

## The Nature and Scope of Political Science

Politics exists everywhere. It is all-pervading and as old as human beings. Politics prevails in every sphere of life. Whether one likes or not, virtually no one is completely beyond the reach of some kind of political system. A citizen encounters politics in the government of the country, town, school, church, political party, civic association, trade union, club and a host of other organisations. Politics has always been created by human beings. They gave birth to empires, nations, wars, revolutions, symbols, institutions, constitutions etc. The view of Heinz Eulan is that the notion of politics does not come from heaven. It does not come from Oak trees. It is not a gift of any angel. It is a human venture centred in man and created by man.

Political science is a social science and like its sister subjects revolves round man and his social environment. Being one of the oldest social sciences, its nature and scope of study have undergone several changes over the centuries. Political science first began with the Greeks. Although Greece was a small country in Europe, it was a land of enlightenment and knowledge in ancient times. Almost all branches of knowledge originated in Greece. It is often said that "excepting the blind forces of nature, nothing moves in this World which is not Greek in its origin." According to Robert A. Dahl, politics "has thrived in all cultures that have inherited the enormous legacy of that ancient people, few in number yet great in influence, the Greeks of pre-Christian era. Like many other arts and sciences, political analysis achieved an extraordinary degree of sophistication among the Greeks some twentyfive centuries ago under the tutelage of Socrates, Plato and Aristotle. Since their time ever age in Western Civilisation has furnished a few great students of politics who have tried to answer certain fundamental question."

In Greece, political science was treated as the science of the city state. The term "politics" is derived from Polis which in Greek language meant the city state. In those days, each city was an independent state, a principality in its own right. Politics as the science of the city state emerged as an instrument to serve as a moral guide to the ruling section of the society for the realisation of good life

### *Learning Objectives*

- Meaning and definition of Politics
- Traditional View
- Modern View
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- Economic Power
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- Criticism of Power View of Politics
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- The Marxist View of Politics
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in all its aspects and to adjust the mutual relationships within society. Apart from the state, it included the study of such social groups as the family. In ancient Greece, political science covered the social and political organisation and functioning of the city without making any distinction between the local and national politics. It was considered as a master science which was broad enough to cover all those activities which paved the way for good life in society.

Aristotle is rightly regarded as "the father of political science" on account of his far-reaching and permanent contribution in the field of politics. Frederick Pollock writes, "There was political speculation before him, but it was he who first brought to bear on political phenomena the patient analysis and unbiased research which are the proper marks and virtues of scientific inquiry. The science of politics, like so much else of our knowledge and endeavours to know, begins with Aristotle."

In his famous book *Politics*, Aristotle wrote, "Man is by nature a political animal and he who by nature and not by mere accident is without state, is either above humanity or below it." Again, "He who is unable to live in society or who has no need because he is sufficient for himself, must be either a beast or God." It is undoubtedly true that man is a social and political animal. He cannot live without society or state. By nature, he desires to live in society and follow the rules and regulations of the state. By leading a lone life, he cannot develop his faculties in the best possible manner. Civilisation and culture cannot progress unless human beings are safe and secure and that is possible only in a well-governed state. Without a state, there will be anarchy. A well-governed state is a must for the progress of man.

The advantages of living in a state are obvious to every person. However, certain persons while living in a state may not participate in political life. Robert A. Dahl observes, "An individual is unlikely to get involved in politics if he places a low valuation on the rewards to be gained from political involvement relative to the rewards expected from other kinds of human activity. For many people, political activity is a good deal gratifying than other outlets—family, friends, recreation and the like. For many, political involvement yields far less affection, income, security, respect, excitement and other values than working at one's job, watching television, reading, fishing, playing with the children, attending a football game or assembling a new hi-fi set. For many, the rewards of other activities are more immediate and concrete." Whether a person takes more or less interest in politics, there is no doubt that the destiny of man is linked with the state and government.

### Meaning and definition of Politics

The word "politics" has different interpretations. From Plato to Easton, it has been interpreted in different ways. Scholars differ greatly on the definition of the subject. That is natural because as Stanley Hoffman remarks, "How could one agree once and for all upon the definition of a field whose scope is in constant flux, indeed a field whose fluctuation is one of its principal characteristics?" Politics cannot be defined in any generally acceptable way. Different political scientists have defined the term politics/political science in different ways. We can discuss the same under two heads—traditional and modern.

### Traditional View

According to traditional political scientists, politics deals mainly with the study of state or government or related institutions. According to Gettell, "Political Science deals with the associations of human beings that form political units, with the organisation of their governments and with the activities of these governments in making and administering law in carrying on inter-state relations." Bluntschli defines political science as "the science which is concerned with the state, which endeavours to understand and comprehend the state in its fundamental conditions, in its essential nature, its various forms of manifestation, its development." According to Sir John Seeley, "Political Science investigates the phenomena of government as Political Economy deals with wealth, Biology with

life, Algebra with principles and Geometry with space and magnitude." The view of Paul Janet is that "political science is that part of social science which treats of the foundations of the state and principles of government." According to Prof. Laski, "The study of Politics concerns itself with the life of man in relation to organised states".

According to Dr. Garner, political science begins and ends with the state. The view of Prof. Fairlie is that political science deals "with the life of man as organised under government and law, in what is known as the state. It includes a study of the organisation and the activities of states, and of the principles and ideals which underlie political organisation and activities. It considers the problems of adjusting political authority to individual liberty, the relations of men which are controlled by the state and the relations of men to the state. It also deals with the distribution of governing power among the several agencies by which the actions of the state are determined, expressed and exercised, and with the problem of international life." Treitschke treats politics as both an art and a science. He describes the problem of political science in these words: "First, it should aim to determine from a consideration of the actual world of state the fundamental idea of the state; second, it should consider historically what the people have chosen, what they have created and what they have attained in political life and how; and, third, through this means, it should determine historical laws and moral imperatives. As such, it is applied history."

According to Gareis, "Political science deals with the origin, development, purpose and all political problems of the state." Lord Acton says, "Political science is concerned with the state and with conditions essential for its development." According to Dr. Leacock, "Political science deals with government." It is clear from the above definitions that according to the traditional view, the main subject of the study of political science is the state and government.

### Modern View

Political science as the study of the state and government and its relationship with the individual remained valid for a very long time until the dawn of the twentieth century which saw fresh ground being covered by political scientists led by George Catlin, Charles Merriam, Almond, Powell, G. Bingham and others. This was the time when other social sciences began to flourish on their own, whereas political science which was described as the master science by Aristotle remained confined to the study of the government and its institutions with a heavy thrust on the legal aspects. Sociologists like Max Weber in an attempt to distinguish political science from other social sciences made a departure and pointed out that the central idea of the subject must be power. After all, the state was the repository of power. The point was well taken up and a host of writers in the United States began to give attention to and focus on the study of power. The earlier attempts to emphasize were recalled. Machiavelli and Hobbes were quoted effectively. Hobbes had said, "There is a general inclination of all mankind, a perpetual and restless desire of power after power, that ceaseth only in death." It was contended that politics all along had been and continued to be power politics—be it slavery in ancient times, supremacy of the church and the state in medieval ages, or the expansion of franchise in the modern era—all were manifestations of a struggle in which individuals or nations promoted from power through influence or control over group action. Care was taken to emphasize that in the context of power fellowship, power neither meant physical nor mechanical power but the ability to induce, involve and determine the actions of individuals by yet another set of individuals. At times, that resulted in the use of force, but often it meant a competition to hunt for political power.

A host of new definitions based on this premise came up. Harold D. Lasswell brought the concept of politics down to earth as it is revealed from the title of his book: "*Politics: Who Gets What, When and How*". In his other book co-authored with Abraham Kaplan, "Power and Society", Lasswell defined "political science, as an empirical (resting on trial or experience) discipline, (as) the study of shaping and sharing of power" and a political act "as" one performed in power perspective. According



to Robson, "Political science centres on the struggle to gain and retain power, to exercise power or influence over others or to resist that exercise." Max Weber observes, "Politics is the struggle for power or the influencing of those in power." According to Wasby, "To some politics involves power, authority and influence." In his book "Modern Political Analysis", Robert A. Dahl writes, "Power, influence and authority are commonplace words that ordinary men share with political practitioners and political theorists. One hears of power to govern, the power of the purse, political power, spiritual power, economic power, national power, judicial power, presidential power, black power, student power, state power."

According to Shaw and Pierce, politics is the struggle for power to make authoritative decisions for the whole society. V.O. Key says that politics as power consists fundamentally of relationship of subordination, dominance and submission to the governors and the governed. The study of politics is the study of these relations. In the words of Catlin, politics as a theoretical study is concerned with the relations of man in association and competition, submission and control, in so far as they seek not the production and consumption of some art but to have their ways with their fellows. What they seek in their political negotiations is power.

According to J.H. Price, "Politics has been defined as the study of the general principles on which government can be carried on successfully; in other words, the study of the exercise of power." Allan R. Ball says that the concept of political power "is a key concept in the study of politics, for if politics is the resolution of conflict, the distribution of power within a political community determines how the conflict is to be resolved and whether the resolution is to be effectively observed by all parties." In the study of political science, we focus our attention on power, its location, how it is exercised or misused, how the ruled react to its exercise etc. "The stuff of politics is power—who governs and how, the reciprocal relationships of authority and obligation between the governors and the governed as well as between different sets of governors and among the governed themselves. The product of political inter-action is more than a series of particular policies like foreign aid or civil rights; it is a way of life."

As the power view of politics was found to be defective and inadequate, attempts were made to modify it by an appeal to the legitimacy of the government. It was said that only legitimate power would become the basis for the acceptance of the government by the bulk of the people. David Easton assigned a moral function to the exercise of power by asking for the authoritative allocation of values for the society. The important word in the phrase "authoritative allocation of values" is authoritative, but many politically important decisions "are made outside the government structure; only those made within the structure can be considered authoritative. The word suggests an air of finality and conveys the idea that once decisions are made, they will stick...The idea of legitimacy or correctness also seems to be suggested by authoritative. While many people, including some of those operating in violation of the law, have political power, only policies coming from a certain source or sources or which have been determined in a certain way e.g., through due process, are accepted as proper."

Another important element in the study of politics is controversy and conflict. Stephen Wasby writes, "Where there is politics, there is controversy; where there are issues, there is politics. Where no controversy exists, where no issues are being debated, politics does not exist." Vermon Von Dyke observes, "Politics consists of struggle among actors pursuing conflicting desires on public issues." The view of Dimock is that the term politics is used in a special sense to describe personal competition, manipulation and intrigue. Sir Ernest Bell writes that politics is the art of looking for trouble, finding it whether it exists or not. According to Ranney, politics in all societies involves conflict which is some form of struggle among human beings to achieve different goals and to satisfy opposing interests. A basic, though perhaps painful, first step towards understanding the government of man is to face the fact and political conflict is not an unfortunate aberration from the norm of perfect cooperation and harmony. It arises from the very nature of life itself. Quincy Wright is of the

opinion that politics exists only when ends or means are controversial. Conflict is basic to politics. Controversy and conflict are not limited to the activities of political institutions but also include other groups and individuals whether political or not.

The study of politics also includes the element of consensus and general arrangements of society. Bernard Crick says that politics implies creative, reconciliation of interests, persuasion, acceptance of rules etc; rigidity to build bridges over inter-personal relationships, not only to allocate but to reconcile. Edward Banfield defines politics as "the activity (negotiations, arguments, discussion, application of force, persuasion etc.) by which an issue is agitated and settled." Eric Rowers writes that politics is the activity which occurs in an ordered community—a way in which disagreements are resolved and translated into policies. Such authoritative decisions reflect the divergence of beliefs, interests and influences within the community. Agreement is necessary for conflict to occur.

According to another view, politics is concerned with man. Heinz Eulan points out that the notion of politics does not come from heaven. It is certainly a human venture, centred in man and created by man. In his book "Great Issues of Politics", Leslie Lipson writes that everything can be found in politics that is contained in man himself (ambition, will, love, passion, hatred, memory, learning, calculation and logical thought). Stephen Wasby says that politics is what political scientists do from 9 to 5. According to Prof. Laski, the study of politics concerns itself with the life of man in relation to organised state. It deals with human beings in organised society.

Another view is that politics is concerned with internationalism. The study of internationalism is necessary for establishing world peace and to have the modern welfare state. Garrison comments, "Our country is the world, our countrymen are all mankind, we love this land of our nationality as we love all other lands."

Thus, the study of politics includes the study of power, influence and authority, authoritative allocation of values, conflicts, controversy and cooperation, group involvement, process of decision-making, political institutions, internationalism etc.

Almond, Powell and other modern American writers have studied political science by sociological, anthropological and psychological methods and criticised the traditional theory of political science on grounds of parochialism and formalism. Their contention is that the political theorists in the past concentrated mainly on the state, government, institutions and their legal norms, rules and regulations or on political ideas and ideologies. They did not concern themselves with the performance of, institutions, their inter-action and political behaviour of man. Therefore, modern American political scientists concentrate their attention upon such basic principles as the search for more comprehensive scope, search for realism, for precision and for intellectual order. The American writers have discarded the traditional concept of state and substituted it by political system. They used the word functions instead of powers because the latter is a legal term. They preferred the use of the word "role" in place of "offices". They used the word structure in place of institutions. The word public opinion has been substituted by them with political culture and political socialisation. The justification given is: "we are not simply adding terms to a new vocabulary, but rather are in the process of developing or adapting a new one; this is not only a matter of conceptual vocabulary, it is an intimation of a major step forward in the nature of political science as science."

The growth of behaviouralism has also influenced the nature of political science. Political scientists put emphasis on the study of human behaviour on which rests the policy-making and policy-implementing functions of the government. The result is that political science has gone a long way to become a part of social sciences. It studies the state (through the government), the citizens and the community at large who are all engaged in the pursuit of certain values to uphold general elections.

To many political thinkers, politics denotes freedom. "Politics is a pre-occupation of free men and its existence is a test of freedom". Politics is an agglomeration of various ideologies, various shades



of opinion. Bernard Crick writes, "Politics is conservative—it preserves the minimum benefits of established order; politics is liberal—it is compounded of particular liberties and requires tolerance; politics is socialist—it provides conditions for deliberate social change by which groups can come to feel that they have an equitable stake in the prosperity and survival of the community". Politics is "realistic good", "moral activity", "free activity", "civilising", "inventive and flexible", "enjoyable and human", "open-minded" and "inventive and sceptical".

### Power View of Politics

There are three main views about politics and those are the power view, the liberal view and the Marxian view. Among them, power view of politics has become prominent during this century.

Although power is an important concept in politics, it is difficult to define it. To quote Parsons, "Unfortunately, the concept of power is not a settled one in the social sciences, either in political science or sociology". However, power has been defined by Wiseman "as the ability to get one's wishes carried out despite opposition". Guild and Palmer write, "By power we mean the ability to affect or to control the decisions, policies, values or fortunes of others." Friedrich says, "Power is not primarily a thing, a possession, but rather a relation". Hoogerwerf defines power as the "possibility to influence the behaviour of others in accordance with the actors' own purposes". David Easton says that power is "a relationship in which one group of persons is able to determine the actions of another in the direction of the former's own ends". According to Russell, power is the production of intended effects. It is ability to cause things to happen.

There are certain *characteristics of power*. It is a rational concept. It is relational as well as relative. No man is weak or powerful in a void. He is weak in relation to some and strong in relation to others. Thus, power is an aggregate of inter-actions among certain actors. Power is bilateral as well as rational. According to Lasswell and Kaplan, even those whose acts are affected also participate in decision-making. By conformity to or disregard of the policy they help to determine whether it is or it is not in fact a decision. Power is situational. The exercise of power depends upon the position/roles of the persons concerned. All American Presidents may have the same power but their exercise of the power varied from person to person and time to time. It is not possible to identify those who wield real power. The most powerful people in a community may be those who remain behind the scenes, or control the atmosphere and the issues raised rather than those who openly participate in settling issues actually raised. Like the concept of love, the concept of power cannot be subjected to rational discussion. To a large extent, it is personal. Being a personal experience, it is subjective. Power is neutral. It can be used for the good of society or to harm it. In many cases, power can be assessed only after it has been actually used. That reduces the predictive value of the concept. Power is a method by which resistance is reduced but it is not the only method to reduce resistance. Another method suggested by Etzioni is consensus formation. Power is generally viewed in a negative sense. It has closer relationship with conflict than with cooperation. The relation between power and ethics is generally weak. The ethics of power depends upon the purpose which is achieved by the use of power and the manner in which goals are set and attained. The power enjoyed by a person can be stretched by communications backed by his power.

There are certain *laws of power*. It invariably fills any vacuum in human organisation. People in general prefer order as compared to chaos which a power vacuum generally implies. The instinct for power is present in all human beings to a lesser or greater degree. Power is invariably personal. It is both gained and exercised by an individual. It is not correct that power is exercised by classes and elites. It is exercised by some persons in certain classes and elites. Power comes to an end through death, resignation, abdication, revolution, foreign conquest etc. Power is invariably based on a system of ideas or philosophy. Power which has no such basis is short-lived. Power is exercised through and depends on institutions. It is organised within the boundaries of certain institutions. Some of the

political institutions which enable the exercise of power in Britain are monarchy, Parliament and the Cabinet. Power is invariably confronted with and acts in the presence of a field of responsibility. Democratic power has a definite area of responsibility. Even the exercise of dictatorial power is not totally devoid of responsibility.

### Political Power

Political power is concerned with the maintenance of law and order and justice in society. It is generally held that it is an independent supra society power which is used to maintain peace and security and to serve the common interests of society. Political power belongs to the state and various state apparatuses. It is exercised not only by the state but also by smaller political associations and groups within it, by socio-political organisations extending beyond state boundaries and also those groups which have no inherent political function. However, state power towers above the powers exercised by other institutions and groups. Political power is not always coercive power. Power to control or influence, pressurise or persuade those who are at the helm of political affairs also forms a part of political power.

It is generally said that the people are the fountain-head of all political power in modern liberal democracies. The pluralist view is that political power in a liberal society is diffused among many interest groups, associations and organisations competing with each other for power. It is the groups which enjoy political power. The Elitist view is that in a democratic society, political power resides in the pluralist elite. Every society is ruled by a minority (elite) which has necessary qualities for political leadership. It possesses political power which is divided into the military, police, bureaucratic, political, economic, religious and other elites. Political power in a society is not centralised. It is divided into plural elites and it is there to serve the interests of all.

The Marxist view is that political power is a strong, organised and unified power of the economically dominant class. It is not divided among various plural elites but generally resides in one particular class of society.

### Economic Power

Economic power means the ownership of the means of production. Those who have economic power also enjoy political power. Etzioni calls economic power the utilitarian assets which include economic possessions, technical and administrative capabilities, manpower etc. He calls economic power utilitarian because it includes administrative and technical assets. A powerful man is not necessarily wealthy and vice versa a wealthy man is not necessarily powerful. In spite of that, wealth is an important source of power and influence in society. The Marxist view is that the control over the means of production gives rise to political power and social prestige.

There is an inter-action between economic power and political power. Both of them do not merge. A politician controls the state but economic power is controlled by business magnates and technocrats. When both economic and political power is combined in one person, the results are not desirable. In his book, "The Modern State", Prof. MacIver writes, "Economic power has many weapons and political power has few. Political power must fight in the open; economic power has the advantage of secrecy. Economic power, once established, has a single and definite aim; political power is composite and easily divided. Economic power can scarcely be corrupted because what it seeks is only for itself, because also there are scarcely any means of corruption but its own." The view of C. Wright Mills is that the real power in the United States is exercised by the power elite consisting of persons who control large business organisations.

In a liberal democracy, those who possess economic power exercise their influence on politics in many ways. Their pressure groups are stronger, more organised and more vocal. The unions of the workers are not strong. The unions of the peasants are much weaker. The organisations of the



consumers are practically absent. The results are obvious. The major newspapers in India are owned by a handful of big business houses and they carry on propaganda in their favour. The capitalists give a lot of financial help to political parties and thereby influence the decisions of the government and that influence may be against the interests of the masses.

### Ideological Power

Ideology may be defined as "a systematic set of arguments and beliefs used to justify an existing or desired social order." Political ideology involves not only a set of beliefs, but is also action-oriented. It puts forward a cause for which the people are prepared not only to fight but also to make sacrifices. To quote Alan Ball, "Individuals are prepared to fight for causes, often realistically hopeless causes, or to undergo ill treatment and torture in the belief that some political values are superior to others." Political ideology can be used to give legitimacy to the ruling classes and help them to remain in power. Through ideology, the people are made to believe that the existing government or the social or economic system is in their best interest and they should be prepared to make sacrifices for maintaining the same. Ideology is not based on reason and hence if an ideology is accepted by the people, they get ready to make sacrifices even if what they are doing is against their own interest. Ideological power represents the manipulative power of the dominant class which controls the thinking and emotions of the people. Ideology can be used to create an illusion of consent even if that consent is detrimental to their real interests. The ruling class creates an ideological atmosphere in which its power looks legitimate and an impression is created that political power is based on their consent. Ideological power converts dissent into consent to some extent.

There is every possibility that the ideological power of the ruling class may be challenged by the ideological power of the other classes, including the workers, peasants etc. In that case, there is always the danger of confrontation between the two which may lead to chaos.

Ideological influences have assumed much greater importance these days on account of the modern communication media which can be used successfully for the propagation of myths and ideologies. In such a situation, propaganda is presented as information and the people "are receivers, not transmitters".

### Criticism of Power View of Politics

Power view of politics has been criticised on many grounds. The Liberals attacked the power view on the ground that politics is a process in society by which conflicts are resolved, common interests are served and an equilibrium is maintained in society. Power is the enemy of rights and liberties. Power may be one aspect in the study of politics but politics should mainly be concerned with social welfare. Power can neither be the sole subject for politics nor the basis of state. Laski writes, "Power is not conferred upon men for the sake of power but to enable them to achieve ends which win happiness for each of us." Power can never be the end of politics. It is merely a means to serve the people. Politics is a welfare activity for the good of society. It cannot be simply a struggle for gaining power. MacIver writes, "Force always disrupts unless it is made subservient to common will... Within a society it is only the clumsy and the stupid who seek to attain their ends by force... Coercive power is a criterion of the state, but not its essence." The view of Oakeshott is that "the words politics and political in relation to a modern European state do not belong to the vocabularies either of authority or of power."

Power view of politics is also criticised on normative basis. Politics is concerned with violence and by making power the subject and object of the study of politics, politics becomes valueless and value-free. When politics becomes merely a power struggle, political and social principles decline. David Easton says, "Where a social philosopher has adopted the idea of power as central to his thinking, as in the case of Machiavelli or Hobbes, it has usually seemed to imply abusive coercion

on behalf of the coercer. Where political life seemed to be reduced to a mere struggle for power, all the noble aims which the philosophers have depicted as the matrix of life seemed to crumble."

Power view of politics is also criticised by Marxism. The view of the Marxists is that all power, whether political, economic or ideological, is concentrated in the hands of the ruling class and is connected with private property. Ultimately, power is class power. Power cannot be diffused. It cannot be exercised in the interests of the whole community. There is unity in political, economic and ideological power and it is class power.

We may conclude by saying that while power is an important concept in politics, it cannot be the sole basis of politics. Power is only a means and not the end of politics. It is not correct to say that politics is nothing but a study of power. Power can never be the sole factor in political process.

### Liberal View of Politics

Liberalism emerged at the time of the Renaissance and Reformation in response to an age characterised by the absolutist state, established religion and a society encrusted with restrictive customs and authoritarian ways. The Liberals advocated freedom of conscience, individual liberty and a check on the power of the state and they succeeded to a very great extent. The liberal view is that politics must promote individual and common well-being. John Locke believed that the state exists for the people and not the people for the state. The view of Bentham was that the state is a group of persons organised for the promotion and maintenance of individual and group happiness or pleasure. The end of the state is the pursuit of maximum happiness or pleasure and avoidance of pain. J.S. Mill advocated liberty. His view was that there should be no state interference in the self-regarding actions of man.

The liberal view of politics is that man as an individual is the centre of the study of politics. Each individual becomes a member of society to further his own interests. Different individuals seek their interests as members of different groups. There are many groups in society which seek to protect the interests of their members against the conflicting interests of the competing groups. Each group is conscious of its particular interests and actively pursues them to secure the authoritative allocation of values in its favour. As that allocation is made by the state, the Liberals regard politics as a state activity. According to liberal view, politics is a group activity and also state activity.

The liberal view is that although different groups have conflicting interests, there are also common interests to which the interests of the competing groups can be reconciled. Politics is essentially an instrument of conflict-resolution. It aims at securing order and justice in society. J.D.B. Miller writes, "Politics is about policy, first and foremost; and policy is a matter of either the desire for change or the desire to protect something against change. Politics, then, is about disagreement or conflict; and political activity is that which is intended to bring about or resist change, in the face of possible resistance." Again, "Politics is, in a sense, the application of government to social situations which will not settle themselves. The aim of those who practise politics is often to secure agreement over what is to be done, to pacify quarrels and to strive for reconciliation and compromise." Miller further says that politics is concerned with conflict and disagreement. If there were general agreements, we would not need politics. The origin of politics lies in social diversity. Politics will continue because diversity is not going to stop.

About the liberal view of politics, Duverger says, "Ever since men have been reflecting on politics, they have oscillated between two diametrically opposed interpretations. According to one, politics is conflict, a struggle in which power allows those who possess it to ensure their hold on society and to profit by it. According to the other views, politics is an effort to bring about the rule of order and justice in which power guarantees the general interests and common good against the pressure of private interests. Organised power in any society is always and at all times both the instrument by which certain groups dominate others, as instruments used in the interest of the rulers and to the



disadvantage of the ruled, and also a means of ensuring a particular social order or achieving some integration of the individual into the collectivity for the general interest. The two elements always co-exist.

According to the liberal view, politics is a dimension of the social process. It is a human activity to resolve social conflicts, maintain law and order, serve the general interest, facilitate the peaceful change in society and contribute to the social, economic and ethical development of human beings and protect their rights and liberties.

According to the liberal view, behind the conflicting interests of the various groups, there is a common interest or common good and it is the business of the state to achieve that. The conflicts among the people have to be resolved and a policy that will ensure better conditions for workers and higher produce for employers, a reasonable price for producers and consumers, suppliers and customers has to be evolved. The end is the concept of the welfare state.

### MacIver

In this connection, a reference may be made to the views of MacIver and Laski. According to MacIver, society has a thousand manifestations—political, religious, philanthropic, literary, intellectual etc. and a social scientist should consider society as a system with many component parts. It was not proper for him to select one aspect and to present it as the determinant of all other aspects. MacIver did not agree with Marx and Spengler who held the view that one single factor determines the entire social system. Moreover, MacIver's view was that society as an institution has existed at all stages of the evolution of man. Society may change but it does not die. To quote MacIver, "As a flame is communicated from coal to coal, so is the life of society communicated, in conscious and unconscious ways, from person to person. It is communicated, not transferred. The inheritance of society, like that of life itself, is not a gift which one relinquishes when another receives it. And it is so communicated, so communicable, because it is no sense outside its members but lives only in them, is their nature or being a fact. Society is neither prior nor posterior to its members, for the term 'person' and the term 'social person' are at every stage of life identical in connotation. When persons enter into any social relation, it is their respective attitudes towards one another which constitute the relation."

According to MacIver, the relation between the individual and society is two-way relationship. To quote him, "The ant and the bee give themselves up to their society, but because they have little to give, all their social sacrifice avails them little. The hermit gives nothing to his society and therefore a country of hermits, were they never so great and wise, would also attain to nothing. But in a true society, the factors, the strength of individuality and the strength of sociality work together and indeed they never can be really independent of one another. For as each of us makes his society, so does our society make each of us." Again, "A society of persons is not a person" and "a grove of trees is not a tree, nor a colony of animals itself an animal."

As regards the relation between society and state, the view of MacIver was that society was there before the state began and hence to identify the social with the political is to be guilty of the grossest of all confusions which completely bars any understanding of either society or the state. MacIver criticised the social contract theory and the organic theory of the state. According to him, the social contract theory "rests upon the false assumption that human beings are, or could become, human beings outside of or apart from society. It implies that men are individuals before they enter into society and that they establish a social order to protect their property or their rights or their lives. Likewise, the organic view of society is also wrong because we do not belong to "society as the leaves belong to the tree or the cells to the body. Indeed society can have little meaning unless individuals themselves are real."

MacIver also criticised Rousseau, Hegel and Bosanquet for identifying the state with society. To quote MacIver, "The state stands for an area of common good not for the whole of common good" and

"the political interest is determinate and has limits, the social has none." According to MacIver, the state is the institution of institutions but society is not an institution at all. It is a life continuous and progressive, the creator of institutions however supreme." The state commands a certain amount of influence over the individuals. The state itself depends on the character and temperament of the people who make the state. To quote MacIver, "The political aspect of the social system is a manifestation of the society; the society expresses itself in many forms and has a multitudinous spontaneous activity which is largely determined by the political order." The society is rooted in our nature and the state is one of its expressions. If man is a political animal, it is because he is a social animal.

MacIver differs from the liberal view in certain respects. According to him, the state represents an area of common good and not the whole of common good. Moreover, the contract may be the basis of the state but not of society. State and society are not identical. Human beings can exist only in society and not otherwise.

### Laski (1893-1950)

Prof. Laski believed in the uniqueness of the individual. To quote him, "I am not a part of a great symphony in which I realise myself only as an incident in the motif of the whole. I am unique. I am separate. I am myself." Later on, he changed his view. The new view was that although there was need for the authority of the state, the rights of individuals regarding privacy, mode of thought and expression should be preserved from violation. "Private liberty is thus that aspect of which the substance is mainly personal to a man's self. It is the opportunity to be fully himself in the private relations of life. It is the chance practically to avail himself of the safeguards evolved for maintenance of those relations." The view of Laski was that the state is not identical with the social order. Men are not only members of the state but also of many other voluntary associations who make demands on the state. Hence society is federal in character. It has general and specific functions. Activities of the general nature belong to the state and those of specific nature belong to voluntary organisations and the state is only marginally concerned with those activities.

According to Laski, the state is only one of the many organisations in the social order which compete for man's loyalty and obedience. Society is plural in structure. Each organisation represents a facet of human activity. Laski placed politics in a dominant regulatory position in the social order.

### The Marxist View of Politics

According to Marx, political institutions and activities are an outgrowth of the prevailing economic system, especially the mode of production. All social relations, including the political ones, are shaped by the prevailing economic relations in society. The conflicting economic interests are the motive force behind all politics. The clash of economic interests is the fundamental issue of social conflict. Other issues are superficial and their resolution cannot end the conflict. If economic issues are solved, all other issues automatically disappear and if the economic issues are evaded, the settlement of other issues is futile.

According to Marx, politics is an instrument of class domination. Conflicts arise in society as the system of production is not organised on a rational basis which means the highest advancement of technology in order to get maximum production and the social ownership of the means of production and distribution. Production is to be undertaken not for private profit but for the benefit of society.

The emergence of private property has divided society into two classes—the haves and have-nots, the masters and servants, the exploiters and the exploited and their interests are irreconcilable. Politics serves the interests of the dominant class.

The division of society into antagonistic classes gives rise to class-conflict or class-struggle. All politics is the result of class struggle. This class conflict cannot be resolved by politics. As a matter



of fact, politics is used by the dominant class to suppress the conflict. So long as society is divided into two classes, state and politics will continue to be used as the tools of the dominant class for the suppression of the dependent class. This state of affairs will continue till a classless society is established. The end of class conflict will mark the end of politics itself.

Ralph Miliband writes, "The Marxist approach to conflict is different. It is not a matter of problems to be solved but a state of domination and subjection to be ended by a total transformation of the conditions which give rise to it. No doubt conflict may be attenuated, but only because the ruling class is able by one means or another—coercion, concessions or persuasion—to prevent the subordinate classes from seeking emancipation. Ultimately, stability is not a matter of reason but of force. The antagonists are irreconcilable and the notion of genuine harmony is a deception or a delusion, at least in relation to class societies." (Marxism and Politics, p. 17).

The Marxist view is that human nature is constantly changing. It is a part of an overall dialectical development. A man is a rational being and he possesses conscious power of rational self-direction. Human nature, which is rational, is changing for the better. The average man will rise to the heights of an Aristotle etc. The behaviour of man is shaped by the means of production. "As individuals express their life, so they are. What they are, therefore, coincides with their production, both with what they produce and with how they produce. The nature of individuals depends on the material conditions determining their production."

The fate of man is determined by the way he makes his living. If he can change the modes of production, he can also change himself. Economic factors are the most important for the process of social change.

According to Marx, the forces of production form the basis of society. Other things such as legal relations, forms of government, art and philosophy etc. are built on the structure of productive forces and thus form the super-structure. To quote Marx, "The totality of these relations of production constitutes the economic structure of society the real foundation on which legal and political super-structures arise and to which definite forms of social consciousness correspond."

According to the Marxists, politics is a form of class struggle. The state arises out of class struggle. It is an instrument of class rule. It is an instrument of the ruling class. The sole purpose is to protect private property. The conflict between classes is the core of capitalist politics.

Marxism supports revolutionary politics. Before revolution, politics is important because it is necessary for the working class to capture the power in the state. Revolution settles the political issue of state power once for all in favour of the working class. State and politics are the only means to end classes and establish a classless society. Politics has an important place in the social process in class struggle and it always has a class character. After revolution, politics will be unimportant and will be used only in establishing a classless society. In a classless society, politics and state will wither away.

Politics is the study of class divisions, class struggle and class relations in society. It is only a dimension of social process. In a classless society, politics also will decline. Politics cannot end the class struggle as the interests of different classes are so antagonistic that they cannot be reconciled or harmonised. There cannot be any common interest for all the classes. Only revolutionary politics is the correct politics.

There are fundamental differences between the liberal and Marxian view of politics. The liberal view is that politics is there to resolve conflicts, maintain order, peace and justice, to serve the common good of the whole society, to help the development of human personality and safeguard the rights and liberties of individuals. According to the Marxian view, politics is a reflection of class struggle. Politics cannot resolve the conflict but it is used by the owners of the means of production for safeguarding their interests/Class struggle in society is fundamental. In a class-divided society, class struggle will never end. Class struggle, and not class harmony, is the key notion in Marx.

Liberalism takes the individualistic view of society and politics, but Marxism takes the class view. Politics can be understood scientifically on the basis of class and class relations. The interests of the individuals of different classes may reconcile or individuals of one class may move to another class, but that does not change the position of classes. Marxism supports the conflict-model instead of the consensus model in politics. Politics cannot resolve the class conflict as it is inherent in the class system, incapable of solution within that system.

### Political Science and Politics

Very often, the two terms political science and politics are used one for the other. Aristotle, the father of political science, used the term "politics" and not political science. There are writers like Jellinek, Sidgwick and Holtzendorff who prefer politics to political science. Prof. Laski named his monumental work as "The Grammar of Politics" and not "Grammar of Political Science." Wilson has also written a book called "Principles of Politics." There are many Universities in India which use the term politics and not political science for their Departments and examinations.

During the nineteenth century, the term politics was divided into two parts, theoretical and applied. In the theoretical part, was included the study of the fundamental characteristics of state. There was no reference to its activities or the means by which its ends could be achieved. The applied part embraced the study of the actual working of the government.

Sir Frederick Pollock classified politics into two parts, theoretical politics and applied politics. According to him, theoretical politics is concerned with the theory of the state, theory of government, theory of legislation and the theory of the state as an artificial person. The theory of the state is concerned with the origin of the state, the classification of forms of government and sovereignty. The theory of government is concerned with the forms of institutions, executive departments and the province and limits of positive law. The theory of legislation deals with the objects of legislation, philosophy of law or general jurisprudence, the methods and sanction of law, interpretation and administration of law and the mechanics of law-making. The theory of the state as an artificial person is concerned with the relations of one state with another and bodies of men and also international law. Applied politics deals with the state, government, laws and legislation and the state personified. It is concerned with the existing forms of government, constitutional law and usage, parliamentary system, army, navy, police, currency, budget and trade, legislative procedure, courts of justice and their machinery, judicial precedents and authority, diplomacy, peace and war, conferences, treaties and conventions and international agreements.

Sir Ernest Benn defines politics as "the art of looking for trouble, finding it whether it exists or not, diagnosing it wrongly and applying the wrong remedy."

Prof. R.N. Gilchrist writes, "Politics nowadays refers to the current problems of government which as often as not are more economic in character than political in the scientific sense. When we speak of a man as interested in politics, we mean that he is interested in the current problems of the day, in tariff questions, in labour questions, in the relation of the executive to the legislature, in any question, in fact, which requires or is supposed to require the attention of the law-makers of the country." (Principles of Political Science, p. 2).

A line of distinction has to be drawn between politics and political science as also between a politician and a political scientist. In ordinary parlance, by politics we mean current politics or the day to day problems of government. Peter H. Merkl writes, "In the broadest sense of the word, politics is a process at work and continuously, in the smallest groups as well as among the great powers on the international level. Everyday the newspapers carry considerable news about it, because the public wants to know what is going on in politics." The man who takes interest in current politics and participates actively in political affairs and government is called a politician. According to Webster's Unified Dictionary and Encyclopaedia, a politician is "one skilled in government or actively engaged in some



branch of it; a person closely affiliated with a political party." The Random House Dictionary gives the following meanings of the term politician: a person who is active in party politics, a seeker or holder of public office who is more concerned about winning favour or retaining power than about maintaining principles, a person who holds political office, a person skilled in political government or administration (statesman), an expert in politics or political government, or a person who seeks to gain power or advancement within an organisation in ways that are generally disapproved.

A politician need not be a political scientist who takes keen interest in the study of political principles and governmental organisation and is an expert in the subject. A politician may have a superficial knowledge of political science. Well read statesmen and administrators may have a deep knowledge of political affairs. They may be well-informed political scientists and seasoned politicians. A political scientist may not become an active politician. All of his activities may be restricted to the realm of reading, writing and discussing about his subject.

As a result of the recent advancement made in the discipline of political science, politics has acquired a new meaning. It is regarded as a political activity which is widespread. According to Bertrand de Jouvenal, political activity is the urge in the human person to control and dominate and direct the wills of other individuals which may assume many forms, but is manifest wherever men enter into group life. Political activity expresses itself through innumerable associations and political parties, each offering its own programme for the solution of various problems facing the country and thereby seeking to control the power of the state by manning the government. Politics is a struggle for power on all levels. The rule of leadership is inherent in the game of politics.

Modern politics has a preference for particular and limited scale of studies of a restricted empirical character, an aspiration towards precision and objectivity. It is a study of the political systems in their relation to social structure. It says nothing as to how the state and its institutions emerged and the process of their development.

### SCOPE OF POLITICAL SCIENCE

There is no unanimity among scholars regarding the scope of political science. There is lack of precision in the definitions and meanings of political science and that creates confusion regarding the precise boundaries of the subject. Vernon Van Dyke observed thus in December 1965, "In these terms no one would contend that the scope of political science is fixed very sharply and that any boundaries are sacrosanct. We have somewhat different conceptions of the subject of our inquiries variously describing it as politics or government or the policy process or the political system; and each label carries with it some probable implications for the probable scope of the subject. Moreover, we pursue various approaches and methods and again the choices that we make are inter-related with the selection of questions and data and so affect scope." According to Willoughby, political science has to deal with three great topics: State, Government and Law. The fundamental problems of political science are an investigation of the nature and origin of the state as the highest political agency for the realisation of the common ends of society and the formulation of fundamental principles of state life, an enquiry into the nature, history and forms of political institutions and a deduction therefrom, so far as possible, of the laws of political growth and development.

The view of Prof. Goodnow is that political science divides itself into three distinct parts: the expression of the state will, the content of the state will as expressed and the execution of the state will. The first division includes political theory and the network of extra legal customs and extra legal organisations which influence the political system of a country. The second division is concerned with law and the third deals with the ascertainment and application of the correct principles of administration.

Gettel writes that political science deals with a historical survey of the origin of the state, tracing the beginnings of political life as they emerge from earlier social forms. It also deals with

the development of the state as it evolved from simple to complex. It is concerned not only with the evolution of the state but also with the development of political ideas and theories. Political science must analyse the fundamental nature of the state, its organisation, its relation to individuals and other states. It must describe modern states as they actually exist and must compare and classify their governments. Political science deals, to a certain degree, with what the state ought to be, with the ultimate ends of the state and with the proper functions of its government. "It is thus a historical investigation of what the state has been and analytical study of what the state is and a politico-ethical discussion of what the state should be." Its leading sub-divisions are historical political science dealing with the origin and development of political forms, political theory dealing with the fundamental concept of the state, descriptive political science dealing with analysis and description of existing political forms and applied political science.

At the UNESCO Conference held in September 1948, distinguished political scientists from the various parts of the world marked out the subject-matter of political science which included (1) Political Theory, (2) Political Institutions, (3) Political Dynamics, and (4) International Relations. Under the first category, the history of political theory and political ideas is studied. The second covers a study of the constitution, national government, regional and local government, public administration, economic and social functions of government and comparative political institutions. The third topic studies political parties, groups and associations, participation of the citizen in the government and administration, public opinion etc. The fourth topic deals with international relations. This demarcation delimits the scope of Political Science within the bounds of four zones.

As the importance of political science is increasing day by day, its scope is also increasing and becoming wider. In spite of this difficulty, we may discuss the scope of political science as the study of the state and government, a study of political theory, a study of political institutions, a study of political dynamics, a study of adjustment of the individual with the state, a study of international law and international relations, study of the concept of power etc.

### (1) Study of State and Government

Political science is the science of state and government. It conducts a scientific study of both the state and government. It deals with the nature and formation of the state and tries to understand various forms and functions of the government. Scholars like Bluntschli, Garris and others believe that the scope of political science is restricted to the study of the state alone. Scholars like Dr. Leacock attach more importance to the study of the government than that of the state. The view of Dr. Leacock is that political science deals only with the government. A similar view is expressed by Karl W. Deutsch in these words: "Because politics is making of decision by public means, it is primarily concerned with government, that is with the direction and self-direction of large communities of the people." The term state does not occur in his definition of political science. The view of Laski, Gilchrist and Gettell is that the scope of political science includes a study of both the state and government. According to Bluntschli, political science is a science which is concerned with the state, endeavours to understand and comprehend the state in its essential nature, various forms, manifestations and developments. Janet writes, "It is that part of social science which treats of the foundations of the state and the principles of the government."

According to Aristotle, "The state originated in the bare needs of life and is continued in existence for the sake of good life". The view of Burke is that the state "is to be looked upon with reverence because it is not a partnership in things subservient only to the gross animal existence of a perishable nature. It is partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living, those who are dead and those who are to be born."



Though the state includes government as one of the essential elements, it is necessary to employ the term government also as governmental machinery has to be brought into a focus in the study. As a matter of fact, about half of the study is devoted to political institutions or governmental machinery. Regarding the scope of political science, Dr. Garner writes, "All the opinions quoted above are in substantial agreement on the essential point, namely, that the phenomena of the state in its varied aspects and relationships, as distinct from the family, the tribe, the nation and from all private associations or groups, though not unconnected with them, constitute the subject of political science."

Political science makes a thorough investigation into the origin of the state from the tribal state to nation state. It deals with the history of the state to know how people organised themselves for law and order in the remote past. It also deals with elements of state, sovereignty and law, ends and functions of state, sphere of state activity, the rights and obligations of the individual, political institutions, forms of government, branches and departments of government, elections, political parties, public opinion and its agencies, local bodies, international bodies etc. Political science deals not only with the state as it actually is but also with what it ought to be. It lays down norms to which the state should conform. It studies the state "as it is, as it has been and as it ought to be". Applying ethical and other norms, the political scientist tries to give shape to a state in which the primary aim of achieving human welfare can be realised. He also tries to peep into the future and speculates about the nature of the future state.

## (2) Study of Political Theory

Political theory is a major branch of political science. On the basis of the political ideas or thoughts of political thinkers, political theory formulates definitions of concepts like democracy, liberty, equality, grounds of political obligation etc. A student of political science must start his lessons with political theory which explains the rudimentary concepts of political science.

Speculations of political philosophers and other ideologies are put together in one volume which is given the title of political theory. The underlying assumption is that other parts of political science on governmental organisation, political parties and pressure groups, international relations etc. are distinct from political theory. The danger of viewing political theory in this way is that a special meaning is attached to the word theory which rules out the possibility of the existence of any theory in other parts of political science. "The practice has an objectionable aspect in that it seems to suggest that all statements expressing theory belong to the subdivision labelled political theory; and conversely, it seems to suggest that books and courses in other sub-divisions go beyond their proper limits if any theory is included. The theory is taken to be synonymous with thought, this attitude becomes disastrous for the other sub-divisions."

## (3) Study of Political Institutions

The study of political institutions includes a study of constitutions and comparative governments. It deals with the nature of different political institutions, including government, explains their merits and demerits, their structure and working and arrives at different conclusions on comparative basis. The study of public administration and local government may be included under this heading. However, the study of public administration has become an independent subject in recent times. There are many types of political institutions in a country or in a society and the institution of the state controls all of them. These institutions are useful to the nation and have their utility in society. That is why we study these institutions alongwith the state.

## (4) Study of Political Dynamics

The study of political dynamics has become important in the twentieth century. It means the current forces at work in government and politics. It covers a wide range and includes the study of

political parties, public opinion, pressure groups, lobbies etc. A scientific study of the working of these political dynamics helps to explain the political behaviour of individuals and groups. The study in this field is often done in collaboration with other social sciences like sociology, anthropology and psychology. The study of political parties has become important in modern times. New conditions and experience make the people wiser and in the light of new knowledge, they can improve the machinery of the state. Human nature is not static but dynamic. "To understand the functioning of government, it is necessary for political science to work outward from the nucleus of the study of government and to take into consideration social, psychological and economic-factors." Many changes often take place. The principles of governance change from time to time. The state today is not what it was one thousand years ago. These changes have to be studied in political science.

## (5) Study of Adjustment of Individual with the State

In political science, we have to study the nature of the relationship between the individual and the state. It is interesting to examine how man adjusts himself within society. Man is the root of politics. The process of adjustment of man with society is an important aspect of political science. The state guarantees certain rights and liberties to its citizens and also imposes certain reasonable restrictions on them. If maximum state intervention leads to loss of liberty, the complete absence of state intervention results in anarchy. It is a difficult problem to adjust or reconcile the authority of the state with individual liberty. Political science has to probe into this difficult and complicated problem.

## (6) Study of International Relations and International Law

The scope of political science includes a study of international relations. It covers a wide range and includes diplomacy, international politics, international law, international organisations like the United Nations etc. On account of scientific inventions and discoveries, cooperation and contact among the different nations of the world have become easier and the whole world turns to be a family. Human society today is viewed from world perspective. The idea of World Government in the distant future is being advocated. The study of international relations has also become an independent subject in modern times. The study of political science also includes a study of international law. The states are the subjects of international law. International law is defined as a body of general principles and specific rules which are ordinarily binding upon the member states. The states are the subjects of international law which has assumed greater importance in modern times.

## (7) Study of National and International Problems and Political Study of Man

Political science is intimately related to the English word "Politics" which itself has been derived from the Greek word "Polis". It stands for city state. The view of Burgess is that the modern demands of land extension, representative government and national unity have made political science not only the science of political independence but that of state sovereignty also. To quote Laski, "The study of political science concerns itself with the life of man in relation to organised states."

Political science enquires into the working of the legislature, the civil service and the judiciary. The conduct of diplomacy is also within its scope. The same is the case with the political ethics of a polity. It also deals with the purposes, ends and limits of political obligation. As the chief concern of political science is to help people to live in harmony, it takes up political problems and offers the solutions based upon particular situations reflecting on the capacity of a political system and the attainment of its goals. As a branch of social sciences, it provides for the overall framework for the evaluation of political phenomenon.

In recent times, there has been an "intellectual revolution" in the thoughts and ideas of the American political scientists and the innovations introduced by them have greatly influenced the nature and subject-matter of political science. The traditional approach is criticised on the ground of



parochialism and formalism. The traditional approach was primarily concerned with institutions and their legal norms, rules and regulations, or political ideas and ideologies rather than performance, interaction and behaviour. The modern political analysis, guided by sociological, anthropological and psychological methods and theories, rests upon four basic principles viz., the search for more comprehensive scope, search for realism, search for precision and search for intellectual order. The object is to free political science from value-judgements or quasi-ethical or philosophical judgments. The modern political scientists seek to develop a kind of empirically oriented and value-free political science and bring it at par with natural sciences.

For a long time, political science was mainly concerned with the legislature, executive and the judiciary. As the study of political science advanced, the scope was extended to an analysis of political parties, bureaucracies, interest groups and other groups. This has been supplemented by how political communications work through the press, radio, television, discussions or meetings and how demands emerge and are formulated through interest groups and political parties and their impact on the policies of the government. The emphasis is on procedures and institutions through which authoritative decisions are made and the outcome of those decisions in the form of rule-making, rule-application and rule-adjudication.

The behaviouralists concentrate on the behaviour of individuals and groups within political institutions. They deal with the actual processes of politics.

Modern political scientists under behavioural and systems approach have widened the scope of political science to cover many more aspects like political socialisation, political culture, political development and informal structures like pressure groups etc.

The process of specialisation in various aspects of political science, changes in methodology, particularly behavioural and inter-disciplinary, have brought about a radical change in the scope of political science. Political decisions are not made in a vacuum or due only to the personal idiosyncrasies of political actors. Economic factors, the social structure and stratification systems influence both the content and mode of making political decisions. We have to take into consideration political orientations of the members of society, how they see the political system itself, how they react to it emotionally and how they evaluate it morally. The process of political socialisation is also important. Prof. Frank Thakurdas writes that the analytical-cum-empirical method "has definitely enlarged the field of our inquiry as it has cleared up the rust in which many helpful distinctions within the framework of political studies lay obscured. It is not that the traditional boundaries have been obliterated; they may merely have been extended and given a sharpness and depth hitherto unknown".

### IS POLITICAL SCIENCE A SCIENCE?

#### Arguments Against

The question is whether political science is a science or not. There are many who do not favour calling political science a science. According to Buckle, in the present state of knowledge, politics, far from being a science, is one of the most backward of all arts. There is no agreement regarding the method of study of political science and the conclusions arrived at by various political scientists. There is no continuity in the development of political science. It deals with man and political institutions which have been changing from time to time. It is not possible to have political experiments in the same way as we have in the case of other sciences. On these grounds, Buckle rejects the claim of political science to be called a science.

A similar view was held by Auguste Comte. The grounds given by him in support of his view were that the writers of political science differed regarding its methods and conclusions. There was no continuity in its development. It failed to supply material out of which hypotheses could be built up.

The view of Amos is that practical statesmen "immersed in actual business and oppressed by the ever-recurring presence of new emergencies almost resent the notion of applying the comprehensive principles of science. The result is that politics floats in the public mind either as a mere field for ingenious chicanery or as a boundless waste for the evolution of scholarly phantoms." Prof. Henry J. Ford says that the "idea of determining state policy upon scientific principles has no place in practical politics."

According to Prof. Ernest Barker, "Each professor of political science is apt to feel about the other professors, if not about himself, that they argue from questionable axioms, by a still more questionable process of logic, to conclusions that are almost unquestionably wrong. The layman, even more sceptical, is inclined to adopt towards political science the attitude of Mrs. Prig to Mrs. Harris so often mentioned by Mrs. Gamp: "I don't believe there's so sick a subject."

The view of Prof. F.W. Maitland is that "When I see a good set of examination questions headed by the words 'Political Science', I regret not the questions but the title."

Burke wrote, "There is no science of politics any more than there is a science of aesthetics—for the lines of politics are not like the lines of mathematics. No lines can be laid down for civil or political wisdom. They are a matter incapable of exact definition."

J.S. Mill wrote in 1843, "It is accordingly but of yesterday that the concept of a political science has existed anywhere but in the mind of, here and there, an isolated thinker, generally very ill-prepared for the realisation."

Many reasons are given in support of the contention that political science cannot claim the status of a science. One reason is that there are controversies over definition, terminology and methods of political science. Among the political scientists, there is no general agreement regarding the definition, scope, terminology, methods and principles of the subject. Different methods and approaches are open to students to conduct investigation in political science instead of a universally accepted single method or set of methods. Likewise, political principles are not universally accepted, and applied. The principles regarding rights and obligations of the individual are not fully accepted by all political thinkers. The same is the case regarding the sphere of the activities of the state. The meanings of different words and expressions have created sharp controversies among political scientists. Terms like imperialism, democracy, communism, socialism, liberalism and nationalism do not have uniform definitions. They have been interpreted and defined in many ways. The terms in political science convey different meanings. R.G. Gettell writes, "The terms of political science are often used carelessly in ordinary speech, are given double meanings and are frequently distorted deliberately by being given a favourable or unfavourable connotation or partisan and national purposes."

The principles of political science have been vague and imprecise and have created multifarious controversies. Universally accepted rigorous methods of scientific investigation, observation and experimentation cannot be followed. It is impossible to obtain correct results in a science. Natural sciences employ a uniform technical vocabulary or jargon. A formula in Physics or Chemistry is universally accepted. It is clear and accurate and there is no scope for any doubt about its veracity or precision. However, that is not the case with the state and government. Political theories or principles cannot be put on par with the principle of Archimedes, the laws of gravitation or the theory of relativity. Certain meanings of democracy have been accepted by many, but not by all. While many thinkers regard democracy as the best form of government, some scholars point out the fact that democracy is government by the ignorant and incompetent people. Likewise, it cannot be said definitely whether state should be mono-national or poly-national and whether legislatures should be unicameral or bicameral.

Another difficulty with political science is that it is not possible to have laboratory experiments in political science. The political researcher has to deal with human beings, while the researcher in



Physics and Chemistry experiments with inanimate substances. All human beings are not like one another. Even the same human being does not behave in the same manner at all times. Political activity cannot be given a made-to-order shape. The emotions and actions of man cannot be controlled. Atmospheric pressure and temperature can be measured but the intensity of political reactions and forces cannot be measured. Political principles cannot be weighed in a laboratory by the scales of precision or tested with litmus paper. A political scientist has no mechanical aids at his disposal. He cannot duplicate laboratory experiments as is the case in Chemistry or Physics. Political conditions cannot be artificially created as human beings cannot be treated as lifeless tools. Identical social conditions cannot be reproduced for experimentation at the will of a political scientist or a politician or a government. No government can command that a nation will react favourably to a particular policy. No government can calculate the intensity of resentment which may be created as a result of an enactment. Prohibition has been a failure in India as the government could not control the behaviour of men and women.

"One chemical element is exactly the same all the world over; any variation in its composition can be tested and explained." Graham Wallas points out that metallurgy became a science when man could actually take two pieces of copper ore unlike in shape and appearance and chemical constitution and extract from them two pieces of copper so nearly alike that they would give the same results when treated in the same way. A student of political science does not possess similar control over his material. He cannot create an artificial uniformity in man. "He cannot after twenty generations of education or breeding render even two human beings sufficiently like each other for him to prophesy that in approach to certainty that they will behave alike under like circumstances."

This is how a teacher of medicine put it to his students: "There are two words in medicine which you never use. They are 'Always' and 'Never'." The same cannot be said of political science. Lord Bryce compared political science to a relatively undeveloped and inexact natural science like meteorology, somewhat in the same way as Prof. Marshall compared economics to the science of tides.

Prof. G.N. Gilchrist writes, "In political science it is difficult to find uniform and unvarying laws. The material is constantly varying. Actions and reactions take place in various and often unforeseen ways." However, the descriptive and classificatory approaches employed by the political scientists can yield approximately correct results. David Easton writes, "Political research has still to penetrate to the hard core of political power in society. In spite of the intensive research activity of the last 75 years, only limited knowledge can as yet be offered on the fundamental distribution of powers among the basic social aggregates. But the energies of the discipline as a whole have not been given to developing consistent and integrated research in order that it might identify the major variables affecting power relations and the significant kinds of data to be observed."

While there is objectivity in the study of physical sciences, it is lacking while studying problems relating to state and government. While dealing with political questions, a completely impartial attitude may not be possible even in the case of the best thinker. The attitude of thinkers of various countries towards political problems may not be detached. Indian political problems are viewed differently by different thinkers and politicians as they may be guided by economic and imperialist prejudices. Problems of nationalism and minorities are frequently approached in a subjective, passionate and prejudiced manner. Racial, religious, economic and other considerations weigh much in the study of political questions. Political disabilities of the coloured people and backward countries may not be examined objectively. Political verdicts may be passed without considering the merits of a case.

### Arguments in favour

However, if by the term science we mean a systematised body of knowledge, political science can certainly be called a science. Dr. Finer rightly says that "we can become the prophets of the probable if not the seers of the certain". "The phenomena of the state present a certain connection or

sequence which is the result of fixed laws, though less immutable, to be sure, than those of the physical world, that these phenomena form proper subject of scientific investigation, and that the laws and the principles deducible therefrom are susceptible of application to the solution of concrete problems of the state." It is true that students of political science do not have laboratories in which they can test their theories like other scientists, but it cannot be denied that there are certain political experiments from which the political scientists can benefit. It is well-known that Aristotle based his "Politics" on his study of the working of 158 constitutions. Likewise, Lord Bryce compared the working of democracy in various countries and then came to his conclusions with regard to the relative merits and demerits of democracy. Sir B.N. Rau, the Constitutional Adviser to the Government of India, visited many countries and placed the results of his comparative study of the various constitutions before the members of the Constituent Assembly for their guidance while framing the Constitution of India. The political scientists can benefit from their study of the Russian Revolution of 1917. Lord Durham laid down certain principles for the development of self-government in Canada. As those principles were found to be useful, those were applied to other colonies also. The bicameral experiment of Britain has encouraged many countries to adopt the same. The same can be said about the working of the two-party system, proportional representation and direct democracy. Dyarchy was introduced in the provinces of India under the Government of India Act, 1919. As it did not work successfully, the same was abolished by the Government of India Act, 1935. The new experiment of provincial autonomy was made under the Government of India Act, 1935 and that too did not work harmoniously. It has been found by experience that democracy is a better form of government than others. It is more permanent than most other forms of government and helps more in promoting the welfare of the common people. Monarchy, dictatorship, aristocracy, oligarchy and other forms of government have been experimented in different parts of the world in ancient, medieval and modern times, but none of them proved successful.

It is true that there is no consensus of opinion among experts regarding the methods, principles and conclusions of political science, but the fault is not with the subject. Political science is a dynamic study of a living subject-matter which is to be translated in terms of living human activity. Unlike other natural sciences, political science does not deal with a static subject-matter. It deals with man and his institutions. As man is dynamic, the same is true of the institutions created by him. The nature of man changes with the changing conditions and hence institutions are bound to adjust themselves with the changing needs of human life in accordance with the changing circumstances of time.

