

Theory of Separation of Powers

Steve Gregory



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Chapter 1

Introduction

Theories of the Modern World and power separation

The Invention of the Idea of power separation

It is interesting to know that, prior to the 19th century, the biggest socio-cultural growths in Europe throughout the 13th-15th centuries were not understood and codified *since* renaissance. In this part you will become well-known with the procedure in which renaissance became a section of our knowledge. In 1860, Jakob Burckhardt formulated the influential concepts of 'Renaissance' and 'humanism', in his pioneering masterpiece of cultural history, *The Culture of the Renaissance in Italy*. Burckhardt's book was a "subtle synthesis of opinions in relation to the Renaissance that had grown powerful throughout the Age of the Enlightenment".

He seemed to be confirming a story told through secular, liberal intellectuals of the eighteenth and nineteenth centuries who were searching for the origins of their own beliefs and values that after the collapse of classical culture an era of darkness and barbarism had set in, dominated through the church and the humdrum of rural life. Eventually, however, a revival of commerce and urban life laid the foundations for a secular and even anti-religious vision of life. The new vision, which glorified the individual and the attractions of earthly life were strongly

reinforced through the rediscovery of the pagan literature of the Antiquity. The new secular and individualistic values, which were somewhat incompatible with Christian beliefs, constituted a new worldly philosophy of life recognized since 'humanism', drawing its largest thoughts and inspiration from ancient times. Humanism subsequently became the inspiration for questioning the moral foundation of the feudal and Christian inheritances in Europe. Burkhardt's job, which dominated the 19th century perception in relation to the Renaissance, came to be subjected to criticisms later.

For a time in the late 1940s and the 1950s, the extremely idea of a Renaissance came under attack, when the rich development of scholarship on medieval history made the inherited view of a dark and uncivilized Transitional Ages seem untenable, "since medievalists exposed squarely in the Transitional Ages all the essential traits supposedly typical of the later era, and also exposed within the Renaissance several traditional elements which seemed to prove that the Transitional Ages existed on into the Renaissance". Medievalists establish renaissances in the sense of periods of classical revival in Carolingian France, Anglo-Saxon England and Ottonian Germany.

One of these medieval revivals, the 'twelfth-century Renaissance', became a subject of biggest historical enquiries, as the coinage of the word through Charles Homer Haskins in his *the renaissance of the Twelfth Century* (1927). Haskins maintained that the word 'renaissance', in the sense of an enthusiasm for classical literature, was a significant characteristic of the twelfth century

and that this cultural renewal was the ancestor of subsequent civilization progress in early contemporary Europe. Yet historians have not discarded fully the concept and the word 'Renaissance' in the sense Burckhardt had used it. For historical realities, which Burckhardt had called, cannot be dismissed with quibbles in relation to the terminology.

Burckhardt rightly saw the emergence of a new civilization and also situated one of its largest sources in Italian humanism through linking it to a unique set of social, political, and economic circumstances. This new civilization might look to be the product of the development of commerce and municipalities in northern Italy from the late eleventh century. But urban development and commercial expansion as the 11th century, does not explain why the new civilization flowered approximately at the end of the 14th century even since it is true that Italy throughout the 12th and 13th centuries had become the mainly highly urbanized, the wealthiest and the mainly developed area of Europe.

The urban and commercial development of Italy stands in contrast to other sections of Europe in the north of the Alps, where the scholastic philosophy, Gothic art, and vernacular literature of these centuries were clearly associated with the clergy and the feudal aristocracy of the medieval age.

Growths in Italy

Italy too was not completely free of this older aristocratic and clerical civilization. Yet the dynamic section of Italy, the north,

was dominated not through clerics and feudal nobles but through prosperous urban merchants, 'and throughout the 12th and 13th centuries, the municipalities of northern Italy in alliance with the popes broke the military and political authority of the German kings, who described themselves Roman emperors and attempted to assert manage in excess of northern Italy'.

Strong, centralizing monarchy of the types that urbanized in France and England did not emerge in Italy. Northern Italy was dotted with virtually independent urban republics. Although the people of these urban societies were deeply religious people, the location of the clergy in Italian municipality life was marginal. The municipalities were governed through prosperous merchants and the dependent petty traders and artisans, however from the 13th century, more and more of them came under manage of military despots who offered defense from internal disorder and external invasion.

Mainly of these Italian cities lived since markets for regional societies, since links flanked by the nearby country and the far markets, generally purchasing its cereals from the vicinity. Some big urban formations, like Genoa or Florence, were centers of international deal, which had expanded therefore enormously throughout the 12th and 13th centuries that the urban societies in such sprawling cities became superior to the usual little societies in the municipality republics.

The management of these cities came to depend increasingly on a professional civil service with legal training. Since the action of

the cities became more intricate, they came to gradually acquire permanent civic institutions including a class of magistrates. This was the time when the societies came to display characteristics of a municipality-state. The municipality-states in practice were republican oligarchies where crucial decisions were taken through a little minority of office-holding prosperous merchants; even however a considerable section of the male population was recruited in the citizen's militia.

In excess of time however, the subsistence of the municipality republic in several examples became precarious. The townsmen were fighting each other, a characteristic that Machiavelli, the great Florentine thinker of renaissance Italy explained since a result of enmity flanked by the prosperous and the poor. The situation was further complicated through factional rivalries within the ruling clusters. The municipality councils became therefore divided beside factional rows that in mainly municipalities before the end of the 14th century the regime of a single individual began to be increasingly preferred.

To escape the problem of civic strife, mainly municipalities turned from republicanism to *signoria* (the rule of one man), who could either be a member of the urban aristocracy or a military captain who had been hired through the municipality councils for organizing the municipality's defense from external enemies. Republican survivals were exceptions; the rule of the signor became universal. With the exception of Venice, mainly Italian municipalities experienced this transformation. The signori in mainly cases chose to rule by existing republican institutions

combining the hitherto antagonistic principles of municipalize and feudalism. The advent of signori resulted from the fragility of republican institutions, yet the triumph of the signori did not eliminate require for scholar officers.

The city-states with enlarged functions including diplomacy, warfare, taxation and governance in an expanding and intricate urban habitation were an ideal breeding ground for a sure consciousness of citizenship. The type of manage that the municipal authorities imposed on traders and artisans fell distant short of free private enterprise, yet it is possible to argue that the growth of private wealth against the background of an expanding commerce and a measure of involvement of the municipalities' elites in the actual governance of the municipality were capable of reinforcing the individualist self consciousness in few of the municipality's leading men.

New Clusters: Lawyers and Notaries

In a community where commerce dominated the scene the mainly significant educated clusters were the lawyers and the notaries (a combination of solicitor and record keeper) who drew up and interpreted the rules and written agreements without which deal on a big level was not possible. With the growing level of commerce there was an acute require for men skilled in drafting, recording, and authenticating contracts and letters.

These were the notaries, specialists who did not require the extensive and costly education provided through law schools but who did receive training in Latin grammar and rhetoric. Such

training in letter-script and drafting legal documents was often given through apprenticeship, but at biggest centers of legal revise such since Padua and Bologna, there were full-time professional teachers who taught not only the conventional legal shapes of drafting several types of business documents and the correct kind of handwriting for documents of public record but also provided few instruction in Roman law.

Unlike in the transitional ages when virtually all intellectual behaviors were accepted on through churchmen, in the Italian municipalities this was pursued through members of the new professions. In more than one sense they were the real forerunners to renaissance humanism. Padua, a university city especially noted for the revise of law and medicine, produced enthusiasts for the language and literature of ancient Rome. A significant figure in this movement was Lovato Lovati (c. 1240-1309) a judge who showed several aspects of humanism. His younger modern Albertino Mussato (1261- 1325), who was a notary through profession, became widely recognized during Italy. Throughout this early stage of the development of humanism, Florence, the municipality associated with the later flowering of humanistic civilization, played a marginal role.

The great Florentine literary and intellectual figure of this age, Dante Alighieri (1265-1321), is connected more with medieval rather than Renaissance civilization whose generation in Florence, despite the persistence of old cultural beliefs, still idea in relation to the a sure conception of cultural renewal by reinterpretation of classical literature and a conscious

repudiation of the values of medieval culture. The arrival of Petrarch, a century later, brought in relation to the transform in Florentine civilization, more decisively. Petrarch realized that antiquity was a distinctive culture which could be understood bigger by the terms and the words of the ancients. Petrarch's stress, so, was on grammar, which included the secure reading of ancient authors from a linguistic point of view. With language, eloquence and the revise of rhetoric, the ultimate purpose of this educational program was to project a sure idea of good life that was suffused with secular meanings.

Humanism

As the nineteenth century, historians have labeled this new civilization since 'humanism', however it seems nowhere in the scripts of the Renaissance era itself. The word that did exist was 'humanistic studies', implying academic subjects favored through humanists. Through the first half of the fifteenth century, the word 'humanist' designated masters who taught academic subjects like grammar, rhetoric, poetry, history, and moral philosophy.

They were members of a scrupulous professional cluster who taught humanities and liberal arts – humanities, a classical term earlier used through Cicero since a substitute for the Greek Paideia, or civilization. Cicero was trying to create the point that it was only human beings who were capable of this knowledge in relation to the own selves. Renaissance humanism, conceived since 'a new philosophy of life' or a glorification of human nature in secular words, eludes precise definition. Indeed there is no

definable set of general beliefs. More than a heightened sense of individualism, the primary feature, was the new pattern of historical consciousness that appeared first in the idea of leading 14th century poet. Petrarch. The sense of being deeply occupied in the restoration of true culture after several centuries of barbarian darkness – an unfair location at that—discovers its first clear report in the jobs of Petrarch, and few such claim is general to virtually all of those writers—like Salutati, Poggio, Valla and Ficino to name a some—whom historians identify since the leading personalities in the history of Italian humanism.

The humanist self-image since free mediators of culture was sharpened through such historical consciousness which enabled them to distinguish their time since an age of light from the preceding one of darkness. They whispered that a dark age had set in after the decline of the Roman Empire since a result of the invasion of the barbarians. The humanists belonging to dissimilar generations returned to this theme of belonging to a new time, inventing the concept of the transitional ages flanked by the collapse of Rome and the cultural renewal in the age of renaissance. Leonardo Bruni, for sometime the chancellor of Florence, in his history of Florence or Flavio Biondo in a job covering the era from the sack of Rome through Alaric in 410 A.D. to the writer's own time betrayed this new sense of modernity.

The sense of the novelty of their age was entwined with a conscious imitation of the jobs of the ancient Greek and Roman writers. A sure consciousness of the newness of their time turned

the great figures of renaissance into believers in progress. Without doubt, the poet Petrarch (Francesco Petrarca, 1304-74) was its first great figure, the real founder of the new civilization, who tried to bring back to life the inner spirit of ancient Roman culture. His love for ancient Latin literature was dovetailed with a repudiation of the inherited medieval civilization. He transformed classicism into a weapon in a thrash about to regenerate the world and to make a distinctive new civilization built on the solid basis of a lost but retrievable antiquity.

New Education

Petrarch's dream of a cultural and moral regeneration of Christian community, based on the union of eloquence and philosophy, had significant implications for education. In late medieval and renaissance Italy, there were three kinds of schools other than the universities and schools mannered through religious orders exclusively for their own members. Mainly of the teaching at all three stages was done through self-employed schoolmasters who took tuition-paying pupils and, working either alone or with one assistant, taught them whatever subjects their parents paid for. But several cities in northern Italy also organized society schools, in which the regional government selected and hired a schoolmaster, who was bound through an extremely specific contract to teach sure subjects up to a sure stage. Collective schools began to seem in the 13th century.

Collective schools in little cities ensured that competent preparation for university revise would be accessible for the sons of the ruling elites. Despite the development of humanism, in the

14th century the curriculum of these schools did not transform much. The textbooks used were predominantly medieval and Christian in origin, and several of them had been deliberately compiled for classroom exploit in teaching correct Latin and sound moral principles.

This medieval curriculum aroused the contempt of Petrarch and virtually all later humanists, who attacked this curriculum on the ground that mainly of its intellectual content, was inadequate and that its moral indoctrination had no relevance in the lives of the citizens of Italian municipalities. Leonardo Bruni acknowledged that it was Petrarch who had outlined a program of revise through which the classical thoughts would be achieved. It included grammar, rhetoric, poetry, moral philosophy and history.

The humanists also insisted upon the mastery of classical Latin and Greek, therefore that the ancient authors could be studied directly to the exclusion of medieval commentaries. The humanists taught in a variety of methods. Few founded their own schools where students could revise the new curriculum at both elementary and advance stages; few humanists supervised to discover their method into universities where teaching sustained to be dominated through law, medicine and theology and the humanist curriculum had a peripheral attendance.

The majority achieved their mission through teaching in numerous grammar schools. But formal education was not the only method by which they formed the minds of their age;

literature, art and drama were the other vehicles of transmission of humanist thoughts.

Print

The growing power of humanist schoolmasters in the Latin grammar schools in the Italian cities did much to set up humanism since the biggest force in Italian civilization. Yet another source of humanism's growing dominance was the new art of printing. Through 1500, several classical texts had been printed in Italy, mostly in Latin. Printing, separately from standardizing the new editions of the classics also helped in their dissemination. Before printing, mainly books lived only in some copies; printing increased their numbers. Since a result, the cost of books also fell exposing the students to a new type of studying instead of depending solely on lectures.

A printed book promoting new thoughts, could quickly reach hundreds of readers. Thoughts, opinions, and fact moved more widely and more rapidly than ever before. Surely one cause why the humanistic civilization of Italy spread more rapidly crossways the Alps toward the end of the 15th century is that books were circulating in print.

Secular Openings

One of the mainly significant characteristics of the renaissance is a beginning of a loosening manage of religion in excess of human life. In this sense it may be said that renaissance created circumstances for the emergence of a secular ideology.

A new focus on humanism also fed into this secular opening. But it is significant to understand exactly how, and to what extent, this secular opening was created. Although humanism may have challenged the conventional authorities of the academic world, including scholastic theologians, it was not necessarily meant to be a challenge to Christian faith or to Catholic orthodoxy. Petrarch, for instance, expressed doubts in relation to his own spiritual beliefs, but he never doubted the truth of Christianity.

He also objected to the Italian scholasticism of his time not on the ground that it was too religious but that it was materialistic and at times subversive of the teachings of the church. Salutati did endorse the active secular life for mainly people and followed that course in his own life, but he still respected the monastic ideals. In the 1390s he and his family were attached to a revivalist movement that was based on traditional shapes of devotion. The inherent and common religiosity of Renaissance humanism is to a big extent a making of 19th century historiography.

This is not to imply that men were not interested in worldly items, even when the educated classes since well since plain folk were deeply moved through religious revivalism and devotionals. Certainly renaissance Italians was strongly attracted to material wealth, to authority, and to glory. Yet those who preferred to live a happy and successful life were not necessarily irreligious, even however humanism since a civilization of the talented urban people in the prosperous Italian city was giving rise to a secular morality.

Fransceco Barbaro, a Venetian humanist of the first generation, wrote a tract regarding marriage which repudiated the traditional thoughts of poverty and defended acquisition of wealth since a virtue. Bracciolini Poggio (1380-1459), who was the mainly celebrated excavator of lost manuscript in Florence, in a tract *On Avarice* defended acquisition of wealth, going to the extent of justifying usury which had always been condemned through orthodox Christianity since an unchristian act, since a legitimate shape of business. In addition numerous humanist treatises like for instance *On Civil Life* written through Matteo Palmiry upheld the superiority of an active life in excess of one of contemplation. Such opinions did express values of the wealthy classes. This set of values was secular; it regarded marriage, wealth and politics since natural and worthy of pursuit. Yet they were not fundamentally anti-Christian.

Their authors were practical moralists who presented a moral code suitable for the ambitious people, rather than monks, while accepting that there could be a spiritual life beyond one's worldly subsistence. The glorification of secular life, however, was more a literary reflection of changing social attitudes than an aspect of classical studies. The classical studies nonetheless contributed to the glorification of human nature, even however humanists were also conscious of its frailties. Lorenzo Valla (1406-1457), who whispered that revise of history, led man to live a life of perfection, in his job, *On Pleasure*, condemned within a profoundly Christian mentality the conventional Christian injunction against pleasure. In few other scripts, there was a rejection of the view that wise men should suppress passion, on

the ground that such suppression was thoroughly unnatural. The theme of human dignity occupies a central lay in such jobs to the degree that in a number of spaces, since the one written through Marsilio Ficino, a neo-Platonist thinker of Florence, human nature was endowed with super natural authority.

Human beings occupying a crucial transitional location in the great chain of being was the point of get in touch with flanked by the material world and the world of god? Such sentiments had already informed the script of the 13th century humanists like Leonardo Da Vinci. Ficino's glorification of human nature takes the pursuit of the human glory beyond the everyday life of the transitional class Florentines. Ficino, despite his knowledge in platonic philosophy on which he frequently lectured before students in his platonic academy, was a believer in magic and astrology. Ficino belonged to a circle of few prominent intellectual figures, which included a young prince of Medici family whose name was Giovanni Pico Della Mirandola. Mirandola's mainly well-known job, '*Oration on the dignity of man*', published in 1496 trades with the theme of human dignity through suggesting that of all God's making man received complete freedom to choose his own lay in the Great chain of being.

Through his own free choice man creates himself either in a spiritual fashion or in the manner of a beast. His view of human nature did not seem towards divine grace but celebrated worldly attainment. The secular morality of the humanists so was grounded in a belief in man's intellectual and moral capability, a

new sense of history, and a highly sophisticated mode of studying. Faith in human capability came shape the realization that the educated could attain wisdom without the help of priests or intellectuals. The conception was strengthened through a renewed acceptance of the ancient proposition that virtue was knowledge.

Behind this place a belief that knowledge could elevate human beings. These attitudes constituted an idea not presently of individualism but also a dissimilar ideal of public man, setting out not presently some new assumptions in relation to the humanity but also a normative process for assessing human actions. In the 15th and 16th centuries, the scholars, the artists, the architects, the musicians and the writers, all those who formed the civilization of Humanism, began to experience a more common sense that their community had entered upon a new age, an age which has removed the 'darkness' of the preceding centuries: the 'Renaissance'.

While this interpretation of history was an exaggeration of what they were professing, it was yet undeniable that a new vision of man was being created. The 'new man' was measured sovereign in the world and, with his cause and creative powers, was able to refashion the world in accordance with his will. Increasingly, the *studium humanitatis* and the common cultural climate of the Renaissance produced texts which showed this deepening interest in the essence of what made man more civilized, humane being and which were so described *humanist literature*. Texts written on a variety of subjects sought to expose what man was and could

do both since an individual and since a member of community. The autobiography, in which a person tells his own, unique story of his life, was born in humanist circles.

A fine instance of this type of script was the one written through the well-known goldsmith and sculptor, Benvenuto Cellini (1500-71), it was a secular and realistic job which told the story of his life. His readers were persuaded to see the world approximately him by his eyes, not according to all sorts of idealizations which the Church had earlier imposed on Christian societies. Therefore, Cellini writes of the must to record one's deeds, and in the procedure informs the posterity in relation to the experience and engagement with reality.

He writes in relation to the ancient monuments that inspired him, giving an idea of the sense of life and movement in Michelangelo's job, often graphically describing Michelangelo's quarrels with his competitors. Another example of this genre of scripts is Vasari's *Lives of the Artists*, in which the author, who was himself an artist, reflected on the attainments of few of his contemporaries in relation to their personalities, in short describing the lay of the creative individual in community. His job, since those of other great names of the renaissance like Niccolo Machiavelli was informed through the sentiments that all men were capable of achieving wisdom and glory – a feeling which merged into the new humanist thoughts in the intellectual circles. This enabled them to understand afresh the history of texts, in the procedure laying out the groundwork for classical scholarship of contemporary times. A consequence of such

intellectual interest enabled the humanists to develop a new understanding of man in community. The moral foundation of this ideal was derived from the belief in man's capability to understand truth on the strength of his cause and worldly sense – an idea that the intellectuals of the renaissance had inherited from classical studying. At one stage this human capability was looked upon since a divine gift; at another stage human attainment depended on free choice which implicitly acknowledged a sure self definition of goals and responsibilities through an individual, who was since much capable of sound decisions since of faulty strategies.

The account of man included both virtue and vice. The historian Buckhardt wrote in relation to the growth of the individual since an aspect of this new consciousness, attributing this to the material life and political civilization of the Italian municipality states. This new consciousness created the ideal of the universal man in the sense of a sure recognition of the individual personality and private attainments. To men like Machiavelli pursuit of glory was a perfectly human virtue.

Realism vs. Moralism

Separately from the pursuit of glory, the self-growth of an individual personality by farming of 'arts and sciences' appeared since another social ideal allowing a great flowering of creative action. The cult of artistic personality was the other face of the similar coin – an ideal which figures prominently in Vasari's *Lives* who connected artistic quality to a psychology of attainment.

To little extent Vasari had followed the process which had been adopted through the celebrated Roman biographer Plutarch. Plutarch had presented before the humanists a vision of man in community whose attainments were results of their pursuit of glory and entwined with a sure conception of virtue. The idea was attractive and powerful because of its intense realism. Niccolo Machiavelli (1469-1527), a Florentine scholar, who, in his well-known 1513 tract *The Prince*, defines the role of man in that segment of community which is, described politics. Machiavelli, too, was secular and a realist; he showed that the will to authority was a dominant motive in human activity however often coated with nice terms of religious and ethical nature. Upon a closer seem it revealed itself since pure self-interest; and more importantly there was nothing wrong in relation to it. Machiavelli's political idea is often interpreted since "the activation, in one sense or another, of a pagan morality, without being contaminated through Christian asceticism".

It is also argued that being a realist he suggested a dual morality. What was moral in the public sphere might have been immoral in one's private life. Machiavelli's condo nation of cunning on the section of a ruler in the superior interest of the realm is the familiar instance of the dual morality. Machiavelli apparently was interested more in what men did in the public sphere than what they preached. Scholars like Quentin Skinner have painstakingly argued that this was essentially a pre-Christian pagan morality where success was worshiped since virtue. Even however Machiavelli had a gloomy opinion in relation to the method life was governed through fortune, he placed a big

premium on the suitable initiatives through men to overpower fortune. In a sense this was a celebration of man since a self-determining being. Such a dynamic concept of man which seems with the renaissance, like humanism, cannot be precisely defined. It certainly implied an individualistic outlook and has often been called since 'renaissance individualism'. In a method it fell distant short of the individualism of a mature bourgeois community, yet it was bourgeois individualism in its embryo. Almost certainly the ideal of the self-made man which renaissance humanism proclaimed was suggestive of the method the individuals were capable of shaping their own lives rather than the more mundane pursuit of authority and money.

This ideal was closely tied with sure versatility or several-sidedness of human nature going against the ordered subsistence that was imposed on man through Christianity and feudalism. The Christian concept of man was founded on the idea that man necessarily had a depraved subsistence and could be delivered only through the grace of god. At another stage he was a member of a feudal order or an estate. The status of an individual either since a member of a feudal order or since a member of the Christian society allowed him a very narrow range of freedom. One could of course rebel against the church and could be condemned since a heretic.

But even that rebellion was staged in the name of the Christ, always weighed down through the belief in man's essential sinfulness derived from the Biblical notion of the original sin. The renaissance view of man replaced this with the dynamic view

in which “the two extreme poles were the greatness of man and also his littleness”. Whether great or little, man began to be looked upon since a relatively autonomous being, ‘creating his own destiny, struggling with fate, creation himself’. This was no more than an idealized image of actual man, backed up adequately through a pluralism of moral values reversing a value organization based on the seven cardinal sins and seven cardinal virtues of medieval Christianity.

The pluralism of moral values seems boldly in the method the renaissance intellectuals began to respond extremely differently to dissimilar human propensities. If the striving for authority was perfectly acceptable to Machiavelli, too few others, like Thomas More, it was a source of much mischief. To put it basically the renaissance experienced the growth of what may be labeled since realistic ethics, suggesting a situation where values became comparative and contradictory calling upon man to seem for the suitable measure to distinguish flanked by good and bad against the backdrop of a significant transformation of social life.

The new ideal of man presumes a superior amount of freedom of activity which the medieval Christian society did not allow. The municipality state was one sphere in which it became increasingly apparent that man is the maker of his own world jointly with others instead of being determined through either Christian or feudal rules of conduct. One of the consequences was the gradual fading absent of the old notion of sin. The man of the age began to measure his activity through their success or the lack of it. The emergence of such practical atheism was a

significant aspect of renaissance thinking in relation to the man. It also lived since the foundation of the rational Christianity or a tolerant religion of cause taking its location against dogmatism and allowing a sure freedom of individuality and choice. Ficino, for instance, made a significant effort to reconcile few of his platonic philosophical thoughts with Christian considerations imbued with the awareness of the creative authority of man.

