rationale for political society. The contract theory in the seventeenth century criticized and provided a democratic alternative challenging absolutism and traditional dictatorship, part of the then dominant theory—Divine Right of Kings.

This theory accepted the proposition that the sovereign rules by divine ordinance or that he was divinity himself. Augustus consciously promoted the idea to the government of Rome to legitimize his newfound absolutism. In 1610 in a speech that James I the British monarch, delivered, he argued that 'Kings are not only God's lieutenants upon earth and sit upon God's throne, but even by God himself they are called gods' adding that kings, 'exercise a manner or resemblance of divine power on earth'. Since, the authority of the monarchs had been ordained by God himself for the benefit of humankind, the ruler had unlimited and indivisible sovereignty, though they were morally bound to follow the divine law.

The theory became popular during the English Civil War. Filmer defended and modified its arguments. Grotius stresses that the contract that establishes civil society constitutes a legal community compatible with individual's natural sociability and conformed to mutual recognition and protection of his moral rights. He believes that the contract actually takes place prior to the state in every community governed by law. Like Grotius, Hobbes considers self-preservation as a basic right. Through the state of nature, he portrays the dismal human existence since, it prohibits the possibilities of

commodious living that makes life meaningful and worthwhile. In the absence of a common power to keep individuals in awe there are no legal or moral rules, no notions of right and wrong, justice and injustice. There is no property and each can take whatever he can get and so long as he can keep it. This state of nature is a state of war, 'a war of every man against every man'. Natural freedom and natural equality of individuals in the state of nature are the reasons for this intolerable and insecure life. It such condition there is no place for Industry... no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving such things as require much force, no knowledge of the face of the earth; no account of Time, no Arts; no Letters, no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poor, nasty, brutish and short. The contract between one individual and the others enables them to come out of the state of nature, which is made possible due to the presence of natural laws. These natural laws are nineteen in all. Of these nineteen three are most important. These are:

- Seek peace and follow it,
- Abandon the natural right to things and
- That individuals must honour contracts.

There is just one contract that creates both the civil society and an absolute political authority. The sovereign power, the third party is a consequence and not a party to the contract. The contract was perpetual and irrevocable. There is no question of individuals first contracting amongst themselves

and then with the ruler thereby circumscribing his powers. Hobbes considers it the power of the sovereign to enforce contracts and make them binding. Pufendorf criticizes Hobbes and goes back to the older notions of 'two contracts' for he argues that individuals established a sovereign without obtaining in return a promise of protection.

Therefore, there must first be a contract to establish a political community, followed by a second one, between the community and its ruler. Interestingly, he does not concede the right of resistance, sharing Hobbes' perception that the pre-political state of nature is intolerable and the supreme political authority is by definition not accountable to or punishable by any person.

The social contract creates the 'person of the state', demanding almost complete obedience. The state has a personality that is distinct from the people who institute it. The state is a moral person with a will and capacity to bear rights and duties that none of the individual comprising it could claim in their own right. The aim of the state was to ensure the security of its citizens. Locke developed Pufendorf's arguments convincingly.

He restored the traditional role of the contract theory as a justification of resistance to government. However, he did not follow Pufendorf's multiple contracts and his tasks were twofold: first, to refute Filmer's criticisms of contractualism and second, to explain the origins of legitimate political authority. The First Treatise rejected the central arguments of Filmer, which were reiterated in the Second Treatise and these are broadly four:

- God does not give the relevant power to Adam.

- Assuming Adam had been granted this power does not mean that his heirs would also have a right to it.

- Even if Adam's heirs do have such a right, there are no clear rules of succession according to which the rightful heirs could be named.

- Even if there were such rules, it would be impossible to identify Adam's actual heirs, considering the time span since, God's original grant of power to him.

Through the technique of the social contract, Locke explains that consent is the basis of a legitimate political authority. Like Hobbes, he too begins with the idea of the state of nature. He rejects Filmer's biblical account of the origins of political power, without abandoning its religious foundations and acknowledges an explicit moral relationship between an individual and God.

To preserve oneself and the well-being of others is a duty that an individual owed to God as part of God's creation as the basic moral law of nature, that existed in the pre-political state of nature. Like Grotius and Pufendorf, Locke viewed the state of nature as a social condition regulated by God's moral law. Political authority, like all moral claims for Locke was ultimately based on religious obligations, the source of all morality. He used the contract as a means to create a body politic but concurrently as a device, to subordinate the body politic to the 'Kingdom of God'. This is in sharp contrast to the rigid secularism of Hobbes who refused to begin from absolute moral presumptions, seeing the social contract as creating a temporal political power for fulfilling external peace, security and earthly felicity.

The distinctiveness of Locke's argument was the two-staged contract as exemplified by two types of consent. The first contract created the civil society from the state of nature, to which the individual contractees directly consented and agreed to submit to the majority rule principle as the basis of decision-making. Unlike Hobbes, who considered civil society as uniting otherwise morally unrelated individuals, Grotius, Pufendorf, Locke and Emmerich de Vattel (1714-67) regarded the civil society with its ensuing obligations as superimposed upon a universal moral community, thus, resulting in potential conflicts between one's duties as a citizen and a human being.

While for Grotius the universal moral community of humankind is declared as a real constraint upon the activities of the state, Locke, Pufendorf and Vattel gradually place the state at the centre of international relations. They endorse a process that attains formal recognition and was greatly made easy by the Peace of Westphalia of 1648. The state becomes the principal moral entity through which the interests of individuals are expressed in the international society of states. The provision for an explicit consent as declaration of one's allegiance at becoming an adult exists in the constitution of Carolina in the United States, that Locke helped to draft. The second contract creates political authority with all its institutions—legislature, courts and socially authorized property arrangements—in the nature of a 'fiduciary' power, a trust. Tacit consent enables successor generations to consent to the arrangement upheld by the original contractors, thus, circumventing Filmer's criticism. Three indicators demonstrate tacit consent: the first is when a person possesses and enjoys property and transmits it to his heirs, which means he is obliged to the laws of that government. The second, when a

person lodges for a week and third, when he is travelling freely on the highway. Thus, unlike Hobbes who in spite of providing a contractual and consensual basis to his sovereign power accepts not only political absolutism but also the fact that this absolute sovereign is self-perpetuating, Locke is a thoroughgoing contractualist. Hobbes rejects the premise but not the conclusion of the divine rights theory thus being midway precariously perched between a tradition that he does not thoroughly reject and the new, which he does not completely embrace. Locke, on the other hand rejects political absolutism, divine right theory and patriarchialism. He provides for a two-staged process to create government with two types of consent, to counter Filmer's defence of the divine basis of royal absolutism.

Rousseau uses the contract as a hypothesis to throw light on the human condition. He praises and dismisses the idea of social contract simultaneously. He criticizes Grotius, Hobbes, Locke and Pufendorf for reading back into the natural condition attributes and desires peculiar to civil society. Having identified inequality as the malaise of modern society he uses the contract in the Social Contract (1762) to design the right society to transform it into a just body politic from the one that is corrupted by self-interest. He tries to instill a strong sense of the community that ancient Sparta exhibited by diluting individualism.

He retains the voluntarist theory of political obligation to legitimize sovereign authority by basing it on consent. Individuals would have both liberty and law if they are able to construct a society where they rule themselves through a contract of association that is not a pact of submission.

Through the contract the individual expresses his reciprocal commitment to his fellow contractors and also as a member of the state in relation to the sovereign that is deemed to possess a moral personality. The contract is between a collectivity that is a single moral person and each of its members taken individually. This collectivity is always right and always tends to the public good. Rousseau, like Hobbes, maintains that the individuals of the two contracting parties are responsible for upholding the terms of the contract, thus, arriving at the same conclusion as Hobbes but through a different route.

Unlike Locke, for Rousseau the foundational contract as a mechanism of regulating the required balance between rights bearing individuals and government, or of obtaining the liberal functioning of institutions.

For Rousseau, just like Hobbes the contract was constitutive of society itself, with a difference in the ends that they envisaged. For Hobbes, the ends were civil peace and commodious living, while for Rousseau it was to ensure that individuals unite without renouncing their liberty and the moral advancement of the components of civil society. The individual lost, through the social contract, his 'natural liberty and the absolute right to anything that tempts him and that he can take: what he gains by the social contract is civil liberty and the legal right of property in what he possess'.

The contract replaces arbitrary relation that exists between persons with obedience of the citizen to the law and for this purpose, atomistic individuals with different wills transform themselves into a community with a common will or interest. For Rousseau, consent is the basis of society but emphasizes

the importance of the community along with the need to protect individual freedom. He attempts to reconcile the claims of the individual with that of the community through the notion of the General Will that emerges in an assembly of equal lawmakers. He categorically asserts that each person is free only if he obeys his own will that finds expression in the laws of the state of which he is the lawmaker. He visualizes a free state as a consensual and also the existence of participatory democracy. Rousseau is a critic of 'the fraudulent liberal social contract'. The liberal contract, argued Carole Pateman (1940-), served to justify social relationships and political institutions that already existed, while Rousseau's contract provides 'an actual foundation for a participatory political order of the future'. It is one of association based on self-assumed obligation and of substantive equality between 'active citizens who are political decision-makers'.

Critics of the Contract Doctrine

The use of the contract along with its attendant idea of consent has its criticisms and limits. Many critics found its language inappropriate because it suggests that the obligation to obey authority, and even its very legitimacy, depends upon an original agreement by which succeeding generations are bound or a continuously renewed agreement that can be revoked if its conditions are not met. The contract doctrine has been criticized for its historical ambiguity, unfeasibility and defective logic.

Filmer's long forgotten Patriarcha or the Natural Power of the King written between 1653-54 but published in 1680 is important, for it formed part of the context in which the social

contract doctrine emerged in the sixteenth and seventeenth centuries. It was the target of Locke and his fellow revolutionaries Tyrrell and Sidney. Furthermore, for present times many of Filmer's arguments resonate in the contemporary feminist critiques of contractarianism, and that of Pateman.

Modern contractarians like Rawls, attempt to resurrect Kant while simultaneously responding to Hegel's criticisms of Kant. Most of the recent liberal/communitarian debate has labouriously tried to stress how neo-Kantianism can avoid the Hegelian inspired communitarian debate. Filmer contends that patriarchal authority is absolute and analogous to political authority. Having created Adam, God gave him authority over his family, the earth and its product. Adam was the first king and the present kings derive their rightful authority from this grant. Adam was thus the first king and the first father and the subsequent generations of men are not born free, but subjects to Adam and his successors with the powers of the father derived from God. Fathers, or patriarchs and their successors, exercise a natural authority that is inherent in the family, and command a natural obligation, that of children to their father. Fatherly authority for Filmer is both real and abstract.

It inheres in natural fathers but it is not necessarily congenital: it is the authority that is natural, not the line of its decent. Filmer argues that kings are not now as they once were, the natural fathers of the families over which they rule, but 'they all either are, or are reputed to be, the next heirs to the first progenitors' (1991:10). Sons who are not themselves fathers, but who became heads of households or states,

exercise the authority attached to the office. Hence, queens, in the absence of kings, exercise paternal rather than maternal authority. Since, God's original grant to Adam is unconditional, monarchial rule is also unlimited. Any attempt to restrain absolutism results in a limited or mixed monarchy. Divided sovereignty weakens authority. Filmer does not support the idea of divided sovereignty though he makes the monarch obey God's laws. Filmer criticizes contractualism, contending that if contractual arguments are true, then it results in two unacceptable consequences, which its advocates find hard to explain. First, it is not possible to provide for a continuing valid political authority. If all authority is vested on consent, then an individual who has not consented is not bound by the laws, implying that minorities, dissenters, non-voters (women and children) need not obey the law and the new ruler, since, one has not consented to them. If the original contractors who establish society are free, then each generation (unless it consents) is not bound to obey the laws. This makes society unstable. If, on the contrary, one contends that succeeding generations have to obey because their father and forefathers had expressed their consent, then such argument is no different from the one championed by the patriarchists. Filmer argues, contrary to the contractualists, that men are not born free but into families, and hence, subject to the authority of their fathers. There is nothing like natural liberty and equality. Individuals confer their authority upon a ruler, because they have none. Natural rights exist but they are not universal for 'there is, and always shall be continued to the end of the world, natural right of a supreme father over every multitude'.

Fathers have natural rights and the power to consent to the transfer of their authority to another party. Such transfers are however unconditional because the power exercised is not derived from consenting heads of families, but is merely substituted by God and acknowledged by them. Moreover, relationships of subordination are natural and that individuals are not equal for a son is subject to the authority of his father. The second argument related to property rights. Filmer thinks that those who explain the origin of government with reference to consent of free individuals find it difficult to establish either feasible or morally acceptable political authority or rightful private possession of goods. Filmer like many of his contemporaries adheres to the view that each individual is God's property and does not have a right to take his own life.

It is therefore absurd to harbour the idea that consenting individuals confer a power that they do not themselves have, namely that of life and death, upon a sovereign. Only God has this power and it is He who confers it upon kings. Locke not merely refutes Filmer's patriarchal theory but also rejects his critique of contractualism as absurd by providing an explanation about the origins of political power and private property. In the eighteenth century, there were efforts to explore 'the true foundation of. society' without using the social contract theory and its attendant idea that society was a mere collection of individuals whose psychological ends conclude in social institutions. One such effort was by Montesquieu. He insists that human beings need to be reminded that they live in society and are 'governed by many factors: climate, religion, law, the precepts of government, the examples of the past, customs, manners; and from the combination of such influences there arises a general spirit'.

The individual will be shaped by the particular social associations in which he lives. Political and moral systems are to be judged in terms of the social context in which they exist. Maistre provides a more extreme defence for natural authority by rejecting the contractarian conception of the individual as a free and equal subject.

He directs his arguments against European Enlightenment and French Revolutionaries in general, and against Rousseau's conception of natural equality and popular sovereignty, in particular. Like Filmer, he regards human being's natural condition as social.

Unlike the former's subtle charges against the contract doctrine, Maistre's arguments are a more virulent attack on the presumption of human beings to challenge a Divine injunction and God's authoritative will. The contract theory's attempt to justify political authority and political obligation are seen as examples of human beings' sinful pride.

It is precisely because of this that there is a need for unquestionable political authority in the person of the monarch. Any attempts to establish equal civil or political authority only results in barbarism and chaos. Maistre perceives human nature and human condition to be similar to that of Hobbes but does not consider it necessary to derive political authority from contractarian arguments. Instead it is the Divinely instituted and authoritative will of God. He does not merely reject contractarianism but any effort to question, legitimize or circumscribe political authority, thus, forming an important source for extreme anti-rationalist conservatism.

Lamennais too rejects Rousseau's contract theory, dismissing it as absurd for no society visualized as a random collection of individuals coming together by chance has ever originated in this manner. Furthermore, any pact has sanctions to ensure its implementation but Rousseau's has none that will stop the people from reclaiming their sovereignty.

The social contract according to Lamennais reduces society into one vast realm where private interests dominate, for governments act purely for self-preservation and aggrandizement.

Having dethroned God and kings, it has also dethrones human beings, reducing them to animals with consequences like turmoil and revolution. For Constant, the fact that Rousseau does not acknowledge any limits is the most serious threat to liberty. Proudhon perceives Rousseau's contract to be one of hatred, 'an offensive and defensive alliance of those who possess against those who do not possess'. Proudhon proposes a 'free contract' that leads to the dissolution and eventual disappearance of the state, which he thinks is possible if one moves away from politics to economics. A proper contract is not between the ruled and ruler, as Rousseau contends, but between individuals as individuals for equal exchange of goods and services of equal value.

Beyond this each of the contractees is perfectly independent. This is possible when there is perfect equilibrium. Reacting to the excesses of the French Revolution and fearing its adverse effects on England, Burke points out that the overall structure of society cannot be reduced to a mere contract between two or

more parties similar to a trade agreement, that is more transient and which can be dissolved by the parties involved.

Society, in his memorable words, is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead and those who are to be born. Each contract of a particular state is but a clause in the great primeval contract of eternal natures, connecting the visible and invisible world, according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures, each in their appointed place. Thomas Paine (1737-1809) criticizes Burke by reiterating Locke, that government is an outcome of a social contract between the people themselves.

He criticizes the British constitution for being unwritten and hence, unhelpful as a reference point. Its precedents are all arbitrary, contrary to reason and common sense. Hume was the most virulent critic of contractarism without propping the theories of Divine Right and patriarchy. In A Treatise of Human Nature (1739-40), he submits that societies are prior to governments and the most likely reason why governments come into into existence is not because of disagreement between members of the same society but external threats and conflicts. The sudden dangers to which societies are vulnerable necessitates retaliatory and immediate authoritative responses and a single individual assumes charge. Hume argues that this natural origin of monarchy is perhaps more convincing than the argument that it is derived from the natural right of patriarchy.

He points out that most of the present governments, except for some stray cases, are not established through consent or contract, so there is no universal acceptance of the theory, a point that influences Bentham. Even if it is assumed that some kind of contact has taken place at an earlier time, the old contract cannot bind future generations. Authority in the long run is based on necessities of circumstances and not on consent. Not only in Persia and China but even in Holland and England, where consent was proclaimed as the basis of authority most people did not remember when they gave their consent.

Nor was there any record of their ancestors giving their consent. Regarding tacit consent, Hume points out that even if this is a criterion of consent, it is one that can never be applied. Most places fell under some jurisdiction and those that did not were without the necessary conveniences and comforts of the existing system, whatever the basis of its legitimacy. He concludes that the social contract doctrine is superfluous and unnecessary. He accepts the contention of Grotius and Pufendorf that civil society is formed because of self interest but regrets their conclusion to base political obligation in the natural law of keeping faith with one's promises. He concedes that while consent is the basis of legitimizing the origins of government it is interest that ensures the continuing existence of its authority. As governments secure peace and commodious living, it is not direct or tacit consent, but one's interests that obligates one to render obedience.

Hume's defence of authority and obedience is akin to Burke but unlike the latter he does not exalt virtues of tradition and

convention but regards self interest as the basis of obligation. Bentham rejects social contract as pure fiction and points out that the binding force of a contract comes from a government and from the habit of enforcement and not vice-versa. This habit of obedience will continue as long as the ruler(s) acts in the interest of the ruled, or more precisely if it is possible to maximize the greatest happiness of the greatest number. Hegel rejects the contract doctrine, for it assumes separateness and autonomy of the individuals rather than their unity. Paradoxically, he accepts voluntarism, a core idea of the contract doctrine.