While German scholars have adopted the analytical method to give political science the character of a science, Holtzendorff defends the claim of political science to be ranked as a science. To quote him, "With the enormous growth of knowledge, it is impossible to deny that the sum total of all the experiences, phenomena and knowledge respecting the state may be brought together under the collective title of political science." The same is the view of Von Mohl, Bluntschli, Retzenhofer, Treitschke, Liber, Burgess and Willoughby. Dr. Garner is also willing to recognise the scientific nature of political science. According to him, "Science is a knowledge relating to a particular subject acquired by a systematic observation, experience or study which have been coordinated, systematised and classified." According to Pearson, the function of science is "the classification of facts, the recognition of their sequence and relative significance." Thomson believes that science includes "all knowledge communicable and verifiable which is reached by methodical observation and experiment and which admits of concise, consistent and connected formulation."

The view of Lord Bryce is that political science is a science, although it is undeveloped and incomplete. To quote him, "Politics is a science in the sense that there is constancy and uniformity in the tendencies of human nature, which enables us to regard the acts of men at one time as due to the same causes which have governed their acts at previous times."

Prof. R.N. Gilchrist believes that general laws can be deduced from given material and those are useful in the actual problems of the government. To quote him, "While we may agree that the



exactness of natural sciences is impossible of attainment in the social science, nevertheless social problems can be treated with the same scientific methods as Chemistry and Physics. These results indeed may not be so accurate or so easily tested, but as we shall see the various subjects with which we deal, present a systematised mass of material which is capable of being treated by ordinary scientific methods. We shall see that general laws can be deduced from given material and these laws are useful in actual problems of government." Again, "To say that the only real sciences are those which have exact results with dogmatic proof of experiments is to deny the possibility of ethics, political economy, political science, sociology, metaphysics being sciences."

Huxley writes, "Whether there is a political science depends on whether any rational principles can be found to regulate the form of constitutions, the determination of the sphere of the state which makes a complete and systematised branch of knowledge, clearly formulated and understood in their mutual relations."

The conclusion of Sir Frederick Pollock is that there is a science of politics in the same sense and to the same or about the same extent as there is a science of morals. "Those who deny the existence of a political science, if they mean that there is no body of rules or laws from which a Prime Minister may infallibly learn how to command a majority in Parliament, would be right as to the fact, but would betray a rather inadequate notion of what science is." Political science has a scientific character because the scientific method is applicable to its phenomena. The development of psychology, a critical use of history and the application of the inductive method will enhance the claim of political science to be considered a science.

### Is Political Science an Art ?

By art we generally mean "practical application of knowledge for the achievement of a particular end." A scientist may possess a thorough knowledge of the chemical composition, nature and characteristics of colours, but when an artist applies that knowledge of colours in painting a picture, it is an art. The knowledge of colours is applied to produce a painting.

Political science is a body of systematised knowledge about the state. The question arises whether that knowledge can be applied in actual practice and the answer is in the affirmative. When drafting a constitution, the knowledge of political science is applied. In administering the day to day affairs of a state, knowledge of political science is necessary. The same is the case with formulating foreign policies and conducting diplomatic relations with foreign states. Political science does not merely accumulate theoretical knowledge, but the same is applied by statesmen, diplomats and administrators to achieve their respective ends in their day to day functions. Hence, political science can be called an art.

However, political science is primarily a science as it is a body of systematised knowledge. It can also be called an art because its knowledge is not of mere theoretical importance. It is of practical value also. Hence Gettell and Bluntschli are of the view that political science bears the character of art also. Like other arts, it deals with the various aspects of life and tells us how and in what way we should lead our lives. It also tells us how we can become better citizens and what our rights and duties are. The view of Buckle is that political science is the most backward of all arts.

The conclusion is that political science can be called both a science and an art.

### Utility of the Study of Political Science

The study of political science is of great value and with its help people can know how and why the state was organised in the past and why its continuation is justified. Political science makes people conscious of their rights and obligations. People who are mentally equipped with the knowledge of political science are an asset to the state. The lessons of political science are useful. Intelligent citizens can play a useful part in social and political affairs. Others also can take advantage of the knowledge

in political science. While there exists a high level of political consciousness in Britain and the United States, the same is lacking in underdeveloped and politically backward countries. Standards in politics, administration and statesmanship cannot be high on account of the low level of political research, lack of sound knowledge of political science and absence of good political traditions and conventions. Statesmen, leaders and administrators in backward countries do not discharge their duties honestly and efficiently on account of the absence of public criticism. If the electorate is well-informed and has a sound knowledge of political science, it becomes vigilant and does not allow the government to rule arbitrarily. If the citizens have a high level of political consciousness, they are an asset to the government. They can give cooperation to the government. This is particularly so in times of grave national emergency or foreign invasion.

Knowledge of political science has become indispensable in modern times because now everyone is directly or indirectly concerned with politics. Robert A. Dahl writes, "A citizen encounters politics in the government of a country, town, school, church, business firm, trade union, club, political party, civic association and a host of organisations. Politics is one of the unavoidable facts of human existence. Everyone is involved in some fashion at some time in some kind of political system." Those administrators and statesmen who have knowledge of political science, are aware of the principles which should guide them and hence they can avoid the pitfalls. In order to understand the affairs of the world, it is desirable to know the affairs of one's own country, the working of various institutions, the nature and conduct of the government and the postures and policies of political parties and various other matters. The knowledge of political science is of great value to "constitution-makers, legislators, executives and judges who need models or norms that can be applied to immediate situations."

The knowledge of political science enriches one's mind and widens one's intellectual horizon. Those who specialise in various fields of political science conduct researches to discover hitherto unknown principles underlying political phenomena and make a rich contribution to the realm of knowledge. If the ultimate philosophy of human life is to enrich knowledge, political science makes a major contribution to the storehouse of knowledge.

Every man must know his rights and duties and a study of politics makes him aware of his rights and responsibilities. In order to be a good citizen, one must know the government, its objectives and its basis. A study of politics helps in this matter. A man without an ideology is less than a man and the absence of ideology gives birth to amoral, normless and opportunist behaviour. A study of politics makes him aware of the different ideologies in society. Without understanding politics and participating in revolutionary politics, it is not possible to change society. In order to live as a fully developed man, a study of politics is a necessity. The object of knowledge about society is not only to understand it but also to change it. In politics, all activities are either to bring a change or to resist a change and a knowledge of politics is essential for both.

Political science is said to be a science of statesmanship and leadership. That is the reason why the recruits to the Indian Foreign Service and the Indian Administrative Service are required to undergo a course in political science at the National Academy of Administration at Mussoorie.

Political science teaches the lesson of cooperation, adjustment and toleration. Society cannot progress without cooperation and adjustment. The absence of toleration leads to anarchy. Politics teaches the principles of toleration and coexistence. It preaches the gospel of "live and let live".

A modern man without knowledge of political science is imperfect. It is said that "a people that neglect politics cannot be happy." Again, "Whoever you are, or want to be, you may not be interested in politics, but politics is interested in you." Hence it is suggested that the study of political science should be made compulsory in all democratic countries. George Bernard Shaw wrote, "Political science is the science by which alone civilisation can be saved."



## The Nature of the State

**Meaning of the State.** The term "State", which is the central subject of our study, has a scientific meaning. We do not use it with the same vagueness and ambiguity as it is used by a man in the street. It is often, but erroneously, used as a synonym for "nation", "society", "government", etc. But all these terms have definite meanings of their own in Political Science and should be clearly distinguished one from the other. The term State is also very commonly used to express the collective action of the community, through the agency of the government, as distinguished from individual action. For instance, when we talk about "State management", "State regulation", "State aid", etc., we actually use the word State for government. Similarly, when we talk about the twenty-six units of the Indian Republic or the fifty states which make the United States of America, we do not give the word its scientific meaning. None of them is really a State. In Political Science the term State has a more specific and definite meaning which has little in common with most of its various ordinary meanings.

As used in Political Science, the term State means an assemblage of people occupying a definite territory under an organised government and subject to no outside control. One hundred and eighty-five (185) manifestations of it are members of the United Nations. There are many more which are not members of the organization. All of them share common characteristics. They are groups of people living on, and exercising control over, a definite territory. They are divided into government and subjects; the rulers and the ruled. Some sort of system or order is represented by each. Rules of law are established and in some measure maintained, and compulsion is exercised, and the right to it is recognized both by the members of the group and by the outside world.

There can be no community without the people to form one, and no common life without some definite piece of territory to live in. When people live a collective life, they fulfil the meaning of Aristotle's famous phrase, "Man is a social animal", and when they live a settled life on a definite territory to realize the purpose of collective living, they fulfil the meaning of Aristotle's second famous phrase: "Man is a political animal." But man is not so good as we want to believe that he is. There are all kinds of men and even good men exhibit selfish behaviour because they live in society. Pride, ambition, avarice, revenge, lust, hypocrisy and other traits of disorderly appetites race with the goodness of man and people are usually concerned with their own welfare first and foremost. This is the evidence of history. "Society", Burke says, "requires not only that the passions of

individuals should be subjected, but that even in the mass and body, as well as in the individuals, the inclinations of men should frequently be thwarted, their will controlled, and their passions brought into subjection."<sup>1</sup> The best that can be done is to control the worst manifestations of human perversity by means of political authority. The people are bound by rules of common behaviour and their violation is accompanied by punishment. That is the State. Society meets man's companionship, the State solves the problems created by such companionship. The State is, thus, some form of association with some special characteristics, particularly that of its territorial connection and of its use of force. It is charged with the duty to maintain those conditions of life for which the State came into existence and for which it continues to exist.

The State is a natural, a necessary, and a universal institution. It is natural because it is rooted in the reality of human nature. It is necessary, because, as Aristotle said, "The State comes into existence originating in the bare needs of life and continuing in existence for the sake of good life." Man needs the State to satisfy his diverse needs and to be what he desires to be. Without the State he cannot rise to the full stature of his personality. In fact, in the absence of such a controlling and regulating authority, society cannot be held together and there will be disorder and chaos. What food means to the human body the State means to man. Both are indispensable for his existence and development. The State is, accordingly, a universal institution. It has existed whenever and wherever man has lived in an organised society, although the term State is the product of the sixteenth century and Machiavelli was the first to give it a scientific meaning. He observed, "All the powers which have had and have authority over man are states (state) and are either monarchies or republics."<sup>2</sup> The structure of the state had been subject to a great evolution. The general process was from the similar and simple mechanism of the past to a highly dissimilar and complex mechanism of today.

**Definition of the State.** Though the State is a necessary and a universal institution, no two writers agree on its definition. There have been many different views about the nature of the State and hence its incompatible definitions. It may well seem curious, says R.M. MacIver, that so great and obvious a fact as the State should be the object of quite conflicting definitions. "Some writers define the State as essentially a class structure... others regard it as the one organisation that transcends class and stands for the whole community. Some interpret it as a power system, others as a welfare system....Some view it entirely as a legal construction, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organised for action under legal rules.' Some identify it with the nation, others regard nationality as incidental or unnecessary or even as a falsifying element which inhibits the State in its natural functions. Some regard it as a mutual insurance society, others as the very texture of all our life. To some it is a necessary evil, and to a very few an evil that is or will be unnecessary someday, while to others it is 'the word the spirit has made for itself'. Some class the State as one in the order of 'corporations' and others think of it as indistinguishable from society itself." Gabriel Almond prefers to use the term "Political System" for the State, as the latter is limited by legal and

1. Edmund Burke, *Reflections on the Revolution in France*, p. 57.

2. Machiavelli, N., *The Prince*, I.



institutional meanings.<sup>3</sup> This disagreement is primarily due to the fact that every writer has defined it from his own point of view. If the author is a sociologist, like Oppenheimer or a philosopher like Hegel, or an economist, or a behaviourist, or a lawyer, his peculiar prepossessions may lead him either to distort the reality by emphasising some actual characteristics of the State and ignoring the rest, or to free himself altogether from reality and picture the State as he thinks it ought to be.

Out of this maze of confusion we select a few definitions which fairly represent the weight of authority, and by comparing them try to know what is common in them. Holland defines the State as "a numerous assemblage of human beings, generally occupying a certain territory, amongst whom the will of the majority, or of an ascertainable class of persons, is by the strength of such a majority: or class, made to prevail against any of their number who oppose it." Hall says, "The marks of an independent State are that the community constituting it is permanently established for a political end, that it possesses a defined territory and that it is independent of external control," and a State exists, according to Oppenheimer, "when a people is settled in a country under its own sovereign government." Bluntschli says, "The State is the politically organised people of a definite territory," and, according to Woodrow Wilson, it "is the people organised for law within a definite territory." MacIver defines it as "an association which, acting through law as promulgated by a government endowed to this end with coercive power, maintains within a community territorially demarcated the universal external conditions of social order." Harold Laski defines the State as "a territorial society divided into Government and subjects claiming, within its allotted physical area, a supremacy over all other institutions." Gabriel Almond says that the Political System, the term he uses for the State, "is that system of interactions to be found in all independent societies which perform the functions of integration and adaptation<sup>4</sup> (both internally and vis-a-vis other societies) by means of the employment, or threat of employment, of more or less legitimate physical compulsion." The Political System, he explains, "is the legitimate, order-maintaining or transforming system in the society."<sup>5</sup> Pennock and Smith define the State as a political system comprising all the people in a defined territory and possessing an organization (government) with the power and authority to enforce its will upon its members, by resort, if necessary, to physical sanctions, and not subject in the like manner to the power and authority of another polity.<sup>6</sup> Robert Dahl says, "The political system made up of the residents of the territorial area and Government of the area is a 'State'.<sup>7</sup>

Notwithstanding the disagreement amongst these writers, all agree in ascribing to the State the three elements: people, territory and government. Disagreement again becomes prominent in respect of the fourth element of sovereignty. Those who deny to the State

3. Gabriel A. Almond and James S. Coleman, *The Politics of Developing Areas*, p. 4.

4. In explaining the functions of integration and adaptation, Almond says, "It is of course true that political systems typically perform the functions of maintaining the integration of a society, adapting and changing elements of the kinship, religious and economic systems, protecting the integrity of political systems from outside threats, or expanding into and attacking other societies." *Ibid.*, p. 5.

5. *Ibid.*, p. 7.

6. J. Ronald Pennock and David G. Smith, *Political Science*, p. 126.

7. Robert A. Dahl, *Modern Political Analysis*, p. 12.

the element of sovereignty, attribute a special quality to government. It is habitually obeyed, says Sidgwick; it is superior to individual wishes, says Esmien; it claims unlimited authority, says Zimmern; it is endowed with coercive power, says MacIver; it is sovereign, says Oppenheimer. When government is accorded superior quality, it is really the quality of the State. The essence of the State, according to Finer, is in its monopoly of coercive power. "This, then, is the State; and its supreme power and monopoly of coercion (which it can devolve in many ways on its own terms) is sovereignty."<sup>8</sup> The sovereign is "legally supreme over any individual or group",<sup>9</sup> says Laski, and the sovereign possesses "supreme coercive power." The State and government are by no means the same thing. Government is merely an essential instrument or contrivance of the State through which its authority is manifested and purpose realized. Taking cognisance of all such considerations, Garner gives a matter-of-fact definition of the State. He defines the State as "a community of persons, more or less numerous, permanently occupying a definite portion of territory, independent, or nearly so, of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience."<sup>10</sup>

### ELEMENTS OF THE STATE

The State must, therefore, possess the elements of—

1. Population;
2. Territory;
3. Government;
4. Sovereignty.

1. **Population.** Two conclusions flow from the discussion on the meaning and nature of the state: (1) that the State is a human institution; the product of man's gregarious nature and the result of necessities of human life, and (2) population and land are the starting point of any study of man in his organised groups. It is the people who make the State, without them there can be none. But population must be large enough to make a State and sustain it. The members of one single family do not make a State; there should be a series of families. No limit, however, can be placed on the number of the people constituting the State. Differences in population, other things remaining the same, do not make any difference in the nature of the State, although opinions as to its size have varied from time to time.

Plato and Aristotle put definite limitations on the population of the State. Their ideal was the Greek City-State, like Athens and Sparta. Plato fixed the number at 5,040 citizens. Aristotle held that neither ten nor a hundred thousand could make a good State, both these numbers were extremes. He laid down the general principle that the number should be neither too large nor too small. It should be large enough to be self-sufficing and small enough to be well governed. Rousseau, the high priest of direct democracy, determined 10,000 to be an ideal number for a State.

8. Finer, Herman, *The State in Theory and Practice*, p. 9.

9. Harold J. Laski, *The Theory and Practice of Modern Government* p. 10.

10. Garner, J.W., *Political Science and Government*, p. 52.



The modern tendency is in favour of States with huge population. It is believed that manpower of the State must swell as population is the sinews of war and power. Hitler's and Mussolini's governments gave bounties to couples producing children above a given minimum. Issueless and unmarried persons were taxed. The erstwhile Soviet Union encouraged the growth of her population. The 1936<sup>11</sup> Constitution guaranteed State aid and honours bestowed on members of large families and unmarried mothers. In India, the problem is to check the ever growing population due to the wide disequilibrium between the population and the available means of production. China has a system of incentives and disincentives to observe a one-child family norm.

But the size of the population is no criterion of the State. Monaco and China are entities with equal status of statehood, although the disparity in the population of both these States is significantly marked. Similarly, increase or loss in population makes no difference in its Statehood. Though no limit, either theoretical or practical, can be placed on the population of a State, yet the population must be sufficient to maintain a State organisation, and it should not be more than what the territorial resources of the State are capable of supporting. But behind all these quantitative factors lie qualitative elements in evaluating the problem of the population of a State. Population cannot be reckoned in mathematical terms; the kind of people they are matters no less than their numbers. Aristotle rightly said that a good citizen makes a good State and a bad citizen a bad State. A good citizen must be intelligent, disciplined, and healthy. Healthy citizens are the health of the State, for disease diminishes intelligence, capacity for work, energy and vitality; it makes for poor production, laziness and lethargy. Similarly, good citizens will not allow religious or political differences to destroy the State's unity and security. The people of India have yet to learn the requisites of good citizenship, though in numbers they stand in the front row.

**2. Territory.** Some writers ignore territory as an element of the State. Leon Duguit says, "The word State designates the rulers... or else the society itself in which the differentiation between rulers and ruled exists and in which, for that very reason, a public power exists."<sup>12</sup> Duguit is chiefly interested in the differentiation between rulers and ruled which takes place "in almost all human societies, large or small, primitive or civilised," and then, he tersely says that "territory is not an indispensable element in the formation of a State." Sir John Seeley, too, does not regard territory as an essential attribute of the State.<sup>13</sup> If a society is held together, he maintains, by the principle of government, it constitutes a State, and Political Science should not concern itself only with the so called civilised society. Why should we not say that States are found in deserts of Arabia and in other regions where the soil is unfruitful and discourages fixed settlement and agriculture? W.W. Willoughby says, "The State itself then is neither the people, the Government, the Magistracy, nor the Constitution. Nor is it indeed the territory over which its authority extends. It is the given community of given individuals, viewed in a certain aspect, namely, as a political unity."

11. Article 122 of the 1936 Constitution of USSR

12. As quoted in E.M. Sait's *Political Institutions—A Preface*, p. 92.

13. Seeley, J., *Introduction to Political Science* pp. 31-37.

But such views are rarely encountered now. They have been rejected, not on theoretical grounds, but because of certain practical considerations. Even Duguit admits that in practice there can be no State without a fixed territory. Just as every person belongs to a State, so does every square yard of earth. There is no State without its proper territory, large or small, and no territory that is not part of some State, large or small.<sup>14</sup> And as far as we personally are concerned, it is our connection with a particular territory that normally creates our membership of a State. I am a citizen of India, because I was born there, or because my father was born there. My fellow citizens are my fellow-residents, and it is this sharing of the same territory that creates most of our common interests. Living together on a common land welds the people in a community of interests and it is a powerful incentive to fellow-feeling. Love for the territory inculcates the spirit of patriotism, which has been described in all ages and stages as a supreme virtue of man. Some reverentially call their country 'fatherland' while others call it "motherland" and they all invoke his or her blessings and vow to safeguard its territorial integrity. Territorial integrity of the State is the most cherished sentiment of oneness and the object of patriotism and both together for its permanent existence.

Moreover, the conduct of international relations would be seriously impeded without the requirement of a defined territory. All authorities on International Law are now agreed that a fixed territory must be a condition of Statehood. People and government are not enough. The occupation of a fixed territory is also essential, otherwise the State could not be readily identified and held to account if one attempts to conquer or violate the integrity of another.

Land, water and airspace within the defined territorial area comprise the territory of the State. It embraces the geographical limits of the State, its rivers and lakes, the natural resources it has, and the airspace above. Generally, the 'territorial limits of a State extend to a distance of three miles (4.4 Kilometres) of the sea from the coast, though in practice the maritime jurisdiction is sought to be extended further by the States. As a result of the extensive developments in aviation, radio-communication and space-flights, the importance of the territorial sovereignty of the States over airspace has, during recent times, assumed a vital role.

There are at present 185 States which are members of the United Nations and alongside of such giants as China, India and the United States there are such pigmies as Monaco, Renitria and Luxemburg<sup>15</sup> as independent States. No limit, like population, can be put on the territory of the State, although opinion has differed on the political utility of a small and a big State. Plato drew a close analogy between the stature of a well-formed man and the size of a normal State. Aristotle was also favourably inclined toward the State of a moderate size. Rousseau took his cue from Plato's analogy and set definite limits to the size of a well-governed State. He maintained that in general "a small State is proportionately stronger than a large one." Montesquieu said that there is a necessary relation between the size of the State and the form of government best adapted to it.

Popular government, it is claimed, can be applied only to a small State. In a small

14. Except the tribal belt on the North-West Frontier of Pakistan inhabited by

15. Luxemburg has a population of 33,000.



State the population is limited and the people have the best opportunity to assemble together and express their opinions. They can exercise vigilance, which is the price of democracy, far more effectively when the State is small. De Tocqueville said, "The history of the world offers no instance of a great nation retaining the form of a republican government for a long series of years. It may be advanced with confidence that the existence of a great republic will always be exposed to far greater dangers than that of a small one....All the passions which are most fatal to republican institutions spread with an increasing territory, while the virtues which maintain their dignity do not augment in the same proportion."<sup>16</sup> Direct democracy can only flourish in a small State and Switzerland is cited as a living example. A small State, it is further argued, evinces more unity and greater patriotism. It is a compact class of people who live a corporate life. Each stands for all and all stand for each, concentrating their energies collectively in promoting common welfare.

Small States, on the other hand, are relatively less secure. They fall an easy prey to bigger States which are usually aggressive, and history is full of examples of many a naked aggression. Hitler in no time trampled Poland and other Central European countries. Japan did the same in the Far East. Recent opinion is invariably in favour of bigger States. Trietschke, the German philosopher, in his work on "Politics" (*Politik*), published a little before World War I, declared that "the State is power," and it is a sin for the State to be small. He said that even the idea of a small State "is ridiculous on account of its weakness, which in itself is reprehensible because it masquerades as strength."

Economic resources cannot be left out of account while evaluating the utility of small States. The modern tendency is towards planning and self-sufficiency, and it can only be realised when the territory of the State is large enough to abound in a variety of natural resources. The scale of production determines the mode of production. Large-scale production is always accompanied by rationalization of industry in order to advantageously compete in the international market, besides commanding an extensive and stable domestic market. After all, the economic conditions of a State determine the political stature of its people. In this competing world a large number of small States endanger international peace.

The improved political devices run down the argument that small States are best suited for democracy. The representative system, growing familiar to Europe from the twelfth and thirteenth centuries and now taking roots in Asia and Africa, has vastly extended the scope of democratic institutions. Federalism has also proved its value. Federalism has reconciled local autonomy with national unity, diversity with uniformity, and it has enabled local communities to retain much of their individual character and yet cooperate for certain purposes in a single State.

Big States, according to Trietschke, "are more adapted than small ones to promote the development of intellectual culture." The resources which a big State possesses, the talent it can command, and the greater genius it can produce immensely help the cultural advancement of a nation and consequently its civilisation. Lord Acton, a great admirer

16. De Tocqueville, A., *Democracy in America* (translated by Reeves), Vol. I, p. 170.

of big States, while summing up the defects of small States, says that they "isolate and shut off their inhabitants, to narrow the horizon of their views; and to dwarf in some degree the proportion of their ideas. Public opinion cannot maintain its liberty and purity in small dimensions, and the currents that come from large communities sweep over a contracted territory.... These States, like the minuter communities of the Middle Ages, serve a purpose, by constituting partitions and securities of self-government in the larger States but they are impediments to the progress of society, which depends on the mixture of races under the same government."<sup>17</sup>

The principles of representation and federalism, operating in the transformed mechanical environment, have invalidated some of the political premises of the past and public opinion today veers round big States. Yet, large and small States continue to be discussed. But as long as power remains the primary factor in international politics, States must either be large or make no attempt to play an important political role. It must, however, be emphasised that there should be some proportion between the population and territory of the State. If there is a disproportionate disparity between the two, the State must suffer from all those economic and political disabilities which are natural to such a situation. The State, in brief, must be viable or capable of maintaining a separate independent existence. This can be possible only if it has adequate area and resources to support the increasing population and to adequately meet the needs of defence and an efficient administration. The modern demands for an efficient and up-to-date defence and administration are ever-growing and consume a pretty big slice of the resources of all States.

3. **Government.** The purpose for which people live together cannot be realized unless they are properly organised and accept certain rules of conduct. The agency created to enforce such rules of conduct and to ensure obedience is called government. Government is the focus of the common purpose of the people occupying a definite territory and it is through this medium that common policies are determined, common affairs are regulated and common interests promoted. Without government the people will be just a babel of tongues with no cohesion and means of collective action. They would divide themselves into groups, parties and even warring associations and thus creating conditions of utter chaos and even civil war. It is, therefore, imperative that there should be a common authority and a consequent order wherever people live. It is the prerequisite of human life and, as such, government is an essential element of the State. The State cannot and does not exist without a government, no matter what form a government may assume.

4. **Sovereignty.** Sovereignty of the State is its most essential and distinguishable feature. A people inhabiting a definite portion of territory and having a government do not constitute a State. They must be internally supreme and free from external control. Sovereignty of the State has two aspects, internal sovereignty and external sovereignty. Internal sovereignty is the State's monopoly of authority inside its boundaries. This authority cannot be shared with any other State and none of its members within its territory can owe obedience to any other State. If the State admits no rival within its own

17. Acton, Lord, *History of Freedom and Other Essays*, p. 295.



territory, it logically follows that it has no authority outside its own territory. Each State is independent of other States. Its will is its own, unaffected by the will of any other external authority. This clarifies the meaning of external sovereignty. We shall return to the discussion on Sovereignty in a later Chapter.<sup>18</sup>

Every State, therefore, must have its population, a definite territory, a duly established government, and sovereignty. Absence of any of these elements denies to it the status of Statehood. Accordingly, the term "State" generally used for the twenty-five units of the Indian Republic or for any one of the fifty States, which make the United States of America, is a misnomer. None of them is sovereign. They possess the elements of population, territory and government and are autonomous in their own spheres of jurisdiction. But autonomy is not sovereignty and lack of sovereignty does not entitle them to be ranked as States.

### STATE AND GOVERNMENT

**State and Government.** In everyday language, the two terms, the State and Government, are often used interchangeably as if there is no difference between them. The Stuarts in England did not differentiate between the two with a view to justifying their absolute authority. Louis XIV of France used to say, "I am the State." Some Political philosophers, too, like Hobbes, used the terms State and government as if they were identical in meaning. But the State and government are by no means the same thing. They are not synonymous, for it is perfectly possible to conceive of communities, primitive nomadic tribes, for example, which are not 'States' in the sense in which India, Pakistan, Britain, and the United States of America are, but which have governments in the sense of accepted rules of conduct, by which law and order are maintained. Indeed, it could be argued, says MacIver, that "where the family exists and it exists everywhere in human society government already exists." If this is so, government can exist independently of the State. But no State can exist without government. Without a government the "population would be an incoherent, unorganized, anarchic mass with no means of collective action."<sup>19</sup>

Government is the agency or the machinery through which common policies are determined and by which common affairs are regulated and common interests promoted. It is the manifestation of the State and it consists of all those persons, institutions and agencies by which the will and policy of the State is expressed and carried out. It is a misnomer to equate government, as in current speech we sometimes do, with its controlling element, as, for instance, a Ministry in Great Britain and India, and the President and his 'cabinet' in the United States. When we refer to 'a change of government' in any of these countries, it really means change in the controlling elements of the government and not a change in the government itself. It is true that a change in the controlling element of government in a State has an important impact on the government, but ministers or a President do not make the whole government. Even emperors and kings abdicate, as did Edward VIII of Britain and King Farouk of Egypt, but with these changes the whole

18. See Chapter 8.

19. Gamer. J.W., *Political Science and Government*, p 101.



# 4

## CHAPTER

# Origin of the State

**Introductory.** While introducing the State, in the first Chapter, we said that it originated in the bare needs of life and continues in existence for the good life of man. But it is shrouded in mystery when and how the State came into existence. The recent researches in the sciences of Anthropology, Ethnology, and Comparative Philology throw some light on the subject, but all this is not sufficient to offer a matter-of-fact explanation of the origin of the State. Speculation is, then, the only alternative and we examine a number of theories that have been advanced from time to time, varying with the credulity of the age. The most important of these theories are:

1. The Theory of Divine Origin.
2. The Theory of Force.
3. The Theory of Social Contract.
4. The Patriarchal and Matriarchal Theories.
5. The Historical or Evolutionary Theory.

The Historical or Evolutionary Theory is now accepted as the correct theory of the origin of the State. The Patriarchal and Matriarchal Theories, which seek to explain that family is the nucleus of the State and either father or mother had really been the head of the family in ancient times, are not separate theories of the origin of the State. They form part of the accepted Historical or Evolutionary Theory, although we have treated them separately for clarity and proper understanding. The theories of Divine Origin, Force and Social Contract are speculative and stand rejected. But it does not mean that they have no practical utility. Each one of these theories contains some element of truth and aids us in penetrating the realm of the past and helps to find out how and why the State came into existence. To examine and reject a speculative theory is a means of arriving at the truth. It is only by groping in the dark that we hope to reach the light. Leacock has rightly said that the "rejection of what is false in the speculative theories of the past will aid in establishing more valid conclusions on the residual basis of what is true." What exists is never new. It is a monument of human effort, the result of prolonged activity. We cannot understand any contemporary institution without some knowledge of its genetic background. Speculative theories exhibit the spirit of the time in which they flourished and are, consequently, the index of the people, their thoughts, and their environments and describe the forces that moulded and shaped the practices of the State. Finally, speculative theories led to the development of political thought. Men



of merit thought and considered, discussed and criticised the various theories enunciated from time to time and it paved the way for further developments in political thinking. The Social Contract theory replaced the theory of Divine Origin and the former was replaced by the Historical or Evolutionary theory.

### THE THEORY OF DIVINE ORIGIN

**The Theory Explained.** The theory of Divine Origin, though one of the earliest, has a simple explanation to offer. It is a theory of political authority and not a theory of the origin of the State. The State, its advocates maintain, was created by God and governed by His deputy or Viceregent. It was His will that men should live in the world in a state of political society and He sent His deputy to rule over them. The ruler was a divinely appointed agent and he was responsible for his actions to God alone. As the ruler was the deputy of God, obedience to him was held to be a religious duty and resistance a sin. The advocates of the Divine Origin Theory, in this way, placed the ruler above the people as well as law. Nothing on earth could limit his will and restrict his power. His word was law and his actions were always just and benevolent. To complain against the authority of the ruler and to characterise his actions as unjust was a sin for which there was divine punishment.

The theory of the Divine Origin of the State is as old as Political Science itself. There is sufficient evidence to prove now that early States were based on this conception and all political authority was connected with certain unseen powers. The earliest ruler was a combination of priest and king or the magic man and king. The authority and reverence which a ruler commanded depended upon his position as a priest or a magic man. Religion and politics were so inextricably mixed up in the primitive society that not a hazy line of demarcation could be drawn between the two.

Even today, the State of Pakistan does not seem to draw a distinction between religion and politics. Sir Mohammad Zafarullah Khan, the then Pakistan Foreign Minister, while speaking on the Objective Resolution in the Pakistan Constituent Assembly in 1949, said: "Those who sought to draw a distinction between the spheres of religion and politics as being mutually exclusive put too narrow a construction upon the functions of religion."<sup>1</sup> The abrogated Constitutions declared Pakistan an Islamic Republic to be governed with the Islamic principles. President Zia-ul-Haq significantly modified the 1973 Constitution to bring it in conformity to the injunctions of Islam. In addition to Islamic Arab States, the Islamic Republic of Iran, the Islamic Republic State of Bangladesh and the Islamic State of Afghanistan are the most recent examples of theocratic States.

The theory that the State and its authority has a Divine Origin and sanction finds unequivocal support in the scriptures of almost all religions in the world. In the *Mahabharata*, it is recounted that the people approached God and requested him to grant them a ruler who should save them from the anarchy and chaos prevailing in the state of nature. "Without a Chief, O Lord", they prayed, "we are perishing. Give us a Chief whom we shall worship in concert and who will protect us."<sup>2</sup> The theory of Divine

1. *The Statesman*, Northern India Edition, New Delhi, March 14, 1949.

2. Refer to U. Ghoshal's *A History of Indian Political Theories*, p. 175.

Origin, however, received a new impetus with the advent of Christianity. "Render unto Caesar the things that are Caesar's," said Jesus Christ, and Paul amplified this in his Epistle to the Romans, which has been quoted by writers time and again in support of the theory of Divine Origin. We are, thus, told, "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever, therefore, resisteth the power, resisteth the ordinance of God: and they that resist shall receive themselves damnation...."<sup>3</sup>

The theory of Divine Origin so enunciated, believed in and accepted, thus, implied:—

1. that God deliberately created the State and this specific act of His grace was to save mankind from destruction;
2. that God sent his Deputy or Viceregent to rule over mankind. The ruler was a divinely appointed agent and he was responsible for his actions to God alone whose Deputy the ruler was. All were ordained to submit to his authority and disobedience to his command was a sin for which there was divine punishment.

**The Divine Right of Kings.** There were direct and precise instructions to the faithful. Although the Roman Empire was a pagan empire, Paul had ordered Christians to accept its authority as derived from God and thereby admitted that the State, whatever the personal morality of the monarch, was divinely ordained. During the Middle Ages in Europe the theory of the Divine Origin of the State was transformed into the doctrine of the Divine Right of Kings. The temporal authority, having emerged victorious over the spiritual authority, claimed that it was a divine favour to the Viceregents of divine authority. Even today the Queen of Great Britain is a Queen "by the Grace of God".

The Stuarts in England found refuge in the doctrine of the Divine Right of Kings and its leading exponent was James I. Sir Robert Filmer was its enthusiastic supporter. Bousset advocated it in France and supported the despotism of Louis XIV. It was claimed that Kings ruled by divine right and the subjects had no recourse against them. "Kings", wrote James I, "are breathing images of God upon earth" and disobedience to their commands was disobedience to God. "As it is atheism and blasphemy to dispute what God can do, so it is presumption and high contempt in a subject to dispute what a King can do, or to say that a King cannot do this or that." Even rebellion in the cause of religion was deemed a sacrilege because, "the State of monarchy is the supremest thing upon earth; for Kings are not only God's lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods." As men are children of God, so are men children of the King and they owe him an equal obedience. Without a King there could be no civil society, as the people were a mere "heedless multitude" incapable of making laws. All law proceeded from the King as the divinely instituted law-giver of his people. The only choice for the people was submission to the authority of the King or complete anarchy. The King could not be held answerable for his actions to human judgment. He was responsible to God alone. "A bad King will be judged by God but he must not be judged by his subjects or by any human agency for enforcing the law, such as the estates or the courts." The law resided ultimately "in the breast of the King."

3. Romans, xiii, 1-7.



The main points in the doctrine of the Divine Right of Kings may, thus, be summed up:—

1. Monarchy is divinely ordained and the King draws his authority from God;
2. Monarchy is hereditary and it is the divine right of a King that it should pass from father to son;
3. The King is answerable to God alone; and
4. Resistance to the lawful authority of a King is a sin.

The theory of the Divine Right of Kings, originally used in the Middle Ages to serve as a bulwark against the claims of the Church Fathers, was later used by Kings and their supporters to defend their existence against the political consciousness of the people—the when the people claimed that ultimately power and sovereign authority rested with them.

**Evaluation of the Theory.** That the State is divinely created does not find any place in the present political thought. The State is essentially a human institution, and it comes into existence when a number of people occupying a definite territory organise themselves politically for achieving common ends. The laws of the State are made by men and enforced by them. The State, therefore, originated in the bare needs of the life of man and continues in existence for the satisfaction of those needs and aspirations for a good life. To accept it as the creation of God is to defy nature itself and to exalt the State to a position above criticism and change. The Divine Origin theory is dangerous as it justifies the arbitrary exercise of royal authority by holding that authority has a religious sanction and origin, and Kings are the vicars of God. When the ruler is made responsible for his actions to God alone and law is held to reside ultimately “in the breast of the King”, it is tantamount to preaching absolutism and making the King a despot. Even if it be conceded that the King is the viceregent or deputy of God, then, how can the existence of a bad King be justified? History abounds in examples of bad and vicious Kings. God personifies virtue, grace and benevolence and so should be His deputy. It is, accordingly, bad logic to accept the dogma of James I that “Kings are breathing images of God upon earth.” Even in the scriptures the theory does not find unequivocal support. The Bible tells us, “Render unto Caesar the things that are Caesar’s and unto God the things that are God’s.” This saying of Christ does not justify the Divine Origin of the State. Finally, the theory does not consider any other form of government except monarchy and that, too, absolute monarchy. Such a form of government is antagonistic to the democratic ideal which accepts consent as the basis of the State.

The Divine Origin theory is dismissed as an explanation of the origin of the State. At the same time, the theory has a certain value. We cannot ignore the part which religion played in the development of the State. The early rulers combined unto themselves the authority and functions of a king and a priest. Law had a religious sanction and “divine” or religious law appealed to primitive man more than human law. Obedience to the State was deemed a religious duty and religious worship was supported by government. Belief in a common religion was, thus, a great combining factor which welded the people in the pursuit of common ends. “It taught men to obey” when they were “not yet ready to govern themselves.”<sup>4</sup> Finally, the theory of Divine Origin adds a moral tone to the functions of the State. “To regard the State as the work of God is to give it a high moral

4. Gettel, R.G., *Introduction to Political Science*, p. 81.

status, to make it something which the citizen may revere and support, something which he may regard as the perfection of human life.”<sup>5</sup> The Divine Origin Theory and with that the Divine Right of Kings was discredited in the seventeenth and eighteenth centuries in the West and was replaced by the Social Contract Theory and Rousseau’s concept of popular sovereignty. Thus, the ‘Voice of God’ gave place to ‘the voice of the people.’

### THE THEORY OF FORCE

**The Statement of the Theory.** The theory of Force is another fallacious theory, but historically important, which is offered as an explanation of the origin and meaning of the State. There is an old saying that ‘war beget the king,’ and true to this maxim, the theory of Force emphasises the origin of the State in the subordination of the weak to the strong. The advocates of the theory argue that man, apart from being a social animal, is bellicose by nature. There is also a lust for power in him. Both these desires prompt him to exhibit his strength and in the early stages of the development of mankind a person physically stronger than the rest captured and enslaved the weak. He collected in this way a band of followers, fought with others, and subjugated the weak. Having increased the number of his followers, over whom he exercised undisputed authority, he became a tribal chief. A clan fought against a clan and a tribe against a tribe. The powerful conquered the weak and this process of conquest and domination continued till the victorious tribe secured control over a definite territory of a considerable size under the sway of its tribal chief, who proclaimed himself the King. Leacock gives a matter-of-fact explanation of the Force Theory when he says that “historically it means that government is the outcome of human aggression, that the beginnings of the State are to be sought in the capture and enslavement of man by man, in the conquest and subjugation of feeble tribes, and generally speaking in the self-seeking domination acquired by superior physical force. The progressive growth from tribe to kingdom, and from kingdom to empire is but a continuation of the same process.”<sup>6</sup> The theory, in fine, tells us that the State is primarily the result of forcible subjugation through long continued warfare among primitive groups and “historically speaking,” as Jenks says, “there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare.”<sup>7</sup>

Once the State had been established, force, which had hitherto been utilised for subjugating others, was used as an instrument for maintaining internal order and making it secure from any kind of external aggression. But this alone was not sufficient. Force was used as the sinews of war and power and in a bid for superiority, one State fought against another, eliminating the weaker and only those survived which either could not be conquered, or no venture was made to conquer them as they were comparatively powerful. The theory of Force, therefore, traces the origin and development of the State to conquest and “justifies its authority by the proposition that might is right.”<sup>8</sup> The theory

5. Gilchrist, R.N., *Principles of Political Science*, p. 74.

6. Leacock, E., *Elements of Political Science*, p. 32.

7. Jenks, E., *A Short History of Politics*, p. 71.

8. Gettel, R.G., *Introduction to Political Science*, p. 79.



has, thus, four implications. First, force is not only a historical factor, but is the present essential feature of the State; secondly, that the States were born of force only; thirdly, that power is their justification and *raison d'être*; and, finally, that the maintenance and extension of power within and without is the sole aim of the State.

**Theory used in support of diverse purposes.** The theory of Force has been advanced by different thinkers and writers for advocating their own point of view. It was first used by the Church Fathers in the medieval period to discredit the State, and to establish the supremacy of the Church. They claimed that the Church was divinely created whereas the State was the outcome of brute force. Gregory VII wrote in 1080: "Which of us is ignorant that kings and lords have had their origin in those who, ignorant of God, by arrogance, rapine, perfidy, slaughter, by every crime which the devil agitating as the prince of the world, have continued to rule over their fellowmen with blind cupidity and intolerable presumption."

In modern times the Individualists owned the theory to protect individual liberty against government encroachment. They characterised the State as a necessary evil and argued that the State should leave the individual alone, *laissez faire*, and should not interfere in what he does, except for the maintenance of internal peace and external security. The Individualists base their arguments on the principle of survival of the fittest and try to prove that it is only the strong who survive and the weak go to the wall. The Socialists, on the other hand, hold that the State is the outcome of the process of aggressive exploitation on the weaker by the stronger; the latter constituting the propertied class who had ever manned administration and directed the machinery of the government to their own benefit. The existing system of industrial organisation, it is maintained, hinges upon force because "a part of the community has succeeded in defrauding their fellows of the just reward of their labour." They further argue that force is the origin of civil society and government represents merely the coercive organisation which tends to curb and exploit the working class in order to maintain the privileged position of the propertied class. The theory of Socialism is a revolt against the State, as it is the product of force and power is its justification and *raison d'être*. Karl Marx, accordingly, concluded that the State must ultimately 'wither away'.

During recent times the theory of Force was a favourite theme of political philosophy with German writers. Imbued with the desire to make their country a Greater Germany, and at the peak of its glory, they lavished praise on force and considered its indiscriminate use as the most important factor for the solidarity of the nation. Treitschke said that "the State is the public power of offence and defence, the first task of which is the making of war and the administration of justice." War, he said, consolidates a people, reveals to each individual his relative unimportance, causes factional hostilities to disappear, and intensifies patriotism and national idealism. "The grandeur of history," he further maintained, "lies in the perpetual conflict of nations" and "the appeal to arms will be valid until the end of history." General Von Bernhardt held might as "the supreme right, and the dispute as to what is right is decided by the arbitrament of war. War gives a biologically just decision, since the decision rests on the very nature of things." Nietzsche preached the doctrine of the will to power and the superman. The individual who can command the highest admiration, according to this doctrine, is the strong man who

compels other men to act in fulfilment of his will. Nietzsche, while glorifying the "masterly" virtues of man, says that a truly moral person "has no place for the vulgar and slavish virtue of humility, self-sacrifice, pity, gentleness." Hitler and Mussolini put into real practice the doctrines of these writers. They regarded force as the normal means for maintaining a nation's prestige, cultural influence, commercial supremacy in the world, and for holding the allegiance of citizens at home. This general doctrine of political authoritarianism, both with Hitler and Mussolini, became "a creed of dominance by intimidation—militancy in international relations and forcible suppression of political dissent in domestic government."<sup>9</sup> Hitler and Mussolini pushed mankind into another World War, causing unprecedented misery, havoc and destruction. The United Nations Organization was established after the War to save the succeeding generations from the scourge of war. Yet there is no end to war. There is a show of might everywhere and a never-ending race between all powers, big and small, to invent and manufacture deadly weapons of warfare, some to defend, others to offend.

**Criticism of the Theory.** Force, indeed, has played an important part in the origin and development of the State. Some of the greatest empires of today have been established through 'blood and iron.' We may see even more of this 'blood and iron' in the days to come. Force is an essential element of the State. Internally, the State requires force to ensure obedience to its commands. Externally, it is necessary to repel aggression and to preserve the integrity of the State. Without force no State can exist and sovereignty of the State always rests ultimately on force. Kant said, "Even a population of devils would find it to their advantage to establish a coercive State by general consent."

But, all this does not sufficiently explain the origin of the State. Force is, no doubt, one of the factors which contributed to the evolution of the State. It is, however, not the only one, nor the most important factor, and the theory of force "errs in magnifying what has been only one factor in the evolution of society into the sole controlling force."<sup>10</sup> Force is, also, not the only basis of the State. Something other than force is necessary in binding the people together. It is will, not force, which is the real basis of the State. Sheer force can hold nothing together because "force always disrupts—unless it is made subservient to common will."<sup>11</sup> Force we do need in maintaining the State, but its indiscriminate use cannot be permitted. It must be used as a medicine and not a daily diet as force is the criterion of the State and not its essence. If it becomes the essence of the State, the State will last so long as force can last. Indiscriminate use of force has always been the forerunner of revolutions, overthrowing governments which rest on force. Since the State is a permanent institution, only moral force can be its permanent foundation. T.H. Green has aptly said that "it is not coercive power as such but coercive power exercised according to law, written or unwritten, for maintenance of the existing rights from external or internal invasions, that makes a State." Might with rights is as lasting as human minds on which it depends.

Moreover, the Theory of Force unduly emphasises the principle of the survival of the

9. Coker, F.W., *Recent Political Thought*, p. 439.

10. Leacock, S., *Elements of Political Science*, p. 33.

11. MacIver, R.M., *The Modern State*, p. 222.



fittest. It means that might is right and those who are physically weak should go to the wall. It is dangerous to employ such a principle in the internal existence of the State. Might without right is antagonistic to individual liberty. The State is duly bound to protect equally the weak and the strong and create equal opportunities for all. Externally, if might is the supreme right, and the dispute as to what is right is decided by the arbitrament of war, there can be no international peace. Every State will be at perpetual war with the rest. This is a condition of chaos, pure and simple, endangering the peace and security of the world. The attention and efforts of every State will be directed towards war-preparedness and to win the war, if it comes. War, which is an *alias* for murder, glorifies brute force, suppressing the moral forces. This is the mean self of man and not his real self. Is this the end for which the State exists?

### THE THEORY OF SOCIAL CONTRACT

**The Theory Explained.** Foremost in historical importance is the Theory of Social Contract. It postulates a *state of nature* as the original condition of mankind and a *social contract*, deliberately and voluntarily made, as the means of escape therefrom. Some political thinkers who advocated the theory of Social Contract were of the opinion that the state of nature was *pre-social*; whereas others regarded it as *pre-political*. But whatever it was, the state of nature was antecedent to the institution of government, that is, prior to the establishment of government. The state of nature was not an organized society. Each man living therein led a life of his own, uncontrolled by any laws of human imposition. Nor was there any human authority to regulate his relations with others. Men living in the state of nature were subject only to such regulations as nature was supposed to prescribe for them. This code of regulations was given the name of the *law of nature* or *natural law*.

No two thinkers on the Social Contract Theory are at one as to the conditions that prevailed in the state of nature. Some described it as a state of "ideal innocence and bliss". Others gave a gloomy and dismal picture and characterised it as a state of "wild savagery", where might was right. Some others considered it as a state of "insecurity", though not of savagery, accompanied by some tangible inconveniences. But whatever it was, all thinkers were agreed that those who lived in the state of nature were ultimately compelled, for one reason or another, to abandon it and substitute the state of nature by a *civil society* or a body-politic where each man led a life of union with his other fellowmen. The law of nature, which regulated the conduct of the individuals who lived in the state of nature, was replaced by man-made laws.

Thus emerged civil society and it was the result of a mutual *consent* or *contract*; man taking upon himself the duty of observing and obeying all those laws which assured the safety and protection of all other members of the newly organised community or body-politic. These laws were prescribed by the mutually agreed authority. Human law was substituted for the natural law and in return for *natural rights* every man found "himself clothed with *social rights*." These rights were maintained and guaranteed by the mutually established authority.

All this process of development was the result of a *contract* or "bargain dictated by

the individual's own interest, an exchange of obligations in return for privileges." What were the terms of the contract, who were the parties to the contract, and what was the extent of the powers of the authority mutually appointed to enforce the laws of the body-politic? There were sharp differences of opinion on all those points as each thinker had sought to establish different conclusions and vindicate different principles. All advocates of the Theory of Social Contract were, however, unanimous on the essential idea that the State was a deliberate human creation, the result of consent or contract.

There are three essential elements in the Theory of Social Contract. First is the state of nature wherein man had not *organised* himself in bonds of political cohesion and, therefore, in a political society. He was independent and free and subject to no obligations and man-made laws. He simply obeyed the law of nature. What the law of nature precisely meant, was his own interpretation and determination. Such a condition in the state of nature created conditions of uncertainty for all as none felt secure both in his person and property. No man could for ever endure such conditions of life and ultimately decided to quit the state of nature. This he did by common consent or agreement or contract or covenant with his fellowmen who lived with him in the state of nature. This is the second element in the Theory of Social Contract. The third is that as a result of common consent or contract or covenant a civil society was established where laws of the State and civil rights prevailed in place of natural law and natural rights. The final element is the process by which one way of life was given up for another way of life.

**History of the Theory.** The Theory of Social Contract is as old as political thought itself and it had found adequate support both in the East and West. Kautilya, the Minister of Chandragupta Maurya, elaborated it in his *Arthashastra*. He wrote, "People suffering from anarchy, as illustrated by the proverbial tendency of a large fish swallowing a small one, first elected Manu to be their King, and allotted one-sixth of the grains grown and one-tenth of their merchandise as sovereign's dues. Supported by this payment Kings took upon themselves the responsibility of maintaining the safety and security of their subjects."<sup>12</sup> The Greek philosopher Plato dealt with the Contract Theory in his works, the *Crito* and the *Republic*. Aristotle, on the other hand, repudiated the theory when he said that the State was a natural institution. Roman Law, which exercised so powerful an influence from the twelfth century onwards, made it clear that most of the positive rules obeyed by men were created by contract. The feudal relationship between the lord and the vassal was essentially a contractual relationship. The Church Fathers, in their early writings, gave some support to the theory, although they abandoned it eventually. It was only during and after the Middle Ages that the idea of Social Contract found a significant place in the discussions of political thinkers. Manegold of Lautenbach maintained that the King could be deposed if "he violates the agreement according to which he was chosen ...."<sup>13</sup>

In the sixteenth and seventeenth centuries the supporters of the Social Contract Theory multiplied and there was more or less universal acceptance of the doctrine. Hooker was the first scientific writer who gave a logical exposition of the Theory of

12. *Arthashastra*, Bk. I, Ch. XIII.

13. As quoted in Sabine, G H., *A History of Political Theory*, p. 241.



Social Contract,<sup>14</sup> though he used it to defend the Established Church against the attacks of its enemies. The theory also received impetus from the writings of Hugo Grotius, the Dutch jurist. But it found real support at the hands of Hobbes, Locke and Rousseau. In our discussions of the theory of Social Contract we are primarily concerned with the political philosophy of these three writers, collectively known as the 'contractualists'.

#### THOMAS HOBBS (1588-1679)

Thomas Hobbes, sometime tutor to Charles II of England, published his book, the *Leviathan*, in 1651. In this book, he gave a striking exposition of the theory of Social Contract. Hobbes had no mind to give the theory of the origin of the State. He wrote, while the memory of the Civil War of 1642, and the King's (Charles I) execution was still vivid, to justify the rule of the Stuarts and believed, that England could be saved only by absolute monarchy. His object was to defend the absolute power of the monarch and he used the doctrine of the Social Contract to support it.

Some critics of Hobbes have stigmatised him as a "pensioner" of the Stuarts. This is an exaggeration. Yet, it remains true that Hobbes supported and defended Stuart despotism when there was an irresistible opposition against such a power. He was convinced that nothing could be too high a price to pay for the preservation of order and that the best security for this was to be found in the unlimited authority of the King.<sup>15</sup>

**The State of Nature.** Hobbes began his thesis with the state of nature, which he characterised as the *pre-social* phase of human nature. The state of nature, as Hobbes described it, was a condition of unmitigated selfishness and rapacity. Men had no sense of right and wrong and they fell upon each other with savage ferocity. There was a perpetual and restless desire with them to satisfy their appetites and desires with a craving for gain and glory which came to an end only with their death. Natural rights which men enjoyed in the state of nature were nothing short of might and natural liberty was nothing more than "the liberty that each man hath to use his own power for the preservation of his own nature." They did not know pity and compassion and if ever anyone did a good act it was the result of his "love of power and delight in the exercise of it."

From this analysis of the state of nature, Hobbes concluded that man was not at all social; indeed he found "nothing but grief in the company of his fellows"—all being almost equally selfish, self-seeking, cunning, egoistic, brutal, covetous and aggressive. The state of nature was, thus, a condition of perpetual war "where every man is enemy to every man" and where the rule of life was "only that to be every man's that he can get; and for so long as he can keep it." When men in the state of nature were like hungry wolves, each ready to devour the other, their lives were "solitary, poor, nasty, brutish and short."

14. Refer to Richard Hooker's *Laws of Ecclesiastical Polity*.

15. "His (Hobbes') principles were at least as contrary to the pretensions of the Stuarts whom he meant to support as to those of the revolutionists whom he meant to refute and more contrary to both than either royalist or parliamentarian was to the other. The friend of the king might well feel that Hobbes' friendship was as dangerous as Cromwell's enmity." Sabine, G.H., *A History of Political Theory*, p. 456.

**The Contract.** These conditions were really intolerable and could not be left to continue indefinitely. Men yearned for peace and security of life and property and in a bid to escape from the misery and horrors of their natural condition, they covenanted among themselves to form a civil society or "Commonwealth" which would give to each individual person security of life and property. They, accordingly, agreed to surrender their natural rights into the hands of a common superior and to obey his commands. The covenant was of each with all and of all with each. Each man said to every man:

"I authorise and give up my right of governing myself to this man, or to this assembly of men, on this condition, that thou give up thy right to him, and authorise all his actions in like manner.... This is the generation of that great Leviathan, or rather (to speak more reverently) of that Mortal God, to which we owe under the immortal God, our peace and defence."

In this way, individuals *surrendered* their natural rights to some particular man or assembly of men. The person or assembly of persons to whom they surrendered their natural rights became sovereign and the covenanting individuals who agreed to submit to the authority of the sovereign became his *subjects*. The sovereign was not a party to the contract. Others had made a covenant to obey him; he had made no covenant to obey them. Consequently, the sovereign did not subject himself to conditions. Hobbes maintained that only a contract binding each and all to unquestioning obedience to a sovereign could really establish a stable commonwealth. Any introduction of 'condition,' in his opinion, was likely to create uncertainty and indefiniteness leading, again, to disputes incapable of a decisive settlement, and so to anarchy. The sovereign, thus, profited from the contract without being a party to it. For the future, however arbitrary that rule might be, the people retained no ultimate right to rise against the sovereign authority. The authority of the sovereign was final and irrevocable.

Here are the highlights of Hobbes' Social Contract:

1. It is a *social* contract and *not* a governmental contract. The sovereign is not a party to the contract, as he is the creation of the contract or, as Dunning puts it, "A superior, or sovereign, exists only by virtue of the pact, not prior to it." Individuals living in the state of nature, all equal, agreed with one another to give up their natural rights of doing anything that pleased them, and to possess anything that they could take and hold, to a common authority, and this common authority became by that fact their superior.
2. As the sovereign is not a party to the contract, he did not subject himself to any conditions; his authority is absolute and unlimited. All his subjects must obey him, otherwise there would be conflict, war, and a return to the wretchedness of the state of nature. "The only way," Hobbes said, "to erect such a common power...is to confer all their power and strength upon one man or upon one assembly of men, that may reduce all their wills by plurality of voice, unto one will."
3. The contract becomes irrevocably binding on the whole community as a perpetual social bond, for the individuals keep no rights to themselves, except the right to self-preservation. If the sovereign lost his power and conquered by another and he submitted to his authority, the subjects become the subjects of the conqueror. "But, if he be held prisoner or have not the liberty of his body, he is not understood to have given away the



right of sovereignty; and therefore his subjects are obliged to yield obedience to the magistrates formerly placed, governing not in their own name, but in his."<sup>16</sup>

4. Hobbes denied to the people the right to revolt against the authority of the sovereign. There can happen no breach to the covenant, even if his authority becomes arbitrary and despotic. In fact, the sovereign can never be wrong and his actions cannot be unjust. He cannot be justly accused by the subjects and "Whatsoever the sovereign doth is unpunishable by the subject."

5. Law is command of the sovereign and he is the sole source of law. "Civil, law is to every subject those rules which the commonwealth hath commanded him by word, writing or other sufficient sign of the will to make use for the distinction of right and wrong." The laws of the sovereign can never be unjust or immoral, "for the law is all the right reason we have, and...is the infallible rule of moral goodness."

6. Liberty is the gift of the sovereign in whom the will of the whole community is unified. The sovereign has "the whole power of prescribing the rules, whereby every man may know, what goods he may enjoy, and what actions he may do, without being molested by any of his fellow-subjects." In short, the liberty of the subjects can properly be thought of only in relation to the laws of the commonwealth. Liberty, according to Hobbes, consisted in:

- (i) whatever the sovereign has not forbidden; and
- (ii) what could not, by the nature of the original pact, be given up, that is, the right of self-preservation, which cannot be surrendered. "Without injustice, therefore, the individual may, in disobedience to the sovereign's command, refuse to kill himself, resist assault, refuse to accuse himself of an offence that would jeopardise his life, and with certain qualifications refuse to serve in the army."<sup>17</sup>

The liberty of the subjects, thus, consisted in: (i) what the sovereign permitted; and (ii) right of self-preservation which is retained by the people.