The great renaissance figures exposed that the attributes of god in information were the attributes of man since well. One can possibly think of an effort towards the deification of man since one of the wonders of the world. There are several illustrations from renaissance sculptures where human heroes seem since divine figures. Michelangelo's David seems like a Greek god. A man like Ficino not only argued that god created man, but also stressed that once created, man created he in excess of and in excess of again. Ficino also spoke of the eternal restlessness and dissatisfaction of human mind returning to the similar dynamic concept of man which refused to acknowledge any limits like an early contemporary merchant motivated through boundless opportunities for profits. This vision of the greatness of man dovetailed with man's essential frailties.

Machiavelli himself whispered that 'all men are bad and ever ready to display their vicious nature partly because of the information that human desires are insatiable'. The mainly powerful motive Machiavelli sees since the stimulus for every human activity is self-interest. The vileness of human nature so had nothing to do with any deliberate design for evil and what

Machiavelli called since human nature is synonymous with the common ethical belief of the emerging bourgeois community in which reliance was placed largely on the unbiased observation of information's and activities.

This precisely was the ethic of experience which occupies a central lay in Machiavelli's definition of human nature when he writes that 'the desire to acquire possession is an extremely natural and ordinary item, and when those men do it that can do it successfully they are always praised and not blamed'. Artists presented this new vision of man since well. For the material remnants of classical civilization were now sought since assiduously since the surviving ancient texts: the 15th and 16th centuries saw the birth of archaeology.

Numerous jobs of art were exposed in the ruins of ancient Rome, and discover reinforced the new view of man that had been developing in the previous century. A multitude of paintings and sculptures of 'perfectly' proportioned men and women was the result. A new, ideal-kind human being was created, which has captured our imagination by the ages. Early in the 14th century life like frescos of Giotto di Baondone, had brought in relation to the significant transforms in the artistic visualization of human figure breaking absent from the mechanical approach of the transitional ages.

In 1416, the Italian sculptor Donatelo broke new ground with figures like his nude David, anticipating the better recognized job on the similar subject through Michelangelo in 1503. Leonardo

da Vinci painted Mona Lisa, which has remained since one of the representations of female beauty in contemporary times. Besides incorporating the secularist and individualist characteristics of humanism, the reborn age or Renaissance should be described realistic since well. In painting, efforts were made to symbolize everything since it emerged. However not completely away in the previous ages, one can certainly uphold that for several centuries realism had been relatively unimportant.

Already in the 14th and 15th centuries, throughout the first stages of humanist civilization, painters increasingly attempted to reproduce reality, casting off preconceived thoughts in relation to the morally or religiously acceptable. Increasingly, what the eye could measure or observe was painted incorporating aloofness, depth and color in order to create the painting more realistic. In sculpture too people were individualized, with recognizable sides, whereas the art of the preceding centuries had been a component of an architectural backdrop—relief's more than freestanding figures; in the changed context sculpted images presented man according to his newly-won vision of himself since an independent and free personality, displaying a sure pride in the beauty of the body, both the male and, in view of the conventions of the preceding age, the female too.

Whereas woman for a extensive time had been 'stereotyped due to the limits imposed upon her role through the community, she now seemed to regain few stature since an individual person, in whose body the perfection of God's making was made since visible since in the male'. This was the case even when paintings

and sculptures served religious purposes, and were collected in such a method that they aroused a suitable devotional reaction in the viewers, like the Madonna and her child through the Italian painter Raphael or the massive frescos, mosaics and statues that adorned walls and ceilings and cupolas in the Church. Inevitably, deal and travel, military conquest and diplomatic contacts connected the new civilization of the Italian cities and courts with the world beyond.

The new civilization was admired and imitated all in excess of Europe although, of course, through the bigger educated and the prosperous, only. For both south and north of the Alps, Humanism and the Renaissance were elite phenomena. Only extremely some of the new thoughts and considerations filtered down to the ordinary man who, after all, could not read or write the polite language, lacking, since the cultivated mind of the age saw it, the skill to acquire virtue and wisdom.

Yet in the 15th and early 16th centuries, the educational institutions in northern Europe produced several humanists. Like their Italian colleagues, they too, began to focus on the classical Greek and Roman texts beside with the holy books of the Christians. Desiderius Erasmus, one of the mainly well-known of these north European humanists, in a series of treatises, tried to place down the rules for an educational organization that despite its Christian basis came to be animated through the critical spirit of Humanism. Indeed, one should not forget that, contrary to what often has been suggested, mainly people livelihood the civilization of Renaissance and humanism did not display a

'heathenish', pagan spirit but remained firmly tied to a view of man and the world since, essentially, redeemable only through a Christian God.

Through the beginning of the 16th century humanist values had begun to refashion the intellectual life of northern Europe. John Colet and Sir Thomas More popularized them in England, Jacques Lefevre's Etaples and Guillaume Bude in France, Conrad Celtis and Hohann Reuchulin in Germany and Erasmus in Holland were the leading humanists in early 16th century Europe. But unlike Italy, where professionals dominated the humanist movement and gave it a secular character –even atheist in few cases – in European humanism the leading protagonists were mostly members of the clerical order.

Their reassessment of Christian theology set the level for the Reformation through calling upon Christians to practice religion in the method it had been stated in the ancient texts of the Christian religion, through discarding unnecessary and unpalatable rituals, condemned since later accretions to an easy religion. With the advent of the Reformation, the humanist 'Self Congratulation on livelihood in a golden age' was eclipsed through theological battles of the time. 'The waning of the Renaissance' had begun. Yet the new view of man since a free rational agent was a principle to which the post-Renaissance philosophy returned in excess of and in excess of again, inspired through the belief in a far god who created man but allowed him complete freedom to live his life freely, in pursuit of happiness 'here and now'.

Chapter 2

The Enlightenment and the World Politics

The Idea of Progress

The idea that is constitutive of the Enlightenment and central to this historical epoch is the idea of progress. By it the Enlightenment expressed the twin belief that – a) the present was bigger and more advanced than the past and b) this advancement has resulted in the happiness of man. Both these claims in relation to the progress in history were based on the assessment of the transforms that were taking lay approximately them.

The scientific discoveries of Copernicus, Kepler and Newton and their applications through Galileo led them to consider that human beings could fully understand the functioning of the universe and gain an unprecedented degree of manage in excess of their natural and physical habitation. This sentiment was further reinforced through the transforms that were taking lay in the traditional institution of life.

The incorporation of new technologies in the field of agriculture and in the manufacturing of goods had meant significant increase in the sphere of manufacture. Coupled with improved discourses, growth of roads, canals, and the development in internal and foreign deal, they whispered they were standing on the threshold of a new period: a period that would be marked through

abundance, perfectibility of man and the institutions of community. At the mainly common stage there was a feeling that we are now moving towards a condition in which, to quote Gibbons, 'all occupants of the planet would enjoy a perfectly happy subsistence'.

Theorists of the Enlightenment were influenced of the attainments and superiority of their age. They saw in history a movement from the dark ages to the civilized present. This did not mean that human history was gradually but steadily moving in one direction or that every level marked an improvement in excess of the previous one. While pointing to progress in history they were primarily saying that there was a marked improvement in the excellence of life in the present period. More specifically, the *Philosophers* were claiming that there has been a tangible and undeniable advancement in every sphere of life as the Reformation. For Chastellux, flourishing agriculture, deal and industry, the rise in population and the development in knowledge were all indicators of the increase in felicity.

The latter meant that their age was a much happier one. It was marked through peace, liberty and abundance. It was, to exploit Kant's terms, the best of all possible worlds. Unlike several of his contemporaries Kant was however of the view that happiness was not the largest issue. It was not basically a question of increase or decrease in the stages of happiness because culture, even in its mainly perfect shape, could not bring in relation to the happiness of men. Hence it was not to be judged in those words. Culture provided a setting in which men can test and prove their

freedom. The present merited a special lay in therefore distant since it had created circumstances in which men can encounter the mainly significant category of cause, namely, freedom.

The belief that man had advanced from the 'barbarous rusticity' to the 'politeness of our age' was feature of the Enlightenment. Indeed, this reading of the past and the present marked a sharp break from the earlier conceptions of history. The Greeks, for example, saw history since a cyclical procedure comprising of periods of glory followed through periods of decline and degeneration. The Transitional Ages, under the power of Christianity, had small lay for mundane history. Nothing in real history mattered because hope and happiness place in the other-world. Man's fall from grace had meant the loss of idyllic subsistence. Consequently, for them, it was only by redemption that men could hope to improve their present condition.

The Renaissance broke absent from this Christian reading of history but it had a pessimistic view of human nature. The Renaissance men whispered that the attainments of antiquity, in scrupulous, of Greek and Roman culture, were unreachable. They embodied the highest attainments of humankind that could not be surpassed. The Enlightenment, in sharp contrast to all this, focused on the 'here' and 'now' and saw in it unprecedented development, accompanied through moral and intellectual liberation of man. Johnson is accounted to have said, "I am always angry when I hear ancient times being praised at the expense of contemporary times. There is now a great trade more studying in the world than there was formerly; for it is

universally diffused". The Scottish philosopher Dugald Stewart was even more unequivocal in affirming the progress in the present world. He argued that the increase in commerce had "led to the diffusion of wealth and 'a more equal diffusion of freedom and happiness', than had ever lived before". Technical innovations that accompanied capitalism meant that men were "released from the bondage of mechanical labour and...free to cultivate the mind". The present was therefore seen since the age of progress where there was unprecedented advance in every sphere of life. It was, in its view, riddled with superstition and dogma, and guided through religion and blind obedience to power.

It was marked through the absence of individual freedom. The present, through comparison, was designated since 'civilized' and 'enlightened': a period in which cause was expected to prevail. The theorists of Enlightenment whispered that there were primarily two obstacles to progress – wars and religion. Both these could be, indeed they needed to be, destroyed through cause. Once that was done then the world would be a bigger lay. It would, in the terms of Condorcet, move from bondage to ultimate perfection of freedom and cause. Cause was, in a sense, the key to the earthly utopia. It was an instrument that individuals could exploit not only to interrogate all received shapes of knowledge but also to lead a virtuous, rational and happy life. For the *Philosophers*, cause was an ally of experience. It embodied a non-authoritarian source of knowledge that can be tested and proved. In the Preface to *The Organization of Nature*, Holbach wrote: "[R]eason with its faithful guide experience

necessity attack in their entrenchments those prejudices of which the human race has been too extensive the victim.... Let us attempt to inspire man with courage, with respect for his cause, with an indistinguishable love for truth, to the end that he may learn to consult his experience, and no longer be the dupe of an imagination led astray through power..."

Theorists, such since Holbach, whispered that cause could liberate men from the oppressive authority exercised through religion and, at the similar time, give them knowledge of the truth. Men had so to be taught to exploit cause and to act in accordance with its potentialities. This was the largest Enlightenment project. The development in scientific knowledge had given the Enlightenment grounds for being optimistic in relation to the present and the future. Its spokesmen asserted with conviction that culture was moving in the right direction and that it necessity continue to move in that direction. The evident progress in material and social life also gave them a sense of grandeur.

They felt that there were no limits on what human beings could know and accomplish. The growth of human faculties and the advance that had been made through the sciences and through culture since an entire, gave them sufficient cause to assert that nature had placed no limits on our hopes. The belief that human beings could achieve whatever they set out to do was closely connected to the Enlightenment idea of progress. Progress indicated the rising skill of individuals to manage their natural and social habitation.

According to the thinkers, the visible improvement in human life was the result of active and effective application of cause for controlling physical and social habitation. *Vice-versa*, the success that their generation had in controlling their habitation and harnessing the forces of nature for the betterment of humankind affirmed the belief that scientific application of cause would lead to the liberation of man.

It could make an ideal world in which individuals could strive to combine the virtues of knowledge with liberty. Three points require to be accentuated here. First, the Enlightenment thinkers connected knowledge with the natural sciences. The way of systematic observation, experimentation and critical inquiry used in the physical sciences was, in their view, the only viable foundation of arriving at the truth. Knowledge necessity is demonstrable. It necessity be backed through evidence that is available by cause and the faculties of the human mind. Based on this conception of knowledge, the Enlightenment posited a dichotomy flanked by metaphysical speculation and knowledge.

The Transitional ages, under the power of Christianity, had assumed that the world created through God could not be recognized through human beings. It was, through definition, inaccessible to human cause. The truth in relation to the man and the universe could only be 'revealed', and hence, recognized by the Holy Scriptures. "Where the light of cause does not shine, the lamp of faith supplies illumination". This was the avowed belief of the Transitional Ages. The Enlightenment rejected this view and maintained that items that could not be recognized

through the application of cause and systematic observation were chimerical. What could not be recognized necessity not even be sought for it constitutes the realm of the metaphysical, if not the nonsensical. Second, the Enlightenment began with the view shared through the leading scientists of their times: namely, that the secrets of the universe could be apprehended totally through man. These theorists were influenced both of the intelligibility of the universe and of the skill of individuals to understand it totally.

They whispered that while discussing nature we ought to begin not with the power of the scriptures but with sensible experiments and demonstrations. In *Les Bijoux Indiscrete*, Diderot compared the way of experimentation to a giant who could in one blow destroy the grand organizations created through metaphysics and idle speculation. The latter were basically structures without foundations therefore they could easily be knocked down through the authority of scientific cause. Third, science had provided a new and fairly dissimilar picture of man and the universe. Instead of positing a world of items that are ordered through their ideal nature or through little prior purpose, it presented nature since a self-regulating organization of laws.

The Enlightenment theorists embraced this world-view and like their counterparts in the natural sciences they aimed to find laws that govern community and human nature. Identifying laws and establishing patterns entailed the revise of reason and effect connections. It required the search for an antecedent event that

is necessary and enough for explaining an occurrence. The *Philosophers* abandoned the search for final reasons and focused instead on the examination of an efficient reason; that is, they tried to specify an antecedent event whose attendance is necessary for the occurrence of a given phenomenon and whose absence would imply the nonoccurrence of that phenomenon.

The revise of reason-and-effect connections was central to the Enlightenment conception of science. According to the thinker, “items are concealed from us since however through a heavy fog especially those items that are mainly often before our eyes. Nature has hidden from us the primary and elementary effects approximately since thoroughly, I should say, since she has hidden the reasons themselves.

Therefore, if we cannot discover the order of mutual dependence of all sections of the universe, nor find first reasons, possibly...you will think it no little attainment to illustrate the connection in the middle of effects that seem to be extremely dissimilar, reducing them to a general principle, and to extract through observation from scrupulous phenomenon the common laws which nature follows through which she governs the universe”.

This conception of scientific enquiry marked a sharp departure from the Aristotelian world-view that had dominated the revise of nature before this. In lay of by observation since a tool for categorizing and classifying items, it now urged the detection of reasons in an effort to explain ‘why’ sure items occur and also to

predict the occurrence of such measures in the future. Detection of reasons, in other terms, was a means of rising man's manage in excess of his habitation – both natural and social. While endorsing this conception of science the *Philosophers* were nonetheless aware that knowledge would have to be built from little foundations.

Yet, they were firm in their belief that the small that we had learnt through way of observation and causal analysis had vastly extended our knowledge; and, that it alone could reveal to us the truth in relation to the world. “[T]hanks to observations with the microscope our vision has penetrated into the deepest recesses of bodies, and that through observations with the telescope it has scanned the breadth of the heavens to enrich natural history and astronomy with a thousand wonderful discoveries. Only by the revise of observations has Chemistry been perfected therefore that it is now succeeding in analyzing bodies into their component elements and is on the verge of being able to put them jointly again. Only in this method has nautical sciences made such progress that now we can speed from one hemisphere to the other in great safety. It is undeniable ...that in Medicine, where hypothetical organizations are dangerous, only sober cause and ... passionate observation can bring improvement and growth. What then remnants for us? Working with this conception of knowledge the Enlightenment thinkers attempted to observe and systematically explain the world approximately them and the community in which they existed. They focused on the observable and attempted to understand the complexities of individual and national character through relating them to other physical and

social elements that are given to empirical investigation. Montesquieu examined the relationships flanked by political and civil laws of a country and its physical character – the climate, temperature and other demographic configurations. Adam Ferguson and David Hume undertook a scientific analysis of the mind through examining empirically the procedure of socialization.

The manner through which individuals internalize moral, social and intellectual thoughts and approach to acquire a notion of virtue and propriety was a subject that received their attention. Even since they studied the procedure of ‘moral education’ they whispered that men of cause could only accept data that is given in observation. Hence, approximately all of them focused on the empirical manifestations of substances and in their job they tried to build connections flanked by observable dimensions of dissimilar phenomena. By systematic observation of concrete particulars, these philosophers sought to arrive at the common principles and laws through which nature and community are governed.

Theorists of Enlightenment whispered that the world was like a machine, controlled through and functioning in accordance with sure common laws. Consequently, through discovering these underlying laws they hoped to understand the mysteries of the universe and gains manage in excess of them. Knowledge was designed to serve, what Habermas calls, a technological interest. Its purpose was to enable individuals to gain greater manage in excess of their habitation therefore that they can protect

themselves against the ravages of natural forces and, at the similar time, harness the energies of nature in a method that is advantageous to humankind. To the Enlightenment mind, rising degree of manage in excess of physical and social world, and the success of technical applications indicated progress and truth. Indeed, they signified scientific knowledge and validated its claim to truth.

It was whispered that the skill to explain and manage natural and social habitation would enable individuals to construct a world in which these twin goals can be realized. To quote Hume, “happiness was the end to which all human life was directed and since community gives men with these thoughts which made life intelligible and happiness possible, men can discover happiness in community”. Hume was not alone in claiming this. Mainly of his contemporaries maintained that expanding knowledge of the laws of the universe would enable humankind to fashion their lives and make a perfect community.

At the extremely least, it will give men the satisfaction of knowing that they have the correct ways of enquiry, consequently they will never ‘relapse into barbarism’. What requires to be reiterated here is that the Enlightenment thinkers did not basically associate knowledge with science; they wanted to apply the “experimental way” used in the physical sciences to the revise of community. Like the natural scientists they searched for laws of human nature and laws of social growth. Montesquieu maintained that “[E]verything which exists has its laws: the Deity has its laws, the material world its laws, the spiritual beings of a

higher order than man their laws, the beasts their laws, and man his own laws.... Since a physical being, man is governed through invariable laws in the similar method since other bodies”.

However, since an intelligent being he continuously violates those laws and creates new ones. With this vital understanding he analyzed two types of laws: those that are general to all men and all communities, and those that are peculiar to a community. While both were to be analyzed and exposed, the former was regarded to be particularly significant. In information, through identifying and enumerating the qualities that are general to all men they hoped to determine those traditions and institutions which were in harmony with the universal natural order and sort those that did not have a lay in that order.

Discovering the consistent and universal principles of human nature was therefore of the utmost importance, especially for the task of reconstructing a bigger and more perfect world. Science was, for the Enlightenment, more than a way of enquiry. It was synonymous with a rationalist orientation. In the effort to make circumstances in which men would be free to explore their potentialities to the fullest, the theorists of Enlightenment launched a thorough critique of the institutions of Christianity and, with it, of existing religions and sects. Approximately all of them, from Voltaire to Holbach, wrote in relation to the harmful effects of religion in excess of individual and social life. Voltaire pointed to the violence engendered in the name of religion. “It is asked why, out of the five hundred sects, there have scarcely been any who have not spilled blood?”

And why “there is scarce any municipality or borough in Europe, where blood has not been spilled for religious quarrels’. He noted further, “I say that the human species has been perceptibly diminished because women and girls were massacred since well since men.... In fine, I say, that therefore distant from forgetting these abominable times, we should frequently take a view of them, to inspire an eternal horror for them; and that it is for our age to create reparation through toleration, for this extensive collection of crimes, which has taken lay by the want of toleration, throughout sixteen barbarous centuries”.

The Enlightenment critique of religion stemmed from the understanding that religion has been a source of oppression in history. It was the foundation of intolerance and hatred in the middle of men. It promoted in excellence and ‘unfreedom’ of man. “It is since a citizen that I attack religion, because it looks to me harmful to the happiness of the state, hostile to the mind of man, and contrary to sound morality’, wrote an Enlightenment thinker. What was possibly equally significant for the Enlightenment was the role that religion played in the Medieval Ages.

Under the hegemony of the Recognized and Unified Roman Catholic Church men were expected to renounce cause and lay their faith instead in revealed truth. Religious authorities spoke of the limits of human cause and asked individuals to listen passively to the voice of custom since communicated through the Church. Theorists of Enlightenment were particularly critical of this world-view. The effort to propound a doctrine that could not be questioned through men and that gave men a fixed view of the

world and their role in it was, in their view, inimical to cause. “Instead of morality the Christian is taught the miraculous fables and inconceivable dogmas of a religion thoroughly hostile to right cause.

From his extremely step in his studies he is taught to distrust the proof of his senses, to subdue his cause...and to rely blindly on the power of his master”. The Enlightenment thinkers attacked the Church for promoting superstition and ignorance. On the one hand, its doctrine was anchored in miracles and mysteries that were irreconcilable with cause, and, on the other, it was intolerant of true knowledge. This perception of religious institutions and religion was reinforced through the hostile attitude of the Church towards the new thinking that came with the Copernican Revolution.

The persecution of the scientists and the philosophers for their beliefs led Voltaire to comment that “those who persecute a philosopher under the pretext that his opinions may be dangerous to the public are since absurd since those who are afraid that the revise of algebra will raise the price of bread in the market; one necessity pity a thinking being who errs”. It is to break free of a “frantic and horrible” persecutor that the Enlightenment thinkers derided the Church and all existing religion. Anti-clericalism and rejection of existing religions does not however imply that the *Philosophies* were atheists. Indeed several of them provided rational grounds for accepting the attendance of a supreme creator. Diderot went a step forward. He rejected atheism. To quote him: “Atheism leaves honesty

unsupported; it does worse, indirectly it leads to depravity". Therefore, while their critique of Christianity led them to question the belief that the world was created in seven days, they nevertheless whispered that the world was a "beautifully crafted machine" and it necessity have been intended through a Supreme Being according to few rational plan.

Belief in a creator did not however imply an acceptance of a religious orientation or the faith that a religion embodies. Voltaire wrote, "He who recognizes only a creating God, he who views in God only a Being infinitely powerful, and who sees in His creatures only beautiful machines, is not religious towards Him any more than a European, admiring the King of China, would thereby profess allegiance to that prince. But he who thinks that God had deigned to lay a relation flanked by Himself and mankind; that He has made him free, capable of good and evil; that He has given all of them the good sense which is the instinct of man, and on which the law of nature is founded; such a one undoubtedly has a religion, and a much bigger religion than all those sects...".

While pointing to the injustices perpetrated through existing religions, theorists of the Enlightenment presented a new 'natural religion' – Deism – that did absent with rituals and supernatural elements and anchored itself in the principles of tolerance and excellence of all persons. Explaining the distinctiveness of a person who affirms this new faith Voltaire writes, "It is he who says to God: 'I adore and serve you'; it is he who says to the Turk, to the Chinese, the Indian, and the Russian: 'I love you'.

He doubts, possibly, that Mahomet [Mohammad] made a journey to the moon and put half of it in his pocket; he does not wish that after his death his wife should burn herself from devotion; he is sometimes tempted not to consider in the story of the eleven thousand virgins, and that of St. Amable, whose hat and gloves were accepted through a ray of the sun from Auvergne since distant since Rome. But for all that he is a presently man. Noah would have placed him in his ark, Numa Pompilius in his councils; he would have ascended the car of Zoroaster; he would have talked philosophy with the Platos, the Aristippuses, the Ciceros....”

Philosophers like Voltaire cast the true believer of this new religion in their own image. Deism expressed the beliefs and the vision of the *Philosophers*, and by it they articulated their belief that there is a Supreme Being, that all creatures in the world were His creations and they deserve to be treated with kindness and without cruelty. The natural religion was therefore a religion of humanity. It was expected not to be a source of derision and hatred in the middle of men; instead it was to incorporate true principles of human nature and a universal organization of morality that arises from the latter.