He points out, in modern times claims are made for private judgement, private will and private conscience whereas in pre-modern times individual wills coincided with the will of the state. The contract doctrine, according to Hegel, conceives the state as a voluntary association with obligations freely chosen and accords priority to private over public right, ignoring the fact that the former is dependent on the latter and not the other way around as the contract theory claims. The state is not a contractual instituted for the protection of property rights of the individuals nor is it a private property of the monarch. The state is an ethical arrangement in which individuals realise their capacities. They are born into it with the capacity to acquire rights and duties that have originated as a result of human practices and which the state can sustain and do not choose it with natural rights. Hegelians and post-Hegelian German philosophers stress the organic unity, individuality and moral autonomy of the state and reject the contractarian arguments for its legitimacy. Bluntschili criticizes Pufendorf and Locke, and to a lesser extent Kant, for not considering the will of the person of the state as composed

of the wills of each individual. Bluntschili considers the social contract theory as historically and logically absurd. Marx accepts Hegel's contention that the individual was a social creation and criticizes abstract individualism espoused by the contract doctrine.

However, unlike Hegel for whom the state fulfills a person's rational nature, Marx believes in the emergence of a genuine community after the withering away of the state following a revolutionary transformation of society. Interestingly, recent communitarianism deriving inspiration from Hegel's anti-contractarianism accepts the community as a moral ideal and rejects Rawls' Kantian contractarianism. The feminists focus on the contract doctrine for its conception of the natural condition of the individual as being one of freedom and equality. Pateman considers the whole conception of society as a contractual association between free and equal citizens as part of the problem that needs to be addressed if women are to free themselves from the male dominance of modern societies.

Locke, Kant and Rousseau are criticized because they explicitly exclude women from the class of rational subjects who consent to political rule. Moreover, the idea of the individual as a free and equal subject is a male classification because it accepts the pre-existing sexual division of labour that entrusts women with the tasks and responsibilities of the domestic sphere thereby freeing the man to concentrate on the public or political realm. Pateman (1988) points out that with few exceptions most contractarians conceived of women as subordinates of men with the establishment of the civil society. She does not agree with the claim of the contractualists that they have defeated patriarchy for what they have done is to

replace fraternity with patriarchalism —father's right to rule. The sexual dominance of men over women replaces the dominance of the fathers over women.

By maintaining relations between sexes as private the liberal theorists remove the subject from political enquiry, thus doing little to alter the status of women. By disregarding women as individuals in the same way as men, even reforms that grant them contractual opportunities as similar as men cannot alter the sexual basis of the social contract. She concedes that identifying the sources of women's subordination is only the beginning of reconstructing politics and institutions free from sex inequality. Coole (1993) agreeing with Pateman points out that the idea of social contract, both in its individualism and a theory of justice operates with masculinity as its norm.

Evolutionary Theory

The Evolutionary Theory contends that the state is a product of historical growth and gradual evolution and that a variety of factors have contributed to its emergence. Among these the main factors that have helped in the formation of the state are kinship, religion and political consciousness. The first of the earliest societies is the family. The desire to reproduce motivates the adolescent to move outside the old family and form a new one. Each new family is a union of two families. The kin comes into existence when consanguinity is recognized and grows into an order of society. The kin-relationship, according to MacIver, is a time-bracket while the political structure that binds the families and individuals that it includes is space-bracket.

An ordering of society is not possible if human beings are merely conscious of their common descent through time; rather they have to be conscious of their present common interest and common nature. Kinship is reinforced by social relationship. In the early kin relationships maternity was a far more definitive guide than paternity and the bond between the mother and her children was stronger and lasting than that of fatherhood, thereby, making it easy to trace descent through the mother and giving the family the misnomer of a matriarchal family. Sometimes, custom ordained that the bridegroom must leave his home and his people and enter the family group to which his bride belonged. In certain cases the chief or king owed his office to the right that marriage granted and which he stood to lose in the event of the death of his spouse.

However, all these did not mean that the female wielded any power or exalted position, for, in reality, she was only a representative of transference. On closer examination it also revealed that the wife and the mother had a social rather a personal status that offset man's natural dominance. As authority developed and organizations grew men gained dominance of groups mainly because of their physical superiority. Domestication of wild animals, increased wealth, control of property, pursuit of pastoral industry and the institution of slavery reinforced this dominance. Of these factors control of wealth and property was the most important for that gave social dominance to the male.

The early patriarchal society was organized on the basis of kinship through males. Women were regarded as a form of property and polygamy was common. The patriarch had complete control of the home and with his death the eldest

male descendant carried forward the authority. From the original patriarchal group probably there were groups and sub-groups, each headed by a male who formed the council of elders and assisted the patriarch. The patriarch later became the tribal chieftain with military, judicial and religious authority.

The patriarchal society was governed with the help of customs that played a more important role than law. Yet, there was no definite sense of morality or legality. The patriarch enforced customs becoming both the judge and executioner simultaneously. In the course of time, custom developed into law. The state arose when authority becames government and custom was translated into law. The patriarchal society differed from modern society in being personal rather than territorial. Since, kinship was the cementing factor the entire group migrated with its organization intact. The early kings were kings of their people and not of their land. The patriarchal society was exclusive, confining its membership to its people and it kept strangers out. It was non-competitive and communal where the group, their freedom and rights was all that mattered. The next important factor in the rise and growth of social consciousness and state was religion.

According to Gettel, kinship and religion were considered to be identical. Common worship reinforced kinship by disciplining the early man to authority. Patriarchal religion was universally ancestor worship, for that ensured a sense of continuity and immortality and therefore, enforced strictly within the group. Rituals, like annual offering to the dead, created a sense of bond among the descendents. When the patriarch became the tribal chief he also assumed the role of high priest interpreting

customs and often the magic-man or the medicine man. The combination of earthly authority with religious authority gave the chief a sense of aura instilling reverence and awe in his followers.

When the patriarchal tribe began to expand by incorporation or conquest, nature worship arose to reinforce patriarchal religion. Religion and political rule were so intertwined that it was difficult to differentiate the two. Obedience to law and to authority rested largely on the divine power of the ruler and in the sacredness of immemorial institution. Political consciousness was the third most important factor that led to the rise of the state.

Once the early man settled down in a territory and took to cultivating the land and domesticating cattle, population begun to increase, wealth accumulated and the idea of property developed. Economic life became complex and diverse.

All these necessitated an organization that ensured order, security and protection to person and property. The state steadily grew with help of war and conquest, for more land was needed for the growing population and its needs. War and conquest not only helped in extending the area of government but also in consolidating political power.

The victors in war became kings and nobles giving rise to stratification in society. Once the state came into existence it developed from simple forms to complex forms. The modern state the now familiar entity goes back to the sixteenth century.

The Rise and Development of the Modern Nation State

This part examines the factors that gave rise to the nation states in Europe and studies the reasons because of which the nation state became the supreme form of the modern state. As regards the first question, the reasons for the rise of the nation state are also coincidentally the factors in the formation of Europe and vice-versa. The creation of nation states in Europe has contributed to the distinct identity that Europe has.

The state system of Europe has exerted exceptional influence in the world beyond Europe, for European colonization has positively drawn the political map of the modern world. It is interesting, for a larger part of human history, human beings have lived without states but not without governments. States are historical phenomena emerging under particular conditions changing and quite fluid, without actually being fixed.

The pre-state political communities were enormously divergent—all the more so since, they often developed out of each other, interacted with each other, conquered each other and merged with each other to produce infinite varied forms, most of them hybrid. It may be possible to classify these into:

- Tribes without rulers
- Tribes with rulers, (chiefdoms) and
- City-states.

Tribes without Rulers

There were no states where human beings lived in hunting and gathering communities, small agrarian units and the regions inhabited by sparsely populated nomadic and semi-nomadic people. Even today anthropologists point out to communities that have no states, for example, the Jale Pale of the New Guinea highlands, the pastoral Anuak, Dinka, Masai and Nuer of the South Sudan, the M'dendeuile and Arusha of East Africa and some pre-Columbian Amerindian tribes in North and South America. In all these, government began and ended with the extended family, lineage or clan. None was superior except for men, elders, parents and no one was inferior except for women, young and children. The kin defined social relations and its rights and obligations. Within the kin one's sex, age and marital status determined an individual's position. In the absence of institutional authority, except for what operated within an extended family, these societies were egalitarian and democratic.

All adult males were equal. Public tasks were performed not by rulers and ruled but by leaders and followers. The absence of centralized authority also meant absence of permanent, specialized war-making armed forces or even popular militias. None of these societies had a system of rent, tribute or taxation that redistributed wealth, or a class of individuals with leisure. Institutional religion hardly played any role and every household chief was also his own priest. However, the priest did not have the right to command obedience, levy taxes, have an organized following to enforce their wishes and did not exercise command in war. Their methods were persuasion and mediation but not coercion.

Chiefdoms

These existed in many societies in Southeast, West and South Africa, as well as over Southeast Asia, Polynesia, Hawaii and New Zealand. History tells us of tribes that destroyed the Mycenean civilization and ruled Greece between 1000 and 750 BC. These tribes were the various Gothic, Frankish and other Germanic tribes as they were from the later centuries of the Roman empire and the Scandinavian tribes during the tenth century just before they became Christianized and turned towards more centralized forms of government. In chiefdoms, the chief had an elevated position over other people with the right to command them. This right claimed as divine became the basis of succession from father to son. This led to frequent clashes and warfare.

Most of these societies were polygamous. Women for their looks or their noble lineages were status symbols for their owners. Their labour was also a source of wealth. The natural result of polygyny was a large number of sons, candidates for succession when the time came, resulting in potential conflicts. Normally the chief's first or principal wife was descended from an eminent family and her offspring(s) enjoyed precedence over the rest. Next to the chief, society was divided into two different layers or classes—privileged group, small and consisting of the chief's extended family, lineage or clan. They enjoyed special rights such as access to the chief, a higher compensation in case of injury or death and immunity from certain kinds of punishment that were considered degrading. They wore special insignia and clothing and in areas with moderate climate they were distinguished by tattoos.

Their position in society depended exactly on their relationship to the chief. From these people the chief selected the provincial rulers and since, they had some claim to succession they were rarely appointed to senior court positions. Below the royal lineage or clan were the numerous class of commoners: such as the ancient Greek labourers or thetes, subject to different kinds of discrimination, such as, not being allowed to own cattle (the Hutu in Burundi and Rwanda), ride stallions (the bonders in pre-Christian Scandinavia), wear feather headgear (the Americas) or bear arms. In an event of injury or death they got very little compensation and their punishment was savage. They were not blood relations of the chief. In parts of Africa the chief and the commoners belonged to different ethnic groups and did not share the same customs or speak the same language. The commoners owed allegiance to the chief. The chief had extensive powers especially in large territories he stood at the apex of a pyramid consisting of regional sub-chiefs. The chiefdoms became the first political entities to institute rent, tribute and taxation, forms of compulsory unilateral payments from the ruled to the rulers leading to concentration of wealth in the ruling few.

The precise nature of the wealth paid depended on the resources made possible by the environment and also on custom. Everywhere it consisted of staple crop like rice and grain. There could be prestigious objects also, such as fine domestic animals, clothes in various forms and in some societies, women. Some of the tributes paid to the chief's storehouses were directly by his tenants. The rest of the population made payments to the sub-chiefs who, having collected them, took their cut which was not fixed, and depended on how much they could get away without inviting

the wrath of the chief and passed the rest on. Both the chiefs and sub-chiefs possessed additional sources of revenue originating in their right to exercise justice, such as fees, fines, the belongings of condemned persons and often bribes.

There also existed some form of licensing system under which chiefs of all ranks demanded and received payment for granting their subjects certain privileges like the right to hold markets, engage in long-distance trade, go on raiding expeditions against other tribes (part of the booty went to the chief) and so on. In short, there was hardly any economic activity in which the chief was not involved and from which he did not get his share.

City States

These were overwhelmingly rural with a livelihood that was hunting, gathering, cattle-raising, fishing and agriculture practiced at the subsistence level. Most of these people were nomadic or semi-nomadic. There were three types of cities in the first, the majority were ruled by petty chiefs, known as lugal in ancient Middle East, wanax in the Mycenean world and kshatriya in India. This type differed from the chiefdoms, mainly by their more sophisticated administrative system and a more complex social structure. The second type of cities were not independent communities but served as either capitals or as provincial centres like Mesopotamia in 235 BC, China from the time of the first imperial dynasties; India during the periods of centralized empire (320-185 BC, AD 320-500 and AD 1526-1707) and pre-Columbian Latin America.

The third type comprised of self-governing cities that existed in pre-dynastic Mesopotamia confined to the Mediterranean littoral. Only in such self-governing cities were Greeks, Romans and possibly also Etruscans and Phoenicians (Carthage) able to come up with a new principle of government. The earliest important political organization was the polls or the city-state in Greece that began as a common association for the security and for the satisfaction of daily needs but gradually became the pivot around which all human activity—moral, intellectual, social, cultural, aesthetic and practical life revolved. The Greek archipelago consisted of many islands among which Athens, Crete and Sparta were well-known. Mountainous terrain, valleys and rivers physically separated these islands.

In spite of their territorial and political separateness, the Greeks shared cultural and social unity due to one language, common religious rituals and Olympic festivals. The Greeks never called themselves Greeks but Hellas. Most of the city-states were small and compact in size and population. Athens between 750-550 BC had 40,000 square miles of territory and 40,000 citizens and 400,000 mixed population. The limit on size was important, for the Greeks were convinced that good order could be sustained any in small cohesive communities. It was both self-sufficient and self-governing. It was the cradle to the ideas of democracy, constitutional government and the due process of law, which were transmitted through Rome to the modern Europe. Rome also put into practice the Stoic idea of a universal society and the need for a uniform system of law. A number of textbooks, case books and codes of law were devised by a group of trained lawyers at the level of theory and for practical use of officials. The Romans established a system of

jurisprudence as a system of general rules by which actions could be classified clearly with definitions. Gaius, Paulus and Ulpian's treatises were systematic delineations of constitutional and political institutions.

In order to unify the divergent peoples within the empire, to deal with the colonies it had conquered, to deal with aliens, to advance the idea of common citizenship and to settle commercial cases with foreign traders a system of law was needed and that was provided by the formulation of a law of nations (jus gentium). This worked alongside the Stoic law of nature (jus naturale), the law common to all nations and the law common to all human beings. Roman lawyers also attempted to distinguish between public law—in essence constitutional law—and private law that which concerned private individuals and the institution of private property. Approximately sixteen hundred years ago, Roman Empire under Theodosius I (379-95) was the last sole ruler and that split after his death in to Western and Eastern Roman Empires. In comparison to the East the western side of the Empire sustained recurring attacks and thus became weak.

In AD 410, the city of Rome was attacked by roaming Germanic tribes and fell in 476 AD following the dethroning of the last Roman Emperor of the West. The Eastern portion was economically safer than the West because the export trade in spices and other commodities continued through the Middle Ages until the Islamic Ottoman Empire challenged it in 1453. The centuries following the disintegration of the Roman Empire saw no another imperial power in Europe, which continued to be ravaged by wars. The political map continued to be drawn and redrawn, as was evident from the presence of five hundred,

more or less independent political units, with ill-defined boundaries in the late fifteenth century. This process continued till 1900. Five types of states can be distinguished since, the fall of Rome in the fifth century:

- Traditional tribute-taking empires;
- System of divided authority characterized by feudal relations, city-states and urban alliances, with the Church (Papacy) playing a leading role from eighth to sixteenth centuries;
- The polity of estates from the fourteenth to sixteenth centuries;
- Absolutist states from fifteenth to eighteenth centuries and
- Modern nation-states with constitutional, liberal democratic or single party polities locked progressively into a system of nation states.

Empires

Imperial systems or empires of varying sizes and grandeur have dominated the history of states over the centuries. Some, such as Rome and China retained institutional forms for considerable period of time. Empires have sustained themselves through focus on coercive means and the ability to make money and through accumulation and when this ability decreased, they disintegrated. All empires were expansionists, which was the main cause for their development. Empires having long distance trading routes met their economic

requirements through the exaction of tribute that sustained the emperor, his administrative and military apparatuses. Paradoxically, in spite of being powerful, their administrative authority was limited since, they lacked the institutions, organizations, personnel and information to provide for regular administration in their territories.

Most empires contained a plethora of communities that were culturally diverse and heterogeneous. Ruling rather than governing, was intrinsic to empires for their dominance in social and geographical space was restrictive. The polities of empires busied themselves with conflicts and intrigue within dominant groups and classes and within local urban centres; beyond that use of military force was to knit peoples and territories together.

Feudalism

Feudalism was a political system with an overlapping and divided authority. It took different forms between eighth and fourteenth centuries. Its distinguishing feature was a 'network of interlocking ties and obligations with system of rule fragmented into many small autonomous parts'. Political power was local and personal in nature producing a 'social world of overlapping claims and powers'. There was no one ruler or state sovereign in the sense of being supreme over a given territory and people. War was frequent and tensions endemic.

The early roots of feudalism date back to the remnants of the Roman Empire and to the militaristic culture and institutions of Germanic tribal peoples. There was a special relationship between a ruler or lord or king generally recognized or

'nominated' by followers on the basis of his military and strategic skills. The warriors swore faithfulness and obeisance to their lord and secured in return protection and privileges. In the late seventh century rulers bestowed vassals with the rights of land, later called feudum in the hope of securing continued loyalty, military service and flows of income.

As a consequence, a hierarchy of lord, vassal and peasants, distinguished by a great chain of relations and obligations as major vassals sub-contracted parts of their lands to others. The vast majority of people were at the bottom of the hierarchy but they constituted the subject of a political relationship. While the feudal kings were primus inter pares or first among equals they, with the exception of England and France, had diverse privileges and duties that included the need to consult and negotiate with the most powerful lords or barons, when taxes or armies were to be raised. The autonomous military capability that the lord was expected to maintain was for supporting their kings but this provided them with an independent power base which they at times used to promote their own interests. While some political forces pushed for centralization other sought local autonomy, thus, leading to disintegrative tendencies.

In medieval Europe, agriculture was the basis of the feudal economy and its surplus were diverted for competing claims and the one that succeeded, constituted a basis to create and sustain political power.

The complex network of kingdoms, principalities, duchies and other centres of power was challenged by the emergence of alternative powers in the towns and cities that depended on

trade, manufacture and high capital accumulation. Different social and political structures emerged as independent centres like Florence, Venice and Sienna in Italy.

Europe in the Middle Ages meant 'Christendom' securing overarching unity from the Holy Roman Empire and the Papacy. The Holy Roman Empire existed in some form from the eighth to the early nineteenth century. Under the patronage of the Catholic Church, the Empire represented an attempt at its zenith, to unite and centralize the fragmented power centres of western Christendom into a politically unified Christian empire. Countries from Germany to Spain and from northern France to Italy federated under the Empire. However, the complex power structures of feudal Europe, on the one hand, and the Catholic Church, on the other, circumscribed the actual secular power of the Empire.