This is how Hobbes gave to his sovereign absolute, inalienable, indivisible and unlimited authority.<sup>18</sup> Hobbes' sovereign, so defined, need not necessarily be one man. Sovereignty may be located in an individual man and his successors (monarchy), or a group of men (aristocracy or democracy, according to the size of the group). But his preference for monarchy is an admitted fact. Monarchy, in the opinion of Hobbes, is not the legitimate form of government, but it is the best form. As a man, the king will be selfish like all men, but the self-indulgence of one is cheaper, he claimed, than the self-indulgence of many. "In a monarchy the private interest was the same with the public." A king cannot be rich, glorious or secure, if his people are poor, contemptible or weak. Since he had got at the top, all his ambition lay in strengthening the State whereas members of a democratic or aristocratic assembly are liable to be swayed by ambition to intrigue against the State in the hope of seizing power. Their designs are a source of great danger to the community. Hobbes' conclusion was that, "other governments were

16. *Leviathan*, Part I, Chapter XXI.

17. Dunning, W.A., *A History of Political Theories from Luther to Montesquieu*, p. 288.

18. The Sovereign's power is limited only by the individual's right to self-preservation.

compacted by the artifice of men out of the ashes of monarchy after it had been ruined by seditions."

**Evaluation of the Theory.** Hobbes was the first Englishman to present a logical system of political philosophy. So skilfully did he blend the current political thought in his system of political administration and adapt it to his ends that he at once came into the front rank of political thinkers and "his theory became from the moment of its appearance the centre of animated controversy and enormous influence throughout Western Europe." Hobbes has been criticised vehemently. His ideas of what constituted a sound scientific method were those of his time and are now long out of date. Yet, his philosophy illustrates Bacon's saying that, "Truth emerges more easily from error than from confusion."

Nothing like the state of nature ever existed and there is absolutely no evidence in history to show the State to have emerged by mutual and deliberate agreement. The Social Contract is impossible, for the history of primitive societies has shown conclusively that men move from status to contract. Hobbes' claim is just the other way, namely, that men move from contract to status. Nor is man so inherently selfish, self-seeking and aggressive as Hobbes has described him. Man is a rational and social being, though his irrationality cannot be ignored altogether.<sup>19</sup> Hobbes' dogma that man is by nature unsocial and an "enemy of his kind" is diametrically opposed to the Aristotelian dogma, that man is a social animal. Society exists by nature and necessity and it has existed since man made his first appearance on this planet. As man is social, he cannot lead an isolated life and his sociability makes him a rational being, cooperative and sympathetic towards his fellowmen. Hobbes' ethical and political philosophy is based wholly on egoism and hedonism.

Hobbes described the state of nature as pre-social and pre-political. At the same time, he said that man enjoyed in the state of nature natural rights. Rights always arise in a society. If there is no society, as Hobbes' state of nature was, how could there exist any rights? Every right has a corresponding obligation. But Hobbes' man in the state of nature had no obligations; he did anything that pleased him, and possessed anything that he could take and hold against all others. Again, according to Hobbes, there was a surrender of rights. But it is against commonsense to believe that man would ever surrender all his rights. Hobbes himself becomes inconsistent when he says that man retained to himself the right of self-preservation.<sup>20</sup> There cannot be complete surrender and then reservation of a right.

A contract is always between two parties; it cannot be unilateral or one-sided. Hobbes makes the sovereign the beneficiary of the contract, but not a party to it. And the contract is perpetual and irrevocable. This transaction hardly appeals to human reason. Hobbes also fails to distinguish between the State and government. He confounds the legal

19. Rousseau writes, "That men are actually wicked, a sad and continued experience of them proves beyond doubt. But all the same, I think, I have shown that man is naturally good." Jean Jacques Rousseau, "A Discourse on the Origin of Inequality," in *The Social Contract and Discourses* (translated by G.D.H. Cole), p. 222.

20. "In case anarchy does actually come upon a society, and the sovereign no longer possesses the power to give the subjects that protection which is for the sole end of the social pact, their obligation to the sovereign *ipso facto* ceases." Dunning, W.A., *History of Political Theories from Luther to Montesquieu*, p. 289.



absolutism of the State with governmental absolutism, and he does not see that changes in the forms of government do not imply the dissolution of the State.

But when all this is said, Hobbes' *Leviathan* is of the very greatest importance. It is, in the words of Professor Oakeshott, "the greatest, perhaps the sole, masterpiece of political philosophy written in the English language." This is an exaggeration, yet, in spite of the fury of his critics, Hobbes continues to be widely read and makes a powerful appeal. The *Leviathan* is the first statement of complete sovereignty in the history of political thought. Hobbes contradicted the old concept of justice and maintained that Justice is created by law and that law is not the reflection of justice. Hobbes is also an Individualist in the sense that for him the world is and must always be made up of individuals. He does not believe in the people, common will or general will or common good.

#### JOHN LOCKE (1632-1704)

If Hobbes championed the absolute sovereignty of the monarch, John Locke, another English political philosopher, espoused the cause of limited monarchy in England. His theory was a justification of the Revolution of 1688, and the deposition of James II. The theory of John Locke is found in his two *Treatises on Civil Government* published anonymously in 1690, wherein he defended the ultimate right of the people to depose the monarch from his authority if he ever deprived them of their "liberties and properties."<sup>21</sup> Locke, in reality, sought, as he himself admitted, to "establish the throne of our great Restorer, our present King William, and make good his title in the consent of the people." Mark the words 'in the consent of the people' for this forms the keynote of Locke's theory. Civil power, according to Locke, is based upon consent.

**The State of Nature.** Locke, too, started with the state of nature. But his state of nature was *pre-political* and not *pre-social* and, as such, it did not present to him such a dismal state of affairs as it had done to Hobbes. Locke's man in the state of nature was neither selfish, nor self-seeking, nor aggressive. He was social and sympathetic towards others, because the law of nature, which was the law of *reason*, directed him to be so. Under the law of nature, as Dunning says, "of which reason is the interpreter, equality is the fundamental fact in men's relations to one another." But equality, for Locke, was not what it was for Hobbes. In Locke's state of nature men were equal and free to act as they thought fit, but "within the bounds of the law of nature." And the "bounds of the law of nature" enjoined upon them not to harm another in his life, health, liberty, or possessions. Locke's state of nature was "a state of peace, goodwill, mutual assistance and preservation," as he himself put it, in contrast to "a state of enmity, malice, violence and mutual destruction," as he described Hobbes' state of nature.

From the law of nature, as it prevailed in the state of nature, flowed, according to Locke, certain natural rights: rights to life, liberty and property. The right to liberty, he

21. "The community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject." *Treatises on Civil Government*, II, Sec. 149.

said, was man's right to do whatever he wanted to do so long as that was not incompatible with the law of nature. The right to property was man's right to anything with which he had mixed his labour, provided he made good use of it since "nothing was made by God for man to spoil or destroy." But the law of nature did not create rights alone. It imposed corresponding obligations as well, because rights had "a law to govern which obliges everyone; and reason which is that law teaches all mankind who will but consult it, that, being all equal and independent, no one ought to harm another in his life, health, liberty and possessions." That is, everyone in the state of nature, while valuing his own life, liberty and property, must also value and respect the life, liberty and property of others as a matter of duty. Such a state of nature in which men enjoyed rights and acknowledged their duties was both moral and social.

**Need for Civil Society.** But unfortunately peace was not secure in the state of nature. It was constantly upset by the "corruption and viciousness of degenerate men." This "ill condition," Locke said, was due to three important wants which remained unsatisfied in the state of nature: (1) the want of an established, settled, known law; (2) the want of a known and indifferent judge; and (3) the want of an executing power to enforce just decisions. Such an "ill condition," Locke asserted, was "full of fears and continual dangers", and in order to escape from all this and to gain certainty and security men made a contract to enter into civil society or the State. This contract was of *all with all* and Locke named it a social contract. The social contract put an end to the state of nature and substituted it by a civil society or the State. Each individual contracted with each to *give up* some of the rights he possessed in the state of nature. All he agreed to was to "give up everyone his single power of punishing to be exercised by such (authority) alone as shall be appointed to it amongst them, and by such rules as the community, or those authorised by them, to that purpose shall agree on." The social contract was, accordingly, no more than a transfer of certain rights and powers so that man's remaining rights would be protected and preserved. Secondly, the contract was for limited and specific purposes, and what was given up was transferred to the community as a whole and not to a man or to an assembly of men, as Hobbes had held. In this way, Locke recognised and established the sovereignty of the people, and that the State existed for the people who formed it: they did not exist for it.

**Two Contracts.** If men were objects for which the social contract was necessitated, that is, to create positive law, establish a known judge, and to create an authority to enforce just decisions, the society in its corporate capacity established the government and authorised it to make positive laws consistent with the law of nature, appoint impartial judges to decide disputes, and to enforce their decisions. There were, thus, two contracts according to Locke, though he did not say so explicitly. The first was a Social Contract which brought into being the civil society or the State. The second was a governmental contract when society in its corporate capacity established a government and selected a ruler to remove the inconveniences or "ill condition" which necessitated the formation of the civil society or the State. The second contract or governmental contract was subordinate to the first in as much as government was "only a fiduciary power" to act for certain ends, and its authority was confined to securing those ends. It was limited, moreover, to the condition that it was to be used in the exercise of "established known



laws." If the government failed to secure the ends for which it was created and to which it had agreed, or did not exercise its authority according to the "established known laws," the community might dismiss it and appoint another government in its place. Here Locke establishes the inherent right of the people to revolt against the authority of the monarch, if he ever abused the terms of the contract to which he is a party, and ruled arbitrarily, ignoring the "established known laws" made by the representatives of the people.

The purpose of Locke is served. By making monarch a party to the contract he limits authority and subordinates it to Parliament, "the supreme power of the commonwealth." Three conclusions flow from it: (1) that the government exists for the good of the people; (2) that it should depend on their consent; and (3) that it should be limited and constitutional in its authority. If it is not for the good of the people, if it does not depend upon their consent, if it is not constitutional and exceeds the authority vested in it, the government can be legitimately overthrown. Locke, thus, justified the Revolution of 1688, and the deposition of James II, and the accession of William and Mary to the throne of England.

Locke recognised the existence of three powers in the civil society or the State. There is first of all the legislative, which he called "the supreme power of the commonwealth." Legislature, he held, was the instrument through which the will of the community was expressed. Since the expression of that will preceded and determined its execution, that department of government which carried out the laws must be subordinate to the department that made them. Although, for Locke, the legislature was unquestionably the superior power, yet it was not sovereign. The idea of absolute, unlimited, and inalienable sovereign power in any human hands found no place in Locke's theory of Social Contract. Behind the "supreme" legislature stand the people, the final embodiment of power. "The community," said Locke, "perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties and properties of the subject."

Secondly, there was the executive which, according to Locke, included the judicial power. The legislature need not always be in session, but the executive must be. Hence, he concluded, they "come often to be separated." There should be separation between the legislature and the executive, "because it may be too great a temptation to human frailty, apt to grasp at power, for the same persons who have the power of making laws to have also in their hands the power to execute them." This is how Locke enunciates the doctrine of the Separation of Powers which is enshrined in the American Constitution, though he is Montesquieu, not Locke, who is the author of the famous classification of powers into executive, legislative and judicial.

The third power that Locke recognised is what he called the federative—the power that made treaties. Locke has not more to tell us about the federative power, except that it is much less capable of being directed by positive laws and so must necessarily be left to the prudence and wisdom of those who are entrusted to manage it for public good.

To sum up, the following important points may be noted in Locke's doctrine of the Social Contract:—

1. Locke's state of nature is *pre-political* rather than *pre-social*.

2. His state of nature is not that of perpetual warfare as it is with Hobbes. It is a state in which men are equal and free to act as they thought fit within the bounds of the law of nature. The law of nature is the law of reason and the law of reason established certain natural rights and recognised certain duties. This state of nature in which men have rights and acknowledged duties, is moral and social in character.

3. But certain inconveniences are experienced in the state of nature. These inconveniences are three in number: uncertainty in the application of the law of reason; absence of a common judge to decide disputes according to the established law; and, no proper authority to execute those decisions. To escape from these inconveniences and the continued danger of fights, wars and confusions accompanying them, men through *voluntary* compacts formed political communities and the communities instituted governments.

4. According to Locke there are two contracts: *social contract* and *governmental contract*. The first put an end to the state of nature and substituted for it a civil society or the State. The second is made with a view to forming the government and selecting a ruler. But the second contract is subordinate to the first. Since the creation of government by a community followed the prior organisation of the community itself, the community can change the government without dissolving itself.

5. The ruler is a party to the contract.

6. There is not a surrender of rights as with Hobbes. It is only the transfer of a few given rights.

7. Law is not the command of the sovereign as Hobbes had said. According to Locke law must be the expression of the will of the people and it should be consistent with the law of reason.

8. Locke makes *consent* of the people the source of all governmental authority.

9. Locke concedes to the people the right to revolution and, thus, the ruler can be deprived of his authority, if ever he fails to fulfil the terms of his contract.

**Evaluation of Locke's Theory.** The most distinctive contribution of Locke to political theory is his doctrine of natural rights. Life, liberty, and property, he holds as inalienable rights of every individual. The end for which civil or political society is constituted is to secure these natural rights, and the attainment of these rights is made possible through the agency of the government. Locke, accordingly, makes a clear distinction between the State and government and introduces the theory of consent, which, in the words of Laski, now occupies a permanent place in English politics. According to Locke, government holds power on condition of, and derives its authority from, the consent of the people whom he ultimately holds sovereign. He emphasizes that "the sovereignty of the State is not the sovereignty of a ruler," and "the will of the State may limit the will and actions of a ruler." Government, for Locke is a trust and the authority of government must be exercised for fulfilling the needs which necessitated the formation of the civil society. If the government fails to function properly and in accordance with the wishes of the people, then, the community has the power to dissolve it and substitute another government in its place. "The happiness and the security of the individual figure, not as



essential to the perpetuity of a government, but as the end for which alone government is ever called into existence."<sup>22</sup>

The main defect in Locke's theory is that he altogether ignores the concept of legal sovereignty. In the words of Gilchrist, "To use our terminology, Hobbes gives a theory of legal sovereignty without recognising the existence and power of political sovereignty; Locke recognises the force of political sovereignty, but does not give adequate recognition to legal sovereignty."<sup>23</sup> Nor is he sure where sovereignty really resides. He speaks of the supreme power of the people at one time and at another he talks of the supreme power of the legislative assembly. Similarly, his views on the state of nature, and that the people inhabiting it made two contracts are incredible. Locke's contribution to the theory of natural rights has also been subjected to severe criticism. For example, Bentham remarks that the concept of natural rights prevailing in the state of nature "is simple nonsense, rhetorical nonsense and nonsense on stilts." All the same, Locke is considered the ideological father of the American Revolution.

#### JEAN JAQUES ROUSSEAU (1712-1778)

Jean Jacques Rousseau, the great French writer of the eighteenth century, elaborated his theory in his famous work : *The Social Contract* published in 1762. Rousseau, unlike his English predecessors, Hobbes and Locke, had no purpose to serve, and no definite cause to uphold, although his teachings inspired the French Revolution of 1789. His object was "to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain free as before." Rousseau wanted to offer a logical explanation of the nature of civil society, though his logic is lost in the epigram and paradox in which he indulges too frequently. This was natural, because Rousseau was a man with abnormally intense feelings and emotions, a vivid imagination, and warm sympathies. He stated many of his ideas abstractly.

**The State of Nature.** The starting point in Rousseau's theory was the traditional state of nature. What the state of nature actually meant to him, Rousseau himself was neither clear nor consistent about it. He had thought and talked about it "because all world was thinking and talking about it,"<sup>24</sup> and Rousseau used it practically in all the various senses that had been attached to it. But "throughout the fluctuations of his usage, one idea alone appeared unmistakable, namely, that the natural state of man was vastly preferable to the social or civil state, and must furnish the norm by which to test and correct it."<sup>25</sup> Back to nature was his call. He had a romantic belief in the excellence of primitive simplicity and denounced the artificiality of "so-called civilised existence." He maintained that the progress of science and the arts had tended to degrade the morals of man. Return to natural simplicity, he held, was the only cure against all the corruption and degradation rampant in civil society. But it did not mean that Rousseau wanted to destroy civil

22. Dunning, *op. cit.* pp. 364-65.

23. Gilchrist, R.N., *Principles of Political Science*, p. 61.

24. Morley's *Rousseau*, Vol. I, p. 155.

25. Dunning, W.A., *History of Political Theories from Rousseau to Spencer*, pp. 12-13.

society. What he precisely meant by "return to nature" was that "nature must be the rule for men in society."<sup>26</sup> It would deliver mankind from the corrupt and artificial existence and that could be accomplished only by the creation of natural social conditions.

Rousseau's man in the state of nature was a "noble savage" who led a life of primitive simplicity and idyllic happiness. He was independent, contented, self-sufficient, healthy, fearless and "without need of his fellows or desire to harm them." It was only the primitive instinct and sympathy which united him with others. He knew neither right nor wrong and was away from all notions of virtue and voice.<sup>27</sup> It was, thus, a pure, simple and innocent life of perfect freedom and equality which Rousseau's men enjoyed in the state of nature. They were as yet free from the spiritless influence of civilisation and they sought their own happiness untrammelled by social laws and institutions.

But these conditions could not last for long. Two things emerged to corrupt this perfect scene. One was increase in population and the other was dawn of reason. With the increase in population, economic progress moved apace. The primitive life of simplicity and idyllic happiness disappeared. Fixed homes established the family, and the institution of property followed, sounding the knell of human equality. Man began to think in terms of *mine* and *thine*. "By nature man scarcely thinks," held Rousseau, "and, the man who reflects is a corrupt creature."<sup>28</sup> When man began to think in terms of *mine* and *thine*, there emerged the institution of private property. "The first man who, after enclosing a piece of ground, bethought himself to say 'this is mine,' and found people simple enough to believe him, was the real founder of civil society." The whole process of development may best be described in the words of Dunning: "The arts of agriculture and metallurgy were discovered; and in the application of them men had need of one another's aid. Cooperation revealed and emphasized the diversity of men's talents and prepared thus the inevitable result. The stronger man did the greater amount of work; the craftier got more of the product. Thus appeared the difference of rich and poor—the prolific source of all other sources of inequality."<sup>29</sup>

**Emergence of Civil Society.** The equality and happiness of the early state was lost. Mankind went rapidly into a state of war resembling Hobbes' state of nature. War, murder, wretchedness, and horror that had been unknown in the savage state became universal. The rich and the poor were ranged against each other in unrelenting hostility. That was a disquieting state of affairs and every individual became anxious to get rid of it. The escape was found in the formation of a civil society. Natural freedom gave place to civil freedom by a social contract of each with all and all with each. As a result of this contract a multitude of individuals became a collective unity—a society. The contract placed every individual in complete dependence on others—complete though mutual and

26. *Ibid.*, p. 13.

27. Rousseau said, "Original man had not the least notion of mine and thine, no true idea of justice...no vice, no virtues...unless we use these terms in the sense of qualities conducive to his own conservation."

28. If Rousseau's arguments are to be summarised, it means "intelligence is dangerous because it undermines reverence; science is destructive because it takes away faith; reason is bad because it sets prudence against moral intention. Without reverence, faith and moral intention there is neither character nor society." Sabine, G.H., *A History of Political Theory*, p. 578.

29. Dunning, W.A., *History of Political Theories from Rousseau to Spencer*, p. 10.



equal. The individual, in Rousseau's political system, "puts his person and all his power in common under the supreme direction of the general will and in our corporate capacity we receive each member as an indivisible part of the whole."

**General Will.** There was only one contract according to Rousseau, which was at once social and political. The individual surrendered himself completely and unconditionally to the will of the body of which he became a member. The body so created was a moral and collective body and Rousseau called it the *General Will*. The unique feature of the General Will was that it represented collective good as distinguished from the private interests of its members. It was the will of all the citizens when they were willing not their own private but the general good; it was the voice of all for the good of all. Rousseau went further and said that my will which willed the best interests of the State was my best will and it was, indeed, more real than my will which willed my private interests. All actions were the result of the will, but my will for the good of the State was morally superior to any other will, private or associational, which might, from time to time, determine my conduct. The General Will being the compound of the best wills of all citizens willing the best interests of the community and its lasting welfare, it must be sovereign. Since it was my will, my own real will, I ought always to follow it. If I did not, because some private and selfish interests induced me not to follow it, then the General Will could legitimately compel me to obey it. Indeed, it was the only authority that could legitimately coerce me, for it was my own will coming back to me even though I did not always recognise it as such. And in following it, I was fulfilling myself and was, thus, finding true freedom. Whoever refused to obey the General Will would be compelled to do so by the whole body. "This means nothing less than that he will be forced to be free; for this is the condition which secures him against all personal dependence."

The General Will, though by definition it could only deal with matters of public not private interest, was alone the judge of what constituted public or private interest. The General Will, moreover, could not allow anything to stand between it and the complete loyalty of its citizens. It was better, Rousseau believed, that other associations than the State should not exist, but if they did, they must always be subordinate, and if any conflict of loyalties should ever occur, citizens must always obey the State, because it was infallible and the custodian of the real interests of all.

The General Will must also, Rousseau said, "be inalienable and indivisible." Hence it could not be represented in parliamentary institutions. "As soon as a nation appoints representatives," he said, "it is no longer free, it no longer exists." England, he declared, was only free during elections, after which it "is enslaved and counts for nothing." Nor could the General Will be delegated in any manner whatever. Any attempt to delegate it would mean its end. "The moment there is a master, there is no longer a sovereign." Here is Rousseau, the apostle of popular sovereignty.

Rousseau made a clear distinction between government and the sovereign people. He said that General Will could not be an executive will. The people, who were sovereign, ought not to be responsible for the details of government. Those who made the law should not carry it out, for it was the characteristic of the sovereign General Will that it must be impersonal, and the decrees of government might frequently be particular and

personal. Rousseau meant by government only the executive power. Law making was not a function of government but that of the sovereign. The people entrusted their executive power to their agent, the government. Government was, thus, only a subordinate authority; the result of the decree of the sovereign and not the creation of the contract. "There is only one contract in the State," emphasised Rousseau, "and this excludes every other."

Two consequences follow from this. First, that the power of government can be limited, modified or taken away by the people, the master, whenever they choose so. Secondly, as government is subordinate to the sovereign, the actual form of government is a matter of secondary importance to Rousseau. So long as General Will is sovereign it matters not what form of government it may be, though he was convinced that the States should be small so that, when necessary, all citizens could get together and make laws. "The larger the State the less the liberty." By "liberty" Rousseau obviously means not freedom from political control but freedom for political control; freedom to determine the course of legislation. Such a direct democracy is the only legitimate form of government, because only in such a constitution does each man "obey himself alone and remain as free as before." Rousseau regarded representative government as a specious form of slavery.

For Rousseau, law is not the will of a class, but the will of the whole nation. "This will," he said, "is to be discovered simply by asking the nation to meet together and declare it. Only when I actively assist in legislation am I really a citizen and genuinely free; and, since the fewer the citizens are the more weight my voice has amongst them." Rousseau believed in direct government by citizens, who should themselves, in public meetings, make the laws; without being betrayed by elected representatives. His choice of direct democracy among the forms of government was largely based upon the Swiss Cantons, which he knew, and the ancient City-States, of which he had read.

Law is, accordingly, an expression of the General Will, which is the will of the society for the common good. It, therefore, demands my respect. But the common good is also my good; and so, finally, in obeying the law I am pursuing my own best interests and achieving what I really will. "It is to law alone that men owe justice and liberty....It is the celestial voice which dictates to each citizen the precepts of public reason, and teaches him to act according to the rules of his own judgment, and not to behave inconsistently with himself."

Another important result of the contract is that life and liberty of each member of the community is secured and founded on the General Will of the society as a whole. Equality and liberty, Rousseau said, are ensured, because each individual makes a complete surrender of himself and all his rights to the community. While doing so, he receives his person and rights back again as indivisible part of the sovereign community. Rousseau said, "Since each gives himself up to all, he gives himself up to none; and as there is acquired over every associate the same right that is given up by himself, there is gained the equivalent of what is lost, with greater power to preserve what is left." Each individual, thus, has a dual capacity. He is both a member of the sovereign body, and a subject.<sup>30</sup>

<sup>30</sup> "Each individual contracting, so to speak, with himself, finds himself engaged under a double relation, namely, as a member of the sovereign towards the individuals, and as a member of the State towards the sovereign."



He is sovereign, as he himself is an integral unit of the community. He is subject, because he must obey the General Will and the General Will stands for public interest.

No individual can, therefore, justifiably disobey the General Will. The General Will, adds Rousseau, is infallible; it is always right and conducive to the public advantage. Moreover, by obeying the General Will the individual simply obeys himself as he himself is the creator of the General Will. Nor can the individual complain of any coercion. Real coercion, Rousseau says, never occurs in society. Even a criminal wills his own punishment. "In order then that the social compact may not be an empty formula, it tacitly includes the undertaking...that whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to be free....This alone legitimises civil undertakings, which, without it, would be absurd, tyrannical, and liable to the most frightful abuses." No act of the sovereign can, thus, be coercive. And how can it be coercive when the General Will is the repository of the interests and welfare of all. An individual can act capriciously when he wants something different from what the interests of the community demand. He does not, then, rightly know his own good or his own desires. Only the General Will can know it. Therefore, Rousseau repeatedly said that the General Will is always right. It cannot be wrong, because the General Will stands for the social good, which is itself the standard of right. "What is not right is merely not the General Will." In this way, Rousseau brought about a thorough submergence of the individual in the State. His emphasis throughout is that the real interest of the whole community must always be the real interest of each of us, even though it may not be our interest as we ourselves see it. This is what Rousseau means by complete surrender and he tried to prove, though not very successfully, that in making this complete surrender each of us is securing for himself the only true liberty. The State, to Rousseau, is a collective person, and "I obey it because only in so doing am I really myself, am I truly free." Freedom, in brief, is obedience to self-imposed laws. The law of the General Will is the highest law.

We now know a good deal about the General Will. It is the result of all men willing their best wills for the good of the State. It is sovereign, inalienable, indivisible, unlimited and one which cannot err. Yet we do not know how it is to be found and Rousseau himself can never tell us how we can be sure of finding the General Will. At times, he seems to suggest that the General Will is to be sought only when all unanimously agree, though he holds that the will of *All* is something very different from the General Will. The "will of all," he says, "is a mere total of selfish and casually coincident wills." At times, he implies that it is the majority will, though at other places he tells us that this can only be so "if all the characteristics of the General Will are still in the majority." At times, it appears that the residue left after cancelling out the differences expressed by all the citizens is to be regarded as the General Will. Rousseau is, thus, very vague in what he tells us about the General Will. "So much vagueness about something as important as the finding of the General Will," observes Wayper, "is to be regretted. Rousseau, who has told us so much about the General Will, has still not told us enough; indeed he has left us in such a position that nobody can be sure what the General Will is on any particular point."

Rousseau compared with Hobbes and Locke. Rousseau had drawn something from

Hobbes and something from Locke. In fact, he began with the method of Locke and ended with those of Hobbes. Both Rousseau and Locke agreed that man in the state of nature was free and happy. The need for a civil society was felt with emergence of certain disquieting affairs in the state of nature. For Locke these were the inconveniences as a result of uncertainty in the application of the law of reason, absence of a common judge to decide disputes arising therefrom, and absence of a common authority to enforce the decision. With Rousseau, increase in population and dawn of reason upon man were responsible for conflict of interests and strife in the state of nature. Formation of a civil society by means of a contract was deemed the only way out. Both Locke and Rousseau agreed that the fundamental social compact ought to have for its end and object the better preservation of the person and goods of every individual, that is, life, liberty, and property. Rousseau was also near Locke when he said that individuals surrendered their rights to the community; making people ultimately sovereign and a source of political authority. Both Locke and Rousseau made the distinction between the State and government, though Rousseau maintained that the institution of government was not the result of contract. Both believed that the contract did not remove the supreme power from the people.

Rousseau's "voice is the voice of Locke, but the hands are those of Hobbes." The influence of Hobbes upon Rousseau is, indeed, marked and singular. With Rousseau, as with Hobbes, the natural man in the state of nature was absolutely independent of others. The only difference between the two was that with Rousseau he was not at war with others, although eventually, when equality and happiness of the early state of nature was lost, Rousseau's mankind, too, went into a state of ceaseless warfare. Again, that there was only one contract by which each individual surrendered all his rights, and the authority of the sovereign to whom rights had been surrendered were strongly reminiscent of Hobbes. For Rousseau, it was the General Will which was sovereign; for Hobbes it was the King. But once Rousseau established the sovereign power in the General Will, he endowed it with as much absolute, unlimited, all-embracing, inalienable and indivisible powers as Hobbes had given to his sovereign monarch. Similarly, General Will, according to Rousseau, could neither be wrong nor unjust. It could even force the individual will to its own point of view. Are these conclusions not similar to those of Hobbes? The only difference is that in the case of Hobbes these are the attributes of a King, whereas with Rousseau they belong to the General Will and what this General Will precisely is, Rousseau remained throughout vague and indefinite about it. In any case, both Hobbes and Rousseau make man the plaything of the sovereign, no matter who the sovereign is, a King or the General Will.

**Evaluation of Rousseau's Theory.** Rousseau was the apostle of popular sovereignty and the secret of his political philosophy is found in the substitution for "a sovereign" of "the sovereign."<sup>31</sup> He justified revolutions against arbitrary rule and was the pioneer to preach the ideals of democracy. Sidgwick says that the characteristic of Rousseau's revolutionary doctrine of popular sovereignty is that it rests on three very simple principles: "(1) That men are by nature free and equal; (2) that the rights of government must be based on some compact freely entered into by these equal and independent individuals;

31. MacIver, R.M., *The Modern State*, p. 442.



and (3) that the only contract at once just to the individuals becomes an indivisible part of a body that retains an inalienable right of determining its own internal constitution and legislation—a sovereign people.<sup>32</sup> Rousseau brings into prominence the idea of consent and establishes once for all that will, not force, is the basis of the State. He also champions the cause of direct democracy by vesting the legislative power in the people. Rousseau's political teachings had a profound appeal for the fathers of the Constitutions of the United States of America and France. To quote Dunning, Rousseau's spirit and "dogmas, however disguised and transformed, are seen everywhere both in the speculative system and in the governmental organisations of the stirring era that followed his death."<sup>33</sup> Rousseau died in 1778.

But the main defect in Rousseau's philosophy is in his explanation of the General Will. He places no limit on the absolute power of the whole over its members. Rousseau, indeed, gives no option to the individual will against the General Will, which can neither be wrong nor unjust. Similarly, individuals cannot protest against the authority of the General Will. Law, according to Rousseau, is the expression of the General Will. If the individual suffers from punishment, say the death penalty, he is really a consenting party to his own execution as he is a part of that sovereign will which made the law under which he is condemned. Rousseau really tried to explain how government can be justified—how men can submit to it and yet remain free men and not slaves, and he thought he could do that by showing that government is a natural development in as much as it is only in the State that men fully realize their capacities. Here he was preaching something which is fundamentally true and important. But unfortunately Rousseau is often obscure, not always consistent, and there is a vein of mysticism running through his doctrine. He wrapped up the lesson he was trying to teach in a language that paved the way for totalitarianism. And totalitarianism is a hateful doctrine, whether the individual is asked to make complete surrender to a mystical entity called the General Will or to a personal leader like Hitler or Mussolini. Then, Rousseau does not differentiate between the State and society and fusion of the two is a handy weapon with Rousseau's admirers in totalitarian States to suppress the individual, his aspirations and his personality. Finally, Rousseau's advocacy of small States, with limited population, and his categorical condemnation of representative institutions present practical difficulties, a direct democracy offers no solution for the political ills from which a nation-State is believed to suffer.

### CRITICISM OF THE SOCIAL CONTRACT THEORY

The doctrine that the State originated in a contract was a favourite theme of political speculation during the seventeenth and eighteenth centuries. But in the nineteenth century it was subjected to a searching criticism. Even before the publication of Rousseau's *Social Contract*, Hume, the English philosopher, declared that contract as the basis of relations between the governors and the governed was incompatible with the facts of history. Jeremy Bentham said, "I bid adieu to the original contract, and I leave it to those

32. Sidgwick, H., *The Development of European Polity*, p. 390.

33. Dunning, W.A., *History of Political Theories from Rousseau to Spencer*, p. 39.

to amuse themselves with the rattle who could think they need it." Bluntschli characterised it "in the highest degree dangerous, since it makes the State and its institutions the product of individual caprice." Sir Henry Maine maintained that nothing could be "more worthless" than such an account of the origin of society and government as given by Hobbes.

As an explanation of the origin of the State the theory is now entirely discredited. The following points of criticism may be noted:—

Historically, the theory is a mere fiction. There is nothing in the whole range of history to show that the State has ever been deliberately created as a result of voluntary agreement. Nor can we suppose that man could ever think of governing himself when he lived under conditions of extreme simplicity, ignorance and even brutality by which the state of nature is characterized. The fact of the matter is that man can live only if he lives in society, and that he can live in society only if he accepts certain restraints on his freedom of action. These restraints are government in the germ. Society and State are natural institutions. It is man's social need which gives them existence and they continue to exist because of this need.

The example of the *Mayflower* compact of 1620 is very often cited in support of the theory of Social Contract. The Puritan emigrants to America, while they were still on board the ship *Mayflower*, drew up and signed a document which declared: "We...do, by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body-politic, for our better ordering and preservation." But this is not a correct example; nor can any other similar example be cited to hold a parallel to the formation of the State by men living in the state of nature. The Puritans emigrating to new lands were not ignorant of political institutions. They were born and had lived in the State and when they went out of it they were fully familiar with the nature of their political governance, and the rights and duties of a citizen in a politically organised society. What the *Mayflower* compact really meant was "merely the transplanting to new lands of political institutions by men already subjected to political authority." And the covenant they concluded did not mark the origin of a new State. They remained subjects of England even after setting up their body-politic. When the United States of America came into being by virtue of a solemn compact (the Articles of Confederation), the State had been familiar to them both as an idea as well as a fact.

The theory of Social Contract is, indeed, remote from actualities and completely oblivious of facts. Nothing like the state of nature had ever existed and even Hobbes himself, after discussing the state of nature, admitted that "it was never generally so." The most primitive peoples that the Anthropologists have described, lived under a regulative system of some sort and conformed to rigid customary modes of behaviour. It is quite unhistorical to suppose that such men would resort to a contract. The very idea of a contract belongs to a later stage of social development than the hypothesis demands. Primitive man did not possess that maturity of outlook which the making of a social contract presupposes. Moreover, the conditions of a contract also presuppose a system of law to support it.

The advocates of the Contract Theory hold individuals as making a contract for their



personal safety and the security of property. But history tells us just the other way. Early law was more communal than individual and the unit of society was not the individual but the family. "The family was the unit, property was held in common. Custom formed law and each man was born into his status in society.<sup>34</sup> Society has thus moved from *status* to *contract* and not from *contract* to *status*, as it has been maintained by the Contractualists. Contract is not the beginning, according to Sir Henry Maine, but the end of society.<sup>35</sup> In the primitive society birth determined the position of every man; it was not a matter of choice or voluntary arrangement. "He who is born a slave, let him remain a slave; the artisan, an artisan; the priest, a priest."<sup>36</sup> This is the command of status and we cannot imagine a slave having free choice to contract. If he has a free choice to contract, then he no longer remains a slave.

Even if it be granted that the State is the result of contract, commonsense will tell us that there are always two parties to the contract. There cannot be a one-sided contract, as was conceived by Hobbes. Moreover, every contract lapses after the death of one of the contracting parties. It cannot be made legally binding on the descendants of the original parties to the contract. Bentham remarks, "I am bound to obey not because my great-grandfather may be regarded as having made a bargain which he did not really make with the great-grandfather of George III, but simply because rebellion does more harm than good."

It is assumed by the Contractualists that men are equal in the state of nature. This assumption is incorrect. If status determined the position of man in the primitive society, then the natural inference is that inequality, rather than equality, existed in the state of nature. Nor can we accept human nature as it has been portrayed by the exponents of the Contract theory. The life of man may justly be described as a life lived in groups. And while living with others he is neither as bad as Hobbes, thinks, nor is he so good as Rousseau considers him to be. Both Hobbes and Rousseau have allowed their intellect to be carried away by their imaginations.

The conception of natural rights and natural liberty, as is said to have existed in the state of nature, is illogical and fallacious. Liberty cannot exist in the state of nature. Law is the condition of liberty. Without restraint liberty is nothing short of licence and a condition of licence is anarchy, pure and simple. The state of nature being pre-political and even pre-social, it was subject to no civil law. Rights, too, arise in a society and every right is accompanied by a corresponding obligation. If there is no society, we cannot think of rights. No rights existed before the State arose.<sup>37</sup> Finally, there can be no rights without a consciousness of common interest on the part of the members of a society and common consciousness was conspicuous by its absence in the state of nature. "Without common consciousness," writes Green, "there might be certain powers on the part of individuals, but no recognition of these powers by others as powers of which they allow

34. Gettell, R.G., *Introduction to Political Science*, p. 86.

35. Maine, Henry, *Ancient Law*, pp. 108-10.

36. Appadorai, A., *The Substance of Politics*, p. 36.

37. Green, T. H., *Lectures on Principles of Political Obligation*, with an introduction by A. D. Lindsay, p. 48. "Natural right, as right in a state of nature which is not a state of society, is a contradiction." Also refer to p. 66.

the exercise nor any claim to such recognition; and without this recognition or claim to recognition there can be no right."<sup>38</sup>

Even on a rational analysis, the theory of Social Contract can no longer be upheld. The relationship between the individual and the State is not voluntary. Each one of us must compulsorily belong to a State and the ties which bind men together are permanent. Each of us is born into the State; we are part of the State; and the State is part of us. Burke has aptly said that the State "ought not be considered as nothing better than a partnership agreement on a trade of pepper and coffee, calico or tobacco or some other such low concern, to be taken up for a little temporary interest and to be dissolved by the fancy of the parties....It is to be looked on with reverence....It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all-perfection. As the end of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living but between those who are dead and those who are to be born."

If the theory of Social Contract is accepted as the true origin of the State, it will make the State purely the handiwork of man, an artificial contrivance. But the State is neither the handiwork of man, nor the creation of God; nor the result of force. It is the product of growth and evolution and many factors enter into the process of its development.

Finally, the authors of the Contract Theory had no mind to trace the origin of the State. Their primary object was to establish the basis of political authority. Determined to prove certain results, they wove a web of their own and in a manner which suited their purpose and, thus, a contradictory theory has been presented as the origin of the State.

**Value of the Theory.** We reject, therefore, the doctrine that the State originated in a contract. At the same time, we cannot discount the practical value of the theory. It has the advantage of giving us perhaps the only sound assumption on which to build and maintain any system of political relationships. It insists upon the fundamental truth that no stable State can exist without the consent of its members, that it is they, and they alone, who make the State. It further emphasises that there is no State either before or without the people and that the State has no authority except that given to it by the people. The relationship of government to the governed is essentially one of contract or bargain as obedience is conditional on the government fulfilling its own part and doing that it is entitled to do by its Charter or Constitution and no more. The principle of consent, thus, became an important factor in the development of political thought and consequently it eclipsed the much talked of and, till then, widely accepted doctrine of the Divine Origin of the State. As Gilchrist points out, "the chief enemy to the Divine Theory was the Contract Theory." Both Locke and Rousseau declared in most unequivocal terms that the monarch derived his authority not from God but from the people and he could continue to remain in office only on the condition of good government. The Contract Theory, therefore, served a useful purpose in its time by combating the claims of irresponsible rulers and class privilege.

The Contract Theory has also helped in the development of the modern concept of sovereignty. Hobbes paved the way for Austin, the exponent of legal sovereignty; Locke

38. *Ibid.*, p. 48.



was the champion of political sovereignty; and Rousseau was the high priest of popular sovereignty. Rousseau also brought into prominence the ideal of direct democracy. Indirect or representative democracy lost much of its appeal after the end of World War I. New devices of popular participation in the work of government began to be advocated, and the referendum is merely a modified form of Rousseau's conception of inalienable sovereignty of the people. Furthermore, the modern theory of a clear separation between the State and government has really come to us from Locke. Finally, the Contract Theory raises the common man on the pedestal of political glory. The modern cry of equal right of voting for all citizens is the legacy of Rousseau's ideal of equal political rights.

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## 5

### CHAPTER

# Origin of the State (contd.)

## PATRIARCHAL AND MATRIARCHAL THEORIES

**Probable Origin in Family.** "The question of exact political origin is unanswerable in the present state of knowledge", says Professor F. H. Hankins,<sup>1</sup> and anything that is advanced is largely, if not entirely, the result of speculation. It seems, however, safe to hazard that the State is the product of history and the family being the most primitive of all human groups, it must have had the starting point in this primary and earliest social unit. "In the family, the primary social unit," says MacIver, "there are always present the curbs and controls that constitute the essence of government... which is the continuation by the more inclusive society of a process of regulation that is highly developed with the family. The same necessities that create the family create also regulation.... Here is the government in miniature, and already government of a quite elaborate character." It begins with marriage and inheritance, controls the simple economy, carries on the family worship, organises defence, arranges hunting and pasture, looks after the upkeep of shelter, of supplies. Thus, a family is held to be the simplest and earliest link in the evolution of the State and the control exercised by a father over the members of his family is supposed to represent the origin of human government. There are, however, some political thinkers who believe that the State is simply an enlargement of the family. But all differ among themselves on the essential question whether the primary unit in the prehistoric times was the family or the tribe, and from whom descent was traced.

**The Patriarchal Theory.** The foremost among such theories is the Patriarchal Theory which seeks to explain that the State is an enlargement of the family. Originally, the family consisted of a man, his wife and children. The father was the head of the family and his control and authority was complete in all respects over all its members. When his children married there was expansion in the original family and it led to the establishment of new families. But the authority of the father and head of the original family remained unabated as before, and it was duly acknowledged by all his descendants. This constituted a patriarchal family. In due course of time the patriarchal family expanded and developed into a clan. The members of a clan were bound to one another by ties of blood relationship, and all lived and functioned under the recognised authority of the senior living male member of the original family. A clan by its own expansion grew into

1. Quoted by Maxey in the introduction to his *Political Philosophies*.



a tribe. With the lapse of time many members withdrew from the parent tribe and settled in new lands in search of their living. This resulted, by virtue of the same process of development, in the founding of many new tribes. The tribes united by ties of blood relationship acted together for common purposes, particularly in defending themselves against the aggression of other tribes. This involved the recognition of some common authority under whose influence they could rally round. This is how the State has developed. Leacock, giving the process of this development, says, "First a household, then a patriarchal family, then a tribe of persons of kindred descent and finally nation—so emerges the social series erected on this basis."<sup>2</sup>

Aristotle believed that the State took form as a natural expansion of the family. A society of many families, he observes, "is called a village, and a village is most naturally composed of the descendants of one family, the children and the children's children, for which reason States were originally governed by kings, as the barbarian States now are, which are composed of those who had before submitted to kingly government; for every family is governed by the elder, as are the branches thereof, on account of their relation thereunto....And when many villages so entirely join themselves together as in every respect to form but one society, that society is a State, and contains, in itself, if I may so speak, the end and perfection of government."<sup>3</sup> According to Aristotle, the State makes its appearance as a kinship group an outgrowth of the family; and the authority of the earlier kings is derived from the authority of the head of the family.

**Sir Henry Maine's Patriarchal Theory.** The chief exponent of the Patriarchal Theory is Sir Henry Maine, at one time Law member of the Governor General's Executive Council in India. He elaborated his theory in his *Ancient Law* (1861) and *The Early History of Institutions* (1874). Maine went deep into history and derived his evidence regarding "the rudiments of the social State" from three sources—from "accounts by contemporary observers of civilisations less advanced than their own," from "the records which particular races have preserved concerning their primitive history," and from "ancient law."<sup>4</sup>

Maine maintained that society in primitive times was "in fact, and in the view of the men that composed it... an aggregation of families," and not a collection of individuals. The unit was the family and the ancient law was so framed as to recognise the patriarchal or family groups as perpetual and inextinguishable entities.<sup>5</sup> The eldest male parent—the eldest ascendant—was absolutely supreme in his household and his domination extended "to life and death, and is as unqualified over his children and their houses as over his slaves."<sup>6</sup> Over them he possessed despotic authority. He was not only absolute owner of property, including even what his children had acquired, but he could chastise and even kill, could sell or transfer by adoption, could marry or divorce any of his children at will. With the breaking up of the single families more families emerged, but all were held

2. Leacock, S., *Elements of Political Science*, p. 38.

3. *Politics*, pp. 1-2.

4. *Ancient Law*, p. 120.

5. *Ibid.*

6. *Ibid.*, pp. 123-24.

together under the authority of the head of the first family. This was the beginning of the tribe. Many members of a tribe withdrew and settled in new places. Such withdrawals led to the growth of new tribes.<sup>7</sup> These tribes, still united by kinship, acted together for common purposes and ultimately formed a State. Maine, thus, outlines this process of development: "The elementary group is the family, connected by common subjection to the highest male ascendant. The aggregation of families forms the Gens or Houses. The aggregation of Houses makes the tribe. The aggregation of tribes constitutes the commonwealth."<sup>8</sup>

The following important points may be noted in Maine's theory:—

1. In the patriarchal family the element of paternity was the chief fact.
2. Descent was traced only through males and from the same ancestor. None of the descendants of a female was included in the primitive notion of family relationship. Kinship was, accordingly, purely agnatic.<sup>9</sup>
3. Permanent marriage was the rule, whether monogamy or polygamy.
4. The head of the family was the basis of all authority, and his power was unqualified over his children and their houses and other relations of all descendants, howsoever numerous.
5. He controlled not only the business affairs of the group which he headed, but its religion and its conduct.

The family was the primal unit of political society, "the seedbed of all larger growths of government," as Woodrow Wilson calls it.<sup>10</sup> Over the family the patriarch ruled with autocratic power. By virtue of the *patria potestas*, the flocks and herds of his sons belonged to him, and his domination extended to life and death, being as unqualified over his children and their dependents as over his slaves. But with the birth of new generations, a change occurred. The family shell was broken, because there was no longer any living male ancestor, a grandfather or great-grandfather, who could claim patriarchal authority over the whole group and maintain family cohesion. The single family had developed into several families; yet all of them were fully conscious of their ultimate kinship. Bound together by ties of common blood, and worship of the common ancestors, they associated in a wider common fellowship group, the *gens*, owing allegiance to some elected elder—perhaps the oldest living ascendant or the most capable. Similarly, the *gens* broadened into the tribe. The pastoral pursuits gave way to agriculture and settled life on a definite land became a matter of necessity; tribes united to form the State.

In support of his statement, Sir Henry Maine cited the Patriarchs of the Old Testament, "families" and "brotherhoods" of Athens, the *patria potestas* in Rome, and the Hindu joint-family system in India. To this may be added particularly the tribal system of the North-West Frontier of Pakistan. The Patriarchal Theory, thus, adopting the family as the unit and supposing "the headship bequeathed from one chief to another, by easy stages transforms the father into the chief or the king, and the family into a civil community." The Patriarchal Theory has during recent times received the unequivocal support of

7. *Ibid.*, p. 138.

8. *Ibid.*, p. 128.

9. *Ibid.*, pp. 145-48.

10. *The State*, p. 15.



Duguit, another jurist, but a French national. Duguit maintains that the father "is the natural chief, the governor of the little state of which the members of the family are the governed. The ancient city was merely a union of families in which political power belonged to the father."

**Criticism of the Theory.** In the decade that followed the publication of Sir Henry Maine's *Ancient Law*, the Patriarchal Theory was subjected to severe attacks. McLennan and others denied Maine's claim that the patriarchal family was the earliest and original unit. There was no group in the primitive past, they urged, with a male at its head. The Matriarchal system was prior to the patriarchal system and tribe rather than family was the earliest unit of society. There was no permanent institution of marriage, they argued. A woman married more than one husband and because of the uncertainty of male parentage kinship was reckoned through women, that is, from mother to daughters. The patriarchal family developed in the later phase of human civilisation.

The early forms of social organisation, it has been maintained, were not so simple as the Patriarchal Theory tries to establish. Sir J. G. Frazer, in his classic work: *The Golden Bough*, warns that "he who investigates the history of institutions should constantly bear in mind the extreme complexity of the causes which have built up the fabric of human society, and should be on his guard against a subtle danger incidental to all science—the tendency to simplify unduly the infinite variety of the phenomena by fixing our attention on a few of them to the exclusion of the rest..."

It is, also, suggested that the theory does not offer an adequate explanation of the origin of the State. It is, in fact, just a speculation into the beginnings of the early society, particularly the family. Gilchrist says, "The patriarchal theory is one of the simplest explanations of the origin of the State, but one of its chief weaknesses is this very simplicity..."

**The Matriarchal Theory.** McLennan, Morgan and Jenks are the notable exponents of the Matriarchal Theory. They reject outright the proposition that the patriarchal family was the earliest form of society. Their thesis is that in primitive society there was no common male head. Kinship could only be traced through mother, *matriarch*, and the way of life was a horde or totem group.

The advocates of the Matriarchal Theory maintain that patriarchal family is possible where either the monogamous or the polygamous institution of marriage exists. Such an institution of marriage did not exist in the beginning of society. The earliest form of marriage was polyandry, one wife having several husbands. Wherever such an institution of marriage is present, the usual relations of husband and wife do not exist. Instead of a family composed of a man, his wife, and children there is a large and loosely connected group called a "horde" or "pack" organised for matrimonial purposes. In such a condition of society promiscuity of sexual relations prevails and kinship is traced through females and not males. McLennan shares with Morgan "the credit of having discovered the clan, a maternally organised, hereditary and unilateral unit, unilateral because children trader this system belonged to the clan of their mother, without regard to the clan of the father."<sup>11</sup> The father belonged to a clan different from his wife's, owing to the existence

11. Merriam, C.E., and Barnes, H.E. (Eds.), *A History of Political Theories, Recent Times*, p. 435.

of the custom of exogamy—the practice of marrying only outside one's own clan or tribe. Jenks illustrated his proposition from the conditions existing among the natives of Australia and the Malaya Archipelago. He says, "It is the custom to speak of Australian and other savages as living in tribes;... it would really be better to call it the 'pack' for it more resembles a hunting than a social organisation. All its members are entitled to share in the proceeds of the day's chase, and, quite naturally, they camp and live together... but the real social unit of the Australians is not the 'tribe' but the *totem group*... The *totem group* is primarily a body of persons distinguished by the sign of some natural object, such as an animal or a tree, who may not intermarry with one another. 'Snake may not marry snake. Emu may not marry Emu.' This is the first rule of savage social organisation.... The other side of the rule is equally startling. The savage may not marry within his totem, but he must marry into another totem specially fixed for him. More than this, he not only marries into the specified totem, but he marries the whole of the women of that totem in his own generation...."

The fundamental features of this society are:—

1. transient marriage relationships;
2. kinship is traced through females;
3. maternal authority is an established fact; and
4. only females succeed to property and power.

J.J. Bachofen, a Swiss writer, who is mainly responsible for tracing the origin of the Matriarchal Theory, held that in primitive society not only descent was traced through mother and property passed in the female line, but women also "played a conspicuous, in fact, dominant, role in body-politic."<sup>12</sup> His first stage of social evolution was one of chaos and sexual promiscuity, then followed the matriarchate, women having grown weary of lawlessness and with the help of religious superstition, having imposed their rule; but in time men found the matriarchal authority unendurable and, asserting their superior physical strength, introduced the patriarchate. Jenks contradicted Sir Henry Maine's statement that family expanded into houses and houses into a tribe. He affirmed that the process of development was just the other way. The Matriarchal Theory, thus, "derives the smaller from the larger group, not the larger from the smaller."<sup>13</sup> The following is the process of development of matriarchal society:—

1. First there is a tribe and it is the oldest and primary social group.
2. In time a tribe breaks into clans.
3. Clans in their turn give place to households.
4. At last, comes the modern family.

It is needless to go into details of the stages in this evolution. The individual family, however, came into existence when men began to lead a pastoral life. Pastoral occupations necessitated keeping of domestic animals. Women, it came to be realized, were the best to tend sheep and cattle while men employed themselves in more arduous tasks. This led to the growth of permanent houses and permanent marriages, either monogamous or polygamous. It is in this way that family came into existence. The patriarchal family,

12. *Ibid.* p. 434.

13. Maine, H., *Early Law and Custom*, p. 220.



emerged only when men adopted settled pastoral and agricultural habits in place of the wandering or hunting life of a primitive man.

**Criticism of the Matriarchal Theory.** That such a system of tribal relationship existed in the past and exists today is beyond doubt. Even Sir Henry Maine, in a later treatise, admitted the importance of a good deal of McLennan's evidence and he restated his theory in view of this evidence. Polyandry persists even today in some parts of the world including India.<sup>14</sup> But there is no adequate proof in support of the matriarchal system as the universal and necessary beginning of society. Moreover, woman is the instrument of transmission. Nature has not made her to play an active part and being physically weak she must be dominated by the sex which is physically superior to her.<sup>15</sup> The Matriarchal Theory, therefore, cannot replace the Patriarchal Theory. The truth seems to be that history provides parallel examples of both the patriarchal and matriarchal systems and we can only conclude by agreeing with Stephen Leacock that "here the matriarchal relationship, and there a patriarchal regime, is found to have been the rule—either of which may perhaps be displaced by the other." Nonetheless, both the theories sufficiently establish that family is the original link in the evolution of the State.

Patriarchal and Matriarchal Theories are in essence sociological rather than political theories, seeking really to explain the beginning of human society and the process of its development. Even the point from which their authors start may not be a starting point. It is probable that centuries might have intervened between the actual beginning of mankind and the most archaic society about which we are told by the advocates of the Patriarchal and Matriarchal theories. Then, the nature of the family and the State are different; in their organization, functions and purpose. Willoughby says, "It would not be true to say that the State has developed out of this small unit (family). The two institutions are different in essence. In the family the location of authority is natural. In the state it is one of choice. Subordination is the principle of the family; equality that of the state. Furthermore, the functions or aims of the state are essentially different from, and even contradictory to, those of the family."<sup>16</sup> According to Willoughby, the Patriarchal and Matriarchal theories are "social rather than political hypotheses." One may not agree with this point of view, yet it is not sufficient to say that the State is the enlargement of the family despite the fact that the germ of government may be found in the family discipline.

### THE HISTORICAL OR EVOLUTIONARY THEORY

We have so far discussed five theories in explanation of the origin of the State, but no single theory offers an adequate explanation. The State is, as Garner said, "neither the

14. According to information available from official sources in India, polyandry is prevalent in the districts of Kangra, Lahaul, Spiti, Kinnaur and Renuka tehsils in Sirmur district in Himachal Pradesh, in Tehri-Garhwal and Uttar Kashi districts in Uttar Pradesh. It is also practised by the Jaunsaris in Dehra Dun district, Maravas, Harijans and Dhobis in Tiruchirappalli; Oddars Bayans, Arundadiars and Uppiliars in Salem district in Tamil Nadu (formerly Madras), and by Muslims in Chandernagore, West Bengal. Recent investigation revealed that it still exists in the Bhurthala Mandav village, in Sangrur district in Punjab.

15. Refer to R.M. MacIver, *The Modern State*, p. 29.

16. Willoughby, W.W., *The Nature of the State*, p. 20.

handiwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family." It is an institution of natural growth which originated in the bare needs of the life of man and continues in existence for the sake of good life. The theory which explains, and is now accepted as a convincing origin of the State, is the Historical or Evolutionary Theory. It explains that the State is the product of growth, a slow and steady evolution extending over a long period of time and ultimately shaping itself into the complex structure of a modern State. Burgess has aptly said that the State is a "continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organisation of mankind."

It is difficult to say how and when the State came into existence. Like all other social institutions, it must have emerged imperceptibly, supported by various influences and conditions. Apart from the influences of physical environment and geographical conditions, there are five important factors which made men to aggregate at different places and separated one group from another, thereby paving the way for the rise and growth of the State. These important factors are:

1. Kinship;
2. Religion;
3. Property and defence;
4. Force;
5. Political consciousness.

It must, however, be remembered that not any one of these influences has worked in isolation from others in the process of State building. They operated in various combinations, each playing its part in creating that unity and organisation that the State requires.

1. **Kinship.** The earliest form of social organisation was based upon blood relationship and kinship was the first and the strongest bond of unity. What bound people together and made them cohere into a group was the belief in common descent and the earliest and closest unit of kinship was the family. It is, of course, a disputed point whether tribe, group or family came first, yet it cannot be denied that family constituted the first link in the process of the evolution of the State, and government must have begun in a clearly defined family discipline; command and obedience. Even the advocates of the Matriarchal Theory ultimately veer round to the family and recognise the authority of the patriarch.

With the expansion of the family arose new families and the multiplication of families led to the formation of clans and tribes. Throughout the process of this evolution sanction of kinship was the only factor which bound the people together. Persons unconnected by ties of blood, unless admitted into the tribe by adoption, were deemed strangers and treated as enemies. The name of the common ancestor was the symbol of kinship. The "magic of names," as MacIver sums up, "reinforced the sense of kinship, as the course of generations enlarged the group. The blood bond of sonship changed imperceptibly into the social bond of the wider brotherhood. The authority of the father passed into the power of the chief. Once more under the aegis of kinship new forms arose which



transcended it. Kinship created society and society at length created the state."<sup>17</sup> The origin of the political activity of man is, therefore, embedded in Aristotle's cogent remark that man is a social and political animal.

It is, then, clear that the germs of government must have begun in clearly defined family discipline and the patriarch evoked respect and obedience to authority. The authority of the father of the family over its members was complete, absolute and undisputed. The patriarch, who afterwards became the tribal chieftain, combined unto himself religious, administrative, judicial and military powers. This is the evidence of history.

**2. Religion.** Closely connected with kinship, as a factor in State-building, is religion. Kinship and religion in the primitive society were two aspects of the same thing and both acted simultaneously in welding together families and tribes. "Religion was the sign and seal of common blood, the expression of its oneness, its sanctity, its obligation."<sup>18</sup> When the bonds of kinship steadily weakened with the expansion of the family into the gens, the clans and the tribes, a common form of worship reinforced the sense of unity and respect for authority.

The primitive religion evolved from animism to ancestor-worship. The early man was surrounded by natural phenomena which he could not understand. He looked towards natural forces, such as storms, thunder and lightning, clouds and wind, the sun, moon and stars with awe and reverence. The changing seasons and the birth and death of vegetation made him stand aghast. To his innocent mind and uncultivated intellect the mystery of death and other psychological problems, like sleep, dreams and insanity, were insoluble. He interpreted all such phenomena as manifestation of some supernatural power. What he could not understand, he began to worship. He "saw God in clouds and heard him in the wind." Under such conditions emerged two forms of religion, worship of nature, and worship of ancestors. The hallowed ceremonies of ancestor worship were conducted at the family altar. There the living came into the presence of their great dead, the spirits of the departed, who exercised power to evil as well as to good and who must be appeased by the meticulous performance of sacred rites. In this way, came to be established a family of deities around which abundant traditions and myths came to be formed.