Although tolerance was central to the new religion, the *Philosophers* denounced all those creeds of Christianity that claimed a right to destroy all those that differed from them. These theorists showed no signs of tolerance towards those who perpetuated religious intolerance. Indeed their largest aim was to

destroy all traces of religious fanaticism that were visible in their world.

Man and Community

The Enlightenment demolished the Heavenly Municipality of St. Augustine but they never lost faith in the skill of human beings to construct a new community in which peace, liberty and abundance would prevail. While they denied the possibility of miracles happening, they sustained to consider in the perfectibility of the human species. With complete confidence in rationalist will and a humanist pride in the capability of human beings to overcome all hurdles they hoped to construct a world in which there will be a steady increase in felicity. They were aware that this was a hard task. "To prolong life, clear the roads of assassins, stay men from starving and give them hope of enjoying the fruits of their labour" would, they knew, need more than presently political continuity.

It would require a moral and intellectual revolution and it was this that the *Philosophers* hoped to accomplish by their scripts. Their belief in scientific rationality and the accompanying critique of the institutions of the Church and existing shapes of religion were essential components of this better agenda of social and Cultural Revolution. The *Philosophers* saw scientific knowledge since authority; consequently, those who tried to challenge it were recognized since men who wished to stay everyone in ignorance. They were seen since the 'enemies' of humankind. However, the Enlightenment did not merely target religious institutions. Anti-clericalism may have been the

predominant sentiment but it was blind obedience to power *per se* that they were mainly critical of. Whether the power was that of the priest or the ruler, custom or tradition, each was subject to the similar critical gaze. To put it in another method, fighting the dogmatism of religion and its institutional buildings was a significant pillar in their thrash about for freedom but it was through no means the only one. Challenge to religious power was complemented through a similarity attack on the absolutist monarchies that lived all in excess of Europe in the post-reformation era. Script in protection of the liberty of the individual, Diderot asserted that “no man has received from nature the right to command others.... Liberty is a gift from heaven, and every person of the similar species has the right to enjoy since much liberty since he enjoys cause”. Theorists of Enlightenment cherished liberty and freedom. For them, these were the highest and the mainly cherished values, and they were critical of despotism for not sufficiently safeguarding these values. Liberty required, on the one hand, a government in which one has the freedom to depose a tyrannical ruler and, on the other, the option to elect people whom one is expected to obey and be governed through. A democratic regime based on the principle of popular sovereignty followed from their defense of liberty.

Although several of them were skeptical of the possibility of establishing a popular, democratic government, they maintained that authority that comes from the “consent of the people” alone is legitimate, and advantageous to community. Montesquieu added another dimension to the discussion on political liberty.

Theory of Separation of Powers

He maintained that liberty entails two elements: 1) a moderate government and 2) not being compelled to do anything other than what one should do. Experience illustrates that individuals are easily tempted to misuse their authority for personal ends. It is so essential to lay limitations upon the exercise of authority. Montesquieu spoke of require to curb the authority of each wing of the government. “When legislative authority is united with the executive authority in a single person, or in a single body of the magistracy, there is no liberty, because one can fear that the similar monarch or senate that makes tyrannical laws will enforce them tyrannically. Nor is there liberty if the authority of judging is not separated from the legislative and from executive authority.

If it were joined to legislative authority, the authority in excess of the life and liberty of the citizens would be arbitrary, for the judge would be legislator. If it were joined to executive authority, the judge could have the force of an oppressor. All would be lost if the similar man, or the similar body of leading men or of the nobility or of the people, exercised all these powers, to create the laws, to carry out public decisions and to judge crimes or disputes in the middle of individuals....”.

A government in which the three characteristics of government – namely, formulation of laws, execution of laws and arbitration or interpretation of laws – are separated and each wing checks the powers of the other is only one dimension of an organization committed to protecting the liberty of its citizens. It had to be

complemented through the privilege of being governed through one's own laws or through people of one's choice.

A democratic government was regarded to be significant for giving authority to the individual. Mainly Enlightenment theorists established that authority to the people may not translate into freedom of the people. The latter entailed "doing what one should want to, and in not being compelled to do what one should not want to". Liberty did not however imply the freedom to follow one's whims or to do that which is not permitted through law. Approximately all of them carried the importance of law. For them, obeying laws was a necessary condition of protecting liberty. If individuals were to follow their own impulse through infringing the law then there would only be anarchy in community.

Political liberty could exist only when individual citizens acknowledge the centrality of law and subject them to its command. Indeed, the attendance of political and civil laws was seen since a continuous reminder to the individual of his duty to his fellow citizens. Few theorists of Enlightenment even represented law since an embodiment of cause. For them laws lay the necessary restraint upon passions of individuals to violate the natural order and, at the similar time, they induce men to channel their sentiments in a direction that facilitates social and civil life in the world. Individuals, in their view, can enjoy liberty only when public safety is ensured and crimes of all types are reduced, if not eliminated. It was regarded to be the task of the legislature to ensure this; in scrupulous, to ensure that crime of

all types becomes less frequent, even if that means by powerful means at its disposal to prevent disorder in community. The point that requires to be accentuated here is that the Enlightenment men carried that individuals tend overwhelmingly to pursue their own interest and this can be a reason of political disorder. Laws were, for this cause, measured necessary to lay sure restraint upon unchecked pursuit of one's own private interest. However, they felt that it was equally significant to see that punishments for defying the law are in proportion to the evil produced through the act. Marcese di Baccaria in information spoke of requires devising a universal level for measuring crime and for determining the punishment proportionate for it. If we could have a universal level of this type, Baccaria whispered, it would be possible to measure the degree of liberty and slavery, humanity and cruelty that exists in dissimilar nations. What necessity also is that the Enlightenment was concerned not only with the excesses perpetrated through despotic regimes but also through the inhumanity of man to man, and it was the latter that they hoped to minimize. Reforming the organization of government and the practices included in existing laws was but a means to realize this end.

In other terms, civility for the Enlightenment meant something more than rule of law. Obeying laws was necessary but what was equally necessary was that laws reflect the principle of common cause. Indeed, obedience was accentuated because laws were supposed to make circumstances in which individual liberty is protected and enhanced. The communication on crime and punishment shaped a section of the Enlightenment's superior

concern for creating a free and enlightened community. Presently since the natural scientists hoped to achieve greater manage in excess of the physical elements by their knowledge, the social scientists whispered that their understanding of the laws of human nature and community would enable them to eliminate evil and make a bigger world. Theorists of Enlightenment were full of optimism in this regard. They felt that all limitations could be overcome and a free world could be created. In section this optimism was fostered through the new shapes of manufacture introduced through the capitalist economy and the technical innovations spurred through the development of scientific knowledge. The Enlightenment thinkers favored freedom of enterprise. Adam Smith argued that even however individuals seek this freedom to further their own private gain; nevertheless the pursuit of self-interest is likely to promote the interest of community since an entire. Freedom of enterprise would lead to development in manufacture, more employment opportunities, and this would benefit all citizens.

Although these philosophers defended capitalist enterprise and argued that a life of virtue did not entail forsaking commercial community, they created legroom for themselves absent from the world of business, politics and fashion. In the salons, coffee-houses and taverns of the emerging contemporary municipalities they would meet, talk about and express opinions that would be in the middle of the mainly influential thoughts of their times. More importantly, men, and sometimes even women, would meet since friends and since equals. Addison and Steele saw coffee-house conversation since a shape of social interaction that

“taught men tolerance, moderation and the pleasure of consensus. It also taught them to seem at their own activities with a critical detachment which was hard to acquire in public life”. The Enlightenment theorists placed considerable stress on the spirit of critique. Cultivating skeptical habits of mind would help to release men from the bondage of myth and prejudice which corrupts the mind and generates enthusiasm that can stand in the method of human happiness.

Education was to play a significant role in this regard. The Enlightenment had tremendous faith in the authority of human beings brought up rationally from infancy to achieve unlimited progress. They also entrusted the state with the responsibility of changing the building of laws and institutions, and undertaking the job of reform. Bounded through a world that was full of promise for a bigger tomorrow, the Enlightenment thinkers wished to instill the spirit of tolerance and minimize crime and torture. They were of course aware that knowledge in relation to the human nature and community would not automatically make virtue, but they whispered that it could certainly shed light upon ignorance and warn us against the misuse of authority. The Enlightenment understanding of man, community, history and knowledge did not however go unchallenged. Through the end of the 18th century itself the Enlightenment faced a challenge from a cluster of intellectuals who were recognized since Romantics.

They questioned approximately every aspect of the enlightenment thinking – from its conception of truth, science and cause to its belief in the idea of progress. The Enlightenment had represented

the present since an advance upon the past, the Romantics, through contrast, saw in it the deterioration of the human condition. Jean Jacques Rousseau argued that the growth of arts and sciences had resulted in the social and moral degeneration of man.

Division of labour, differentiation of functions and applications of technology had, in his view, corrupted men and destroyed their idyllic subsistence. Indeed it had created a hiatus flanked by nature and man. While man in his natural state was guided through the principle of pity – that is, “a natural aversion to seeing any other sentient being perish or suffer, especially if it is one of our type” the progress of culture had made him egoistic and self-centered. It had resulted in the loss of freedom for the self. Men led an alienated subsistence now, subordinated to the order of time and job that is imposed through industrializing capital. Romanticists like Rousseau sought salvation in the “natural order”.

For them, it was only in the natural order that man’s truest and deepest requires could be satisfied. Further, in contrast to that ideal world the present emerged since a disappointment, if not a complete failure. It was a substance of bitterness and resentment. Consequently, many romanticists idealized the past. Few even wanted to turn the clock back. These scripts, attempting to glorify the past echoed the sentiments of the disinherited aristocratic class and they were congenial to their demand for returning to feudalism. However, this was not the defining attribute of Romanticism. The Romantics rejected the

present community, harked back to the pre-contemporary world and created the image of a “natural” man primarily to challenge the mechanistic and instrumental rationality of the new capitalist order.

By its symbols of the past and other cultures it sought to reveal the limitations of the contemporary world-view and the scientific rationality that underpinned it. The Romantic rebellion was, in several methods, the ‘other’, that is, the negation, of Enlightenment. It affirmed values that opposed everything that Enlightenment stood for. The Enlightenment had elevated cause to the location of sovereign power. It whispered that cause had the skill to find the absolute truth, both in relation to the meaning of history since well since the working of the universe.

The *Philosophers* assumed, on the one hand, that cause rules in excess of the universe and, on the other, that it was supremely significant to man. Cause could enable us to understand the functioning of this intricately intended machine, described nature, find its laws and apply that knowledge to manage the physical and the social world. This idea that cause either “dominates everything or could be made to do therefore” was fundamentally challenged through Romanticism. The challenge took several dissimilar shapes. At the mainly immediate stage, the Romantics pitted passions against cause.

Against the cautiously controlled and mathematically precise observations of the scientist, they placed the cause of the heart and extolled its virtues. In Enlightenment idea cause was closely

connected to scientific rationality. Its applications were expected to yield truth – i.e., knowledge of universals since well since knowledge that is universally applicable. Through referring to cause of the heart, the Romanticists questioned this vital conception of universality and truth. Against the notion of objectivity of taste and permanence of the truly beautiful, Romanticism affirmed the value of the contingent. They stressed inward conviction and juxtaposed it to judgments oriented to externalized averages.

Not only did they resist conventionality to impersonal laws, they maintained that the “single narrow door to truth place within us. Through looking within ourselves, into our inner consciousness we approach to understand and know the truth”. The Scottish Enlightenment thinker, David Hume, had once suggested “If we take in our hand any volume, of divinity or school metaphysics, for example, let us inquire, Does it include any abstract reasoning regarding matter of information and subsistence? No. Commit it then to flames; for it can include nothing but sophistry and illusion”. Romanticism consciously sought to retrieve that which the Enlightenment had consigned to the flames. They focused on the magical and the mystical and exalted the strange in excess of the recognized in a bid to reject the Enlightenment conception of truth and science.

On the one hand, they challenged require to adhere to laid down processes and ways of observation and generalization, and, on the other, they focused on the “exotic, deviant or the special case, counterpoising these to the probable or standard case”.

Romanticism conferred a special status on the unique, and, beside with it, defined individuality in words of departure from social norms and conventions.

Against the classical unities of time and lay, they welcomed a “melange of times, tones, moods and spaces”. The Enlightenment had viewed the world since a harmonious, integrated entire. Romanticism, on the other hand, perceived it since an “incongruous assemblage” and tension filled conjunction of sections” that could not add up to a single, coherent, unified entire. The totality was at best a mosaic, characterized through plurality and dissonance. The exploit of standardized techniques and processes through the Enlightenment was based on the assumption that the universe – both natural and social – had a patterned regularity.

It functions in accordance with sure laws that can be exposed through the application of human cause and scientific way. Through emphasizing dissonance of sections and uniqueness of measures Romanticism rejected this assumption of Enlightenment thinking. In its view the world defied neat categorization and was not amenable to the type of systematic, analytical revise that was the hallmark of science.

The scripts of these theorists were filled with imagery of twilight, blurring boundaries and absence of clear-cut distinctions. Their jobs of art depicted pictures of the natural forces and elements that defied human manage. While the Enlightenment art told a story of clear, calm skies in which man was in manage of his

destiny, Romanticism presented a turbulent world in which chaos and uncertainty prevailed, reminding human being of the limits of their knowledge and the finitude of their subsistence.

Through concentrating on the singular and the unique, on the one hand, and the mystical and the strange, on the other, Romanticism drew attention to the failure of human cause. If the Enlightenment expressed optimism that the world could be recognized fully through the human mind, Romanticism pointed to that which resisted account through human cause and scientific knowledge. Romanticism did not basically reverse the antinomies that defined the Enlightenment; they challenged the philosophy of Realism that informed the latter. Scientific rationality was anchored in the belief that truth can be arrived at by an accurate account of the external world. Romanticism challenged this notion of realism in three methods.

First, it questioned the possibility of apprehending truth by the ways employed through science; second, it retrieved categories that had no lay in a world that is experienced since information; and third, it redefined the notion of truth emphasizing the capability of the individual to make new meanings and values. The idea that truth entails an accurate account of an external reality that is recognized by sensory perception and systematic observation was the consistent substance of doubt and criticism within Romanticism. In a same vein Keats also rebelled against the reduction of the rainbow to prismatic colors. Such symbols, in his view, deprived it of its poetry and aesthetic quality, and in the procedure failed to fully experience or perceive this

substance. While few Romanticists questioned the loss of truth by the analytic-synthetic way of the sciences, others, like Rousseau, gave a privileged lay to emotions and feelings.

The Enlightenment had dismissed these categories since subjective, and unable to grasp objective truth, but Rousseau held them to be crucial to the understanding of the self and community. Further, he accentuated the role of the individual and maintained that the creative originality of the artist is bigger able to capture the truth of the external world. The Enlightenment *Philosophers* attempted to find the world, i.e., to unveil the truth that was already there. In contrast to this, the Romantics stressed the capability of the individual to make new meanings and values. The idea that truth is a substance of construction and making rather than detection was subsequently urbanized through Nietzsche to give a critique of the Enlightenment and even its Romantic critics.

Nietzsche

Romanticism had lamented the loss of meaning in the contemporary world. To fill this void they turned to nature, religion and custom. Nietzsche, script in the late nineteenth century, questioned presently this. While accepting the spiritual wasteland in which the contemporary man walks alone, he maintained that neither to nature nor religion could give the *free* man with peace, joy or certainty.

Speaking passionately against a return to the past, he wrote: "The barbarism of all ages possessed more happiness than we do

– let us not deceive ourselves on this point – but our impulse towards knowledge is too widely urbanized to allow us to value happiness without knowledge, or the happiness of a strong and fixed delusion: it is painful to us even to imagine such a state of items! Our restless pursuit of discoveries and divinations has become for us since attractive and since indispensable since hapless love of a lover.... Knowledge within us has urbanized into a passion, which does not shrink from any sacrifice and at bottoms fears nothing but its own extinction....It may be that mankind will perish eventually from this passion for knowledge!— but even that does not daunt me....”

For Nietzsche there was another cause why man could no longer rely on tradition and custom. Custom oppresses: it appeals to a higher power, a power that is obeyed not because “it commands what is useful to us but merely because it commands”. The free man cannot so depend upon it. He is an individual, defying tradition and norms of received morality. It is his will to depend on nothing but himself.

As the free man of the contemporary age cannot discover solace either in religion or custom, there are presently two options before him; a) he may abandon the search for an ultimate meaning; and b) he may make meaning through his own will and activity. In exploring these alternatives Nietzsche did not merely reject the Enlightenment and its Romantic alternative; he questioned the whole custom of western rationalist idea, beginning with Plato. For Nietzsche all schools of idea had one item in general: they had firm belief in themselves and their

knowledge. They whispered that they had arrived at the truth. In the Athenian world of ancient Greek municipality-states Plato claimed that cause could give man access to the ultimate reality – the world of shapes. Each in its own method therefore claims that it has *exposed* the truth in relation to the external world that exists independently of us.

Further, that this truth has been arrived at impersonally and objectively; i.e., in words of qualities that inhere in the substances themselves. Men have existed in this state of “theoretical innocence” for centuries believing that they possess the right way for discovering the nature of ultimate reality, and for determining what is good and precious. Working under the power of these childish presuppositions they have failed to realize that the external world is in itself devoid of all meanings and values. Whatever has value in the present world “has it not in itself through its nature”? Rather a value was “given to it, bestowed upon it, it was *we* who gave and bestowed! We only have created the world which is of any explanation to man”.

In creation this argument and suggesting that man is a “creator, a continuous poet of life”, Nietzsche was not undermining the significance of cognition. For Nietzsche knowledge remnants a supreme value, but if pure knowledge since revealed through cause or experiments is the only end then we would have to follow whatever direction these faculties take us in. We have to be prepared, for example, to follow the path that experimental cause leads us towards, be that of nuclear power or genetic engineering. However, this would be complete “madness”.

Knowledge has to be mediated through values that we regard to be worth affirming, values through which we may wish to construct the world. The role of the artist is so of the utmost importance. While men of science aim to find what is already there, the artist gives form to a world, expressing human ideals. For this cause Nietzsche maintained that poetry and myths were a precious source of knowledge for us. In Nietzsche's jobs the artist was not presently the 'other' of the contemporary rational scientist. He was, first and foremost, a creator; and since a creator he embodied the skill to transcend the boundaries of the social and what is designated since the rational.

The artist since such stood alone, demanding the moralism implicit in western philosophical customs. Therefore it was by Nietzsche and the Romanticists that few of the vital tenets of the Enlightenment came to be questioned in a fundamental method. In scrupulous the view that the present was the mainly advanced and civilized period in the history of humankind became subject to scrutiny. Critiques of the idea of progress, cause and industrial rationality sought to displace the centrality accorded to science in the Enlightenment scheme of items.

The critics, through and big, carried that the new age of capitalism, scientific detection and industrialization had provided a much "softened" world for the mortals. It had offered a benign ethic of health, vitalism and welfare but the problem was that these growths challenged the existing conceptions without offering any alternative vision of the meaning of life. Consequently, the critics searched for an alternative to the

industrial community, especially to the instrumental and technological rationality that permeated the present. Romanticism of the late 19th century only marked the first step in this direction. Subsequent theorists accepted this task forward through pointing to – a) limitations of the Enlightenment project of progress; b) the exploitative nature of the capitalism; and c) the violence implicit in contemporary science.

Karl Marx

The early scripts of Karl Marx showed that capitalist mode of manufacture generates four kinds of alienation: alienation of man in the workplace; alienation of man from his product; alienation of man from his species life; and, alienation of man from man. For human beings, job is a means of self-expression and growth of one's potential. However, in capitalism job ceases to fulfill this requirement.

The industrial stage divides the job of manufacture into little fragments; it compartmentalizes occupations such that each individual repeatedly performs the similar differentiated and narrowly dedicated task. Under these conditions, job becomes a routine, if not a drudgery. At the similar time, individual gets alienated from the end-product of their making. They can no longer relate to the product that emerges from these factories. Even however the worker by his labour creates all the products, from the simplest to the mainly intricate machines; yet, they seem to him since reified commodities in the market. He can no longer own them since his creations. In information he confronts these substances since a stranger and is dominated through

them. Job therefore becomes a mode of oppressing men. Instead of being a means of self-realization and fulfillment it is transformed into a repressive action. The instrumental rationality that governs the workplace also extends to the social legroom. The urban industrial cities in which men live also function on the principle of utility and require. Men see each other since substances of exploit value and relate to each other on that foundation primarily.

Their alienation is therefore complete: it extends from the economic domain to the social and the political. For Marx, freedom could not effectively exist in such a community. The world that Enlightenment had fantasized in relation to could not perhaps ensure liberation of men. Not even the mainly progressive expressions of that rationality—namely, science and industrialization—could give for a community in which men could realize their potential. Towards the end of the 18th century, Romanticism had spoken of the moral of the newly emerging order.

It had also hinted at the loss of freedom in the age of industrialization. These themes were revived in the second half of the 20th century through the New Left, mainly notably in the scripts of Herbert Marcuse. In his book, *One Dimensional Man*, Marcuse characterized the post-enlightenment industrial community since “irrational” and “repressive”. Despite the evident progress and increase in productivity, this community, in his view, was “destructive of the free growth of human requires and faculties”. To several it may seem that political freedom is

protected in this community and there has been an expansion in the liberties enjoyed through men.

Today there is more to choose from: several dissimilar newspapers, radio stations, TV channels and an entire gamut of commodities in the market – from dissimilar diversities of potato chips to motor cars and washing machines. Yet, men have no real capability to create choices of their own. Men's requires are constantly formed and manipulated through the media industry that furthers the interests of some. It moulds and constructs images that determine the choices we create at home, in the market place and in social interactions. In a world where "false" requires are fashioned through the media there is no effective intellectual freedom or liberation of man. Men act and participate since "pre-conditioned receptacles of extensive standing". Indeed by their actions they reinforce the instruments of socio-economic management and their oppression.

The contemporary industrialized world constituted a "more progressive level of alienation". Its seeming progress, "the means of mass transportation and commerce, the commodities of lodging, food and clothing, the irresistible output of the entertainment and mass industry carry with them prescribed attitudes and habits, sure intellectual and emotional reactions which bind the consumers more or less pleasantly to the producers, and by the latter, to the entire. The products indoctrinate and manipulate; they promote a false consciousness which is immune against its falsehood. And since these beneficial products become accessible to more individuals in more social classes, the indoctrination

they carry ceases to be publicity; it becomes a method of life. It is a good method of life, it militates against qualitative transform. Therefore emerges a pattern of one-dimensional idea and activities". More importantly, since men and women share in the similar images and thoughts there is less and less the possibility of demanding the present and seeking alternatives to it. In a world where images, presentation and appearance count more than even the content, these theorists felt there could be no real freedom, or for that matter, the possibility of "communicative rationality" asserting itself in the "life-world".

For Marcuse since well since for other members of the Frankfurt School the Enlightenment had transformed what was once liberating cause, occupied in the fight against religious dogma and superstition, into a repressive orthodoxy. It had done this through visualizing cause since an instrument of manage; and, since a tool for gaining mastery in excess of the world rather than critical reflection and reconstruction. Instrumental cause that was concerned primarily with efficiency, economy and utility could not be expected to liberate man or to construct a bigger world.

Critics of Science

In the second half of the twentieth century, a same doubt is raised in relation to the science. Can science make a bigger world: a world in which individuals can enjoy freedom and happiness? The Enlightenment had answered this question in the affirmative. Its optimism emanated, in section, from its view that science had revealed the truth. Its way had enabled men to know

the external reality, the world approximately us, while technical application had facilitated manage in excess of that reality such that it could now serve the interest of man.

Science had in this dual sense made man the master of the universe. Men may not have intended that magnificent machine but they were certainly in a location to manage and manipulate it to suit their ends. Science symbolized this faith and it was for this cause that the Enlightenment had given it a special status in the order of items. This faith in science has been challenged in the late twentieth century. In the middle of other items the critics uphold that contemporary science and technology promote violence, and cannot so be a means for improving the human condition or shaping a bigger, more peaceful, world. In India this point of view is best represented in the scripts of Ashis Nandy, Vandana Shiva and Claude Alvares.

All of them see a link flanked by science, technology, oppression and violence. For these analysts science is intrinsically violent. Both science and technology are violent methods of handling the world; hence, their "exploit for violent purposes is assured". In collusion with colonialism and imperialism, science unleashed violence against traditional methods of life. Today, it has resulted in the massive accumulation of armaments and nuclear arsenal, all of which threaten the extremely subsistence of life on earth. In addition, it has resulted in concentration of authority in the hands of some. Science does not basically downgrade custom, it locations scientific knowledge against everyday experience and

received knowledge. In the procedure it gives a special location to the technocrat, the specialists.