The Catholic Church was the main rival power to the medieval feudal and city networks and the Church, throughout the Middle Age, subordinated the secular to spiritual authority. It emphasized that Good lay. in the submission to God's will. In the absence of any theoretical alternative to the theocratic positions of Pope and Holy Roman Empire, this order was described as the order of 'international Christian society'. It was first Christian, regarding God as the arbiter of disputes and conflicts with reference to religious doctrine and was coated with presumptions about the universal nature of human community. The rise of national states and Reformation gave rise to the idea of the modern state that challenged western Christendom. Its basis was prepared by the development of a new form of political identity—national identity.

The Polity of Estates

This can be traced to the crisis within feudalism that is understood to have begun around 1300. The decline of feudalism began with the emergence of new concepts and ideas, for example, the claims of different social groups or estates to political prerogatives, specifically to rights of representation. Though these were extensions of existing feudal relations they had some distinctive and new qualities. In the first place, in the polity of estates the rulers present themselves primarily not as feudal superiors, but as the holders of higher, public prerogatives of non—and often pre-feudal origins, surrounded by the halo of a higher majesty; often imparted by means of sacred ceremonies.

In the second place, the counterpart to the ruler is typically represented not by individuals but by constituted bodies of various kinds: local assemblies of aristocrats, cities, ecclesiastical bodies, corporate associations. Taken singly, each of these bodies—the 'estates' represents a different collective entity: a region's noblemen of a given rank, the residents of a town, the faithful of a parish or the practitioners of a trade. Taken together, these bodies claim to represent a wider, more abstract, territorial entity—country, Land, terra, pays—which, they assert, the ruler is entitled to rule only to the extent that he upholds its distinctive customs and serve its interests. In turn, however, these interests are largely identified with those of the estates; and even the customs of the country or the region in question have as their major components the different claims of the various estates.

Thus, the ruler can rule legitimately only to the extent thar periodically he convenes the estates of a given region or of the whole territory into a constituted, public gathering.

In these situations the rulers had to deal with estates and estates, had to deal with rulers resulting in the emergence of a variety of estate-based assemblies, parliaments, diets and councils which sought to legitimate and enjoy autonomous faculties of rule. The polity of estates meant dual power, the power split between rulers and estates, which did not last long.

It was threatened by the estates seeking more power and by the monarchy hoping to undermine the assemblies in order to centralize power in their own hands. With the loosening of feudal traditions and customs, notions like nature and limits of political authority, rights, law and obedience began to engage political theorists.

Absolutist States

From the fifteenth to the eighteenth centuries Europe had two types of regimes: the 'absolute' monarchies of France, Prussia, Austria, Spain, Sweden and Russia and 'constitutional' monarchies and republics in England and Holland. These two regimes differed in conceptual and institutional sense but some of these differences were more apparent than real.

Absolutism was made possible by the absorption of smaller and weaker political units into larger and stronger political systems; an invigourated ability to rule over a united territorial space; a tightened system of law and order enforced throughout a territory; the application of a 'more unitary, continuous, calculable and effective' rule by a single sovereign

head; and the development of a relatively small number of states engaged in an 'open-ended, competitive, and risk-laden power struggle'. The absolutist rulers claimed that they alone had the legitimate right of decision over state affairs as evident from the statement attributed to Louis XV, King of France from 1715 to 1774:

- In my person alone resides the sovereign power, and it is from me alone that the courts hold their existence and their authority. That... authority can only be exercised in my name... For it is to me exclusively that the legislative power belongs.... The whole public order emanates from me since, I am its supreme guardian.... The rights and interests of the nation... are necessarily united with my own and can only rest in my hands.

The absolute king claimed to be the supreme source of human law although he justified his writ rule as being derived from the law of God, backed by the divine right theory. He stood at the pinnacle of a new system of rule that was progressively centralized and his sovereign authority to be supreme and indivisible. All qualities were visible in the rituals and routines of courtly life. There were developments, six in all that are crucial to the history of state system: uniform system of rule within a territory, creation of new mechanisms of law-making and law-enforcement; the centralization of administrative power; extension of fiscal management; the formalization of relations among states through the development of diplomacy and diplomatic institutions and the introduction of a standing army. Absolutism accelerated the process of state-making that began to decrease social, economic and cultural disparity within states and expand the variation among them.

One reason for the expansion of state administrative power was because of its ability to collect and store information about its subjects and use that for supervising them. This meant the need to rely more on cooperative forms of social relations, for force alone could not be the basis of managing its affairs and sustaining its offices and activities. As a consequence there was an increased mutuality between the rulers and ruled, and since, more reciprocity was involved there were more opportunities for subordinate groups to influence their rulers.

Briefly absolutism encouraged the development of new forms and limits on state power—constitutionalism and for the eventual participation of powerful groups in the process of government itself. Absolute regimes in comparison to ancient emperor were limited despotisms, for they were not the sole source of law, of coinages, weights and measures, of economic monopolies and could not impose compulsory cooperation. The absolutist ruler owned only his own estates and was weak in relation to powerful groups in society, for example, the nobility, merchants and urban bourgeoisie. Like its constitutional counterparts, the absolutist state tried to coordinate the activities of these groups and build up the state's infrastructural strength.

A complex set of factors are responsible for the historical changes that changed medieval notion of politics. Struggle between the monarch and barons over the domain of rightful authority; peasant rebellion against excessive taxes and weighing social obligations; the spread of trade, commerce and market relations; the prospering of Renaissance culture with renewed interest in classical political ideas that included Athenian democracy and Roman law; changes in technology

particularly with regard to military skills; the consolidation of national monarchies particularly in England, France and Spain; religious conflicts and the challenge to Catholicism's universal claims and the struggle between the Church and State were all contributory factors.

By the end of the seventeenth century, Europe was no longer a mosaic of states. The claim of each state to supreme authority and control also meant the recognition of such a claim by other states as equally entitled to autonomy and respect within their own borders. In international context, sovereignty signified the independence of the state, namely an acknowledgement of its sole rights to jurisdiction over a particular group and territory, acceptance of a similar right of other states and equal rights to self-determination.

In international relations, the principle of sovereign equality of all states was to become pre-eminent in the formal conduct of states with one another. With the emergence of international society, there also emerged international law as exemplified by the Westphalian model covering a period from 1648 to 1945 and its features are:

- The world consists of, and is divided by, sovereign states, which recognize no superior authority.

- The processes of law-making, the settlement of disputes and law-enforcement are largely in the hands of individual states subject to the logic of 'the competitive struggle for power'.

- Differences among states are often settled by force: the principle of effective power holds sway. Virtually no legal

fetters exist to curb the resort to force; international legal standards afford minimal protection.

- This came about after the Peace of Westphalia of 1648 that brought to an end the Eighty-years was between Spain and the Dutch and the German phase of the Thirty-years war.

- Responsibility for cross-border, wrongful acts are a private matter concerning only those affected; no collective interest in compliance with international law is recognized.

- All states are regarded as equal before the law; legal rules do not take into account asymmetries of power.

- International law is oriented to the establishment of minimal rules of co-existence; the creation of enduring relationship among states and peoples is an aim only to the extent that it allows military objectives to be met.

- The minimization of impediments on state freedom is the 'collective' priority.

The era of absolutist states and its constitutional counterpart ushered in a new international order, which had a enduring and contradictory quality rich in implications: an increasingly integrated states system simultaneously endorsed the right of each state to autonomous and independent action.

As a result the state were 'not subject to international moral requirements because they represent separate and discrete political orders with no common authority among them'.

According to this model, the world comprises of separate political powers pursuing their own interests, and backed ultimately by their organization of coercive powers.

Modern State

Absolutism, by concentrating political power in its own hands and in seeking to create a central system of rule, paved the way for a secular and national system of power. The English (1640-88) and French (1789) Revolutions marked the transition from absolutism to modern state with the following features of fixed territory, control of the means of violence, impersonal power structure and legitimacy. The nation-state or national state does not essentially mean that a state's people 'share a strong linguistic, religious and symbolic identity'. Though important, it is necessary to separate the nation-state from nationalism, 'What makes the "nation" integral to the nation-state... is not the existence of sentiments of nationalism but the unification of an administrative apparatus over precisely defined territorial boundaries'.

The modern state can be understood with reference to its forms: constitutional state, the liberal state, the liberal-democratic state and the single-party polity. Constitutionalism refers to explicit and/or implicit limits on political or state decision-making. These limits can be procedural as to how decisions and changes can be made or substantive preventing certain changes altogether. Constitutionalism stipulates the proper limits and forms of state action.

An important doctrine in this context that emerged to become a central tenet of European liberalism was a state exists to

safeguard the rights and liberties of citizens who are ultimately the best judges of their own interests. The state's scope and practice have to be restrained to ensure the maximum possible freedom of every citizen.

The liberal state is the effort to create a private space independent of the state and freeing the civil society—personal, family and business life—from unnecessary political interference and thereby limiting state's authority. The components of liberal state are constitutionalism, private property, the competitive market economy and the patriarchal family. The Western state, at first a liberal state becomes a liberal democratic state with the extension of franchise to the working class and women.

The third type is the liberal representative democracy or a system of elected rulers who profess to represent the interests and views of the citizens within a framework of the rule of law. Election through two or multiparty system constitutes the life breath of representative governments. There is the one party or single party system that existed in erstwhile communist societies of East Europe and the Soviet Union and some Third world countries, on the basis that a single party can legitimately express the overall will of the society. The collapse of communism has ended the single party system. Even some third world countries, like Tanzania, have moved towards a multi-party system.

An important factor in the emergence of the modern state is the capacity of the states to organize the means of coercion (armies, navies and other types of military might) and to deploy them when necessary. Modern states spend considerable

amount of their finances in acquiring military equipment and technology. Another crucial factor in the creation of the democratic nation-state is nationalism. The attempt to construct a national identity to bring people together within a framework of delimited territory gives the state a heightened power and status.

National identity has been used to bring about mobilization and legitimacy though state-building and nationbuilding have never overlapped. In certain cases, nationalism has become a means to challenge the existing nation-state boundaries, *e.g.* Northern Ireland. The economic factor for the rise of the modern state is trade and commerce. The main features of the modern states system—the centralization of political power, the expansion of administrative rule, the emergence of massed standing armies, the deployment of force—that exists in sixteenth century Europe in nascent form becomes part of the entire global system. It all began with the European states' capacity for overseas operations by means of naval and military force for purpose of long range navigation. The Spanish and Portuguese were the early explorers followed by the Dutch and the English.

By the middle of the eighteenth century, English power was on the ascendancy and had become dominant by the nineteenth century, so much so that England, the first industrial power also became the first world power. London became the centre of world trade and finance. The expansion of Europe across the globe, in turn, became a major source for expansion of state activity and efficiency. All the core organization types of modern society—the modern state, modern corporate enterprise and modern science— were shaped by it and benefited greatly

from it. While European state systems developed and expanded non-European civilizations—the Chinese, Indian and Middle East progressively declined, and in this, capitalism played a crucial role with its origins in the sixteenth century.

Capitalism penetrated and integrated the different and distant corners of the world, for its aspirations were never determined by national boundaries. The earliest political units that could be properly called states were France, Spain, Portugal, Britain, the countries comprising the Holy Roman Empire (Germany, Italy, Balkans, Austria Hungary) and Scandinavia and the Netherlands. This was in the seventeenth and eighteenth century occupying 1,450,000 square miles out of a global mass of 57, 000,0000.

Wallerstein (1980) points out that capitalism from the beginning has been 'an affair of the world economy and not of nation states'. He distinguishes between two types of world systems that have existed historically: world-empires and world economies.

The former are political units characterized by imperial bureaucracies with substantial armies to exact tax and tribute from territorially dispersed populations, their capacity for success depend upon political and military achievements. World empires are inflexible and eventually displaced by the world economy that emerged in the sixteenth and seventeenth centuries because of its gargantuan appetite for endless accumulation of wealth. This world economy is an economic unit that crosses boundaries of any given state and any constraint is on the state and not on the process of economic expansion.

Wallerstein divides the modern world system into three components: the core (initially the northwest and central Europe); the semi-periphery (the Mediterranean Zone) and the periphery (colonies). Each zone of the world-economy is characterized, according to Wallerstein, by a particular kind of economic activity, state structure, class formation and mechanism of labour control. The world capitalist economy creates a new form of worldwide division of labour. While colonialism in its original form has practically disappeared. The world capitalist economy creates and reproduces massive imbalances of economic and political power among the different constituent areas.

Initially the world capitalist economy took the form of expansion of market relations compelled by a growing need for raw materials and other factors of production. Capitalism invigourated this drive and was invigourated by it. The development of capitalism can be explained partly due to the long-drawn changes in 'European' agriculture from as early as the twelfth century: changes resulting in part from the drainage and utilization of wet soils, which increased agricultural yields and created a sustainable surplus for trade. Connected to this was the establishment of long-distance trade routes in which the northern shores of the Mediterranean were initially prominent.

A combination of agricultural and navigational opportunities helped invigourate the European economic dynamic and the constant competition for resources, territory and trade. Accordingly, the objectives of war gradually became more economic: military endeavour and conquest became more closely connected to the pursuit of economic advantage. There

was a direct connection between success of military conquest and the triumphant pursuit of economic gain. As capitalism developed and matured, the state gradually got more entangled with the interests of civil society partly for its own sake.

To be able to pursue and implement policy of its choice it needed financial resources and for this reason it began to steadily coordinate the activities of the civil society. The other side of the process also meant that the civil society with its powerful groups and classes began to shape state action to suit their own interests.

Weber analyses the relationship between modern capitalism and the emerging modern state. He points out that the Marxist analysis is based on a deficient understanding of the nature of the modern state and of the complexity of political life. The history of the state and the history of political struggle cannot in any way be reduced to class relations: the origins and functions of the state implies that it is far more than a 'superstructure' on an economic 'base'.

Marxism, Anarchism and the National Question

Class, and not nationality is the key factor for Marx and Engels. Their vision of proletarian internationalism is an advancement of the French Revolution's declaration of human brotherhood. The phrase 'workers of the world unite' is the consequence of the belief that while the bourgeoisie in each nation has its own vested interest, the proletarians in all the countries have the same interest and the same enemy. On the basis of this view, they divide the world into advanced and backward civilizations and supported British imperialist

expansion. They perceive the non-European societies as static without a sense of history and maintain these societies will change from the outside. Writing on India, Marx points out that England had to fulfill a double mission, one destructive and the other regenerative; 'the annihilation of the old Asiatic society and laying the material foundations of Western society in Asia'. Furthermore, Marx and Engels oppose the right of nations to self-determination. On the contrary, Bakunin uncompromisingly supports national self-determination for all including the great or small, weak or strong, civilized and non-civilized. He asserts, because a certain country constitutes a part of some state, even if it joined the state of its own free will, it does not follow that it is under obligation to remain for ever attached to that state.

No perpetual obligation can be admitted by human justice, the only justice which we recognize any duties that are not founded upon freedom. The right of free reunion as well as the right of secession is the first and most important of all political rights; lacking that right, a confederation would simply de disguised centralization. During the First World War Lenin's plan was the conversion of the imperialist war into an international class-based civil war. He pleaded for self-determination of the oppressed nationalities of Tsarist Russia and other such empires.

He understood proletarian internationalism to mean two things: first, proletarian struggle in any particular area of nation has to be subordinated to the strategy and planning of the larger socialist movement. Second, any proletarian struggle, which wins its battle over the local bourgeoisie, must be capable and willing to direct all its energies for the

overthrow of the international capital. Lenin was convinced that the socialist revolution in Tsarist Russia would be a catalyst for international socialist revolution for socialism in one country was unthinkable. He was more enthused about the right of self-determination than the other Bolsheviks, like Nikolai Ivanovich Bukharin. However, he also categorically stated that the right of self-determination cannot be higher than that of the interest of socialism itself, implying that once the Bolsheviks capture power it would be relegated to a secondary position. Therefore, inspite of the constitutional provision of the right to secede in the former Soviet Constitution the question of autonomy was never to become an issue within the highly centralized Communist Party structure.

Nation States in the Developing World

There has been a proliferation of new states after the Second World War mainly because of decolonization. For the first time since, the emergence of the modern state system the third world nations have become full members of the world community. The great disparity in wealth and other indicators of human development between the older nations and these newly emerging ones is enormous, but asserting their national identity and continuing as independent states have been an important aspect of world history for the last five decades.

This new phase of nationbuilding process completes the process of the emergence of new nations that began with the British withdrawal from North America at the end of the eighteenth century, the freedom of the Spanish and Portuguese colonies in South America in the nineteenth century and subsequent acceptance of European settled states in Canada,

Australia and New Zealand. This process in the context of Asia and Africa that began after 1945 was acknowledged in January 1960, by the then British Prime Minister Harold MacMillan. He considered the emergence of new States as a notable historical development and though they have assumed different forms all of them are inspired by a profound sense of nationalism. Commenting on momentous changes in Africa, he remarked 'the wind of change was blowing throughout the Continent'.

Globalization And The Future Of The State

In the recent times the structures and processes of the world State system have been facing large scale changes because of the force of globalization. The political foundation of the modern western style state has been undercut by five factors: moral, economic, military, cultural and political, representing different segments of one general trend: globalization. Revolution in transportation, communications and information has led to the shrinkage of the territorial space. Inventions like telephone, internet, radio, television, satellite television and jet planes have resulted in a situation, where the state no longer wields monopoly over information and communications and controls the access of its citizens to information. Migration, increase in international tourism, greater dependence on foreign companies at home and abroad for jobs or contracts, greater exposure and access to other cultures through the media have also led to changes in lifestyles and personal tastes and interests. This increasingly brings into focus notions like national identity and national culture. Held pointed out that globalization of information far from creating a common human purpose establishes the significance of identity and difference.

This encourages people without their own states to demand for one giving rise to new nation states. The advent of nuclear weapons and intercontinental missiles have virtually made every state including the powerful and mighty, defenceless. The former US President Ronald Reagan's confession about the impossibility of winning a nuclear war has removed one of the most important props of the state since, the mid-eighteenth century that the state protects its citizens from foreign threats. The emergence of global markets, greater imports and multinational corporations has weakened its economic supremacy.

Though Aristotle taught us that a state ensures justice yet this is not entirely correct. Ever since, the Nuremberg and Tokyo trials (1945- 46) it has been seen that states do inflict injuries and harm on its citizens, driving them to committing genocide. More recently, a fact has come to prominence that some groups, aided and abetted by the state power indulge in ethnic cleansing. Besides, there are international organizations, human rights groups and self appointed spokesperson for democracy. All these undermine the claim that the state is the moral arbiter of its citizen's lives. In the context of globalization of national politics, hi-tech and emergence of the world economy 'the national state has become too small for big problems and too big for small problems'. The process of integration in Europe and the creation of NAFTA in America have drastically curtailed the earlier notions of state sovereignty and total domination. In the world village of today, nations co-exist as interdependent neighbours with a great degree of interaction and commonality.