Ancestor-worship, thus, strengthened the bonds of family union which eventually contributed to the solidarity of the tribe. But these bonds were only local in character. When tribes expanded by incorporation or conquest, kinship and ancestor-worship proved weak ties of union among the diverse people spread over extended territory. Common belief in gods and deities, or worship of nature became the cementing bond of affinity and comradeship among such people, although remnants of the old family worship and legends of tribal heroes still formed a common national religion that served as a sanction of government and law. The sanction of law in primitive society was religion and, as it was the terrible aspect of religion that appealed to primitive minds, the breaking of law was followed by terrible punishment. This is how the relation of command and obedience, which was natural in family relations, was definitely established by religion.

17. MacIver, R.M., *The Modern State*, p. 35.

18. Woodrow Wilson, *The State*, p. 15.

Side by side grew up superstitions and magical customs. In primitive communities magical rites and incantations were practised both privately and publicly. Anyone who could propitiate the spirits, began to acquire commanding importance and unique influence. He was looked upon with awe and reverence and all bowed to his authority, since none could dare incur the wrath of the magic-man. The sorcerer became the leader and it is here that we witness the emergence of magician-kings. From magician the step to chief or king was simple. Magicians gave way to priests, when people had lost faith in the spirits and the power of magic. The priests, too, came into eminence in the same way as the magicians. The evidence available sufficiently shows that early kings were priest-kings, combining the duties of ceremonial observances and secular rule. The rise of the magician and of his kingly successor has been the special thesis of Sir James G. Frazer. According to Frazer's theory, the first form of tribal government was the gerontocracy or council of old men, representing the various families constituting the tribe. Their control over the tribe was perfect and complete as they alone were deemed to be familiar with the secret mysteries of the tribal religion, and they alone were considered eminently competent to know all that could be known about the spiritual world. Out of the council of elders emerged the magician, "a resolute and ambitious man, a clever and unscrupulous man, who pretended to extraordinary powers of divination and sorcery. The fertility of the soil, rain or drought, the success or failure of crops seemed to depend more upon his incantations and rituals than upon human effort. His influence, especially among an agricultural people, assumed enormous proportions. The magician eventually made himself priest-king."

Briefly, the value of religion in the evolution of the State can hardly be denied. In primitive society religion and politics were inextricably mixed up. Religion not only helped the unification of political communities, but it was religion alone which was responsible for subordinating barbaric anarchy and for teaching reverence and obedience. The importance of religion, as a force in the evolution of the State, was not limited to the earliest States alone. In Afghanistan religion has, even now much to do with politics. Islamic law is a force behind Pakistan, the Islamic Republic. Twenty-three Muslim theologians of Pakistan jointly pronounced a verdict (*fatwa*) against the election of a woman as the President or Khalifa of an Islamic State,<sup>19</sup> when Miss Fatima Jinnah<sup>20</sup> declared her intention to oppose President Ayub Khan in the Presidential election in 1964. Although a secular State, yet in India, too, religion still plays an important part in the political life of the country. India's political life is demarcated more on religion than on political issues. The legacy of religion in the political life of the country is found even in Britain as in the religious coronation of Kings or Queens and "the still-half-consciously lingering view of law and of State commands as something sacred." The tradition of the divine origin of political power dies hard.

**3. Property and Defence.** In order to understand the origin of the State and government we must observe how the kinship group earned its living. "The basic factor in any given society," says Laski, "is the way it earns its living all social relations are built upon

19. *The Statesman*, New Delhi, Sept. 30, 1964.

20. Sister of M.A. Jinnah, the architect of Pakistan.



provision for those primary material appetites without satisfying which life cannot endure. And an analysis of society will always reveal the close connection between its institutions and culture and the methods of satisfying material appetites. As these methods change, so also will the institutions and culture of the society change .... Changes in the methods of economic production appear to be the most vital factor in the making of changes in all other social patterns we know. For changes in those methods determine the changes of social relationships; and these, in their turn, are subtly interwoven with all the cultural habits of men.<sup>21</sup> The key to social behaviour must, therefore, be sought in the economic system.

Among primitive peoples there were successive economic stages that marked the growing importance of property and that brought about corresponding changes in social organisation. The three economic stages are the huntsman stage, the herdsman or pastoral stage and the husbandman or agricultural stage. They are universal stages in the sense that groups generally passed from the one to the other, from lower to higher.

The huntsman led a miserable existence, moving about in quest of game and of wild berries or roots. He had no property except the crude weapons and tools. It was a condition of primeval savagery and escape came through the domestication of wild animals. The domestic animals, originally kept as pets, proved a good way to provide against future periods of scarcity. Still later, it became apparent that the animals were useful for other purposes besides supplying meat in times of privation. The horse provided rapid means of movement, the cow provided milk and the sheep wool. He had also come to know that his flocks and herds could be vastly increased by systematic breeding. A huntsman became a herdsman and flocks and herds became his wealth. Simultaneously, other forms of property, for example, improved clothing, weapons, and domestic utensils, appeared.

Whatever may have been the earlier form of the family, pastoral life, which is marked with substantial property interests, increased the social dominance of the male.<sup>22</sup> It strengthened, if it did not create, the patriarchy. The patriarch exercised absolute control over the family, and over all its property. When the family expanded into the gens and the tribe, the patriarchal discipline prepared the way for tribal government. Property introduced all sorts of complications. There must reside sufficient power with the tribal authorities to settle property disputes between different families, and to regulate and safeguard the rights of ownership. Thus, the gradual increase of property entailed a corresponding intensification of social control. Tribesmen, who were accustomed to giving unquestioning obedience to their respective family heads, accepted the authority of the Council of Elders and of the chieftain who rose out of the Council.

At the same time, organised force was needed to repel the plundering raids of adjacent tribes. Concerted action for common defence against the hostile designs of others strengthened the solidarity of the tribe and increased the authority of the tribal organisation.

21. Laski, H.J., *The State in Theory and Practice*, p. 91.

22. Refer to R.M. MacIver, *The Modern State*, p. 31. According to him, the relatively settled pastoral life "accorded with, and in a sense, made necessary, the patriarchal family." He believes, as some others do, that the matrilineal family preceded the patrilineal. Property brought about the change.

The saying "war begat the king" is, according to Gettell, "at least a half truth, since military activity was a powerful force, both in creating the need for authority and law, and in replacing family organisations by system purely political." These conditions called for individual leadership. Some member of the Council of Elders or patriarchs, whose personal qualities, such as, military prowess, knowledge of human nature, oratorical capacity, with or without the assistance of religious superstitions, pushed his way to the front and raised himself far above his peers in prestige and influence. Tribesmen rallied round him and he was recognised as the chieftain. Since the qualities of leadership were likely to be inherited, the office of the chieftain became attached to a particular family and was transmitted like other forms of property. Generally, it passed on to the eldest member of the family, though, in times of unusual stress, when war or domestic violence threatened, the office went not to the eldest, but to the most competent of the chiefly lineage.

The institution of private property and its systematic development, thus, brought the nomadic herdsman to the threshold of the State. The State must possess the element of territoriality. Although the pastoral tribes confined their wanderings within roughly determined geographical limits, they were still nomads. The State came into existence when the people became permanently territorially settled.

The territorial State did not appear until population began to press upon subsistence. The herdsman needed much more land than the husbandman. As the pastoral tribe grew in numbers and flocks and herds multiplied, one of the two courses became imminent to follow: either new land might be acquired by migration or the old land put to more productive use. Fertile pastures, when brought under cultivation, could support a bigger population, and the tribesmen had long been experimenting with agriculture, with as crude methods as their tools. Rather than leave the region to which they had become attached, they supplemented their prevailing pastoral economy with the rudiments of agriculture. Gradually the herdsman became husbandman. The transition took place slowly, as, "by trial and error or by the imitation of some neighbouring agriculturists the methods of tillage are improved and their potentialities realised." When a pastoral kinship group settled on the land, the State began. The group had already set up a government; it acquired territoriality as well. The three elements of the State are: people; government and territory. When three had been attained, search for the fourth, sovereignty, followed.

Along with the new system of production, that is, agriculture, came great social changes. The first was, sharpening of class distinctions with the unequal distribution of wealth. The rise of social classes occurred in pastoral society and they were perpetuated in agricultural society. Besides nobles and commoners, there were slaves. When one tribe attacked the other, the captives were no longer killed and perhaps eaten. The pastoralist had plenty to eat, but felt the need of supplementing the labour resources of the family to care for the expanding herd and to protect it from beasts of prey and human marauders. He invented slavery as a substitute for cannibalism.<sup>23</sup> It was a beneficent invention and in the agricultural society systematic resort was made to slavery.

4. **Force.** The new system also placed a great emphasis upon military life, first for

23. Oppenheimer, R., *The State*, p. 37.



defence, then for conquest. It is often contended that the State began in conquest when the herdsmen conquered the husbandmen or peasants. The conquest theory is favourably received by the Sociologists. Oppenheimer, the most prominent advocate of this theory, maintains that "the cause of the genesis of all States is the contact between peasants and herdsmen, between labourers and robbers, between bottom lands and prairies."<sup>24</sup> The conquest theory does not explain the origin of the State. But the part played by warfare in moulding political institutions at any stage of human development cannot be discounted, more so in a primitive society. Private property, in the form of flocks and herds, afforded a strong incentive to looting, which in turn had to be checked by systematic defence and punitive expeditions against hostile tribes. Concerted action for common defence and chastisement of the warring tribes created the dire need for military leadership which was an important factor in creating the chieftainship and strengthening its powers. The office of the chieftain became hereditary and consequently it led to the establishment of the monarchy. Yet, the emergence of the State, as MacIver says, and he is supported by the weight of evidence, "is not due to force, although in the process of expansion force undoubtedly played a part."<sup>25</sup>

**5. Political Consciousness.** The last is political consciousness arising from the fundamental needs of life for protection and order. When the people settle down on a definite territory in pursuit of their subsistence and a desire to secure it from encroachment by others, the need for regulating things and persons is felt imminently and this is the essence of political consciousness. It is doubtful whether there was ever a conscious expression for such a need. But there is no denying the fact that the institution of private property and the requirements of self-defence, both from within and without the tribe, and consequently the emergence of military leadership was probably the first distinctive political authority to which the people ungrudgingly submitted. This military leader commanded the confidence of his people and he established some sort of political organisation, i.e., government, to meet the needs of protection and order. In some such way the State arose. People, territory, government and independence from others or sovereignty, as we describe it now, had come in.

Much of this, which we present as a regular process, was, of course, very slow and confused. The course of events must have also varied with the character and circumstances of each people. All the same, the spirit of organisation, as Woodrow Wilson says, "is natural twin born with man and the family." In its simple and rudimentary form germs of governmental organisation were found in the family discipline. Religion reinforced family discipline and gradually created the wider discipline necessary for the existence of the State. Custom was the first law and there was a religious sanction behind every custom and the magicians who controlled religious sanctions were more powerful than any agent of political authority. When human wants, economic, social and political, increased through the combination of diverse circumstances and conditions, the State territorially established and forming a distinct group of people independent of others.

24. *Ibid.*, p. 45.

25. *The Modern State*, p. 222. Similarly, Sir John Seeley considers conquest as the means, not of originating the State, but producing a new and abnormal type of State, which he calls "inorganic"—*Introduction to Political Science*, pp. 73-75.

became more complex in form, more universal in its range of activities, more indispensable to the needs of mankind. The distinction we now make so carefully between the State and society is of comparatively recent origin. In fact, a double process had been at work through all these centuries: one by which the State takes over powers hitherto enjoyed by society, and the other by which it abandons to society powers it no longer needs.

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## 8

## CHAPTER

# Sovereignty

We have said that what differentiates membership of the State from that of other associations is its compulsory nature and the fact that all other organizations and activities within the frontiers of the State are, in the last resort, subordinate to it. The State issues directions and it also enforces them, if necessary, by employing armed force. "The modern State," says Laski, "is a territorial society, divided into Government and subjects, claiming within its allotted physical area, supremacy over all other institutions." Sovereignty is the most important constituent element of the State and there can be no State without a Sovereign power. "The basis of State sovereignty," to quote Laski again, "is the contingent power to use the armed forces of the State to compel obedience to its will....And it is the possession of this legal right to resort to coercion which distinguishes the government of the State from the government of all other associations." How essential that control is to the State's effective power is one of the clearest lessons of history.

There are two aspects of sovereignty: internal sovereignty and external sovereignty. Internal sovereignty refers to the presence in every independent State of some person, assembly or group which has the final legal power to command and enforce obedience to its authority. This supreme authority is absolute over all individuals or associations of individuals within the State. It issues orders to all men and all associations within that area but it receives orders from none of them.<sup>1</sup> Its will is absolute and it is subject to no legal limitation. "What it proposes is right by the mere announcement of intention."<sup>2</sup>

By external sovereignty we mean that the State is subject to no other authority and, consequently, is independent of any compulsion or interference on the part of other States. If its authority is subject to the provisions of any treaty, or if it is limited by the rules of international law, the sovereign status of the State is not destroyed in any way. These are auto-limitations and are obeyed at the will of the State. There is no other authority which can coerce it into obedience. Each State is independent of other States. Its will is its own, unaffected by the will of any external power.

It follows that the sovereignty of the State is unlimited internally as well as externally.

1. Laski, H.J., *A Grammar of Politics*, p. 44.

2. *Ibid.*



It is original and absolute power and it cannot be divided. Division of sovereignty means destruction of sovereignty. Sovereignty represents the unity of the State, and the sovereign State is one which is externally free and internally supreme. The authority exercised by various organs of the State, that is, government, is delegated. Gettell has aptly said: "If Sovereignty is not absolute, no State exists, if sovereignty is divided, more than one State exist. There can be no legal power at the back of the sovereignty of the State and no legal check on its scope."<sup>3</sup>

**Definitions of Sovereignty.** Definitions of sovereignty, like definitions of the State, are many and varied. Bodin defined it as the "supreme power over citizens and subjects, unrestrained by law." Hugo Grotius defined it as "the supreme political power vested in him whose acts are not subject to any other and whose will cannot be overridden." Duguit says that sovereignty is the "commanding power of the State; it is the will of the nation organised in the State; it is the right to give unconditional orders to all individuals in the territory of the State." Burgess characterised it as "original, absolute, unlimited power over the individual subject and over all associations of subjects." He further says that sovereignty is "the undervived and independent power to command and compel obedience." The sovereign is "legally supreme over any individual or group," says Laski, he possesses "supreme coercive power." Sovereignty, according to Jenks, is "an authority which, in the last resort, controls absolutely and beyond appeal the actions of every individual member of the community."

#### TERM SOVEREIGNTY AND ITS DEVELOPMENT

**Origin of the Term.** The term sovereignty is derived from the Latin word "superanus" which means supreme. The notion of sovereignty, as suggesting the supreme power in a territory, is modern and its emergence is connected with the rise of the modern nation-State. But it does not mean that the ancient and medieval ages had no idea of such a notion. For the ancients it simply meant "statement of the fact that there must be an ultimate control, someone with the last word in any case of dispute, able to make final adjustments in the sharing of responsibility and power; and that the State, and no other social force, must exercise this final authority." Creon says in Sophocles's tragedy *Antigone*, "Whatever the State appoints must be obeyed in everything, both small and great, just and unjust." Plato and Aristotle recognised the presence of the "supreme power" in the State and emphasised the respect for State authority; the finality of law. Aristotle claimed for the State a natural priority to the family and the individual. The Roman lawyers and the medieval writers spoke of "fulness of the power of the State."

The Middle Ages knew nothing about the doctrine and practice of concerted final authority. The political form, then, was feudalism, based on personal dependence and allegiance within many small groups. Feudalism was the antithesis of unified authority. There was open conflict between the Spiritual and Temporal authorities and if anybody, under the circumstances, could claim final authority, it was the Church and not the State.

3. Gettell, R. G., *Introduction to Political Science*, p. 95.

Moreover, peoples' firm belief in the laws of nature or God and the sanctity which was attached to such laws over man-made laws retarded the growth of the modern idea of sovereignty. Summing up the nature of sovereignty in the Middle Ages, Ward says, "The authority of Feudalism and the belief in the law of God or nature superior to the human law made impossible the modern idea of the unlimited and indivisible sovereignty of the State over all citizens."

The religious wars of the sixteenth century destroyed the unity of the Church and on the ruins of this destruction was built the modern State. The triumphant monarch either gradually destroyed or absorbed all possible rival intermediaries between himself and his subjects, including the Church. Sovereignty came to be regarded as one of the essential attributes of the State, incarnate in the king, the head of the State. His authority was final to define and pronounce the law. The emergence of the modern State, thus, gave a new meaning to the term sovereignty. The struggle which gave rise to the conception of sovereignty was undertaken and sustained by the monarch himself in order to establish his personal independence. To the victor belonged the spoils of war.

**Bodin and Hobbes.** The new reality of sovereignty of the State was given its philosophical justification by a Frenchman, Jean Bodin, and an Englishman, Thomas Hobbes, each writing during the full agony of the civil and religious wars of his country, the former at the beginning and the latter in the middle of the seventeenth century. Both Bodin and Hobbes defended the need for one single unified authority, which should be accepted by all and against which no group or individual could raise the objection of any earlier rights to independence or resistance. Rights were what the State granted, compatible with the unity of the State and keeping of peace and order within it. There could be only one power within the community, they urged, which could not be limited, or divided and shared. Bodin's sovereign was, however, subject to four limitations. Firstly, as the king did not possess supermundane sovereignty, God was above him. Secondly, the supreme power of the king over his subjects was "subordinated" to "the law of God and nature," that is, to the requirements of the moral order. Thirdly, the French King could not modify the succession or any part of public domain, and, finally, the king could not touch private property. But these limitations, Bodin maintained, did not limit the power of the king over the body-politic. His assertion that the Prince was the image of God meant that he was a sovereign living person and his authority transcended the whole political community just as God transcended the cosmos. He said either sovereignty meant nothing or it meant a supreme power ruling over the entire body-politic. He thus defined sovereignty as "a power supreme over citizens and subjects, itself not bound by the laws." It gave orders and received orders from none.

In this way, the concept of sovereignty took a definite form at the moment when absolute monarchy was beginning to make its appearance in Europe. With Thomas Hobbes it reached its perfection when the sovereign power of the king was held to be natural and inalienable. His whole idea was to establish that the king possessed a natural and inalienable right to rule over his subjects. Once the people had agreed upon the fundamental law of the kingdom, and given the king and his descendants power over them, they were deprived



of any right to govern themselves, and the full natural right to rule the body-politic resided in the person of the king whose authority was absolute and indivisible.

**Sovereignty and the Modern Democratic State.** Later, people began to realise that the king was a part of the governmental machine and, accordingly, an agent rather than a master, and, as such, he possessed subordinate and delegated authority, which could be revoked at the will of the master, the people. It was a protest against absolute monarchy. It began with John Locke, an English political philosopher, who justified the Glorious Revolution (1688), and found its fullest expression in the French Revolution. The French Revolution made the people sovereign, "and not only transferred to it," as Soltau remarks, "all the attributes of the old monarchy of divine right but removed all limitations, on the ground that the people, when governing itself, had no need to restrict its authority."<sup>4</sup> The State, in its corporate capacity, was, thus, endowed with all the attributes of sovereignty which the monarch previously possessed. Two factors reinforced the absolutism of the new democratic State. One was nationalism which added the claims of the nation to those of the sovereign people. The national State claimed not only unlimited authority at home over its members, but also the right to expand abroad at the expense of others. The second factor was the enormous increase in the province of the State following the Industrial Revolution. The activities of the State were not only limited to protection, administration and dispensation of justice, but it became "an organiser of economic life, an educator, an agent in practically every aspect of the collective existence." This meant an ever-increasing "mass of legislation and a great increase in the importance of the State as supreme law-maker, thus reinforcing the dogma of sovereignty, by giving it a much wider field of application."<sup>5</sup>

**Rousseau.** The concept of popular sovereignty and the identification of the people with the State was actually the result of the teachings of Rousseau, which he had propagated thirty years before the French Revolution. Rousseau made popular sovereignty the doctrine of individual freedom, but the myth of the General Will, which was "always right," made of it a vindication of much more comprehensive State power than any previous political thinker had offered since Plato. Rousseau injected into the nascent modern democracies a notion of sovereignty which was destructive of democracy and pointed towards the totalitarian State. People and the State having become one, the personality of the individual is merged in the social whole, for it is only the power of the State which makes the freedom of its members. Rousseau asserted that the will of the State is the will of the individual in so far as he has accepted this identification of himself with the community. His real self, his real will becomes part of the common or General Will for the common good. If he does not agree what the General Will consents for him, he pursues selfish ends and the General Will can compel him to agree and by doing so he is forced to be free. Thus, the mystical operations of the General Will create conditions of unheard absolutism. Rousseau's State was the Leviathan of Hobbes, crowned with the General Will instead of the crown of absolute monarchs who were described as tyrants.

4. Roger H. Soltau, *An Introduction to Politics*, p. 96.

5. *Ibid.*, p. 98.

**Hegel.** The theory of sovereignty, as initiated by Rousseau, was given its complete and coherent form by Hegel, the German political thinker, who made it more definitely philosophical and metaphysical. "The State," he said, "is 'perfected rationality', the eternal and necessary essence of spirit, the rational in itself and for itself, an absolute fixed end in itself." In this way, Hegel completely identifies the State with society and asserts that only in and through the State does the individual receive what makes life worth living, without it he is nothing. Consequently, the rights of the State are unlimited, legally as a matter of fact and morally as a matter of right, and the individual lives in order to make his contribution to the common life of the State. He must be prepared to enjoy and sacrifice what the good of the common life of the State either grants him or demands from him. The State being not the agent of society, it does not exist for the performance of some specific purposes and with clearly defined functions. The State, for Hegel, is the supreme community and organised moral life is only possible within the State. It is the source of morality and of all civilised existence.

**Austin and the Pluralists.** The legal theory of sovereignty received its logical analysis at the hands of John Austin, an English jurist. Austin's conclusions formed the basis of the prevailing systems of jurisprudence and they exercised immense influence on political thought in England and the United States of America. Till recently, sovereignty has been viewed as absolute internal sovereignty and complete external independence. The Pluralists, the recent school of thought, reject outright the concept of absolute authority of the State and plead for division of sovereignty between the State and various other associations present within its territorial limits. They regard the State as an association like various other associations with a specific purpose to perform. The functions of the State are well-defined and it has no rightful claim to eminence. The Pluralists, in brief, maintain that sovereignty is divisible and the State is not supreme and unlimited in its authority.

### KINDS OF SOVEREIGNTY

**Present-day Confusion.** It will be evident that the whole subject of sovereignty is a hopeless confusion of a number of different issues and viewpoints. This is essentially due to the confusion, in the past as well as in our own times, between what is and what some people would like the State to be. Extreme idealistic sovereignty is German in origin and tends to justify State absolutism which had been the traditional policy of Prussia and the gospel of Hegel, who was a Prussian. This theory found its echoes later in the totalitarianism of the Nazis and the Fascists. Then, some of the thinkers were exploring the abstract nature of sovereignty and have, as Bryce remarks, been engaged in barren discussions dragging us through "a dusty desert of words rather than of substance." Others have frequently done so, as MacIver says, with an ulterior motive "to get a speculative basis for a practical propaganda."

There is a second confusion between legal theory and political practice. The legal theory of sovereignty vests ultimate legal power in some definite person or body of persons. The authority of the sovereign is supreme and it possesses the power to enforce obedience to its will. But where is that ultimate authority to be found? There is not one



single answer to this question. Not only does it vary from country to country, but it will not be always the same in the same country. In Britain, Parliament is sovereign and what it enacts is law. An Act of Parliament cannot be called into question in any court of law. Nor can it be declared invalid, for no law exists in Britain higher than that made by Parliament. But a recent Act of Parliament takes a precedence over a less recent one and supersedes any earlier statutory provisions inconsistent with it. In the United States, Congress is not sovereign. It is a delegated agency and its acts can be pronounced unconstitutional by the Supreme Court. It is the Constitution which is supreme there and the sovereign power is exercised by the constitution-amending authority. In a totalitarian State sovereignty will belong to the executive, since both legislative and judicial powers are subservient to it. Hitler retained the Reichstag as a subservient organ whose function was merely to record a formal approval of Nazi policy. And no Court in Germany could question the legality of the policy endorsed by the Reichstag.

The legal sovereign, in all democracies, must ultimately bow to the political sovereign. But what is this political sovereignty and where is such a sovereign? The problem of the real location of political sovereignty has not yet been solved. Finally, there is the confusion between the actual authority and its source. "It is one thing to say," writes Soltau, "that all authority comes from the people and another to say that the people actually govern." This they obviously cannot do; government is the action of the few. And when Rousseau said that the people actually govern, he introduced in their governance that mystic element of General Will which made it possible for his disciples to justify the omniscient and omnipotent State where sovereignty rested in the hands of a small number of men who make up the government. Because of these confusions and the unreality of the elaborate justification of the omniscient and omnipotent State, Laski and others have suggested that the theory of sovereignty should be kept out of political discussions. But dropping of sovereignty itself does not simplify matters. It is impossible to drop it, because it exists and since it exists we cannot avoid controversy. Indeed, one of the most effective means of getting to know the character of any system of government is to find out where sovereignty can actually be located and how it is really exercised. To know it is to know the different forms in which sovereignty is expressed.

**Titular Sovereignty.** Since the term sovereignty is used in different contexts, *titular* sovereignty is one of them. The origin of *titular* sovereignty goes back to the seventeenth century, immediately after the emergence of the nation-State. The nation-States were headed by absolute monarchies and the kings personified the sovereignty of the State. There was soon a conflict between the kings and their people. The people challenged the absolute and unlimited authority of the kings and demanded their own rights and privileges. They claimed that power was ultimately theirs and that the kings exercised limited authority delegated to them on their behalf. The kings, on their own part, found refuge in the Divine Origin Theory and Divine Right of Kings, and claimed divine privileges, freeing themselves from all human limitations. The people ultimately triumphed and democracy, with its representative institutions, came to be established in one form or another. The powers of the king were limited and defined by law or as prescribed by conventions. He was retained in his position as head of the State, but in all matters of administration he was compelled to seek the advice and consent of the representatives of

the people. The representatives guided him in choosing and dismissing his ministers, in raising his revenues, and in almost every act of his government. This was the advent of constitutional government. The king remained only a symbol of authority, a legacy of the past. He personified the sovereignty of the State and in terms of law all authority belonged to him. But actual sovereignty rested somewhere else and the monarch simply exercised personal influence in the exercise of that authority. Influence is not authority and can be least sovereignty.

By *titular* sovereignty we mean sovereignty by the title only. It is another way of saying sovereignty in name or nominal sovereignty. It refers to the sovereign powers of the king or monarch who has ceased to exercise any real authority. In theory, he may still possess all the sovereign powers which were once enjoyed by him, but in actual practice there is some other man or body of men who act on behalf of the sovereign and exercise supreme authority. The best example of titular sovereignty is the British King who is even today "our sovereign lord the king." Legally, the powers of the king are supreme. He is the source of all authority, the acts of the government are his acts, and the officers of the State—civil and military—are his servants appointed and dismissed at his pleasure. He is also the fountain of justice and law. But in real practice all this is not true. The sovereignty of the king is now a legacy of the past. There is no action of government which is the result of his initiative. The actual power and direction of government rests with the king's duly constituted ministers. Lowell has beautifully summed up the whole position. He says, "According to the early theory of the constitution the ministers were the counsellors of the king. It was for them to advise and for him to decide. Now the parts are almost reversed. The king is consulted, but the ministers decide." The king has now ceased to exercise any real authority; it is titular.

An absolute monarch is all powerful. He is a real sovereign, the source of all commands and the final authority in all business of the State. But such a sovereign is difficult to find today. Even King Zahir Shah of Afghanistan could not claim to be a real sovereign. At the same time, he was neither titular. He had discretion and exercised some form of personal authority. The position of the Shah of Iran was more or less identical to that of the King of Afghanistan. Islamic Law determines the extent of authority of the Kings in the Middle East countries and they dare not violate the commands of the Quran and the Shariat, though they seem to be exercising unlimited authority. Where rudiments of democratic elements have entered the body-politic of a country, they are defended to be in conformity to and in accordance with the prescription of Islam.

**Legal Sovereignty.** The sovereignty of the State may further be looked at from two points of view: legal and political. Legal sovereignty is the conception of sovereignty in terms of law, and it refers to that person or body of persons who, by law, have the power to issue final commands. In every State there must be some authority which is determinate and visible in the sense that it should command all and the people may appeal to it as the final authority. Such an authority is known as the legal sovereign and the authority of the legal sovereign is supreme and final over all individuals and associations. No individual or group of individuals has the legal right to act contrary to the decisions of



the sovereign power, even if such decisions override the prescriptions of divine law,<sup>6</sup> the principles of morality, or the mandates of public opinion. The courts recognise and apply only that law which emanates from the legal sovereign and disobedience to such a law is accompanied by punishment.

The authority of the legal sovereign is absolute and its will is illimitable, indivisible and inalienable. Law is simply the will of the sovereign. There is no one to question its validity. Within the sphere of law, there is, as Hobbes bluntly said, no such thing as an unjust command. The authority of the sovereign being unlimited, he has the legal right to will whatever he may happen to desire. All rights enjoyed by citizens are granted and enforced by the legal sovereign and there can be no rights against him. This implies that if the legal sovereign can grant rights, he can take them back or even annul them. In Britain, King-in-Parliament is the legal sovereign. In the United States the legal sovereign consists of the combination of authorities that have the power to amend the Constitution—Conventions, or two-thirds majority in each House of Congress which may propose amendments, and State Legislatures or State Conventions which may ratify them. It is, thus, the interaction of specified individuals and institutions according to specified rules of procedure.

This analysis is the lawyer's view of sovereignty. A lawyer is not concerned with the content of law, that is, its welfare content or the value component of law. He is only concerned with the legal source from which it emanates. According to Ritchie, "The legal sovereign is the lawyer's sovereign *qua* lawyer, the sovereign beyond which lawyers and courts refuse to look." But behind the legal sovereign there is another power which is unknown to law. It is the political sovereign, unorganised and incapable of expressing the will of the State in the form of legal command, but to whom the legal sovereign must ultimately bow.

The following characteristics of legal sovereignty may be noted:

1. The legal sovereign is always definite and determinate.
2. Legal sovereignty may reside either in the person of a monarch as in an absolute monarchy, or it may be vested in a body of persons as in a democracy; King of Queen and Parliament in Britain.
3. It is definitely organised, precise and known to law.
4. It alone has the power to declare in legal terms the will of the State.
5. Disobedience to the imperatives of the legal sovereign means physical punishment.
6. All rights emanate from the legal sovereign and it can take them back or even annul them.
7. The authority of the legal sovereign is absolute, illimitable and supreme. It is subject to no control within and without the State.

**Political Sovereignty.** But absolute and unlimited authority of the legal sovereign does not exist anywhere. Not even a despot can act independently and exclusively. His will is actually shaped by the many and varied influences which are unknown to law. All

6. Except in the Islamic countries where Islamic Law is supreme and unquestionable.

these influences are the real power behind the legal sovereign. As Dicey puts it, "Behind the sovereign which the lawyer recognises, there is another sovereign to whom the legal sovereign must bow."<sup>7</sup> This is called the political sovereign, and, according to Professor Gilchrist, the political sovereign is the sum total of the influences in a State which lie behind the law.<sup>8</sup>

As the political sovereign is not known to law, it is unorganised, indeterminate, and not even precise. In modern representative democracies the political sovereign is very often identified with either the whole mass of the people, or with the electorate or with public opinion. But the political sovereign is neither the electorate nor is it identical with the whole mass of the people, nor can it be identified with the public opinion. Taking first the electorate, no one can doubt its political power in a representative system of government. The legislature dare not disregard the will of the electorate. It may even command the legislature to do its bidding. If it does not, the members of the legislature may be punished at the next election for failure to obey the will of the electorate. Every few years, the electorate creates a new representative chamber, and in doing so it largely determines the nature of parliamentary commands. But on closer examination, it will be found that the electors have no independent opinion of their own. They are influenced by party politics and while casting their votes, they vote for the party rather than for the candidates. The decision of the electorate is also influenced by religious and caste considerations, particularly in India, and the role of press, publicity and propaganda in a democratic State is significant. Thus, so many influences, visible and hidden, affect the decisions of the electorate that it becomes difficult to say where sovereignty precisely lies.

In certain States and at certain times, the electoral sovereign may not exist. It does not exist in a monarchy when the king succeeds to the throne by hereditary right and exercises absolute power. It did not exist in Mussolini's Italy and Hitler's Germany. It did not also exist in the erstwhile Soviet Russia and other communist countries. In Italy and Germany the *de facto* Sovereign controlled both the legal Sovereign and the electoral Sovereign. In the former Soviet Russia and other communist countries it was the communist party of that country and its politburo. The electoral Sovereign did not exist in Pakistan during the regimes of its chief Martial Law Administrators, General Ayub Khan, Yahya Khan and Zia-ul-Huq.

Nor can we take political sovereignty synonymous with the mass of the people. Quite a sizable number of the people are usually apathetic about politics. They do not want to govern themselves and would not know how to do so even if they wanted to. Then, all the people do not enjoy the right to vote. Those who do not enjoy this right can neither participate in the election of their representatives nor have they any constitutional means at their disposal to effectively influence the decisions of the legal sovereign. It is also possible that the masses may be under the influence of either the priestly class or landed aristocracy, or the militarists. Even if it is not, in the best of democracies, where the people believe that they govern themselves, it can still be suggested that real power

7. Dicey, A.V., *The Law of the Constitution* (1915), Introduction, pp. xviii-xix.

8. Gilchrist, R.N., *Principles of Political Science*, p. 93.



gravitates (or ascends) to a small elite. It is, therefore, not the mass of the people which constitute the political sovereign. It really rests in that class of people under whose influence they actually are.<sup>9</sup>

Similarly, political sovereignty cannot be equated to public opinion. Public opinion is of a highly fluctuating nature and it is susceptible to varied influences. Then, public opinion must have two characteristics. It should be, in the first place, an opinion of a public nature, and secondly, it should be as widely held by the public as possible. But one cannot always be sure that the Opinion actually held is of a public nature. Perhaps the demagogue might have made the decision for them, or the religious or caste appeal had influenced it. Finally, in a representative government, legislature is said to be the barometer of public opinion. Here public opinion is identified with the political sovereign and it may coincide with the legal sovereign, as the British Parliament is.

Political sovereignty, thus, proves to be vague and indeterminate. At many stages it becomes confusing and "the more one searches for this final authority the more it seems to elude one's grasp."<sup>10</sup> Yet, we cannot ignore its existence. Even Dicey, the nineteenth century constitutional lawyer, could not ignore it. He made the distinction between legal and political sovereignty. In Britain, he said, while Parliament was, from a legal point of view, the sovereign legislative power in the State, it was, from a political point of view, subject to two practical limitations. It could not enforce its will if the governed refused to obey and, since it was itself made up of individuals whose outlook was formed by the same social climate as that of their constituents, there were things that it would not, in practice, dream of trying to do, howsoever extensive its legal competence might be. "If a legislature decided that all blue-eyed babies should be murdered," said Leslie Stephen, "the preservation of blue-eyed babies would be illegal, but legislators must go mad before they could pass such a law and subjects be idiotic before they could submit to it."<sup>11</sup>

Political sovereignty may, then, mean the electoral plus all other vehicles and influences that mould and shape public opinion. Garner gives it a much wider scope when he says, "In a narrow sense the electorate constitutes the political sovereign, yet in a wide sense it may be said to be the whole mass of the population, including every person who

9. Sidwick takes certain hypothetical cases and tries to illustrate the nature of political sovereignty. "Suppose that a monarch habitually obeys a priest, not for fear of extra-mundane penalties threatened by the latter, but from fear of finding it difficult to obtain obedience from his subjects if they believe him to be a special object of God's anger—we shall agree that he no longer completely possesses supreme political power. And if the influence of the priesthood over the monarch's subjects were so strong that the bulk of them unquestionably obey a direction of the chief priest to cease obeying the monarch, and if, therefore, the chief priest's directions were habitually obeyed by the monarch,—it would hardly be denied that the priest had become really, if not nominally, the political superior of the monarch..." — *The Elements of Politics*, pp. 627-28. Leacock sums up: "Following upon this line of argument we might well expect to find that the legal and political sovereign would but rarely coincide. In one State the priesthood, in another the military or might supply the real motive power that controls the public administration." — *Elements of Political Science*, p. 60.

10. Leacock, S., *Elements of Political Science*, p. 60.

11. Leslie Stephen, *Science of Ethics*, p. 143.

contributes to the moulding of public opinion whether he is a voter or not."<sup>12</sup> But this definition robs political sovereignty of its connotation as it is widely understood.

**Relation between Political and Legal Sovereignty.** The problem of good government, says Ritchie, is largely the problem of the proper relation between the legal and the ultimate sovereign. In a system of direct democracy legal and political sovereigns practically coincide, because the people are directly concerned in making laws. Their expressed will is not a mere opinion, but a law itself. They also elect and remove their rulers. In an indirect democracy representatives of the people make laws. They constitute the legal sovereign and the people who elect their representatives may roughly be called the political sovereign. Law ought to conform to the wishes of the electorate and the legislators must obey their mandate. If they do not, the electorate and the legislature are not in harmony with one another and disharmony between the two tends to create political friction. Really, legal and political sovereign are not two separate entities. They are two aspects of the sovereignty of the State, though expressed through different channels. When there is friction between the two it is highly detrimental to good government. Law must be the manifestation of the will of the people and if the legal sovereign cannot accept the verdict of the political sovereign, the representatives of the people should be re-elected and the legislature reorganised and reconstituted so as to become the mirror of their opinion. Laski has rightly said that "individual is, ultimately, the supreme arbiter of his behaviour" and "if the State is to be a moral entity, it must be built upon the organised acquiescence of the members."<sup>13</sup> The last word remains with the ultimate sovereign, the electorate. Indeed, in some democratic States there often seems to be, says Laski, "a larger degree of obedience from the sovereign Parliament to its constituents than there is the other way round; a series of by-elections, for instance, produce with amazing rapidity a change in the will and temper of the sovereign."

The legal sovereign, therefore, cannot act against the will of the political sovereign. If it does, a legal truth may become a political untruth. A legislature, which legislates in a manner contrary to the will of the people, will be replaced by one more faithful to the popular will. "In other words, the political sovereign lies behind and conditions and, thus, limits the legal sovereign, though, legally speaking, the legal sovereign is omnipotent."<sup>14</sup> The distinction between the legal and political aspects is necessary and useful in that it reminds us that we are dealing with the power, not of an inanimate machine, but of human beings over their fellowmen. We know from History that, however absolute the legal right to exercise power may be, there is a limit in practice. Human beings will stand just so much.

**Popular Sovereignty.** The doctrine of popular sovereignty is the product of the sixteenth and seventeenth centuries. It emerged as an expression of resentment of the people against the despotic authority of the kings and their reliance on the theory of Divine Right. Popular Sovereignty attributes ultimate sovereignty to the people. This theory, first hinted by John Locke, was later expounded by Rousseau and it became the slogan of the French Revolution. According to Rousseau, the State came into existence

12. Garner, J.W., *Political Science and Government*, p. 160.

13. Laski, H.J., *Grammar of Politics*, pp. 62-63.

14. Gilchrist, R.N., *Principles of Political Science*, p. 94.



by explicit or tacit agreement. Explicitly, people said, "We want to be a State, a community." For Rousseau the State and the people were one. Having created the State, the people ought to control it and change it as they pleased, for whenever an individual decided that he belonged to a people, he already had decided that his people should be sovereign and that, being sovereign, they should run their own affairs. This is the doctrine of popular sovereignty.

The doctrine of popular sovereignty was propounded by Jefferson in the American Declaration of Independence and was incorporated in the Preamble of the Constitution by asserting that government derived its authority from the consent of the governed. An echo of it is found in Abraham Lincoln's First Inaugural Address: "This country, with its institutions, belongs to the people who inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it." This is Rousseau's theory of popular sovereignty in radical form. Since then popular sovereignty has become, as Bryce says, "the basis and watchword of democracy."<sup>15</sup>

In spite of our unflinching democratic faith in the dogma of popular sovereignty, it must be admitted that it is highly vague and indeterminate. We fail to determine and definitely say who these sovereign people are. Do we mean the entire unorganised mass of people living in the State, including women, children, idiots, insolvents and criminals? If so, then the sovereignty of the masses has no meaning in practical politics. The mass of the people cannot be organised and without organisation they constitute a mob, a babel of tongues, who can act neither actively nor effectively. Organisation is the foundation of sovereignty. But if people become organised and follow their leaders, where is their sovereignty? Sovereignty of the people, Gettell says, by the very definition of the State, is a contradiction in terms. If by the State we mean a people organised for law within a definite territory, "some organisation and method of government is the legal one, otherwise no State exists."<sup>16</sup>

It has been suggested that popular sovereignty refers to the sovereignty of the electorate. But sovereignty of the electorate has no legal basis unless it is expressed through channels prescribed by the constitution. The voters, in a representative form of government, do not themselves exercise actual sovereign power. They elect their representatives and it is through them, as members of the legislature, that the sovereign power is expressed. It, therefore, embraces manhood suffrage and the control of the legislature by the representatives of the people. But as a matter of reality, the control of the legislature rests in the parliamentary majority party which is determined by the majority of the voters who had elected them. Out of this majority party, too, emerges a ruling coterie who wield actual power. "The sovereignty of the people, therefore, can mean nothing more than the power of the majority of the electorate in a country where a system of approximate universal suffrage prevails, acting through legally established channels, to express their will and make it prevail."<sup>17</sup> Opinion, otherwise expressed by voters, however powerful that opinion may be, is not valid unless clothed in legal form.

15. Bryce, *Modern Democracies*, Vol. I, p. 143.

16. Gettell, R.G., *Introduction to Political Science*, p. 100.

17. Garner, J.W., *Introduction to Political Science*, p. 165.

The exercise of suffrage is not a true indication of popular sovereignty. In a modern democratic State not all the people are entitled to vote, and many who are entitled to vote are disinterested in the political process. They remain inarticulate. Therefore, the actual electors form a much smaller portion of the entire population. According to Gettell, not more than one-fifth of the population in any modern State are voters and within that number a majority would be but little more than one-tenth of the citizens.<sup>18</sup> Even these one-tenth of the citizens are not legally sovereign. Popular sovereignty cannot be equated with sovereignty of the electorate.

The idea of popular sovereignty is, indeed, highly confusing. At the same time, we cannot ignore the popular appeal it has. Ritchie, and other political thinkers<sup>19</sup> have tried to establish that the ultimate repository of political power is always found in the mass of the people. The State exists for the people and the mechanism of the State, that is, government, should function in accordance with the wishes of the people. While sovereignty in the legal sense may not be placed in the people, yet they are potentially a check on the legal sovereign. No legal sovereign can for long brush aside the will of the people. If it does, there are possibilities of revolution. In fact, the tendency with every modern State is to make legal sovereignty responsive to the popular demand as quickly as possible. We cannot, under the circumstances, ignore the force of "popular sovereignty." Gilchrist, however, suggests that "popular control" better indicates the idea underlying popular sovereignty.<sup>20</sup> This is a correct analysis and the modern democratic States have developed certain institutional devices, as referendum and initiative, to manifest the will of the people. Also, there are consultative councils and advisory bodies which surround every department of government in a democratic State and all matters pertaining to a department are referred to the relevant advisory body for its opinion and advice.

'De jure' and 'de facto' Sovereignty. Distinction must also be made between *de jure* and *de facto* sovereignty. *De jure* sovereignty is the legal sovereignty and it has its foundation in law. Its attribute is the right to govern and command obedience. But it may so happen that the *de jure* sovereign may not be able to command obedience while someone else, whose identity may or may not be recognised by law, is actually obeyed. That person or body of persons who actually exercises power, and who, for the time being, is able to enforce obedience, or to whose commands voluntary obedience is given by the bulk of the people, is called the *de facto* sovereign. The *de facto* sovereign may not be a legal sovereign. The criterion of sovereignty is actual obedience to command. Bryce says that "the person or body of persons who can make his or their will prevail whether according to the law or against the law: he, or they, are the *de facto* ruler, the person to whom obedience is actually paid." The *de facto* sovereign may be a usurping king, or a dictator, or a priest or a prophet, "in either case the sovereignty rests upon physical power or spiritual influence rather than legal right." Let us take a familiar example. On October 28, 1922, when Mussolini's Black Shirts marched on Rome, the legal sovereign was Parliament. Mussolini became Prime Minister in the prescribed manner. Immediately

18. Gettell, R.G., *Introduction to Political Science*, p. 100.

19. Refer to Sidgwick, H., *The Elements of Politics*, p. 630.

20. Gilchrist R.N., *Principles of Political Science*, p. 95.



after his appointment, he ruled Parliament and the country through Parliament. Parliament still remained the legal sovereign, but the actual or *de facto* sovereign was Mussolini. The commands which Parliament issued came from Mussolini and they were enforced by him as the leader of the Fascist Party. The legal sovereign did what it was told to do. Hitler, too, occupied a similar position in Germany. He controlled the legal sovereign—Reichstag—and he was the actual or *de facto* sovereign, or, to use Bryce's term, the practical sovereign. The Reichstag was a subservient organ to record formal approval of Nazi policy. Stalin, who in his lifetime was transformed into a superman possessing supernatural characteristics, was really the actual sovereign in the USSR for about three decades. He controlled the Government and the Party both. Collective leadership at any of these levels was just a myth.

History abounds in examples of *de facto* sovereignty. Many instances can be cited when legally constituted sovereign power was displaced in consequence of revolution or expulsion by a usurper. The Bolshevik regime in Russia, following the Revolution of 1917, is the most familiar example, in recent times, of *de facto* sovereignty. Likewise Bachha Saka usurped the throne of Afghanistan after the flight of King Amanullah and became the *de facto* sovereign in that country. Italy's conquest of Abyssinia and General Franco's usurpation of power in Spain are other illustrations of *de facto* sovereignty. General Naguib's *coup d'état* in Egypt and the abdication of King Farouk is also illustrative of *de facto* sovereignty. Nasser succeeded Naguib. The events in Iraq, Pakistan, Sudan, Burma, Bangladesh, Afghanistan, and in many other countries, particularly in Africa, tell the same story.

The *de facto* sovereign is, thus, the strongest active force in the State and capable of making its will prevail. But the *de jure* and *de facto* sovereignty should ultimately coincide, otherwise there is a danger of conflict between them. Garner says, "The sovereign who succeeds in maintaining his power usually becomes in the course of time the legal sovereign, through the acquiescence of the people or the reorganisation of the State, somewhat as actual possession in private law ripens into legal ownership through prescription."<sup>21</sup> New laws are made in order to give a definite status to the *de facto* sovereign himself, too, will not like to continue his authority based exclusively upon physical force for an indefinite period of time. There is, as Bryce has said, "a natural and instinctive opposition to submission to power which rests only on force."<sup>22</sup> The new sovereign will, therefore, endeavour to make his *de facto* claim converted into a legal right, because sovereignty established and exercised on a legal basis makes obedience spontaneous and enduring.

The *de facto* sovereignty will, thus, eventually procure *de jure* sovereignty. The principal criteria of *de jure* sovereignty within the State are success, the passage of time, and the establishment of a tradition. There is also another very important form of external recognition, the willingness of other States to exchange ambassadors and establish diplomatic relations. The most recent example is recognition of the Baltic States which

21. Garner, J.W., *Introduction to Political Science*, p. 168.

22. *Studies in History and Jurisprudence*, Vol. II, p. 516.

had seceded from the erstwhile Soviet Union and declared themselves independent and Sovereign states. Withholding of recognition by a great power may contribute to the fall of a *de facto* Sovereign power. Woodrow Wilson practically doomed the regime of Victoriana Huerta in Mexico in 1913 by refusing recognition. Customarily, recognition is granted to any regime indicating capacity to rule, as in the case of Bangladesh and Afghanistan. India was the first country to recognise both the new regimes. Occasionally, however, there may be opposition to a regime for the manner it captured power as in the case of Hureta, or for the philosophy underlying the new government as in the case of the Soviet Russia and the People's Republic of China.

The jurists of the Analytical School, however, outright reject the distinction between *de jure* and *de facto* sovereignty. They do not accept sovereignty in any other form or context except legal sovereignty, that is, what can be expressed in terms of law and sustained by law, "An unlawful sovereignty is a contradiction in terms", they assert. Austin has, accordingly, suggested that it would be more appropriate to use the terms, *de jure* and *de facto*, in respect of government rather than sovereignty.

#### AUSTIN'S THEORY OF SOVEREIGNTY

The Juristic analysis of sovereignty has a history stretching back to the Roman empire. The Roman jurists worked out a theory of *Imperium* and found the source of law in the will of the prince. In modern times the development of the theory of sovereignty coincided roughly with the growth of the State in power, functions and prestige. From Bodin, through Hobbes and Bentham, this juristic idea reached its climax in John Austin as contained in his lectures on Jurisprudence, published in 1832. Austin endeavoured to build up an exact juristic terminology and to present a clear outline of the organisation of a government's legal power.<sup>23</sup>

The theory of sovereignty, as enunciated by Austin, depends mainly upon his view of the nature of law. Law, according to Austin, is a "command given by a superior to an inferior."<sup>24</sup> From this definition of law he develops his theory of sovereignty in the following words:—

"If a *determinate* human superior, not in the habit of obedience to a like superior, receives *habitual* obedience, from the *bulk* of a given society, that determinate human superior is sovereign in that society, and that society (including the superior) is a society political and independent."<sup>25</sup>

Austin's doctrine of 'sovereign' may be reduced to the following propositions:—  
(i) That there is, in every political and independent community, some person or body

23. Sabine, G.H., *A History of Political Thought*, p. 654. 24.

24. Austin says, "Every positive law, or every law, simply and strictly so called, is set by a sovereign person or a sovereign body of persons to a member or members of the independent political society wherein that person or body of persons is sovereign or supreme."

25. Austin then proceeds: "To that determinate superior the other members of the society are dependent. The position of its other members towards that determinate superior is a state of subjection or a state of dependence. The mutual relation which subsists between that superior and them may be styled the relation of sovereign and subject, or the relation of sovereignty and subjectivity."



of persons who exercise sovereign power. Sovereign power is as essential in every political society "as the centre of gravity in a mass of matter."<sup>26</sup>

(ii) That the sovereign is a determinate person or body of persons. "He is not necessarily a single person: in the modern western world he is very rarely so; but he must have so much of the attributes of a single person as to be determinate."<sup>27</sup> The State for Austin is a legal order in which there is a determinate authority acting as the ultimate source of power. Sovereignty, therefore, neither resides in the general will as Rousseau conceived, nor in the mass of the people, nor in the electorate, as none of them is a determinate body. Nor has the sovereignty of God or gods any significance in the business of the State. It is concerned with man and every State must have a determinate human superior who can issue commands and create laws. Hence human laws, and not divine laws, are the proper subject of State activity.

(iii) That such a determinate human superior must not himself obey any other higher authority. His will is supreme over all individuals and associations and he is subject to no control, direct or indirect. The determinate human superior may act unwisely, or dishonestly, or in an ethical sense, unjustly, but for the purpose of the legal theory the character of his action is unimportant. So long as laws emanate from the legal sovereign, they are commands which must be obeyed.

(iv) That the sovereign receives habitual obedience from the bulk of the community. That is to say, obedience must be a matter of habit and not merely occasional. Obedience rendered to an authority for a short time does not make it a sovereign. Austin's thesis is that obedience to the sovereign authority must be continuous, regular, undisturbed and uninterrupted. Moreover, obedience rendered to the sovereign must not necessarily be from the whole of the society. It is enough for purposes of the sovereign power if it comes from the bulk of the society—its large majority. Where habitual obedience from the bulk of the society is not forthcoming there is no sovereign power. Thus, sovereignty involves not only the submission of the many but also its permanence.

(v) That command is the essence of law. Whatever the sovereign commands is law, and law prescribes to do certain things and not to do others. Failure to obey laws, as commanded, is visited by a penalty.

(vi) That the sovereign power is indivisible. It is a unity and is incapable of division. Division of sovereignty means destruction of sovereignty.

In brief, Austin's analysis of sovereignty embraces the existence of the supreme power which is determinate, absolute, illimitable, inalienable, indivisible, all-comprehensive and permanent. It is subject to no limitation or command by any other superior person.

But Austin's theory is a lawyer's view of sovereignty and it has been subjected to a searching criticism, particularly by Sir Henry Maine and other historical jurists.<sup>28</sup> Sovereignty, according to Maine, does not reside in a determinate human superior. "A despot with a disturbed brain," he says, "is the sole conceivable example of such

26. Maine, H., *The Early History of Institutions*, p. 339.

27. *Ibid.*, p. 351.

28. Refer to Sidgwick, H., *Elements of Politics*, Appendix (A), p. 651.

sovereignty."<sup>29</sup> Maine emphasizes the existence of "vast mass of influences, which we may call for shortness moral, that perpetually shapes, limits, or forbids the actual direction of the forces by its sovereign."<sup>30</sup> He cites the example of Ranjit Singh, ruler of Punjab, whom Maine characterised as an absolute despot apparently possessing qualities of Austin's conception of the sovereign power. Ranjit Singh, Maine says, "could have commanded anything; the smallest disobedience to his commands would have been followed by death or mutilation."<sup>31</sup> Yet, Ranjit Singh never "once in all his life" issued a command which Austin could call a law. "The rule which regulated the life of his subjects were derived from their immemorial usages, and these rules were administered by domestic tribunals, in families or village communities."<sup>32</sup> Even a despot like Ranjit Singh, Maine concludes, dare not issue a command which would compel an unwilling people to change their deep-rooted habits and customs. If he does it, he will confront the risk of revolution. Ranjit Singh's laws were primarily derived from customs, usages, and religious injunctions and they were administered by the village *panchayats* (councils). But it is not only in regard to "oriental society" that Maine finds Austin's analysis inadequate. In the "world of western civilisation," he says, no sovereign, however despotic, could disregard "the entire history of the community, the mass of its historic antecedents, which in each community determines how the sovereign shall exercise or forbear from exercising, his irresistible coercive power." Austin's conception of a determinate sovereign is also inconsistent with the well-accepted ideas of political and popular sovereignty. It ignores the power of public opinion and does not take into consideration the existence of political sovereignty, which is now believed as the ultimate sovereign power in a State. Sir Henry Maine, accordingly, concludes that it is a historical fact that the sovereign has never been determinate.

The Federal State presents another difficulty about vesting sovereignty in a determinate person or body. Sovereignty is indivisible and the sovereign body which has the power to amend the Constitution cannot be described as a determinate body. In the United States, for example, the constitutional powers of government are divided between the federal government and governments of the 'states' as the constituent units are named there. No change can be made in the Constitution without amending it. The Constitution amending body is Conventions or two-thirds majority of each House of Congress which may propose an amendment, and State legislatures or State Conventions which ratify them by a prescribed majority. In India, too, powers between the Central Government and the State Governments are divided and changes therein can be brought about by the process specified in the Constitution for amending it. The Constitution amending authority is sovereign, but this sovereign authority is diffused. There are three methods of amending the Indian Constitution. In some cases it is a simple majority of both the Houses of Parliament, in others, which are specified in the Constitution, it is the two-thirds majority of the members present and voting in each House of Parliament plus a majority of the total membership in each House, and ratified by the legislatures of one half of 'States,'

29. Maine, H., *The Early History of Institutions*, p. 359.

30. *Ibid.*

31. *Ibid.*, p. 380.

32. *Ibid.*, pp. 380-81.



constituent units, and for the rest it is a majority of the total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House of Parliament. But the Constitution may itself limit the Constitution amending authority. Carl J. Friedrich maintains that where the constitution amending power is vested in the Legislature, "limitations are usually imposed upon it."<sup>33</sup> In France, an amendment of 1884 provided that the republican form of government should never be made the subject of proposed revision. Article V of the United States Constitution prescribes that no State, without its consent, can be deprived of its equal representation in the Senate.

Austin's definition of law that it is a "command given by a superior to an inferior," which forms the basis of his theory of sovereignty, cannot be accepted as a simple truth. Laski says that to think of law as simply a command is even for the jurist "to strain definition to the verge of decency."<sup>34</sup> No sovereign can ignore the existence of customary law which has grown through usage in every country. Customary law is not the fiat of a determinate superior, and in earlier stages of society laws were seldom, if ever, positive commands of a sovereign. Ranjit Singh, to again quote Maine, "never issued a command which Austin would call a law. He never made a law and never did or could have dreamed of changing the civil rules under which his subjects lived."<sup>35</sup> Even a sovereign legislative assembly, like the British Parliament, dare not pass a law which aims to violate the established customs and traditions of the country. MacIver has aptly said that "State has little power to make custom, and perhaps less to destroy it, although indirectly it influences customs by changing the conditions out of which they spring."<sup>36</sup> Custom is not a deliberate statute; it is the outcome of ages and even an autocrat must be the guardian and servant of customs, if he desires to obviate the possibilities of a revolution.<sup>37</sup> For, custom, "when attacked, attacks law in turn, attacks not only the particular law which opposes it, but what is more vital, the spirit of law-abidingness."<sup>38</sup> Austin himself was fully conscious of the force behind customs and maintained, "whatever the sovereign permits, he commands." Austin argued that customs, unless enforced by courts of justice, are merely "positive morality"; rules enforced by opinions. But as soon as courts of justice enforce them, they become commands of the sovereign, conveyed through the judges who are his delegates or deputies.

The concept of law, prior to the Analytical School, conveyed the notion of order first and then the notion of force. The Analytical Jurists, on the other hand, lay down unhesitatingly that the notion of force has priority over the notion of order. Austin lays too much emphasis on force and prescribes that disobedience of law is visited by a penalty. It means, in the words of the Analytical School, that people obey laws for fear of punishment. The modern view is that we obey laws not because their disobedience is accompanied by punishment; we obey them because there is in us the spirit of law-

33. Carl J. Friedrich, *Constitutional Government and Democracy*, p. 143.

34. Laski, H., *A Grammar of Politics*, p. 51.

35. Maine, H., *The Early History of Institutions*, p. 382.

36. MacIver, R.M., *The Modern State*, p. 160.

37. Gilchrist, R.N., *The Principles of Political Science*, p. 114.

38. MacIver, R.M., *The Modern State*, p. 161.

abidingness. Laski says, "The notion of command" in law "is contingent and indirect and the idea of penalty is, again, save in the most circuitous way, notably absent."<sup>39</sup> He holds that the individual conscience is the only true source of law. Austin's conception is also out of tune with a Welfare State. In a Welfare or Social-service State the content of law is of great importance than the source of law. We obey it, because it promotes social solidarity, as Leon Duguit says. He carries his argument to the extent that laws are not created by the State, but it is the laws that create the State. Krabbe discovers the spring of law in the community's sense of justice.