In the scientific worldview, it is these men of knowledge rather than ordinary citizens who are empowered. Similarly, growth and progress sanctioned through science has uprooted people from their natural surroundings and has resulted in the displacement of countless people from their land. Heavy industries and large dams have dislodged societies without any real possibility of rehabilitating them, taken in excess of their land and resulted in the destruction of precious agricultural land.

At the similar time, it has alienated societies from the possessions that are crucial to their extremely subsistence. According to the thinker, science is not merely responsible for the making of sophisticated weapons of size destruction; it is destructive even in its peaceful applications. Scientific agriculture has resulted in aggressive and “reckless pillage” of nature. While traditional manners of cultivation left time for nature to regenerate itself, today the pattern of crop farming has generated troubles at several stages. The exploit of new seeds, which promise higher yield, has destroyed bio-varieties and the richness of nature.

Excessive use of ground possessions by farming of at least three crops each year, primarily for purposes of sale in the market, has left the farmer poorer. The condition of soil has deteriorated and it has created a habitation that is “favorable for multiplication of disease”. In the region of health likewise, there is an increase in

iatrogenic illness. In information “iatrogenic illness reason more deaths than road accidents”. In university hospitals in America, one out of five patients contract iatrogenic illness and one out of 30 die because of it. While rising productivity and cure for many diseases, it has created newer shapes of illnesses, upset the balance of nature and worsened the condition of life for the ordinary man. Since we observed earlier, Romanticism had contrasted the world ushered in through industrializing capital and science with the ideal subsistence of man in nature.

It had challenged the Enlightenment idea of progress through glorifying nature and seeking a return to it. If Enlightenment had credited science with advancing the happiness of man, Romanticism blamed it for rising alienation, violence, loss of peace and security. It warned humankind of the disasters that approach with science and its technical applications, and craved for the cosmic order that is supposed to be there, present in nature. It is this reliance upon custom and the natural order that distinguishes Romanticism from the postmodern critiques of Enlightenment.

Postmodernism

Each of these intellectual engagements, in its view, seeks foundations; that is, they seem for absolute and unconditional foundation of reality and claim to arrive at the truth. The only variation being that while religion locates the absolute in the world beyond, science points to the laws of nature since constituting the foundations of the world and philosophy spaces its faith in the capability of cause to unearth that absolute truth.

What remnants unaltered is that each of them seems for, and seeks to find the truth that is already there. Against this worldview, postmodernism asks us to abandon the search for foundations and universal truth. Like Nietzsche, the postmodernist thinkers assert that knowledge does not involve discovering a meaning that is already there, pre-contained in the text. For the postmodernists, the task of every inquiry is, and necessity is, to deconstruct the text: to read it in a method that allows new meanings to emerge from it.

Nietzsche had argued that the history of the west, from the time of Plato onwards, reveals a "tyranny of the mind". Plato claimed that philosophers armed with the authority of cause would penetrate the world of appearances and arrive at the truth. He so banished the poets from the Republic. In recent times, the Enlightenment bestows the similar faith in systematic observation and experience. Both are influenced that they possess the absolute truth and the perfect way to arrive at it. Countless people have, in excess of the years, sacrificed themselves to these convictions. Believing that they knew best they imposed their methods upon others.

The idea that we know the truth, that we and we alone have access to it, has been a source of fanaticism in the world. Postmodernists add to this Nietzsche a sentiment to say that it has also been the source of totalitarianism. To protect freedom that the contemporary man therefore deeply cherishes we necessity so abandon this search for absolute truth. And realize instead that others also consider that they know the truth and

are acting in accordance with it. Intellectual arrogance necessity so give method to a sense of deeper humility: that is, to a framework wherein meta-narratives give method to scrupulous histories of people livelihood in a specific time and lay, and legroom is created for the co-attendance of multiple projects and knowledge organizations. Indian Politics Entered a new era at the beginning of the 1990s. The period of political domination by the Congress (I) branch of the Indian National Congress came to an end with the party's defeat in the 1989 general elections, and India began a period of intense multiparty political competition. Even though the Congress (I) regained power as a minority government in 1991, its grasp on power was precarious. The Nehruvian socialist ideology that the party had used to fashion India's political agenda had lost much of its popular appeal. The Congress (I) political leadership had lost the mantle of moral integrity inherited from the Indian National Congress's role in the independence movement, and it was widely viewed as corrupt. Support among key social bases of the Congress (I) political coalition was seriously eroding. The main alternative to the Congress (I), the Bharatiya Janata Party (BJP--Indian People's Party), embarked on a campaign to reorganize the Indian electorate in an effort to create a Hindu nationalist majority coalition. Simultaneously, such parties as the Janata Dal (People's Party), the Samajwadi Party (Socialist Party), and the Bahujan Samaj Party (BSP--Party of Society's Majority) attempted to ascend to power on the crest of an alliance of interests uniting Dalits, Backward Classes, Scheduled Tribes, and religious minorities. The structure of India's federal--or union--system not only creates a strong central government but also has facilitated

the concentration of power in the central government in general and in particular in the Office of the Prime Minister. This centralization of power has been a source of considerable controversy and political tension. It is likely to further exacerbate political conflict because of the increasing pluralism of the country's party system and the growing diversity of interest-group representation. Once viewed as a source of solutions for the country's economic and social problems, the Indian polity is increasingly seen by political observers as the problem.

When populist political appeals stir the passions of the masses, government institutions appear less capable than ever before of accommodating conflicts in a society mobilized along competing ethnic and religious lines. In addition, law and order have become increasingly tenuous because of the growing inability of the police to curb criminal activities and quell communal disturbances. Indeed, many observers bemoan the "criminalization" of Indian politics at a time when politicians routinely hire "muscle power" to improve their electoral prospects, and criminals themselves successfully run for public office. These circumstances have led some observers to conclude that India has entered into a growing crisis of governability.

Few analysts would deny the gravity of India's problems, but some contend they have occurred amidst the maturation of civil society and the emergence of new, more democratic political practices. Backward Classes, the Dalits, and tribal peoples increasingly have refused to rest content with the patronage and populism characteristic of the "Congress system." Mobilization of

these groups has provided a viable base for the political opposition and unraveled the fabric of the Congress. Since the late 1970s, there has been a proliferation of nongovernmental organizations. These groups made new demands on the political system that required a substantial redistribution of political power, economic resources, and social status.

Whether or not developments in Indian politics exacerbate the continuing problems or give birth to greater democracy broadly hinges on efforts to resolve three key issues. How will India's political system, now more than ever based on egalitarian democratic values, accommodate the changes taking place in its hierarchical social system? How will the state balance the need to recognize the interests of the country's remarkably heterogeneous society with the imperatives of national unity? And, in the face of the declining legitimacy of the Indian state and the continuing development of civil society, can the Indian state regenerate its legitimacy, and if it is to do so, how should it redefine the boundaries between state and society? India has confronted these issues throughout much of its history. These issues, with their intrinsic tensions, will continue to serve as sources of change in the continuing evolution of the Indian polity.

The Indian constitution

The constitution of India draws extensively from Western legal traditions in its outline of the principles of liberal democracy. It is distinguished from many Western constitutions, however, in its elaboration of principles reflecting the aspirations to end the inequities of traditional social relations and enhance the social

Theory of Separation of Powers

welfare of the population. According to constitutional scholar Granville Austin, probably no other nation's constitution "has provided so much impetus toward changing and rebuilding society for the common good." Since its enactment, the constitution has fostered a steady concentration of power in the central government--especially the Office of the Prime Minister.

This centralization has occurred in the face of the increasing assertiveness of an array of ethnic and caste groups across Indian society. Increasingly, the government has responded to the resulting tensions by resorting to the formidable array of authoritarian powers provided by the constitution. Together with the public's perception of pervasive corruption among India's politicians, the state's centralization of authority and increasing resort to coercive power have eroded its legitimacy. However, a new assertiveness shown by the Supreme Court and the Election Commission suggests that the remaining checks and balances among the country's political institutions continue to support the resilience of Indian democracy.

Adopted after some two and one-half years of deliberation by the Constituent Assembly that also acted as India's first legislature, the Indian constitution was put into effect on January 26, 1950. Bhimrao Ramji (B.R.) Ambedkar, a Dalit who earned a law degree from Columbia University, chaired the drafting committee of the constitution and shepherded it through Constituent Assembly debates. Supporters of independent India's founding father, Mohandas Karamchand (Mahatma) Gandhi, backed measures that would form a decentralized polity with strong local

administration--known as panchayat --in a system known as panchayati raj that is rule by panchayats.

However, the support of more modernist leaders, such as Jawaharlal Nehru, ultimately led to a parliamentary government and a federal system with a strong central government. Following a British parliamentary pattern, the constitution embodies the Fundamental Rights, which are similar to the United States Bill of Rights, and a Supreme Court similar to that of the United States. It creates a "sovereign democratic republic" called India, or Bharat (after the legendary king of the Mahabharata), which "shall be a Union of States." India is a federal system in which residual powers of legislation remain with the central government, similar to that in Canada. The constitution of India provides detailed lists dividing up powers between central and state governments as in Australia, and it elaborates a set of Directive Principles of State Policy as does the Irish constitution.

The 395 articles and ten appendixes, known as schedules, in the constitution make it one of the longest and most detailed in the world. Schedules can be added to the constitution by amendment. The ten schedules in force cover the designations of the states and union territories; the emoluments for high-level officials; forms of oaths; allocation of the number of seats in the Rajya Sabha (Council of States--the upper house of Parliament) per state or territory; provisions for the administration and control of Scheduled Areas and Scheduled Tribes; provisions for the administration of tribal areas in Assam; the union (meaning central government), state, and concurrent (dual) lists of

responsibilities; the official languages; land and tenure reforms; and the association of Sikkim with India.

The Indian constitution is also one of the most frequently amended constitutions in the world. The first amendment came only a year after the adoption of the constitution and instituted numerous minor changes. Many more amendments followed, and through June 1995 the constitution had been amended seventy-seven times, a rate of almost two amendments per year since 1950. Most of the constitution can be amended after a quorum of more than half of the members of each house in Parliament passes an amendment with a two-thirds majority vote. Articles pertaining to the distribution of legislative authority between the central and state governments must also be approved by 50 percent of the state legislatures.

Chapter 3

Government of India

Legislative branch

The Government of India officially referred to as the Union Government, and commonly as Central Government, was established by the Constitution of India, and is the governing authority of a federal union of 28 states and 7 union territories, collectively called the Republic of India. The basic civil and criminal laws governing the citizens of India are set down in major parliamentary legislation, such as the Indian Penal Code, Criminal Procedure Code, etc. The federal (union) and individual state governments consist of executive, legislative and judicial branches.

The legal system as applicable to the federal and individual state governments is based on the English Common and Statutory Law. India accepts International Court of Justice jurisdiction with several reservations. At the local level, the Panchayati Raj system has several decentralised administrative functions. India is a Sovereign Socialist Secular Democratic Republic with a Parliamentary system of government. The Republic is governed in terms of the Constitution. Sovereignty is shared between the centre and the state government, but the central government is given greater powers.

The President is the constitutional head of Executive of the Union. Real executive power vests in a Council of Ministers with

the Prime Minister as head of government. The State resembles the federal system. In the states, the Governor is the head of Executive, but real executive power vests with the Chief Minister who heads the Council of Ministers. The judicial setup of the country is headed by the Chief justice, who presides over one of the largest judicial apparatus dispensing criminal, civil and all other forms of litigation. The government head of its legal wing is the Attorney General of India. After the national elections are held the President calls the most suitable candidate to form the central government.

Normally this candidate is the head of the largest party in the parliament. In case the central govt. resigns because of any reason, the President can call the other candidate to form the next gov. The President can also declare, according to govt advice, new elections and if necessary an emergency state. The President has the right to be updated about crucial govt matters and other rights like giving amnesty to prisoners etc. According to the Constitution, elections are to be held once in every five years, unless the parliament dissolves earlier or, on the other hand, a state of emergency is declared, in which case parliament can continue for another year. The Parliament consists of two houses.

The Lower House is called the Lok Sabha and the Upper House is called the Rajya Sabha. In the national elections candidates are chosen for the Lower House. The candidates are elected in territorial constituencies. There are 543 territorial constituencies in the country. The Upper House, Rajya Sabha, consists of up to

250 members. Of these members, 230 are elected by state legislatures and about 15 are nominated by the President. Unlike the Lower House, the Upper House cannot be dissolved, but one third of its members resign every two years. The Upper House, Rajya Sabha, consists of up to 250 members.

Of these members 230 are elected by state legislatures and about 15 are nominated by the President. Unlike the Lower House, the Upper House cannot be dissolved, but one third of its members resign every two years. Most of the parliamentary activities, passing laws, no-confidence votes, budget bills, take place in the Lower House of parliament. The Upper House together with the Lower House amends the Constitution. These two Houses together with the state legislatures also elect the President. The states have their own legislatures. Some states have two Houses and some only one House.

The Lower House where most of the legislature activities happen is called the Vidhan Sabha. The state elections are held every five years unless the state governments are dissolved earlier. The supreme court of India presides over an identical judicial apparatus in the state, where the judicial head is the chief justice of the system, and from the government side the attorney general.

The country has a bicameral parliament including the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). The members of Lok Sabha are elected directly by all eligible voters and sits for 5 years unless dissolved earlier. The

legislatures of the states and union territories elect 233 members to the Rajya Sabha, and the president appoints another 12.

The elected members of the Rajya Sabha serve 6-year terms, with one-third up for election every 2 years. The Lok Sabha consists of 545 members; 543 are directly elected to 5-year terms. The other two are appointed. National and state elections are ordinarily held every five years, although they may be postponed in an emergency and may be held more frequently if the government loses a confidence vote.

Lok Sabha and Rajya Sabha

Parliament is the legislative arm of the Union Government. India's bicameral Parliament consists of two houses; Lok Sabha and Rajya Sabha. Lok Sabha is the lower house of the Parliament and it comprises of the elected representatives of the people. They come to Lok Sabha after winning their elections, in which eligible electorates (any Indian citizen of 18 years and above, who is not debarred by law is entitled to vote) cast their votes through the system of universal adult franchise. Each Lok Sabha is constituted for a five year term, after which it is automatically dissolved, unless extended by a Proclamation of Emergency.

In such a case, its term may be extended with one year increments. Unless it experiences premature dissolution, a given Lok Sabha is expected to run a five year term. From independence to 2007, India has seen 14 Lok Sabha terms. According to the Constitution of India, Lok Sabha can have 552 members, with 530 members representing states of India, and 20

members representing the Union Territories. Two members are represented by the Anglo-Indian community if the President feels the community doesn't have adequate representation in the house. In fact, this is one of the few 'real' powers of the President that is ordained by the Constitution of India.

The membership of Lok Sabha is distributed among the states and union territories so as to ensure proper representation of the population of the states and union territories. The members of the Lok Sabha elects a Speaker of the house, who is responsible for the conducting of business, and maintaining the decorum of the house, and also a Deputy Speaker. The later preside over the proceedings in the absence of the Speaker. Rajya Sabha or the Council of States is the upper house of the Parliament.

Its members are not directly elected by people. Members of the Rajya Sabha from each state are elected by the members of the State Legislature or the Legislative Assembly of that state by means of proportional representation, through the single transferable vote system. The representatives of the Union Territories for the Rajya Sabha are chosen in such manner as may be decided or prescribed by the Parliament from time to time. According to the Constitution, Rajya Sabha can have maximum 250 members, that is 238 members representing the states, and 12 members nominated by the President, for their expertise in specific fields of art, literature, science, and social services. Rajya Sabha is a permanent body and is not subject to dissolution. However, one third of the members retire every second year, and are replaced by newly elected members. Each

member is elected for a term of six years, however like Lok Sabha, the members can be reelected. Though both Lok Sabha and Rajya Sabha share the union legislative powers, and have the right to initiate, pass and amend ordinary bills of law, but Lok Sabha has an edge over the upper house of the Parliament. Under the Constitution, the Council of Ministers are only accountable to the Lok Sabha and not Rajya Sabha, and money bills can only be introduced in Lok Sabha.

Rajya Sabha can neither delay the money bills for more than fourteen days, nor can amend it without the consent of the Lok Sabha. If it does so, the bill will be deemed to be passed by both houses of the Parliament, and will be sent to the President for formal assent. Moreover, if there is a conflict in legislation, which cannot be resolved even by the joint committee of both houses, it is then passed to the joint session of the Parliament, where eventually Lok Sabha's views would generally prevail as it has more than twice the numbers than that of the Rajya Sabha.

Rajya Sabha

The Rajya Sabha (meaning the "Council of States") is the upper house of the Parliament of India. Membership is limited to 250 members, 12 of whom are chosen by the President of India for their expertise in specific fields of art, literature, science, and social services. These members are known as nominated members. The remainder of the body is elected by state and territorial legislatures. Terms of office are for six years, with one third of the members facing re-election every two years. The Rajya Sabha meets in continuous session and, unlike the lower

house of parliament, the Lok Sabha, is not subject to dissolution. The Rajya Sabha shares legislative powers with the Lok Sabha, except in the area of supply, where the Lok Sabha has overriding powers. In the case of conflicting legislation, a joint sitting of the two houses is held.

The Vice-President of India (currently, Hamid Ansari) is the ex-officio Chairman of the Rajya Sabha. The Deputy Chairman of the Rajya Sabha, who is elected from amongst its members, takes care of the day-to-day matters of the house in the absence of the Chairman. The Rajya Sabha held its first sitting on 13 May 1952.

Appointment

Members are elected by the Legislative Assembly of Each State. Seats are fixed for each state on the basis of its population, and not equality. Elections in within the state legislatures are held using single transferable votes with proportional representation.

Powers

Along with Lok Sabha, the Rajya Sabha has the right to initiate, pass and amend ordinary bills of law. If there is a conflict which cannot be resolved even by the joint committee of the two Houses, it is solved in the joint session of the Parliament, where the will of the Lok Sabha almost always prevails, since the Lok Sabha is more than twice as large as the Rajya Sabha. Consultative Power in money bills (taxation and spending), which can originate only in the Lok Sabha, and the Rajya Sabha cannot delay it for more than fourteen days, nor amend it against the

will of the Lok Sabha, otherwise the bill will be deemed to be passed by both the houses and sent to the President for assent.

Equal Powers with the Lok Sabha in initiating and passing any Bill for Constitutional Amendment (by a majority of the total membership of the House and at least two-thirds majority of the members present and voting). Equal Powers with the Lok Sabha in initiating and passing a motion for the impeachment of the President (Indians, by two-thirds of the membership of the House)

Equal Powers with the Lok Sabha in initiating and passing a motion for the impeachment of the judges of the Supreme Court and the state High Courts (by a majority of the membership of the House and two-thirds majority of the members present and voting). Equal Powers with the Lok Sabha in initiating and passing a resolution declaring war or national emergency or constitutional emergency in a state. If the Lok Sabha is dissolved before or after the declaration of a National Emergency, the Rajya Sabha becomes the sole de facto and de jure Parliament.

It, of course, cannot be dissolved. Sole power to declare by two-thirds majority if a subject in the jurisdiction of the states has assumed national importance, thereby enabling the Union to legislate on it. No power to cause the dismissal or resignation of the Prime Minister or any minister, this being the sole prerogative of the Lok Sabha (caused by its simple majority). But power to ask questions from the ministers retained.

Growth of Bicameralism

In India, a Second Chamber was envisaged for the first time under the Montague Chelmsford Reforms proposals. The Government of India Act, 1919 accordingly, provided that the Indian Legislature shall consist of the Governor-General and the two chambers, namely the Council of State and the House of Assembly. The term of the Council was fixed at five years. Under the Government of India Act, 1935, however, the Council of State was made a continuous body, not subject to dissolution.

The members were to hold their seats for nine years and one-third of them retiring at the end of every three years. But the scheme envisaged for the Second Chamber under the Government of India Act, 1935 never materialised because the provisions pertaining to the federal structure under the Act were never put into operation. As a result, the Second Chamber set up under the Government of India Act, 1919 continued to function till 1947.

Composition of Parliament

Parliament of India consists of the President and two Houses—the Council of States (Rajya Sabha) and the House of the People (Lok Sabha)*. Rajya Sabha, as its name suggests, represents the States although the States are not equally represented in this House. Rajya Sabha consists of the representatives of the States and the Union territories and persons nominated by the President of India. Not more than two hundred and thirty-eight representatives of the States and the Union territories can be elected to Rajya Sabha. The allocation of seats to the States and

the Union territories has broadly been made on the basis of population and the number of seats to be filled up by each of them has been specified in the Fourth Schedule to the Constitution. The representatives of the States are elected by their respective Legislative Assemblies in accordance with the system of proportional representation by means of the single transferable vote and Parliament by law prescribes the mode of choosing the representatives of the Union territories.

Apart from elected members, Rajya Sabha has twelve members nominated by the President of India from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service. The present strength of Rajya Sabha is 245.

Duration

As per the provisions of the Constitution, Rajya Sabha is not subject to dissolution but one-third of its members retire every second year. The term of individual members is six years. Casual vacancies whenever occurring, are filled through bye-elections for the remaining term only.

Qualification for Membership

In order to be chosen a member of Rajya Sabha, a person (a) must be a citizen of India, (b) must not be less than 30 years of age. Under the Representation of the People Act, 1951, a person had to be an elector in a parliamentary constituency in the State from where he seeks election to Rajya Sabha. It may, however, be

mentioned that the Representation of the People (Amendment) Act, 2003, which amended Section 3 of the Representation of the People Act, 1951, has done away with the requirement of being a resident of State or Union territory from which a person seeks to contest elections to Rajya Sabha. He/She has to be an elector in a parliamentary constituency anywhere in India. It has also provided that the election to fill a seat in Rajya Sabha shall be by open ballot. The following grounds could disqualify a person for being chosen and for being a member of Rajya Sabha –

- if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament, by law, not to disqualify its holder;
- if he is of unsound mind and stands so declared by a competent court;
- if he is an undischarged insolvent;
- if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State; and
- if he is so disqualified by or under any law made by Parliament.

The mere fact of a person being a Minister either of the Union or of any State does not amount to holding an office of profit. Pursuant to certain constitutional provisions, Parliament has enacted laws exempting holders of certain offices from being disqualified as members of Parliament. The President of India is

the final authority to decide if a member has become subject to any of the disqualifications.

Before giving his decision, however, the President obtains the opinion of the Election Commission of India and acts according to such opinion. Besides, the Constitution provides for disqualification of the members on ground of defection. As per the provisions contained in the Tenth Schedule to the Constitution a person shall be disqualified for being a member:

- if he has voluntarily given up the membership of his political party; and
- if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs, unless such voting or abstention has been condoned by the political party within fifteen days.

An elected member who has been returned to the House as an Independent candidate shall incur disqualification if he joins any political party after such election. A nominated member of the House shall be disqualified from the membership of the House if he joins any political party after the expiry of six months from the date of his taking seat in the House. However, disqualification on ground of defection does not apply in case of merger of political parties under the provisions contained in the Tenth Schedule to the Constitution.

It may be mentioned that the Constitution (Ninety-first Amendment) Act, 2003 sought, inter alia, an amendment to the

Tenth Schedule by omitting paragraph 3 pertaining to the exemption from disqualification in case of split in a legislature party. The provisions of disqualification, under the Tenth Schedule, do not apply to a member who on his election as the Speaker or the Deputy Speaker of Lok Sabha or the Deputy Chairman of Rajya Sabha, or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly voluntarily gives up his membership of the political party to which he belonged immediately before his election or rejoins such political party after he ceases to hold such office. The Chairman or, as the case may be, the Speaker has been given the final authority to decide questions of disqualification of a member of a House under the provisions of the Tenth Schedule to the Constitution.

Presiding Officers of Rajya Sabha

The Vice-President of India is ex officio Chairman of Rajya Sabha. While the office of the Chairman is vacant, or during any period when he acts or discharges the functions of President, the Deputy Chairman of Rajya Sabha performs the duties of the office of the Chairman. If the office of the Deputy Chairman is also vacant, the President appoints a member of the House to perform the duties of the office.

The Chairman presides over Rajya Sabha and regulates its proceedings. He maintains order in the House. He also has the power to adjourn Rajya Sabha and suspend its meeting if there is no quorum. He is the channel of communication between the House and any other outside person or authority. He has to

decide under constitutional provisions whether a member of Rajya Sabha has tendered his resignation voluntarily. He has also to decide under the constitutional provisions, question of disqualification on grounds of defection.