The problem today is that there exists a global economy but the political arrangements are still rooted in the sovereignty of states. The key task now is to reconcile global society with the sovereignty of states. The sovereign states often abuse power and the powerful ones do not want to strengthen international institutions. One argument of the stronger states is that international institutions do not work well because states in the international arena have no principles but only interests to protect.

Coupled with this weakness there is yet another inadequacy, namely national bureaucracies that multiply into international bureaucracy. It is also a fact that international institutions like the United Nations have not been very successful in protecting and promoting universal principles like human rights. If globalization is to succeed then international institutions have to perform better and that is only possible if there is an emergence of a responsive international civil society. As within the nation, the state power is restricted by the forces of civil society, which successfully monitor the process of globalization there is to be an alliance of the democratic states with a commitment to principles and not merely interests with active intervention of the civil society.

Chapter 4

Organization of Government

Governors of states of India

The Governors and Lieutenant-Governors of the states and territories of India have similar powers and functions at the state level as that of the President of India at Union level. Governors exist in the states while Lieutenant-Governors exist in union territories and in the National Capital Territory of Delhi. The Governor acts as the nominal head whereas the real power lies in the hand of the Chief Ministers of the states and the Chief Minister's Council of Ministers. In India, a Lieutenant governor is in charge of a Union Territory. However the rank is present only in the union territories of Andaman and Nicobar Islands, Delhi and Pondicherry (the other territories have an administrator appointed, who is an IAS officer). Lieutenant-Governors hold the same rank as a Governor of a state in the list of precedence. The Governors and Lieutenant-Governors are appointed by the President for a term of 5 years.

Powers and Functions

The Governor enjoys many different types of powers:

- Executive powers related to administration, appointments and removals,

- Legislative powers related to lawmaking and the state legislature, that is Vidhan Sabha or Vidhan Parishad,

- Discretionary powers to be carried out according to the discretion of the Governor.

Executive Powers

- The Constitution vests in the Governor all the executive powers of the State Government. The Governor appoints the Chief Minister who enjoys the support of the majority in the Vidhan Sabha. The Governor also appoints the other members of the Council of Ministers and distributes portfolios to them on the advice of the Chief Minister. The Council of Ministers remain in power during the 'pleasure' of the Governor, but in the real sense it means the pleasure of the Vidhan Sabha. As long as the majority in the Vidhan Sabha supports the government, the Council of Ministers cannot be dismissed. The Governor appoints the Chief Minister of a state. He also appoints the Advocate General and the chairman and members of the State Public Service Commission. The President consults the Governor in the appointment of judges of the High Courts and the Governor appoints the judges of the District Courts.

Legislative Powers

The Governor summons the sessions of both houses of the state legislature and prorogues them. The Governor can even dissolve the Vidhan Sabha. These powers are formal and the Governor while using these powers must act according to the

advice of the Council of Ministers headed by the Chief Minister. The Governor inaugurates the state legislature by addressing it after the assembly elections and also at the beginning of the first session every year. The Governor's address on these occasions generally outlines new policies of the state government. A bill that the state legislature has passed, can become a law only after the Governor gives assent. The Governor can return a bill to the state legislature, if it is not a money bill, for reconsideration. However, if the state legislature sends it back to the Governor for the second time, the Governor must assent to it. The Governor has the power to reserve certain bills for the President. When the state legislature is not in session and the Governor considers it necessary to have a law, then the Governor can promulgate ordinances. These ordinances are submitted to the state legislature at its next session. They remain valid for no more than six weeks from the date the state legislature is reconvened unless approved by it earlier.

Chief Minister and Council of Ministers: Power and Role

- A Chief Minister is the elected head of government of a sub-national (*e.g.* constituent federal) state, provinces of Pakistan, notably a state (and sometimes a union territory) of India, a territory of Australia or a British overseas territory that has attained self-government. It is also used as the English version of the title given to the heads of governments of the Malay states without a monarchy. The title is also used in the Crown dependencies of the Isle of Man (since, 1986), in Guernsey (since, 2004), and in Jersey (since, 2005). In Malaysia, it is used to refer to the heads of government, called in their

Malay language term Ketua Menteri (literally Chief Minister), of the Malaysian states without a sultan, *i.e.*, Malacca, Penang, Sabah and Sarawak, while the Malay language term Menteri Besar (literally Great Minister) is used in other states with a monarch. By analogy the term is often applied to various other high ministerial offices, *e.g.* in a princely state before or during the British raj.

Deputy Chief Minister

- Deputy chief minister is an optional post in some States of India second to the Chief Minister. In general practice the position is given to a member of the coalition party when the government is formed with the support of various parties. It can also be awarded to a member of the majority party who has substantial support of the legislature compared to the Chief Minister.

The powers and functions of Council of Ministers

- In the state like the centre parliamentary Government has been established. It is written in the constitution that there will be a Council of Minister headed by the Chief Minister to aid and advise the Governor. The Governor appoints the leader of the majority party as the Chief Minister and all other minister are appointed by him on the recommendation of the Chief Minister. The ministers remain in office during the pleasures of the Chief Minister. But the fact is that the Governor can neither appoint nor remove any minster from office of his own accord.

Appointment of the Council of Ministers

- The leader of the majority party in the Legislative Assembly is appointed through Chief Minister by the Governor. Examples are on record when the Governor appointed those as Chief Minister who were not at all the members of the state Legislature. The Chief Minister distributes portfolio among the ministers. The Chief Minister can make a change in the departments of his ministers.

Composition

- The Council of Ministers in Orissa is known as Cabinet. At present Naveen Pattnaik is the Chief Minister of Orissa. The Council of Ministers may have three or two ranks of ministers. At present in Orissa it has two ranks of ministers. The size of the ministry depends upon the Chief Minister.

Tenure

- The Cabinet does not have any definite and fixed term of office. The Chief Minister can ask any minister to resign. The Cabinet remains in office so far as enjoys the confidence of the majority of the members of the House. The Legislative Assembly can pass a vote of no-confidence against the ministry and the ministry will vacate office.

Qualification

- There is only one qualification for becoming a minister that he should be a member of either House of the Legislature. If a person is appointed a minister and he is not a member of the Legislature he will have to become a member of the Legislature within a period of 6 months of his appointment otherwise he is to leave office.

Power and Function

- The Council of Ministers occupies the same position in the state as the Council of Ministers occupies at the center. They are to perform various functions.

Executive Power

- The ministry exercises all the executive powers of the Governor. All the departments of the Government are under the control of the Ministers and it is their responsibility to run the administration smoothly. The Council of Ministers lays down the policy of Government and in the light of that the department work is carried out. The Council of Ministers executes the decision taken by the Cabinet. They maintain order and peace in the state. All the big and important appointments are made on the advice of the Council of Ministers.

Legislative Power

- The Council of Ministers has a big role to play in the making of the law of the state. Ministers are taken from

among the members of the Legislature. They participate in the meeting of the Legislature. They introduce Bills, participate in the discussion and cast their vote. The meeting of the Legislature are summoned and adjourned on the advice of the cabinet. The inaugural address of the Governor is also prepared by the Council of Ministers. Most of the Bills are rejected and passed accordingly to the will of the Council of Ministers. Council of Ministers has the support of the party in majority in the Legislature and this party is always at the beck and call of the cabinet. Hence, any Bill introduced by the Cabinet cannot be rejected and the Council of Ministers if it desires so can ask the Governor to dissolve the Legislative Assembly. The Governor under such circumstances also is to act on the advice of the Ministry. The Council of Ministers can issue an ordinance through the state Governor.

Financial Power

- The budget of the states is prepared by the Council of Ministers. The Money Bills can only be introduced by theory ministers. There are the ministers who propose imposition of taxes or suggest reduction or abolition of taxes.

Position of the Council of Ministers

- The powers of the Council of Ministers clearly indicate that the ministry is the real ruler of the state .Its will prevail in the making of laws enforcing them in and the running of the administration of the state. But during emergency the Cabinet loses its importance. When the

proclamation of emergency is issued the President can take the administration into his own hands and in this situation the Governor acts as the agent of the President of India.

The Council of Ministers in Constitution

Council of Ministers to aid and advise the Governor:-

- There shall be a Council of Ministers with [Chief Minister] at the head to aidand advise the Governor in the exercise of his functions.

- All functions of the Governor except those under sections 36, 38 and92 shall be exercised by him only on the advice of the Council of Ministers.

- The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be enquired into in any court.

- *Appointment of Ministers*: The [Chief Minister] shall be appointed by the Governor and the other r.1inisters shall be appointed by the Governor on the advice of the [Chief Minister].

- Minister's responsibility to the Legislature.-

- The Council of Ministers shall be collectively responsible to the Legislative Assembly.

- A Minister who for any period of six consecutive months is not a member of either House of Legislature shall upon the expiry of that period cease to be a Minister.

- *Deputy Ministers*: The Governor may on the advice of the [Chief Minister] appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.

- *Tenure of Office*: The Ministers and the Deputy Ministers shall hold office during the pleasure of the Governor.

- *Oaths of Office and secrecy*: Before a Minister or a Deputy Minister enters upon his office, the Governor or, in his absence, any person authorised by him, shall administer to the Minister or the Deputy Minister the oaths of office and of secrecy according to the form set out for the purpose in the Fifth Schedule.

- *Salaries and allowances of Ministers and Deputy Ministers*: The salaries and allowances of Ministers and Deputy Ministers shall be such as the Legislature may from time to time by law determine and, until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Ministers' Salaries Act, 1956 (Act VI of 1956), the Jammu and Kashmir Ministers Travelling Allowances Rules for the time being in force, and the Jammu and Kashmir Deputy Minister's Salaries and Allowances Act, S. 2010 (Act VIII of S. 2010).

Legislature: Composition, Power and Functions of Legislative Assembly and Legislative Council

- A legislature is a type of deliberative assembly with the power to pass, amend, and repeal laws. The law created by a legislature is called legislation or statutory law. In addition to enacting laws, legislatures usually have exclusive authority to raise taxes and adopt the budget and other money bills. Legislatures are known by many names, the most common being parliament and congress, although these terms also have more specific meanings. In parliamentary systems of government, the legislature is formally supreme and appoints a member from its house as the prime minister which acts as the executive.

- In a presidential system, according to the separation of powers doctrine, the legislature is considered an independent and coequal branch of government along with both the judiciary and the executive. The primary components of a legislature are one or more chambers or houses: assemblies that debate and vote upon bills. A legislature with only one house is called unicameral. A bicameral legislature possesses two separate chambers, usually described as an upper house and a lower house, which often differ in duties, powers, and the methods used for the selection of members.

- Much rarer have been tricameral legislatures; the most recent existed in the waning years of caucasian-minority rule in South Africa. In most parliamentary systems, the lower house is the more powerful house while the upper house is merely a chamber of advice or review.

- However, in presidential systems, the powers of the two houses are often similar or equal. In federations, it is typical for the upper house to represent the component states; the same applies to the supranational legislature of the European Union. For this purpose, the upper house may either contain the delegates of state governments, as is the case in the European Union and in Germany and was the case in the United States before 1913, or be elected according to a formula that grants equal representation to states with smaller populations, as is the case in Australia and the modern United States.

- Because members of legislatures usually sit together in a specific room to deliberate, seats in that room may be assigned exclusively to members of the legislature. In parliamentary language, the term seat is sometimes used to mean that someone is a member of a legislature. For example, saying that a legislature has 100 "seats" means that there are 100 members of the legislature, and saying that someone is "contesting a seat" means they are trying to get elected as a member of the legislature. By extension, the term seat is often used in less formal contexts to refer to an electoral district itself, as for example in the phrases "safe seat" and "marginal seat".

Composition

- Each state has a legislative assembly (Vidhan Sabha) which is a popularly elected House. Its members are elected by the people of the state on the basis of universal adult franchise. Some of the states have Vidhan Parishad (legislative council) also. In the state where there are two

Houses, 'Vidhan Sabha' is known as the House and 'Vidhan Parishad' as the Upper House.

The State Legislature in Constitution

- *Legislature for the State*. There shall be a Legislature for the Statewhich shall consist of the Governor and two Houses to be known respectively as the Legislative Assembly and the Legislative Council.

Composition of Legislative Assembly.

- The Legislative Assembly shall consist of [one hundred and eleven] members chosen by direct election from territorial constituencies in the State: Provided that the Governor may if he is of opinion that women are not adequately represented in the Assembly, nominate not more than two women to be members thereof.

- For the purposes of sub-section (1), the State shall be divided intosingle member territorial constituencies by such authority and in such manner asthe Legislature may by law determine.

- Upon the completion of each census, the number, extent andboundaries of the territorial constituencies shall be readjusted by such authorityand in such manner as the Legislature may by jaw determine: Provided that such readjustment shall not effect representation in the Legislative Assembly until the dissolution of the then existing Assembly: Provided that until the relevant figures for tile first census taken after the year 2026 have been published, it shall not be necessary to readjust the total

number of seats in the Legislative Assembly of the State and - the- division of the State into territorial constituencies under this sub-section.

- Provision relating to Pakistan- occupied territory.- Notwithstanding anything contained in section 47, until the area of the State under the occupation of Pakistan ceases to be, so occupied and the people residing in that area elect their representatives

- [twenty-four seats] in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly; and

- The said area shall be excluded in delimiting the territorial constituencies under section 47.

48-A. Holding of general election in the event of earlier dissolution of Legislative Assembly.-Notwithstanding anything contained in this Constitution ifupon the completion of a census, but before the final readjustment of territorialconstituencies, the Legislative Assembly is dissolved prior to the expiry of itsduration and the Governor is satisfied that holding of general election withoutdelay is necessary, he may, after consulting the Election Commission, bynotification direct that the general election shall be held on the basis of the lastpreceding delimitation of territorial constitu-encies.

- Reservation of seats for Scheduled Castes.-

  – There shall be reserved in the Legislative Assembly for the Scheduled Castes in the State a number of seats which shall bear, as nearly as may be, the

same, proportion to the total number of seats in the Assembly as the population of the Scheduled Castes bears to the population of the State. Explanation.-In this sub-section-

i. The expression "population" means the population as ascertained at the last preceding census of which the relevant figures have beenpublished; and

ii. "Scheduled Castes" means the castes, races or tribes or part of, or groups within, castes, races, or tribes which are for the purposes of the Constitution of India deemed to be Scheduled Castes in relation to the State under the provisions of Article 341 of the Constitution: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures of the first census taken after the year 2026 have been published, be construed as a reference to the 1981 census.

– The provisions of sub-section (1) shall cease to have effect on the expiration of a period of [fifty-three years] from the commencement of this Constitution: Provided that such cesser shall not affect any representation in the Legislative Assembly until the dissolution of the then existing Assembly.

- Composition of Legislative Council.-

– Legislative Council shall consist of thirty-six members, chosen in the manner provided in this section.

– Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir and are not members of the Legislative Assembly: Provided that of the members so elected, at least one shall be a resident of Tehsil Ladakh and at least one shall be a resident of Tehsil Kargil.

– Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Jammu and are not members of the Legislative Assembly:

- Provided that of the members so elected, at least one shall be a resident of Doda District and at least one shall be a resident of Poonch District.

– one member shall be elected by each of the following electorates, namely

i. The members of municipal council, town area committees and notified area committees in the Province of Kashmir;

ii. The members of municipal council, town area committees and notified area committees in the Province of Jammu;

– Two members shall be elected by each of the following electorates, namely

  i. The members of the Panchayats and such other local bodies in the Province of Kashmir as the Governor may by order specify;

  ii. The members of the Panchayats and such other local bodies in theProvince of Jammu as the Governor may by order specify.

– [Eight] members shall be nominated by the Governor, not more than three of whom shall be persons belonging to any of the socially or economically backward classes in the State, and the others shall be persons having special knowledge or practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

– Elections under sub-sections (2) and (3) shall be held in accordance with the system of proportional representation by means of the single transferable vote.

Powers and functions of the Legislative Assembly

- The constitution provides for a law making body, Legislature for every state. In some states, the Legislature is bicameral and in some it is unit-cameral. Where the Legislature is bicameral the upper House is called the Legislative Council and the lower House is known as Legislative assembly Vidhan Sabha members are elected

directly by the people hence, it is the representative House. The Vidhan sabhaby passing a resolution by 2/3 majority of the members present and voting may request the Parliament to create or abolish the Vidhan parisada in the state. The Orissa Legislative assembly or the Vidhan Sabha is the Unit-cameral, Legislature of Orissa.

Composition

- The constitution provides that the Legislative Assembly of each state shall consist of not more than 500 and less than 60 members. According to 36th Amendment Sikkim was made a full-fledged state and members of Sikkim Legislative Assembly cannot b less than 30. The total strength of a State Legislative Assembly depends upon the population of the state. Those eligible to vote must be:

- Citizen of india

- Must have completed the age of 21 years

- Must have been otherwise disqualified.

- The constitution also makes provision for the reservation of seats for the scheduled castes and tribes. It is to give special representation to them. However, elections of the members of the scheduled caste and tribes are also held on the basis of joint electorate. Provision for the nomination of members belonging to the Anglo-Indian community has also been made in the constitution. The Orissa Legislative Assembly has 22 seats reserved for the Scheduled Caste and 34 for the Scheduled Tribes. This

reservation is to continue up to 2026 after the ninety one amendment of the constitution.

Qualifications

- The qualifications and disqualifications for a member of the Legislative Assembly are the same as for members of the Lok sabha. A candidates seeks elections to the Legislative Assembly must fulfill the following qualifications.

- He must be a citizen of India.

- He must have completed the age of 25 years.

- He must not hold an office of profit.

- He must possess qualifications laid down by the parliament of India.

- He must not be unsound mind and should not have been declared disqualifications by a competent court.

- If after election any question arises as to whether a member is subject to any of the disqualifications the decision of the Governor shall be final. But before giving any decision on any such question the Governor is required to obtain the opinion of the Election Commission and cat according to such opinion.

- The decision of the Governor therefore is really the decision of the Election commission.

Term

- The term of Legislative Assembly is five years. The term of five years starts from the date of sitting.

- During the Parliament of emergency the life of the Assembly can be extended by a law of Parliament for a period not exceeding one year at a time.

Salary

- Members of the Legislative Assembly are entitled to such salary and allowances as are determined by the Legislature of states by law.

Immunities

- Like the members of parliament the members of the State Legislature also enjoy freedom of speech on the floor of the House. They cannot be prosecuted for having said anything on the floor of the House. During session the members cannot be arrested in any civil cases.

Quorum

- Until the Legislature of the state by law otherwise provides, the quorum to constitute a meeting of the House shall be ten members or one tenth of the total number of the House whichever is greater.

- According to 42nd Amendment each Home of State Legislature is empowered to determine its quorum.