Austin's theory is further criticised on the ground that it invests the sovereign with absolute and illimitable powers. The Pluralists maintain that the State is an association like various other associations and, therefore, the sovereign authority cannot be invested with unique sovereign powers. They oppose the Austinian doctrine of a single and unified sovereignty, and emphasize the importance of associations, which are, for their purposes, as sovereign as the State is for its purpose. Sovereignty, accordingly, is neither unity nor absolute. It is diffused and hedged all around within and without the State. Externally, Austin's sovereign power is limited by the prescription of International Law, and the concept of internationalism has made it still more incompatible. Austin's theory of sovereignty, therefore, is now regarded not only a legal fiction, but a baneful and dangerous dogma which should be expunged from the literature on international relations. Laski is even of the opinion that the notion of an independent sovereign State is, on the international side, fatal to the well-being of humanity. It is a bold, but realistic statement which Laski makes and the developments since World War I (1914-18) testify it. Today, the States constitute an international society and it is commonly realised that the increasingly vast problems which concern the well-being of humanity are not local but international. The problems of food, health, education, and population are in essence local problems, but their solutions are found in the deliberations of international organisations like the W.F.O., the W.H.O., the UNESCO, etc.—all agencies of the United Nations. Even the restoration of order and establishment of lawful government within the country has become an international concern.

It is, impossible, under the circumstances, to accept the legal theory of sovereignty as valid for political philosophy, as it postulates for the sovereign such powers as cannot in fact be exercised. Moreover, it narrows down "the meaning of vital terms to a content which, if maintained, would be fatal to the existence of society."<sup>40</sup> We cannot accept law, which is an important factor in the life of the State, from the purely legal point of view. Law must be built upon general social environments. To separate it from all these forces and influences is to defeat the very purpose of law. It should, however, be admitted that as an analysis of strictly legal nature of sovereignty, Austin's is clear, and logical.

### PLURALISM

The growth of associations, discharging various functions, in modern times provoked a revolt against the monistic theory of sovereignty and led to the political pluralism which

39. Laski, H., *A Grammar of Politics*, p. 62.

40. Hsiao Kung Chuan, *Political Pluralism*, p. 8.



constitutes one of the most remarkable movements in recent political theory. The monistic theory endows the State with a unitary sovereign power, either as the source of political authority as such or as the source of legal authority. It is the source from which law emanates which is supreme over all individuals and associations within its territorial limits, and is extremely independent of others. Monism regards all other associations as the creation of the State and dependent for their continued existence upon the will of the sovereign power. The functions which these associations perform are those that are conceded to them by the sovereign power.

The pluralists, on the other hand, declare that if a political theory is to be "philosophically true, scientifically sound, morally righteous, legally implicit in codes and decisions, and practically convenient," it must recognise the personality of a corporation as a real and spontaneous entity, with an inherent life and activity of its own. Social life is organised and finds expression through numerous associations which do not derive their existence or rights from the State. The State is, therefore, a federation, "an interlocking union of groups, assisting the discovery of self by each man with his diversified nature."

The pluralists regard the monistic theory of sovereignty as a pernicious and futile doctrine. The pluralistic State is simply a State in which there exists no single source of authority that is all-competent and comprehensive. There is no unified system of law, no centralised organ of administration and no generalisation of political will. "On the contrary, it is a multiplicity in its essence and manifestation, it is divisible into parts and should be divided." Pluralism, in brief, undertakes to transform the State. It criticises and "discredits" the State as it is, and seeks to reduce it from its place of "honour to servitude."<sup>41</sup> Lindsay, for example, says, "If we look at the facts it is clear enough that the theory of sovereign State has broken down." Laski, who was the most vehement critic of the monistic theory, said, "It is impossible to make legal theory of sovereignty valid for political philosophy." He was of the definite opinion that "it would be a lasting benefit to political science if the whole concept of sovereignty were surrendered,"<sup>42</sup> or, as Krabbe puts it, "the notion of sovereignty must be expunged from political theory."

**Pluralistic Theory Explained.** Laski says that sovereignty is neither absolute nor a unity. It is pluralistic, constitutional and responsible. He asserts that man's social nature finds expression in numerous associations or groups pursuing various ends—religious, social, economic, professional, political and recreational. The State is one of these groups and no one of these groups is superior, normally or practically, to others. All associations, which enter into the life of man, arise naturally and spontaneously and all act, within the sphere of their respective activities, independently of State control. Though the State is a primary and most important association, yet it can only claim to be *primus inter pares*, or first among equals. Being only one among many associations, the State has no rightful claim to eminence and it cannot be the sole repository of power or focus of loyalty. If it is sovereign, so are other associations within their spheres of activity, and man's loyalty

41. G.D.H. Cole, who is one of the central figures in advocating Pluralism, writes, "But as man has made the State, man can destroy it; and as man has made it great, man can restrict it. Moreover, as man has made the State, man can make something greater, something more fitted to exercise a final sovereignty, or at least to provide a final court of appeal." As quoted in Hsiao's *Political Pluralism*, p. 35.

42. Laski, H.J., *Grammar of Politics*, p. 55.

to them is as abiding as it is to the State. It is also possible that his loyalty to some group or organization of which he is a member, may receive priority over his loyalty to the State. There are Communists whose loyalty to their Party is stronger than their loyalty to their country. Members of the Society of Friends have a conscientious objection to being conscripted into the army, because they consider it morally wrong to fight for one's country. The State, accordingly, cannot in any important sense be said to be sovereign in its relations to other associations which come into existence independently of the State and function exclusively by themselves.<sup>43</sup> Each association has its own laws and government and it exacts obedience to those laws independently of the State.

The pluralists reject the distinction, which is so neatly made, between the State and government. They insist on a realistic Political Science and consider the distinction between the two as an artificial product of legal reasoning and logical refinement. Duguit is the foremost in this respect. He asserts that juristic entities, being legal fictions, have no place in realistic as distinguished from metaphysical discussion. We only know the government as a matter of reality and as it functions actually. The immediate power belongs to the government and the State and government are in fact the same. Laski also speaks of the State as the government and he rejects, likewise, the legalistic theory of the personality of the State. American political scientists substitute the State by a political system which in itself is a unit of the social system. Robert Dahl says that almost every human association has a political system and he even includes families in his definition of a political system.

The pluralistic theory, thus, finds its practical explanation in the bewildering variety of associations and groups which exist to promote the social, industrial, political and other varied interests of man. All these groups, as Laski says, determine, "quite largely, his choice of friends, of opportunities, of a career."<sup>44</sup> They plan his activities and provide him with opportunities for the expression of his desires. "They seek to give him mastery of the event, to enable him, in concert with like-minded men, to control the environment to a destiny he wants."<sup>45</sup> Society, in fine, far from consisting of a mass of isolated individuals, is actually a web of associations and groups that link men and women with one another. The old concept that society is an association of individuals in a common life does not hold good any longer. It is a "nation of joiners." Pluralism is, thus, a natural accompaniment of the "atomistic" view of society and human freedom. To put it in the words of Ernest Barker, the State is more an association of individuals, already united in various groups "for a further and more embracing common purpose."<sup>46</sup> It means that the State is only one among many other forms of human associations, and, as compared with other associations, it has no more superior claims to the individual's allegiance. The State and the associations and groups, as Maitland says, are the species of the same genus.

43. Coker, R.W., *Recent Political Thought*, p. 504; also refer to *A History of Political Theories. Recent Times*, Edited by C.E. Merriam and H.E. Barnes, pp. 89-98.

44. Laski, *Grammar of Politics*, p. 256.

45. *Ibid.* p. 257.

46. Ernest Barker, *Political Thought in England from Herbert Spencer to the Present Day*, pp. 175-83.



The fact that society contains many associations has a number of consequences. First, it takes individuals out of a state of isolation and gives them a chance to participate in the common endeavour, that is, the good of man and society. Secondly, it permits citizens to have a variety of loyalties and allegiances, thereby preventing the possibility that they might live under a single source of authority. Finally, "a network of voluntary associations stands as a 'buffer' between the relatively powerless individual and the potentially powerful state."<sup>47</sup> The pluralists, thus, consider the State as essential in the life of the individual as other associations composing society are. They are not against the State, but would discard the sovereign State with its absolute and indivisible power. They denounce coercive government and dispute its right, and even its power to compel obedience. They believe that the various associations and groups fulfil the many and diverse wants of the individual and help to make his life whole and rich, and, accordingly, assert that any interference on the part of the State, and for that matter of the government, in the independent existence and functioning of these associations is not only undesirable but defeats the purpose for which the State came into existence and continues to exist. Greaves says that the State is a system of order and, as such, it requires a body of rules "to provide in their certainty and predictability a foundation for order." It needs organs to make these rules and to interpret them. Clearly it is also necessary that the State should have at its command the use of physical force to ensure obedience to its rules. But "Order is merely a prerequisite for the achievement of ends which the members of the association have in common and in realization of which the state may be an instrument for realizing."<sup>48</sup> The State is not merely a system of order. It is a cooperative organization for the promotion of the well-being and development of the personalities of its members.

The central idea of Pluralism has been summed up by Gettell. He says, "The Pluralists deny that the State is a unique organisation; they hold that other associations are equally important and natural; they argue that such associations for their purpose are as sovereign as the State is for its purpose. They emphasize the inability of the State to enforce its will in practice against the opposition of certain groups within it. They deny that the possession of force by the State gives it any superior right. They insist on the equal rights of all groups that command the allegiance of their members and that perform valuable functions in society. Hence sovereignty is possessed by many associations. It is not an indivisible unit; the State is not supreme or unlimited." All this may be reduced to the following bare analysis:—

1. The parts of the State are as real as the whole. The State is, therefore, distributive, not collective.
2. The distinction between the State and government is not real. Both are the same. The State does not command, it serves and is a public or social service organization.
3. The State is one among other groups which man needs to fulfil the purposes of his life. His allegiance is, accordingly, not unified. It is divided and diffused. His allegiance to the State may conflict with his allegiance to other associations, and may even take priority over his loyalty to the State.

47. Andrew Hacker, *The Study of Politics, The Western Tradition and American Origins*. p. 25.

48. Greaves, H.R.G., *The Foundations of Political Theory*, p. 14.

4. The State is not in any way a mysterious formation with supernatural or metaphysical characteristics. Omnipotent sovereignty is not true to facts. It is not unitary, but federal.
5. The State can serve its purpose by and through goodwill alone. It cannot destroy associations and groups, as it cannot create them. Nor can it enforce its will against the opposition of associations and groups within it. Since the State expresses the will or purpose of the human beings within it, it "does not enjoy any necessary pre-eminence for its demands," as Laski puts it. As the State is only one of the many associations to which the individual happens to belong, "politically there is no such thing as sovereignty at all", he concludes.

**Development of the Theory.** The theory of pluralism originated in the writings of Otto V. Gierke and F.W. Maitland in the last quarter of the nineteenth century, although earlier political thinkers, too, had recognised the part associations played in the life of man. The doctrine of Gierke and Maitland is that various associations, which exist within any society, are instinctive to man. They are not hypothetical, fictitious or created from without. Each association has a real personality and a collective consciousness and will. Each is independent of the State and may be even prior to it. According to Gierke, all such associations have their own rights, duties and functions. He argues that "the State should accept the common point of view that permanent associations have rights and duties as groups, whether or not the State has accepted them as corporations."<sup>49</sup>

Various Sociologists have also criticised the traditional structure of society. They regard the political side of the life of man as only one part of human activity and, accordingly, would seek to concentrate on group life in its various manifestations. Emile Durkheim argues for the restoration of the ancient occupational groups as a definitely recognised public organisation. "We have at present," he maintained, "no clear principles and no clear juridical sanctions through which to determine relations between employers or employees and the public."<sup>50</sup> The activities of any profession could be regulated only by a group embracing its functions and needs, such as a guild or a trade union. The professional groups must, therefore, be established for securing the economic regulation of all such professions and for purposes of political representation. Geographical representation, it is asserted, had lost its political, economic and social utility and, as such, geographical divisions should be replaced by vocational divisions which will reflect more accurately the various social interests.

There are other writers who have emphasized the autonomous rights of particular groups or who support some special type of social organisation. They protest against the omniscience of the State. Figgis criticises the efforts of the modern political leaders, "to invade the proper spheres of such essential social groups as churches, trade unions, local communities, and the family." The State, he says, did not create the family nor did it create the churches; nor even in any real sense can it be said to have created the clubs or trade unions, nor in the middle ages, the guild or the religious order, hardly even the universities or the colleges within the universities; they have all arisen out of the natural

49. As quoted in R.W. Cokers *Recent Political Thought*, p. 504.

50. *Ibid.*, p. 506.



associative instincts of mankind, and should all be treated by the supreme authority as having a life original and guaranteed to be controlled and directed like persons, but not regarded in their corporate capacity as mere names.<sup>51</sup> Figgis gives to the State a superior right over all other associations, but this superior right is only for coordination and adjustment.

Laski recognises complete autonomy for all associations. He emphasises that the parts of the State are as real as the whole. "We do not proceed," he says, "from the State to the parts of the State on the ground that the State is more fundamentally unified than its parts, but we, on the contrary, admit that parts are as real and as self-sufficient as the whole."<sup>52</sup> The essence of his arguments may be stated in his own words. He says, "But because society is federal, authority must be federal, also."<sup>53</sup> Laski assails the moral validity of the doctrine that attributes sovereignty to the State. The State, in his opinion, has no right to the allegiance of an individual except in so far as his conscience assents to. "The claim of authority upon myself is...legitimate proportionately to the moral urgency of its appeal."<sup>54</sup> He further said, "The only State to which I owe allegiance is the State in which I discover moral adequacy; and if a given State fails to satisfy that condition, I must, to be consistent with my own moral nature, attempt experiment...Our first duty is to be true to our conscience."<sup>55</sup> He tersely summed up, "We give to this particular group (the State) no particular merit."<sup>56</sup>

Laski would, thus, deny to the State any superior claim over other associations. He would even condition obedience to its authority. His general view is that the "sovereignty of the State will pass, as the divine right of the kings had its day." The State will continue only to coordinate the functions of various other associations without any right to assume omnipotence. Powers, in this way, will become coordinate instead of being hierarchical, and authority federal.

There are many other contemporary political writers who have advocated Pluralism—MacIver, Lindsay, Barker, G.D.H. Cole, Miss Follet and others. MacIver, for example, accepts the State as an association like various others within the community, although it exercises functions of a unique character. He gives the State an essential character of a corporation possessing "definite limits, definite powers and responsibilities." The business of the State, in his opinion, is merely to give "a form of unity to the whole system of social relationship." Barker does not accept the conception of the "real personality" of groups, but he admits that permanent groups within society existed prior to the State, and each of them has a corporate character and functions of its own. The State to him is a group of groups or a community of communities.

**Evaluation of the Pluralistic Theory.** What the Pluralists assert is true to a great

51. Figgis, J.N., *Churches in the Modern State*, p. 47.

52. Laski, H., *The Problem of Sovereignty*, p. 9.

53. Laski, H., *A Grammar of Politics*, p. 271.

54. *Ibid.*, p. 349.

55. *Ibid.*, p. 289.

56. Laski, H., "The Personality of Associations," *Harvard Law Review* xxxix (1915-16), p. 426, and as quoted in R.W. Coker's *Recent Political Thought*, p. 508.

extent. Our life is a group life and modern society is honeycombed with such organisations. No one can deny that voluntary groups and associations play an important role in the local and national life of the people. Man is not merely a citizen. He has his duty to the family, to the community and to himself. He owes allegiance to all such associations as make his life full and contribute to his well-being. A healthy society is one in which the individual has an abundance of opportunities for pursuing his own particular interests in collaboration with others. Accordingly, in general, the greater the number and variety of associations, the better will be his opportunities.

The Pluralist theory is a protest against the elevation of the State to mystical heights. Hegel viewed it as "God on earth" and invested it with not only supreme legal, but also supreme moral authority. Pluralism demarcates and limits the functions of the State and defines its authority. It accepts the State at par with other associations and demolishes the edifice of its glorification which Hegel built. Miss Follet in her book, *The New State*, sums up the merits of pluralism as follows:

1. The Pluralists "prick the bubble of present State's right to supremacy. They see that the State which has been slowly forming since the Middle Ages with its pretences and unfulfilled claims has not won either our regard or respect."
2. "They recognise the value of the group and they see that the variety of our group life today has a significance which must be immediately reckoned within political life." They also repudiate the notion that the groups are given authority by the State.
3. "They plead for a revivification of local life." The pluralists, thus, aim at decentralising authority and feel that the most imminent of our needs "is the awakening and invigorating, the educating and organising of the local unit."
4. "The Pluralists see that the interest of the State is not now always identical with the interests of its parts."
5. Pluralism is "the beginning of the disappearance of the crowd."
6. Finally, pluralism "contains the prophecy of the future because it had with keenest insight seized upon the problem of identity of association, of federalism."

But it may be noted that these associations can exist, grow, and achieve their objects only within the framework of the State, and that we cannot abandon the doctrine of the sovereignty of the State. Without sovereignty there can be no State and without the State we cannot have variety of associations, because for the collective life of man there must be some political organisation. If the State is to be abolished and replaced by autonomous associations, it is "not far removed from a condition of theoretical anarchy, in which each individual's conscience is the arbiter of his action."<sup>57</sup> Figgis described the State as a Society of "Societies" and assigned to it "a distinctive function and a superior authority" as an agency of coordination and adjustment. He asserted that one of the chief values in the several smaller groups consists in the fact that they foster loyalty to the State. To quote Figgis again, "It is largely to regulate such groups and to ensure that they do not outstep the bounds of justice that the coercive force of the State exists."<sup>58</sup>

The pluralists, in fact, have not attempted to make these groups independent of the

57. Gilchrist, R.N., *Principles of Political Science*, p. 104.

58. As quoted in Coker, R.W., *Recent Political Thought*, p. 513.



State. The State, Gierke says, "is distinguished from other social bodies by its position above them; for the State alone there is no limit through a higher collective existence; its will is the sovereign general will, the State is the highest *Machtverband*."<sup>59</sup> Paul Bancour regards the State as the sole representative of general interests and national solidarity. He would assign to the State the duty of preventing any group from acting aggressively towards other groups and its own members. Lindsay recognises the State as the "organisation of organisations." Miss Follett criticises the pluralists' conception of the State as "competing" for the citizen's loyalty. Even Laski did not propose to get rid of the State altogether. He recognised the distinction between the State and an association and defined the State as "the association to protect the interests of men as citizens." He agreed that "to satisfy the common needs, it must control other associations to the degree that secures for them the service such needs require." He also accepted the need of the "ultimate reserve power of the State." Laski finally conceded: "And however much we may reduce the direct administrative capacity of the political State, the fact remains that once it is charged with the provision of services which men stand in common need, it has their interests in trust to a degree with which no other body can, at least in a temporal sense, compete. Even if we abstract from the modern State the final control of international affairs, the civic area of internal matters that is left seems, at any casual glance, overwhelming."<sup>60</sup>

We may, then, conclude that in spite of their convincing arguments, the pluralists fail to "expunge" the notion of sovereignty from political theory as they claim. There is yet another interesting and perhaps somewhat surprising fact to note. "While most Pluralists have sought to drive sovereignty out of the front door of their new society, they quietly smuggle it again through back door, more or less disguised, but nevertheless a sovereignty." Such, indeed, is the case with Krabbe's "legal community" ruled by the sense of right, Duguit's monistic principle of "social solidarity", and Cole's "democratic supreme court of functional equity." The pluralists attempt to abolish sovereignty, but are finally compelled to restore it. There is always some ultimate authority in society, whether we find it in "natural law", "in reason", in "social solidarity", or in the individual's "sense of right." As soon as we admit the existence of an ultimate power, we must provide a channel for its expression, that is, a "determinate person", as the jurists say, "through whom the voice of the common good is heard." The pluralists may refuse to call this channel the sovereign person, but the fact is that with whatever name we may designate it, sovereignty is still sovereignty. It does not lose the quality of supremacy, no matter by whom and in which manner it is exercised. In fact, the pluralists are not out to destroy sovereignty, but to recognise it so that the political power shall become the true expression of the community. "To destroy sovereignty", as Hsiao says, "is as dangerous as it is futile."<sup>61</sup>

The possession of power does not mean its perpetual exercise whenever the sovereign's command is opposed. If the opposition is resolute and determined, common sense and good judgment may suggest it to the sovereign to give way. If he does not, perhaps the

59. *Ibid.*, p. 512.

60. Laski, H., *The Problems of Sovereignty*, p. 75.

61. *Political Pluralism*, p. 140.

cost would be too great, disproportionate to the satisfaction of vindicating the law. Would it have been wiser to meet the Indian demand for *Swaraj* (independence) and Egyptian nationalism with wholesale military repression instead of granting independence to both the countries? The sovereign will always hesitate in taking drastic action. It is easy to recall many occasions on which the sovereign has given way before group pressure. The behaviour of the legal sovereign can best be explained by his dependence on the political sovereign. If the political sovereign has not been reduced to impotence as the mere tool of a dictator, he hangs over the head of the legal sovereign like a sword of Damocles. Even a dictator is afraid of his future and will hesitate to take an action which is likely to jeopardise his existence. MacIver appropriately says that "all governments depend simply upon a margin of strength, represented by the balance of opinion in their favour" and "an act which reduces the margin weakens its authority entirely out of proportion to the turn over of opinion."<sup>62</sup> If the legal sovereign flouts public opinion, when the voters finally act, they will entrust legal sovereignty to a different set of men and so reverse the unpopular policy of repressive actions.

But it does not mean that the entire pluralistic criticism of the monistic State is a vain attempt. The pluralists have done a useful service by emphasizing individual freedom and introducing the group into political thought. They have pointed out the way to a more concrete method of social organization than that hitherto generally employed. Sovereignty, they insist, must not be too narrowly political or legal. It must be representative of the diversity of social purposes—economic, religious, cultural, and other interests as well. In this way, sovereignty becomes the real and living manifestation of social purposes. The authority of such a sovereign is vastly more extended and ultimate than any sovereign power conceived by monistic lawyers who always take a narrow and abstract view of it. Such a conception of sovereignty retards the forces of absolutism set into motion by Hegel and his followers.

### CHARACTERISTICS OF SOVEREIGNTY

The traditional distinctive attributes or characteristics of sovereignty are: permanence, exclusiveness, all-comprehensiveness, inalienability, indivisibility, and absoluteness.

**Permanence.** Sovereignty is permanent and it continues uninterrupted as long as the State exists. Changes in government do not mean cessation of sovereignty. Bearers of the authority of government may change, but the State endures and so does sovereignty. It does not cease with the "death or temporary dispossession of a particular bearer or the reorganisation of the State, but shifts immediately to a new bearer as the centre of gravity shifts from one part of a physical body to another when it undergoes external change."<sup>63</sup>

**Exclusiveness.** The sovereign power is exclusive and there is none to compete with it. There can be only one sovereign power in a State which can legally command the obedience of its inhabitants. To hold otherwise would be to deny the principle of the unity of the State and "to admit the possibility of an *imperium in imperio*."

62. MacIver, R.M., *The Modern State*, p. 292.

63. Garner, J.W., *Political Science and Government*, p. 170.



**All-comprehensiveness.** Sovereignty is universal in character and it extends to all persons and associations within its territorial limits. It is co-extensive in its operation with the jurisdiction of the State and comprehends within its scope all persons and things in the territory of the State. The modern State does not recognise the existence of any rival within its jurisdiction. There can be neither any person, nor any organisation, however universal, which can affect the sovereignty of the State.

The only exception to the universality of sovereignty is the extra-territorial jurisdiction allowed to embassies. An embassy is subject to the law of the State of which it flies the flag and the ambassador and his staff are amenable, within the premises of the embassy, to the law of their own country. The law of the State in which the embassy is located does not apply to it. It must, however, be remembered that the extra-territorial sovereignty is only a matter of international courtesy and is, under no circumstances, a limitation on the sovereignty of the State. If any State wishes, it can deny this privilege and history provides many such examples.

**Inalienability.** The sovereignty of the State cannot be alienated. Liber has said that "sovereignty can no more be alienated than a tree can alienate its right to sprout or a man can transfer his life and personality without self-destruction." The State and sovereignty are essential to each other. But when the State cedes a part of its territory, it does not mean that the State has lost its sovereignty. It is, on the other hand, "an excellent example of the working of the sovereignty of the State. All that happens is that, whereas formerly there was one State, now, with such cession, there are two States."<sup>64</sup>

Closely connected with inalienability is the attribute of the imprescriptibility of sovereignty. This means that sovereign power cannot be lost with the lapse of time by the non-exercise of such power. "Sovereignty cannot be lost," says Garner, "by mere lapse of time, as property in land may be lost by prescription at private law."

**Indivisibility.** The pluralists believe in the duality of sovereignty. The legal sovereignty aims at its unity. It is asserted that sovereignty is indivisible and division of sovereignty means destruction of sovereignty. Jellinek has remarked that the notion of a "divided, fragmented, diminished, limited, relative sovereignty" is the negation of sovereignty. If we accept the pluralist point of view and concede sovereignty to all associations and groups, it is simply to paralyse the existence of the State. The existence of several supreme wills, each equally capable of issuing commands and exacting obedience, would obviously result in conflicts, disintegration of the State, and ultimately in its extinction. Wherever it may reside, sovereignty "is an entire thing; to divide it is to destroy it. It is the supreme power in a State, and we might just as well speak of half a triangle as of half a sovereignty."<sup>65</sup>

But all do not subscribe to the view that sovereignty is unity. The question of divided sovereignty was brought into prominence when the United States of America emerged as a Federation. A federation is normally the result of a union between hitherto sovereign States. It is one of the essential features of a federation that while agreeing to a union, the federating units must preserve their individuality. The subjects of administration are,

64. Gilchrist, R.N., *Principles of Political Science*, p. 110.

65. As quoted in J.W. Garner's *Political Science and Government*, p. 173.

accordingly, divided between the newly created central government and the federating units. At the time of adopting the Constitution, it was generally held by the publicists in the United States that both the central government and the units of a federation remain sovereign within their own respective jurisdiction and sovereignty, as such, was divisible. This theory was strongly supported by Hamilton and Madison. It was endorsed by the Supreme Court in *Chisholm v. Georgia* (1792) wherein, it was held that "the United States are sovereign as to all the powers of government actually surrendered by the States, while each State in the union is sovereign as to all the powers reserved." This theory of dual sovereignty received the approval of such eminent constitutional lawyers as Judges Cooley and Story and political writers as De Tocqueville, Hurd and many others. "There is no question," says Hurd, "that the statesmen of all sections who made the constitution of the United States understood that political sovereignty was capable of division according to its subjects and powers."

This is not a correct estimate of sovereignty in a federation. A federal union does not envisage two States. It makes only one State and, therefore, one sovereignty. The units of a federation are not really States. It is a misnomer if they are named so. They are subordinate lawmaking bodies with guaranteed powers. They are not sovereign, but autonomous within their sphere of powers as the national government is within its own sphere of jurisdiction. What is divided in a federation, between the centre and units, are the powers of government, and not sovereignty. Those who believe in the division of sovereignty confuse the State and government. Calhoun says, "There is no difficulty in understanding how powers appertaining to sovereignty may be divided and the exercise of one portion be delegated to one set of agents and another portion to another, or how sovereignty may be vested in one man, in a few or in many. But how sovereignty itself, the supreme power, can be divided ... it is impossible to conceive."

Where, then, do we discover sovereignty in a federation? The jurisdiction and powers of legislatures at the centre and in the units, called states both in the United States and India but Provinces in Canada, composing a federation are limited. They derive their authority from the Constitution and each gives legal expression to its will within prescribed limits. If they attempt to go beyond the powers therein enumerated, the courts are likely to hold such an act invalid. The legal sovereign in a federation is the body which can amend the Constitution and by doing so, gives commands to every other organ of government. The amending body is supreme; legislatures are subordinates. It is, however, important to note that in a federation the Constitution amending power is indeterminate. There is no single point or body in which such authority can be said to reside. Laski has said, "The discovery of sovereignty in a federal State is, practically, an impossible adventure."<sup>66</sup> It may, therefore, be concluded that sovereignty is a quality of the State. Like the honesty of a man or the beauty of a flower, it does not need to be located.

**Absoluteness.** The sovereignty of the State is absolute and unlimited. It is subject to no legal limitations, either internally or externally. Without sovereignty there can be no State. It is the supreme characteristic of Statehood. Sovereignty, therefore, implies absence of any restraint on its authority, either from within or without. To hold otherwise is to

66. Laski, H.J., *A Grammar of Politics*, p. 63.



create some higher power by which the sovereign authority is limited. Absoluteness of sovereignty also implies its universality, permanence and indivisibility.

All this is true in terms of law, but there is no such thing on earth as absolute sovereignty. It is through human agency that the sovereign power is expressed and exercised. Man can never be perfect and independent. Dependence is his very nature. How can he be absolutely sovereign then? Even the most despotic ruler is limited by his natural limitations. Sovereign power is, also, limited by what Gilchrist calls "human endurance." He says that the religion, education, character and environments of the sovereign must colour his actions.<sup>67</sup> There are, accordingly, limits of individuality, expediency and commonsense. Moreover, some writers hold the view that man possesses certain natural and inherent rights. These rights exist independently of the State and no sovereign can supersede them. Bluntschli says that even the State as a whole is not almighty, for it is limited externally by the rights of other States and internally by its own nature and by the rights of its individual members.

The doctrine that the State is absolutely supreme is fallacious and even dangerous. We have already discussed the nature of political sovereignty and the vast mass of influences which perpetually shape, limit or forbid the actual direction of the forces of society by the sovereign. There are some who even maintain that sovereignty is limited by the prescriptions of divine law. Sir Henry Maine tried to establish that the sovereign can, under no circumstances, act contrary to the immemorial customs and long-established traditions. No autocrat, to repeat, be he Ranjit Singh, or Galeazzo Visconti, can compel an unwilling people to change their deep-rooted habits and customs. He is always confronted with the risk of revolution. Nor has any State so far devised a machinery for controlling thoughts. In fact, none has gone as far as this, though the devise of brain-washing is there. Finally, there are limitations imposed by the rules of International Law and by the constitution of the State. The State may bind itself by treaty not to exercise its powers in certain ways. For instance, it might bind itself not to change its tariffs or the value of its currency without the consent of other States. Governments in constitutional States are set within legal orders which determine their bounds and may limit their activities. In the United States no government may pass an *ex post facto* law. Even the State, as it operates through the amending power, is subject to limitations. It may strive to enact law that runs so counter to the convictions of large number of its people that it fails to be obeyed and to receive the requisite "acceptance." Such was the case with prohibition in the United States.

**What Sovereignty Means Today?** We have dealt with so many conflicting issues involved in the concept of sovereignty. These conflicting issues are essentially the creation of nineteenth century jurists and political theorists who created such a maze that it becomes difficult to extricate oneself therefrom. The modern State is sovereign and it is now universally admitted that without sovereignty there can be no State. The sovereignty of the State is recognised, first, in a legal sovereign, which has *de jure*, that is, from the standpoint of law, the final word of command and whose authority, so far as law is concerned, is unlimited, absolute and supreme. With the establishment of the representative

67. Gilchrist, R.N., *Principles of Political Science*, p. 107.



# Power, Authority and Legitimacy

In the words of Robert A. Dahl, "Power, influence and authority are commonplace words that ordinary people share with political practitioners and political theorists. One hears of power to govern, the power of purse, political power, spiritual power, economic power, national power, judicial power, Presidential power, black power, student power, state power."

Power is central to the study of politics. Politics is nothing but struggle for power. We cannot separate power from the study of politics. All states possess power which is the most important and essential element of the state. No state system can work in the absence of power. The view of Robert A. Dahl is that power is synonymous with politics. Harold Lasswell says that politics gives an answer to the question: "Who gets what, when and how?". Wasby observes that the concepts of power and influence are central to the study of politics.

Power is the key concept because if politics is the resolution of conflict, it is the distribution of power within a community that determines how the conflict is to be resolved and whether the resolution is to be effectively observed by all parties.

Political power is not evenly distributed. It is usually concentrated in the hands of a few who may be called "the power elite." In both the liberal Western democracies and the Communist states, we have the power elite.

Some scholars have defined politics itself in terms of power struggle. Their contention is that political relationships are mainly power relationships. However, this view is not accepted by the normative theorists who maintain that it is not easy to accept the concept of power as a key concept. They consider authority as the key concept. The moral philosophers are dissatisfied with the power concept. They point out that man is motivated not only by power considerations, but there are other urges and

## *Learning Objectives*

- Meaning of Power
- Difference Between Power and Force
- Difference Between Political and Military Power
- Development of the Concept of Power
- Characteristics of Power
- Sources of Power
- Kinds of Power
- Forms of Power
- Methods of Exercising Power
- Measurement of Political Power
- Authority
- Concept of Authority
- Sources of Authority
- Characteristics of Authority
- Basis of Authority
- Authority and Power
- Authority and Freedom
- Structure of Authority
- Legitimacy
- Basis of Legitimacy
- Types of Legitimacy
- Suggested Readings



drives in him which lead him to accommodate others and resolve differences. Man is not exclusively a power-hungry animal who always seeks to control the actions and behaviour of others. Power is a means to an end for which power is sought and that is more important. To understand politics as essentially a power struggle has dangerous normative implications. It stresses the importance of brute force and justifies the existence of a system based on power. That is why it is difficult to accept power as the key concept in politics. Authority, and not power, is the key concept and the state, though enjoying power, ought to be based on authority.

### Meaning of Power

There is no agreement among scholars regarding the meaning of the term "Power." James G. March writes that power is a disappointing concept. It is not easy to define power because it is a complex term. Many definitions of power have been attempted. According to Herbert Goldhamer and Edward Shills, "Power is ability to influence the behaviour of others in accordance with one's own ends." Hans Margenthaun defines politics as a struggle for power, as a psychological relation between those who exercise it and those over whom it is exercised. It gives the formal control of certain actions of the latter. To quote him, "By power we mean the power of man over the minds and actions of other men." Power is a possession but not in a tangible form like money. MacIver writes, "By the possession of power we mean the capacity to centralise, regulate or direct the behaviour of persons or things." According to Samuel Beer, "One person exercises power over another when he intentionally acts in such a manner as to affect in a predictable way actions of others." Lasswell and Kaplan define power as participation in the making of decisions. Erich Kaufman says, "The essence of the state is *Machtentfaltung* (development, increase and display of power)". Karl Baker writes, "The simple fact is that politics is inseparable from power. States and government exist to exert power. In each country and in the world at large, there is either a balance of power, and an unstable balance of power, or no balance of power at all. But there is always power. Political power exists in the world and will be used by those who have it." M.G. Smith says that "power is the ability to act effectively over people and things using means ranging from persuasion to coercion". In the words of George Schwarzenburger, "Power is capacity to impose one's will over another by reliance on effective sanctions in case of non-compliance." Robert A. Dahl defines power "as a special case of influence involving losses for non-compliance. If A confronts B with the prospects of shifting his behaviour, A is attempting to exercise power over B."

David Easton defines power as the "relationship in which one person or a group is able to determine the actions of another in the direction of the former's own ends." Power is the capacity of an actor to affect the actions of others in accordance with his own intentions. It implies a relationship. It is something one can use against somebody else. It is also a possession. It is something that one has and which one may choose to use or not to use. Hobbes has used the term power in the sense of something possessed, the present means to obtain some apparent "future good". He speaks of every man in the state of nature being afraid of the power of every other man. The weak man fears the physically strong. The strong man fears the scheming intellect of the weak. Today, when a man is elected to an office, he receives certain stipulated powers which he regards as his personal possession. The two aspects of power, power as a possession and power as a relationship are in one sense mutually inter-dependent. The skilful use of power as a possession can enable the user to make many more do his bidding. On becoming Prime Minister, every leader of the majority party in a parliamentary democracy holds certain stipulated powers as a possession, although some Prime Ministers used their possession more skillfully than others and thereby increased their total power.

Power is invariably used to produce certain desired effects. Bertrand Russell refers to power as "the production of intended effects." One can produce intended effects either by persuasion or influence or by force and domination. Persuasion can be honest and technical when scientific reasons are given for changing one's view. It can also be fraudulent and propagandistic when facts are distorted

or deliberately certain events are played down in order to convince a person. In the case of power as domination, there is manifestly a conflict situation. As power includes at one end of the pole influence and at the other end domination, Partridge calls it "the most inclusive term".

Power is compared with a scale at one end of which is influence and at the other end domination. A number of situations involving the exercise of power are arranged along this scale.

There are three dimensions of power viz., the range of power, the zone of acceptance and the intensity of power. The range of power has reference to the number of persons the power-wielder can influence or induce to follow. The zone of acceptance refers to those matters of areas or zones within which the power-wielder exercises power. A government may be able to exercise great power when the people obey it but not so if they oppose. Scholars have tried to use this concept of zone of acceptance in describing the distribution of social and political power. Even within a given zone of power, there will be a limit to the amount of influence or domination that a power-wielder may be able to exercise. A commander in the army may be able to induce or compel his troops to endure hardships and sufferings to a certain limit and not beyond that on account of the danger of revolt. This is called the intensity of power.

Power relationships do not follow the "zero-sum game". An increase in the power of one man does not necessarily mean a decrease in the power of another. During the World War II, the British Government increased its powers but that does not mean that British citizens who conferred that power, lost their power.

### Difference Between Power and Force

The view of Robert Bierstedt is that "force is manifest power. Force means the reduction or limitation or closure of even total elimination of alternatives to the social action of one person or group by another person or group". When a man surrenders his money to a dacoit in order to save his life, the dacoit has achieved his objective by merely a threat of force without using it. When the dacoit has to resort to actual force in order to snatch the money and other belongings, he has used force. The actual manifestation of power is force. Force is power in action or force is power exercised.

### Difference Between Political and Military Power

There is a lot of difference between political power and military power. The basis of political power is psychological influence, leadership and its will power. Political power includes the power of money, arms and ammunition and influence regarding votes. In democratic countries, power is gained through elections in which money and other methods are frequently used. Military power plays a secondary role as compared with political power because military authorities have to obey the President of India and the Prime Minister of India. When one country attacks another country, the military power of both the sides comes into action and force is used.

### Development of the Concept of Power

The concept of power is very old. It can be traced to the time of Aristotle. The view of Montesquieu was that power was the central point for the study of political science. Almost all political scientists have used the term power in their writings.

### Characteristics of Power

There are certain characteristics of power. Power is the capacity to influence the behaviour of others. An individual or a nation wields power to the extent he is capable of changing others behaviour according to his wish. Power is the capacity of an individual to get things done from others according to his desires.



According to Frederick, "Power is a certain kind of human relationship. For the use of power, the presence of an actor or subject and some other individuals is essential so that the actor can influence "other individuals according to his capacity and wish. Power does not exist in vacuum. Power can be exercised only in relation to others. This establishes a kind of relationship.

Power is situational. It depends on situation, circumstances and position. A teacher may exercise power on his student while he is in college but not after he has left the college. Likewise, an officer may use power and authority on his subordinates, but they may not accept his power when he retires. Hence, power depends upon the situation, circumstances and position.

Power depends on its use. The President of India has powers but he does not use them as he is merely a constitutional head. The President of the United States has vast powers and he actually uses them.

Power must be backed by sanction. If the capacity of a person to get work done from others is devoid of coercion, that capacity or ability cannot be called power. Robert A. Dahl writes, "Whoever can visit penalties like these on people, is bound to be important in any society. Indeed, the state is distinguished from other political systems only to the extent that it successfully upholds the claim to the exclusive right to determine the conditions under which certain kinds of severe penalties, those involving serious physical pain, constraint, punishment or death, may be legitimately employed." Political power must be exercised for the attainment of some purpose or goal. If it is used without any goal or purpose, it is ineffective and useless. Karl Deutsch writes, "Power cannot accomplish more than a succession of random impacts on the environment unless there is some relatively fixed goal or purpose. There are some decisions by which the application of power can be guided or directed. The guidance is indispensable for the sustained effectiveness of any system that applies power to its environment and any such system must receive this guidance from its memories, its past decision, its will or somewhat move generally from its character."

In the opinion of Lasswell and Kaplan, power is always relational. It is not the property of one single individual. At least two actors are required, one who exercises the power and the other upon whom the power is exercised. "Power is an interpersonal relationship. Those who hold power, are empowered. They depend upon and continue only so long as there are continuing streams of empowering responses." It is useless to talk about the power of an individual or of a nation unless they, by establishing relations with other individuals and nations, affect their behaviour.

Another characteristic of power is that it is not absolute but relative only. If an individual has power, it is essential that there should be someone who is prepared to accept its use as well. Power depends upon time. Power-relation changes with the changing circumstances.

Power has two aspects, actual and potential. There is the actual power of a person and a community and also the potential power of a person and a community. By actual power we mean that power which a person or community actually uses. Potential power is that power which a person or community can exercise although the same may not be actually exercised.

### Sources of Power

There are many sources of power. The major source of power is knowledge which helps us to move from darkness to light. It helps us in investigating, learning thinking and development of mind and soul. The capacity for leadership comes through knowledge. Hence, knowledge is an important source of power.

Another source of power is organisation. It is a great power in itself. When people work together, their power and strength increases. Likewise, when a person enjoys the support of the leader of an organisation, his power increases. Political parties are organised to capture power and exercise the same.

Another source of power is the status of an individual. Economic status helps a person to attain power. A rich man can put pressure even on the highest officials and ministers and get things done in his own way. Dahl rightly says that an individual with better resources will capture more power than others. The status of a person in the religious field is also a source of power as the followers of that religion support him.

Another source of power is the skill of an individual. A tactful person can get more powers than others.

Another source of power is faith or belief. Power cannot be based on repression or brute force. It is necessary to win over the faith of the people also. A government enjoying public faith is more powerful than others.

Another source of power is authority. Authority means legitimate power. When a person occupies a political or legal post legitimately, his power increases automatically. Authority not only adds to power but also makes it effective. When a person becomes a minister and gets the authority of a minister, he becomes more powerful than others.

Another source of power is the mass media like newspapers, radio and television. The owners and editors of newspapers can easily influence others and are admittedly powerful.

Another source of power is the personality of a person. That personality may be due to his wisdom, courage, oratory, organisational ability and capacity to take quick and proper decisions. A leader who possesses a charismatic personality is more powerful than others.

### Kinds of Power

Power may be legitimate or illegitimate. Legitimate power is that which is used according to the laws, Constitution or the accepted traditions of the people. It may be constitutional, traditional, or charismatic. *Constitutional power* is derived from the Constitution of the country. Traditional power is based on customs and traditions of a country. Charismatic power is based on the personal qualities of an individual.

Illegitimate power is that which is exercised not according to laws, Constitution or the accepted traditions or customs of the people. It is based on force or repression.

Power may be direct or indirect. When a person himself uses his power, it is called direct power. When he gets it used by others or by subordinates, it is called indirect power. Power which is exercised openly or explicitly is called manifest power. The police and the army are examples of manifest power. The power which cannot be exercised openly or clearly is called latent power such as the power of the people. When a person uses his power over others who do not have any power on him, it is called unilateral power. When both sides use power for each other, it is called bilateral power. When power is centralised at one place, it is called centralised power. When it is divided at different places, it is called decentralised power. Power is decentralised in a federation. It is centralised in a unitary government. National power is always exercised by the state. It may be psychological power, economic power or military power.

### Forms of Power

Crespiigny classifies power relationship into six categories viz., coercive, inductive, reactional, impedimental, attrahent and persuasive power relationships. A *coercive relationship* exists between A and B when A gets B to do what he wants by threatening to make things unpleasant for B if he does not comply. Basically, coercive relationship implies conflict and deprivation. Over a period of time, it may come to generate voluntary behaviour.



An *inductive power* relationship exists when A gets B to do what he wants by providing him something attractive, by offering a kind of award. By granting additional release of newsprint, the government may induce a newspaper not to publish a critical review.

In a *reactional power* relationship, A exerts power over B or B does what A wants, not because of inducement or constraint but because B hopes or expects that A will help him if he complies or will harm him if he does not comply. The power relationship between superiors and their subordinates is usually *reactional* because subordinates believe that they may prosper or win promotion by complying with the wishes of the superiors.

In the case of *impedimental power*, A gets B to comply with his wishes by putting impediments or obstacles in the attainment of his goal. A minister may prevent a contractor from doing his building work by withdrawing the "no-objection" certificate.

A power relationship in which A exercises power over B because the latter loves or is impressed or attracted by his personality and desires to imitate or obey him, is called *Attrahent power*. No conflict or tension is involved as power is willingly conceded by B to A. The power of a charismatic leader is generally of this kind.

*Persuasive power* is that power which may be exercised by A over B and which is based on rational or non-rational arguments. There is no conflict or tension in this power relationship.

There is a *legitimate power* relationship when A affects the actions of B because B regards him entitled to do so. Legitimate power must be exercised by a person authorised by a set of rules to do certain things or issue certain commands. A exercises legitimate power over B only when B feels that the action of A is just and he is authorised to act by a set or system of rules.

### Methods of Exercising Power

Power may be exercised in different ways. *Persuasion* is the most effective and widely used method of exercising power. Most of the work of international organisations consists of the efforts of the various delegates to persuade one another. Another method of exercising power is by offering *rewards*. Rewards may be psychological, material, economic or political. A diplomat may change the policy of his country to win the appreciation of a fellow diplomat from another country. Rewards may be in the shape of military aid, weapons, troops and training facilities. Rewards may be in the form of loans or gifts. Punishment is another method of exercising power. Rewards and punishments are closely related. Another method of exercising power is the *use of force*. Punishment is threatened as a preventive measure but when it is actually carried out, it becomes the use of force.

### Measurement of Political Power

It is a difficult thing to measure political power. One important reason is the universal tendency to present power relationship in the garb of morality. During the period between the two World Wars, it was believed in certain quarters that with the establishment of the League of Nations, power has been eliminated from international relations. That impression was created because the big Powers spoke in moral terms of peace and security. It was not realised that the big Powers were speaking in those terms because that enabled them to maintain their superior position. A power pursuit was presented in moral terms. However, an attempt can be made to measure political power by asking such relevant questions: how many times has A effected change in the behaviour of B? Did B change dramatically or was he almost at the position that A desired? Was the change in B's behaviour relatively permanent or temporary? Did A have similar success in the behaviour of C, D, E, etc. as he had with B?

One way to measure power is to rely on the judgment of the people. Many observers can be asked to judge the power of certain people.

## AUTHORITY

### Concept of Authority

The word authority is derived from the old Roman notion of "Auctor" or "Auctoritas" which generally meant counsel or advice. It was the Roman custom to get the Senate made up of "men of reason" and "Elders with experience" to approve or reject the decisions of the popular assembly. According to Carl Friedrich, an authority is the embodiment of reason and depends on "the capacity of reasoned elaboration. The man who possesses authority has the capacity for reasoned elaboration." Authority regulates behaviour mainly by speech and words, not force. Authority is inevitable in any society. Men are "rule-following animals." They talk and regulate their own behaviour and that of others by means of speech and framing rules. The term authority is essential to indicate the people who are considered to have the right to make pronouncements or announce decisions. Authority has a double implication. It implies not only that someone with the capacity to reasoned elaboration has the right to issue regulations and make final pronouncements. It also implies that someone has the right to receive obedience. The view of Peters is that the concept of authority is "incompatible with science and morality." This is due to the fact that science proceeds by its own logic while morality depends on inner conviction. In both cases, authority is out of place.

According to MacIver, "Authority is often defined as being power, the power to command obedience." Jouvenel is of the view that "authority is ability of man to get his proposals accepted." Herbert A. Simon defines authority as "the power to make decision which guides the actions of another. It is relationship between individuals, one superior and the other subordinate. The superior frames and transmits decisions with expectations that they will be accepted by subordinates. The subordinates accept such decisions and his conduct is determined by them." Robert A. Dahl writes, "A commands B and B feels A has perfect right to do so and which he has a complete obligation to obey. Power of this kind is often said to be legitimate. But when B feels A has absolutely no right to ask him to obey, which he has no obligation to obey, and which perhaps he actually has no obligation to resist. Power of this kind is often said to be illegitimate. Legitimate power is often called "authority". An important element of authority is legitimacy.

### Sources of Authority

According to Max Weber, there are three types of sources of political authority: traditional, charismatic and legal-rational. When the right to rule emerges from a continuous use of political power based on customs and traditions, it is called traditional authority. When the right to rule springs from the great qualities of head and heart of the political leader, it is called charismatic authority. When the right to rule emerges from constitutional rules, it is called legal-rational authority.

### Characteristics of Authority

There are certain characteristics of the concept of authority. The most important is *legitimacy*. It is legitimacy which determines the effectiveness of authority. Legitimacy is very essential for authority.

Another important characteristic of authority is dominance. Authority is the capacity of the individual to command others. An individual or group which possesses authority, exercises dominance over others. Authority is the command of senior officials given to their subordinates which is accepted by them.

Another characteristic of authority is that it is informal. It lacks those characteristics which are the main characteristics of power. Frederick writes, "Authority is not a power, but something that accompanies power."



Another characteristic of authority is reason. Frederick writes, "The man who has authority possesses something that I would describe as the capacity for reasoned elaboration, for giving convincing reasons for what he does or proposes to have other to do." The basis of authority is reason. We accept authority because it is based on logic.

Another characteristic of authority is responsibility or accountability. The individual or the group which possesses authority is also answerable to some higher authority. In a democracy, responsibility or accountability is an important characteristic of authority.

When authority is claimed to be derived from God, it is called authority based on divine right. James I of England and Louis XIV of France considered themselves as the representatives of God and maintained that they got their authority directly from God. Such a view is not acceptable today. Another kind of authority is based on brute force. Generally, dictators possess this type of authority but it is never permanent.

Another kind of authority is based on ancestral heritage. This type of authority exists under a monarchical system.

Another kind of authority is that of the elite. It is possessed by a small group of individuals on the basis of their knowledge, money or personality.

When a person or a group derives its power from the Constitution of the country, it is called constitutional authority.

Traditional authority is that which is based on ancient customs or traditions or conventions.

Rational-legal authority is that which is used in accordance with the laws of the land. Such a kind of authority exists only in a democracy.

When the right to rule springs from the great qualities of the leader, it is called charismatic authority. Max Weber says, "Charismatic authority rests on the devotion to the specific and exceptional sanctity, heroism or exemplary character of an individual person."

Religious authority is possessed by those individuals who occupy a high position of authority in some religious sect or religion.

Authority may be *de jure* or *de facto*. *De jure* authority pre-supposes a system of rules which determine who shall be the actors, that is, who shall be those who with reasoned elaboration, shall take decisions, make pronouncements, issue commands and perform certain acts. *De jure* authority is exercised through speech and word and enjoys the right to receive obedience. While *de jure* authority is concerned with a prior set of rules that determine who shall be the author, *de facto* authority has reference to the man whose word, in fact, goes as law (and is obeyed) in these spheres. Normally, *de jure* and *de facto* authorities go hand in hand. The Parliament of England has both *de jure* and *de facto* authority.

In addition to *de jure* and *de facto* authorities, there is also an *intermediate kind of authority*. This authority is held by a man not according to any system of rules but because "he is special sort of person". Such an authority rests on the devotion of the people to the personal characteristics of the man, his heroism, or special or unusual abilities. Max Weber calls this kind of authority charismatic authority. Scientists and economists are considered authorities although they have not been put in authority by any set of rules, but because of their training, study and competence. Peters writes that *intermediate authority* implies "a self-generating system of entitlement which is confined to specific spheres of pronouncement and decision."

## Basis of Authority

There was a time when the only sanction behind authority was sheer physical force. Religion also was another basis. The view of the exponents of the social contract theory was that a social contract provided a basis for state authority. In the nineteenth century, democracy was the most important force. Political thinkers refer to the principle of consent as something necessary for the use of state authority. The state which is based on the consent of the people has no need to make use of its coercive power as the people are loyal spontaneously. The success of a government depends upon the cooperation which it can evoke from the people. When the aims and objectives of the state are identical with those of the people, the latter whole-heartedly obey and support the state and the use of coercion is the minimum.

A reference may be made to the *sanctions of authority*. There may be social sanctions of authority. Society expects individuals to be obedient in certain social situations. Individuals also accept authority on account of fear of society. There is also psychological sanction when the juniors accept the authority of seniors. Another sanction of authority is purpose. For the proper functioning of an organisation, its employees accept the authority of their elders. Authority is accepted by individuals for the achievement of some goal or object. Sometimes, the people accept authority if it brings money or status for them.

## Authority and Power

Some scholars regard authority as a species of power. For example, Weldon defines authority as "power exercised with the general approval of the people concerned." There are scholars who use the two terms interchangeably. As a matter of fact, the term authority was not conceptually analysed satisfactorily by scholars. Machiavelli and Hobbes devoted considerable space in analysing how power was used to regulate human life but said practically nothing about authority.

Normative theories reject the attempt to analyse authority in terms of power. R.S. Peters writes, "But, my claim is that power usually has meaning by contrast with authority rather than as a generic term of which authority is a species. The concept of authority is necessary to bring out the ways in which behaviour is regulated without recourse to power, that is, force, incentive and propaganda." C.J. Friedrich observes, "Authority is not a kind of power for something that accompanies it."

Power and authority are both ways of regulating social behaviour and conduct. The man with authority does this by virtue of his "capacity for reasoned elaboration", his capacity for giving convincing reasons for what he does or wants others to do. On the other hand, power is the way of regulating social conduct or behaviour by means other than reasoned elaboration, by means such as force, propaganda, enticement, fear of putting obstacles in the way, even love etc.

Both authority and power may increase or decrease, but for different reasons. We speak of decline in authority with age. Authority may decline owing to hastiness, emotionalism and favouritism in the exercise of authority. In contrast, the loss of power is due to the loss of wealth, military force, threat or strife. There is no system of rules authorising the actor to act or make pronouncements and there is no obligation to render obedience. However, there is an intimate connection between power and authority. So long as the rule or system is generally respected by most people, there is exercise of authority. However, with reference to the few who do not respect the system or rules, authority may also be a source of power. The exercise of authority will always imply the exercise of power, not in relation to the majority who accept it but in relation to those who do not. The Government of India exercises authority as most of the Indians accept to be governed by the Constitution of India. However, if a handful of extremists or secessionists choose not to accept them and flout the Constitution, the Government of India exercises authority as well as power in relation to them. Every government based on authority must have sufficient power to maintain its authority against the few who reject it, against those who choose to bring about change in violation of the accepted rules or by force overthrow it. A government with authority but without power, may easily be overthrown by



a handful of armed rebels. The bulk of the people concede authority to the government to maintain law and order and realise other goals. Authority must be effective to attain its purpose or it will not be respected. Power always goes with authority but every instance of the exercise of power is not an expression of authority.

Authority in the state can decline or disappear. It happens when a government having authority does not possess enough military strength or force to suppress an armed revolt or a challenge from a determined minority. The government itself may lose the capacity of ruling by reasoned elaboration and thereby forfeit the right to receive obedience. From the point of view of normative theory, it is more meaningful to speak of the rise and decline of authority in the state than the rise and decline of power.

Authority is always legitimate whereas power can be legitimate as well as illegitimate. In the words of Lasswell, "Power becomes authority when it is legalised. Capacity to issue orders is power, whereas authority is that point where the decisions are taken." Power is generally based on force, whereas authority is based on consent. Authority is more democratic than power. It is always legitimate and based on popular support. Authority is the ability of a man to get his proposals accepted but power is the capacity of man to change the behaviour of others.

### Authority and Freedom

Authority and freedom are not opposed to each other. As a matter of fact, freedom finds authority as something indispensable because without authority there will be anarchy. Authority has to be exercised in a legitimate way for a good social purpose, for maintaining peace, order and harmony and for solving the multifarious problems of the people. Trouble arises when authority is misused for purposes other than those promoting the happiness and welfare of the people. A dictator makes his authority repulsive to the people and his authority can never be reconciled with freedom. The misuse of authority destroys freedom.

### Structure of Authority

The term structure of authority refers to the widely accepted fixed and regular channels, institutions and set procedures by which authority is exercised. The structure of authority varies from state to state depending upon such factors as the size of the country, the size of its population, its traditions, social requirements and expectations. Changes in these factors result in changes in the structure of authority. As the traditions and expectations of the community change or are modified by the historical process and the requirements to the situation, the structure of authority tends to become outdated. The structure of authority must respond to those factors by making necessary adjustments because an outdated structure can be a serious threat to the survival of authority itself.

There are two basic features of the structure of authority which cannot be tampered with. One is that the structure of authority must provide a two-way traffic—from top to bottom and from the base upwards. The decisions and pronouncements of the government must be clearly formulated and effectively communicated downwards to the masses. Secondly, the structure of the authority in the state must be plural. No single individual or association can speak for all the rest. Modern societies are complicated and plural and hence the structure of authority has to reflect this plurality.

### LEGITIMACY

The term "legitimacy" is derived from the Latin word "Legitimus" which means lawful. However, in modern times, the term has a different meaning. According to S.M. Lipset, "Legitimacy involves the capacity of the system to engender and maintain the belief that existing political institutions are most appropriate for the society." Dahl writes, "According to one use of the term, a government is

said to be legitimate if the people to whom its orders are directed believe that the structure, procedure, acts, decisions, policies, officials or leaders of the government possess the quality of righteousness, propriety or moral goodness and should be accepted because of this quality irrespective of the specified content of the particular act in question." Though different political systems can acquire legitimacy, democracies are more in need of it than others. Jean Blondel observes, "Legitimacy can be defined as the extent to which the population accepts naturally, without questioning, the organisation to which it belongs." The broader the area of agreement or acceptance, the more legitimate is the organisation. Legitimacy is concerned not only with the political system but also with the group that exists in a society. G.K. Robert opines, "Legitimacy is that principle which indicates the acceptance on the part of the public of the occupancy of a political office by a particular person, or the exercise of power by a person or group, either generally or in some specific instance, on the grounds that occupancy or exercise of powers is in accordance with some generally accepted principles and procedures of enforcement of authority." J.C. Piano and R.E. Riggs write, "Legitimacy means the quality of being justified or willingly accepted by subordinates that converts the exercise of political power into rightful authority. Legitimacy reflects an underlying consensus that endows the leadership and the state with authority and that offers respect and acceptance for individual leaders, institutions and behaviour norms." Legitimacy means the capacity to produce and maintain a belief that the existing political system is the most appropriate for the society and the people must regard it as sacred and worthy of respect and obey it unhesitatingly. As regards the extent of legitimacy, Jean Blondel writes, "There are, in fact, two ways in which one can talk about the extent of legitimacy or a dimension of legitimacy. One relates to a number of persons, who support the political system or group, the greater this percentage, the more legitimate the political system or group would seem to be; the other relates to the intensity of the system, members of the political system or group may be very passive, almost neutral, or else intensely opposed or intensely in favour. When these two aspects are linked, it becomes conceivable to measure the legitimacy of a group or political system by considering its weighted support minus the weighted rejection. If the figures were near zero or even negative, the group would have no legitimacy and would be in considerable danger of not maintaining itself."