Under the Rules of Procedure and Conduct of Business in Rajya Sabha, the Chairman admits notices of Questions, Motions, Resolutions, etc. While presiding over Rajya Sabha, the Chairman has only a casting vote. When a resolution for his removal is under consideration he is neither entitled to preside over the House nor to vote on such a resolution but has a right to speak in or otherwise to take part in such proceedings.

Deputy Chairman

Rajya Sabha elects a Deputy Chairman to perform the functions of the Chairman in case of a vacancy in the office of the Chairman or when the Vice-President is acting as or discharging the functions of the President. He may be removed from office by a resolution of Rajya Sabha moved after fourteen days notice of the intention to move the resolution and passed by a majority of all the then members of the House.

Panel of Vice-Chairmen

There is also a panel of six Vice-Chairmen formed by the Chairman, and in case both the Chairman and the Deputy Chairman are absent, a person from the panel presides. If none of the empanelled members is available, the House elects a person from amongst its members to preside over its sittings.

Quorum

One tenth of the total number of members of Rajya Sabha constitutes the quorum for a meeting of the House.

Voting

All questions are decided by majority vote. The Chairman or person acting as such, has no vote in the first instance, but has a casting vote in the case of an equality of votes. A Minister is entitled to vote only if he is a member of the House.

Powers, Privileges and Immunities of the House and Members

Parliamentary privileges in India are not codified. Some of the privileges and immunities of the Houses of Parliament, the members and committees thereof are specified in the Constitution, certain statutes and the Rules of Procedure of the Houses, while others continue to be based on precedents of the British House of Commons, and on conventions which have grown over the years.

A few important privileges and immunities are:

- Freedom of speech in Parliament and immunity of a member from any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof.
- Immunity to a person from proceedings in any court in respect of the publication by or under the authority of

either House of Parliament of any report, paper, votes or proceedings.

- Prohibition on the courts to inquire into proceedings of Parliament.
- Immunity to a person from any court proceedings in respect of the publication in newspaper of a substantially true report of any proceedings of either House of Parliament unless the publication is proved to have been made with malice.
- Freedom from arrest of members in civil cases during the continuance of the session of the House and forty days before the commencement and forty days after its conclusion.
- Exemption of a member from service of legal process and arrest within the precincts of the House.

Functions

The functions of Rajya Sabha may broadly be categorised as: Legislative, Financial, Deliberative and Federal. Legislation is by far the most important business of Rajya Sabha, as indeed of Parliament and in this sphere, Rajya Sabha enjoys almost equal powers with Lok Sabha.

Legislative Functions

The Constitution has classified the subjects for legislation into three Lists, namely (1) the Union List, (2) the State List and (3) the Concurrent List. The Union List includes those subjects over which Parliament has exclusive authority to make laws, while the

Concurrent List enumerates those subjects over which it has authority along with the States.

It has been provided that if the Legislature of a State makes a law in respect of a matter enumerated in the Concurrent List which contains any provision repugnant to the provisions of a law made by Parliament with respect to that matter, then the law made by the Legislature of such State will, if it has been reserved for the consideration of the President and has received his assent, prevail in that State but at the same time Parliament has the power to enact any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State. The residuary power is vested in the Centre.

Even in regard to the State List, over which the States have exclusive jurisdiction, Parliament can assume authority, if (1) Rajya Sabha declares by a resolution supported by not less than two-thirds of the members present and voting that such legislation is in national interest, or (2) two or more States mutually agree that Parliament may do so, or (3) it is necessary to implement treaties or international conventions. Further, when a Proclamation of Emergency is in operation, Parliament is competent to legislate on matters included in the State List.

A Bill can be introduced in either House of Parliament. A Bill introduced by the Minister is known as Government Bill and a Bill introduced by a private member is known as Private Member's Bill. The procedure for the passage of the Bills is

similar in both the cases. A Bill has to pass through three stages in each House of Parliament and receive Presidential assent before it becomes an Act of Parliament. In the event of a deadlock between the two Houses on a Bill other than a Money Bill or a Constitution Amendment Bill, the issue is resolved at a joint sitting of the two Houses.

Financial Functions

Under the Constitution, financial legislation has been divided into two categories - Money Bills and Financial Bills. The former contains only and exclusively money clauses and the latter, apart from money clauses also contains other matters. Neither type of Bill can be introduced in Rajya Sabha. A Bill which, if enacted and brought into operation would involve expenditure from the Consolidated Fund of India is also called a Financial Bill. Such a Bill, however, can be introduced in Rajya Sabha. It cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

With respect to Money Bills, Rajya Sabha is empowered to make only recommendations. If a Money Bill which is transmitted to Rajya Sabha for its recommendations is not returned to Lok Sabha within fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form it was passed by Lok Sabha. However, in case of Financial Bills, Rajya Sabha has full powers like an ordinary piece of legislation.

The Annual Budget of the Government is laid before Rajya Sabha also, although the Budget speech is made in Lok Sabha only.

Rajya Sabha has no powers to vote on the Demands for Grants of the Ministries/Departments which is the exclusive domain of Lok Sabha. However, the twenty-four Department-related Parliamentary Standing Committees which have thirty-one members, ten from Rajya Sabha and twenty-one from Lok Sabha, examine the Demands for Grants of the respective Ministries/Departments of the Government of India. One of the important functions of Rajya Sabha is to focus public attention on major problems affecting policies of the Government and administration and to provide a forum for ventilation of public grievances. This responsibility is discharged through deliberations on General Budget, Railway Budget, Motion of Thanks on the President's Address, Five-Year Plans and working of various Ministries/Departments and on various policy statements made by the Government. Rajya Sabha also places its views on various international issues.

Federal Functions

Rajya Sabha enjoys certain special powers under the Constitution. Rajya Sabha may pass a resolution, by a majority of not less than two-thirds of the members present and voting, to the effect that it is necessary or expedient in the national interest that Parliament should make a law with respect to any matter enumerated in the State List. Then, Parliament becomes empowered to make a law on the subject specified in the resolution for the whole or any part of the territory of India. Such a resolution remains in force for a maximum period of one year but this period can be extended by one year at a time by passing

a further resolution. If Rajya Sabha passes a resolution by a majority of not less than two-thirds of the members present and voting declaring that it is necessary or expedient in the national interest to create one or more All India Services common to the Union and the States, Parliament may then by law provide for the creation of such service or services. Under the Constitution, the President is empowered to issue Proclamations in the event of national emergency, in the event of failure of constitutional machinery in a State, or in the case of financial emergency.

Normally, every such Proclamation has to be approved by both Houses of Parliament within a stipulated period. Under certain circumstances, however, Rajya Sabha enjoys special powers in this regard. If a Proclamation is issued at a time when Lok Sabha has been dissolved or the dissolution of Lok Sabha takes place within the period allowed for its approval, then the Proclamation can remain effective if, a resolution approving it is passed by Rajya Sabha.

The committee system in Rajya Sabha

Parliamentary Committees are of two types - ad hoc Committees and Standing Committees. An ad hoc Committee is created for a specific purpose and when it has completed its assigned task and has submitted its report, it becomes *functus officio*. Commonly known examples of such ad hoc committees are the Select and Joint Committees on Bills. Rajya Sabha has the following Standing Committees, members of which are nominated by the Chairman of Rajya Sabha.

Theory of Separation of Powers

Committee of Privileges: It examines questions involving breach of privileges of the House or of the members or any of its committees referred to it by the House or by the Chairman.

Committee on Petitions: It examines petitions on Bills and matters of general public interest and also entertains representations on matters concerning central subjects.

Committee on Government Assurances: It scrutinises the assurances given by Ministers in the House and reports to the House regarding their implementation.

Committee on Subordinate Legislation: It scrutinises and reports to the House whether the powers to make regulations, rules, sub-rules, bye-laws, etc., conferred by the Constitution or Acts, are being properly exercised by the Executive within the scope of such delegation.

Committee on Papers Laid on the Table: It examines the Papers laid on the Table of the House by Ministers to see whether there has been compliance of the provisions of the Constitution, Act, rules or regulations under which the Paper has been laid.

Business Advisory Committee: It recommends the time that should be allotted for discussion of legislative and other business which is to be brought before the House.

Rules Committee: It considers matters of procedure and conduct of business in the House and recommends amendments to the rules that are considered necessary.

General Purposes Committee: It considers and advises the Chairman on matters concerning the affairs of the House, which do not appropriately fall within the purview of any other committee.

House Committee: It deals with the residential accommodation and other amenities for members.

Committee on Ethics: It oversees the ethical and moral conduct of the members of Rajya Sabha and also examines cases referred to it with reference to ethical and other misconduct of members.

Committee on Provision of Computers to Members of Rajya Sabha: It deals with matters relating to supply of computers to members and also reviews the hardware and software requirements of members.

Committee on Members of Parliament Local Area Development Scheme: This Committee monitors the implementation of the Member of Parliament Local Area Development (MPLAD) Scheme.

Members of Rajya Sabha are also associated with some of the important Committees of Lok Sabha like the Committee on Public Accounts, Committee on Public Undertakings and Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

Parliamentary Standing Committees

With a view to further strengthening the Committee System, the two Houses of Parliament gave unanimous approval on 29 March

1993, for the setting up of the seventeen Department-related Standing Committees. The Department-related Parliamentary Committee System was inaugurated on 31 March 1993 and the new Committees started functioning from 8 April 1993. Members of both Houses serve on these Committees. Six of the seventeen Department-related Parliamentary Standing Committees set up initially, viz., the Committee on Commerce; the Committee on Home Affairs; the Committee on Human Resource Development; the Committee on Industry; the Committee on Science and Technology, Environment and Forests; and the Committee on Transport, Tourism and Culture are under the administrative control of the Chairman of Rajya Sabha.

It may be mentioned that in July 2004, the number of these Committees has been increased to twenty four with a view to streamlining the committee system and broadening the Parliamentary scrutiny of the executive. Out of these twenty four committees, eight function under the control and direction of the Chairman, Rajya Sabha. The two new Committees which function under the administrative control of Chairman of Rajya Sabha are the Committee on Health and Family Welfare, and the Committee on Personnel, Public Grievances, Law and Justice. These Committees encompass for scrutiny purpose all Ministries and Departments of the Government within their ambit. The Department-related Committees are entrusted with the following functions:

- to consider the Demands for Grants of the related Ministries/Departments and report thereon. The

report shall not suggest anything of the nature of cut motions;

- to examine Bills, pertaining to the related Ministries/ Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon;
- to consider the annual reports of the Ministries/Departments and report thereon; and
- to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.

These Standing Committees are not to consider matters of day-to-day administration of the related Ministries/Departments.

Secretary-General and the Secretariat

Rajya Sabha has a Secretariat of its own headed by the Secretary-General, who is a permanent official working under the overall control of the Chairman of Rajya Sabha. The duties of the Secretary-General are to advise the Chairman and Members of Parliament on the law and the Rules of Procedure which regulate parliamentary business, to sign orders of the House, and to endorse and sign Bills sent to the President for signature in the absence of the Chairman.

The Secretary-General sits at the Table during the sittings of the House, takes brief notes of the proceedings and also acts as an accounting officer for the votes of the House when there is a

division. The Secretary-General is also responsible for the working of the Secretariat, which serves the House by doing the administrative work, printing of Bills and List of Business, servicing Committees, and keeping the records of the House.

Parliament House

The Parliament House, one of the massive structures which can rightly be described as 'romance in red stone' is a circular edifice about 171 metres (560 feet) in diameter and 0.54 kilometer (one-third of a mile) in circumference. Along the entire circumference on the first floor of the building runs a deep verandah flanked by a colonnade of 144 massive sandstone columns. Each of these columns are 8.23 metres high.

A circular edifice known as the Central Hall is located in the centre of the Parliament House. Around this hall are located three chambers at three symmetrical points. In between the chambers are the garden courts. In two of these chambers are housed Lok Sabha and Rajya Sabha. A ring of Committee rooms and office rooms lies between the outer verandah and the chambers. Inside the semi-circular chambers of Lok Sabha and Rajya Sabha, the general layout is almost similar. The total number of seats in the Lok Sabha Chamber is 550 and in the Rajya Sabha Chamber 250.

Rajya Sabha Chamber

The Rajya Sabha Chamber is of a horse-shoe shape and its pattern is similar to that of the Lok Sabha Chamber. It is,

however, smaller in size and has a seating capacity for 250 members. Originally, the Rajya Sabha Chamber had a seating capacity for 82 members only. In 1957, when the Automatic Vote Recording Equipment was installed there, the number of seats was increased to 250 keeping in view any possible expansion of the House in future. The Rajya Sabha Chamber is air-conditioned and has modern acoustic system. The recently installed light-system enables television cameras to electronically record the proceedings of the House, which is telecast by the official television called 'Doordarshan'.

The Chair of the Chairman of Rajya Sabha stands on a raised platform in the centre of the straightline connecting the two ends of the horse-shoe. Above the Chair are two galleries, which are not used at present. Starting from the left of the Chair are situated the Public Gallery, the Chairman's Gallery, the Diplomatic and the Distinguished Visitor's Galleries, the Press Gallery and the Lok Sabha Gallery. In the pit of the Chamber just below the Chairman's Chair is the table of the Secretary-General. In front of the table of the Secretary-General, a large table is placed which is known as the Table of the House on which papers are formally laid by the Ministers.

Parliament House Annexe

To cope with the growing demand of Parliamentary work, the Parliament House Annexe (Sansadiya Soudha), PHA for short, was constructed. It was inaugurated by the former Prime Minister of India, Shrimati Indira Gandhi, on 24 October 1975. The Annexe building is located in a plot of 3.84 hectares with total floor area

of 35000 sq. mtrs. The basement houses a Reception Centre, Post Office, a Committee Room and a Medical Centre equipped with modern facilities. On the ground floor is the main Committee Room with a seating capacity of 157. There are also four smaller Committee Rooms located on the ground floor and one small Committee room on the basement.

The ground floor also houses an Auditorium, Exhibition Area, Private Dining Room, the State Bank of India and the Banquet Hall. Office accommodation for the Prime Minister, Chairman of Rajya Sabha and Speaker of Lok Sabha, Minister for Parliamentary Affairs and the Secretaries-General of Rajya Sabha and Lok Sabha has been provided in the First Floor. This floor also has a meeting Hall and some office accommodation. The other floors are having rooms for committees, officers and staff of the Secretariats of the two Houses of Parliament.

Parliament Library Building

Till May 2002, the Parliament Library was functioning from the Parliament House. It was felt, for long, that the space available to the Parliament Library and its allied services in the Parliament House was too limited to cope with the volume of literature being acquired by it. Besides, there had been an increasing demand for making available to the members of Parliament a more effective, efficient and modern Library and Reference, Research, Documentation and Information Service known as LARRDIS. The new Parliament Library Building named Sansadiya Gyanpeeth, was formally inaugurated on 7 May 2002 by the then President of India, Shri K.R. Narayanan. The new Library is a modular,

utilitarian and centrally air-conditioned building with provision for all the facilities of a modern Library.

The main entrance of the Library is directly linked to one of the gates of Parliament House. The Parliament Library is located in the 'A' Block of the Parliament Library Building. With its present holding of about 1.25 million volumes of books, reports, governmental publications, U.N. Reports, debates, Gazettes and other documents, including periodicals, newspapers and publications brought by the Lok Sabha and Rajya Sabha Secretariats, it is one of the finest and richest repositories in the country.

As many as 132 Indian and foreign newspapers and 560 periodicals in Hindi, English and other Indian languages are being received regularly in the Library. Apart from the Library and Reference, Research, Documentation and Information Service (LARRDIS) the building accommodates the Bureau of Parliamentary Studies and Training (BPST) and the Parliamentary Museum and Archives (PMA). It also has an auditorium with a seating capacity of 1,075 persons; a Media Centre equipped with the latest telecommunication facilities as part of the Press and Public Relations Wing; an Audio-Visual Unit; a Microfilm Reader Room; a small Auditorium with facilities for multi-media presentations; and Library committee Rooms and Conference Rooms.

It has optic fibre-based Local Area Network (LAN) with high speed Wide Area Network (WAN) connectivity to provide linkage with

State Legislatures, foreign Parliaments and other international organizations. Audio-visual aids form a substantial part of the services. Television sets are provided at vantage points for viewing live the proceedings of both the Houses of Parliament. A large number of cubicles are fully equipped with audio and video facilities and computers. Besides, multimedia facilities have been provided at the reading tables in the Reading rooms for members of Parliament.

Members of Rajya Sabha

The members of the Rajya Sabha from each state are elected by the members of the Legislature or the Legislative Assembly of that state by means of proportional representation through the Single Transferable Vote System.

The representatives of the Union Territories are chosen in such manner as may be decided or prescribed by the Parliament from time to time.

Elected Members

There are 238 elected members, who represent the 28 states and 7 Union Territories, including the National Capital territory, New Delhi. Seats are allotted to them on the basis of their population.

For example, Uttar Pradesh with a population of nearly 16 crores is represented in the Rajya Sabha by 31 members, which is the largest. Goa, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura send only one member each to the Rajya Sabha.

Nominated Members

Under article 80 of the Constitution, out of the 250 members, of the Council of States (Rajya Sabha) 12 are nominated by the President of India from amongst persons who have special knowledge or practical experience in the fields such as literature, science, art or social service. Since its inception in 1952, 105 members have been nominated so far, for a term of 6-year each, and with an added provision that one-third of the members shall retire every two years.

Lok Sabha

The Lok Sabha (alternatively titled, the House of the People, by the Constitution of India) is the lower house in the Parliament of India. The Lok Sabha also stands for the term of the lower house between consecutive parliamentary general elections in India. There have been 14 Lok Sabha terms elected by the people of India as of 2007. Members of the Lok Sabha are direct representatives of the people of India, having been directly elected by the electorate consisting of all eligible adult citizens of India. Its maximum size as outlined in the Constitution of India is 552 members, made up of up to 530 members representing people from the states of India, up to 20 members representing people from the Union Territories, and two members to represent the Anglo-Indian community if it does not have adequate representation in the house according to the President.

Each Lok Sabha is formed for a five year term, after which it is automatically dissolved, unless extended by a Proclamation of

Emergency which may extend the term in one year increments. The 14th Lok Sabha was formed in May 2004 and will be in place till the next General Elections. An exercise to redraw Lok Sabha constituencies' boundaries has been carried out by the Delimitation Commission based on the Indian census of 2001. This exercise which was supposed to be carried out after every census was suspended in 1976 following a constitutional amendment to avoid adverse effects of the family planning program which was being implemented.

Qualifications required to become a member

To become a member of the Lok Sabha, a person must definitely be a citizen of India, not less than 25 years of age. He/she should be mentally sound and should not be bankrupt. He/she should also state an affidavit that there are no criminal procedures against him/her. For reserved seats one should be member of scheduled caste or/and tribes.

Sessions and Working hours

On normal business days, the Lok Sabha assembles from 11 a.m. to 1 p.m., and again from 2 p.m. to 6 p.m. The first hour of every sitting is called the Question Hour, during which questions posed by members may be assigned to specific government ministries, to be answered at a fixed date in the future. The Lok Sabha shares legislative power with the Rajya Sabha, except in the area of Money Bills, in which case the Lok Sabha has the ultimate authority.

If conflicting legislation is enacted by the two Houses, a joint sitting is held to resolve the differences. In such a session, the members of the Lok Sabha would generally prevail, since the Lok Sabha includes more than twice as many members as the Rajya Sabha.

Three sessions of Lok Sabha take place in a year:

- Budget Session: February to May.
- Monsoon Session: July to September.
- Winter Session: November to December.
- Powers, including the Special powers of the Lok Sabha

The special powers of the Lok Sabha are the reason why the Lok Sabha is de facto and de jure more powerful than the Rajya Sabha. A motion of no confidence against the government may be introduced and passed only in the Lok Sabha. If passed by a majority vote, the Prime Minister and his council of Ministers shall collectively resign.

The Rajya Sabha has no power over such a motion, and hence no real power over the executive. However, the Prime Minister may threaten (sic) the dissolution of the Lok Sabha and recommend this to the President, forcing another untimely General Election. The President normally accepts this recommendation unless he is otherwise convinced that the Lok Sabha might recommend a new Prime Minister by a majority vote. Thus de facto, both the executive and the legislature in India have checks and balances over each other. A money bill can be introduced only in the Lok Sabha.

After it is passed by the Lok Sabha, it is sent to the Rajya Sabha, where it can be deliberated upon for a maximum period of 14 days. If rejected by the Rajya Sabha, or 14 days lapse from the introduction of the bill in the Rajya Sabha without any action by the House, or recommendations made by the Rajya Sabha are not accepted by the Lok Sabha, the bill shall be considered passed. The budget is presented in the Lok Sabha by the Finance Minister in the name of the President of India

In matters pertaining to non-financial (ordinary) bills, after the bill has been passed by the House where it was originally tabled (Lok Sabha or Rajya Sabha), it shall be sent to the other house, where it may be kept for a maximum period of 6 months. If the other House rejects the bill or a period of 6 months elapses without any action by that House, or the recommendations made by the members of the other house are not accepted by the House which originally tabled the bill, it results in a deadlock. This is resolved by the President by calling a joint session of both Houses which is presided over by the speaker of the Lok Sabha and decided by a simple majority.

The will of the Lok Sabha normally prevails in these matters, as its strength is more than double that of the Rajya Sabha:

- Equal Powers with the Rajya Sabha in initiating and passing any Bill for Constitutional Amendment (by a majority of the total membership of the House and at least two-thirds majority of the members present and voting)

- Equal Powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the President (by two-thirds of the membership of the House)
- Equal Powers with the Rajya Sabha in initiating and passing a motion for the impeachment of the judges of the Supreme Court and the state High Courts (by a majority of the membership of the House and at least two-thirds majority of the members present and voting)
- Equal Powers with the Rajya Sabha in initiating and passing a resolution declaring war or national emergency (by two-thirds majority) or constitutional emergency (by simple majority) in a state
- If the Lok Sabha is dissolved before or after the declaration of a National Emergency, the Rajya Sabha becomes the sole de facto and de jure Parliament. It, of course, cannot be dissolved. This is a limitation on the Lok Sabha.

Trivia

The longest serving Lok Sabha member was Shri Ashoke Kumar Sen, a minister who served with many prime ministers including Nehru and Indira Gandhi. He won the seat a record 8 times.

Functions of Lok Sabha and Rajya Sabha

The main function of both the Houses is to pass laws. Every Bill has to be passed by both the Houses and assented to by the President before it becomes law. The subjects over which Parliament can legislate are the subjects mentioned under the

Union List in the Seventh Schedule to the Constitution of India. Broadly speaking, Union subjects are those important subjects which for reasons of convenience, efficiency and security are administered on all-India basis. The principal Union subjects are Defence, Foreign Affairs, Railways, Transport and Communications, Currency and Coinage, Banking, Customs and Excise Duties.

There are numerous other subjects on which both Parliament and State Legislatures can legislate. Under this category mention may be made of economic and social planning, social security and insurance, labour welfare, price control and vital statistics. Besides passing laws, Parliament can by means of resolutions, motions for adjournment, discussions and questions addressed by members to Ministers exercise control over the administration of the country and safeguard people's liberties.

Chapter 4

Constitution of India

The Cabinet Mission

The Constitution of India lays down the framework on which Indian polity is run. The Constitution declares India to be a sovereign socialist democratic republic, assuring its citizens of justice, equality, and liberty. It was passed by the Constituent Assembly of India on November 26, 1949, and came into effect on January 26, 1950. India celebrates January 26 each year as Republic Day. It is the longest written constitution of any independent nation in the world, containing 395 articles and 12 schedules, as well as numerous amendments, for a total of 117,369 words in the English language version. Besides the English version, there is an official Hindi translation.

The Constitution lays down the basic structure of government under which the people chose themselves to be governed. It establishes the main organs of government - the executive, the legislature and the judiciary. The Constitution not only defines the powers of each organ, but also demarcates their responsibilities. It regulates the relationship between the different organs and between the government and the people.

The Constitution is superior to all other laws of the country. Every law enacted by the government has to be in conformity with the Constitution. The Constitution lays down the national goals of India - Democracy, Socialism and National Integration. It also

spells out the Fundamental Rights, Directive Principles and Duties of citizens.