Powers Functions

- The Legislative Assembly has the powers to make laws on all subjects contained in the state list. Those subjects are within the exclusive jurisdiction of the State Legislative Assembly.

Legislative Powers

- The Legislative Assembly can make laws on the subjects mentioned in the state list and concurrent list. If there is only one chamber of the Legislature, the Bill after being passed by this chamber is sent to the Governor for his assent.

- If there are two chambers of the Legislature the Bill after having been passed by a chamber is sent to the second chamber is that to the Governor of the state for his assent.

  The second chamber Council can delay the passage of the Bill at the most for one month. The Governor can veto a Bill once but if passed by the Legislature for the second time the Governor will have to give his assent.

Financial Powers

- Money Bill can only be introduced in the Legislative Assembly. The Legislative Assembly exercises committee control over the finances of state.

The Governor cannot refuse to give his assent to the Money Bill. During emergency limitation can be imposed on the financial powers of the Governor.

Executive Power

- The State Executive is responsible to the Legislative Assembly for all its actions and policies. The leader of the majority party in the Legislative Assembly is appointed as the Chief Minister of the state. Most of the Ministers are taken from the Legislative Assembly. The members of the Legislative Assembly can ask questions to the Ministers and they are to give satisfactory answers to these entire question. The Legislative Assembly can reject an important Bill of the cabinet or by decreasing the salary of the Ministers or by passing a vote of no. confidence against the ministry to remove it from office.

Electoral Functions

- The members of the Legislative Assembly participate in the election of the President of India. The members of Rajya Sabha are elected by the state Legislature. If elects its own Speaker and Deputy speaker.

Constitutional Function

- The constitutional power of the Legislative Assembly is not very important. Power of amendment is vested with the Parliament, but important provisions of the constitution cannot be amended unless half of the state Legislatures in the country approves such an amendment.

Creation or the Abolition of the Legislative Council

- The Legislative Assembly by passing a resolution by two third majority of the members present and voting can request the Union Parliament for the creation of the abolition of the Legislative Council in the state. It is merely a request to the Union parliament and the Union parliament is not bound to accept the request.

Legislative Council

- The minimum strength of the Council is 40 and the maximum is one third of the total membership of the legislative Assembly. The election to the council is indirect.

- The members are elected by proportional representation by means of single transferable vote. A candidate for election to the Legislative Council must be a citizen of India, not less than thirty years of age and should possess such other qualifications as may be prescribed by Parliament.

  It is a permanent body. One-third of its members retire every two years. The Council along with the Assembly must be summoned at least twice a year. The intervening period between two sessions should not exceed six months. The Governor can prorogue the Legislative council. The Legislative Council chooses its own Chairman and a Deputy Chairman.

Function of the Council

- Immunities and privileges enjoyed by members of State Legislature. In the Legislative Chamber, the members enjoy freedom of Speech. They are not liable to any proceedings in any court of law in respect of anything said or any vote given by them in the legislature or a legislative committee.

The Powers and Functions of the Legislative Council

- The Legislative Council is the upper or the second chamber of state Legislature. The Legislative Council does not exist in all the sate of India. At present only five states have Legislative Councils.

Election

- The members of the Legislative Council are not elected directly by the voters. They are elected in the following ways:

- One-sixth of the total members of the Council are nominated by the Governor. These persons have special aptitude and specialization in literature, fine arts, science & social service.

- One third of the members of the Council are elected by the State Legislative Assembly. These persons are not to be the members of the House.

- One –third of the members are elected by the local bodies namely, Corporation, Municipalities, Zilla Parishads and Panchayats.

- One-twelfth of the members of the Council are elected by the teachers of not lower than Higher Secondary School. Teachers who have three years of standing are entitled to vote at the election.

- One-twelfth of the members are elected by the university graduates of at least 3 years of standing.

Tenure

- The Council is a permanent body. Its one-third members retire by rotation after 2 years but these persons can be re-elected. Each member of the Council remains in office for 6 years.

Qualifications

- He should be a citizen of India.

- He should not be less than 30 years of age.

- He should not hold any office of profit under the Central or State Government.

- He should possess such other qualifications as may be prescribed by Parliament from time to time.

- He should not be mad or insane and should not have been disqualified to become a member of the Council.

Chairman

- There is an elected chairman of the Council who is the Presiding Officer. He is responsible for running smoothly the business of the House. The Legislative Council can remove the Chairman and the Deputy Chairman from office by a majority vote of the House.

Powers & Functions of the Legislative Council

- Any non-Money Bill which can be introduced in the Legislative Assembly can also be introduced in the Legislative Council. Any ordinary Bill on the subject mentioned in the State List and Concurrent list can be introduced in the Legislative Council. After the Bill is passed by the Legislative Assembly, the Bill cannot be sent to Governor for his assent unless it is passed by the Legislative Assembly. The Legislative Council can delay a non-money Bill at the most for a month.

Financial Power

- In financial matters the Legislative Council does not enjoy much power. Money Bills cannot be introduced in this Chamber. The money Bill can only be introduced in the Legislative Assembly and after it is passed there, it is sent to the Legislative Council and the Council can delay it at the most for 14 days. It may reject the Bill or may not take any action over if for 14 days and in both these cases the bill is considered as passed by both the Houses and is sent to the Governor for assent. Budget is only introduced in the Legislative Assembly.

Control over the Executive

- The Legislative Council does not exercise much control over the Executive. Some ministers are of course taken from the Council. Its members can question to the ministers and they are to give satisfactory answers to the questions. The Council can discuss and pass resolutions of the matter of public importance and relating to the administration of the state. The Council can criticize the functioning of the departments under the Ministers. More than this it does not have any control over the Council of Ministers. The Council of Ministers cannot be removed from office by the Legislative Council. Legislative Council is the upper chamber of the State legislature. But its position as compared with the lower chamber is of less importance. The Legislative Assembly can establish or abolish the Legislative Council by passing a resolution to this effect. The very existence of the Legislative Council depends upon the Legislative Assembly.

- An Act to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of the Jammu and Kashmir State Legislature. BE it enacted by the Jammu and Kashmir State Legislature in the Thirteenth Year of the Republic of India as follows:

- *Short title*: This Act may be called the Jammu and Kashmir State Legislature (Prevention of Disqualification) Act, 1962.

- *Definitions*: In this Act, unless the context otherwise requires:

  – 'Compensatory allowance' means any sum of money payable to the holder of an office by way of daily allowance (such allowance not exceeding the amount of daily allowance to which a member of the Jammu and Kashmir State Legislature is entitled under the salaries and allowances of Members of Jammu and Kashmir State Legislature Act, 1960), any conveyance allowance, house-rent allowance or travelling allowance for the purpose of enabling him to recoup any expenditure incurred by him in performing the functions of that office;

  – 'Sstatutory body' means any corporation, committee, commission, council, board or other body of persons whether incorporated or not, established by or under any law for the time being in force;

  – 'Non-statutory body' means any body of persons other than a statutory body.

- *Certain offices of profit not to disqualify*: It is hereby declared that none of the following offices, in so far as it is an office of profit under the Government of Jammu and Kashmir or the Government of India, shall disqualify the holder thereof for being chosen as, or for being, a member of the Jammu and Kashmir State Legislature, namely:—

  – Any office held by a Minister, Minister of State or Deputy Minister whether ex officio or by name;

- The office of Chief Whip, Deputy Cheif Whip or Whip in either House of the Jammu and Kashmir State Legislature;

- The office of a Chief Parliamentary Secretary or a Parliamentary Secretary or a Parliamentary Under Secretary;

- The office of Chairman or member of the syndicate, senate, executive committee, council or court of the University of Jammu and Kashmir or any other body connected with the said University;

- [(dd) the office of Chairman or member of a Committee, Commission or Board set up by the Government whether under a statute or by executive order, for or in connection with the—

  i. Prevention of corruption,

  ii. Development of the State in planned manner,

  iii. Land reforms];

- The office of a member or any delegation or mission sent outside India by the Government for any special purpose;

- The office of Chairman or member of a committee (whether consisting of one or more members), set up temporarily for the purpose of advising the Government or any other authority in respect of any matter of public importance or for the purpose of

making an enquiry into, or collecting statistics in respect of, any such matter, if the holder of such office is not entitled to any remuneration other than compensatory allowance;

– The office of Chairman, Director or member of any statutory or non-statutory body other than any such body as is referred to in [clause (dd)] or clause (f) if the holder of such office is not entitled to any remuneration other than compensatory allowance.

- *Explanation*: For the purposes of this section, the office of Chairman of Secretary shall include every office of that description by whatever name called.

- *Repeal*: The Jammu and Kashmir Legislature (Prevention of Disqualification) Act, 1957 is hereby repealed

- The judiciary (also known as the judicial system or judicature) is the system of courts that interprets and applies the law in the name of the sovereign or state. The judiciary also provides a mechanism for the resolution of disputes. Under the doctrine of the separation of powers, the judiciary generally does not make law (that is, in a plenary fashion, which is the responsibility of the legislature) or enforce law (which is the responsibility of the executive), but rather interprets law and applies it to the facts of each case. This branch of government is often tasked with ensuring equal justice under law. It usually consists of a court of final appeal (called the "supreme court" or "constitutional court"), together with lower courts.

- In most jurisdictions the judicial branch has the power to change laws through the process of judicial review. Courts with judicial review power may annul the laws and rules of the state when it finds them incompatible with the provisions of a constitution. Judges constitute a critical force for interpretation and implementation of a constitution, thus de facto in common law countries creating the body of constitutional law. During last decades the judiciary became active in economic issues related with economic rights established by constitution because "economics may provide insight into questions that bear on the proper legal interpretation". Since, many a country with a transitional political and economic system continues treating its constitution as an abstract legal document disengaged from the economic policy of the state, practice of judicial review of economic acts of executive and legislative branches became to grow.

- In the 1980s, the Supreme Court of India for almost a decade had been encouraging public interest litigation on behalf of the poor and oppressed by using a very broad interpretation of several articles of the Indian Constitution. Budget of the judiciary in many transitional and developing countries is almost completely controlled by the executive. The latter undermines the separation of powers, as it creates a critical financial dependence of the judiciary. The proper national wealth distribution including the government spending on the judiciary is subject of the constitutional economics.

- It is important to distinguish between the two methods of corruption of the judiciary: the state (through budget

planning and various privileges), and the private. The term "judiciary" is also used to refer collectively to the personnel, such as judges, magistrates and other adjudicators, who form the core of a judiciary (sometimes referred to as a "bench"), as well as the staffs who keep the system running smoothly.

- After the French Revolution, lawmakers prohibited any interpretation of law by judges, and the legislature was the only body permitted to interpret the law; this prohibition was later overturned by the Code Napoléon. In civil law jurisdictions at present, judges interpret the law to about the same extent as in common law jurisdictions – though it may be acknowledged in theory in a different manner than in the common law tradition which directly recognizes the limited power of judges to make law. For instance, in France, the jurisprudence constante of the Court of Cassation or the Council of State is equivalent in practice with case law. In theory, in the French civil law tradition, a judge does not make new law; he or she merely interprets the intents of "the Legislator." The role of interpretation is traditionally approached more conservatively in civil law jurisdictions than in common law jurisdictions. When the law fails to deal with a situation, doctrinal writers and not judges call for legislative reform.

Various Functions

- In common or provinces, courts interpret law, including constitutions, statutes, and regulations. They also make law (but in a limited sense, limited to the facts of

particular cases) based upon prior case law in areas where the legislature has not made law. For instance, the tort of negligence is not derived from statute law in most common law jurisdictions. The term common law refers to this kind of law.

- In civil law jurisdictions, courts interpret the law, but are, at least in theory, prohibited from creating law, and thus, still in theory, do not issue rulings more general than the actual case to be judged. In practice, jurisprudence plays the same role as case law.

- In socialist law, the primary responsibility for interpreting the law belongs to the legislature.

This difference can be seen by comparing United States, France and the People's Republic of China:

- In the United States court system, the Supreme Court is the final authority on the interpretation of the federal Constitution and all statutes and regulations created pursuant to it, as well as the constitutionality of the various state laws; in the US federal court system, federal cases are tried in trial courts, known as the US district courts, followed by appellate courts and then the Supreme Court. State courts, which try the 98per cent of litigation, may have different names and organization; trial courts may be called "courts of common plea", appellate courts "superior courts" or "commonwealth courts". The judicial system, whether state or federal, begins with a court of first instance, is appealed to an appellate court, and then ends at the court of last resort.

- In France, the final authority on the interpretation of the law is the Council of State for administrative cases, and the Court of Cassation for civil and criminal cases;

- And in the People Republic of China, the final authority on the interpretation of the law is the National People's Congress.

- Other countries such as Argentina have mixed systems that include lower courts, appeals courts, a cassation court (for criminal law) and a Supreme Court. In this system the Supreme Court is always the final authority but criminal cases have four stages, one more than civil law.

Judicial System in India

- The Supreme Court in India is the ultimate interpreter of the constitution and the laws of the land. It has appellate jurisdiction over all civil and criminal proceedings involving substantial issues concerning the interpretation of the constitution. The court has the original and exclusive jurisdiction to resolve disputes between the central government and one or more states and union territories as well as between different states and union territories. And the Supreme Court is also empowered to issue advisory rulings on issues referred to it by the president.

- The Supreme Court has wide discretionary powers to hear special appeals on any matter from any court except those of the armed services. It also functions as a court of record and supervises every high court. Twenty-five

associate justices and one chief justice serve on the Supreme Court. The president appoints the chief justice. Associate justices are also appointed by the president after consultation with the chief justice and, if the president deems necessary, with other associate justices of the Supreme Court and high court judges in the states. The appointments do not require Parliament's concurrence. Justices may not be removed from office until they reach mandatory retirement at age sixty-five unless each house of Parliament passes, by a vote of two-thirds of the members in attendance and a majority of its total membership, a presidential order charging "proved misbehaviour or incapacity." The contradiction between the principles of parliamentary sovereignty and judicial review that is embedded in India's constitution has been a source of major controversy over the years.

- After the courts overturned state laws redistributing land from zamindar estates on the grounds that the laws violated the zamindars' Fundamental Rights, Parliament passed the first (1951), fourth (1955), and seventeenth amendments (1964) to protect its authority to implement land redistribution. The Supreme Court countered these amendments in 1967 when it ruled in the *Golaknath v State of Punjab* case that Parliament did not have the power to abrogate the Fundamental Rights, including the provisions on private property. On February 1, 1970, the Supreme Court invalidated the government-sponsored Bank Nationalization Bill that had been passed by Parliament in August 1969.

- The Supreme Court also rejected as unconstitutional a presidential order of September 7, 1970, that abolished the titles, privileges, and privy purses of the former rulers of India's old princely states. In reaction to Supreme Court decisions, in 1971 Parliament passed the Twenty-fourth Amendment empowering it to amend any provision of the constitution, including the Fundamental Rights; the Twenty-fifth Amendment, making legislative decisions concerning proper land compensation non-justiciable; and the Twenty-sixth Amendment, which added a constitutional article abolishing princely privileges and privy purses. On April 24, 1973, the Supreme Court responded to the parliamentary offensive by ruling in the *Keshavananda Bharati v the State of Kerala* case that although these amendments were constitutional, the court still reserved for itself the discretion to reject any constitutional amendments passed by Parliament by declaring that the amendments cannot change the constitution's "basic structure."

- During the 1975-77 Emergency, Parliament passed the Forty-second Amendment in January 1977, which essentially abrogated the *Keshavananda* ruling by preventing the Supreme Court from reviewing any constitutional amendment with the exception of procedural issues concerning ratification. The Forty-second Amendment's fifty-nine clauses stripped the Supreme Court of many of its powers and moved the political system towards parliamentary sovereignty. However, the Forty-third and Forty-fourth amendments, passed by the Janata government after the defeat of Indira Gandhi in March 1977, reversed these changes. In

the *Minerva Mills* case of 1980, the Supreme Court reaffirmed its authority to protect the basic structure of the constitution.

- However, in the *Judges Transfer* case on December 31, 1981, the Supreme Court upheld the government's authority to dismiss temporary judges and transfer high court justices without the consent of the chief justice. The Supreme Court continued to be embroiled in controversy in 1989, when its US$470 million judgement against Union Carbide for the Bhopal catastrophe resulted in public demonstrations protesting the inadequacy of the settlement. In 1991 the first-ever impeachment motion against a Supreme Court justice was signed by 108 members of Parliament. A year later, a high-profile enquiry found Associate Justice V. Ramaswamy "guilty of willful and gross misuses of office . . . and moral turpitude by using public funds for private purposes and reckless disregard of statutory rules" while serving as chief justice of Punjab and Haryana.

- Despite this strong indictment, Ramaswamy survived parliamentary impeachment proceedings and remained on the Supreme Court after only 196 members of Parliament, less than the required two-thirds, voted for his ouster. During 1993 and 1994, the Supreme Court took measures to bolster the integrity of the courts and protect civil liberties in the face of state coercion. In an effort to avoid the appearance of conflict of interest in the judiciary, Chief Justice Manepalli Narayanrao Venkatachaliah initiated a controversial model code of conduct for judges that required the transfer of high court judges having

children practicing as attorneys in their courts. Since, 1993, the Supreme Court has implemented a policy to compensate the victims of violence while in police custody. On April 27, 1994, the Supreme Court issued a ruling that enhanced the rights of individuals placed under arrest by stipulating elaborate guidelines for arrest, detention, and interrogation.

Power and Functions of High Court

- High Courts stand at the head of the State Judicial administration. Each High Court consists of a Chief Justice and other judges, with the total number differing from State to State. The Chief Justice of High Court is appointed by the President of India in consultation with the Chief Justice of India and the Governor of State concerned. To be eligible for appointment as a Judge, one must have held a Judicial Office in India for 10 years or must have practiced as an advocate of High Court for a considerable period. There are also Registrars who attend to all administrative matters pertaining to Subordinate Courts and Correspondence with Government, other High Courts and district and subordinate courts.

Chapter 5

Judiciary

Law of India

Law of India refers to the system of law in modern India. It is largely based on English common law because of the long period of British colonial influence during the period of the British Raj. Much of contemporary Indian law shows substantial European and American influence. Various legislations first introduced by the British are still in effect in modified forms today.

During the drafting of the Indian Constitution, laws from Ireland, the United States, Britain, and France were synthesised into a refined set of Indian laws. Indian laws also adhere to the United Nations guidelines on human rights law and the environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India.

Indian family law is complex, with each religion adhering to its own specific laws. In most states, registering of marriages and divorces is not compulsory. Separate laws govern Hindus, Muslims, Christians, Sikhs, and followers of other religions. The exception to this rule is in the state of Goa, where a Portuguese uniform civil code is in place, in which all religions have a common law regarding marriages, divorces, and adoption. There are about 1221 laws as of May 2010 However, since, there are Central laws as well as State laws, its difficult

to ascertain their exact numbers as on a given date. The best way to find the about the Central Laws in India is from the official web site.