### Basis of Legitimacy

Max Weber refers to certain grounds of legitimacy. Legitimacy may be based on the rational ground resting in a belief in the legality of patterns of normative rules and the right of those elevated to authority under those rules to issue commands. The traditional basis of legitimacy rests on an established belief in the sanctity of immemorial traditions and legitimacy of the status of those exercising authority under them. The charismatic basis of legitimacy rests on devotion to the specific and exceptional sanctity, heroism or exemplary character of an individual person and the normative patterns or orders revealed or ordained by him. Dahl refers to three kinds of the basis of legitimacy viz., personal choice, competence and economy.

### Types of Legitimacy

There are two types of legitimacy: legitimacy towards authority or authorities and legitimacy towards regime. David Easton refers to three types of legitimacy viz., ideological legitimacy, structural legitimacy and personal legitimacy. Ideological legitimacy is based on the moral convictions about the validity of the regime and incumbents of authority. Structural legitimacy is based on an independent belief in the validity of the structure and norms and the incumbents of the authority. Personal legitimacy is based on the belief in the validity of the incumbents of authority roles to the authority roles themselves. The belief in the validity of authorities is based on their personal qualities. When the source of legitimacy is the ideology prevailing in the society, it is called ideological legitimacy. The principles which motivate the members of a system to accept their authorities as legitimate also contribute to the validation of structures and norms of the regime. Legitimacy also flows from the personal qualities and worth of the authorities rather than their position in the system. There are leaders who are able to build up a belief in their legitimacy.



"Law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government."

- Woodrow Wilson.

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## STATE, LAW AND PUNISHMENT

**Relation between Law and Morality Law and Public Opinion.** The term 'Law' has been derived from "an old Teutonic root 'lag' "which means something which lies fixed or evenly." Law regulates life and without law there is chaos and confusion. The term law is used to denote that which is uniform. Laws are of two kinds: physical and human. Those laws which regulate nature are known as physical laws. Those laws which regulate human life are known as human laws. In Political Science we use the term law to mean a body of rules to guide human action. The state operates through the government and the government interprets the will of the state through law. Law is the vehicle of sovereignty. "Any discussion of sovereignty", says E. Asirvatham, "involves the question of law. Sovereignty is a mere theoretical principle and does not have much meaning unless it expresses itself in and through law."<sup>1</sup>

### DEFINITIONS OF LAW

- (1) According to Salmond, "Law is a collection of the rules which the State recognises and applies in the administration of justice."
- (2) According to Austin: "Law is the command of the sovereign."
- (3) Woodrow Wilson maintains that "Law is that portion of the established thought and habit which has gained distinct and formal recognition in the shape of uniform rules backed by the authority and power of the government."
- (4) According to H.R. Soltou, "A Law is a rule of behaviour for the members of state, the disregard of which meets with a penalty which will be enforced by the state's machinery of power."
- (5) In the opinion of Holland: "A law is a general rule of external human action enforced by a sovereign political authority."
- (6) Professor Willoughby maintains that Laws are "those rule of conduct that control courts of justice in the exercise of their jurisdictions. As distinguished from all rules of conduct that obtain more or less general recognition in a community of men, they are such as have for their ultimate enforcement the entire power of the state."

1. E. Asirvatham : "Political Theory", p. 324.

(7) According to Krabbe, "Law is the expression of the judgments of value which we human beings make by virtue of our disposition and nature."

**Purpose of Law.** In short, we can say that in Political Science we use the term law to mean a body to rules of guide human action and to regulate human life. Hocking has very aptly remarked, "It is not the issuing of law that makes the state, it is the force of the state that makes law." A law does not become a law until and unless it is backed by the state. The purpose of law is to "establish sure foundations in the certitude of which men can build and rebuild the many mansions of society."<sup>2</sup>

### CLASSIFICATION OF LAWS

Laws are of the following types:-

- (1) Private Laws.
  - (2) Public Laws.
  - (3) Constitutional Laws.
  - (4) Statute Laws.
  - (5) Ordinances.
  - (6) Common Laws.
  - (7) Administrative Laws.
  - (8) International Laws.
1. **Private Laws.** Private laws determine the relation of citizens to one another. They regulate the relations among individuals. "In Private Law", says Holland, "the parties concerned are private individuals above and between whom stands the state as an impartial arbiter."
  2. **Public Laws.** Public laws are the laws that determine the relation of citizens to the state. Distinguishing Public Law from Private Law Holland says, "In public law also the state is present as an arbiter, although it is at the same time one of the parties interested."
  3. **Constitutional Laws.** Constitutional Laws are all those "rules which, directly or indirectly affect the distribution or the exercise of power in the state", and which are "enforced by the courts". Constitutional Laws are the basic laws according to which the government in a state conducts itself. In short, the laws that define, interpret and regulate the functions of the government are known as constitutional laws. The laws which are not related to the forms and functions of the government and to the fundamental rights but are related to the social and economic affairs of all citizens are known as ordinary laws. For example, the election of the President, the powers and functions of the Supreme Court and method of the appointment of the Governors are the constitutional affairs but the abolition of child-marriage, prohibition of wine, Hindi Code Bill, etc., come under the command of ordinary laws.
  4. **Statute Laws.** The laws which are framed by the Legislative Assembly or by the Parliament are known as Statute Laws. These days Democratic Government is popular in most of the countries and most of the laws are framed there by the Parliaments in those countries.
  5. **Ordinances.** Ordinances are the orders issued by the executive branch of the government within the powers prescribed to them by the law of the state. In simple words, the President issues the orders, in the absence of Parliament, in order to face the emergency. As a rule ordinances are not permanent. They are issued for the special purpose of facing emergency.

2. MacIver: "The Modern State", p. 272.



6. **Common Laws.** Common laws are those laws which rest on customs but are enforced by the law courts like statute law. Common laws are quite popular in England.

7. **Administrative Laws.** According to Dicey, administrative laws interpret the office and responsibilities of government servants. Administrative laws enable the public officers to separate law and procedure from private individuals. These laws also attempt to interpret the privileges of government officials. These laws are not popular in England, U.S.A. and India. They are popular in France and a few other countries of Europe. If there arises a dispute between a citizen and a government-servant, the citizen goes to the Administrative Courts. The Administrative Court resolves the dispute with the help of administrative laws. Such Administrative Courts are not popular in India, England and U.S.A. Here all the cases are filed in the ordinary courts.

8. **International Laws.** International laws are rules which determine the conduct of the general body of civilized states in their dealing with each other. International laws stand for the body of the rules which regulates the relations between states. These laws are not framed by any sovereign law-making authority nor is there any sovereign authority to enforce these laws. But these laws are backed by International Public Opinion. These laws are meant for regulating the conduct of various states in the world. They have the force only to the extent to which they are recognised and accepted by the different states of the world. For example, it is a universally accepted international law that the plane of no foreign country can fly over the territory of any country without seeking its permission. This international law is universally accepted by all the countries of the world.

### SOURCES OF LAW

Following are the sources of law :

1. **Customs.** Customs play a decisive role in the framing of the laws. Most of the laws spring from the customs and are recognised by the state. If we turn the pages of political history, we come to know that in the Tribal Age. Whenever there arose a dispute between the two members of a tribe that dispute was resolved by the head of the tribe. In resolving the dispute the head of the tribes used to seek the help of customs and traditions. These customs became laws when tribes extended into the states. No state can afford to ignore the customs of the country. MacIver has very aptly remarked in this connection, "In the great book of law the state merely writes new sentences and here and there scratches out an old one. Much of the book was never written by the state at all and by all of it the state itself is bound, save as it modifies, the code from generation to generation. The state can no more reconstitute at any time the law as a whole than a man can remake his body". The Common Law of England sprang mainly from customs.

2. **Religion.** In the primitive community religion played a decisive role in the framing of laws. Religion served as the basis of law in most of the countries. Woodrow Wilson has beautifully pointed out in this regard, "Indeed the early law of Rome was little more than a body of technical religious rules, a system of means for obtaining religious rights through the proper carrying out of certain religious formulas". The origin of the Hindu Law in India can be traced in the code of Manu. Likewise, the origin of Mohammedan Law can be traced in Shariat. In the proper sense of the term Divine law is a law revealed through man from God. God is the ultimate source of divine law, though man may promulgate it.

3. **Judicial Decisions.** Judicial decisions play an important role in the framing of laws. Gettell maintains that the state "arose not as the creator of law but as the interpreter and enforcer of custom". The function of the Judiciary is to

interpret and declare the law. But in discharging its function the judiciary creates new laws. The laws are later on recognised by the state. In this way, Judicial Decisions are another source of law. In discharging his duty of resolving the dispute by interpreting the law, the judge sometimes imparts verbal decisions and these decisions can be referred in later cases. In modern courts when there is an ambiguity in a particular law, the judge interprets it in his own way and thus creates a new rule. In course of time, this new rule is recognised by the state and it becomes a law. Sometimes, the decisions of Supreme Court and High Courts are treated as laws.

4. **Equity.** Another source of law is equity. In the words of Sir Henry Maine, Equity is "any body of rules existing by the side of the original civil law, founded on distinct principles and claiming incidentally to supersede the civil law in virtue of a superior sanctity inherent in those principles". It is an "informal method of making of new law or altering old law, depending on intrinsic fairness or equality of treatment". As everybody knows, the function of a judge is to interpret law and administer justice. But many times laws do not fit in every case. In the cases where laws do not fit in or when laws are ambiguous, principles of equity are applied and cases are decided according to commonsense and fairness.

5. **Scientific Commentaries.** Scientific commentaries are another source of law. A scientific commentator, "by collecting, comparing and logically arranging legal principles, customs, decisions and laws lays down guiding principles for possible cases. He shows the omission and deduces principles to govern them. He provides the basis for new law, not the new law itself". At first when the commentary appears, it is used only as an argument to convince but later on when its authority is recognised, it becomes more authoritative than judicial decisions. "The opinion of learned writers on law", says A. Appadorai, "have often been accepted as correct law: in England, for instance, the opinions of Coke and Blackstone; in America of Story and Kent, in India of Vijnaneswara and Apararka".

6. **Legislature.** The last and the most important source of law is legislature. In modern times most of the laws are framed by Legislature.

### RELATION BETWEEN STATE, LAW AND MORALITY

#### Relationship between law and morality

"The state is founded on the minds of its citizens, who are moral agents", says Professor R.N. Gilchrist, "... A bad people means a bad state and bad laws". It is true that law is the subject of study in Political Science and morality is the subject-matter of Ethics, yet there is a close affinity between the two. We have already discussed at length the affinity found between Political Science and Ethics in the second chapter. Here we are to deal with the close intimacy found between law and morality. Law and morality are complementary to each other. Ethics teaches citizens the code of conduct. It shows them the distinction between truth and falsehood. It makes us aware of the wrongness and rightness of our actions. Ethics enables us to think in moral terms and upgrades us in moral terms. It helps us in raising our moral standard. Laws framed by the state also aim at the same. The ultimate end of the state lies in promoting the welfare of the people. The state aims at good life. Political Science also enables individuals to come out as good citizens. Individual can become an ideal citizen only when he follows the code of conduct by morality. So there is a close affinity between law and morality. Ideal citizens are by an ideal state. A state can become an ideal state only when it operates through ideal laws of morality. Morality is the basis of ideal laws. If the state operates through ideal laws which are based on morality, it will help the emergency of an ideal state. For example, laws framed with a purpose of eliminating such evils and



"Where there is no law, there is no freedom".

-John Locke

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## LIBERTY AND EQUALITY

### IMPORTANCE OF LIBERTY

From the very beginning both man and the state have been making efforts for the security of their freedom. Freedom is a very precious condition without which neither the state nor the individuals can make any progress. We remember very well how cruelly the absolute monarchs ignored the claims of liberty in England in ancient and medieval ages. These absolute monarchs did not pay any attention to the liberty of the individuals and acted according to their will. But people could no longer tolerate it. They rose in revolt and continued their struggle against the absolute monarchy of these cruel rulers till they got their freedom. As a result of this constant revolt and struggle against absolute monarchy, Emperor John had to bow down before the public and had to ensure freedom to his subjects. After that Tudor and Stuart emperors tried to continue their absolute monarchy. It resulted in the outbreak of the Civil War in their regime. King Charles I was beheaded and Oliver Cromwell succeeded him. Even in the regime of Cromwell when people failed to attain their freedom, the British continued their struggle for freedom. This resulted into the outbreak of Glorious Revolution in the regime of Charles II and James II. As a result of it, people succeeded in attaining the absolute monarchy of their cruel rulers for a long period. This long struggle resulted in the outbreak of the famous French Revolution in 1789. But even this political upheaval could not help people in attaining their long desired liberty. The successors of Napoleon behaved like absolute monarchs. At last after the fall of Napoleon III, Third Republic was established and people succeeded in attaining their liberty in the real sense of the term. After the fall of Third Republic in 1940 and Fourth Republic in 1958, Fifth Republic was established in France. Just as people struggle for individual liberty for a long period of time, so slave countries also go on struggling against the foreign yoke till they succeed in attaining independence. In nineteenth century, Italy and in twentieth century, India, Algeria and many other countries made untold sacrifice for the noble cause of attaining their independence. These sacrifices bear a testimony to the fact that the slave countries have been attaching a very great importance to their national liberty or independence.

### MEANING OF LIBERTY

The term 'liberty' has been derived from the Latin word 'Liber' which means free from all shackles. The Latin word 'Liber' denotes the absence of all restraints. It means one can do whatever one likes, regardless of all conditions. But as a matter of fact liberty does not permit a person to do whatever one likes. Liberty, in the sense

of a complete absence of all restraints is not possible. Such liberty cannot exist. The fundamental maxim of liberty is that law is the condition of liberty. Professor Barker has beautifully pointed out that just as the absence of ugliness does not mean presence of beauty so that absence of all restraints does not mean the presence of liberty. "Liberty is possible only in an ordered state, a state where the legal and political aspects of sovereignty coincide or nearly coincide." "Historic experience", says Professor Laski, "has evolved for us rules of convenience which promote right-living; and to compel obedience to them is a justifiable limitation of freedom". He defines liberty as "the eager maintenance of that atmosphere in which men have the opportunity to be their best selves".<sup>1</sup>

### Definitions of Liberty

- (1) According to Seeley, "Liberty is the opposite of over-government".
- (2) McKechnie believes that "Freedom is not the absence of all restraints, but rather the substitution of rational ones for the irrational".
- (3) "Liberty", according to Mr. Burns, "means liberty to grow to one's natural height, to develop one's abilities".
- (4) According to Gettell, "Liberty is the positive power of doing and enjoying those things which are worthy of enjoyment and work".
- (5) "Liberty is", says Professor G.D.H. Cole, "the freedom of the individual to express without external hindrances to personality".
- (6) According to Mahatma Gandhi, "Liberty does not mean the absence of restraint but it lies in development of liberty".
- (7) Laski maintains, "Without rights there cannot be liberty, because, without rights, men are the subjects of law unrelated to the needs of personality".

On the basis of definitions given above we can say that liberty is a very precious condition in a state without which human beings cannot develop their personality. Ramsay Muir maintains, "By liberty I mean, the secure enjoyment by individuals and by natural and spontaneous groups of individuals, such as a nation, church, trade union, of the power to think their own thoughts and to express and act upon them, using their own gifts in their own way under the shelter of law, provided they do not impair the corresponding rights of others".

### Positive and Negative Conceptions of Liberty

Liberty has two phases: Positive and Negative. "The positive concept of liberty admits that there must be compulsion if liberty is to have a practical meaning....Whereas the positive view of liberty expresses the freedom to do something, the negative aspect connotes the freedom from having to do something."<sup>2</sup> By negative liberty is meant that there should be any hindrance in the path of one's actions. By positive liberty is meant freedom to do something. The individual should have rights and opportunities to develop his personality. By liberty, J.S. Mill meant negative liberty. He maintained that there should not be any restraint imposed upon man and his actions. There should not be any hindrance in the path of man. This hindrance may be good or bad. But J.S. Mill does not allow any hindrance. For example, he allows the individual to drink wine if he is not on

1. Professor Laski: "A Grammar of Politics", p. 143.
2. Ibid., p. 142.
3. Laski: "Grammar of Politics", p. 142.
4. "Encyclopaedia of Social Science", Vol. (1954), p. 442.



the public duty at that time. He does not think whether wine will cause harm to his health or not. This is the reason why our government has passed the Prohibition Law. This is the reason why Professor Barker observed, "John Sutart Mill was the prophet of an empty liberty because he had no clear philosophy of rights through which alone the conception of liberty attains a concrete meaning".<sup>5</sup>

### DIFFERENT KINDS OF LIBERTY

Liberty is of the following kinds :

- (1) Natural Liberty.
- (2) Civil Liberty.
- (3) Personal Liberty.
- (4) Political Liberty.
- (5) Economic Liberty.
- (6) National Liberty.

#### (1) Natural Liberty

First of all, we have the concept of natural liberty which indicates unrestrained freedom to do whatever one likes. Professor R.N. Gilchrist calls it unscientific use of liberty. He defines natural liberty thus: "Everyone has a vague notion of liberty of some kind and a desire for it, but among ten people using the word, perhaps no two will be able to say exactly what they mean, or if they do so say it, will agree with each other in their definitions. This general unscientific use of the word we may call Natural Liberty".<sup>6</sup> While analysing his theory of Social Contract, he defined natural liberty as "What a man loses by the social contract he defined natural liberty and an unlimited right to anything that tempts him, which he can obtain". Thus, natural liberty seems to be a licence rather than a liberty. Natural liberty means absence of all restraints - an unrestrained freedom to do whatever one likes. Just a lion is free to do whatever it likes in the jungle, so a man should have unrestrained freedom to do whatever he likes in society. Thus, it is quite clear that natural liberty is based on sheer force. John Locke maintained that in the state of nature people enjoyed the right to life, liberty and property. But it is absolutely incorrect because it is only the state that guarantees the enjoyment of these rights. In the absence of the state, the question of the enjoyment of human rights does not arise. In the state of nature people possessed animal powers and not the rights. Rousseau, an ardent advocate of the state of nature, maintained, "Man was born free, but everywhere he is in chains". This statement of Rousseau does not appear sound because the development of human personality is not possible in the absence of society. And only in society the individual cannot enjoy unrestrained freedom. He cannot act according to his will in society. If he is allowed to do whatever he likes, there will be chaos in society and people will degenerate into the state of nature as described by Hobbes.

#### (2) Civil Liberty

Secondly, we have the concept of Civil Liberty which means the Rule of Law. "Civil Liberty", according to Barker, "consists in three differently expressed articles; physical freedom from injury or threat to the life, health and movement of the body; intellectual freedom for the expression of thought and belief, and practical freedom for the play of will and the exercise of choice in the general field of contractual action and relations with other persons". Civil liberty indicates that absence of those restraints which are not reasonable and legitimate. It refers to the liberty enjoyed by man in society. It prevails in the state. It denotes the enjoyment of

5. Barker, "Political Thought in England", p. 10.

6. Professor R.N. Gilchrist, "Principles of Political Science", pp. 16-17.

our rights within the limits of law. The protection of civil liberty is guaranteed by the law. The protection of civil liberty is guaranteed by the laws of the state. Gettell has very aptly remarked in this connection, "Definite law, sure enforcement and equality before law marked the advance of civil liberty of man to man".

#### (3) Political Liberty

Thirdly, we have the concept of Political liberty which means liberty of citizens to participate in the political life and affairs of the state. By Political Liberty Laski means the freedom of the individual to participate in the affairs of the state. He says, "I can let my mind play freely about the substance of public business. I must be able without let or hindrance to add my special experience to the general barriers in the way of access to position of authority. I must be able to announce my opinion and to concert with others in the announcement of opinion". Leacock calls Political Liberty as "constitutional liberty". and Gilchrist regards Political Liberty as "practically synonymous with democracy". Political Liberty includes minimum rights. These rights are: the right to vote; the right to contest elections; the right hold public office; the right to express political views and criticise the government; and the right to petition etc.

#### (4) Personal Liberty

Fourthly, we have the concept of personal liberty which means the availability of those conditions in which the individual can act as the pleases without being under any type of arbitrary and illegitimate restraint. In the opinion of F.A. Hayek, liberty is a "condition of men in which coercion of some by others is reduced as much as possible in society.... The state in which a man is not subject to coercion by the arbitrary will of another or other is often also distinguished an individual or personal freedom".<sup>7</sup> Every individual has the right not to permit any other individual to interfere in the affairs of his personal life. Every individual should have the liberty to dress, food, standard of living, marriages, education of children, etc. The state should not interfere in the personal matters of the individual. Such liberty is essential for the free development of human society.

#### (5) Economic Liberty

Fourthly, we have the concept of Economic Liberty which means the liberty to earn one's daily bread. In his book "Grammar of Politics", while defining economic liberty, Professor Laski says, "By economic liberty, I mean security and the opportunity to find reasonable significance in the earning of one's daily bread. I must be free from the constant fear of unemployment and insufficiency which, perhaps more than other inadequacies, sap the whole strength of personality. I must be safeguarded against the wants of tomorrow". In simple words, we can say that every individual, regardless of the distinction of caste, colour and creed, should have liberty to earn his daily bread by fair means.

#### (6) National Liberty

By national liberty we mean the liberty of the nation or the country. The following words are engraved on the building of our Central Secretariat, Delhi: "Liberty does not descend upon a person. People must raise themselves to liberty. Liberty is a blessing that must be earned in order to be enjoyed". Like individuals, nations also think in terms of liberty. National liberty exists where the nation or the community is independent and sovereign. As a matter of fact national liberty is another name for national sovereignty. Every state or nation wishes to remain free. And without independence the progress of the nation or the state is not possible. In

7. F.A. Hayek, "The Constitution of Liberty", (1959), p. 11.



a slave country people cannot enjoy the comforts of life. And whenever a country is enslaved by imperialistic forces, the slave country goes on making efforts and continues to make sacrifices till it succeeds in liberating itself from the clutches of the foreign yoke. In order to restore and regain its independence, India made unimaginable sacrifices and continually struggled against the Turks, Mughals and British. These sacrifices are well recorded in the golden pages of Indian history. Likewise, in the nineteenth century Italy struggled against Austrian yoke and ultimately succeeded in restoring its independence. The sacrifices made by Italy and the heroic deeds done by the brave leaders of Italy are well-recorded in the golden pages of Italian history. In the nineteenth and twentieth centuries Greece and Bulgaria struggled against the yoke of Turkish empire and ultimately succeeded in regaining their freedom. In twentieth century, African countries struggled against the yoke of foreign empires and their struggle resulted in the restoration of freedom to most of African countries. After the attainment of freedom if any attempt to enslave that free country is made, the affected country makes all possible efforts and makes every sacrifice to safeguard its independence. For example, England made every possible sacrifice in order to safeguard the country against the aggressions committed on it by Napoleon and Hitler. After Independence when India was attacked by China in 1962, again by Pakistan in 1965 and 1971, the Government of India made all possible efforts to defend the country and the soldiers of Indian army sacrificed their lives for the noble cause of safeguarding national freedom and glory. Indian public and all the political parties of India co-operated with the government in that hour of emergency.

## RELATION BETWEEN LIBERTY, SOVEREIGNTY (AUTHORITY) AND LAW

### Views of Individualists, Anarchists and Syndicalists

As we have already discussed, Liberty does not mean the absence of all restraints legitimate or illegitimate. Nor does liberty mean unrestrained freedom to do whatever one likes to do. Liberty means the individual can act as he pleases without being under any type of arbitrary or illegal restraint or control. Liberty does not mean the complete absence of all laws. Liberty exists only in an ordered state. The state frames law and the sovereign state operates through these laws. There is a close relationship between liberty, sovereignty and law. Though this view seems sound yet a number of political thinkers do not accept this view. For example, Syndicalists and Anarchists maintain that more powerful the state, more curtailed and confined will the individual liberty be. Hence, they wanted to abolish the state. William Godwin, a well-known anarchist opines: "Law is an institution of the most pernicious type". In the eighteenth and nineteenth centuries, the individualists interpreted liberty in their own way. They regarded the control of the state as harmful to the individual and, therefore, supported the confinement of the authority of the state. But the individualist doctrine resulted in dangerous consequences in England when this doctrine was implemented. Now it is universally accepted that laws are the protectors of liberty. Liberty ceases to exist in the absence of law.

### Law is the Condition of Liberty

"Where there is no law there is no freedom", says John Locke. Therefore, the existence of law is essential for the existence of liberty. It is the laws that protect liberty. In the absence of law the individual will have to seek the help of might in order to safeguard his liberty. And there will be "might is right". In the absence of laws anarchy will prevail in society and people will degenerate into primitive savages who lived in the state of nature as described by Hobbes.

Professor Willoughby has asserted that "Freedom exists only when there is restraint". Gettell observes, "Liberty in any real and dependable sense is possible only if sovereignty exists and becomes more perfect as sovereignty is more completely organised".<sup>8</sup>

### Law is the protector of Liberty

Liberty is protected by law in three ways. First of all law provides congenial atmosphere for the smooth running of civilized life in society. Law punishes the criminals and defends the rights of the individuals. Secondly, laws guarantee the enjoyment of individual rights and duties and protects them. The state punishes the individual who causes harm to others and hinders the path of others. Thirdly, constitution is the custodian of liberty. It is only the constitution that confines the authority of the state and protects the fundamental rights of the people.

### Views of Idealists

Idealists maintain that liberty lies in the obedience to law. Liberty ceases to exist in the absence of laws. For example, Hegel maintains, "State is a march of God upon earth and it is the highest expression and organ of social morality". T. H. Green has justly said, "Much modern legislation interferes with the freedom of contract, in order to maintain the conditions without which a free exercise of the human faculties is impossible". According to idealists obedience to law is obedience to real will.

### Does every law protect liberty

Now the question arises whether every law protects liberty. During the British rule many laws were framed which aimed at crushing the individual liberty of Indians. For example, Rowlatt Act, Safety Act, Bengal Regulation of 1818 Vernacular Press Act, 1818, etc., were framed for crushing liberty. Indians raised a call of protest against these laws and struggled against the implementation of these laws. Gandhiji launched Satyagraha against the Salt Law. Thus, it is quite clear that every law is not the protector of liberty. If the laws are framed for the noble purpose of promoting the common welfare, they protect liberty. Sometimes even in democratic countries such laws are framed as are deadly against the public opinion and against the spirit of common welfare. The public agitates against these laws and carries out peaceful demonstrations. If the good laws are framed, the public obeys them in full spirit. It is our duty to obey these laws because without obedience to laws, we cannot enjoy our liberty. In dictatorship laws are enforced mercilessly. This imposition of laws on the people makes the public unhappy. The laws which pay due regard to the spirit of liberty are regarded as good laws. Gettell has very aptly remarked in this respect, "Sovereignty carried to the extreme becomes tyranny and destroys liberty and liberty carried to extreme becomes anarchy and destroys sovereignty."<sup>9</sup> Thus, it is quite clear that there is a very close relationship between liberty and equality.

## SAFEGUARDS OR GUARANTEES OF LIBERTY

Liberty can be defended in the following ways:

### (1) Establishment of Democracy

Liberty and Democracy go together. Liberty is safer and more secure in Democracy than in any other form of government. Democratic government is the government of the people whereas in other forms of government (like Absolute Monarchy and Dictatorship) all powers are centred and centralised into the hands

8. Gettell: "Introduction of Political Science", p. 110.

9. Gettell, "Political Science", p. 140.



of one person or a group of persons. The person in power or a group of persons in power cannot tolerate his or their criticism. It is the quality of Democracy that opposite parties are given due respect in Democracy. It is the opposite parties that form the government after the failure of the ruling party. Criticism of the government is welcomed in Democracy.

### (2) Constitution

It is only the constitution that confines the authority of the state. It lays down certain barriers and these barriers are not to be crossed by the state while using its authority.

### (3) Fundamental Rights.

Fundamental rights are assured to us by the government. They protect our liberty to a very great extent. It is these fundamental rights that also confine the authority of the state. In the existence of fundamental rights the state cannot interfere in the matters of personal life. In the absence of fundamental rights liberty of the individual is never out of danger and in the absence of liberty development of human personality is not possible.

### (4) Independent Judiciary

For the safeguard of liberty it is necessary that Judiciary should be independent. It should be free from the control of the Executive. If Judiciary is subordinate to the Executive or if it is not free from the influence of the Executive, it will not be able to impart justice nor will it be able to protect the fundamental rights of man. In the communist countries or in the countries which have Dictatorship, fundamental rights are given to the people, but Judiciary is not free from the influence of the Executive. In such countries, the safeguard and security of fundamental rights, constitution and liberty is not quite possible.

### (5) Decentralisation of Powers.

Centralisation of powers gives rise to monarchy. Therefore decentralisation of power is required for the safeguard of liberty. Powers should be divided into central, provincial and local self-governments. This decentralisation of powers leads to efficient administration. And people also start co-operating with the functioning of the government.

### (6) Economic Security

"Where there are rich and poor", says Laski, "educated and uneducated, we always find a relation of master and servant". Economic security is a condition to liberty. For the safeguard of liberty it is essential that people should have economic security. This is possible only in the absence of economic disparity, inflation and unemployment. People should have superior standard of living and have equal opportunities for making their progress. This is possible only in socialism and not in capitalism.

### (7) Rule of Law.

For the safeguard of liberty, the application of the rule of law is necessary. Rule of law is established in England, U.S.A. and India. Rule of law means that there should not be any distinction of caste and creed, colour and race. In the eyes of law all are equal and all are liable to be punished if they commit crime. No privileges will be given to a person belonging to a particular class nor will there be any provision for immunity. No person will be punished or kept in custody for a long time until and unless his crime is proved.

### (8) Political Education and Eternal Vigilance.

Permanent safeguard of liberty is possible only when people are politically educated and are acutely aware of their rights and duties. Eternal vigilance is the price of liberty and in its absence one can act according to his will. Laski has very aptly remarked, "It is the proud spirit of the citizens, less than the letter of the law, that is the most real safeguard".<sup>10</sup> Whenever the government crosses the barrier of its authority and interferes in the personal life of the people, people rise in revolt against the government. Jefferson's comment is worth-noting in this regard: "What country can preserve its liberties, if its rulers are not warned from time to time that the people preserve the spirit of resistance".

## EQUALITY

### Meaning of Equality

By equality, we generally mean that all men are equal and all should be entitled to identity of treatment and income. "Men are born, and always continue, free and equal in respect of their rights".<sup>11</sup> "We hold these truths to be self-evident that all men are created equal".<sup>12</sup> But in practical life this is not true. No two men are similar in physical constitution, capacity and temperament. Professor Laski has very aptly remarked in this connection: "Equality does not mean the identity of treatment or the sameness of reward. If a bricklayer gets the same reward as a mathematician or a scientist, the purpose of society will be defeated. Equality, therefore, means, first of all the absence of social privilege. In the second place it means that adequate opportunities are laid open to all".<sup>13</sup>

Equality is a levelling process: "The ideal of equality has insisted that men are politically equal, that all citizens are equally entitled to take part in political life, to exercise the franchise, to run for and hold office. It has insisted that individuals should be equal before the law, that when the general law confers rights or imposes duties, the rights and duties shall extend to all; or conversely that they shall not confer special privileges on particular individuals or groups".<sup>14</sup> Undoubtedly, it implies fundamentally a levelling process", says Professor Laski, "It means that no man shall be placed in society that he can overreach his neighbour to the extent which constitutes a denial of the latter's citizenship".<sup>15</sup> Equality, after all, is a derivative value", explains Braker. "It is derived from the supreme value of the development of personality-in each like and equally, but each along its own different line and of its own separate motion".<sup>16</sup> He further says, "We are thus arranged as it were, in a level time at the starting point of the race that lies ahead; and we start from that level line, so far as the state is concerned, with equal conditions guaranteed to each for making the best of himself-however much we may eventually differ in what we actually make of ourselves".<sup>17</sup>

## KINDS OF EQUALITY

There are following kinds of equality:

### (1) Social Equality.

<sup>10</sup> Laski: "Grammar of Politics", p. 104

<sup>11</sup> Declaration of Rights of Man issued by the National Assemblée of France in 1789 A.D.

<sup>12</sup> American Declaration of Independence.

<sup>13</sup> Professor Laski: "Grammar of Politics".

<sup>14</sup> J.A. Corry, "Democratic Government and Politics" (1958), p.33.

<sup>15</sup> Prof. Laski: "A Grammar of Politics", p. 153.

<sup>16</sup> Braker: "Principles of Social and Political Theory", p. 155.

<sup>17</sup> Ibid, p. 151.



- (2) Civil Equality.
- (3) Political Equality.
- (4) Economic Equality.
- (5) Equality of Opportunity and Education.

#### (1) Social Equality

Social equality means that all the citizens are entitled to enjoy equal status in society and no one is entitled to special privileges. There should not be any distinction of caste and creed, colour and race, groups and classes, clans and tribes. All should have an equal opportunity to develop his personality. All citizens in India enjoy social equality. Untouchability has been abolished and its practice has been forbidden. Previously, the policy of racial discrimination was adopted in the United States of America but **Johnson I, Ex-President of U.S.A.**, established social equality by getting the Bill passed by the Congress. The policy of racial discrimination is still followed by South Africa. Social inequality still prevails over there. On 10th December, 1948, the U.N.O. declared the charter of human rights which laid stress on social equality. But these rights have been violated by a number of countries in the past according to the report of Amnesty International.

#### (2) Civil Equality

Secondly, we have the concept of Civil Liberty. Civil liberty consists in the enjoyment of similar civil liberties and civil rights by all the citizens. Civil laws should treat all the individuals equally. There should not be any discrimination of superior and inferior, the rich and the poor, caste and creed, colour and race, clans and tribes, groups and classes. Rule of law is in force in England and in the eyes of the rule of law all are equal. Equal treatment is given to all by the rule of law. Similar is the case with India.

#### (3) Political Equality.

By Political Equality we mean equal access of everyone to the avenues of political authority. All citizens must possess similar political rights, they should have similar voice in the working of the government and they should have equal opportunities to actively participate in the political life and affairs of the country. Political equality guarantees the enjoyment of similar political rights to all citizens. Universal adult franchise is a means to this end. Universal adult suffrage has been introduced in India. The same provision has been made in England, U.S.S.R., U.S.A., France and many other countries. Previously, Switzerland had not conferred on women the right to vote but in February 1971 conferred the right of vote to women. In Asia and Africa there are many countries where Political Equality has not been established.

#### (4) Economic Equality.

Economic Equality is closely related to political equality. Professor Laski underlies the great significance of economic equality. "Political equality is, therefore, never real unless it is accompanied with virtual economic liberty; political power otherwise is bound to be the hand-maid of economic power". According to Lord Bryce, Economic Equality "is the attempt to expunge all differences in wealth, allotting to every man and woman an equal share in worldly goods". But this concept of ideal economic equality can never be materialised in practical politics. By economic equality we mean the provision of equal opportunities to all so that they may be able to make their economic progress. This can be done only in Socialism and not in Capitalism. Hence, Capitalism should be replaced by Socialism.

#### (5) Equality of Opportunity and Education.

By equality of opportunity and education we mean that all the citizens should be given equal and similar opportunities by the state. All the individuals should have similar chances to receive education. They should have similar opportunities to develop their personality. Racial or any type of discrimination should not be observed. There should not be any distinction of caste and creed, colour and race, rich and poor. In India, all are provided with equal opportunities and all have equal rights to education.

### RELATION BETWEEN LIBERTY AND EQUALITY

Liberty and Equality are closely related to each other. There is no value of liberty in the absence of equality. They are the same conditions viewed from different angles. They are the two sides of the same coin. Though there is a close relationship between liberty and equality, yet there are some political thinkers who do not find any relationship between liberty and equality. For example, Lord Acton and De Tocqueville who were the ardent advocates of liberty, found no relationship between the two conditions. To them liberty and equality were antagonistic and antithetical to each other. Lord Acton maintains that "The passion for equality made vain the hope for liberty". Such political thinkers maintain that where there is liberty, there is no equality and vice versa. These political thinkers are of the opinion that people were conferred inequality by nature. We find inequality in nature also. In some parts there are rivers while in others there are mountains and in still other parts there are plains and fields. No two persons are similar in their ability and capacity. And so there cannot be equality in society.

The views of Lord Acton and De Tocqueville are not accepted by modern political thinkers. Professor H.J. Laski has very aptly remarked in this connection: "To persons so ardent for liberty as Tocqueville and Lord Acton, liberty and equality, are antithetical things. It is a drastic conclusion. But it turns, in the case of both men, upon a misunderstanding of what equality implies". These days, it is generally believed that liberty and equality should go together. If an individual is given unrestrained liberty to do whatever he likes, he will cause harm to others. There will be chaos in society if individuals are given unrestrained liberty.

In the nineteenth century, the Individualists wrongly interpreted the term 'Liberty'. They did not attach any importance to economic equality and laid stress on Laissez Faire to be adopted by the government. Adam Smith was the ardent advocate of this view. The Individualists maintained that there should be a free competition between the capitalists and labour leaders. They did not want the government to interfere in the economic matters. Formula of Demand and Supply should be adopted. All the economic difficulties will be removed by this formula. If there will be excess of commodities and easy availability of labour, prices will come down. If there is scarcity, prices will rise higher and higher. This formula was implemented in England and in many other countries of Europe and it resulted in dangerous consequences. The government lost its control over the capitalists. The capitalists exploited the opportunity to the full. They exploited the labour to the full. As a result of it, the rich grew richer and poor became poorer. The labour class suffered tragically. As a result of it, an intense reaction took place against Individualism. This reaction led to the dawn of Socialism. Socialism condemned and refuted the principles of Individualism. Liberty has no significance in the absence of economic equality. Professor Laski has very aptly remarked, "Where there are rich and poor, educated and uneducated, we always find a relation of master and servant". C.E.M. Joad has also asserted, "The doctrine of liberty, of which the importance cannot be over-estimated in politics, worked disastrously



when applied in the field of economics".<sup>18</sup> Hobbes has also asserted, "What good is freedom to a starving man? He cannot eat freedom or drink it". Thus, it is quite clear that economic equality is essential for the existence of political freedom. Otherwise it will be capitalist Democracy in which the labourers will have the right to vote but they will not be able to get their purposes served. Therefore, Liberty in the real sense of word is possible only in Socialistic democracy in which equality and liberty go together.

Similarly, it is also true that in the absence of political liberty, equality cannot be established. Mr. Elton Trueblood has very aptly remarked in this connection "The paradox is that equality and freedom, which began by being ideas in conflict and tension, turn out open analysis to be necessary to each other. The truth is that it is impossible to make a reasonable statement of the meaning of equality except in terms of freedom. Men are equal only because all men are intrinsically free, as nothing else in all creation is free".<sup>19</sup> "Equality, in all its forms, must always be," says Barker, "subject and instrumental to the free development of capacity, but if it be pressed to the length of uniformity and if uniformity be made to thwart the free development of capacity, the subject becomes the master and the world is turned topsyturvy".<sup>20</sup> R. H. Tawney has rightly remarked, "A large measure of equality, so far from being inimical to liberty, is essential to it".<sup>21</sup> Pollard also writes, "There is only one solution of the problem of liberty. It lies in equality". Thus, Liberty and Equality are complementary to each other. They are not opposed to each other. They go together. Liberty and Equality "are to be reconciled by remembering that both (liberty and equality) are subordinate means to the end of realising the potentialities of individual personality on the widest possible scale. The development of a rich variety of potentialities requires a large measure of liberty and forbids all attempts to impose a dead level of social and economic equality".<sup>22</sup> "There is an intimate connection between the two "because all individual liberties are related to the basic equality of all men and because historically the aspiration for liberty became in practice and destruction of privilege or inequality".<sup>23</sup> Both are complementary to each other. "Liberty thus implies equality," says Herbert A. Dean, "liberty and equality are not in conflict nor even separate but are different facts of the same ideal.... Indeed since they are identical, there can be no problem how or to what extent they are or can be related; this surely the nearest, if not the most satisfactory solution ever devised for a perennial problem in political philosophy".<sup>24</sup>

### SOME SELECTED QUESTIONS

With the change in our social and economic order of society the conceptions of 'Liberty' and 'Equality' also change".

Explain the views of economic independence and equality under the present conditions of life in the light of the above statement.

2. Describe various liberties included in the term Civil Liberty. How and why are they limited?

18. C.E.M. Joad: "Introduction to Modern Political Theory", p. 30.
19. Elton Trueblood: "Declaration of Freedom", p. 75.
20. Barker: "Principles of Social and Political Theory", p. 157.
21. R.H. Tawney: "Equality", p. 245.
22. Corry and Abraham: "Elements of Democratic Government", (1963), p.
23. Massimo Salvadori: "Liberal Democracy", (1957), p. 36.
24. Herbert A. Deane: "The Political Ideals of Harold J. Laski", 1955, p. 46.

3. External vigilance is the price of Liberty. Discuss the safeguards of liberty in the light of the above statement and discuss the value of the Theory of Separation of Powers in this connection.

4. "Civil Liberty is not the absence of restraint but an opportunity for self-development". Discuss.

5. What is Liberty? Can Law and Liberty go together?

6. Discuss the various meanings of the term 'Liberty'. Can the liberty of the individual and the power of the state co-exist?

7. "The Passion of equality makes vain the hope of freedom".

- Lord Acton

"Liberty and equality are not opposed to each other but supplementary to each other", - Laski.

Which which of these views do you agree? Give reasons for your answer.

8. Explain fully the meaning of the term Liberty. Do you think that Liberty and Equality are complementary?





## State Authority and Obligations and Rights of Individual

*Plan:* A. Sovereignty, Power and Authority in the Modern State. B. Meaning of the Obligations. C. Kinds of Obligations. D. Important Obligations of the Individual. E. Grounds of Political Obligation. F. Views of Different Thinkers on Obedience. G. Meaning and Features of Rights. H. Theories of Rights. I. Kinds of Rights. J. Fundamental Rights. K. Rights and Social Welfare. L. Safeguarding Rights. M. Books for Further Study.

### A. Sovereignty, Power and Authority in Modern State

Like the concept of sovereignty, the concept of political power is also of tremendous significance in the study of political science; in fact it forms the core of the study.

*Sovereignty and Power:* A line of difference drawn between sovereignty and power. As we have already discussed earlier, sovereignty, an essential element of state, is the supreme power to coerce and punish. Power is the ability, which an individual or a group of individuals command to make decisions, which affect the behaviour of people in a state. Peter Odegard says on page 76 in *Political Power and Social Change* (1969): "In its most general sense power in human affairs involves the control of human behaviour for particular ends through the express or implied threat of punishment for those who refuse or fail to comply." Sovereignty may remain unexercised, if there is no government. When government functions, power is actually exercised.

*Authority:* Authority means legitimate power, or power which has been approved by the people or power in accordance with the constitution or the law of the state. A government officer is competent to exercise authority, that is, his power is legitimate; but his authority is clearly defined and if he goes against the rules, which have conferred power on him, his authority ceases to be legitimate.

*Sanctions behind Power:* Alan R. Ball mentions the sanctions behind political power in page 27 in *Modern Politics and Government* (1971):

"Political power is, then, the capacity to affect another's behaviour by threat of some form of sanction. The greater the sanction, or the more numerous the sanctions, the greater will be political power. The sanctions may be negative or positive. Thus a political leader may acquire compliance with his wishes by promising those who support him wealth or oppose him. Most exercises of power include both." Marx Weber, the German sociologist, speaks of three types or sources of political authority: (1) Traditional Authority, that is, the right to rule emerging from a continuous exercise of political power. A king's authority belongs to this category. (2) Charismatic Authority springing from usually great qualities of the political leader, e.g., Napoleon Bonaparte, Mustapha Kamal Ataturk, Mussolini, Hitler etc. (3) Legal-Bureaucratic or Legal-Rational Authority based on the political office held by an individual according to constitutional rules, e.g., President George Bush of the USA (See *Ibid.*, page 30).

*Instruments of Authority:* The following three instruments are used by those who are in authority:

(1) *Force and Violence:* Force is one of the instruments of means of enforcing decisions. Every government has to make use of physical coercion, but this has to be in a legitimate manner. This is known as force. When physical coercion is employed illegitimately or contrary to laws and rules, it is called violence. Policemen are compelled by circumstances to make use of force to deal with a mob, which turns violent.

(2) *Education:* Education forms an excellent instrument of authority. In a state force should not be the only instrument or means of enforcing decisions and obtaining conformity and obedience from the long range point of view, because force may be effective only temporarily. If power and authority are to strike deep roots and become permanent, measures other than sheer physical force have to be employed. These include steps which elevate and enlighten the minds of the people and make them realise that the exercise of authority is purposeful, as it aims not only at establishing peace and order but also at promoting the material and moral well-being of those who are called upon to obey law. Education is one of the surest and one of the most enduring ways of establishing authority and evoking public co-operation and support.

(3) *Economic Measures:* Economic measures constitute the third instrument of authority. These measures can have a profound effect on the life of the people. Imposing taxes of various types, deficit financing, land reform measures, steps to control industry, business, trade and commerce, regulation of prices and social welfare measures clearly show how authority flows to have far-reaching consequences on the various sections of society.

*Legitimation of Authority:* The exercise of authority becomes legitimate when it is exercised: (1) according to constitutional and legal principles; (2) according to customs and traditions; and (3) by charismatic leaders like George Washington, Pandit Jawaharlal Nehru, Franklin D. Roosevelt, Mao Tse-tung, Ho Chi Minh and others.



**Hierarchical Structure of Authority:** The structure of authority in India, Britain, the USA, France and other state is hierarchical under the provisions of their respective constitutions.

### B. Meaning of Obligations

**Individual's Duties:** An individual has to follow rules of behaviour in society for his own good and for the good of others. Society makes unwritten rules of behaviour in the form of customs and usages, and the state makes written rules known as laws. The individual has to follow certain do's and don'ts in state. These are his positive and negative duties or obligations. For example, payment of taxes fully and regularly is a positive duty, and refraining from harassing, troubling or robbing others is a negative duty.

**Duties and Rights Correlated:** Duties are of importance in a social context. The duties of the individual become the rights of others, and the rights of the individual become the duties of others. An individual has the duty of recognising the right to life, the right to property and other rights in other persons. Similarly, he expects others to do their duty of recognising his right to life and other rights. It has been aptly said that duties and rights are the two sides of the same coin.

**Obligations of State:** The state was established to meet the needs of the individual and society, and hence it has to discharge properly obligations expected of it. The proper functioning of the state depends upon a well-organised system of duties and rights. The nature of the state can be regarded as good or bad according to the way in which it protects the rights of the people and at the same time makes them discharge the obligation of going far beyond the limit of protecting the life and property of the individual. It should also promote the health of the individual, spread education and discharge other functions, political, social and economic for developing the personality of the individual.

### C. Kinds of Obligations

Obligations can be classified in two ways: (1) Moral and Legal : (2) Positive and Negative.

#### (1) Moral and Legal Obligations

**Moral Obligations:** According to the moral principles of society in which he lives, the individual shall discharge certain obligations or duties. Serving old parents, being helpful to neighbours, showing kindness to animals, being friendly and respectful to guests, treating the physically handicapped with compassion, sharing the sorrow of others in their deep distress and being considerate towards the sick are some of the moral obligations, but if the individual fails to discharge them, he cannot be legally punished. Society is not competent to use any coercive power against the individual who is indifferent to his moral duties.

**Legal Obligations:** Legal obligations which are prescribed by the state are on a different level altogether. If these duties are not done by the individual,

the state swings into action to punish him. If he fails to pay taxes or violates other laws, the individual will be punished according to law.

#### (2) Positive and Negative Obligations

**Duties in the Positive Sense:** Certain legal and more duties have to be performed by the individual in the positive sense. These are prescribed by state and society in the form of Do's. Paying tax or joining the army during national emergency is a positive legal duty. Looking after one's sick and old parents is a positive moral duty.

**Duties in the Negative Sense:** Certain legal and moral duties have to be discharged by the individual in the negative sense. They are prescribed to call upon the individual not to behave in a particular manner in the state or society. Negative legal and moral duties are laid down in the form of Don'ts. Legally, the individual shall not violate any civil or criminal law. He shall not encroach on the property of others or commit theft or murder. He shall not insult his elders or superiors and he shall not harass the poor and the weak.

### D. Important Obligations of Individual

The individual, whether he is a citizen or an alien, shall obey the laws of the state positively and negatively. He shall do what is prescribed by law and also refrain from doing what is prohibited by law.

In the Soviet Constitution, the duties of citizens are clearly given along with the rights. This is not the case with the Constitution of the USA and several other constitutions. In the original Constitution of India (1950) there was no mention of duties. But Articles 51-A giving a list of Fundamental Duties was inserted by the controversial Constitution (Forty-second Amendment) Act, 1976. These duties, if performed sincerely by citizens, will wipe out the maladies of national indiscipline, casteism, communalism, linguism, narrowmindedness, regionalism and fissiparous tendencies.

**Obligations of Citizens:** Citizens are called upon to discharge certain obligations, which are regarded as very important for the good of all in the state. These are: (1) obeying laws; (2) resisting bad laws; (3) showing full loyalty to the state; (4) paying taxes; (5) casting vote and holding public office; and (6) co-operating with government.

(1) **Obeying Laws:** The foremost obligation of the individual is to obey all the laws of the state. The law-abiding citizen is an asset to the state, whereas the law-breaker is a source of trouble.

(2) **Resisting Bad Laws:** Sometimes a government makes bad laws with the help of the brute majority in the legislature or because it is able to wield dictatorial power. Resisting bad laws is as important as obeying good laws. Thinkers like T. H. Green, Harold Laski and Mahatma Gandhi say that is the moral duty to resist bad laws, while legally speaking, violating or resisting a law, whether it is good or bad is a crime or legal offence.



(3) *Showing Full Loyalty to State*: The citizen shall be fully loyal to the state and shall not harm the state in any manner. A citizen, who is loyal to any foreign state, is a traitor to his own state.

(4) *Paying Taxes*: Every state requires money for meeting its numerous obligations, for running its governmental machinery, for maintaining army, navy, air force, police force and civil service, for rendering various kinds of services and for promoting the general welfare and happiness of the people. As this money has to come from the pockets of the people, it is the duty of every individual to pay all taxes which are compulsory payments fully and on time.

(5)  *Casting Vote and Holding Public Office*: Exercising franchise in a democracy is a very important duty and privilege of a citizen. Holding public office is another important duty and right.

(6) *Co-operating with Government*: It is the duty of citizens to co-operate with their government for maintaining law and order and promoting public welfare.

#### E. Grounds of Political Obligation

We may briefly examine here the grounds of political obligation or why the individual obeys the state.

*Obedience the Rule*: In a state, obedience to laws is the general rule and disobedience is rare. Most of the people obey the laws, and only a few disobey them and meet the punishment. The government of a state can function smoothly and effectively only if the majority obey its laws. Law-breakers, who form a small minority, can be controlled and punished. But if the majority of the people disobey laws, government will be helpless, as no amount of force can quell the majority, if they are dead against the government, which they wish to overthrow.

*Why the Majority Obey?* A very pertinent and significant question that is being asked is: why should the individual obey the state, be loyal to it and act in accordance with the laws and orders passed by it? This question arose, when people became politically conscious of their rights in modern times, when democracy struck deep roots and new political values emerged.

The following reasons explain why the individual obeys the state:

(1) *Need of State*: Most of the citizens are aware that the state has a purpose. It has to protect them, uphold their rights and serve their multifarious needs. In their own interests, they should co-operate with it and obey its laws and orders.

(2) *Fear of Disorder and Anarchy*: The fear that if disorder and anarchy erupt, their lives and property might be in great danger makes citizen law-abiding. As a rule, human beings, who desire to have peace and order can never imagine of living in a lawless society.

(3) *Matter of Habit and Tradition*: In a family in which much importance is given to disciplined conduct, it becomes a habit with all members to be good,

courteous and helpful; so also in a well-ordered state, it is a habit among its citizens to be peace-loving and law-abiding.

(4) *Fear of Punishment*: Some citizens consider that obedience is an unpleasant and painful duty. They obey laws, because they wish to avoid punishment with its evil effects.

(5) *Respect for Might of State*: Some citizens obey laws only because they have wholesome respect for the might of the state, which they are aware of or forced to realise they cannot challenge successfully.

(6) *Religion*: The religious factor is also responsible for obedience. In ancient and medieval states the hold of religion on the people was great, and at the instance of religious leaders the people readily obeyed the government. In some ancient states like Sumerian city states, the kings themselves were priests. King Hammurabi of Babylonia made his subjects blindly believe that he had received a code of laws directly from the hands of Shamash, the sun god. In modern Europe too religion had much to do with the loyalty of subjects. A king could easily win the loyalty and obedience of his subjects, if their religion happened to be the same as his own.

(7) *Rationality and Usefulness of Laws*: People will readily obey laws, if they are found to be rational and useful. Law is only a means to an end and not an end in itself. People will gladly obey laws, if they prove themselves to be useful instruments of human welfare.

(8) *Legitimacy of Source of Law*: A law is obeyed wholeheartedly by citizens, if its source is legitimate. This means that the government which makes law should be constitutional and legal. People will revolt against the laws made by a tyrant who has usurped power.

#### F. Views of Different Thinkers on Obedience

We may briefly examine the views of different thinkers on obedience to law.

##### (1) Greek Thinkers

*Greeks as Slaves of Law*: The Greeks regarded themselves as slaves of law, and did not or could not claim any rights against the state as such, as the individual can do in the modern democratic state. The question of disobedience to the state could never be imagined by the Greek citizen. This attitude to law is to be found in the thought of great Greek philosophers like Socrates, Plato and Aristotle. When Socrates was condemned to death, he thought it was his honourable duty to bear the punishment as "a slave of law." Even though escaping from the clutches of law was possible, Socrates thought it was better to die as an obedient and law-abiding citizen than to live as a dishonest citizen.

##### (2) Advocates of Divine Right Theory

*King as God's Agent*: The Divine Right Theory of Kings was made the ground of obedience by the advocates of the theory. It was claimed that God



gave authority to the king to rule over his subjects. King James I of England (who wrote a thesis on Divine Right) called upon his subjects to obey his government without questioning it, even if it went wrong. He claimed that the king was God's agent on earth and it would be sinful for his subjects to disobey him.

### (3) Hobbes, Locke and Rousseau

*Theory of Consent:* The theory of consent, which says that the authority of the state is based on the consent of the people was put forward by Hobbes, Locke and Rousseau, the authors of the Social Contract Theory.

*Hobbes:* Hobbes said that the state rose as a result of contract. People who wanted to escape from disorder and anarchy in the primitive time made a social contract according to which they committed themselves to obey the laws of an absolute king, who was the product of the contract but not a party to it. Thus obedience was based on consent.

*Locke:* Locke, another contractualist, spoke of two contracts: social and governmental. By the former, civil society arose, and by the latter government was established. While the people agreed to obey the laws of the government according to the contract, the ruler too had to govern properly failing which people could exercise their right to revolt against him. Unlike Hobbes, who espoused the cause of absolute monarchy, Locke advocated the principle of limited or constitutional monarchy. In Locke's contract also, the consent of the people is mentioned.

*Rousseau:* Rousseau also spoke of the formation of the state as a result of social contract, by which people agreed to be law-abiding. He vested sovereignty in the General Will. Rousseau gave the law-abiding people the right to revolution, if the ruler misused his power.

Hobbes, Locke and Rousseau say that people voluntarily agreed to obey laws and made consent the basis of obedience.

### (4) T. H. Green

*Will as Basis of State:* T. H. Green says that the state should serve the interests of the people and try to win their loyalty. He emphasizes the point that will, and not force, is the basis of the state.

### (5) Idealists

*Obedience as Duty:* Idealists like Kant say that the individual's duty is to obey the state whether he agrees with its policies or not; Hegel the extreme idealist goes to the extent of saying that the state is infallible, absolute and omnipotent. This view is not accepted by those who wish to have a democratic form of government.

### (6) Utilitarians

*Obedience for Service:* Utilitarians like Jeremy Bentham say that the people obey the government not because any contract was made, but because

it renders services and gives utility. Government owes a duty to the people for exacting loyalty and obedience. If it fails to promote the happiness of the people, it forfeits its right to exist.

### (7) Conclusion on Various Views on Obedience

*Each Thinker Stressing on a Particular Reason:* At various stages of history, political thinkers explained why the individual obeys the state or why he actually follows its laws. Generally, each thinker lays stress on a particular reason. For instance, contractualists speak of consent based on contract and utilitarians underline the importance of happiness. The different thinkers do not explain all the factors involved in the obedience to law. A careful examination of the relationship between the individual and the state shows that loyalty and obedience of the individual to the state arises as a result of multiplicity of factors.

*General Conditions for Obedience:* People willingly obey the laws of the state, if the following conditions are fulfilled:

(1) Government should be strong and stable, and it should be able to face any challenge to its authority in the internal and external fields.

(2) Government should be committed to fully protect the people, uphold their rights and promote their general happiness and welfare.

(3) People should have faith in the government's policies and its ability to realise the targets fixed by it.

(4) Government should be responsive to public opinion and responsible to the elected representatives of the people.

(5) The government should pass laws, which clearly meet the needs of a dynamic society. People should feel that they need such laws, and therefore obeying them would be in their own interest.

(6) Minorities should feel a sense of security. This is possible when the constitution and the laws uphold the rights of all and do not show any discrimination against the minorities. The majority party in power should have no scope to cut down basic rights.

## G. Meaning and Features of Rights

### (1) Meaning of Rights

*Conditions Recognised and Upheld by Law:* In a state conditions conducive to the well-being of the individual are created, recognised and upheld by law. For example, the conditions, ensuring full security to the life of the individual and his property are created and supported by the laws of the state. These become the right to life and the right to property of the individual. Rights have no meaning unless they are recognised, upheld and enforced by laws.

*Power to Act or Demand Action:* Webster's Unified Dictionary and Encyclopedia says that right is "a power or privilege with which the law invests a person. It may be either power to act or to demand action on the part of



another. Rights may be substantive—those of life, liberty, property, etc., remedial—those used to protect substantive rights.”

**Proper Use of Rights:** Citizens should understand their duties and responsibilities and make a proper use of their rights in letter and spirit. Improper use of rights defeats the social purpose of having them. Misuse of rights result in violation of laws.

## (2) Features of Rights

Rights have the following features:

(1) **Rights only in Social Context:** An individual has rights only in a social context. He enjoys them as a member of society and not as an isolated human being.

(2) **Rights and Duties Correlated:** Rights and duties are correlated. They are two sides of the same coin, and they invariably go together. They are interwoven in social life. Every right has its corresponding obligation. The right of one individual becomes the duty of another. Rights are recognised by society and upheld by state. Every individual recognises the rights of others in society and lives in a manner which enables others to realise these rights.