World War II in Europe came to an end on May 9, 1945. In July, a new government came to power in the United Kingdom. The new British government announced its Indian Policy and decided to convene a constitution drafting body. Three British cabinet ministers were sent to find a solution to the question of India's independence. This team of ministers was called the Cabinet Mission.

The Cabinet Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. Elections for the 296 seats assigned to the British Indian provinces were completed by July-August 1946. With the independence of India on August 15, 1947, the Constituent Assembly became a fully sovereign body. The Assembly began work on 9 December 1947.

The Constituent Assembly

The Constituent Assembly of India was the body that framed the constitution of India. The people of India elected the members of the provincial assemblies, who in turn elected the constituent assembly. Jawaharlal Nehru, Rajendra Prasad, Sardar Vallabhbhai Patel, Maulana Abul Kalam Azad and Shyama Prasad Mukherjee were some important figures in the Assembly. There were more than 30 members of the scheduled classes. Frank Anthony represented the Anglo-Indian community, and the Parsis were represented by H. P. Modi and R. K. Sidhwa. The Chairman

of the Minorities Committee was Harendra Coomar Mookerjee, a distinguished Christian who represented all Christians other than Anglo-Indians. Constitutional experts like Alladi Krishnaswamy Iyer, B. R. Ambedkar, B. N. Rau and K. M. Munshi were also members of the Assembly. Sarojini Naidu, Hansa Mehta, Durgabai Deshmukh and Rajkumari Amrit Kaur were important women members.

The first president of the Constituent Assembly was Sachidanand Sinha but later, Rajendra Prasad was elected president of the Constituent Assembly while B. R. Ambedkar was appointed the Chairman of the Drafting Committee. The Constituent Assembly met for 166 days, spread over a period of 2 years, 11 months and 18 days. Its sessions were open to the press and the public.

Features

The Constitution of India draws extensively from Western legal traditions in its enunciation of the principles of liberal democracy. It is distinguished from many Western constitutions, however, in its elaboration of principles reflecting aspirations to end the inequities of traditional social relations and enhance the social welfare of the population. According to constitutional scholar Granville Austin, probably no other nation's constitution "has provided so much impetus toward changing and rebuilding society for the common good." Since its enactment, the constitution has fostered a steady concentration of power in the hands of the central government - especially the Office of the Prime Minister. This centralization has occurred in the face of the increasing assertiveness of an array of ethnic and caste

groups across Indian society. Increasingly, the government has responded to the resulting tensions by resorting to the formidable array of authoritarian powers provided by the Constitution. However, a new assertiveness shown by the Supreme Court and the Election Commission suggests that the remaining checks and balances among the country's political institutions are resilient and capable of supporting Indian democracy. Furthermore regional parties are gaining popularity at the expense of national parties which has led to coalition governments at the centre. As a consequence, power is becoming more decentralised.

The Constitution in its final form owes much to a number of different principles from various other Constitutions. The general structure of the Constitution's democratic framework was largely the work of B. N. Rau, a constitutional scholar of international standing. Supporters of independent India's founding father, Mohandas K. Gandhi, backed measures that would form a decentralized polity with strong local government — known as panchayat — in a system known as Panchayati Raj, i.e. rule by Panchayats. However, the view of more modernist leaders such as Jawaharlal Nehru, ultimately prevailed leading to the establishment of a parliamentary system of government and a federal system with a strong central government.

Features of the Indian Constitution

- Parliamentary form of government
- The idea of single citizenship
- The idea of the Rule of law
- Institution of Speaker and his role

- Lawmaking procedure
- Procedure established by Law u/a 13

United States Constitution

- Charter of Fundamental Rights, which is similar to the United States Bill of Rights
- Federal structure of government
- Power of Judicial Review and independence of the judiciary
- President as supreme commander of armed forces u/a 52
- Due process of law u/a 13

Irish Constitution

- Constitutional enunciation of the directive principles of state policy

French Constitution

- Ideals of Liberty, Equality and Fraternity

Canadian Constitution

- A quasi-federal form of government (a federal system with a strong central government)
- The idea of Residual Powers

Australian Constitution

- Freedom of trade and commerce within the country and between the states
- Power of the national legislature to make laws for implementing treaties, even on matters outside normal Federal jurisdiction

Constitution of U.S.S.R

- Fundamental Duties u/a 51-A

Weimar Constitution

- Emergency Provision u/a 356

Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The preamble is not a part of the Constitution of India as it is not enforceable in a court of law. However, the Supreme Court has, in the case of *Kesavananda Bharati vs. The State of Kerala*, recognized that the Preamble is a part of the Constitution and may be used to interpret ambiguous areas of the Constitution where differing interpretations present themselves. However, the Preamble is useful as an interpretive tool only if there is an ambiguity in the article itself and should not be treated as a rights bestowing part of the Constitution.

An interesting side note concerns the words "SOCIALIST" and SECULAR in the preamble. The original drafting used the words "SOVEREIGN DEMOCRATIC REPUBLIC". The two additional words "SOCIALIST" and SECULAR were introduced by the controversial 42nd amendment. The amendment was pushed through by Indira Gandhi in 1976, when she had dictatorial powers. A committee under the chairmanship of Sardar Swaran Singh recommended that this amendment be enacted after being constituted to study the question of amending the constitution in the light of past experience.

The importance of the Preamble

The wording of the Preamble highlights some of the fundamental values and guiding principles on which the Constitution of India is based. The Preamble serves as a guiding light for the

Constitution and judges interpret the Constitution in its light. In a majority of decisions, the Supreme Court of India has it nor any of its content is legally enforceable.

The first words of the Preamble - "*We, the people*" - signifies that power is ultimately vested in the hands of the people of India. The Preamble lays down the most important national goals which every citizen and the government must try to achieve, such as socialism, secularism and national integration. Lastly, it lays down the date for the adoption of the Constitution - 26 November 1949.

The important words in the Preamble

The word sovereign means supreme or independent. India is internally and externally sovereign - externally free from the control of any foreign power and internally, it has a free government which is directly elected by the people and makes laws that govern the people.

Socialist

The word socialist was added to the Preamble by the 42nd amendment act of 1976. It implies social and economic equality. Social equality in this context means the absence of discrimination on the grounds only of caste, colour, creed, sex, religion, or language. Under social equality, everyone has equal status and opportunities. Economic equality in this context means that the government will endeavor to make the distribution of wealth more equal and provide a decent standard

of living for all. This is in effect emphasizing a commitment towards the formation of a welfare state. India has adopted a mixed economy and the government has framed many laws to achieve the aim and the Child Labour Prohibition Act.

Secular

The word secular was inserted into the Preamble by the 42nd amendment act of 1976. It implies equality of all religions and religious tolerance. India, therefore does not have an official state religion. Every person has the right to preach, practice and propagate any religion they choose. The government must not favour or discriminate against any religion. It must treat all religions with equal respect. All citizens, irrespective of their religious beliefs are equal in the eyes of law. No religious instruction is imparted in government or government-aided schools. Nevertheless, general information about all established world religions is imparted as part of the course in Sociology, without giving any importance to any one religion or the others. The content presents the basic/fundamental information with regards to the fundamental beliefs, social values and main practices and festivals of each established world religions. The Supreme Court in *S.R Bommai v. Union of India* held that secularism was an integral part of the basic structure of the constitution.

Democratic

India is a democracy. The people of India elect their governments at all levels (Union, State and local) by a system of universal

adult franchise; popularly known as 'One man one vote'. Every citizen of India, who is 18 years of age and above and not otherwise debarred by law, is entitled to vote. Every citizen enjoys this right without any discrimination on the basis of caste, creed, colour, sex, religion or education.

Republic

As opposed to a monarchy, in which the head of state is appointed on hereditary basis for a lifetime or until he abdicates from the throne, a democratic republic is an entity in which the head of state is elected, directly or indirectly, for a fixed tenure. The President of India is elected by an electoral college for a term of five years. The Post of the President Of India is not hereditary. Every citizen of India is eligible to become the President of the country.

Schedules

Schedules can be added to the constitution by amendment. The twelve schedules in force cover the designations of the

- States and Union Territories;
- Emoluments for High-Level Officials;
- Forms of Oaths;
- Allocation of the number of seats in the Rajya Sabha (Council of States - the upper house of Parliament) per State or Union Territory;
- Provisions for the administration and control of Scheduled_Areas and Scheduled Tribes (areas and

tribes needing special protection due to disadvantageous conditions);

- Provisions for the administration of tribal areas in Assam;
- The Union (central government), State, and Concurrent (dual) lists of responsibilities;
- The Official Languages;
- Article 31B-Validity excluded from Court's Review (land and tenure reforms; the association of Sikkim with India);
- Anti-Defection provisions for Members of Parliament and Members of the State Legislatures;
- Panchayat Raj (Rural Development);
- Municipality (Urban Planning).

Amendments

Methods of Amendment:

- By simple majority of the Parliament: Amendments in this category can be made by a simple majority of members present and voting, before sending them for the President's assent.
- By special majority of the Parliament: Amendments can be made in this category by a two-thirds majority of the total number of members present and voting, which should not be less than half of the total membership of the house.

- By special majority of the Parliament and ratification of at least half of the state legislatures by special majority. After this, it is sent to the President for his assent.

On paper, an amendment to the Constitution is an extremely difficult affair, and normally needs at least two-thirds of the Lok Sabha and Rajya Sabha to pass it. However, the Constitution is one of the most frequently amended governing documents in the world; amendments average about two a year. The document outlines governmental powers in considerable detail, meaning that amendments are required to deal with matters addressed by ordinary statute in most other democracies.

In 1974, the Supreme Court of India in the landmark case of *Kesavananda Bharati vs. The State of Kerala* enunciated the Basic Structure Doctrine, which expanded the scope of judicial review to include the power to review Constitutional Amendments passed by the Legislature. Using this doctrine, the Supreme Court has struck down the 39th Amendment and parts of the 42nd Amendment as being violative of the Basic Structure of the Constitution.

Some noted authors of Constitutional law, such as HM Seervai, have argued that this is an usurpation of amending power by the judiciary, which was never intended by the framers of the Constitution. However, it can be argued that this doctrine is necessary to protect basic human rights from being legislated

away. There have been a total of 94 amendments to the constitution of India, as of 2006.

Articles

- **Part I** - consists of Articles 1 - 4 on the Union and its Territory
- **Part II** - consists of Articles 5 - 11 on Citizenship.
- **Part III** - consists of Articles 12 - 35 on Fundamental Rights.
 - Articles 14 - 18 on Right to Equality,
 - Articles 19 - 22 on Right to Freedom,
 - Articles 23 - 24 on Right against Exploitation,
 - Articles 25 - 28 on Right to Freedom of Religion,
 - Articles 29 - 30 on Cultural and Educational Rights,
 - Articles 31 on Right to Property (Repealed) and Saving of Laws,
 - Articles 32 - 35 on Right to Constitutional Remedies.
- **Part IV** - consists of Articles 36 - 51 on Directive Principles of State Policy.
- **Part IV (A)** consists of Article 51A - Fundamental Duties of each citizen of India.
- **Part V** - consists of Articles on the Union.

Chapter I - Articles 52 to 78 on The Executive.

- Articles 52 - 73 on the President and Vice-President,
- Articles 74 - 75 on Council of Ministers,
- Articles 76 - Attorney General of India,

- Articles 77 - 78 on the Conduct of Government Business

Chapter II - Articles 79 - 122 on Parliament.

- Articles 79 - 88 on Constitution of Parliament,
- Articles 89 - 98 on Officers of Parliament,
- Articles 99 - 100 on Conduct of Business,
- Articles 101 - 104 on Disqualification of members,
- Articles 105 - 106 on Powers, privileges and Immunities of Parliament and its Members,
- Articles 107 - 111 on Legislative Procedure,
- Articles 112 - 117 on Procedure in Financial Matters,
- Articles 118 - 122 on Procedure Generally.

Chapter III - Article 123 on the Legislative Powers of the President.

Article 123 on Power of president to promulgate Ordinances during recess of Parliament

Chapter IV - Articles 124 - 147 on The Union Judiciary.

Articles 124 - 147 Establishment and Constitution of the Supreme Court

Chapter V - Articles 148 - 151 on the Controller and Auditor-General of India.

- Articles 148 - 151 on Duties and powers of Comptroller and Auditor-General.

- **Part VI** - Articles on the States.

Chapter I - Article 152 on the General definition of a State of the Union of India

- Article 152 - Exclusion of the state of Jammu and Kashmir from the general definition of a state of the Union of India.

Chapter II - Articles 153 - 167 on The Executive

- Articles 153 - 162 on The Governor, Articles 163 - 164 on The Council of
- Ministers,
- Article 165 on the Advocate-General for the State.
- Articles 166 - 167 on the Conduct of Government Business.

Chapter III - Articles 168 - 212 on The State Legislature.

- Articles 168 - 177 General
- Articles 178 - 187 on the Officers of the State Legislature,
- Articles 188 - 189 on Conduct of Business,
- Articles 190 - 193 on Disqualification of members,
- Articles 194 - 195 on Powers, Privileges and Immunities Parliament and its Members,
- Articles 196 - 201 on Legislative Procedure,
- Articles 202 - 207 on Procedure in Financial Matters,
- Articles 208 - 212 on Procedure Generally.

Chapter IV - Article 213 on the Legislative Powers of the Governor

- Article 213 - Power of governor to promulgate Ordinances during recess of Assembly of state.

Chapter V - Articles 214 - 231 on The High Courts in the States.

- a. Articles 214 - 231 on High Courts in the States,

Chapter VI - Articles 233 - 237 on the Subordinate Courts

- Articles 232 - 237 on Subordinate Courts
- **Part VII** - consists of Articles on States in the B part of the First schedule.
- Article 238 Repealed, Replaced by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
- **Part VIII** - consists of Articles on The Union Territories
- Articles 239 - 242 Administration, creation of Council of Ministers and High Courts
- **Part IX** - consists of Articles on the Panchayat system.
- Articles 243 - 243O on the Gram Sabha and Panchayat system
- **Part IXA** - consists of Articles on Municipalities.
- Articles 243P - 243ZG on Municipalities
- **Part X** - consists of Articles on the scheduled and Tribal Areas
- Articles 244 - 244A on Administration, creation of Council of Ministers, and legislatures.

- **Part XI** - consists of Articles on Relations between the Union and the States.

Chapter I - Articles 245 - 255 on the Distribution of Legislative Powers

- Articles 245 - 255 on Distribution of Legislative Relations

Chapter II - Articles 256 - 263 on Administrative Relations

- Articles 256 - 261 - General
- Article 262 - on Disputes relating to waters.
- Article 263 - on Co-ordination between States
- **Part XII** - consists of Articles on Finance, Property, Contracts and Suits

Chapter I - Articles 264 - 291 on Finance

- Articles 264 - 267 General
- Articles 268 - 281 on Distribution Revenues between the Union and the States
- Articles 282 - 291 on Miscellaneous Financial Provisions

Chapter II - Articles 292 - 293 on Borrowing

- Articles 292 - 293 on Borrowing by States

Chapter III - Articles 294 - 300 on Property, Contracts, Right, Liabilities, Obligations and Suits

- Articles 294 - 300 on Succession to property assets, liabilities, and obligations.

Chapter IV - Article 300A on the Right to Property

- Article 300A - on Persons not to be deprived of property save by authority of law
- **Part XIII** - consists of Articles on Trade and Commerce within the territory of India
- Articles 301 - 305 on Freedom of Trade and Commerce, and the power of Parliament and States to impose restrictions on the same
- Article 306 - Repealed - Replaced by the Constitution (Seventh Amendment) Act, 1956, s. 29 and Sch.
- Article 307 - Appointment of authority for carrying out the purposes of articles 301 to 304.
- **Part XIV** - consists of Articles on Services Under the Union and the States

Chapter I - Articles 308 - 314 on Services

- Articles 308 - 313 on Services
- Article 314 - Repealed - Replaced by the Constitution (Twenty-eighth Amendment) Act, 1972, s. 3 (w.e.f. 29-8-1972).

Chapter II - Articles 315 - 323 on the Public Service Commissions

- Articles 315 - 323 on Public Service Commissions
- **Part XIVA** - consists of Articles on Tribunals
- Articles 323 A - 323 B
- **Part XV** - consists of Articles on Elections
- Articles 324 - 329 on Elections
- Article 329A - Repealed - Replaced by the Constitution (Forty-fourth Amendment) Act, 1978, s. 36 (w.e.f. 20-6-1979).
- **Part XVI** - consists of Articles on Special Provisions Relating to certain Classes.
- Articles 330 - 342 on Reservations
- **Part XVII** - consists of Articles on Official Language

Chapter I - Articles 343 - 344 on Language of the Union

- Articles 343 - 344 Official Language of the Union
- **Chapter II** - Articles 345 - 347 on Regional Languages
- Articles 345 - 347 on Language of the State

Chapter III - Articles 348 - 349 on Language of the Supreme Court, High courts, Etc

- Articles 348 - 349 on Language used in Supreme Court, High courts Etc

Chapter IV - Articles 350 - 351 on Special Directives

- Article 350 - on Language to be used in representations for redress of grievances.
- Article 350A - on Facilities for instruction in mother-tongue at primary stage.
- Article 350B - on provision for Special Officer for linguistic minorities.
- Article 351 - on Directive for development of the Hindi language.
- **Part XVIII** - consists of Articles on Emergency Provisions
- Articles 352 - 359 on Emergency Provisions
- Article 359A - Repealed - Replaced by the Constitution (Sixty-third Amendment) Act, 1989, s. 3 (w.e.f. 6-1-1990).
- Article 360 - on Provisions as to financial emergency.
- **Part XIX** - Miscellaneous
- Articles 361 - 361A - Miscellaneous
- Article 362 - Repealed - Replaced by the Constitution (Twenty-sixth Amendment) Act, 1971, s. 2.
- Articles 363 - 367 - Miscellaneous
- **Part XX** - consists of Articles on Amendment of the Constitution
- **Part XXI** - consists of Articles on Temporary, Transitional and Special Provisions
- Articles 369 - 378A on Temporary, Transitional and Special Provisions

- Article 379 - 391 - Repealed - Replaced by the Constitution (Seventh Amendment) Act, 1956,
- Article 392 - on the Power of the President to remove difficulties.
- **Part XXII** consists of Articles on short title, date of commencement, Authoritative text in Hindi and Repeals.

Articles 393 - 395 Commencement, authoritative text in Hindi and repeals

Criticisms

The Constitution of India differs from other western constitutions, from which it has derived inspiration, in the fact that it stipulates the supremacy of the legislature as the supreme law making body of the land. In that respect, it renders the legislative arm of government nominally more powerful than either the executive or the Judiciary.

Background of the Indian Constitution

Periods of Constitutional Development

One of the basic features of the Indian Republic is that it not only possesses a federal structure but is also a decentralized unitary State. Originally the Indian Federation comprised two different and distinct categories of constituent units. There were, in the first place, nine Part A States which previously formed an

integral portion of the unitary State of British India and secured their autonomous status under the Government of India Act, 1935. The second category included nine Princely States or Unions of States. These did not form part of British India, nor were they within the legislative jurisdiction of the British Parliament. Their relations with the British Crown were governed by treaties, engagements and sanads. Part C States, which were not strictly speaking constituent units of the Indian Federation but were decentralized portions of the Indian Republic, also belonged to this category with the exception of the States of Delhi, Ajmer and Coorg which were British territories directly under the control of the Government of India.

These historical differences between the two different categories of constituent units naturally led to different lines of constitutional and political development, and although under the latest amendments to the Indian Constitution, the distinction between these categories has disappeared, the differences did survive in the first stage of the federalizing process as a result of the differences in historical antecedents.

Evolution of the East India Company

The constitutional history of the first category of States which jointly made up what was known as British India falls into six distinct periods. The first began with the establishment of the East India Company as a trading corporation under Queen Elizabeth's Charter of 1600. This Charter had three purposes in view. In the first place, it dealt with the incorporation of the

Company by the name of the "Governor and Company of Merchants of London trading with the East Indies."

The Company was authorized to elect annually one Governor and twenty-four committees for dealing with the various purposes for which the Company was incorporated. Secondly, the Charter granted to the Company the exclusive trading privileges for a period of fifteen years. It empowered the Company to "traffic and use the trade of merchandise by sea in and by such ways and passages already found out or which hereafter shall be found out and discovered . . . into and from the East Indies."

The limits of this trading privilege were the Cape of Good Hope, on the one hand, and the Straits of Magellan, on the other. There was, however, one specific limitation on the powers of the Company in so far as it was expressly forbidden to undertake any trade in any country, port, island or place "being already in the lawful and actual possession of any such Christian Prince or State as at this present or at any time hereafter shall be in league or amity" with the Crown of England. Thirdly, the Charter also contained the germ of governmental powers inasmuch as it granted to the Company both legislative and judicial powers within prescribed limits.

The Company was authorized to make and ordain such reasonable laws, constitutions, orders and ordinances as might be necessary and convenient for the good government of the Company and its settlements. It was also authorized to impose such punishments and penalties as might seem necessary or

convenient for the enforcement of these laws and ordinances. The only restriction on these powers was that neither these laws nor the punishments imposed by them could be repugnant to the laws of England. The judicial powers conferred by the Charter of 1600 were enlarged by the grants of 1615 and 1623 which empowered the Company to authorize its President and other chief officers to inflict punishments for non-capital offences and to enforce martial law, subject to the submission of capital cases to the verdict of a jury.

There was a further extension of these powers in 1661. Under a charter granted by Charles II, the Company was invested with executive authority over its fortresses and settlements and also empowered to appoint Governors and other officers for their government. The judicial authority of the Governor and Council of each factory was extended to all persons belonging to the Company or under its control and to "all causes, whether civil or criminal, according to the laws of this Kingdom".

The Company was also authorized to provide the necessary arms and ammunition and to take effective measures "for the security and defence of their factories and settlement". It was also granted the extraordinary power to "make peace or war with any people that are not Christians, in any places of their trade, as shall be for the most advantage and benefit of the said Governor and Company, and of their trade."

In 1678, in implementation of the judicial power granted under this Charter, a High Court consisting of the Governor and

Council was established at Madras which was the principal settlement of the Company at the time. By a Charter of 1669, the port and island of Bombay, which had previously been ceded to the British Government, were granted to the East India Company to be held of the Crown, and extensive civil and military powers were conferred on the Company for the government of this territory; and in 1677 the Company was for the first time empowered to coin money.

The Charter of 1683 marked a further stage in the transformation of the Company; it conferred on the Company full power to declare war and to make peace with any Asiatic power and to raise forces for the purpose, subject to the authority of the Crown to interpose whenever considered necessary.

This was followed by the Charter of 1758 which expressly conferred on the Company the power to cede, restore, or dispose of any territory acquired by conquest from any of the Princes, subject to the proviso that the Company could not, without the concurrence of the Crown, exercise these powers in respect of any territory acquired from any European State.

In 1765 there was a remarkable enlargement of the authority of the Company when it secured the grant of the *diwani* of Bengal, Bihar and Orissa from the Moghul Emperor. The grant of the *diwani* introduced a system of dual government under which the fiscal administration of Bengal, Bihar and Orissa was vested in the Company which also retained full military power and authority, but the maintenance of law and order continued to be

vested in the authorities appointed by the Moghul Emperor, apart from the settlements and fortresses and other possessions of the Company which were subject to the jurisdiction of the authorities created by Royal Charters.

It will be noticed that during this period the East India Company ceased to be an exclusively trading organization and acquired considerable powers of governance. The Company had full executive authority over its territorial possessions including the power to raise forces for their defence, to acquire or cede territories, to declare war against any Prince in India and to conclude treaties with any Asiatic power.

Its legislative authority over its possessions was also plenary subject to the only condition that the laws enacted by it could not be repugnant to the laws of England. There was also an organized system of judiciary whose jurisdiction extended to all its territories. Speaking of the provisions of the Royal Charters Ilbert observes: "The transition of the Company from a trading association to a territorial sovereign invested with powers of civil and military government is very apparent in these provisions."

This statement regarding the legal position of the Company is not, however, correct. Important judicial decisions have held that the East India Company was not a sovereign but merely an agent or delegate of the Crown. For instance, in the *Secretary of State v. Kamachee Boyee Sahiba*, 7 M.I.A. 476, it was held by Lord Kingsdown that the property claimed by the respondent in the

case had been "seized by the British Government, acting as a sovereign power, through its delegate, the East India Company."

After the grant of the *diwani*, the Company acquired a dual character. It was not only a delegate of the Crown of England but was also an authority subordinate to the Moghul Emperor and exercised sovereign powers on his behalf in accordance with the laws and usages of the Empire.