History of Indian law

Ancient India represented a distinct tradition of law, and had a historically independent school of legal theory and practice. The *Arthashastra*, dating from 400 BC and the *Manusmriti*, from 100 AD, were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia. Early in this period, which culminated in the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent.

The appearance of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition.

Inter-State relations in the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a temporary or semipermanent character. When India became part of the British Empire, there was a break in tradition, and Hindu and Islamic law were supplanted by the common law. As a result, the present judicial system of the country derives largely from the British system and has little correlation to the institutions of the pre-British era.

Constitutional and administrative law

The Constitution of India, which came into effect from January 26, 1950, is the lengthiest written constitution in the world. Although its administrative provisions are to a large extent based on the Government of India Act 1935, it also contains various other provisions that were drawn from other constitutions in the world at the time of its creation. It provides details of the administration of both the Union and the States, and codifies the relations between the Federal Government and the State Governments.

Also incorporated into the text are a chapter on the fundamental rights of citisens, as well as a chapter on directive principles of state policy. The constitution prescribes a federal structure of government, with a clearly defined separation of legislative and executive powers between the Federation and the States. Each State Government has the freedom to draft it own laws on subjects classified as state subjects 1. Laws passed by the Parliament of India and other pre-existing central laws on subjects classified as central subjects are binding on all citisens. However, the Constitution also has certain unitary features, such as vesting power of amendment solely in the Federal Government, the absence of dual citisenship, and the overriding authority assumed by the Federal Government in times of emergency.

Criminal law

The Indian Penal Code formulated by the British during the British Raj in 1860, forms the backbone of criminal law in India. The Code of Criminal Procedure, 1973 governs the

procedural aspects of the criminal law. Jury trials were abolished by the government in 1960 on the grounds they would be susceptible to media and public influence. This decision was based on an 8-1 acquittal of Kawas Nanavati in *K. M. Nanavati vs. State of Maharashtra*, which was overturned by higher courts.

In February 2011, the Supreme Court of India ruled that criminal defendants have a constitutional right to counsel. Capital punishment in India is legal. The last execution was conducted in 2004, when Dhananjoy Chatterjee was hanged for the rape and murder of a 14-year old girl.

Contract law

The main contract law in India is codified in the Indian Contract Act, which came into effect on September 1, 1872 and extends to all India except the state of Jammu and Kashmir. It governs entrance into contract, and effects of breach of contract. Indian Contract law is popularly known as mercantile law of India. Originally Indian Sales of Goods Act and Partnership Act were part of Indian Contract act, but due to needed amendment there acts were separated from Contract Act. Contract act is the main and most used act of legal agreements in India.

Labour law

Indian labour laws are among the most restrictive and complex in the world according to the World Bank.

Tort law

Development of constitutional tort began in India in the early 1980s. It influenced the direction tort law in India took during the 1990s. In recognising state liability, constitutional tort deviates from established norms in tort law. This covers custodial deaths, police atrocities, encounter killings, illegal detention and disappearances. Law commission of India's first report was relating to the Liability of the State in Tort. This report was submitted by the Law commission of India on 11.5.1956. State owes tortious Liability under Article 300 of Indian Constitution.

Tax law

Indian tax law is an extremely complex body of law, with several different taxes levied by different governments. Income Tax is levied by the Central Government under the Income Tax Act, 1961. Customs and excise duties are also levied by the Central government. Sales tax is levied under VAT legislation at the state level.

Trust law

Trust law in India is mainly codified in the Indian Trusts Act of 1882, which came into force on March 1, 1882. It extends to the whole of India except for the state of Jammu and Kashmir and Andaman and Nicobar Islands. Indian law follows principles of English law in most areas of law, but the law of trusts is a notable exception. Indian law does not recognise "double ownership", and a beneficiary of trust property is not the equitable owner of the property in Indian law.

Family law

Family laws in India are different when Warren Hastings in 1772 created provisions prescribing Hindu law for Hindus and Islamic law for Muslims, for litigation relating to personal matters. However, after independence, efforts have been made to modernise various aspects of personal law and bring about uniformity among various religions. Recent reform has affected custody and guardianship laws, adoption laws, succession law, and laws concernint domestic violence and child marriage.

Hindu Law

As far as Hindus are concerned *Hindu Law* is a specific branch of law. Though the attempt made by the first parliament after independence did not succeed in bringing forth a Hindu Code comprising the entire field of Hindu family law, laws could be enacted touching upon all major areas that affect family life among Hindus in India. Jains, Sikhs and Buddhists are also covered by Hindu law.

Muslim Law

Indian Muslims' personal laws are based on the Sharia, which is partially applied in India. The portion of the *fiqh* applicable to Indian Muslims as personal law is termed Mohammedan law. Despite being largely uncodified, Mohammedan law has the same legal status as other codified statutes.

The development of the law is largely on the basis of judicial precedent, which in recent times has been subject to review by the courts. The contribution of Justice V.R. Krishna Iyer in the

matter of interpretation of the statutory as well as personal law is significant. The very Source of the Muslim law are divided into two categories:

- Primary Source
- Secondary Source

"*Primary Source" As per Sunni Law*:

- Quran
- Sunna or Ahdis (Tradition of the Prophet)
- Ijma (Unanimous Decision of the Jurists)
- Qiyas (Analogical deduction)

As per Shia Law:

- Quran
- Tradition (only those that have come from the family of the Prophet)
- Ijma (only those confirmed by Imams)
- Reasons

"*Secondary Source*":

- Custom
- Judicial Decisions

- Legislation

Salient Feature of Quran:

- Divine Origin
- First Source
- Structure
- Mixture of Religion, Law and Morality
- Different Forms of Legal Rules
- Unchangeable
- Incompleteness-Quran is not a complete code, only 200 verses deal with legal matters
- Silence of Quran-On many legal issues, Quran is silent

Christian Law

For Christians, a distinct branch of law known as Christian Law, mostly based on specific statutes, applies. Christian law of Succession and Divorce in India have undergone changes in recent years. The Indian Divorce (Amendment) Act of 2001 has brought in considerable changes in the grounds available for divorce. By now Christian law in India has emerged as a separate branch of law.

It covers the entire spectrum of family law so far as it concerns Christians in India. Christian law, to a great extent is based on English law but there are laws that originated on the strength

of customary practices and precedents. Christian family law has now distinct sub branches like laws on marriage, divorce,restitution, judicial separation, succession, adoption, guardianship,maintenance, custody of minor children and relevance of canon law and all that regulates familial relationship.

Nationality law

Nationality law or citisenship law is mainly codified in the constitution of India and the Citisenship Act of 1955. Although the Constitution of India bars multiple citisenship, the Parliament of India passed on January 7, 2004, a law creating a new form of very limited dual nationality called *Overseas Citisenship of India*. Overseas citisens of India have no form of political rights or participation in the government, however, and there are no plans to issue to overseas citisens any form of Indian passport.

Law enforcement

India has a multitude of law enforcement agencies. All agencies are part of the Internal Affairs Ministry (Home Ministry). At the very basic level is the local police force, which is under state jurisdiction.

Supreme Court of India

The Supreme Court of India is the highest judicial forum and final court of appeal as established by Part V, Chapter IV of the Constitution of India. According to the Constitution of India, the role of the Supreme Court is that of a federal court

and guardian of the Constitution. Articles 124 to 147 of the Constitution of India lay down the composition and jurisdiction of the Supreme Court of India. The Supreme Court is meant to be the last resort and highest appellate court which takes up appeals against judgements of the High Courts of the states and territories. Also, disputes between states or petitions involving a serious infringement of fundamental and human rights are usually brought directly to the Supreme Court. The Supreme Court of India held its inaugural sitting on 28 January 1950, and since, then has delivered more than 24,000 reported judgements.

Constitution of the court

On 28 January 1950, two days after India became a sovereign democratic republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building. The Chamber of Princes had earlier been the seat of the Federal Court of India for 12 years, between 1937 and 1950, and was the seat of the Supreme Court until the Supreme Court acquired its present premises in 1958. The Supreme Court of India replaced both the Federal Court of India and the Judicial Committee of the Privy Council at the apex of the Indian court system. After its inauguration on 28 January 1950, the Supreme Court commenced its sittings in the Chamber of Princes in the Parliament House. The Court moved into the present building in 1958. The Supreme Court Bar Association is the bar of the highest court. The current president of the SCBA is Pravin Parekh, while K.C. Kaushik is the present Honourary Secretary.

The Supreme Court Building and its Architecture

The main block of the Supreme Court building was built on a square plot of 22 acres and the building was designed by chief architect Ganesh Bhikaji Deolalikar who was the first Indian to head CPWD and designed the Supreme Court Building in an Indo – British architectural style. He was succeeded by Shridher Krishna Joglekar. The Court moved into the present building in 1958. The building is shaped to project the image of scales of justice with the Central Wing of the building corresponding to the centre beam of the Scales. In 1979, two new wings—the East Wing and the West Wing—were added to the complex. In all there are 15 court rooms in the various wings of the building. The Chief Justice's Court is the largest of the courtroom located in the centre of the Central Wing. It has a large dome with a high ceiling.

Composition

As originally enacted, the Constitution of India provided for a Supreme Court with a Chief Justice and seven lower-ranking Judges—leaving it to Indian Parliament to increase this number. In the early years, a full bench of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and cases began to accumulate, Parliament increased the number of Judges from the original eight in 1950 to eleven in 1956, fourteen in 1960, eighteen in 1978, twenty-six in 1986 and thirty one in 2008. As the number of the Judges has increased, they have sat in smaller Benches of two or three—coming together in larger Benches of five or more only when required to settle fundamental

questions of law. Any bench may refer the case under consideration up to a larger bench if the need to do so arises.

Eligibility

- The person must be a citisen of India
- Judge of a High Court or of two or more such Courts in succession for at least five years, or
- An Advocate of a High Court or of two or more such Courts in succession for at least ten years, or
- The person must be, in the opinion of the President, a distinguished jurist.

A Judge of a High Court or retired Judge of the Supreme Court or High Courts may be appointed as an ad-hoc Judge of the Supreme Court.

Appointment

All Judges of Supreme Court are appointed by the President of India. However, the President must appoint judges in consultation with the Supreme Court, and appointments are generally made on the basis of seniority and not political preference.

Tenure

Supreme Court Judges retire at the age of 65. A judge of Supreme Court can be removed from office only through the process of impeachment.

Salary

Article 125 of Indian Constitution leaves it to the Indian Parliament to determine the salary, other allowances, leave of absence, pension, *etc.* However, the parliament can not alter any of these privileges and rights to the judge's disadvantage after his appointment.

Court Demographics

The Supreme Court has always maintained a wide regional representation. It also has had a good share of Judges belonging to religious and ethnic minorities.

The first woman to be appointed to the Supreme Court was Justice Fatima Beevi in 1987. She was later followed by Justices Sujata Manohar, Ruma Pal and Gyan Sudha Mishra. Justice Ranjana Desai, who was elevated from the Bombay High Court is the most recent woman judge in the Supreme Court, so that for the first time there were two women (Mishra and Desai) simultaneously in the Supreme Court. In 2000 Justice K. G. Balakrishnan became the first judge from the *dalit* community. In 2007 he also became the first *dalit* Chief Justice of India.

However after retirement a petition-seeking vigilance probe into the allegations of "amassment of wealth disproportionate to their sources of income" by Balakrishnan's family members, was filed before the Income Tax Vigilance and Anti-Corruption Bureau. The income tax department confirmed recently that at least three of his relatives had held a large amount of black money.

Jurisdiction

The Supreme Court has original, appellate and advisory jurisdiction under Articles 32, 131–144 of the Constitution.

Original Jurisdiction

The court has exclusive original jurisdiction over any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more States on the other or between two or more States, if and insofar as the dispute involves any question (whether of law or of fact) on which the existence or extent of a legal right depends. In addition, Article 32 of the Constitution grants an extensive original jurisdiction to the Supreme Court in regard to enforcement of Fundamental Rights. It is empowered to issue directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari* to enforce them.

Appellate Jurisdiction

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Articles 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution. The Supreme Court can also grant special leave under article 136(1) to appeal from a judgement or order of any non-military Indian court. Parliament has the power to enlarge the appellate jurisdiction of the Supreme Court and has exercised this power

in case of criminal appeals by enacting the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970.

Appeals also lie to the Supreme Court in civil matters if the High Court concerned certifies:

- That the case involves a substantial question of law of general importance, and

- That, in the opinion of the High Court, the said question needs to be decided by the Supreme Court.

In criminal cases, an appeal lies to the Supreme Court if the High Court:

- Has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or

- Has withdrawn for trial before itself any case from any Court subordinate to its authority and has in such trial convicted the accused and sentenced him to death or to imprisonment for life or for a period of not less than 10 years, or

- Certified that the case is a fit one for appeal to the Supreme Court.

Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.

Advisory Jurisdiction

The Supreme Court has special advisory jurisdiction in matters which may specifically be referred to it by the President of India under Article 143 of the Constitution.There are provisions for reference or appeal to this Court under Article 317(1) of the Constitution, Section 257 of the Income Tax Act, 1961, Section 7(2) of the Monopolies and Restrictive Trade Practices Act, 1969, Section 130-A of the Customs Act, 1962, Section 35-H of the Central Excises and Salt Act, 1944 and Section 82C of the Gold (Control) Act, 1968.

Appeals also lie to the Supreme Court under the Representation of the People Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969, Advocates Act, 1961, Contempt of Courts Act, 1971, Customs Act, 1962, Central Excises and Salt Act, 1944, Enlargement of Criminal Appellate Jurisdiction Act, 1970, Trial of Offences Relating to Transactions in Securities Act, 1992, Terrorist and Disruptive Activities (Prevention) Act, 1987 and Consumer Protection Act, 1986. Election Petitions under Part III of the Presidential and Vice Presidential Elections Act, 1952 are also filed directly in the Supreme Court.

The Supreme Court has the power to transfer the cases from one High Court to another and even from one District Court of a particular state to another District Court of the other state. In such transfer cases the Hon'ble Supreme Court transfer only those cases if they really lack appropriate territorial jurisdiction and those cases which were otherwise supposed to be filed under the

Judicial independence

The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. Judges are generally appointed on the basis of seniority and not on political preference. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. The salary and allowances of a judge of the Supreme Court cannot be reduced after appointment. A person who has been a Judge of the Supreme Court is debarred from practising in any court of law or before any other authority in India.

Power to Review its own Judgements

Under Order XL of the Supreme Court Rules, the Supreme Court may review its judgement or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in Order XLVII, Rule 1 of the Code of Civil Procedure and in a criminal proceeding except on the ground of an error apparent on the face of the record.

Powers to Punish Contempt

Under Articles 129 and 142 of the Constitution the Supreme Court has been vested with power to punish anyone for contempt of any law court in India including itself. The Supreme Court performed an unprecedented action when it

directed a sitting Minister of the state of Maharashtra, Swaroop Singh Naik, to be jailed for 1 month on a charge of contempt of court on 12 May 2006. This was the first time that a serving Minister was ever jailed.

Jammu and Kashmir

With reference to the State of Jammu and Kashmir (J&K) it would be relevant to note that, J&K has for various historical reasons a special status vis-a-vis the other states of India. Article 370 of the Constitution of India carves out certain exceptions for J&K. The Constitution of India is not fully applicable to the state of J&K. This is the effect of Article 370. The Constitution of India is applicable to the state of J&K with various modifications and exceptions.

These are provided for in the Constitution (Application to Jammu and Kashmir) Order, 1954. Also, Jammu and Kashmir, unlike the other Indian states, also has its own Constitution. Although the Constitution of India is applicable to Jammu and Kashmir with numerous modifications, the Constitution (Application to Jammu and Kashmir) Order, 1954 makes Article 141 applicable to the state of J&K and hence, law declared by Supreme Court is equally applicable to all courts of J&K including the High Court.

After some of the courts overturned state laws redistributing land from *zamindar* (landlord) estates on the grounds that the laws violated the zamindars' fundamental rights, the Parliament of India passed the First Amendment to the Constitution in 1951 followed by the Fourth Amendment in 1955 to protect its authority to implement land redistribution.

The Supreme Court countered these amendments in 1967 when it ruled in *Golaknath v. State of Punjab* that Parliament did not have the power to abrogate fundamental rights, including the provisions on private property. Other laws deemed unconstitutional:

- On 1 February 1970, the Supreme Court invalidated the government-sponsored Bank Nationalization Bill that had been passed by Parliament in August 1969.

- The Supreme Court also rejected as unconstitutional a presidential order of 7 September 1970, that abolished the titles, privileges, and privy purses of the former rulers of India's old princely states.

Response from Parliament:

- In reaction to the decisions of the Supreme Court, in 1971 the Parliament of India passed an amendment empowering itself to amend any provision of the constitution, including the fundamental rights.

- The Parliament of India passed the 25th Amendment, making legislative decisions concerning proper land compensation non-justiciable.

- The Parliament of India passed an amendment to the Constitution of India, which added a constitutional article abolishing princely privileges and privy purses.

Counter-response from the Supreme Court

The Court ruled that the basic structure of the constitution cannot be altered for convenience. On 24 April 1973, the Supreme Court responded to the parliamentary offensive by ruling in *Kesavananda Bharati v. The State of Kerala* that although these amendments were constitutional, the court still reserved for itself the discretion to reject any constitutional amendments passed by Parliament by declaring that the amendments cannot change the constitution's "basic structure", a decision piloted through by Chief Justice Sikri.

Emergency and Government of India

The independence of judiciary was severely curtailed on account of powerful central government during the Indian Emergency (1975-1977) of Indira Gandhi. The constitutional rights of imprisoned persons were restricted under Preventive detention laws passed by the parliament. In the case of Shiva Kant Shukla *Additional District Magistrate of Jabalpur v. Shiv Kant Shukla*, popularly known as the *Habeas Corpus case*, a bench of five seniormost judges of Supreme court ruled in favour of state's right for unrestricted powers of detention during emergency. Justices A.N. Ray, P. N. Bhagwati, Y. V. Chandrachud, and M.H. Beg, stated in the majority decision:

- (Under the declaration of emergency) no person has any locus to move any writ petition under Art. 226 before a High Court for habeas corpus or any other writ or order or direction to challenge the legality of an order of detention.

The only dissenting opinion was from Justice H. R. Khanna, who stated:

- Detention without trial is an anathema to all those who love personal liberty... A dissent is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting Judge believes the court to have been betrayed.