(3) **Rights Not Absolute:** No right in a state is absolute, and no individual can lay claim to any right in the absolute sense. Rights are limited in their scope and are conditioned by the needs of the entire community. They are subject to reasonable restrictions in a social context. There will be disorder in a state, if every individual proclaims the absolute nature of his rights and presses them too far to the great annoyance and inconvenience of other members of society.

(4) **Rights only in a Democratic State:** The individual enjoys many rights fully only in a democratic state. But in an absolute monarchy or a military or any other type of dictatorship, it is not possible to enjoy rights, because most of the rights are denied to the individual by those wielding power.

(5) **Conditions of Good Life:** Rights are conditions essential for living well and for the development of the individual's personality. A democratic state gives maximum scope for the material and moral uplift of the individual and society. Rights are conditions of good life provided and guaranteed by the state. They are a collection of opportunities in social life for enriching life and making it meaningful.

(6) **Rights Changing in Number and Content:** The number of rights and their content go on changing with the times in society. Therefore rights are to be regarded as dynamic. What are considered as rights in one generation may be condemned by the next generation. Slavery was a right in the USA before the Civil War (1861-65), but this condition was declared illegal with the changing times.

## H. Theories of Rights

Several theories have been put forward to explain rights. The most important theories are: (1) the Theory of Natural Rights; (2) the Legal Theory

of Rights; (3) the Social Welfare Theory of Rights; (4) the Idealistic Theory of Rights; and (5) the Historical Theory of Rights.

### (1) The Theory of Natural Rights

**Rights Created not by Man but by Nature:** The theory of Natural Rights says that rights are natural. Every human being enjoys them and finds them indispensable for his very existence. They come from nature and are not created by any human agency. This theory, which came into the limelight, has a non-juristic basis.

**Natural Rights in Greek and Roman Political Thought:** The theory has its origin in Greece. The Greek Stoic philosophers spoke of natural rights and their writings profoundly influenced Roman thinkers, who said that all human beings are subject to certain common principles of life as created by nature. Roman thinkers applied *Ius Naturale* (Natural Law) to people living in the Roman empire. The concept of natural law created a bond among peoples of different races under Roman rule. The great Roman lawyer Cicero was a powerful exponent of natural law, which became the basis on which Roman law-makers worked in preparing law codes.

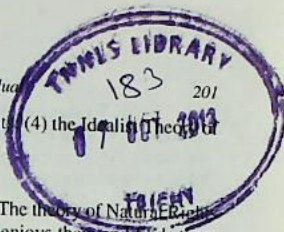
**Setback of Natural Law in Medieval Period:** The concept of natural law suffered a setback in the medieval period in Europe, as the Church thinkers gave great prominence to the law of God and of the Church.

**Contractualist Opinion of Pre-Social and Pre-Political Rights:** The exponents of the Social Contract Theory like Hobbes, Locke and Rousseau say that people had natural rights even before society and state emerged. Locke says that nature has made all men free and rational and has given them rights like right to life and liberty. Herbert Spencer thinking along the same lines says that the process of evolution shows that all men have the fundamental right to equal freedom which enables them to do what they will. Such a right comes from nature, and not from any human agency like state.

**Surrender of Rights through Contract:** Hobbes says that human beings surrender their natural rights through a social contract. Locke believes that though man gave up some of his natural rights, he continued to enjoy the remaining rights. Rousseau, who says that man surrendered his individual will to the General Will, regrets that “man is born free, but everywhere he is in chains.”

**Reference to Natural Rights by American and French Revolutionaries:** The declarations made by the American and French Revolutionaries echoed the ideas of Locke. Americans proclaimed that “all men are by nature equally free and independent and have certain inherent rights...” Similarly, the French National Assembly breathed the same spirit pertaining to natural rights as given by the great American leaders like Jefferson.

**Evaluation of the Theory:** We may make a brief reference to the merit and drawbacks of the theory.





**Merit:** We can find merit in the Theory of National Rights, provided we understand it in the right spirit without laying too much stress on the letter of the theory. As far as the theory says that natural rights are necessary for man's ethical and moral development, it is very valuable.

**Drawbacks:** The theory has several drawbacks. Utilitarians like Jeremy Bentham in the 19th century vehemently criticised it. The following defects of the theory may be enumerated:

(1) **Vague and Confusing:** The theory is vague, as it fails to give the precise meaning of the term 'natural.' Different writers interpret it in different ways resulting in great confusion. It is not possible to make a list of natural rights on which political thinkers fully agree. For instance, some would advocate the maintenance of slaves as a natural right, while others would condemn it strongly, as it goes against the natural right of freedom of mankind.

(2) **Unreasonable:** The theory is unreasonable. It is too much to believe that man had rights from nature, even before he became a member of society or state. Rights can exist only in society.

(3) **Wrong View of Contractualists:** Contractualists like Hobbes, Locke and Rousseau, who support the theory are incorrect. It is wrong to suggest that rights existed in pre-historic times, and that these were lost, when the state was formed. On the contrary, rights have a real basis only in the state and not outside it.

(4) **Importance of State Ignored:** A serious flaw in the theory is that it ignores the state as a source of rights. Though not all, several rights are recognised, created and upheld by the state. It should also be emphasised that rights cannot be enforced without the state. Jeremy Bentham who says that laws determine rights criticises the Theory of Natural Rights as "the nonsense upon stilts."

## (2) The Legal Theory of Rights

**Against the Theory of Natural Rights:** The Legal Theory of Rights which is diametrically opposed to the Theory of Natural Rights says that rights have not been gifted by nature, and are not in man's nature itself.

**Rights Created and Defined by State:** The theory makes out the following points:

- (1) Rights are created and maintained by the state.
- (2) The individual owes every right to the state, and he has no right against the state.
- (3) The state defines what rights are and what rights are not.
- (4) The state provides a list of basic or fundamental rights.
- (5) The state makes laws to recognise and uphold rights. Provision is made for enforcing rights.
- (6) The state can change rights and their content, as it can amend laws.

## Evaluation of the Theory

We may make a brief reference to the merits and drawbacks of the theory.

**Merits:** The following are the merits of the theory :

(a) The Legal Theory of Rights puts it correctly when it says that the state is the immediate source of rights.

(b) It is also true that the individual enjoys rights, because they are recognised, upheld and enforced by the state.

(c) Then again, it is equally true that rights have no meaning unless they are backed by the state.

**Drawbacks:** The following drawbacks of the theory can be enumerated:

(a) The theory does not deal with rights philosophically and does not explain whether the state is right in recognising and upholding certain rights and in omitting other rights. The outlook of the theory is very narrow.

(b) The theory makes the state absolute and throws the individual, who cannot resist law, entirely at the mercy of the state. Critics like Harold Laski and T. H. Green point out that every individual has rights against the state.

(c) Pluralists criticise the theory for making the state the source of all rights. They say that the individual owes much to various social groups for enjoying different rights.

## (3) The Social Welfare Theory of Rights

**Rights Created by Society for Social Welfare:** The Social Welfare Theory, which looks at rights through the angle of social welfare, says that rights are created by society. The state upholds rights as conditions of social welfare. Roseco Pound and Chafee, the exponents of the theory, would like natural rights, laws and customs to promote the welfare of society.

**Social Welfare Principle Upheld by Utilitarians:** Jeremy Bentham, John Stuart Mill and other utilitarian thinkers say that rights are based on utility. The state creates rights, which arise only in a social context. Laws are passed to uphold rights, and it is wrong to think that rights come from nature. The state should create conditions to lessen pain and increase happiness. These conditions are rights.

## Evaluation of the Theory

A brief reference may be made to the merits and defects of the Social Welfare Theory of Rights.

**Merits:** The following merits of the theory may be mentioned :

(1) The theory upheld the principle of the welfare state and debunked the concept of the police state.

(2) Utilitarians, who made a practical approach, prevailed upon the British Government to introduce several political, social and economic reforms for improving the conditions of the common man.



**Defects:** The following are the defects of the theory:

(1) The principles put forward by the theory are vague. For instance, it is not clearly stated what happiness is, and what exactly is connoted by the principle of the greatest happiness of the greatest number. The same is the case with the term "public welfare."

(2) The promotion of social welfare can be made good excuse for increasing the powers of the state and eroding the rights of the individual. In India, in the name of the social welfare, government has been gradually whittling down the Fundamental Rights by one constitutional amendment after the other.

#### (4) The Idealist Theory of Rights

**Rights for Development of Personality:** The Idealist or Personality Theory of Rights says that the state creates conditions for the development of the individual's personality. Krause, Henrici and Wilde, who are the exponents of the theory, say that without rights man cannot be his best self. T. H. Green, the great idealist thinker, says that rights are powers "necessary to the fulfilment of man's vocation as a moral being."

**Rights Connected with Moral Development, Individual Good and Common Good:** The theory links rights with the moral development of man and looks at rights essentially from the ethical point of view. Without rights, it is not possible for the individual to live and realise his full stature.

**Stand of Extreme Idealists:** Extreme idealists like Hegel say that the individual is able to realise his freedom only as a member of the state. But they create a serious problem by making the state absolute with the individual completely surrendering himself to the state. Moderate idealists like Kant and Green speak in terms of the growth of the individual's personality and the common good of all.

#### Evaluation of the Theory

A brief evaluation of the Idealist Theory of Rights may be made.

**Merit:** The theory views at rights through the moral or ethical angle, and as far as it aims at the highest growth of the individual in a social context, it makes a significance contribution.

**Drawbacks:** The following drawbacks of the theory may be mentioned:

(1) The theory is vague, and objective standards cannot be applied. While one accepts the principle of the development of the individual's personality as a good ideal, going to the practical field, we find it rather ambiguous.

(2) Extreme idealists do great harm to the liberty of the individual by asking him to obey the state implicitly without giving him even the right to criticise the state or resist laws, which are bad and harmful to him.

#### (5) The Historical Theory of Rights

**Rights as Products of Historical Evolution:** The exponents of the Historical Theory of Rights say that rights are not created by the state, but are

the products of historical evolution. While in the modern state rights are recognised and upheld by law, in ancient times rights were based on customs and usages. In the course of a very long time, human beings in society evolved certain usages, traditions and customs for the common good, and these in an unwritten form became the basis of law, which gave rights to the individual in an actual written form. As far as the primitive, man was concerned, custom was unwritten law.

Edmund Burke held the view that the Glorious Revolution of 1688 in England was based on the customary rights of the people.

#### Evaluation of the Theory

A very short account of the merit and defects of the Historical Theory of Rights may be given.

**Merit:** The theory is correct, when it says that several rights arose as a result of historical evolution, and that customs provided a basis of written laws of the state. In England, for instance, as Edmund Burke points out, people fought for upholding rights which were customary. In many countries, legislation conferring rights only upholds many traditions, which are products of history.

**Defects:** The following points may be made out to indicate the defects of the theory:

(1) All rights are not products of history. Only some rights are the results of historical evolution.

(2) Certain rights are created by the laws of the state, and they do not have history as source of their origin. The state has got rid of inequality in the Indian caste system, which was the product of history and introduced equality through a written constitution and law. Therefore, it is clear that injustice done by history is wiped out by the state. The same can be said about abolition of slavery, *sati*, female infanticide and other social evils.

#### (6) Conclusion on Various Theories of Rights

**Need to Collect Correct Facts from All Theories:** By way of conclusion, it may be said that every theory gives some truth, and it is better not to depend on the theory only for understanding the true nature of rights. Some rights are the product of history; some are results of legislation; all rights directly or indirectly help the individual to develop his personality; certain rights are inherent in human nature; and lastly as the utilitarians say, rights stand for promoting social welfare. Therefore, the correct facts, given by different theories of rights have to be brought together.

#### I. Kinds of Rights

Rights are classified into two categories: Moral and Legal. Legal rights are of two types: Civil and Political.

**Civil Rights:** Civil rights are: (1) right to life; (2) right to liberty; (3) right to work; (4) right to education; (5) right to property; (6) right to contract;



(7) right to speech and press; (8) right to association; (9) right to relation, (10) right to family, (11) right to equality; and other rights.

*Political Rights:* Political rights are: (1) right to vote; (2) right to stand for election; (3) right to public office; (4) right to petition; and (5) right to criticise government.

A brief study of the various kinds of rights may be made.

### (1) Moral and Legal Rights

*Moral Rights:* Rights, which are based on the ethical or moral sanction of society, are called moral rights. These rights do not have legal backing, and cannot be enforced by law courts. The opinion of society recognises the moral rights of children to be protected, loved and educated by their parents; but in case parents ill-treat or neglect their children, no legal action can be taken against the indifferent, careless and cruel parents. People in their old age have the moral right to be loved, served and respected by their sons and daughters; but this right cannot be enforced legally.

*Legal Rights:* Legal rights are recognised and upheld by law, and if they are violated, there is legal remedy. Persons, who violate property rights and other rights of others, can be punished according to the law. Government itself has to respect the basic or fundamental rights of citizens. If citizens are denied the right to religious worship or the right to freedom of expression, these rights can be legally and constitutionally enforced.

### (2) Civil Rights and Political Rights

As stated earlier, legal rights are of two types: (1) Civil, and (2) Political.

*Civil Rights:* Civil rights are those rights which enable an individual to lead a normal social life. For example, the right to life, the right to private property, the right to freedom of thought and expression, and several other rights are civil rights, which are conditions or opportunities of civilised life.

*Political Rights:* Political rights are those rights which enable a citizen to participate in the political affairs and governance of the country. The citizen enjoys these rights in his public capacity. For example, in India the right to vote, the right to stand for election, the right to occupy a public post under the government and the right to criticise the government are political rights. The right to form a political association for expressing views is a combination of civil and political rights.

### (3) Importance Civil Rights

We may briefly discuss here important civil rights.

#### (a) Right to life

*Most Important Right:* The right to life is the most important civil right, and without this there will be safety neither to the individual nor to society. This right enables every individual to get protection to life. In very ancient times, the right to life was not recognised, as the importance of the family and tribe was

underlined, and the individual's right to life was not upheld. In the modern state, the right to life also means the duty to live.

*Scope Widened:* In modern times, the scope of the right to live has been widened. It is said that every individual has the right to be born without great handicaps.

*Right of Self-Defence:* The right to life includes the right to self-defence. While killing is clearly forbidden by law, in exceptional cases, the individual, whose own life is exposed to great danger, may use violence to defend himself.

*Controversy over Capital Punishment:* In most of the states, capital sentence is awarded to persons guilty of cold-blooded murder. In very ancient times the relations of the murdered person took revenge on the murderer. But in the modern state no private person is authorised to take away human life.

*Suicide:* Right to life does not tolerate the commission of suicide. An individual has no right to take away his own life, which is sacred.

*Euthanasia:* A question, which cannot be satisfactorily answered, is, whether a person who suffers intolerable pain owing to an incurable disease has the right to suicide or whether a doctor can give relief by euthanasia, when he finds absolutely no hope for his patient. Opinion is sharply divided on the question whether mercy killing is justified.

#### (b) Right to Family

*Family for Continuation of Human Race:* The right to family is of great significance for the continuation of the human race. In all ages, the family as a social unit played an important part in the growth of the state and in the evolution of culture and civilisation.

*Right to Marry:* In every state, the sanctity of the family life has been recognised and the institution of marriage has been regarded as sacred. The individual has the right to marry and have a family.

*Regulating Family Life:* Every civilised state has made laws to protect family life and regulate relations between the members of the family. Laws deal with bigamy, polygamy, polyandry, marriage, divorce, property rights of family members, custody of children and other matters.

*Incurable Diseases:* It is said that persons suffering from awful and incurable diseases, mental and physical, should not be allowed to marry and enjoy fully the right to family life. This matter too is highly controversial, and arguments can be advanced for and against.

#### (c) Right to Property

*Meaning and Role of Private Property:* Nothing perhaps has played such a vital role in the evolution of state, civilisation and culture as the institution of private property, which connotes not only a possession of material objects, but an exclusive and permanent control over them. The right to property stands for the freedom to use and enjoy one's property as one likes.



*Origin:* The institution of private property rose even before the emergence of the state, and in fact it proved to be one of the factors helping the evolution of the state. At first there was equality among human beings, and there was no institution of private property. But in course of time the concept of Mine and Thine arose, and it became necessary to develop and recognise private property at first by custom and later by law. The expansion of the concept of private property led to the formation of territory, one of the essential attributes of the state.

*Advantages of Property:* Man's attachment of private property is explained by his strong instinct to acquire, possess and own wealth. Private property has its own advantages. (1) Besides creating a sense of legitimate pride, private property provides means of livelihood to the individual and his family. (2) The numerous uses to which private property can be put give a strong incentive to work. Production increases and society at large benefits by the desire to own property. (3) It provides security to the members of the family and frees them from anxiety and mental tension about their future. It also enables them to lead a full and meaningful life. It develops in them noble qualities, which only contented men can foster. They will be in a position to develop their personalities fully and have opportunities to be helpful and generous.

*Criticism of Private Property:* Property becomes impropriety, when it is misused for selfish purposes and for the ruthless exploitation of others. Property acquired by illegal and anti-social methods is impropriety. In modern times, particularly after the rise of industrial capitalism, which led to the concentration of property in the hands of a few individuals, the institution of private property came in for severe criticism.

*Property under Socialism:* In all countries, laws have been passed for regulating the institution of property. In Soviet Russia, revolutionary socialism or communism triumphed, when the Bolshevik Revolution of 1917 destroyed the old order. In China, the Communist Revolution was completed by 1949. In both these countries private property (except very limited property and personal belongings) was abolished. In India, which accepted the concept of a socialistic pattern of society under the leadership of Prime Minister Pandit Jawaharlal Nehru, the Union and State Governments passed laws to liquidate *zamindari* and to give land to the tiller. In India private sector and public sector in industries co-exist.

#### (d) Right to Work

*Corollary to Right to Live:* The right to work, which is another important civil right, is a corollary to the right to live, as one who lives has to work. Louis Blanc, a prominent socialist thinker of the 19th century, was perhaps the first to ask for constitutional recognition of the right to work. But even now this has not been possible, as states do not have adequate resources to enforce this right.

*States Unable to Guarantee Jobs:* The state should provide maintenance to disabled people and work to able-bodied, as every human being has the right

to live, which implies the right to work. Unfortunately, most of the states do not undertake or are not in a position to shoulder this responsibility legally, and hence there is large-scale unemployment among able bodied people, and the old and the decrepit are left to suffer in their poverty and helplessness.

*Good Record of Some States:* In recent years, there has been a new awakening, and several states have positively accepted the concept of social welfare. Highly advanced states have done much along the road of social welfare. Though they are unable to provide employment to all, they have made provision to pay unemployment benefit.

#### (e) Right to Contract

*Essential Condition of Civilised Life:* The right to contract enables the individual to enter into contracts freely with others. This is an essential condition of civilised life, and without this social life has no meaning. An individual may enter into agreement with other individuals or associations, regarding subjects of mutual interest.

*Laws for Regulating Contracts:* Every state makes laws to regulate contracts and to prevent the making of contracts, which are injurious to the interests of society. A government recognises a contract between a landlord and a tenant, a creditor and a debtor, an employer and an employee, a buyer and a seller and so on, provided they do not violate the laws of the state. No government today permits the making of illegal contracts like buying and selling slaves. The power of the state to regulate contracts and totally ban the making of evil contracts is in the best interests of the state.

#### (f) Right to Free Speech

*Absolutely Essential for Social Life:* The right to free speech, which enables the individual to think freely and speak freely, is absolutely essential for social life. This right to speak freely and exchange views freely leads to the sister right, that is, the right to write freely.

*Significance in Democracy:* The right to free speech, which includes freedom of the press, is of great significance in a democracy, because democracy stands for government by free discussion and criticism. In democratic states of the West, the widest scope is given to freedom of thought and expression; but in totalitarian states, the individual has forfeited this right.

*Advantages of Free Speech:* The right to freedom of expression is very advantageous in a democratic state. (1) People can exchange their views and opinions freely, and make constructive suggestions to improve governance. (2) Grievances can be brought to the notice of the authorities concerned. (3) Government can be freely criticised. (4) Government can take advantage of the views of the public. (5) Democracy has good chances of success.

#### (g) Right to Religion

*No State Interference in Religious Affairs:* This right enables an individual to have his own religious views, follow any religion of his choice and



worship God freely. The state does not interfere in his religious affairs. This was not the case in the past, when people were penalised for holding religious views different from those of the rulers. In Europe, when the Reformation movement broke out, people lost religious freedom. At present in most of the states in the world, people enjoy the right to full religious freedom.

*India a Secular State:* India under the Constitution (1950) is a secular state. The state holds in even balance all religions. The state has no official religion, and its policies are not based on religion. People can follow any religion and right to religious freedom is one of the seven Fundamental Rights guaranteed by the Constitution.

#### (h) Right to Liberty and Free Movement

*A Comprehensive Right:* Right to liberty and free movement is a wide and comprehensive right including several rights. This right gives the individual the right to meet the others, the right to form associations, the right to settle anywhere and freely move in the state. The individual may follow any profession, trade or occupation, and acquire, hold and sell property. The right also includes freedom from illegal arrest and detention.

*In India:* The Right to Freedom is a Fundamental Right in India, which is justiciable.

*Liberty a Great Asset:* Liberty is such a valuable asset to develop personality that in the 18th century Americans shed their blood in their great War of Independence (1775-83) and the French did the same in their great Revolution (1789).

#### (i) Right to Equality

*Wide Scope:* The right to equality is also wide in its scope. It includes several rights including equality before the law, equality of opportunity in matters of employment and complete absence of discrimination on grounds of race, region, language, religion, caste, sex, place of birth and other matters.

*Same Rewards and Punishments:* The state holds in even balance for all citizens favours, rewards and punishments. Law treats all citizens in the state in the same way. It neither favours nor disfavors any particular individual or group. The state metes out the same punishment to all for violation of law. The principle of equality is followed in matters of taxation. In Britain, this right is upheld by the Rule of Law.

*In India:* The Right to Equality is a Fundamental Right guaranteed by the Constitution. This right includes: (1) equality before the law, (2) prohibition of any type of discrimination, (3) equality of opportunity, (4) abolition of untouchability and (5) abolition of titles.

*Practice of Discrimination:* Discrimination is still practised in countries like South Africa.

#### (j) Right to Education

*Wide Educational Opportunities:* The right to education gives full freedom to the individual to educate himself, develop his faculties and live like

a good citizen. The right implies that wide educational opportunities are at the disposal of the individual to develop his personality. In highly advanced countries, government gives all facilities for primary, secondary and higher education, and even introduces compulsory education up to a certain standard.

*In India:* In India the right to education is guaranteed by Cultural and Educational Rights and minorities are given the right to preserve their language, script and culture, the right of admission into educational institutions and the right to establish and administer their own educational institutions. Government cannot show discrimination against educational institutions of minorities.

#### (k) Right to Association

*Tremendous Significance:* The right to association is of tremendous significance in a democratic state. This goes hand in hand with the right to speech, and the right to liberty and free movement. People have to express their views freely, meet others and understand their views, form political groups or parties for the propagation of views and establish various kinds of social, economic, cultural and religious associations. In every state, the life of the people in the community can be seen through many associations and groups with diverse aims and interests, and without these, man's life would be quite barren.

*In India:* In India, the right to association is included in the Right to Freedom, which is a Fundamental Right guaranteed by the Constitution.

#### (4) Important Political Rights

The important political rights are: (a) right to vote; (b) right to stand for election; (c) right to hold public office; (d) right to petition; and (e) right to criticise government.

##### (a) Right to vote

*Advantage of Adult Franchise:* The right to vote is the foremost political right, which arose with democracy. The individual, who has franchise, has a share in the making of government in a democratic state. In many states, adult franchise has been introduced; but there are states in which women, people without property and the uneducated are excluded from franchise.

*In India:* In India, adult franchise has been introduced under the Constitution (1950) and all persons, who are 21 years old, have the right to vote on the principle of one person one vote. Only aliens, minors, certain types of criminals, bankrupts and mentally sick people are excluded from voting. In 1989 the age to vote was reduced to 18.

##### (b) Right to Stand for Election

*Corollary to Right to vote:* The right to stand for election in a democracy is a corollary to the right to vote.

*Need of Minimum Qualifications:* In certain states, while all adults have the right to vote, all cannot stand for election. Certain minimum qualifications



of age and education are imposed, because all are not supposed to be fit for the membership of the legislature. Practical experience in some states has shown that some members of the legislature are both ignorant and incompetent, and they become members of the legislature, as Laski says, "merely for the prestige which membership confers." It seems reasonable to impose certain minimum educational qualifications for contesting elections.

*In India:* In India no educational qualification has been laid down for those contesting elections.

#### (c) Right to Public Office

*All Public Offices Thrown Open to All:* The right to public office is another important product of democracy. No public office is the exclusive monopoly or privilege of any particular individual or group of persons, and all citizens in a state regardless of region, religion, race, caste, creed or sex have access even to the highest office.

*In India:* In India this right is a part of the Right to Equality, which is a Fundamental Right guaranteed by the Constitution. This right has gone far in upholding the basic democratic principle of equality.

#### (d) Right to Petition

*Ventilation of Grievances:* The right to petition, which gives the citizen the right to express or ventilate his grievances, is of immense significance, as it provides him with an opportunity to inform government where exactly the shoe pinches. Not only the people, but those in authority derive benefit from this right.

*In India:* This right is included in the Right to Freedom, a Fundamental Right guaranteed by the Constitution.

#### (e) Right to Criticise

*Democracy as Government by Public Criticism:* The right to criticise government is another basic political right in a democracy, which is supposed to be government by public criticism. This political right is based on the civil right to freedom of expression.

### J. Fundamental Rights

*Basic Rights for Personality Development:* Rights, which are quite essential to man for the development of his personality, are called fundamental rights, which every democratic government guarantees in modern times.

*Possibility of Democratic Government Turning Dictatorial:* In modern times, direct democracy is not possible; what concerns all is not discussed by all, but only by a few persons, who are elected representatives of the people. Moreover, the way in which political parties function, and seize and exercise power has created sense of frustration and dissatisfaction among the people in general. In some states, the party which forms government may develop dictatorial power (within a democratic framework), when it commands absolute majority in the legislature, and when there is no hope for the opposition to

form an alternative government. The possibility of a certain party in power passing legislation to increase its own power to the detriment of the country and restricting the rights of the people cannot be ruled out. Hence, it is quite essential to have a list of fundamental rights on which no party in power will be able to encroach.

*Constitutional Guarantees to Minorities:* The problem of minorities is one of the most vexed questions in a modern democratic state. To dispel the fear that the rights of minorities may not be trampled upon, adequate constitutional guarantees are given through justiciable fundamental rights, which are clearly mentioned and defined.

*Fundamental Rights in India:* The Constitution of India (1950) contains a list of seven Fundamental Rights, which are justiciable. In many verdicts given by the Supreme Court and the High Courts, it has been made clear beyond a shadow of doubt that the rights of citizens including those of minorities are fully protected from the inroads made by the executive or the legislature. These rights, which uphold the dignity of the individual, are the true props of democracy.

The following are the Fundamental Rights, which are guaranteed by the Constitution of India :

(1) *Right to Equality:* The Right to Equality, which is comprehensive stands for: (1) equality before the law; (2) prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; (3) equality of opportunity in matters of public employment; (4) abolition of untouchability; and (5) abolition of titles.

(2) *Right to Freedom:* The Right to Freedom is a bunch of rights: (1) right to freedom of speech and expression, right to assemble and peaceably and without arms, right to form associations or unions, right to move freely throughout the territory of India, right to reside and settle in any part of the territory of India, right to acquire, hold and dispose of property, and right to practise any profession, or to carry on any occupation, trade and business; (2) protection in respect of conviction for offences; (3) protection of life and personal liberty; and (4) protection against arrest and detention in certain cases.

(3) *Right against Exploitation:* The Right against Exploitation include: (1) freedom from slavery, *begar* and other forms of forced labour; (2) imposition of compulsory service by the state without discrimination; and (3) freedom from exploitation of children below 14 years.

(4) *Right to Freedom of Religion:* The Right to Freedom of Religion includes: (1) freedom of conscience and free profession, practice and propagation of religion; (2) freedom to manage religious affairs; (3) freedom as to payment of taxes for promotion of any particular religion; and (4) freedom as to attendance at religious instruction or religious worship in certain educational institutions.

The state is empowered to regulate the activities of religious institutions, if their activities are unwholesome and injurious to the interests of society.



Religious bodies have at their disposal huge funds, which are likely to be misused for selfish interests and for harmful communal activities. The non-religious affairs of religious institutions are controlled and regulated by the state.

(5) *Cultural and Educational Rights*: The Constitution of India guarantees certain Cultural and Educational Rights: (1) right of minorities to preserve their language, script or culture; (2) right of admission of minorities into educational institutions; (3) rights of minorities to establish and administer their own educational institutions; and (4) prohibition of discrimination against educational institutions of minorities as regards grants.

(6) *Right to Property*: Citizens have the right to acquire, hold and dispose of property. Article 31 of the Constitution says: "No person shall be deprived of his property save by authority of law." Article 31 was amended by Parliament to take away from the judiciary the power of going into the question of compensation given to individuals, whose private property is taken over by government. This step was taken because zamindars challenged legislation, which abolished zamindari.

The right to property has been severely eroded by several constitutional amendments. Several eminent men strongly criticised the manner in which Parliament and State legislatures passed legislation to make more and more inroads into the right to property. The Constitution (Twenty-fourth Amendment) Act, 1971, enabled Parliament and State legislatures to introduce radical changes through legislation, leaving no room for any revolutionary movement. The avowed purpose of the drastic amendment was *Garibi Hatao* (Removal of Poverty). With all the merits in this amendment, it put the right to property in great danger. The minorities felt that their property right too were in jeopardy. Discussion in Parliament in connection with the amendment showed that the Congress, the ruling party under the leadership of Smt. Indira Gandhi, wanted to weaken or degrade the judiciary.

(7) *Right to Constitutional Remedies*: Article 32 which gives the Right to Constitutional Remedies is in fact not a right, but a set of remedial measures. The Article says: (1) The Supreme Court may be moved under Article 32 (1) for the enforcement of Fundamental Rights. (2) The Supreme Court is competent to issue writs under Article 32 (2). (3) Parliament may make law under Article 32 (3) empowering any other court to issue writs. (4) The Right to Constitutional Remedies under Article 32 (4) shall not be suspended except according to the provisions of the Constitution.

*Fundamental Rights not Absolute*: Fundamental Rights in India are not absolute, and reasonable restrictions can be imposed on them. The Constitution empowers the President of India to restrict them in times of Emergency.

#### K. Rights and Social Welfare

*Tremendous Increase in State's Powers*: A recent trend, which has been marked with anxiety all over the world, is the tremendous increase in the

powers of the state resulting in more and more interference in the life of the individual. The state is seen all round in restricting and regulating the activities of the individual all for the sake of promoting social welfare. Even in democratic states, the individual feels that there is excessive control on almost all aspects of his life. While the area of state power is getting enlarged at an alarming rate, the area of individual freedom is becoming smaller and smaller. The individual is hemmed in on all sides by a large number of laws restricting his freedom. In fact some of the legislatures in the world have been finding it difficult to cope with the load of legislative work and bills are passed in great hurry.

*Changing Concept of Rights and New Individualism*: Today all over the world of concept of the welfare state has been gaining ground. Actual experience has shown that *laissez faire* on individualism which did more harm than good was rejected by the end of the 19th century. State regulation for public welfare has become inevitable. However, the state should understand its limitation and should not impose totalitarian control. Here much depends upon the attitude and vigilance of the people. If the people become indifferent to their rights and tolerate all kinds of unreasonable restrictions, before long they will lose their freedom and become the tools of the state.

Today a new type of individualism, which has shifted the emphasis from the individual to the group, has emerged. Rights at present are viewed more through the angle of society than through that of the individual. The right to private property, which was regarded as absolute by individualists, has been restricted in almost every state owing to the impact of socialist forces whether democratic or revolutionary.

#### L. Safeguarding Rights

*Via Media*: It is realised by all that selfish individualism and totalitarian state control should be avoided, and a *via media* should be found out to safeguard the rights of the individual and to arm the state only with reasonable powers for promoting social.

*Methods of Protecting Rights*: Certain methods have been evolved to safeguard the rights of the individual. These are the following:

- (1) The individual should be assured certain minimum basic or fundamental rights, which should be beyond state control.
- (2) These rights should be clearly written and remedial measures should be constitutionally and legally provided for enforcing them.
- (3) A highly competent, independent and fearless judiciary should be set up.
- (4) Periodical elections on the basis of adult franchise should be held.
- (5) Provision may be made for direct methods of legislation like referendum and initiative.
- (6) The press should be left free and unfettered, and the state should not be able to threaten and silence it.



## Chapter 9

### **MEANING, DEFINITION OF LIBERALISM**

Liberalism has been a dominant political philosophy of the west which created immense impact for about four centuries. It was not developed at a particular point of time. A few thinkers have expressed liberalism as a faith and a spiritual affair. Others viewed it as a matter of intellectual affair. A few writers equated liberalism with individualism. Yet there are a few others who interpreted it in terms of social democracy. It is thus evident that it is difficult to describe it either as a dogma or doctrine. It represents a system of ideas which ultimately aims in realising a plural society with abundance of diversity in socio, politico, economic and cultural life.

Liberalism may be traced in the writings of Socrates and Plato who argued, for the freedom of inquiry and expression. In fact, liberalism is a movement which was adopted to fight against authority of the monarchy, the feudal lords and the tyranny of the church in fifteenth and sixteenth centuries. In reality it was a product of reformation, individualism and scientific temper representing the middle class. It stood for the removal of hurdles coming in the way of human progress so as to free the individual and the society from the bondage of the State and government. In essence its political expression was manifest in the assertion of the individual and his rights, autonomy and freedom against the arbitrary authority of the State.

Subsequently it was further developed and got consolidated at the hands of John Locke, Montesquieu, Thomas Paine, Bentham and Rousseau during 17th and 18th centuries. The American Declaration of Independence as well as the French Declaration of the Rights of the man amply reiterated a great belief in the natural law and inalienable rights of the individual. Liberalism as a movement though made itself felt in almost all the countries of Western Europe and in America but the most spectacular development took place in England due to rise of the middle class with the industrial development in the 19th century.

Liberalism is the theory and practice of individual liberty, judicial defence and a Constitutional State. It was an attempt to



give back to man his personality and individuality. According to W.M. Meegovern, "Liberalism as a political concept is a compound of two separate elements, one of them is democracy and the other individualism." Liberalism embraces the principles of democracy such as equality, liberty, fraternity, secularism, toleration and constitutional methods and individualism and fullest development of personality of an individual.

Liberalism means freedom from the authority of the government in the affairs of the individual. Thus, liberalism means the absence of governmental authority in matters relating to the welfare of the individual. Thus, theory is based on the principle that the individual can develop his personality to the fullest possible extent, if alone he is left free from the arbitrary interference of the government. That is why J.S. Mill declared that "that government is the best which governs the least."

### Definitions

According to David G. Smith, "Liberalism is the belief in and commitment to a set of methods and policies that have as their common aim, greater freedom for individual men."

As per H.J. Laski, "Liberalism is the expression, less of a creed than of a temperament. It implies a passion for liberty and that passion may be compelling, it requires a power to be tolerant, even skeptical about opinions and tendencies you hold to be dangerous, which is one of the rarest human qualities."

In the words of Sartori, "very simply, liberalism is the theory and practice of individual liberty, judicial defence and the Constitutional State."

### Implications or Principles of Liberalism

With a thorough and clear understanding of the concept of liberalism, one can find the following principles :

#### Social

(1) Liberalism is opposed to all artificial pressures as well as regulations on individual freedom and conscience of individuals.

(2) It believes that traditions and institutions being outdated will have no relevance in the individual's prosperity and development.

#### Economical

(3) In economic sphere liberalism supports free trade and production.

(4) It vigorously opposes any restriction on imports and

exports.

(5) It advocates that the citizens should be allowed freely to exploit natural resources and distribute economic dividends as he desires.

### Political

(6) Initially, liberalism had advocated the total restriction of State interference in the freedom of man.

(7) It advocates the strict application of the theory of separation of powers, judicial review, Parliamentary control over the executive, protection of minority interests, prevention of the concentration of power and the rule of law.

(8) Liberalism preaches that the power rests with the people and the government must be accountable to the people through periodic elections.

(9) It is a voice in favour of equality before law.

(10) It advocates freedom of thought and expression.

(11) It maintains that State and Society should protect individual's natural rights.

(12) It stands for secularism.

## Classical and Modern Concept of Liberalism

### Classical or Negative Liberalism

Liberalism, which originated in 17th and 18th centuries, is popularly known as classical liberalism. Adam Smith, John Locke, Jeremy Bentham, David Ricardo and Thomas Malthus have laid the foundations of classical liberalism. Adam Smith advocated for the establishment of natural liberty. Natural liberty implies that a man should not be restricted by the authoritarian laws made by the State. He particularly emphasized that regarding the economic sphere every man is free. Ricardo and Malthus supported a self regulating market. In their view, the market should not have any political restrictions. Thus, it leads to capitalism. According to their vision, capitalism is fruitful for all sections of people, capitalists reap profits, workers get employment, farmers receive good price for their produce and land-owners receive high rents. Jeremy Bentham pleads that every man is the best judge of his pain and pleasure. This is based on utilitarianism.

Classical liberalism had emphasised on the fundamental individuality of man, liberty, rationality and dignity and worth of man and expressed a profound faith in the individual freedom. It interpreted that freedom was to be viewed as the absence of



restraint by the State in the individual's sphere. It professed a faith in the spiritual equality of the individual and absolute value of human personality. It believed that the State is an artificial institution owning its existence to the consent of the individual. The State is viewed as a necessary evil performing minimal functions without negating the basic freedom of man. It had pleaded the sanctity of private property and supported free trade.

Prof. Hallowell interpreted it as negative in its nature and summed up the following focal points as the main tenets of classical liberalism.

- (1) Equality of citizens in matter of faith and personality;
- (2) It relies totally on the human rationality, good and positive behaviour of man;
- (3) It supports inalienable natural rights such as right to life, liberty and property;
- (4) The State is the result of human acquiescence so as to promote and preserve the rights of citizens;
- (5) Significantly it elaborates the sphere of State activity in which the citizens and the State are placed on contractual obligation;
- (6) It emphasises a total faith in the concept of rule of law and continuation of government. It does not support the rule of a few individuals administering arbitrarily, negating the individual's interests;
- (7) It believes that the State is a necessary evil and hence it must be assigned minimal functions;
- (8) It amply emphasises politico, socio, cultural, economic, moral and spiritual freedoms;
- (9) Lastly, it adheres to the basic assumption that man is essentially rational and that pursuance of his own interests tantamounts to the promotion of the interests of society.

### Principles of Classical Liberalism

In his book 'Liberalism', Hobhouse discussed certain basic principles of liberalism. According to him, those principles were evolved as a consequence of the struggle of the middle classes against feudalism, the government by aristocrats and the power of the clergy. These principles are as follows :

(i) **Civil Liberty.**—This principle implies that people were not to be governed by rule but by laws. It consists of rights and privileges which the State creates and protects for its subjects. The

most important of these rights are—right to life, right to work, right to personal safety and freedom, right to religion, right to property, right to freedom of speech, public meetings. Rousseau thought that all men were born free and equal in rights and that rights of man could be limited only by law and that for the formulation of law it was the right of every citizen to participate either in person or through a representative and that the law must apply with precise equality to all.

(ii) **Fiscal Liberty.**—According to this principle, there should be no taxation without representation. The middle classes were the producers of the new wealth of the community and no wonder they claimed they should be allowed to decide as to how and whom their money was to be spent on. They wanted to decide as to how much, how, where and on whom their money was to be spent.

(iii) **Personal Liberty.**—Personal liberty covered several rights and duties. It was to secure freedom of speech, discussion, writing and painting, and freedom of thought and faith. No government or church has the right to invade the privacy of a man's thought or his home or demand that he make his thought known. It also includes the freedom of religious belief and worship.

(iv) **Social Liberty.**—Social liberty means social equality. It means that there should be no discrimination on grounds of birth, wealth, colour, creed, sex, race and economic position. In essence social liberty means that all men are born equal and they must have equal opportunities of progress.

(v) **Economic Liberty.**—Economic liberty means that the individual should have the right to property and contract. Hobhouse also includes in it the right to form economic associations and partnerships. The middle classes were keen to get all the restriction of buying and selling removed and they wanted the sphere of State activity to the minimum. They advocated the policy of *laissez-faire*.

(vi) **Domestic Freedom.**—Domestic freedom covers rights for women as regards property and marriage and rights for children. Children were to have rights against even their parents. They need to be protected against maltreatment, cruelty and exploitation. They were also to have the right to education.

(vii) **Administrative, Geographical and Racial Liberty.**—This concept implied administrative and local autonomy and the right of nations to self-determination. As the middle classes grew in power both economically and politically, they found themselves in conflict with different social orders in those areas



where they wanted to establish themselves.

(viii) **International Liberty.**—Liberals were opposed to the use of force as an instrument of national policy or to militarism.

(ix) **Political Liberty and Popular Sovereignty.**—Political liberty and popular sovereignty were described by Hobhouse as the crown and glory of liberalism. These two things involved and supported each other. Political liberty involved a wide system of subordinate liberties. The theory of popular sovereignty rested on the assumption of the essential equality of man. The middle class supported the ideas of popular sovereignty and political liberty in their own interests.

### Criticism of Classical Liberalism

(i) It is a conservative philosophy of the capitalist class, *i.e.*, it is a bourgeoisie philosophy.

(ii) The claim of the liberal democratic State that it endeavours to secure benefits to the overwhelming majority in society is incorrect.

(iii) The classical liberalism limits the claims of authority and thus paves the way for anarchy.

(iv) It is rather amorphous both as a doctrine and as a movement is not completely consistent doctrine and it has no concise programme which is accepted by all liberals.

(v) Liberties failed to bring perfect equality.

(vi) It has failed to protect the interests of working class.

### Marx and Liberalism

Marx was not the supporter of liberalism. He equated liberalism with capitalism. He regarded it as primarily a theory of capitalist exploitation over social justice. According to him, liberalism was limited by its class origins and class interests.

Marx did not see in liberalism a doctrine which contained in itself the seeds of a development beyond its class origins which might incorporate the best ideas of socialism. However, Marx did not reject outright all the liberal ideas particularly those concerned with political liberty. He contended that political liberties were merely abstractions without any other purpose than to keep the masses submissive to their rulers.

Marx criticised liberalism on the ground that it excludes all considerations of the role of class and class interests in the making of fundamental changes in society.

Marx contended that liberalism did not apply to any particular class. It spoke in the name of humanity. It disregarded

the patent fact that the landlords and capitalists were not interested in the welfare of the majority. Liberals looked upon the State not as an instrument of a class but as means by which the interests of all men were expressed. Marx contended that the State and ruling class were inseparable. Liberalism helps the ruling capitalist class by neglecting majority working class.

### Positive Liberalism or Liberalism as a theory of the Welfare State

By the close of 19th century, positive liberalism had flourished consequent to the set-back to the classical notion. Unrestricted freedom to the capitalism widened the gap between haves and have-nots. There was a considerable demand from the have-nots for their economic and social emancipation. The evils brought by the capitalism such as starving conditions of labour, insecurity, exploitation, degeneration of health conditions, *etc.* paved the way for positive liberalism.

Jeremy Bentham and J.S. Mill realised the need of reconciliation between individual liberty and social liberty, *i.e.*, the greatest happiness of the greatest number. They supported democracy and also accepted the increasing functions of the State in the broader interests and welfare of the society. J.S. Mill had suggested compulsory education, liberation of individuals from certain contracts like slavery, marriage, monopoly, control, regulation of the working hours, fixing of minimum wages and social security measures.

Modern States became welfare States. They provided not only law and order but a wide range of social services also. The primary purpose of the welfare State is to give the citizens security and to help them if they lose their source of income. "A welfare State guarantees minimum standard of subsistence without removing incentives to private enterprise and it brings about a limited redistribution of income by means of graduated high taxation." The State plays a positive role in removing large inequalities.

T.H. Green also supported the direct State interference in three spheres of social life. They are ignorance, pauperism and use of intoxicants. Being an idealist thinker he believed that the State should not merely confine its activity to regulatory functions but also suggested to remove the external hindrances in the voluntary performance of good acts. In fact, the individual during this period has been very much humanised by the removal of negative features of classical period.

G.D.H. Cole says, "The welfare State is a society in which an



assured minimum standard of living and opportunity become a possession of every citizen." T.W. Kant states that a welfare State is "a State that provides its citizens a wide range of social services." It is a system wherein Government agrees to underwrite certain levels of employment, income, education, medical and social security and housing for all its citizens. Hobman opined that a welfare State sets a pattern for any human and progressive society.

Hobhouse, H.J. Laski and MacIver have championed positive liberalism which stands very close to socialism. According to Hobhouse, "The ideal society is conceived as a whole which flourishes and lives by the harmonious growth of its parts, each of which is developing on its own nature, tends on the whole to the further development of the other."

According to the welfare philosophers, the State should have three main objects to pursue.

- (i) The State should ensure the well-being of the individuals;
- (ii) It should bring about the well-being of the State or the collective interest of individuals in their associated capacity;
- (iii) It should promote the civilization of mankind.

The following are some of the main features of positive liberalism or theory of welfare State.

- (1) Positive liberalism believes that the rights are not natural and sacrosanct. It supports the view that the rights are created by the State and could be restricted in the interests of the several welfare.
- (2) It does not believe the notion that the State is a necessary evil. It advocates that the State has to partake more and more in socio-economic, cultural and other activities.
- (3) It believes that State is a moral institution to promote the intellectual and moral faculties of the individual.
- (4) It believes in humanism and secularism as the principle goals and objectives to promote harmony and peace.
- (5) It also stands for liberating the country from alien rule and securing autonomy at different levels of administration.
- (6) It advocates regulation and control of economic life of the society to pave way for possible reforms.
- (7) It also pleads for constitutional, democratic and parliamentary system.

- (8) It advocates some degree of public control in industrial matters.
- (9) It advocates the need of collective responsibility in education, problems of children and taking care of sick, aged, etc.

### Modern Concept of Liberalism (Contemporary Liberalism)

After the Second World War, a few more changes have taken place in the concept of liberalism. It is now popularly known as the contemporary or modern liberalism. It was advocated by Brain Champman, Schumpeter, Robert Dhal, John Rawl, John Dewey, Morris Raphael Cohen, W. Koben, etc.

The classical liberalism revolved around the protection and preservation of the individual's right to life, liberty and property. The positive liberalism later advocated the State interference for the welfare of the broad masses of mankind. These two currents merged more or less completely into one during the 1920's and 1930's to form modern liberalism. These currents were those of political democracy and the reformist socialist current in the labour movement.

Modern liberalism had mainly emphasised that the world should be saved from totalitarianism and promote justice, fairness and equality. Modern liberals have argued for the emancipation of the personality of the individuals as well as social groups. They believe that the State is a federation of groups and a union of guilds. Modern liberalism lays greatest faith in the value of free expression of individual personality. It emphasises equality of opportunities for all citizens but does not compromise as far as liberty and rational choice of the human beings are concerned.

Modern liberalism has assumed two forms in the narrow sense and in the general sense. In the narrow sense, it has come to mean a positive midway between conservatism and socialism, and one that is favourable to reform but opposed to radicalism. In a wider or general sense, it has come to be equated with democracy as opposed to totalitarianism, both of the communists and the fascists. In this sense it implies the preservation of popular institutions of government, like the suffrage, representative assemblies, executive responsible to the legislature, etc. So modern liberalism is the outcome of the drive of liberal and socialist ancestors for a world free of tyranny and exploitation.

Schumpeter does not agree totally with democratic methods



and highlights that at times the democratic methods are used to acquire political power by means of competitive struggle for people's votes.

Robert Dhal, on the other hand, treats democracy as a mechanism in maintaining equilibrium to secure the principle of distributive justice.

John Rawl had argued that inequalities are inevitable. Justice demands that we should judge the moral growth of individuals and social groups in terms of the rights and income in a society divided by classes.

John Dewey and Morris Raphael Cohen believed that modern liberalism is an attitude and a programme. As an attitude, it considers reasons and strategic method to guide social action. As a programme, it stands for keeping the social channels of communication open so that the State could control key industries and the need to provide a political system which permits the process of popular education to fulfil economic realities.

Prof. Macpherson of Toronto elaborated the dimensions of modern liberalism as follows :

- (1) Man is an absolute proprietor of his own capabilities. He has freedom to use his inner faculties and owes nothing to the society. His freedom is limited by the utilitarian factor.
- (2) The society is not marked by a kind of relation of domination, dominated and subordinated. On the contrary, the man and society have reciprocal relation sharing the rights and duties.
- (3) The political society is a rational device as well as a mechanism in the form of an institution for securing the protection of property stretching through even life and liberty.

The theory of liberalism as is evident has undergone many changes from time to time. Prof. Andrew Hacker classified liberalism into four kinds, namely; (i) Free Market Liberalism; (ii) Reformist Liberalism; (iii) Utopian Liberalism; and (iv) Democratic Liberalism. With the advent of socialism it has lost its vitality as a doctrine and thus got relegated to the background.



*"More perhaps than any other theory, socialism proves to be a different creed in the hands of each of its exponents, varying with the temperaments of its advocates and the nature of the abuses which have prompted their advocacy.... The literature on this subject is so enormous, with the result that it is hard to say in what exactly it is that socialism consists. Socialism, in short, is like a hat that has lost its shape because everybody wears it".*

- C.E.M. Joad

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## SOCIALISM, COMMUNISM AND COLLECTIVISM (MARX, LENIN AND STATE SOCIALISM)

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### WHAT IS SOCIALISM?

It is difficult to say what socialism is, because socialism emerged as a sharp reaction to individualism. It is a political philosophy as well as a great movement. In socialism, economic principles and logic have amalgamated with the political principles in such a manner that it has become extremely difficult to separate them. Secondly, the supporters of socialism hold similar views, regarding many things and because of many contradictory definitions of this subject, it has become difficult to decide which of the definitions is correct. Thirdly, the term socialism is also used for a particular set-up and way of life. Therefore, different writers have used socialism in different ways with different meanings. That is why Joad writes that "Socialism is like a hat that has lost its shape because everybody wears it". Though there is difficulty in explaining the meaning of socialism and there is no uniformity in various social notions and principles and programmes, yet many things are common among them. For instance, all socialists are against capitalism, whether they are Communists, State-Socialists or Collectivists, or Syndicalists, Guild Socialists or Anarchists. They want the socialisation of the means of production. This means that they want social control over the means of production. This is the broad meaning of socialism. If socialism is used in a narrow sense, it will mean Collectivism or State Socialism. Now we give some definitions of socialism, which will help us in understanding the meaning of socialism more clearly.

**Definitions of Socialism.** The following are some of the popular definitions of socialism:

(1) Humphrey says, "Socialism is a system of society in which means of the life belong to the community as a whole and are developed and operated by the community with the aims of promoting the general well-being".



(2) According to *Encyclopaedia Britannica*, Socialism is that policy or theory which aims at securing by the action of the central democratic authority better distribution and in due subordinate thereto, a better production of wealth now prevailes".

(3) According to *Hugham*, Socialism is the political movement of class which aims to abolish exploitation by means of the collective ownership and democratic management of the basis instrument of production and distribution".

(4) Prof. Ely says, "A socialist is one who looks to society organised in the state for aid and bringing about a more perfect distribution of economic goods and an elevation of humanity, while individualists desire every man to work out his own salvation, material and spiritual".

(5) *Ramsay Macdonald* writes, "No better definition of socialism can be given in general terms than that it aims at the organisation of material economic forces of society and their control by the human forces".

(6) *Sellers* regards socialism a movement and says, "It is democratic movement whose purpose is the securing of an economic organisation of society which will give the maximum possible at any one time, of justice and liberty".

(7) *Robert* has laid emphasis on collective ownership. He says, "The programme of socialism consists of essentially one demand, viz., that the land and other instruments of production shall be the common property of the people and shall be used and governed by the people for the people".

(8) According to *Emile*, "Socialism means the organisation of workers for the conquest of political power for the purpose of transforming capitalist property into social prosperity".

(9) *Shri Jai Prakash Narayan*, after considering the socialism from the point of view says, "Socialism is a society in which all are workers of a classless society. It is a society in which human labour is not a subject to explanation with interest of private property, in which all wealth is truly national or common wealth, in which there are no unearned incomes and no large income disparities, in which human life and progress are planned and where all live for all".

(10) English philosopher *Bertrand Russell* is of the view that "I think we come nearest to the essence of Socialism by defining it as the advocacy of communal ownership of land and property".

#### Conclusion

Some of the definitions given above are comprehensive while others are narrow. According to one view, socialism is a movement; the other view considers it an economic system. It has also been called a philosophy. In spite of a great disparity among the definitions, it is clear that socialism is a bitter enemy of capitalism. It wants to destroy capitalism, because it creates economic disparity in society. Socialism wants to establish social control over the means of production (land, industries, etc.). It wants to abolish private property and investment, so that economic disparity should end and both the rich and the poor should get equal opportunity for their progress.

**Main features of socialism.** All socialists, irrespective of their alignment with any branch of socialism, accept the four points, mentioned below:

- (1) State and not individual should control the means of production.
- (2) Production should be based on social necessity and not on individual profit.

- (3) Individual profit motive should be replaced by that of social service.
- (4) Open competition and arbitrary production should give way to co-operation and definite production.

### DEVELOPMENT OF SOCIALISM

During the period from 1750 to 1850, there was a great development of science, art and vocational knowledge in Europe. Therefore, the influence of middle-classes increased. After this, Industrial Revolution took place, and the capitalist influence increased. Though during the nineteenth century, many countries of Europe saw the rise of democracy and nationalism, yet due to the influence of individualism, governments did not feel it necessary to have economic control or to remove the ills of capitalism. Owing to this, the condition of the working classes deteriorated. Having been influenced by the condition of the workers, Karl Marx produced sufficient literature on scientific socialism. Prior to Karl Marx there were many socialists, who suggested social control over private property. They were deeply touched by the miserable conditions of the poor, and thus they suggested this measure. To differentiate them from Karl Marx, they are called Utopian Socialists, because they did not give any solid arguments like Marx about the practical form of socialism.

**Essentials of Utopian Socialism.** Utopian socialism had a great faith in human intellect, good nature and goodwill. These socialists were against capitalism and said that it created not only social and economic inequality, but also degenerated morality. Thus, they wanted to bring in socialism by abolishing capitalism. However, they believed that socialism could be established by will. This was a great mistake on their part.

**Downfall of Utopian Socialism.** There was less reality and more idealism in Utopian socialism. Therefore, when Karl Marx preached his scientific socialism, Utopian socialism vanished in no time.

Marx emphasised the socialisation of the means of production, which is the chief basis of modern socialism.

### ARGUMENTS IN FAVOUR OF SOCIALISM

(1) **Socialism contradicts capitalism which is based on exploitation.** Socialism is against capitalism, which is based on exploitation. The capitalists exploit the poor and lead an idle and luxurious life on the profits earned by the poor. There is economic inequality due to capitalism, which hinders social progress. Therefore, socialism wants to put an end to this exploitation and establish social equality.

(2) **Socialism prevents economic waste due to open competition.** In a capitalistic system, there is open economic competition, in which much money is spent on propaganda, advertisement and on other such things. The capitalists do not produce wealth according to the needs of the society, but they produce goods for their own benefit. This results in the production of some things and there is also dearth of many other things. This situation creates trouble for the society. Socialism removes both these evils of capitalism and lays emphasis on co-operation instead of an open competition.

(3) **Socialism is based on justice more than capitalism.** Capitalism concentrates the capital of the society in a few hands, which is based on injustice. Socialism wants the social control over factories, ships and railways. It does not want that these should be controlled by a few persons. Therefore, socialism is based on justice.



(4) **Socialism is more democratic than capitalistic system.** The question of economic equality does not arise in a capitalistic system, because in this system the wealth of the country is concentrated in the hands of a few persons. Where there is a great economic inequality, success of democracy becomes doubtful. Thus, in order to make democracy successful, it is essential to establish socialism.

(5) **It is more natural.** The socialists are of the view that socialism is more natural than capitalism. Nature has distributed air, water, rain, etc., equally among all the people. Therefore, it is desirable that there should be social control over land and minerals.

(6) **It is more scientific.** Socialism is more scientific than capitalism, because capitalism safeguards the interests of a few, while socialism protects the interests of the society. Socialism attaches more importance to the society, than to the individual and urges the individual to devote himself to the service of the community.

### CRITICISM OF SOCIALISM

Socialism has been criticised as under:

(1) **It kills individual initiative.** Each individual works more and more for private property. In socialism, private property cannot be utilized for investment in the market to earn profit. Therefore, individual initiative to produce more will be killed under social control.

(2) **Under socialism, functions of the state would be so much enlarged that it would not be possible for it to discharge them well.** According to socialism the state should not only take up protective functions like maintenance of law and order, justice and protection against foreign aggression, but it should also increase the production. For this purpose it should take up the socialisation of the means of production. It will be very difficult for the state to perform enormous functions.

(3) **Socialism will fail in practice.** Critics are of the view that socialism will fail in practice. Socialism wants to establish peace and economic prosperity and to remove economic disparity and social ills. But in practice this is very difficult to accomplish.

(4) **Socialism divides society into two classes.** Socialism divides the society into two classes—Capitalists and Workers. Their interests are conflicting and there can be no unity between them. This brings about conflicts and clashes in the society.

(5) **It kills individual freedom.** Socialism gives many powers to the state and it interferes in every sphere of the individual activity. This ~~max~~ individual freedom.

#### Conclusion

Socialism may be criticised bitterly, but the progressive powers of the world were against capitalism and they were in favour of socialism. Today socialism is seen in different parts of Asia in one form or the other. In England in 1974 the Labour Party formed its government. In 1966 elections, Labour Party won with a thumping majority. In India the ruling Congress Party's aim is to establish socialism. The Congress repeated its determination in its 1955 session at Avadi (Tamil Nadu) and in 1964, at Bhuvaneshwar, to establish socialism in the country. Many of the drawbacks of socialism can be removed. It is positively better than capitalism and individualism, because its aim is to remove economic inequality and to establish comfort, peace and prosperity. Socialist governments have made many laws for the benefit of the workers and for the abolition of capitalism. Therefore, it got expanded in the world at a great speed.



## 31

## Communism

*Plan:* A. Definition and Meaning of Communism. B. Karl Marx and Friedrich Engels. C. Basic Principles of Karl Marx. D. Evaluation of Marxism. E. The Bolshevik Revolution. F. Stalinism. G. After Stalin. H. Communism in China. I. Sino-Soviet Conflict. J. Red Influence in the World. K. Socialism and Communism. L. Effects of the Russian and the Chinese Revolutions. M. Books for Further Study.