Government by the East India Company under Parliamentary Control

All power and authority which the East India Company had so far exercised in Indian territories was derived from the Crown of England, apart from the grant of the *diwani* by the Moghul Emperor; and it was not until 1767 that for the first time the British Parliament interfered in the affairs of the Company. A statute was enacted in that year which required the Company to pay to the British Government an annual sum, and in consideration of this payment the Company was allowed to retain its territorial possessions and revenues. As Ilbert points out, this was the first direct recognition by the British Parliament of the territorial acquisitions of the Company.

The increasing interest which the British Parliament began to take in the affairs of the East India Company culminated in the Statute of 1773, generally known as the Regulating Act. It is necessary to examine in detail the provisions of this Statute as it laid the foundation of the future government of the British possessions in India. Prior to this enactment each of the three

Presidencies of Bengal, Madras and Bombay was under a Governor or President and Council appointed by the Court of Directors of the East India Company.

The strength of the Council varied from twelve to sixteen members. All power was vested in the President and Council jointly, and all decisions were taken by a majority of votes. The Governments of the Presidencies were independent of each other and responsible only to the Court of Directors in England. The Regulating Act introduced for the first time important provisions unifying the system of government. Section 7 of the Act declared that the whole civil and military government of the Presidency of Bengal shall be vested in the Governor-General and Council during such time as the territorial acquisitions and revenues remained in the possession the Company.

The Governor-General and Council were bound by the votes of a majority of those present at their meetings, and in the case of equality of votes the Governor-General had a casting vote. The Act also expressly declared the supremacy of Bengal over the other Presidencies. The Governor-General and Council were granted the power of superintendence and control over the government of the Presidencies of Madras and Bombay.

In particular, the President and Council of Madras and Bombay were forbidden to make war or treaty without orders of the Governor-General and Council or the East India Company. They were also expressly made subject to the orders of the Governor-General and Council. A President and Council offending against

these provisions could be suspended by order of the Governor-General and Council. The Presidencies were also required to transmit to the Governor-General and Council information regarding all transactions and matters relating to the government, revenues or interests of the Company.

The Act also introduced important changes in the administration of justice in the Presidency of Bengal. It authorized the Crown to establish a Supreme Court of Judicature at Fort William consisting of a Chief Justice and three other Judges. The Supreme Court was invested with civil, criminal, admiralty and ecclesiastical jurisdiction. The territorial extent of its jurisdiction covered the town of Calcutta and the factory of Fort William and the other factories subordinate to it.

The jurisdiction of the Court was also declared to extend to all British subjects residing in the Kingdoms of Bengal, Bihar and Orissa, or any of them under the protection of the Company. There were, however, two important limitations on the jurisdiction thus conferred on the Supreme Court. In the first place, the Court was not competent to take cognisance of any indictment or information against the Governor-General or any member of his Council. Secondly, the Court had no jurisdiction in respect of any suits or actions brought against any inhabitant of India residing in any of the Kingdoms of Bengal, Bihar or Orissa except on a contract where the defendant had accepted the jurisdiction of the Court. The Act also established the system of juries of British subjects resident in Calcutta in respect of all offences of which the Supreme Court had cognisance. Under

Section 18 of the Act appeal lay against the judgement of the Supreme Court to the King in Council in England. The Regulating Act also dealt with the problem of legislative authority.

Under Section 36, the Governor-General and Council were empowered to make and issue such rules, ordinances and regulations for the good order and civil government of the Company's Settlement at Fort William, and the subordinate factories and places, as should be deemed just and reasonable, subject to the provision that such rules, ordinances and regulations could not be repugnant to the laws of England. Section 37 of the Act expressly reserved the power of the Crown to disallow such laws and ordinances.

Two Parliamentary Committees were appointed in 1781 to investigate matters relating to the administration of the British possessions in India, and as a result another Act was passed in 1781 defining the power of the Supreme Court. This Act expressly excluded from the jurisdiction of the Supreme Court all matters relating to the revenue regulations of the Governor-General and Council. Section 17 of the Act also conferred on the Supreme Court jurisdiction in respect of all actions and suits against all inhabitants of Calcutta "provided that their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mohamedans, by the laws and usages of Mohamedans, and in the case of Gentus by the laws and usages of Gentus; and where only one of the parties shall be a Mohamedan or Gentu by the laws and usages of the defendant."

This was the first statutory recognition of the personal laws of the Hindus and Mohammedans, and followed the regulations which had been previously enacted by the Bengal Government. The control thus intermittently exercised by the British Parliament was finally placed on a permanent basis by Pitt's Act of 1784, which established a Board of six Commissioners under the designation of "the Commissioners for the affairs of India".

The Board consisted of the Chancellor of the Exchequer, one of the Secretaries of State, and four other Privy Councillors appointed by the Crown. The Board was authorized "to superintend, direct, and control all acts, operations and concerns which in anywise relate to the civil or military government or revenues of the British territorial possessions in the East Indies." The Court of Directors of the Company was thus brought under the complete control of the Board. The powers vested in the Board subsequently came to be exercised by the Senior Commissioner who came to be known as the President of the Board of Control.

The Act also introduced several changes in the system of administration in India. In the first place, it reconstituted the Governor-General's Council which now consisted of three members including the Commander-in-Chief of the Company's forces in India who ranked next to the Governor-General. The Council of the other two Presidencies was similarly reorganized and included the Commander-in-Chief in the Presidencies. The Governor-General, Governors, Commanders-in-Chief and members of the Council were appointed by the Court of Directors

but could be removed by the Crown. The power of the Governor-General and Council over the Presidencies of Bombay and Madras was extended to cover all matters "as relate to any transaction with the country powers, or to war or peace, or to the application of the revenues or forces of such Presidencies in time of war." The Governor-General and Council were, however, expressly made subject to the control of the Court of Directors.

Thus, they could not, without the express authority of the Court of Directors, declare war, or commence hostilities, or enter into any treaty for making war, against any Prince or State except where hostilities had actually been commenced against the British Government in India. Three important changes were subsequently introduced in this scheme of government. In the first place, the Charter Act of 1793 laid down that the junior members of the Board of Control need not be Privy Councillors.

Secondly, the same Act introduced the rule that the power of the Governor-General to override the majority of his Council in exceptional cases could also be exercised by the Governors of Madras and Bombay. Thirdly, the Act of 1797 authorized the grant of a charter for the constitution of a Recorder's Court instead of the Mayor's Court at Madras and Bombay.

The next important step was taken in 1833 when another Charter Act was passed by the British Parliament. This statute introduced important changes in the Constitution of the East India Company as well as in the system of government in India. It allowed the Company to retain its territorial possessions for

another period of twenty years, but they were to be held by the Company "in trust for his Majesty, his heirs and successors, for the services of the Government of India."

It also completely changed the mercantile character of the Company in so far as the Company was under the statute entirely deprived of its commercial functions. It was, however, allowed to retain its administrative and political powers under the system of dual government instituted by the previous Acts.

The superintendence, direction and control of the civil and military government of the British possessions in India were expressly continued to vest in the Governor-General and Council who were henceforward to be known as the Governor-General of India in Council. The statute also created a fourth member of the Governor-General's Council whose duty was confined entirely to legislative measures and who had no power to sit or vote except at meetings for enacting laws and regulations.

The statute also reorganized the legislative functions of the Government of India which were now exclusively vested in the GovernorGeneral in Council, and the Governments of the Presidencies were only authorized to submit their legislative measures to the GovernorGeneral in Council. The legislative authority of the GovernorGeneral in Council extended to the repeal, amendment or alteration of any laws or regulations for the time being in force in the British possessions in India.

The laws thus enacted were applicable to all persons, whether British, Indian or foreigners, and to all Courts of Justice,

whether established by Royal Charter or otherwise. The territorial jurisdiction of the Council extended to all places and things within and throughout the whole of the British territories in India, and covered all servants of the Crown outside these territories but within the dominions of the Princes in alliance with the Company.

The Governor-General's Council was also expressly authorized to enact articles of war for the government of the Indian Forces raised by the Company. The legislative power of the Governor-General was, however, subject to three important limitations. In the first place, it could not repeal, amend, or suspend any provisions of the Act of 1833. Secondly, it could not affect any prerogative of the Crown, or the authority of Parliament, or the Constitution or rights of the Company, or any part of the unwritten laws or Constitution of the United Kingdom dealing with allegiance to the Crown or the sovereignty of the Crown over Indian territories.

Thirdly, the statute expressly safeguarded the right of the British Parliament to legislate for the Crown's territories in India and to repeal Indian Acts. The laws enacted by the Governor-General under the powers given by this Act could also be disallowed by the Court of Directors, acting under the authority of the Board of Control.

There were three other important provisions of the Act. In the first place, it provided that "a general system of judicial establishments and police" should be inaugurated subject to

such special arrangements as local circumstances may require. Secondly, it prescribed that "such laws as may be applicable in common to all classes of the inhabitants of the said territories, due regard being had to the rights, feelings, and peculiar usages of the people, should be enacted."

Thirdly, it required that "all laws and customs having the force of law within the same territories should be ascertained and consolidated, and, as occasion may require, amended." The statute also authorized the Governor-General in Council to appoint a Commission to enquire into the jurisdiction, powers, and rules of the existing Courts of Justice, of existing forms of judicial procedure, and the nature and operation of laws, whether civil or criminal, written or customary. Accordingly, the first Indian Law Commission was appointed by the Governor-General, of which the most outstanding member was Macaulay; and the present Indian Codes, particularly the Indian Penal Code and the Codes of Civil and Criminal Procedure, owe their origin to this Commission.

Another provision of outstanding importance was embodied in Section 87 of the Act which, for the first time, introduced the principle of equality and non-discrimination. This Section declared that "no native of the said territories, nor any natural born subject of His Majesty resident therein, shall, by reason only of his religion, place of birth, descent, colour or any of them, be disabled from holding any place, office, or employment under the Company." The substance of this provision is now to be found in Article 16 of the Indian Constitution.

The last step during this period was taken in 1853 when another Charter Act was passed by the British Parliament. This Act authorized the Court of Directors and the Board of Control to sanction the appointment of a Lieutenant-Governor of Bengal. It also empowered the Directors of the Company to constitute one new Presidency, with the same system of a Governor and Council as in the Presidencies of Madras and Bombay or, as an alternative, to authorize the appointment of a Lieutenant-Governor.

This provision was made use of in 1859 when a new Lieutenant-Governorship for the Punjab was constituted. The Act also enlarged the Governor-General's Council for legislative purposes by the addition of the Chief Justice of Bengal and one other Supreme Court Judge and four representative members from Bengal, Madras, Bombay and the North Western Provinces. The sessions of the Legislative Council were also opened to the public and their proceedings were officially published.

Direct Government by the Crown

The system of government laid down by these statutes continued in force till 1858 when, as a result of the Indian Mutiny, the government of India was transferred to the Crown under the Government of India Act, 1858. Thus came to an end the government of the British possessions in India by the East India Company and began the period of direct government by the Crown. The Act declared that India was to be governed by and in the name of the Crown, acting through a Secretary of State, to

whom were transferred the powers previously vested either in the Court of Directors or in the Board of Control.

The Act also authorized the appointment of a fifth principal Secretary of State for this purpose. It also constituted a Council of fifteen members to assist the Secretary of State; of these eight were appointed by the Crown and seven elected by the Directors of the Company. The Secretary of State was the President of the Council, but had power to override in cases of difference of opinion, and to issue any dispatches without reference to the Council. The Board of Control was thus abolished, and the Secretary of State in Council was given a quasi-corporate character for the purpose of enabling him to claim the rights and discharge the obligations devolving upon him as successor to the East India Company.

In consequence of the abolition of the East India Company, the property of the Company was transferred to the Crown and the expenditure of the revenues of India was placed under the Secretary of State in Council. The Act also transferred to the service of the Crown all naval and military forces of the Company, although they continued to retain their separate local character, with the same liability to local service and the same pay and privileges. The changes introduced by the Government of India Act, 1858, were formally announced in India by a Royal Proclamation, and this was the first time that a constitutional document of this character was used in India. This important change in the administration of the British possessions in India was supplemented by the Indian Councils Act, 1861, which

reconstituted the Governor-General's Executive Council as well as the Legislative Council. The Executive Council was reorganized to consist of three members who had served for ten years in India under the Company or the Crown, one barrister or advocate of five years' standing, and the Commander-in-Chief as an extraordinary member.

Legislative authority was vested in the Governor-General's Council strengthened by not less than six and not more than twelve additional members nominated by the Governor-General for a period of two years. Of these additional members, not less than half were persons not in the civil or military service of the Crown.

The function of the Legislative Council was, however, strictly limited to legislation, and it was expressly forbidden to transact any business other than the consideration and enactment of legislative measures. Nor was it permissible to introduce in the Council, without the previous sanction of the Governor-General, any measure relating to the public revenue or debt, religion, military or naval affairs, or foreign relations. Every measure passed by the Council required the assent of the Governor-General, subject to the power of the Crown to disallow any Act.

The legislative authority of the Governor-General in Council extended to making laws and regulations or altering any laws and regulations for the time being in force in the British territories in India, and to making laws and regulations for all persons and for all Courts of Justice, and for all places and things within the

said territories. It also covered the servants of the Government of India within the dominion of Princes in alliance with the Crown. There was, however, an express provision saving the general authority of the British Parliament. It is interesting to note that the Act conferred on the Governor-General exceptional power to make, in cases of emergency, ordinances without the concurrence of his Council which were to remain in force for a period of six months.

The power now vested in the President of the Indian Republic to issue emergency ordinances may be traced back to this provision. The Act of 1861 also restored to the Governors of Madras and Bombay the power of legislation which had been taken away from them under the Charter Act of 1833. The Governor's Councils of Madras and Bombay were enlarged for the purpose of legislation by the addition of the Advocate-General and other members nominated on the same basis as the additional members of the Governor-General's Council.

No demarcation was, however, made between the extent of the legislative power of the Governor-General's Council and that of the Governor's Councils; but all Acts of the local legislature required the assent of the Governor-General over and above the assent of the Governor. They were also subject to the right of disallowance vested in the Crown as in the case of the Acts of the Governor-General's Council.

The statute also dealt with the organization of legislative authorities in the new territorial acquisitions. Under Section 44,

the GovernorGeneral was directed to constitute, by proclamation, a Legislative Council for Bengal. He was also authorized to establish similar Councils for the North Western Provinces (afterwards known as the United Provinces) and for the Punjab. These Councils were to consist of the Lieutenant-Governor and a number of nominated members, and were governed by the same provisions as the Legislative Councils for Madras and Bombay.

The Act also conferred on the GovernorGeneral power to establish new Provinces for legislative purposes and to appoint new Lieutenant-Governors, and to alter the boundaries of the existing Provinces. In the same year another Act was passed by the British Parliament reorganizing the judicial administration. This Act empowered the Crown to establish, by letters patent, High Courts of Judicature in Calcutta, Madras and Bombay, and on their establishment the chartered Supreme Court and the Sadr Adalat Courts were abolished and their jurisdiction and powers transferred to the new courts.

Each of the High Courts consisted of a Chief Justice and not more than fifteen judges of whom not less than one-third including the Chief Justice, were barristers, and not less than one-third were members of the Civil Service. All judges were appointed by the Crown and held office during its pleasure. The High Courts were expressly invested with the powers of superintendence and control over all courts subject to their jurisdiction. Three changes of considerable importance were subsequently introduced by parliamentary legislation. The Government of India Act, 1865, conferred on the Governor-

General's Council the power to legislate in respect of all British subjects in Indian States, whether servants of the Crown or not, as well as the power to define and alter the territorial limits of the various Presidencies and other Provinces. In 1869, another statute was enacted empowering the Governor-General's Council to make laws for all Indian subjects of the Crown in any part of the world, whether in India or elsewhere.

The Indian Councils Act, 1892, increased the strength of the Legislative Councils, and authorized the Governor-General to make rules, with the approval of the Secretary of State in Council, regulating the conditions under which the members of the Legislative Councils were to be nominated. It also authorized the Governor-General in Council to make rules regarding the discussion of the annual financial statement as well as interpellations under specified conditions and restrictions.

The Beginning of Representative Legislature

The system of governance prescribed by these British statutes continued to be operative until 1909 when, for the first time, the principle of election was introduced under the Indian Councils Act, 1909. This statute marks the beginning of the gradual democratization of the machinery of governance in India. In accordance with the regulations issued under the authority of this Act, as amended by the regulations of 1912, there was an official majority in the Governor-General's Council, and a non-official majority in all other Legislative Councils.

The Indian Legislative Council consisted of thirty-six officials and thirty-two non-officials; in the Legislative Council of Bengal there were nineteen officials and thirty-two non-officials; in Madras twenty officials and twenty-six non-officials, and in Bombay, eighteen officials and twenty-eight non-officials. There was a similar majority of nonofficials in the Legislative Councils of the United Provinces, Bihar and Orissa, Punjab, Burma and Assam.

The non-official members of the Indian Legislative Council were elected by the Provincial Legislative Councils and special electoral bodies such as Chambers of Commerce and landholders. The rules also provided for the special representation of Mohammedans and Mohammedan landholders; and this was indeed the beginning of the communal electorates which have played such an important role in the political development of India. In the Provinces, the main electoral bodies were Municipal Corporations and Municipalities, the Universities, Chambers of Commerce, and Mohammedans. The rules, it would, therefore, be clear, provided for indirect election and there was no provision for direct election by the people.

The powers of the Legislative Councils continued to be the same as under the Act of 1861, but their deliberative functions were subsequently enlarged. The Act of 1892 had empowered the Governor- General as well as the Governors and Lieutenant-Governors of the Provinces to make rules authorizing the discussion of the annual financial statement. The Act of 1909 repealed these provisions of the Act of 1892 and prescribed the making of rules authorizing the discussion of the annual

financial statement and of any matter of general public interest. The rules made under this statutory provision granted to the members of the Legislative Councils for the first time the right to propose resolutions in respect of the budget or any matter of general public importance and to divide the Councils upon them. It was, however, made clear that the resolutions were purely recommendatory and not binding on the Governors. There were at the same time several important restrictions on this right.

As regards the financial statement, some of the items of revenue as well as of expenditure were expressly excluded from discussion. This was the origin of the distinction which has now been embodied in the Indian Constitution between votable and non-votable subjects, i.e. the expenditure charged upon the Consolidated Fund of India and the expenditure not so charged. The rules also excluded from discussion any matter affecting the relations of His Majesty's Government or of the Government of India with any foreign or Indian State and any matter under adjudication by a court of law having jurisdiction in any part of the British Dominions.

There was a further reservation that the Governor-General had the right to disallow any resolution without giving any reason other than that in his opinion it was not consistent with the public interest to do so. The same authority was also vested in the Governors and Lieutenant-Governors of the Provinces. The Act of 1909 also enlarged the scope of interpellations. The regulations made under the Act of 1892 had granted to the members of the Legislative Councils the right to ask questions

under certain conditions and restrictions. This right was now extended to supplementary questions for the purpose of elucidating any matter of fact regarding which a request for information had been made in the original question.

Dyarchical Form of Government

The system of government envisaged in the Act of 1909 continued to be in force till the Parliamentary Statute of 1919 which began a new period in the history of the constitutional development of British India. Several far-reaching changes were introduced by and under the provisions of the statute. In the first place, a clear distinction was now made between provincial and central powers, although both the executive and the legislative authority of the Provinces remained subject to the control of the Central Government.

Thus, although the Provinces now had clearly defined powers, they could be overridden under the authority of the Governor-General. Secondly, within the powers conferred on the Provinces, there was a clear-cut division between reserve subjects and transferred subjects. The reserve subjects included all those matters in respect of which the Governor had discretionary authority. They were not, therefore, subject to the control of the Provincial Legislature. As regards transferred subjects, elected members of the Legislative Council were appointed members of the Governor's Executive Council and were placed in charge of these subjects, and were, therefore, under the control of the legislature.

The system thus introduced in the Provinces was known as dyarchy because of the division of the power and authority of the Governor into two separate classes, one being entirely at the discretion of the Governor and the other subject to the control of the legislature. The report of the Simon Commission thus describes this new system of government: "The theory of the reformed constitution is that ministers without being answerable for reserve departments or for policy with the reserved side are jointly responsible to the elected legislature in respect of the transferred half of the Government.

But it seems to us that it has proved impossible to translate this theory into practice. The intention of dyarchy was to establish within a definite range responsibility to an elected legislature. In the light of experience, it may be doubted whether the object aimed at could be attained as long as both halves of Government have to present themselves before the same legislature.

The practical difficulty in the way of achieving the objective of dyarchy and obtaining a clear demarcation of responsibility arises not so much in the inner counsels of Government as in the eyes of the legislature, the electorate and the people." The system of dyarchy, in spite of all its weaknesses, was however, the first step towards the establishment of responsible government in the Provinces and was also in accordance with the objective set forth in the famous declaration made by the British Government in 1917. This defined the policy of His Majesty's Government in the following terms: "The policy of His Majesty's Government with which the Government of India are in complete accord, is that of

increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire."

The Birth of Responsible Government

We have already seen that the Regulating Act of 1773 laid the foundation of an elaborate system of administration of the British possessions in India. The Charter Act of 1833 further elaborated the machinery of administration and established a unified system of government in British India. The Government of India Act, 1858, terminated the administration of the East India Company and transferred it to the Crown.

The Indian Councils Act of 1861 introduced for the first time the system of representative institutions, and this was further extended by the Act of 1909. The next important development was initiated by the Act of 1919 which laid the foundation of responsible government. The authors of the Montague-Chelmsford Report had thus described their view of the future constitution of India: "Our conception of the eventual future of India is a sisterhood of States self-governing in all matters of purely local or provincial interest.

Over these congeries of States would preside a Central Government increasingly representative of and responsible to the people of all of them; dealing with matters both internal and external of common interest to the whole of India; acting as

arbitrator in inter-State relations and representing the interests of all India on equal terms with the self-governing units of British India."

This concept of the constitutional organization of India was given a practical shape and form in the Government of India Act, 1935, which terminated the period of dyarchy and began the period of responsible government in the Provinces. The first object of the statute was to establish an All-India Federation consisting of the Governor's Provinces and the Indian States which acceded to the Federation.

It was for the first time that the Indian States, which were not subject to the sovereignty of the British Parliament, were to be brought into a constitutional organization having authority throughout the territories of the Provinces and the acceding States. Secondly, for the purpose of establishing the All-India Federation, the statute split up the unitary State of British India into several autonomous Provinces, independent within their own sphere and free of central control, deriving their authority directly from the Crown.

This was indeed a radical departure from the constitutional scheme under the Act of 1919. Thirdly, the statute also established a Federal Court having authority throughout the Federation and exercising appellate jurisdiction, over all High Courts in British India. The provisions of the statute relating to the Provinces came into operation on the 1st of April, 1937, and

the Provinces became autonomous and independent within the sphere assigned to them.

Each of the Governor's Provinces possessed an Executive and a Legislature invested with exclusive authority in a clearly demarcated sphere; and within that sphere the Executive Government was responsible to the Legislature, subject to the specified discretionary powers of the Governor. The Government of India Act, 1935, had expressly laid down that the Federation of India, as embodied in the Act, could not come into existence unless the Indian States entitled to choose not less than fifty-two members of the Council of State had executed the Instrument of Accession and unless the aggregate population of the federating States amounted to not less than one-half of the total population of the States.

The negotiations between the Government of India and the Indian States in regard to their accession were broken off by the Government of India soon after the commencement of the second World War. This was indeed unfortunate as the absence of responsible and representative government at the Centre ultimately led to the partition of India and the tragic events which followed it.

An eminent statesman has thus commented on the situation: "For India as a whole the failure of Federation was a disaster. So bitter indeed was the antagonism prevailing between the two main communities that it was bound to be a matter of the utmost delicacy to devise any constitution acceptable to both. The

Hindus must naturally favour rule by simple majorities, since they had the numerical advantage. But this must be fatal for the Muslims, since majority rule would spell for the Muslims permanent exclusion from power, and lead them to demand some special franchise and other arrangements to protect Muslim interests.

These in turn were bound to arouse the strenuous resistance of Hindus, and so the deadlock of claims would stand, menacing and irreconcilable. At any moment the combustible material might burst into flames. Immediately the communal issue dominated everything. Riots and killings left their ugly trail of anger and determination to have revenge. Thus all the time this evil thing was bedeviling the relations between the two great communities and paralysing the hopes of peaceful and harmonious progress.