It is believed that before delivering his dissenting opinion, Justice Khanna had mentioned to his sister: *I have prepared my judgement, which is going to cost me the Chief Justice-ship of India."* When the central Government is to recommend one of Supreme court Judges for the post of Chief Justice in January 1977,Justice Khanna was superseded despite being the most senior judge at the time and thereby Government broke the convention of appointing only the senior most judge to the position of Chief Justice of India. In fact, it was felt that the other judges may have gone along for this very reason. Justice Khanna remains a legendary figure among the legal fraternity in India for this decision.

The New York Times, wrote of this opinion: "The submission of an independent judiciary to absolutist government is virtually the last step in the destruction of a democratic society; and the Indian Supreme Court's decision appears close to utter surrender." During the emergency period, the government also passed the 39th amendment, which sought to limit judicial review for the election of the Prime Minister; only a body constituted by Parliament could review this election. The court tamely agreed with this curtailment (1975), despite the earlier Keshavanand decision. Subsequently, the parliament, with

most opposition members in jail during the emergency, passed the 42nd Amendment which prevented any court from reviewing any amendment to the constitution with the exception of procedural issues concerning ratification.

A few years after the emergency, however, the Supreme court rejected the absoluteness of the 42nd amendment and reaffirmed its power of judicial review in the *Minerva Mills* case (1980). As a final act during the emergency, in what Justice V. R. Krishna Iyer has called "a stab on the independence of the High Court", judges were moved helter-skelter across the country, in concurrence with Chief Justice Beg.

Post-1980: an assertive Supreme Court

Fortunately for Indian jurisprudence, the "brooding spirit of the law" referred to by Justice Khanna was to correct the excesses of the emergency soon enough. After Indira Gandhi lost elections in 1977, the new government of Morarji Desai, and especially law minister Shanti Bhushan (who had earlier argued for the detenues in the Habeas Corpus case), introduced a number of amendments making it more difficult to declare and sustain an emergency, and reinstated much of the power to the Supreme Court. It is said that the Basic Structure doctrine, created in *Kesavananda*, was strengthened in *Indira Gandhi's* case and set in stone in *Minerva Mills*.

The Supreme Court's creative and expansive interpretations of Article 21 (Life and Personal Liberty), primarily after the Emergency period, have given rise to a new jurisprudence of public interest litigation that has vigorously promoted many important economic and social rights (constitutionally

protected but not enforceable) including, but not restricted to, the rights to free education, livelihood, a clean environment, food and many others. Civil and political rights (traditionally protected in the Fundamental Rights chapter of the Indian Constitution) have also been expanded and more fiercely protected.

These new interpretations have opened the avenue for litigation on a number of important issues. It is interesting to note that the pioneer of the expanded interpretation of Article 21, Chief Justice P N Bhagwati, was also one of the judges who heard the ADM Jabalpur case, and held that the Right to Life could not be claimed in Emergency

Recent important cases

Among the important pronouncements of the Supreme Court post 2000 is the Coelho case (I.R. Coelho v. State of Tamil Nadu (Judgement of 11the January, 2007). A unanimous Bench of 9 judges reaffirmed the basic structure doctrine. An authority on the Indian Constitution, former Attorney-General Soli Sorabjee commented on the judgement, “The judgement in I.R. Coelho vigorously reaffirms the doctrine of basic structure.

Indeed it has gone further and held that a constitutional amendment which entails violation of any fundamental rights which the Court regards as forming part of the basic structure of the Constitution then the same can be struck down depending upon its impact and consequences. The judgement clearly imposes further limitations on the constituent power of Parliament with respect to the principles underlying certain fundamental rights. The judgement in Coelho has in effect

restored the decision in Golak Nath regarding non-amendability of the Constitution on account of infraction of fundamental rights, contrary to the judgement in Kesavananda Bharati case.

Another important decision was of the five-judge Bench in Ashoka Kumara Thakur v. Union of India; where the constitutional validity of Central Educational Institutions (Reservations in Admissions) Act, 2006 was upheld, subject to the "creamy layer" criteria. Importantly, the Court refused to follow the 'strict scrutiny' standards of review followed by the United States Supreme Court. At the same time, the Court has applied the strict scrutiny standards in Anuj Garg v. Hotel Association of India (2007) In Aravalli Golf Course and other cases, the Supreme Court (particularly Justice Markandey Katju) has expressed reservations about taking on an increasingly activist role.

2G Spectrum Scam

In extraordinary situations where corruption in allotment of mobile licenses has caused an estimated astronomical loss of ` 1,76,000 crores, a Bench comprising Justices G S Singhvi and A K Ganguly told CBI to inform who the beneficiaries and conspirators in parking funds in foreign bank accounts were.

Black Money

The government refused to disclose details of about 18 Indians holding accounts in LGT Bank, Liechtenstein, evoking a sharp response from a Bench comprising Justices B Sudershan Reddy and S S Nijjar to "Make up your mind whether you can

make the disclosure." The Solicitor General of India replied that it will be done "at the appropriate stage." Lack of enthusiasm made the court create a special investigative team (SIT).

The year 2008 has seen the Supreme Court in one controversy after another, from serious allegations of corruption at the highest level of the judiciary, expensive private holidays at the tax payers expense, refusal to divulge details of judges' assets to the public, secrecy in the appointments of judges', to refusal to make information public under the Right to Information Act. The Chief Justice of India K.G.Balakrishnan invited a lot of criticism for his comments on his post not being that of a public servant, but that of a constitutional authority.

He later went back on this stand. The judiciary has come in for serious criticisms from both the current President of India Pratibha Patil and the former President APJ Abdul Kalam for failure in handling its duties.

The Prime Minister, Dr.Manmohan Singh, has stated that corruption is one of the major challenges facing the judiciary, and suggested that there is an urgent need to eradicate this menace. The Cabinet Secretary of the Indian Government has recently introduced the Judges Enquiry (Amendment) Bill 2008 in Parliament for setting up of a panel called the National Judicial Council, headed by the Chief Justice of India, that will probe into allegations of corruption and misconduct by High Court and Supreme Court judges. However, even this bill is allegedly a farce, just meant to silence and suppress the public. As per this Bill, a panel of judges themselves will be judging the judges,this enquiry can be initiated against the

Chief Justice of India or against retired judges by the order of President,Cabinet Secretary and Parliament then they are suspended.

Senior Judges

- Supreme Court Bench, Justice B N Agrawal, Justice V S Sirpurkar: “We are not giving the certificate that no judge is corrupt. Black sheep are everywhere. It’s only a question of degree.”

- Supreme Court Judge, Justice Agarwal: “What about the character of politicians, lawyers and the society? We come from the same corrupt society and do not descend from heaven. But it seems you have descended from heaven and are, therefore, accusing us.”

- Supreme Court Bench, Justice Arijit Pasayat, Justice V S Sirpurkar and Justice G S Singhvi:

  – “The time has come because people have started categorising some judges as very honest despite it being the foremost qualification of any judge. It is the system. We have to find the mechanism to stem the rot””Has the existing mechanism become outdated? Should with some minor modification, the mechanism could still be effective?”

- Supreme Court Bench” “The rot has set in.” The judges appeared to be in agreement with senior advocate Anil Devan and Solicitor General G. E. Vahanvati who, citing the falling standards, questioned the desirability of keeping the immunity judges have from prosecution.

Senior Government Officials

- Former President of India, APJ Abdul Kalam: "If longevity of cases continued, people would resort to extra-judicial measures."

- President of India, Pratibha Patil: *At a seminar on judicial reforms*

  – "Judiciary cannot escape blame for delayed justice that is fraught with the risk of promoting the lynch mob phenomenon."

  – "Time has come when we need to seriously introspect whether our judicial machinery has lived up to its expectations of walking the enlightened way by securing complete justice to all and standing out as (a) beacon of truth, faith and hope."

  – "Admittedly, the realm of judicial administration is not without its own share of inadequacies and blemishes."

- Former Chief Justice of India, Y. K. Sabharwal: "The justice delivery system has reached its nadir"

- Speaker of Lok Sabha, Miera Kumar:

  – "As a citisen of this country and as a lawyer who had practised for many decades, it is a matter of agony if there is even a whisper of an allegation against a judicial officer ... But the fact is that allegations against judicial officers are becoming a

reality. One Chief Justice has said that only 20 per cent of the judges are corrupt. Another judge has lamented that there are no internal procedures to look into the allegations. Therefore, the necessity of a mechanism is being emphasised by the judges themselves. Then the question arises as to how this mechanism would be brought about and as to who would bring it. The fact of the matter is that the judiciary is the only unique institution that has no accountability to the people in a democracy. In this overall context, it is absolutely essential to involve outside elements in the process of judicial accountability."

- Attorney General of India, G. E. Vahanvati: At a *Delhi High Court* hearing

  – "Declaration of assets by judges to the CJI are personal information which cannot be revealed under the present RTI and the same should be amended accordingly."

  – "It is submitted that the information which is sought (pertaining to judges assets) is purely and simply personal information, the disclosure of which has no relationship to any public activity"

- Minister of External Affairs Pranab Mukherjee: "Constructive criticism should be encouraged." He joined the chorus on judicial delays that has resulted in people taking law into their own hands. He underlined the need for strengthening judicial infrastructure.it is very important to know adout it.

Chief Justice of India

The Chief Justice of India is the highest-ranking judge in the Supreme Court of India, and thus holds the highest judicial position in India. As well as presiding in the Supreme Court, the Chief Justice also head its administrative functions. The current Chief Justice is S. H. Kapadia, who has held the office since, 12th May 2010. As the chief judge, the Chief Justice is responsible for the allocation of cases and appointment of constitutional benches which deal with important matters of law. In accordance with Article 145 of the Constitution of India and the Supreme Court Rules of Procedure of 1966, the Chief Justice allocates work to the other judges, who are bound to refer the matter back to him or her in case they require the matter to be looked into by a bench of higher strength. On the administrative side, the Chief Justice carries out the following functions:

- Maintenance of the roster;
- Appointment of court officials;
- General and miscellaneous matters relating to the supervision and functioning of the Supreme Court.

Appointment

Article 124 of the Constitution of India provides for the manner of appointing judges to the Supreme Court. However, no specific provision is made as to the appointment of the Chief Justice; as a result, the latter is appointed in the same manner as for the other judges to the Supreme Court. Generally speaking, Supreme Court and the High Courts as he or she

thinks necessary. However, this convention has been breached on a number of occasions, most notably during the premiership of Indira Gandhi, when A.N. Ray was appointed as the Chief Justice despite three judges being more senior than him. It was alleged that Ray was appointed because he was considered to be a supporter of Gandhi's government, during a time when her government was becoming increasingly mired in a political and constitutional crisis. In the aftermath of the Emergency, the Supreme Court in a series of landmark decisions asserted its position and independence.

In one such case the Court declared (in the constitutional bench S.P. Gupta - II case) that the Government of India would be bound to nominate only the most senior judge of the Supreme Court for the position of Chief Justice, thereby removing a potential source for Government influence over the judiciary. Since, then, the convention has been followed without exception. Once appointed, the Chief Justice remains in office until his or her retirement or death, unless removed by impeachment.

High Courts of India

India's unitary judicial system is made up of the Supreme Court of India at the national level, for the entire country and the 24 High Courts at the State level[recently Tripura, Meghalaya and Manipur declared in Loksabha on May 12, 2012]. These courts have jurisdiction over a state, a union territory or a group of states and union territories. Below the High Courts are a hierarchy of subordinate courts such as the civil courts, family courts, criminal courts and various other district courts. High Courts are instituted as constitutional

courts under Part VI, Chapter V, Article 214 of the Indian Constitution. The High Courts are the principal civil courts of original jurisdiction in the state along with District Courts which are subordinate to the High courts. However, High courts exercise their original civil and criminal jurisdiction only if the courts subordinate to the High court in the state are not competent (not authorised by law)to try such matters for lack of pecuniary, territorial jurisdiction. High courts may also enjoy original jurisdiction in certain matters if so designated specifically in a state or Federal law., *e.g.*: Company law cases are instituted only in a High court. However, primarily the work of most High Courts consists of Appeals from lower courts and writ petitions in terms of Article 226 of the Constitution of India. Writ Jurisdiction is also original jurisdiction of High Court.The precise territorial jurisdiction of each High Court varies. The appeal order is the following; tehsil-kotwali-criminal/civil courts-district court - high court - supreme court. Each state is divided into judicial districts presided over by a 'District and Sessions Judge'. He is known as a District Judge when he presides over a civil case, and a Sessions Judge when he presides over a criminal case. He is the highest judicial authority below a High Court judge. Below him, there are courts of civil jurisdiction, known by different names in different states.

Under Article 141 of the Constitution of India all courts in India which includes High courts are bound by the judgements and orders of the Supreme Court of India by precedence. Judges in a High Court are appointed by the President of India in consultation with the Chief Justice of India and the governor of the state. High Courts are headed by a Chief Justice. The Chief Justices are ranked #14 (in their state) and

#17 (outside their state) in the Indian order of precedence. The number of judges in a court is decided by dividing the average institution of main cases during the last five years by the national average, or the average rate of disposal of main cases per judge per year in that High Court, whichever is higher.

The Calcutta High Court is the oldest High Court in the country, established on 2 July 1862. High courts which handle a large number of cases of a particular region, have permanent *benches* (or a branch of the court) established there. Benches are also present in states which come under the jurisdiction of a court outside its territorial limits. Smaller states with few cases may have circuit benches established. Circuit benches (known as circuit courts in some parts of the world) are temporary courts which hold proceedings for a few selected months in a year. Thus cases built up during this interim period are judged when the circuit court is in session.

District Courts of India

The District Courts of India are the district courts established by the State governments in India for every district or for one or more districts together taking into account the number of cases, population distribution in the district.

They administer justice in India at a district level. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The decisions of District court is subject to the appellate jurisdiction of the High court.

Composition of District courts

The highest court in each district is that of the District and Sessions Judge. This is the principal court of original civil jurisdiction besides High Court of the State and which derives its jurisdiction in civil matters primarily from the code of civil procedure. The district court is also a court of Sessions when it exercises its jurisdiction on criminal matters under Code of Criminal procedure. The district court is presided over by one District Judge appointed by the state Government. In addition to the district judge there may be number of Additional District Judges and Assistant District Judges depending on the workload.

The Additional District Judge and the court presided have equivalent jurisdiction as the District Judge and his district court. However, the district judge has supervisory control over Additional and Assistant District Judges, including decisions on allocation of work among them.

The District and Sessions judge is often referred to as “district judge” when he presides over civil matters and “sessions judge” when he presides over criminal matters. Being the highest judge at district level, the District Judge also enjoys the power to manage the state funds allocated for the development of judiciary in the district.

The district judge is also called “Metropolitan session judge” when he is presiding over a district court in a city which is designated “Metropolitan area” by the state Government. Other courts subordinated to district court in the Metropolitan area are also referred to with “metropolitan” prefixed to the usual

designation. An area is designated a metropolitan area by the concerned state Government if population of the area exceeds one million.

Voting system

A voting system or electoral system is a method by which voters make a choice between options, often in an election or on a policy referendum. A voting system contains rules for valid voting, and how votes are counted and aggregated to yield a final result. Common voting systems are majority rule, proportional representation or plurality voting with a number of variations and methods such as first-past-the-post or preferential voting. The study of formally defined voting systems is called voting theory, a subfield of political science, economics or mathematics.

With majority rule, those who are unfamiliar with voting theory are often surprised that another voting system exists, or that “majority rule” systems can produce results not supported by a majority. If every election had only two choices, the winner would be determined using majority rule alone. However, when there are three or more options, there may not be a single option that is preferred by a majority. Different voting systems may give very different results, particularly in cases where there is no clear majority preference.

Aspects of voting systems

A voting system specifies the form of the ballot, the set of allowable votes, and the tallying method, an algorithm for determining the outcome. This outcome may be a single

winner, or may involve multiple winners such as in the election of a legislative body. The voting system may also specify how voting power is distributed among the voters, and how voters are divided into subgroups whose votes are counted independently.

The real-world implementation of an election is generally not considered part of the voting system. For example, though a voting system specifies the ballot abstractly, it does not specify whether the actual physical ballot takes the form of a piece of document, a punch card, or a computer display.

A voting system also does not specify whether or how votes are kept secret, how to verify that votes are counted accurately, or who is allowed to vote. These are aspects of the broader topic of elections and election systems.

The Ballot

Different voting systems have different forms for allowing the individual to express his or her vote. In ranked ballot or "preference" voting systems, such as Instant-run-off voting, the Borda count, or a Condorcet method, voters order the list of options from most to least preferred. In range voting, voters rate each option separately on a scale. In plurality voting, voters select only one option, while in approval voting, they can select as many as they want. In voting systems that allow "plumping", like cumulative voting, voters may vote for the same candidate multiple times. Some voting systems include additional choices on the ballot, such as write-in candidates, a none of the above option, or a no confidence in that candidate option.

Weight of Votes

Many elections are held to the ideal of "one person, one vote," meaning that every voter's votes should be counted with equal weight. This is not true of all elections, however. Corporate elections, for instance, usually weight votes according to the amount of stock each voter holds in the company, changing the mechanism to "one share, one vote". Votes can also be weighted unequally for other reasons, such as increasing the voting weight of higher-ranked members of an organization.

Voting weight is not the same thing as voting power. In situations where certain groups of voters will all cast the same vote, voting power measures the ability of a group to change the outcome of a vote. Groups may form coalitions to maximize voting power. In some German states, most notably Prussia and Sachsen, there was before 1918 a weighted vote system known as the Prussian three-class franchise, where the electorate would be divided into three categories based on the amount of income tax paid. Each category would have equal voting power in choosing the electors.

Status Quo

Some voting systems are weighted in themselves, for example if a supermajority is required to change the status quo. An extreme case of this is unanimous consent, where changing the status quo requires the support of every voting member. If the decision is whether to accept a new member into an organization, failure of this procedure to admit the new member is called blackballing.

A different mechanism that favours the status quo is the requirement for a quorum, which ensures that the status quo remains if not enough voters participate in the vote. Quorum requirements often depend only on the total number of votes rather than the number of actual votes cast for the winning option; however, this can sometimes encourage dissenting voters to refrain from voting entirely to prevent a quorum.

Constituencies

Often the purpose of an election is to choose a legislative body made of multiple winners. This can be done by running a single election and choosing the winners from the same pool of votes, or by dividing up the voters into constituencies that have different options and elect different winners.

Some countries, like Israel, fill their entire parliament using a single multiple-winner district, while others, like the Republic of Ireland or Belgium, break up their national elections into smaller multiple-winner districts, and yet others, like the United States or the United Kingdom, hold only single-winner elections. The Australian bicameral Parliament has single-member electorates for the legislative body and multi-member electorates for its Senate. Some systems, like the Additional member system, embed smaller districts within larger ones.

The way constituencies are created and assigned seats can dramatically affect the results. Apportionment is the process by which states, regions, or larger districts are awarded seats, usually according to population changes as a result of a census. Redistricting is the process by which the borders of constituencies are redrawn once apportioned. Both procedures

can become highly politically contentious due to the possibility of both malapportionment, where there are unequal representative to population ratios across districts, and gerrymandering, where electoral districts are manipulated for political gain. An example of this were the UK Rotten and pocket boroughs, parliamentary constituencies that had a very small electorate - *e.g.* an abandoned town - and could thus be used by a patron to gain undue and unrepresentative influence within parliament. This was a feature of the unreformed House of Commons before the Great Reform Act of 1832.

Multiple-winner methods

Most Western democracies use some form of multiple-winner voting system, with the United States and the United Kingdom being notable exceptions. A vote with multiple winners, such as the election of a legislature, has different practical effects than a single-winner vote. Often, participants in a multiple winner election are more concerned with the overall composition of the legislature than exactly which candidates get elected. For this reason, many multiple-winner systems aim for proportional representation, which means that if a given party gets Xper cent of the vote, it should also get approximately Xper cent of the seats in the legislature. Not all multiple-winner voting systems are proportional.

Proportional Methods

Truly proportional methods make some guarantee of proportionality by making each winning option represent approximately the same number of voters. This number is called a quota. For example, if the quota is 1000 voters, then

each elected candidate reflects the opinions of 1000 voters, within a margin of error. This can be measured using the Gallagher Index.

Most proportional systems in use are based on party-list proportional representation, in which voters vote for parties instead of for individual candidates. For each quota of votes a party receives, one of their candidates wins a seat on the legislature. The methods differ in how the quota is determined or, equivalently, how the proportions of votes are rounded off to match the number of seats.

The methods of seat allocation can be grouped overall into highest averages methods and largest remainder methods. Largest remainder methods set a particular quota based on the number of voters, while highest averages methods, such as the Sainte-Laguë method and the d'Hondt method, determine the quota indirectly by dividing the number of votes the parties receive by a sequence of numbers.

Independently of the method used to assign seats, party-list systems can be open list or closed list. In an open list system, voters decide which candidates within a party win the seats. In a closed list system, the seats are assigned to candidates in a fixed order that the party chooses. The Mixed Member Proportional system is a mixed method that only uses a party list for a subset of the winners, filling other seats with the winners of regional elections, thus having features of open list and closed list systems.

In contrast to party-list systems, the Single Transferable Vote is a proportional representation system in which voters rank individual candidates in order of preference. Unlike party-list

systems, STV does not depend on the candidates being grouped into political parties. Votes are transferred between candidates in a manner similar to instant run-off voting, but in addition to transferring votes from candidates who are eliminated, excess votes are also transferred from candidates who already have a quota.

Semiproportional Methods

An alternative method called Cumulative voting is a semiproportional voting system in which each voter has n votes, where n is the number of seats to be elected. Voters can distribute portions of their vote between a set of candidates, fully upon one candidate, or a mixture. It is considered a proportional system in allowing a united coalition representing a m/(n+1) fraction of the voters to be guaranteed to elect m seats of an n-seat election. For example in a 3-seat election, 3/4 of the voters can guarantee control over all three seats. Cumulative voting is a common way of holding elections in which the voters have unequal voting power, such as in corporate governance under the "one share, one vote" rule. Cumulative voting is also used as a multiple-winner method, such as in elections for a corporate board.

Cumulative voting is not fully proportional because it suffers from the same spoiler effect of the plurality voting system without a run-off process. A group of like-minded voters divided among "too many" candidates may fail to elect any winners, or elect fewer than they deserve by their size. The level of proportionality depends on how well-coordinated the voters are.

Limited voting is a multi-winner system that gives voters fewer votes than the number of seats to be decided. The simplest and most common form of limited voting is Single Non-Transferable Vote. It can be considered a special variation of cumulative voting where a full vote cannot be divided among more than one candidate. It depends on a statistical distributions of voters to smooth out preferences that CV can do by individual voters.

For example, in a 4-seat election a candidate needs 20per cent to guarantee election. A coalition of 40per cent can guarantee 2-seats in CV by perfectly splitting their votes as individuals between 2 candidates. In comparison, SNTV tends towards collectively dividing 20per cent between each candidate by assuming every coalition voter flipped a coin to decide which candidate to support with their single vote. This limitation simplifies voting and counting, at the cost of more uncertainty of results.

Non-proportional and Semiproportional Methods

Many multiple-winner voting methods are simple extensions of single-winner methods, without an explicit goal of producing a proportional result. Bloc voting, or plurality-at-large, has each voter vote for N options and selects the top N as the winners. Because of its propensity for landslide victories won by a single winning slate of candidates, bloc voting is non-proportional. Two similar plurality-based methods with multiple winners are the Single Non-Transferable Vote or SNTV method, where the voter votes for only one option, and cumulative voting. Unlike bloc voting, elections using the Single Non-transferable Vote or cumulative voting may achieve proportionality if voters use

tactical voting or strategic nomination. Because they encourage proportional results without guaranteeing them, the Single Non-transferable Vote and cumulative voting methods are classified as semiproportional. Other methods that can be seen as semiproportional are mixed methods, which combine the results of a plurality election and a party-list election. Parallel voting is an example of a mixed method because it is only proportional for a subset of the winners.

Single-winner methods

Single-winner systems can be classified based on their ballot type. In one vote systems, a voter picks one choice at a time. In ranked voting systems, each voter ranks the candidates in order of preference. In rated voting systems, voters give a score to each candidate.

Single or Sequential Vote Methods

The most prevalent single-winner voting method, by far, is plurality where each voter votes for one choice, and the choice that receives the most votes wins, even if it receives less than a majority of votes.

Run-off methods hold multiple rounds of plurality voting to ensure that the winner is elected by a majority. Top-two run-off voting, the second most common method used in elections, holds a run-off election between the two highest polling options if there is no absolute majority. In elimination run-off elections, the weakest candidate(s) are eliminated until there is a majority. A primary election process is also used as a two round run-off voting system. The two candidates or choices

with the most votes in the open primary ballot progress to the general election. The difference between a run-off and an open primary is that a winner is never chosen in the primary, while the first round of a run-off can result in a winner if one candidate has over 50per cent of the vote. In the Random ballot method, each voter votes for one option and a single ballot is selected at random to determine the winner. This is mostly used as a tiebreaker for other methods.

Ranked Voting Methods

Also known as preferential voting methods, these methods allow each voter to rank the candidates in order of preference. Often it is not necessary to rank all the candidates: unranked candidates are usually considered to be tied for last place. Some ranked ballot methods also allow voters to give multiple candidates the same ranking.

The most common ranked voting method is instant-run-off voting, also known as the “alternative vote” or simply preferential voting, which uses voters’ preferences to simulate an elimination run-off election without multiple voting events. As the votes are tallied, the option with the fewest first-choice votes is eliminated. In successive rounds of counting, the next preferred choice still available from each eliminated ballot is transferred to candidates not yet eliminated. The least preferred option is eliminated in each round of counting until there is a majority winner, with all ballots being considered in every round of counting.

The Borda count is a simple ranked voting method in which the options receive points based on their position on each ballot. A

class of similar methods is called positional voting systems. Other ranked methods include Coombs' method, Supplementary voting, Bucklin voting, and Condorcet method.

Condorcet methods, or pairwise methods, are a class of ranked voting methods that meet the Condorcet criterion. These methods compare every option pairwise with every other option, one at a time, and an option that defeats every other option is the winner. An option defeats another option if a majority of voters rank it higher on their ballot than the other option. These methods are often referred to collectively as Condorcet methods because the Condorcet criterion ensures that they all give the same result in most elections, where there exists a Condorcet winner. The differences between Condorcet methods occur in situations where no option is undefeated, implying that there exists a cycle of options that defeat one another, called a Condorcet paradox or Smith set. Considering a generic Condorcet method to be an abstract method that does not resolve these cycles, specific versions of Condorcet that select winners even when no Condorcet winner exists are called Condorcet completion methods.

A simple version of Condorcet is Minimax: if no option is undefeated, the option that is defeated by the fewest votes in its worst defeat wins. Another simple method is Copeland's method, in which the winner is the option that wins the most pairwise contests, as in many round-robin tournaments. The Schulze method and Ranked Pairs are two recently designed Condorcet methods that satisfy a large number of voting system criteria.

The Kemeny-Young method is a Condorcet method that fully ranks all the candidates from most popular to least popular.

Rated Voting Methods

Rated ballots allow even more flexibility than ranked ballots, but few methods are designed to use them. Each voter gives a score to each option; the allowable scores could be numeric or could be "grades" like A/B/C/D/F.

Rated ballots can be used for ranked voting methods, as long as the ranked method allows tied rankings. Some ranked methods assume that all the rankings on a ballot are distinct, but many voters would be likely to give multiple candidates the same rating on a rated ballot.

- Range voting: In range voting, voters give numeric ratings to each option, and the option with the highest total score wins.

- Approval voting: Approval voting, where voters may vote for as many candidates as they like, can be seen as an instance of range voting where the allowable ratings are 0 and 1.

Criteria in Evaluating Single Winner Voting Systems

In the real world, attitudes towards voting systems are highly influenced by the systems' impact on groups that one supports or opposes.

This can make the objective comparison of voting systems difficult. To compare systems fairly and independently of

political ideologies, voting theorists use voting system criteria, which define potentially desirable properties of voting systems mathematically.

It is impossible for one voting system to pass all criteria in common use. Economist Kenneth Arrow proved Arrow's impossibility theorem, which demonstrates that several desirable features of voting systems are mutually contradictory. For this reason, someone implementing a voting system has to decide which criteria are important for the election.

Using criteria to compare systems does not make the comparison completely objective. For example, it is relatively easy to devise a criterion that is met by one's preferred voting method, and by very few other methods.

Doing this, one can then construct a biased argument for the criterion, instead of arguing directly for the method. There is no ultimate authority on which criteria should be considered, but the following are some criteria that are accepted and considered to be desirable by many voting theorists:

- *Majority criterion*: If there exists a majority that ranks a single candidate higher than all other candidates, does that candidate always win?

- *Monotonicity criterion*: Is it impossible to cause a winning candidate to lose by ranking him higher, or to cause a losing candidate to win by ranking him lower?

- *Consistency criterion*: If the electorate is divided in two and a choice wins in both parts, does it always win overall?

- *Participation criterion*: Is voting honestly always better than not voting at all?

- *Condorcet criterion*: If a candidate beats every other candidate in pairwise comparison, does that candidate always win?

- *Condorcet loser criterion*: If a candidate loses to every other candidate in pairwise comparison, does that candidate always lose?

- *Independence of irrelevant alternatives*: If a candidate is added or removed, do the relative rankings of the remaining candidates stay the same?

- *Independence of clone candidates*: Is the outcome the same if candidates identical to existing candidates are added?

- *Later-no-harm criterion:* If, in any election, a voter gives an additional ranking, vote or positive rating to a less preferred candidate, can that additional ranking, vote or rating cause a more preferred candidate to lose?

- *Reversal symmetry*: If individual preferences of each voter are inverted, does the original winner never win?

- *Polynomial time*: Can the winner be calculated in a runtime that is polynomial in the number of candidates and the number of voters?

- *Summability*: How much information must be transmitted from each polling station to a central location in order to determine the winner? This is expressed as an order function of the number of candidates N. Slower-growing functions such as O(N) or O(N2) make for easier counting, while faster-growing functions such as O(N!) might make it harder to catch fraud by election administrators.

- *Allows equal rankings*: Allows a voter to choose whether to rank any two candidates equally at any position on the ballot. This can reduce the prevalence of spoiled ballots due to overvotes, and can give a less-dishonest alternative to some tactical voting strategies.

Game theory

Game theory is a branch of applied mathematics that is used in the social sciences, most notably in economics, as well as in biology, engineering, political science, international relations, computer science, and philosophy. Game theory attempts to mathematically capture behaviour in strategic situations, or games, in which an individual's success in making choices depends on the choices of others.

While initially developed to analyse competitions in which one individual does better at another's expense, it has been expanded to treat a wide class of interactions, which are classified according to several criteria. Today, "game theory is a sort of umbrella or 'unified field' theory for the rational side

of social science, where 'social' is interpreted broadly, to include human as well as non-human players.

Traditional applications of game theory attempt to find equilibria in these games. In an equilibrium, each player of the game has adopted a strategy that they are unlikely to change. Many equilibrium concepts have been developed in an attempt to capture this idea. These equilibrium concepts are motivated differently depending on the field of application, although they often overlap or coincide. This methodology is not without criticism, and debates continue over the appropriateness of particular equilibrium concepts, the appropriateness of equilibria altogether, and the usefulness of mathematical models more generally. Although some developments occurred before it, the field of game theory came into being with Émile Borel's researches in his 1938 book Applications aux Jeux des Hazard, and was followed by the 1944 book Theory of Games and Economic Behaviour by John von Neumann and Oskar Morgenstern. This theory was developed extensively in the 1950s by many scholars. Game theory was later explicitly applied to biology in the 1970s, although similar developments go back at least as far as the 1930s. Game theory has been widely recognized as an important tool in many fields. Eight game theorists have won the Nobel Memorial Prize in Economic Sciences, and John Maynard Smith was awarded the Crafoord Prize for his application of game theory to biology.

In Political science

The application of game theory to political science is focused in the overlapping areas of fair division, political economy, public choice, war bargaining, positive political theory, and social

choice theory. In each of these areas, researchers have developed game theoretic models in which the players are often voters, states, special interest groups, and politicians.

For early examples of game theory applied to political science, see the work of Anthony Downs. In his book An Economic Theory of Democracy, he applies the Hotelling firm location model to the political process. In the Downsian model, political candidates commit to ideologies on a one-dimensional policy space. The theorist shows how the political candidates will converge to the ideology preferred by the median voter.

A game-theoretic explanation for democratic peace is that public and open debate in democracies send clear and reliable information regarding their intentions 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.

Political campaign

A political campaign is an organized effort which seeks to influence the decision making process within a specific group. In democracies, political campaigns often refer to electoral campaigns, wherein representatives are chosen or referendums are decided.

Campaign message

The message of the campaign contains the ideas that the candidate wants to share with the voters. The message often

consists of several talking points about policy issues. The points summarize the main ideas of the campaign and are repeated frequently in order to create a lasting impression with the voters. In many elections, the opposition party will try to get the candidate "off message" by bringing up policy or personal questions that are not related to the talking points. Most campaigns prefer to keep the message broad in order to attract the most potential voters.

A message that is too narrow can alienate voters or slow the candidate down with explaining details. For example, in the election of 2008 John McCain originally used a message that focused on his patriotism and political experience: "Country First"; later the message was changed to shift attention to his role as "The Original Maverick" within the political establishment. Barack Obama ran on a consistent, simple message of "change" throughout his campaign. If the message is crafted carefully, it will assure the candidate a victory at the polls. For a winning candidate, the message is refined and then becomes his or her political agenda in office.

Soundbites

The habit of modern Western media outlets of taking short excerpts from speeches has resulted in the creation of the term "soundbite". Examples might include:

- "John Doe is a businessman, not a politician. His background in finance means he can bring fiscal discipline to state government."

- "As our society faces a rapid upswing in violent crime and an ever worsening education system, we need leaders

who will keep our streets safe and restore accountability to our schools. John Doe is that leader."

- "Over the past four years, John Doe has missed over fifty City Council meetings. How can you lead if you don't show up? Jane Doe won't turn a blind eye to the government."

Campaign finance

Campaign finance refers to the fundraising and spending that political campaigns do in their election campaigns. As campaigns have many expenditures, ranging from the cost of travel for the candidate and others might include the purchasing of air time for TV advertisements, however in some countries, such as Britain TV advertising is free. Candidates often devote substantial time and effort raising money to finance campaigns.

Although the political science literature indicates that most contributors give to support candidates with whom they are already in agreement, there is wide public perception that donors expect illegitimate government favours in return so some have come to equate campaign finance with political corruption and bribery. These views have led some governments to reform fundraising sources and techniques in the hope of eliminating perceived undue influence being given to monied interests. Another tactic is for the government, rather than private individuals and organizations, to provide funding for campaigns.

Democratic countries have differing regulations on what types of donations to political parties and campaigns are acceptable.

The causes and effects of different campaign finance rules are studied in a number of disciplines including political science, economics and public policy.

Private Financing

Some countries rely heavily on private donors to finance political campaigns. In these countries, fundraising is often a significant activity for the campaign staff and the candidate, especially in larger and more prominent campaigns. For example, one survey in the United States found that 23per cent of candidates for statewide office surveyed say that they spent more than half of their scheduled time raising money. Over half of all candidates surveyed spent at least 1/4 of their time on fundraising. The tactics used can include direct mail solicitation, attempts to encourage supporters to contribute via the Internet, direct solicitation from the candidate, and events specifically for the purpose of fundraising, or other activities.

Most countries that rely on private donations to fund campaigns require extensive disclosure of donations, frequently including information such as the name, employer and address of donors. This is intended to allow for policing of undue donor influence by other campaigns or by good government groups, while preserving most benefits of private financing, including the right to make donations and to spend money for political speech, saving government the expense of funding campaigns, and keeping government from funding partisan speech that some citizens may find odious.

Supporters of private financing systems believe that, in addition to avoiding government limitations on speech, private

financing fosters civic involvement, ensures that a diversity of views are heard, and prevents government from tilting the scales to favour those in power or with political influence.

These kind of donations can come from private individuals, as well as groups such as trade unions, which make up the bulk of the funding for the British Labour Party. However critics of this system claim that it leads to votes being "bought" and to large gaps between different parties in the money they have to campaign with.

Public Financing

Other countries choose to use government funding to run campaigns. Funding campaigns from the government budget is widespread in South America and Europe. The mechanisms for this can be quite varied, ranging from direct subsidy of political parties to government matching funds for certain types of private donations to exemption from fees of government services and many other systems as well. Supporters of government financing generally believe that the system decreases corruption; in addition, many proponents believe that government financing promotes other values, such as civic participation or greater faith in the political process.

Not all government subsidies take the form of money; some systems require campaign materials to be provided at very low rates to the candidates.Critics sometimes complain of the expense of the government financing systems. Libertarian critics of the system argue that government should not subsidize political speech. Other critics argue that government financing, with its emphasis on equalizing money resources,

merely exaggerates differences in non-monetary resources.In many countries, such as Germany and the United States, campaigns can be funded by a combination of private and public money. In the U.S.A., some regions have tried to exclude private financing altogether, in what proponents call clean elections. In some electoral systems, candidates who win an election or secure a minimum number of ballots are allowed to apply for a rebate to the government. The candidate submits an audited report of the campaign expenses and the government issues a rebate to the candidate, subject to some caps such as the number of votes cast for the candidate or a blanket cap. For example, in the 2008 election, candidates for the Legislative Council of Hong Kong were entitled to a rebate up to HK$11 per vote.