To such an impasse the Princes might conceivably have applied a balancing element, which under a carefully devised scheme could have averted the division of the country, for partition was almost certainly the only alternative should the federal scheme come to nothing." The failure of the federal scheme may be attributed to two causes. In the first place, the policy of the Government of India in respect of the accession of the States to the Indian Federation was inelastic and inflexible.

If a certain amount of comprehension of the reality of the situation had been shown by them, there is no doubt that it might have been possible to secure the accession of the majority

of the States. Further, in regard to certain specified matters, the Government of India went so far as to disregard the understandings which had already been reached at the Round Table Conferences. Secondly, the failure of the negotiations was also due to the growing opposition to the federal scheme amongst the Indian Princes led by the Rulers of Hyderabad, Bikaner and Nawanagar. The federal provisions of the Act, therefore, remained in abeyance.

The Act had, however, provided for a transitional period between the establishment of provincial autonomy and the commencement of the Federation. Under these provisions the Central Legislature, as established under the Act of 1919, continued to function as the Federal Legislature for British India; but the executive government at the Centre continued to be the same as under the Act of 1919. There was, therefore, no representative and responsible government at the Centre.

The only change made in the system of Indian government was, therefore, the setting up of provincial autonomy under which the provincial governments became responsible governments within the sphere assigned to them by the Government of India Act, 1935. It should, however, be noted that during this period the Federal Court, the Federal Public Service Commission and the Federal Railway Authority began to function under the Act, although the Federation, as embodied in the Act, was not established. It is, therefore, obvious that British India was no longer a unitary State as under the Act of 1919, but had already split up into autonomous units which functioned within the

sphere allotted to them, independently and without being subject to the control of the Central Government.

The Indian Independence Act, 1947

This state of affairs continued till the enactment by the British Parliament of the Indian Independence Act, 1947, which has had far-reaching and radical effects on the political and constitutional development of India as a whole. In the first place, the Act established two separate and independent Dominions in the territories of British India. Secondly, the Act terminated British authority in India. Section 7 of the Act expressly stated that His Majesty's Government in the United Kingdom shall have no responsibility as respects the government of any of the territories which were included in British India.

It also made clear that after the 14th August, 1947, His Majesty's Government in the United Kingdom shall not have any form of control over the affairs of the Dominions of India and Pakistan or of any Province or part thereof. Thirdly, the Act authorized the two new Dominions to set up any kind of constitution that they desired including the right to secede from the Commonwealth. It also granted to the legislatures of the two Dominions full power to make laws including laws having extra-territorial operation.

The Act also provided that no statute of the British Parliament shall extend to either of the Dominions unless it is extended thereto by a law of the Dominion Legislature. Fourthly, the Independence Statute terminated by a unilateral declaration the treaties, engagements and sanads which had so far governed the

relations between the Crown and the Indian States. In other words, the paramountcy so far claimed by the Crown by virtue of treaty, grant or otherwise came to an end, and, on its termination, the rights exercised by the Crown in regard to the States were not transferred to the Governments of the two new Dominions but reverted to the States.

Political Development of the Princely States

As we have already seen, the Republic of India comprises the territories which formerly constituted the British Dominions in India as well as the territories of the Princely States which were outside the jurisdiction of the British Crown and the British Parliament. We have so far examined the constitutional development of the territories known as British India. It now remains to trace very briefly the political evolution of the Princely States.

Historically speaking, the States fell into seven different classes at the time of the commencement of their relations with the East India Company. In the first place, there were States which were sovereign and independent *de jure* and *de facto* owing no allegiance to the Moghul Emperor. Such, for instance, were the States of Gwalior and Indore. As regards Hyderabad, it is clear that the State originally enjoyed a status and position superior to that of the East India Company. Secondly, there were States which were dependent *de jure* but sovereign *de facto*, as, for example, the States of Tonk and Jaora which owed nominal allegiance to the Ruler of Indore. The third class included the States which had lost their independence and separate existence

for a period but were restored to their former status and rights by the British Government. Fourthly, there were States which owed their separate and individual existence to the British Government. These were created either out of British territory or by dismemberment of other States. The fifth class included all States which paid tribute to other States. Apart from the payment of tribute, they enjoyed full and complete sovereignty, whether internal or external.

The next group consisted of States which were subordinate *de jure* and *de facto* to other States. This class also included States which were directly under the authority of the Moghul Emperor. Finally, there were States which subsequently came to be known as mediatized and guaranteed States on whose behalf the East India Company intervened so as to secure their separate existence.

This detailed classification of States clearly shows that it is not correct to assume that all States were under the suzerainty of the Moghul Emperor at the time of the British advent in India. On the contrary, many of the States had no political relations with the Court of Delhi and had established their independence in defiance of the authority of the Moghul Emperor.

The first period in the history of the relations between the States and the East India Company was one during which the States dealt with the Company on a footing of equality. It should be remembered in this connexion that from 1765 the East India Company was an agent of the Moghul Emperor and its position

was not, therefore, superior to that of the States which accepted the suzerainty of the Moghul Emperor. On the other hand, as we have already seen, there were many States which did not accept the supremacy of the Court of Delhi.

In fact, in its dealings with the Rulers of Hyderabad, the Company on many occasions behaved as if it were occupying an inferior position. The second period was marked by the definite supremacy of the East India Company acting on behalf of the British Crown. Many of the treaties which were concluded during this period were, therefore, treaties of subordinate alliance and co-operation. A striking instance is furnished by the treaties which were concluded during the first decade of the nineteenth century with the Rulers of the States of Rajputana.

The third period began after the Crown had taken over the government of the British possessions in India. In the Royal Proclamation issued at that time it was announced that the treaties concluded with the States by the East India Company were binding on the Crown and as such would be considered as inviolate and inviolable. It was during this period that the ascendancy of the Crown was clearly and unmistakably established throughout India and the doctrine of paramountcy of the Crown was evolved to justify the action of the agents of the Crown in derogation of the treaties concluded with the States.

The rights which were specifically claimed on behalf of the Crown related to intervention in the affairs of the States in the event of gross misrule and maladministration and the consequential

powers which the Crown and its agents could exercise within the territories of the States, although they continued to remain outside the legislative authority of the British Parliament. This continued to be the position of the States till the Indian Independence Act of 1947 which terminated the authority of the Crown exercisable in the territories of the States and expressly provided that the powers hitherto exercised by the Crown would revert to the States.

But before the provisions of the statute became operative, the Indian States executed Instruments of Accession under which they transferred all powers of governance to the new Dominion of India in respect of specified matters and subject to the terms and conditions laid down in the Instrument. Thus, for the first time, the Indian States became an integral part of the constitutional machinery established for the new Dominion of India under an amended version of the Government of India Act, 1935.

This, however, was a transitory stage. Many of the States were soon afterwards persuaded to execute additional agreements merging their territories in the neighbouring Provinces of the Indian Dominion. This, then, was the position of the States when in 1950 the Indian Constitution, framed by the Constituent Assembly, came into operation.

Chapter 5

Fundamental Rights and Directive Principles

Fundamental Rights

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties are sections of the Constitution of India that prescribe the fundamental obligations of the State to its citizens and the duties of the citizens to the State. These sections comprise a constitutional bill of rights and guidelines for government policy-making and the behaviour and conduct of citizens. These sections are considered vital elements of the constitution, which was developed between 1947 and 1949 by the Constituent Assembly of India.

The *Fundamental Rights* are defined as the basic human rights of all citizens. These rights, defined in Part III of the Constitution, apply irrespective of race, place of birth, religion, caste, creed or gender. They are enforceable by the courts, subject to specific restrictions.

The *Directive Principles of State Policy* are guidelines for the framing of laws by the government. These provisions—set out in Part IV of the Constitution—are not enforceable by the courts, but the principles on which they are based are fundamental guidelines for governance that the State is expected to apply in framing and passing laws. The *Fundamental Duties* are defined as

the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties—set out in Part IV–A of the constitution—concern individuals and the nation. Like the Directive Principles, they are not legally enforceable.

The development of constitutional rights in India was inspired by historical documents such as England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man. In 1928, an All Parties Conference of representatives from Indian political parties proposed constitutional reforms for India. This 11-member committee, led by Motilal Nehru, had been called into existence as a formal instrument to complement the widespread civil disobedience campaigns of the 1920s.

These mass campaigns had originally been a response to the Rowlatt Acts, which in 1919 had given the British colonial government the powers of arrest and detention, conduction of searches and seizures without warrants, restriction of public gatherings and censorship of the press. Demanding dominion status and elections under universal suffrage, the committee called for guarantees of rights deemed fundamental, representation for religious and ethnic minorities and limitations on government powers.

In 1931, the Indian National Congress, at its Karachi session, adopted resolutions defining, as well as committing itself to the defence of fundamental civil rights, including socio-economic rights such as minimum wage, the abolition of untouchability

and serfdom. Committing themselves to socialism in 1936, the leaders of the Congress party took examples from the Soviet constitution, which inspired the fundamental duties of citizens as a means of collective, patriotic responsibility.

The task of developing a constitution for an independent India was undertaken by the Constituent Assembly of India, which composed of elected representatives under the presidency of Rajendra Prasad. The assembly appointed a constitution drafting committee headed by Bhimrao Ramji Ambedkar. The process was influenced by the adoption of the Universal Declaration of Human Rights by the U.N. General Assembly on 10 December 1948.

The declaration called upon all member States to adopt these rights in their constitutions. The Fundamental Rights and Directive Principles were included in the final draft of the constitution promulgated on 26 November 1949, while the Fundamental Duties were later added to the constitution by the 42nd Amendment Act in 1976. Changes in Fundamental Rights, Directive Principles and Fundamental Duties require a constitutional amendment, that must be passed by a two-thirds majority in both houses of Parliament.

The Fundamental Rights — embodied in Part III of the constitution — guarantee civil liberties such that all Indians can lead their lives in peace as citizens of India. The six fundamental rights are right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies.

These include individual rights common to most liberal democracies, incorporated in the fundamental law of the land and are enforceable in a court of law. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. These rights are neither absolute nor immune from constitutional amendments. They have been aimed at overturning the inequalities of pre-independence social practises.

Specifically, they resulted in abolishment of untouchability and prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They forbid human trafficking and unfree labour. They protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and administer their own educational institutions.

All people, irrespective of race, religion, caste or sex, have the right to approach the High Courts or the Supreme Court for the enforcement of their fundamental rights. It is not necessary that the aggrieved party has to be the one to do so. In public interest, anyone can initiate litigation in the court on their behalf. This is known as "Public interest litigation". High Court and Supreme Court judges can also act on their own on the basis of media reports.

The Fundamental Rights emphasise equality by guaranteeing to all citizens the access and use of public institutions and protections, irrespective of their background. The rights to life and personal liberty apply for persons of any nationality, while

others, such as the freedom of speech and expression are applicable only to the citizens of India (including non-resident Indian citizens). The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental Rights primarily protect individuals from any arbitrary State actions, but some rights are enforceable against private individuals too. For instance, the constitution abolishes untouchability and prohibits *begar*. These provisions act as a check both on State action and actions of private individuals. Fundamental Rights are not absolute and are subject to reasonable restrictions as necessary for the protection of national interest. In the *Kesavananda Bharati vs. state of Kerala* case, the Supreme Court ruled that all provisions of the constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution like secularism, democracy, federalism, separation of powers.

Often called the "Basic structure doctrine", this decision is widely regarded as an important part of Indian history. In the 1978 *Maneka Gandhi v. Union of India* case, the Supreme Court extended the doctrine's importance as superior to any parliamentary legislation. According to the verdict, no act of parliament can be considered a law if it violated the basic structure of the constitution. This landmark guarantee of Fundamental Rights was regarded as a unique example of judicial independence in preserving the sanctity of Fundamental Rights. The Fundamental Rights can only be altered by a constitutional amendment, hence their inclusion is a check not only on the

executive branch, but also on the Parliament and state legislatures. The imposition of a state of emergency may lead to a temporary suspension of the rights conferred by Article 19 (including freedoms of speech, assembly and movement, etc.) to preserve national security and public order. The President can, by order, suspend the right to constitutional remedies as well.

Personal rights

The right to equality is one of the chief guarantees given in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights, guaranteeing equality of all citizens before law, social equality, equal access to public areas, equality in matters of public employment, the abolition of untouchability and of titles. However, reservations (i.e, quotas in jobs, education, etc.) can be made for women, children, scheduled castes and scheduled tribes.

The State cannot discriminate against anyone in the matters of employment except for the implementation of any mandated quotas, though exceptions can be made where specific knowledge is required. To preserve religious freedom, the holder of an office of any religious institution should be a person professing that particular religion. The right to equality in matters regarding public employment is not conferred to overseas citizens of India.

The practise of untouchability has been declared an offence punishable by law. The State cannot confer any titles and the citizens of India cannot accept titles from a foreign State. Indian aristocratic titles such as *Rai Bahadurs* and *Khan Bahadurs* have

been abolished. However, military and academic distinctions can be conferred on the citizens of India. Awards such as the *Bharat Ratna* "cannot be used by the recipient as a title." A ruling by the Supreme Court on 15 December 1995 upheld the validity of such awards.

The Right to freedom is stated in Articles 19, 20, 21 and 22 with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom encompasses the freedom of expression, the freedom to assemble peacefully without arms, the freedom to form associations and unions, the freedom to move freely and settle in any part of the territory of India and the freedom to practise any profession.

Restrictions can be imposed on all these rights in the interest of security, decency and morality. The constitution guarantees the right to life and personal liberty. Protection with respect to conviction for offences, protection of life and personal liberty and the rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty.

The Right to freedom of religion'—covered in Articles 25, 26, 27 and 28—provides religious freedom to all citizens and preserves the principle of secularism in India. According to the constitution, all religions are equal before the State. Citizens are free to preach, practise and propagate any religion of their choice.

Several distinct and often controversial practises, such as the wearing and carrying of *kirpans* is included in the profession of

Sikhism and protected under law. Religious communities can set up charitable institutions of their own, subject to certain restrictions in the interest of public order, morality and health. No person can be compelled to pay taxes for the promotion of a religion and a State-run institution cannot impart education that is associated with a particular religion.

Economic and social rights

The cultural and educational rights—given in Articles 29 and 30—are measures to protect the rights of ethnic and religious minorities. Any community that has a language and a script of its own has the right to conserve and develop them. No citizen can be discriminated against for admission in State or State-aided institutions. All religious and ethno-linguistic communities can set up their own educational institutions in order to preserve and develop their own culture.

In granting aid to institutions, the State cannot discriminate against any institution on the basis of the fact that it is administered by a minority institution. The right to education at elementary level has been made one of the Fundamental Rights under right to life and personal liberty by the 86th constitutional amendment of 2002.

Child labour and *Begar* is prohibited under Right against exploitation. The Right against exploitation, given in Articles 23 and 24 provides for the abolition of human trafficking, and the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines. Child labour is

considered a violation of the spirit and provisions of the constitution. *Begar* (forced and unfree labour), practised in the past by landlords, has been declared a crime punishable by law. Trafficking in humans for the purpose of slave trade or prostitution is prohibited by law. An exception is made in employment without payment for services for public purposes, such as compulsory military conscription.

The Right to constitutional remedies empowers the citizens to approach a court of law to appeal against denial of the Fundamental Rights. For instance, in case of imprisonment, the person can ask the court to see if it is in accordance with the provisions of the law of the country. If the court finds that it is not, the person will be released from custody. This procedure of asking the courts to preserve or safeguard the citizens' Fundamental Rights can be done in various ways. The courts can issue *writs*, namely *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. When a national or state emergency is declared, this right is suspended by the central government.

The Right to property was a former Fundamental Right under Article 32 before it was revoked by the 44th Amendment Act of 1978. A new article, Article 300-A, was added to the constitution which provided that no person shall be deprived of his property, except by the authority of law. If a legislature makes a law depriving a person of his property, there would be no obligation on the part of the State to pay any compensation. The aggrieved person will have no right to move the court under Article 32. The right to property is no longer a fundamental right, though it is

still a constitutional right. If the government appears to have acted unfairly, the action can be challenged in a court of law.

The **Fundamental Rights in India** enshrined in the Part III of the Constitution of India guarantee civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These include individual rights common to most liberal democracies, such as equality before law, freedom of speech and expression, freedom of association and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs such as habeas corpus.

Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary. The Fundamental Rights are defined as basic human freedoms which every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour or sex. They are enforceable by the courts, subject to certain restrictions. The Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man.

The six fundamental rights are:

- Right to equality
- Right to freedom
- Right against exploitation

- Right to freedom of religion
- Cultural and educational rights
- Right to constitutional remedies

Rights literally mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the *Fundamental Law of the Land* and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.

Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions.

The development of constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as England's Bill of Rights (1689), the United States Bill of Rights (approved on September 17, 1787, final ratification on December 15, 1791) and France's Declaration of the Rights of Man (created during the revolution of 1789, and ratified on August 26, 1789). Under the educational system of British Raj, students were

exposed to ideas of democracy, human rights and European political history. The Indian student community in England was further inspired by the workings of parliamentary democracy and British political parties.

In 1919, the Rowlatt Acts gave extensive powers to the British government and police, and allowed indefinite arrest and detention of individuals, warrant-less searches and seizures, restrictions on public gatherings, and intensive censorship of media and publications. The public opposition to this act eventually led to mass campaigns of non-violent civil disobedience throughout the country demanding guaranteed civil freedoms, and limitations on government power. Indians, who were seeking independence and their own government, were particularly influenced by the independence of Ireland and the development of the Irish constitution. Also, the directive principles of state policy in Irish constitution were looked upon by the people of India as an inspiration for the independent India's government to comprehensively tackle complex social and economic challenges across a vast, diverse nation and population.

In 1928, the Nehru Commission composing of representatives of Indian political parties proposed constitutional reforms for India that apart from calling for dominion status for India and elections under universal suffrage, would guarantee rights deemed fundamental, representation for religious and ethnic minorities, and limit the powers of the government. In 1931, the Indian National Congress (the largest Indian political party of the

time) adopted resolutions committing itself to the defense of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom.

Committing themselves to socialism in 1936, the Congress leaders took examples from the constitution of the erstwhile USSR, which inspired the fundamental duties of citizens as a means of collective patriotic responsibility for national interests and challenges.

When India obtained independence on 15 August 1947, the task of developing a constitution for the nation was undertaken by the Constituent Assembly of India, composing of elected representatives under the presidency of Rajendra Prasad. While members of Congress composed of a large majority, Congress leaders appointed persons from diverse political backgrounds to responsibilities of developing the constitution and national laws. Notably, Bhimrao Ramji Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects.

A notable development during that period having significant effect on the Indian constitution took place on 10 December 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights and called upon all member states to adopt these rights in their respective constitutions. The Fundamental Rights were included in the Ist Draft Constitution

(February 1948), the IInd Draft Constitution (17 October 1948) and the IIIrd and final Draft Constitution (26 November 1949), being prepared by the Drafting Committee.

Significance and characteristics

The Fundamental Rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. The writers of the constitution regarded democracy of no avail if civil liberties, like freedom of speech and religion were not recognized and protected by the State. According to them, "democracy" is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the Fundamental Rights.

All people, irrespective of race, religion, caste or sex, have been given the right to move the Supreme Court and the High Courts for the enforcement of their Fundamental Rights. It is not necessary that the aggrieved party has to be the one to do so. Poverty stricken people may not have the means to do so and therefore, in the public interest, anyone can commence litigation in the court on their behalf. This is known as "Public interest litigation". In some cases, High Court judges have acted on their own on the basis of newspaper reports. These Fundamental Rights help not only in protection but also the prevention of gross violations of human rights. They emphasize on the

fundamental unity of India by guaranteeing to all citizens the access and use of the same facilities, irrespective of background. Some Fundamental Rights apply for persons of any nationality whereas others are available only to the citizens of India. The right to life and personal liberty is available to all people and so is the right to freedom of religion. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are reserved to citizens alone, including non-resident Indian citizens. The right to equality in matters of public employment cannot be conferred to overseas citizens of India.

Fundamental rights primarily protect individuals from any arbitrary state actions, but some rights are enforceable against individuals. For instance, the Constitution abolishes untouchability and also prohibits *begar*. These provisions act as a check both on state action as well as the action of private individuals. However, these rights are not absolute or uncontrolled and are subject to reasonable restrictions as necessary for the protection of general welfare. They can also be selectively curtailed.

The Supreme Court has ruled that all provisions of the Constitution, including Fundamental Rights can be amended. However, the Parliament cannot alter the basic structure of the constitution. Features such as secularism and democracy fall under this category. Since the Fundamental Rights can only be altered by a constitutional amendment, their inclusion is a check not only on the executive branch, but also on the Parliament and state legislatures. A state of national emergency has an adverse

effect on these rights. Under such a state, the rights conferred by Article 19 (freedoms of speech, assembly and movement, etc.) remain suspended. Hence, in such a situation, the legislature may make laws which go against the rights given in Article 19. Also, the President may by order suspend the right to move court for the enforcement of other rights as well.

Right to equality

Right to equality is an important right provided for in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties, and guarantees the following:

- Equality before law: Article 14 of the constitution guarantees that all citizens shall be equally protected by the laws of the country. It means that the State cannot discriminate against a citizen on the basis of caste, creed, colour, sex, religion or place of birth. According to the *Electricity Act* of 26 January 2003 the Parliament has the power to create special courts for the speedy trial of offences committed by persons holding high offices. Creation of special courts is not a violation of this right.
- Social equality and equal access to public areas: Article 15 of the constitution states that no person shall be discriminated on the basis of caste, colour, language etc. Every person shall have equal access to public places like public parks, museums, wells, bathing ghats and temples etc. However, the State may

make any special provision for women and children. Special provisions may be made for the advancements of any socially or educationally backward class or scheduled castes or scheduled tribes.

- Equality in matters of public employment: Article 16 of the constitution lays down that the State cannot discriminate against anyone in the matters of employment. All citizens can apply for government jobs. There are some exceptions. The Parliament may enact a law stating that certain jobs can only be filled by applicants who are domiciled in the area. This may be meant for posts that require knowledge of the locality and language of the area. The State may also reserve posts for members of backward classes, scheduled castes or scheduled tribes which are not adequately represented in the services under the State to bring up the weaker sections of the society. Also, there a law may be passed which requires that the holder of an office of any religious institution shall also be a person professing that particular religion. According to the *Citizenship (Amendment) Bill, 2003*, this right shall not be conferred to Overseas citizens of India.
- Abolition of untouchability: Article 17 of the constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The *Untouchability Offences Act* of 1955 (renamed to *Protection of Civil Rights Act* in 1976) provided penalties for preventing a

person from entering a place of worship or from taking water from a tank or well.

- **Abolition of Titles:** Article 18 of the constitution prohibits the State from conferring any titles. Citizens of India cannot accept titles from a foreign State. The British government had created an aristocratic class known as *Rai Bahadurs* and *Khan Bahadurs* in India — these titles were also abolished. However, Military and academic distinctions can be conferred on the citizens of India. The awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title and do not, accordingly, come within the constitutional prohibition". The Supreme Court, on 15 December 1995, upheld the validity of such awards.

Right to freedom

The Constitution of India contains the right to freedom, given in articles 19, 20, 21 and 22, with the view of guaranteeing individual rights that were considered vital by the framers of the constitution. The right to freedom in Article 19 guarantees the following six freedoms:

- Freedom of speech and expression, which enable an individual to participate in public activities. The phrase, "freedom of press" has not been used in Article 19, but freedom of expression includes freedom of press. Reasonable restrictions can be imposed in the interest of public order, security of State, decency or morality.

- Freedom to assemble peacefully without arms, on which the State can impose reasonable restrictions in the interest of public order and the sovereignty and integrity of India.
- Freedom to form associations or unions on which the State can impose reasonable restrictions on this freedom in the interest of public order, morality and the sovereignty and integrity of India.
- Freedom to move freely throughout the territory of India though reasonable restrictions can be imposed on this right in the interest of the general public, for example, restrictions may be imposed on movement and travelling, so as to control epidemics.
- Freedom to reside and settle in any part of the territory of India which is also subject to reasonable restrictions by the State in the interest of the general public or for the protection of the scheduled tribes because certain safeguards as are envisaged here seem to be justified to protect indigenous and tribal peoples from exploitation and coercion.
- Freedom to practice any profession or to carry on any occupation, trade or business on which the State may impose reasonable restrictions in the interest of the general public. Thus, there is no right to carry on a business which is dangerous or immoral. Also, professional or technical qualifications may be prescribed for practicing any profession or carrying on any trade.