### A. Definition and Meaning of Communism

*Socialism and Communism:* At the outset itself, it may be stated that communism is a form of socialism. (We have noted earlier that socialism itself cannot be defined precisely). While all communists are socialists, all socialists are not communists. In the 19th century, the terms 'socialism' and 'communism' were more or less regarded as synonymous; the term 'communism' was not widely used during the period 1848-1918.

*Socialism Prelude to Communism:* In Soviet Russia, Lenin's revolutionary followers called themselves communists and broke away from socialists. Soviet Russia is called the Union of Soviet Socialist Republics; the term 'communist' has been avoided. It is believed that socialism is a prelude to communism. It seems theoretically that Russia will become communist in the future, when the state will wither away. "The ideology of communism favours state ownership of the means of production and equal distribution of wealth."

### B. Karl Marx and Friedrich Engels

*Founders of Communism:* Karl Marx and Friedrich Engels are regarded as high priests of proletariat socialism and communism

*Marx not the First Socialist Thinker:* Marx and Engels were not the first thinkers to give socialist ideas. As stated in connection with capitalism and democratic socialism, communism can be found in Plato's *Republic* and in modern times socialist ideas can be seen in the works of St. Simon, Fourier and Owen. Marx and Engels introduced revolutionary socialism or communism, which must be clearly distinguished from democratic socialism.

*Lassalle:* Another writer in whose works the doctrines of "proletariat" socialism can be found was Ferdinand Lassalle (1815-64), who gave the principles of "iron law of wages."

*Utopian and Scientific Socialism:* It is necessary to note here the difference between socialism as preached by Owen and others on one side and socialism as taught by Marx and Engels on the other. The former came to be known as Utopian Socialism and the latter Scientific Socialism. Utopian Socialism is peaceful and evolutionary, whereas Scientific Socialism or Communism is violent and revolutionary.

The term 'Utopian Socialist' is applied chiefly to thinkers like Count Henri de Saint Simon, Charles Fourier and Etienne Cabet in France and Robert Owen in Britain. In England, Charles Kingsley, Frederick Denison Maurice and J. M. Ludlow applied Christian ethics to the socialist movement and thus the Christian socialist movement began. Christian socialists rendered constructive and meritorious service in the field of education.

*Thinkers before Marx:* F. W. Coker says on page 222 in *Recent Political Thought* (1957) that though socialism "has its definite origin principally in the work of Karl Marx, many of the basic economic doctrines of Marxian socialism, however, are to be found in writings several decades earlier, notably in the works of William Thompson, Thomas Hodgskin, John Gray, John Francis Bray and other British writers."

### 1. Karl Marx (1818-1883)

*Early Days in Prussia:* Karl Heinrich Marx was born to Jewish parents (who had become Christians) on May 5, 1818, in Trier in the Rhineland Province of Prussia. He was educated at Bonn, Berlin and Jena, where in 1841 he got a doctorate degree in philosophy.

*Influence of Hegel and Feurbach:* Marx was deeply influenced by the thought of Hegel (1770-1831) and Feurbach (1804-72). From the former he learnt the dialectic, and from the latter the principle that man makes religion (God) and religion (God) does not make man.

*Communist Manifesto of Marx and Engels:* During 1843-49 Marx was in France and Belgium. The year 1848 is a great landmark in the history of the world, for it witnessed Marx and Engels issuing in January a joint *Communist Manifesto* addressed to the workers of the world "to unite, for you have nothing to lose but the chains of your slavery." These two inseparable collaborators, who expressed themselves in unambiguous and clear-cut language against the evils of capitalism, provided the ideology for violent and bloody revolutions, which were staged in Russia and China in the twentieth century.

*First International:* Marx played an important part in establishing in London in September 1864 the International Workingmen's Association. This came to be called the First International. It met annually till 1872, when it came to an end after its headquarters were shifted to New York in the same year.



*In Exile:* For about 34 years, Marx was in exile in England. He spent his time in reading and writing.

*Das Kapital:* Marx wrote several pamphlets and treatises on socialism. But *Das Kapital* was his greatest work, which brought about a turning point in the history of the world. He could publish only the first volume of his *Das Kapital* and the remaining two volumes were published several years after his death by the efforts of Engels.

## 2. Friedrich Engels (1820-1895)

*Capitalist with Sympathy:* Friedrich Engels was a capitalist with sympathy for the poor and down-trodden workers. He was born in 1820 in a rich family in Britain, where his father was a cotton manufacturer. Being in his father's business, he had opportunities to know the social condition in England. He was deeply interested in writing and published *The Condition of the Working Class in England* in 1845, which brought him great fame in Europe.

*Friendship and Collaboration with Marx:* In 1844 he came in contact with Karl Marx in Paris, and became his great friend and sympathiser. As a result of their fruitful collaboration, they could jointly release the *Communist Manifesto* in January 1948.

In the study of communism, we assign Engels a place second to that of Marx. L. W. Lancaster says on page 161 in *Masters of Political Thought*, Vol. III (1959): "The friendship and collaboration of Marx and Engels is almost if not quite unique in literary history. Marx was by no means easy to get on with, and Engels' devotion was often sorely tried by the former's importunities concerning money matters and his callous disregard of Engel's feelings; his willingness to forgive much and to play second fiddle to Marx can only be explained by his complete devotion to communism." Engels wrote several books in collaboration with Marx and himself wrote separately books like *The Origin of the Family, Private Property and the State*, and *Socialism, Utopian and Scientific*.

*Theorists after Engels:* After the death of Engels in 1895, theorists like August Babel, Wilhelm Liebknecht, Jules Guesde and Karl Kautsky for some time upheld Marxism. Kautsky (1854-1938) who spent a major part of his life in Austria and Germany was a great defender of the fundamental principles of Marxism.

## C. Basic Principles of Karl Marx

The teaching of Marx move around a few basic principles: (1) dialectical materialism; (2) materialistic interpretation of history; (3) theory of surplus value; (4) class war; (5) concentration of capital; (6) dictatorship of the proletariat; (7) withering of the state; (8) religion, the opium of the people; and (9) inevitability of revolution.

### (1) Dialectical Materialism

*Study of Contradictions:* Dialectical materialism is one of the basic principles of Marx. But he has nowhere explained very clearly its meaning.

"Dialectic is nothing more than the science of the general laws of motion and development of Nature, human society and thought." Materialism is the principle, which says that mind is the derivative product of matter and it does not have an independent existence. Dialectic literally means discussion. Eddy Asirvatham says on page 222 in *Political Theory* (1957): "Dialectic is the study of contradictions, which lie at the very heart of existence. Development is the struggle of opposites."

*Matter Primary and Mind Secondary:* Marx and Engels learnt from Hegel the general nature of the dialectic, though they objected to and rejected Hegel's idealistic interpretation. They did not agree with the principle that external reality was a mere reflection of some thing within the human mind. Unlike the idealists, who believed in the existence of the mind, materialists thought that nature-or matter existed independent of and outside the mind. According to them, matter, the source of sensation and ideas, is primary, and mind, the mirror of matter is secondary. Matter is active; self-moves and self-determines. It is never passive. It carries within itself the requisite energy to transform itself. Marx says: "With me the ideal is nothing else than the material world reflected by the human mind and translated into forms of thought."

*Theory of Philosophical Materialism:* Marx evolved the theory of philosophical materialism. In the universe, there are forces of self-sufficiency, self-creation and self-perpetuation. The world is by nature material and the different phenomena in the world are different forms of matter in movement. From this it follows that material life of society is primary and spiritual life is secondary. The material life of society depends upon the method of securing the means of livelihood and the way of producing material values. Evolution is development of matter from within. The evolutionary process is helped or retarded by environment, though the process is not originated by environment. Similarly, environment cannot stop the process from attaining its goal.

*Process of Action and Reaction between Forces:* The argument of dialectical materialism states that opposite forces which are always present form the moving force of history. E. M. Burns says on page 148 in *Ideas in Conflict* (1950): "Marx had a conception of progressive evolution or historical dynamics operating in response to economic forces. This he derived from the German idealist Hegel, who conceived of history as a dialectical process or struggle of opposites, in which the dominant ideas of each age assumed the role of *thesis*. The thesis was soon confronted and eventually defeated by an *antithesis* or opposite. This contest finally resulted in the production of a *synthesis*, which incorporated the more valuable elements of both thesis and anti-thesis." The opposite forces in society never balance each other; on the other hand, one of them is stronger than the other. History presents the process of action and reaction between the forces. Capital, which represents one force, is thesis, and labour antithesis. This leads to class struggle. Motion or mode of existence of matter is rendered possible by conflict of opposites. Every stage of history, which is below perfection, conveys within itself the germs of its own



destruction. In the conflict of opposites (thesis and anti-thesis) a new synthesis is formed by what is true in thesis and anti-thesis.

### (2) *Materialistic Interpretation of History*

*Historical Phenomena Determined by Economic Conditions:* Materialistic interpretation of history or historical materialism is another basic principle of Marxism. Marx applied the principle of dialectical materialism to the interpretation of history. Marx says that economic conditions determine historical phenomena. Man must eat to live and his life depends upon the measure of success, with which he produces what he needs. Production of wealth is the most important human activity. L. W. Lancaster says on page 169 in *Masters of Political Thought*, Vol. III (1959): "The materialistic conception of history starts from the principle that production and with production the exchange of its products, is the basis of every social order; that in every society which has appeared in history the distribution of the products, and with it the division of society into classes or estates is determined by what is produced and how it is produced, and how the product is exchanged."

*Primitive, Ancient, Feudal and Capitalist Stages:* Marx speaks of four stages through which production passes:

(1) *Primitive Communist Stage:* In this stage, the means of production are owned by the community and they are meagre.

(2) *Ancient Stages:* In this stage, owners of slaves and of the means of production get everything substantial, and the poor and the slaves, who receive very little form the exploited lot.

(3) *Feudal Stage:* In this stage, the feudal baron owns land, the most important means of production and exploits the serfs.

(4) *Capitalist Stage:* In this stage, the capitalist owns all the important means of production and makes the workers wage-slaves or tools.

In the Ancient, Feudal and Capitalist stages, the structure of society is the result of conditions of production. Material conditions of life are so important that they determine the political and economic conditions. Society develops a particular outlook owing to economic conditions. The mental attitude of the people is the product of material conditions. Religion and law are also determined by the same conditions. Society goes through these different stages to ultimately reach a stage of a classless society. Each stage is better than the earlier one.

*War between Classes:* Marx says that according to the relentless law of history, a particular class owns and controls the means of production, and by virtue of this exploits the rest of the people. The capitalist class makes use of the state as an instrument of oppression and exploitation. Thus at every stage there are broadly two classes. The owners of means of production and exploiters on one side and the exploited on the other. History presents nothing but the record of a war between classes. Every exploiting class at each stage gives rise to an opposite class. Hence thesis and anti-thesis can be noted. Feudal

barons and capitalists form the thesis, and the serfs and the proletariat constitute the anti-thesis.

*Proletariat Overthrow Capitalists:* Marx says that capitalism carries with it the seeds of its own destruction. Capitalism will be destroyed by capitalists themselves and not by professional revolutionaries. The relentless laws of social development, which overthrew the old systems will also pull down capitalism. Big Business, the thesis created, Big Labour, the anti-thesis. The thesis of capitalism will be got rid of by the anti-thesis of organised workers. Capitalism will be overthrown by the proletariat, and there will emerge a state of proletariat socialism, which is only transitional.

The dictatorship of the proletariat will make use of the state to crush the capitalists and their friends and enemies of the proletariat. Ultimately, a stage will come when there will be no state at all. The state will wither away.

### (3) *The Theory of Surplus Value*

*Economic Value Created by Labour Only:* The value of a commodity depends upon the quantity or amount of labour put in to produce it. Human labour alone is the creator of all real economic values. Factors other than labour are insignificant and unessential. Though the labourer is the real creator of value, the capitalist does not pay him his full due, but only a part of it. Labour creates two values : Necessary and Surplus. The wage paid to the labourer is equal to the necessary value. The remaining major part of the worker's due, the surplus, is taken away by the capitalist employer.

*Surplus Value Stolen by Capitalist:* The difference between the value of a commodity and the actual payment made to the labourer represents surplus value, which is misappropriated or stolen by the capitalists. This illegal income of the capitalist is called profit. The greater the exploitation of the worker, the higher is the surplus value. Surplus is called "congealed labour" by Marx. "Capital creates nothing, but is itself created by labour. However, the worker does not receive a just share of the value his drudgery or skill creates."

### (4) *Theory of Class War*

*War between Exploiters and Exploited:* The idea of class war emerges from the theories of dialectical materialism, materialistic interpretation of history and surplus value. At every stage in history there is war between the classes. The land-owner exploits the land-less, and the factory owner exploits the workers. Between the classes, there is hatred and antagonism.

*Marx Prophet of Russian and Chinese Revolutions:* Referred to the French Revolution (1789) as a reaction against exploiting feudalism, it was, according to him, a bourgeois revolution calculated to overthrow the privileged class, which was robbing the underprivileged class of its legitimate dues. While Marx spoke of the French Revolution like a historian; he became the prophet of the great revolutions of the twentieth century. Marx himself did not launch any revolution, but provided the theoretical combustible matter for the Russian and Chinese revolutions.



(5) *Law of Concentration of Capital*

**Wealth Concentrated and Multiplied in a Few Hands:** Capital is concentrated in a few hands. The rich become richer and the poor become poor, as the wealth of the community gets concentrated in the hands of a few people. The rich, the owners of the means of production, easily multiply their capital. In the capitalist system, capital which is in the hands of a few goes on increasing rapidly, while the have-nots are progressively pauperised.

**Capitalists Decrease but Workers Multiply:** The rise of trusts, cartels and monopolies, which fall into the hands of a few capitalists is a danger to capitalism itself. This is because the number of capitalists, in whose hands wealth is concentrated, goes on diminishing, while the ranks of the proletariat go on swelling. The concentration of wealth takes place not only in the hands of industrial capitalists, but also in the hands of landlords. The proletariat will overthrow both landlords and industrial capitalists.

(6) *Dictatorship of the Proletariat*

**Capture of Power by Proletariat:** Marx also speaks of the dictatorship of the proletariat, that is, the landless and propertyless masses of people. The proletariat will seize power from the capitalists through a violent revolution and establish its dictatorship. "The proletariat is that class of society, whose means of livelihood entirely depend on the sale of its labour and not on the profits derived from capital, whose weal and woe, whose life and death, whose whole existence depend upon the demand for labour, depend upon the alterations of good times and bad, upon the fluctuations, which are the outcome of unbridled competition." (Quoted by Lancaster, *Ibid.*, page 178).

**Ultimately a Classless Society:** The ultimate aim will be to bring about a classless society. In the transitional period, the dictatorship of the proletariat will seize all capitalist property, abolish all rights of inheritance and centralise means of transport and communication. In the temporary phase, labour will be paid according to the actual work done, though the ultimate aim is to realise the principle "from each according to his ability and to each according to his need."

(7) *Withering of State*

**Bourgeois Reactionaries to be Crushed:** Marx says that ultimately the state will wither away. In the transitional stage, the state will be used by the proletariat to destroy any resistance from the bourgeois. There can be no free popular government, as all power will have to be used to crush the bourgeois reactionaries. The dictatorship of the proletariat will bring about social and economic justice; then there will be no thesis, anti-thesis and class war. One man will not exploit another man, and one class will not exploit another class. Thus ground will be prepared for the disappearance of the state.

**Disappearance of State:** As soon as the dictatorship of the proletariat is set up, the process of withering of the state will begin. The complete disappearance of the state marks the zenith of Marxian socialism.

(8) *Religion the Opium of the People*

**Religion as Tool for Exploitation:** Marxism is against religion. Karl Marx was convinced that religion acted as opium on the minds of the people. To speak against religion, which had a powerful grip on the minds of the people all over the world, required unusual courage. He linked religion with capitalist exploitation. Capitalist exploiters use religion as a cover to conceal their methods of exploitation. Religion, according to Marx, is the capitalist tool to deceive the masses of people.

(9) *Inevitability of Revolution*

**Peculiar Complex of Capitalists:** Marx explained through his *Communist Manifesto* how revolution cannot be avoided. The owners of the means of production do not allow historical forces to have their normal course. Revolution becomes absolutely essential owing to the peculiar complex of capitalists. William Ebenstein says on page 10 in *Today's Isms* (1958): "Since the ideology of the ruling class reflects the existing economic system, the owners of the means of production sincerely believe that the existing system, is economically the most efficient, socially the most equitable, and basically the most harmonious with the laws of nature and the will of whatever good they venerate."

D. *Evaluation of Marxism*

We may briefly discuss the merits and defects of Marxism.

**Merits.** The following are the merits of Marxism:

(1) **Great Impact on Mankind:** Whether one agrees with Karl Marx or not, one has to recognise the tremendous impact of Marxism on mankind. Millions of people all over the world have felt the effect of his teachings, which have changed the course of history. It is strange yet true that Marx was unwillingly supported by exploiting capitalists themselves through their obduracy and refusal to change their track. Had capitalists in the nineteenth century followed the enlightened and benevolent path chalked out by Robert Owen, Marxism would not have grown so very rapidly. Similarly in 1917, Tsar Nicholas II of Russia, who refused to yield and continued to exploit the people lost his power and life. Capitalists refused to make a compromise with workers, as they failed to see the writing on the wall.

(2) **Great Hope to Workers:** At a time, when Owenism could not cut much ice in countries in which workers are openly and shamelessly exploited, and workers were in need of a great leader, Karl Marx emerged. He gave a clarion call to workers of all the countries of the world to unite. Though his teachings had serious flaws, they inspired hope in the underdog, when there seemed to be no hope at all.

(3) **Clear-Cut Theory:** Marx provided a clear-cut theory, which could not be given by leaders of democratic socialism. The theory could be easily understood of workers and could instantly capture their imagination, particularly in countries in which the governments and capitalists subjected workers



to ruthless exploitation. He gave readymade principles on which workers could swear.

(4) *Terror to Exploiters*: Marxism became a terror to capitalism, and capitalists all over the world found it a terrible nightmare. Though there was much in Marxism, which was incorrect and undesirable, it had a sobering effect on capitalists as an exploiting class. All over the world, workers got relief either through a revolution or through reforms introduced by capitalists themselves.

*Defects of Communism*: The theory of Karl Marx has the following drawbacks:

(1) *Materialistic Interpretation of History Wrong*: The materialistic interpretation of history is incorrect, as it considers the non-economic factors like political conditions, religion, language, art and science as insignificant. Marxian approach to history is very narrow, and it is absolutely prejudiced in favour of material conditions of life. While it can be admitted that economic conditions are of great importance, it is wrong to say that there is nothing beyond material conditions in the life of an individual or in the history of a country.

(2) *Class War Concept Misleading*: The theory of class war is also incorrect and misleading. To Marx, history is nothing but a record of war between the haves and the have-nots. It is hardly possible to find in the history of the world any country in which the social structure is as described by Marx. The concept of class war is artificial, and it is aimed more at capturing the workers' minds than at providing a true theory regarding social relations.

(3) *Theory of Surplus Value Wrong*: The theory of surplus value also can be criticised strongly. It gives too much importance to labour and ignores factors of production like land, capital and business organisation. The theory is best calculated to serve propaganda ends; it overestimates the role of workers, flatters them extravagantly and does gross injustice to other agents of production.

(4) *State Not Obstructive but Useful and Indispensable*: It is also wrong to say that the state is used as an instrument of oppression and exploitation. While it is true that those in authority in different countries some time or the other abused their power to serve their own ends, it is grossly incorrect to say that the state is not a creative and useful force, but an obstructive agency of exploitation. Countless examples can be given to show that the state is a positively creative force and an agency of social service.

(5) *State not Withering*: Marx envisages the possibility of having a classless society in which the state has no reason to continue. He says that ultimately the state will wither away. Such a condition can be better imagined than realised. The post-revolutionary periods in Soviet Russia and People's Republic of China show a trend contrary to Marxian expectations. Not only the plant of the state did not wither away, but put on a greener colour.

(6) *Injustice to Religion*: Karl Marx does great injustice to religion as a vital force in life, when he says that it is the opium of the people. Instead of

criticising the drawbacks of different religions or their misuse by selfish people, Marx unfairly hits out at religion itself and preaches atheism. No one can deny the importance of religion used by every individual for his own solace and for reaching his higher self.

(7) *Gospel of Hatred*: Through dialectical materialism, historical materialism and class-war, Marx generated hatred and fanaticism everywhere. Just as Marx himself was not prepared to listen to the arguments of his opponents, the followers of Marx too are not ready to discuss matters peacefully and in a reasonable manner. Blinded by fanaticism, they talk passionately in terms of class-war and the elimination of the capitalist and the bourgeoisie.

#### *Criticism of Marx by Revisionists*

*Process of Revisionism by Bernstein*: Even when Marx was alive, some had differences of opinion with him, while others desired to maintain Marxian principles in their pure form. Amongst those who did not fall in line with all dogmas of Marx, the most prominent was Eduard Bernstein, who formally started the process of revisionism during the years 1896-98 by publishing a series of articles, which criticised Marx. Bernstein argued that Marx was wrong in saying that capitalist society was about to collapse; he also rejected the Marxian principle of class war. This criticism of Marx made Bernstein unpopular with the orthodox German Social Democrats, particularly Karl Kautsky.

*Attitude of Other Critics*: Other Marxian critics were Jean Juarez in France, Karl Branting in Sweden and Emile Vandervelde in Belgium. The revisionists followed a *via media* between democratic reformism and revolutionary socialism.

#### **E. The Bolshevik Revolution**

*Poverty and Ruthless Exploitation in Russia*: Marxism had very good scope to establish itself in Russia. The absence of liberal traditions in Russia, inefficiency and mismanagement by the Czars, political oppression, social inequality and degradation, abject obscurantism and the ill-treatment of minorities prepared the ground for the rise and spread of revolutionary ideas. In no other country in Europe were conditions so bad as in Russia. The Czars crushed all opposition to their government with measure of ruthlessness having few parallels in the world. They deceived themselves ultimately in seeking refuge in the blind belief that people could be perpetually suppressed and exploitation would continue indefinitely without any protest, opposition or resistance.

*Penetration of Communist Ideas*: In spite of the drastic measures taken by the Czars to build a China Wall against the entry of liberal ideas, socialist and communist ideas penetrated into the country. It was surprising that the Czar allowed *Das Kapital* to be translated into Russian; perhaps the censors felt that owing to its difficult language many might not read it at all.



## Anarchism

*Plan:* A. Definition and Meaning of Anarchism. B. Basic Principles of Anarchism. C. Methods of Anarchists. D. Views of Great Anarchist Thinkers. E. Evaluation of Anarchism. F. Books for Further Study.

### A. Definition and Meaning of Anarchism

*Extreme Type of Communism:* Anarchism is one of the theories dealing with the sphere of the state activity. It is an extreme theory challenging the very existence of the state and disparaging all forms of authority. Anarchism may be regarded as an extreme type of communism.

*Hoary Beginning:* Some form of anarchist thought prevailed in ancient Greece among the Stoics and the Cynics. In the middle ages in Europe several poets and philosophers strongly expressed themselves against state authority.

*Need of Total Abolition of State:* Anarchist philosophy, which emerged in the 19th century, went to the extreme end of saying that the state should be abolished altogether. It is a revolutionary doctrine that all governmental restraints should be removed for realising the ideal milieu for social and political freedom. Hence it is diametrically opposed to the idealist philosophy. While the idealists in the one hand lay emphasis on the importance of the state, with the help of which alone the individual can develop his personality, anarchists on the other hand regard the state as an evil coming in the way of the individual's development. *Webster's Unified Dictionary* and *Encyclopedia* says that anarchism is a "political theory advocating the abolition of the state and all central law, substitution of free will agreements between local and occupational groups. Based on the concept of Zeno (4th century B.C.) the idea of anarchism has appealed to many thinkers such as Thoreau, who have believed in the fullest possible individual freedom." *The Random House Dictionary of the English Language* says that anarchism is "a doctrine urging the abolition of government or governmental restraint as the indispensable condition for full social and political liberty."

*Opposition to Private Property and Hostility to Religious Authority:* F.W. Coker mentions on page 192 in *Recent Political Thought* (1957) that

anarchism is against the state, private property and all kinds of religious control. "Anarchism is the doctrine that political authority, in any of its forms, is unnecessary and undesirable. In recent anarchism, theoretical opposition to the state has usually been associated with opposition to the institution of private property and also with hostility to organised religious authority."

*Natural Impulse of Human Beings to Co-operate:* Anarchists lay great emphasis on the natural impulse among human beings to co-operate. They firmly believe that human nature is essentially good. They say that established artificial authorities like the state and the church prevent human beings from being naturally good and co-operating in a spontaneous way. The gist of anarchist thought is that human beings can live better without a government than with it. A government is not all at necessary; in fact it is a positive evil, which should be completely dispensed with.

*Importance of Natural Law and Voluntary Agreements:* The anarchist appeals from the state law to what he deems to be a higher law, the natural law. The needs of the individual and society can be met by voluntary agreements among territorial and professional groups. Anarchists speak in terms of free agreements, and are against the individual's submission to the state, whose authority is based on force and not on human volition.

*Supreme Place Given to Liberty:* Liberty is given the highest place in anarchist thought. Bakunin says: "The liberty of man consists solely in this that he obeys the laws of nature, because he has himself recognised them as such, and not because they have been imposed upon him externally by any foreign will whatsoever, human or divine, collective or individual."

*All Anarchists Anti-Authoritarian:* All anarchist leaders agree on the common point that state authority is harmful to the individual and should be done away with.

*Two Schools of Anarchists:* All anarchist leaders do not fully agree with one another, but all of them are anti-authoritarian. E.M. Burns says that modern anarchists fall into two schools; (1) those like William Godwin who are economic individualists, and (2) those like Bakunin who are collectivists and revolutionists.

Godwin and Proudhon mixed anarchism with individualism, whereas Bakunin, Kropotkin and others combined anarchism with collectivism.

### B. Basic Principles of Anarchism

We may briefly refer to the basic principles of anarchism.

1. *State Upholds Inequality and Injustice:* Anarchists say that the state is an unmixed evil against which people should fight and get it abolished. State authority serves no rational purpose and is unnecessary, and undesirable; it is a hindrance in the way of society, and it upholds a system, which makes society miserable. The state which upholds a system, which makes inequality and injustice, gives full scope for all kinds of evils. People, who were originally good by nature, became bad under state authority. They lose their innocence



and become unhappy. The state brings about degeneration in people, makes people criminals, and then exercises its authority to punish them in different ways. Law, the instrument of the state, is an evil, and people obey it, as they are compelled to do so.

2. *Need of Destroying Capitalism and Private Property:* Anarchism condemns the institution of private property, which flourishes under capitalism. Capitalism has produced evils like the degradation of those who work, the enjoyment of the few who exploit others without doing any work, poverty and suffering to millions, extravagance and ostentation of the rich, colossal waste in society, immorality and unemployment. Therefore capitalism should be destroyed along with the state.

3. *Church another Great Evil:* The church, the friend and collaborator of capitalists and of those in authority in the state misleads the poor and the needy, who are called upon to reconcile their lot with a system, which brings about their suffering, sorrow and degradation. Religion thus is a force of evil, and an obstacle to social progress. Hence the authority of the church also should be overthrown.

4. *Anarchist Society Based on Decentralisation, Fraternity and Freedom:* State authority is based on compulsion, fear, egoism and exclusion. In the evil conditions created by the state, good people turn bad and suffer. The state is therefore a curse. The remedy lies in the establishment of anarchist society, which is based on fraternity, freedom, union and love. Anarchists put great faith in the worth of the individual, who they think will give his best when he is emancipated from state coercion and when he is able to function freely as a member of a voluntary organisation.

5. *Criticism of Representative Institutions:* Anarchists criticise even democracy and representative institutions, which they say function very badly. They have no faith in representative bodies, which are in charge of persons who know very little and who do everything badly. Anarchists say that it is not possible for a person (who is a member of the legislature) to represent others for all matters.

### C. Methods of Anarchist

*Evolutionary and Revolutionary Anarchism:* There are two forms of anarchism: Evolutionary and Revolutionary. Anarchists like Tolstoy desire to employ evolutionary and peaceful methods. They believe in good ends and good means too and they intend to establish an anarchist society through love and persuasion. But there are anarchists, who are wedded to revolutionary ideas and violence. They think that violent and distractive methods should be employed to establish anarchist society. They firmly believe that non-violent and persuasive methods are useless in dealing with those who uphold the state, the church, capitalism and private property.

*Violent and Destructive Tactics of Anarchists, Communists and Syndicalists:* Like nihilists, communists and syndicalists, anarchists employ violent

and destructive tactics. Nihilists, who were against all existing institutions, developed the cult of violence and were behind many activities of violence, outrage and murder. They believed that the end justified the means, fair or foul. Nihilists in Czarist Russia were the authors of several atrocious deeds like poisoning, shooting and bomb-throwing.

Like communists, anarchists spread bitterness, hatred, fanaticism and class prejudice. Communists, unlike anarchists, desire to make use of state authority to introduce revolutionary socialism; but in the long run, like anarchists, they want the state to wither away.

Similarly, comparison can be drawn between syndicalism and anarchism. Syndicalists wish to employ violence to get rid of the state to establish a federation of workers' associations.

Syndicalism, communism and anarchism are against peaceful and evolutionary methods, and are the deadliest enemies of capitalism.

*Anarchist Literature:* Anarchist principles were propagated among the workers of Europe through a large number of magazines. Some of them could not last long owing to government action or financial difficulties. Several anarchist clubs with strange and frightening names like "The Bomb Throwers" were established. In Russia more revolutionary type of philosophy known as nihilist was developed to wipe out traditional institutions, ideas and values.

### D. Views of Great Anarchist Thinkers

We may briefly discuss the views of prominent anarchist thinkers like William Godwin, Thomas Hodgskin, Pierre Joseph Proudhon, Henry Thoreau, Count Tolstoy, Michael Bakunin, and Prince Peter Kropotkin.

#### William Godwin (1755-1836)

*First Modern Anarchist:* It seems the first modern anarchist was William Godwin, an Englishman who was Shelley's father-in-law. He expressed his extraordinary views in his book: *An Enquiry Concerning Political Justice and its Influence on General Welfare and Happiness.*

*State Upholding Injustice:* Godwin says that the state upholds injustice and inequity with the help of its authority. This prevents the individual from acting in a just and reasonable way. The individual is suppressed, and there is no scope for his free development and self-expression.

*Evils of Government and Property:* Government is an evil, as it is based on violence; and property is an evil, as it creates vanity and depravity among the propertied people, and servility and immorality among the poor.

*Word Anarchism not Used:* It is significant to note that Godwin did not employ the term Anarchism in his books, and technically speaking, it may not be quite correct to regard his philosophy as fully anarchist.

#### Thomas Hodgskin (1787-1860)

*Utopian Anarchist:* F.W. Coker regards Thomas Hodgskin, an Englishman who lived in the post-Napoleonic war, as a utopian anarchist. The



individualistic of Adam Smith had a profound impact on his mind. He says that there is no need for law and planning, as man is a part of the universe, which "is regulated by permanent and invariable laws." He says that human beings have a natural property right of securing all the fruit of their labour, and nature stands as a guarantee to this right.

#### **Pierre Joseph Proudhon (1809-65)**

*Father of Anarchism:* Pierre Joseph Proudhon, who championed the cause of liberty which he regarded as the mother of order, condemned the government of man by man. Expressing himself strongly against government, he said: "I am, in the full sense of the word, an Aarchist." Proudhon, who was the first person to regard himself as an anarchist and use the term anarchy in the technical sense is regarded as the Father of Anarchism.

*Government Stands for Oppression and Injustice:* Proudhon says that government is synonymous with oppression and it upholds injustice.

*Need of Voluntary Groups:* The state is against reason, justice and understanding. Instead of having the state, voluntary groups should be formed and they should engage themselves in productive enterprise. State authority should make way to the rise of mutualism in voluntary associations.

*Bank of People to Eliminate Private Capital:* Proudhon advocated the establishment of a Bank of the People, which would eliminate all private capital ultimately. The free credit supplied by the Bank of the People to various voluntary associations would make it possible to have positive and meaningful anarchy. Cooperative banking alone would enable people to get rid of the evil of private capital.

*Property as Theft Promoting Injustice:* Proudhon condemned private property as theft and advocated equal property rights for all. It is incorrect to think that he was completely opposed to the institution of private property. What he exposed and attacked was the system of property distribution existing under capitalism, which upheld and nursed social injustice.

*Society to Seek the Highest Perfection:* Proudhon, who stood against authority, privileges and private property as a tool of exploitation, was in favour of forming a society seeking the highest perfection "in the union of order and anarchy." Though Proudhon regarded himself as a socialist, he was against communism, which he criticised as utopian. Karl Marx ridiculed Proudhon as a petit-bourgeois.

#### **Henry Thoreau (1817-62)**

*State as Hurdle:* Henry David Thoreau was an American anarchist, who strongly opposed the very existence of the state. He said that Americans would have achieved much, had the state not acted as a hurdle.

*Against Tax Payment:* Thoreau did not approve of the authority of the state and was against the payment of taxes. He made non-payment of taxes as a matter of strong conviction and refused to pay taxes.

*Against Slavery:* Thoreau condemned the maintenance of slaves in the state of Massachusetts as something abominable and sinful.

*Against Rule of the Majority:* Thoreau criticised the rule of the majority prevailing in modern state as unfair and unjust. Government exercises authority wrongly and unjustly, causing injustice and suffering to good men.

*Inspired Mahatma Gandhi:* Thoreau was in favour of offering active and passive resistance to the American government. Mahatma Gandhi (1869-1948) about 59 years later was deeply influenced by Thoreau's thought, and actually followed the principles of non-payment of taxes and of active and passive resistance to the imperialist British Government in India.

#### **Count Tolstoy (1828-1910)**

*Philosophical Anarchist:* We may regard Leo Tolstoy who belonged to an aristocratic Russian family as a philosophical type of anarchist. He shunned a life of luxury and sophistication and wished to lead an honest, unostentatious and simple life. Mahatma Gandhi felt the impact of his noble anarchist principles. The anarchist books of Tolstoy include *The Kingdom of God within You* and *What shall We Do?* Tolstoy says that anarchists should disobey laws, resort to non-co-operation with state authorities, resist payment of taxes and offer passive resistance to establish an anarchist state.

*Synthesis of Anarchism and Christian Socialism:* Tolstoy brought about a blending of anarchism and Christian socialism. This was possible, as he stood for peaceful methods and establishment of justice.

*State an Evil Superstition:* Tolstoy says that the state arose and exists as an evil superstition.

*Criticism of State and Private Property:* Tolstoy believes that private property and state are against the teachings of Jesus Christ as the former violates the principles of charity and brotherhood, and the latter is based on coercion.

*Principles of Christian Anarchism:* Tolstoy's principles, which are labelled as Christian Anarchism, are governed by the ethical code of Christianity. He feels that the Christian principle of love is conspicuous by its absence in the state. He upheld Christ's principle: "Resist not evil, but overcome evil by good." The state, which functions on the basis of force, is contrary to Christ's teaching.

*Need of Liberation from State Control:* Tolstoy argued that the authority of the state prevented people from doing good and desirable work, and compelled men to do what they did not like. Therefore liberation of people from state control would be beneficial to all.

#### **Michael Bakunin (1814-76)**

*How Bakunin Became Anarchist:* Another anarchist upholding anti-authoritarian philosophy was Count Michael Bakunin, who belonged to a distinguished noble family in Czarist Russia. He underwent military training



and served as an officer in the army. It was at that time that he got opportunities to know the high-handed and despotic ways of Czarist officers. He came in contact with Proudhon, Marx and Engels, who influenced him much. He visited countries like Germany, England, France, the U.S.A. and Japan. He is regarded as the founder of scientific anarchism.

**Narrowly Escaped Death:** As a communist and anarchist, Bakunin criticised the Russian Government strongly. He was condemned to death repeatedly by the Czarist regime, but was not executed. He was exiled to Siberia; but here again he was lucky to effect his escape.

**Establishment of Social Democratic Alliance:** In 1869 Bakunin established the Social Democratic Alliance to disseminate his ideas, which were clearly anti-political, anti-national and anti-authoritarian.

**Rulers and Ruled Corrupted in State:** Bakunin says that the state is an evil, as it degrades and demoralises people. The state functions with the help of force, and its activities are not based on persuasion and enlightenment. Whatever may be the garb of government, it is an evil. Even a democratic form of government is an evil, as it cannot change the nature of state. Power acts as a corrupting influence on all the rulers as well as the ruled. Therefore the state should be eliminated.

**God and Czar Uphold Tyranny:** Bakunin vehemently criticised the church on which he poured his wrath. Bakunin put God on a level with the Czar of Russia, as both stood for tyranny and oppression.

**Private Property Used for Exploitation:** Bakunin also attacked the institution of private property, which is used for exploitation. Religion and private property are the instruments with which the rich enrich themselves further and impoverish the poor further. Though Bakunin was not against an evolutionary method to realise his goal, he favoured the revolutionary method as people shall have to wait long to be liberated from the state, religion and private property, these institutions which subject men to suffering. Bakunin made a devastating comment on the institution of private property.

**Formation of Anarchist Society and World Community:** In preaching a type of proletarian anarchism, Bakunin spoke not of Russia only but of the entire world. He spoke in terms of forming an anarchist society, in which there would be no distinctions of nationality, race, colour and belief. Ultimately, this would lead to the abolition of state frontiers and the formation of a world community.

#### Prince Peter Kropotkin (1842-1921)

**Dynamic Leader Fighting for Justice Through Anarchism:** Kropotkin was a dynamic leader fighting for justice through anarchism. He was a Russian, who was the most distinguished among Bakunin's anarchist disciples. Like Bakunin, he belonged to a reputed noble family and had opportunities to know fully the despotic and cruel ways of the Czarist officers, when he served as a military officer. In 1872 he went to Switzerland and became a member of the

International Workingmen's Association at Geneva, which he had to leave, as his views were very radical.

**Participation in Nihilist Movement:** For participating in the nihilist movement based on terrorism in Russia, he was arrested in 1874 and put in prison. He escaped from prison in 1876 and visited foreign countries like England, France and Switzerland.

**Author of Several Books:** Kropotkin lived in London for a long time and wrote several books like *Modern Science and Anarchism*.

**Condemnation of State, Religion and Private Property:** Like Bakunin, Kropotkin was against state, religion and private property. He says that there was a time, when people worked through natural institutions, which gave liberty to the people. But when the state emerged, it imposed its authority on the people, who forfeited their liberty. People obeyed laws not because laws were good, but because authority forced them to do so.

**Reasons for Eliminating State:** Kropotkin, who is regarded as the scientific interpreter of new anarchism, advanced valid reasons for making out a case for anarchism and elimination of state. (1) The state is not only useless, but is a positive hindrance to liberty. (2) The state and other forms of authority make the lives of the people miserable. In the state, people work in bad and unhealthy surroundings, and they have no interest in doing the type of work, which is forced on them.

**Production Serves Public Need in Anarchist Society:** Under state authority and within the framework of private property, people do not produce, what the community needs, but what is dictated by directors and shareholders of companies. Therefore progress is not possible under the conditions created and upheld by the state. But in anarchist society, production will cater to the real needs of the people. Progress is registered only through the collective efforts of the people in workshops and factories, which provide workers with the people in workshops and factories, which provide workers with the types of jobs they like. People will find in these factories opportunities to engage themselves in useful tasks, which would give them true pleasure.

**Society Served by Communes:** In anarchist society envisaged by Kropotkin, communes will serve the needs of the people.

#### Other Anarchists

Other Anarchists were Josiah Warren (1799-1874), Johann Kasper Schmidt (18-6-1856), Stephen Parnell Andrews (1812-86), Benjamin R. Tucker and Lysander Spooner (1808-87). Among these anarchists, Schmidt, the German, advocated a dangerous type of anarchism similar to that of Russian nihilists.

#### E. Evaluation of Anarchism

We may briefly refer to the merits and defects of anarchism.

**Merits:** Some of the arguments advanced by anarchists are correct. The following merits of anarchist views may be enumerated:



(1) Tolstoy and other anarchists sincerely draw the attention of people to the unhappy conditions prevailing in states, and offer solid arguments in support of anarchism. No one can gainsay that in capitalist society, there is misery and unemployment, and people are forced to do the type of work, in which they have no interest at all or have very little interest.

(2) People have no true liberty, whatever may be the form of government. It is a fact that in several countries, in which the form of government is democracy, people suffer from degradation, misery and unemployment.

(3) Few people are in power in a state, and they misuse this in their own selfish interests.

(4) Religion is used side by side with private property for exploitation.

(5) The individual in anarchist society will be able to live freely, work spontaneously and with joy contributing his best to society.

**Drawbacks:** The following drawbacks of anarchist views may be mentioned:

(1) *State Not Responsible for Destruction of Moral Values:* Anarchists want the state to be abolished. But this is neither desirable nor feasible. It is not correct to say that the state is responsible for the decline and destruction of moral values and for the degeneration of human beings. The record of various states all over the world shows that the state has more than justified its existence and has indirectly led to the moral development of man.

(2) *State, Authority not against Liberty:* The anarchist argument that liberty and authority are antagonistic to each other does not hold water. In fact legitimate authority acts as a supporting pillar to individual liberty instead of going against it. If the state is abolished, there will be disorder and confusion. In such an atmosphere, no progress will be possible, and the individual will lose whatever freedom he originally had under a well-organised government.

(3) *Realisation of Anarchist Dream Impossible:* It is impossible to realise the anarchist dream of having a completely happy and coercion-free society. It seems that in the paradise the anarchists seek to create, there will be no immorality, exploitation, misery and compulsion. In a stateless, classless, and churchless society, all will be happy. Such a state is too good to be true.

(4) *Anarchist Remedy worse than Disease:* Like syndicalists, nihilists and communists, anarchists spread fanaticism and hatred, and depend upon brute force for the realisation of their aims.

(5) *Too much Faith in Human Nature:* Anarchists put too much faith in human nature. They believe that there will be a paradise once human beings are entirely freed from state control. It is hard to believe that when there is no state, human beings will live freely, co-operate whole-heartedly and express nothing but understanding and goodwill.

(6) *Utopian Ideals:* Anarchists entertain sweet and grand ideals, which cannot be realised anywhere in the world. There is a vast difference between

the real conditions in the world and the conditions anarchists would love to have. Their ideals are utopian and too good to be true and real.

(7) *Confusing Picture:* Anarchist thought is not very clear and consistent. The picture presented by them is confusing.

#### F. Books for Further Study

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6. Ebenstein, William, *Today's Issues* — 1958.
7. Hallowell, J.H., *Main Currents in Modern Political Thought*.
8. Harmon, Judd M., *Political Thought from Plato to the Present*.
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14. Spahr, *Reading in Recent Political Philosophy*.
15. Wilson, C., *Anarchism*.



"It is in general a necessary condition of free institutions, that the boundaries of government should coincide in the main with those of nationalities".

—John Stuart Mill

37

## NATIONALISM AND IMPERIALISM

### MEANING OF NATIONALISM

We have already discussed Nationalism in detail in Chapter Six, and it is useless to repeat the same here. Suffice it to say here that the people who have same race, language, religion, history, literature, economic interests and political aspirations, feelings of nationalism are aroused among them. Nationalism teaches us to love our motherland. The nationalists love their motherland, rivers, mountains, flowers, animals and birds very much and they say that motherland is better than paradise. Hans Kohn writes, "Nationalism is an idea, an idea-force which fills man's brain and heart with new thoughts and sentiments and drives him to translate his consciousness into deeds of organised action".<sup>1</sup> According to Dr. Garner, "It is one of the characteristic features of modern nationalism that most peoples who constitute a nationality aspire either to be independent and to be under a state organisation of their own choice and creation or at least to be accorded a large political autonomy where they are united with another nationality or nationalities in the same state".<sup>2</sup>

### RIGHT OF SELF-DETERMINATION

**Meaning of the right of self-determination.** The right means that each nationality should have in separate state. John Stuart Mill in his book, "Representative Government", has laid a special emphasis on the theory. Late President Woodrow Wilson of the U.S.A. also said, "self-determination is not a mere phrase, it is an imperative principle of action, which statesmen will henceforth ignore at their peril". (Quoted by Dr. Garner).

**Implementation of the right of self-determination.** According to this principle the province of Alsace Lorraine was given to France. Poland was considered as a free state and its boundaries were merged with ethnic boundary. North Schleswig was returned to Denmark. The Czechs and Slovaks got freedom from the slavery of Austria and a new state named Czechoslovakia was formed by merging both of them. Western Slov-serbs; Crete and Slovene were also freed from the Austria-

Hungary empire and a new free state named Yugoslavia was established. Similarly Syria, Meso-tamia, Palestine and Hejaz were freed from the control of Turkish empire and became partially independent states. According to this right, after the Second World War, India, Sri Lanka, Burma, Malaya, Indonesia, Egypt, Cyprus, Algeria, Ghana, Rhodesia, Congo, Zanzibar and Guinea were freed.

**Violation of this right.** "In spite of this, the principle was not fully implemented in Paris Peace Conference, 1920. Many Germans were left under the regimes of Poland, Czechoslovakia and Italy and certain people of Hungary were pulled out of the country and were handed over to other states. Many Lithuanian and Rumanian nationals were shifted to Poland and Czechoslovakia. Many Austrians, Albanians and Bulgarians were sent over to Yugoslavia. Similarly in Rumania and Greece, the number of people of other races was so high that they outnumbered the original inhabitants.

**Practical difficulties in adopting this principle.** If this principle is adopted, there will be practical difficulties. According to this principle, Scotland and Wales shall have to be separated from England. Moreover, many nationalists will have to be given the right of separation from the Soviet Union and China which will not be tolerated by the governments of these countries. The Pakhtoons shall be separated from Pakistan, and there will be disorder and anarchy in India. The rebel Naga leaders and Sikh terrorists, had demanded separate states for the Nagas and the Sikhs respectively. These demands were not accepted by the Government of India. Pakistan is harping on the theme of self-determination for Kashmiris. If on the basis of this right, a plebiscite is held in Kashmir, it will give rise to many complications. According to this principle, many states of Europe will be cut into pieces because, they are inhabited by people belong to several nationalities. Therefore President Smarik in his tract "Small Nations in the European Crisis" wrote that "there are 68 small nations in Europe and if this principle is adopted, Europe will have to be divided into 68 instead of 28 states, which will be a practical difficulty. For this reason, in Lausanne Peace Conference, 1923 Lord Curzon said, that the principle of self-determination is a double-edged sword and it can only be accepted with some reservations.

In 1918 and 1919, plebiscite took place in Aland Island (Europe) and according to that the people decided, almost unanimously, to be separated from Finland and to join Sweden. There was a great controversy over it. The League of Nations appointed a committee of renowned jurists. The committee suggested that, "there will be a great shock to the sovereign power of the modern states, if the inhabitants of Aland Islands are given the right of self-determination and this will endanger the stability of the state. Not only this, there will be a great danger to the interests of international society." In India on the basis of this principle, the Muslim League continuously demanded the right of self-determination till 1946-47, with the result that the country was divided in 1947 and Pakistan was established. It rendered millions of people homeless as refugees. Thus this right should be utilized with great caution.

### MERITS OF NATIONALISM

(1) **Helpful in liberating the country from foreign yoke.** Nationalism infused the spirit of patriotism in the minds of the people. If a country is under the yoke of a foreign rule as was the case in India before 1947, the people can be united for attaining freedom through nationalism. In the nineteenth century, in Greece, Italy, Bulgaria, Serbia and Poland and in the twentieth century in many countries of

1. Hans Kohn: "The Idea of Nationalism", p. 19.

2. Garner: "Political Science and Government", p. 123, ed. 1953, p. 123.

3. Text of the opinion in Journal Official of the League Nations, Special Supplement, No. 3, 1920, pp. 3 ff.



Africa, Asia and South America many freedom movements were started. Inspired by the national feelings, the people of these countries freed themselves from the foreign rule.

(2) **It leads to social unit.** Through nationalism the feelings of the high and low and casteism are banished from the minds of the people, and social unity is achieved. The nationalist leaders make the people understand with full force that our nation can progress and can have a prestigious place in the world only, when all disparities are removed.

(3) **It leads to the spirit of heroism and self-sacrifice.** Nationalism creates the feeling of heroism and self-sacrifice. Every nation has to make several sacrifices for the attainment and protection of its freedom. India at first freed itself from the Turks and the Mughals and later from Britishers. In order to achieve this aim, our people made many sacrifices which have gained an important place in our history. Similarly, our countrymen made several sacrifices to face the Chinese and Pakistani aggressions and our armed forces displayed a spirit of unique heroism. It forms a golden chapter of our history.

(4) **It leads to economic prosperity.** The feeling of nationalism unites the people and they work for the economic prosperity of the country. They bear the burden of extra taxes in order to implement plans in the national interest.

(5) **Nationalism enables the country face the economic and political crisis effectively.** Every nation faces an economic or political crisis once or twice in its career, and the world history is a clear proof of it. If the people have national feelings, they will have unity, and the spirit of self-sacrifice. With the help of this spirit, the people of that country shall be able to face the crisis boldly.

(6) **It leads to political unity and stability.** Nationalism is a great organising force. Through this force, the leaders create political unity among the people and they crush disintegrating tendencies. It brings about stability in the nation. For example, when on October 20, 1962, China invaded India, the spirit of nationalism was aroused among the people but the Leftist Communists preached in favour of China and their anti-national tendency was clearly seen. Therefore, the then Minister for Home Affairs, Shri Gulzarilal Nanda, put them behind the bars and created political unity and stability in the country.

(7) **Nationalism helps in curbing mutual conflicts and quarrels and the attention of the people is drawn towards big problems.**

(8) **The individual gives up his selfish interest and works for national interest.**

(9) **True nationalism is an important link between different countries of the world.** Mahatma Gandhi, Shri Jawaharlal Nehru and Mrs. Indira Gandhi being true nationalists, were Internationalists also. Under the inspiration of Shri Jawaharlal Nehru, the U.N. declared the year 1965 as international co-operation year. India under the leadership of Mrs. Gandhi had become President of Non-Aligned Movement. After her assassination on October 31, 1984, Mr. Rajiv Gandhi became the President of Non-Aligned Movement.

If the nationalism is liberal, it is not harmful. Liberal nationalists want worldly peace. They believe in equality, liberty and prosperity of all nations. However, sometimes it becomes aggressive nationalism. The following are the drawbacks of aggressive nationalism:-

### DERMITS OF AGGRESSIVE NATIONALISM

(1) **Aggressive nationalism leads to racism.** Aggressive nationalism leads to racism. Hitler encouraged racism in the name of nationalism and said that Aryan

race was the best race and it had been made to rule all over the world. He turned the Jews out of Germany. Mussolini also believed in racial supremacy. The British likewise believed in the supremacy of the white race.

(2) **It encourages Colonialism and Imperialism.** In the name of nationalism many European races discovered many new markets for their goods in the name of racism and established colonies. Later on for the sake of their national interests, they conquered many parts of the world and expanded their empire. The English, Dutch, French, Russians, Japanese, Germans, Italians and Spanish people acted similarly during the nineteenth and twentieth centuries.

(3) **It is likely to endanger world peace.** When nationalism takes the extreme form in any country, that country invades other weaker countries, which becomes the basis for a world war. For example, Hitler invaded Austria, Czechoslovakia, Poland, Denmark, Norway, Belgium and France and Russia. Mussolini invaded Ethiopia. The result of all these invasions, was the Second World War in which there occurred a great destruction of men, money and material. After the Second World War, Pakistan followed this policy and, first in 1947, and later in 1965 and 1971, she invaded India. It resulted in a great loss of life and property to both the countries.

(4) **It is hindrance in the way of World Federation and international co-operation.** Militant or aggressive nationalism is a great hindrance in the way of international co-operation. Many modern intellectuals are of the view that in order to establish world peace, it is essential that every state should give up a part of its sovereignty and give it to the world-federation. But militant nationalism proves a hindrance in its way.

**Conclusion.** If the nationalism does not take the militant form, it is a good thing. It will help in settling international conflicts. Unity will be established and mutual goodwill and co-operation will be increased. As Hayes has said, "Nationalism will prove a boon for the humanity and the world if it means pure patriotism. If it takes a militant form, it will result in mutual enmity and non-co-operation among the nations, and the world peace will be disturbed. In that situation, it will prove a curse".

### IMPERIALISM

**Meaning of Imperialism.** Before going into a detailed discussion of Imperialism, it is necessary to know its meaning. For this purpose we give the definitions of certain famous writers:-

(1) Prof. Schuman has defined imperialism as, "control over non-white races by western national states by force".

(2) Mortiz Julius Bonn, in Encyclopaedia of Social Science writes, "Imperialism is a policy which aims at creating, organising and maintaining an empire, that is, a state of vast size composed of various more or less distinct national units and subject to a single centralized will".<sup>4</sup>

(3) C.D. Burns says, "Imperialism is a name given to a single system of law and government in many different lands and races".

(4) According to H.G. Wells, "All our modern imperialism are thus, the more or less conscious efforts of one nation-state to become world-wide".

(5) Prof. Hawking says, "Imperialism is the ethics of severity".

4. Mortiz Julius Bonn: "Encyclopaedia of Social Sciences".



## DISTINCTION BETWEEN THE STATE AND GOVERNMENT

The terms State and Governments have been indiscriminately and erroneously used for each other. They have often been inter-changeably employed as if there is no difference between the two. The Stuart in England never differentiated the State from the government. They did so in order to justify their absolute authority. King Louis XIV used to say, "I am the State". Some political thinkers have also gone to the extent of using these two terms inter-changeably. Hobbes employed the terms the State and the government as if they meant the same thing. It was John Locke who first of all attempted to differentiate the State from the government in nineteenth century. Otherwise, the two terms had been inter-changeably used by the political thinkers. Recent political thinkers like Harold J. Laski and G.D.H. Cole also find little or no difference between the two. According to Cole, the State "*is nothing more or less than the political machinery of government in a community*".<sup>18</sup> Laski also observes, "For the State is for the purposes of practical administration, the government". This identification of the State and government misses an important fact. "While the government is a body of some citizens, the State consists of all the citizens, however, inactive and inarticulate their will may be in the governance of the country".<sup>19</sup> In this connection Professor W. W. Willoughby has very aptly remarked, "*By the term Government is designated the organisation of the state - the machinery through which its purpose are formulated and executed*".<sup>20</sup> But we should not forget the fact that the government is only one of the four essential constituents of the state. It is true that a state cannot exist without the well-established Government. But, however, organised and established the government may be, it cannot attain the status of statehood. The government is only an agency of the state through which the collective will is formulated, expressed and executed. According to Leacock, the term government used in its widest sense, "rests on the fundamental idea of control and obedience; it implies authority and submission to that authority". Here are certain differences found between the State and the government.

### (1) Government is the agent of the State

*MacIver* says, "when we speak of the State, we mean the organisation of which government is the administrative organ.... A State has a constitution, a code of law, a way of setting up its government, body of its citizens. When we think of this whole structure, we think of the State. "The State", said the United States Supreme Court, "itself is an ideal person, intangible, invisible, immutable. Government is an agent, within the sphere of its agency of perfect representative but outside of that is a lawless usurpation. Elaborating the point *Woodrow Wilson* remarked that the State "is juristically wholly organised in its government and can only speak through the government". So from this it is absolutely clear that the government is the organisation or machinery through which the State manifests itself.

According to Dr. Garner, "*Government is the agency or machinery through which the collective will of the people or state may be formulated, expressed and executed*". Prof. Laski has also regarded the government as an agent of the State. He says, "It exists to carry out the purposes of the State. It is not itself the supreme coercive power. It is simply the mechanism of administration which gives effect to the purpose of that power". These definitions very clearly

18. G.D.H. Cole: "Self-Government and Industry", revised ed., London, 1919, p. 119.

19. C.C. Field: "Guild Socialism — A Critical Examination, p. 106.

20. W.W. Willoughby: "The Nature of the State", p. 8.



indicate that the government serves as an agent to carry out the purposes of the State. It formulates the collective will of the public, expresses it and executes it. It is concrete whereas the State is abstract. It is through the government that the state operates. This is the reason why in Democracy the government is regarded as servant and the State as master.

### (2) Government is only a part of the State

As has already been stated that the four essential elements constitute a State. They are Population, Territory, Government and Sovereignty. Government is the most essential constituent because the State cannot operate without government. It is the government that carries out the purposes of the State and maintains law and order in society.

### (3) State possesses Sovereignty but government does not

State possesses sovereignty which is one of the four essential constituents of the state. There can be no state without sovereignty. For example, before 1947, India could not claim the status of statehood because at that time it was under the control of the British empire. The government does not possess sovereignty because in democracy, public is regarded as source of all powers. It has been clearly stated in the Constitution of India that the people are the main source of sovereignty. This is the reason why after every five years a general election is held in India.

### (4) Government changes frequently but the state remains more or less permanent.

Government changes frequently. Government collapses owing to certain political reasons and the other parties get the opportunity to form their own governments. During the Second World War, Chamberlaine's government was functioning in England. After that his government was replaced by the other government. In this way, many governments were formed under the leadership of most popular leaders like Churchill, Attlee, Macmillan, Edward Heath and Wilson. Similarly, in Pakistan after 1947 a number of governments were established under the leadership of the most popular leaders like Liaquat Ali Khan, Muhammad Ali, Ayub Khan, Yahya Khan and Zulfikar Ali Bhutto. In the same way, under the leadership of Eisenhower, the Republican Leader, his government was established in the U.S.A. in his tenure of Presidentship. His government was replaced by the governments established under the leadership of President Kennedy and Johnson, both Democrats. In 1952, the English emperor-George VI-expired but his empire did not come to an end. Queen Elizabeth II, his daughter, was enthroned after his death. In 1917, a revolution broke out in Russia and after that Nicolus Czar II was dethroned. As a result, the government was replaced and not the State. The State meets its end only when it loses its authority to have a control over its population or its sovereignty is usurped by another State. For example, Mussolini enslaved Ethiopia and Ethiopia could not retain the status of statehood. Similarly, before the Second World War, when Hitler conquered Austria, Poland and Belgium, these countries could not retain the status of statehood. When these countries became free once again after the Second World War, they regained the status of statehood. England has been and is a free nation for centuries. It has been and is enjoying the status of statehood, though a number of governments were established and replaced. In the same way before 1947, India could not claim the status of statehood. It could enjoy this status only after its independence in 1947.

### (5) State is Uniform throughout but the governments are of many kinds

The four essential constituents, namely Population, Territory, Government and Sovereignty, are indispensable for the organisation of the state. Any humar

organisation having all the four essential elements will enjoy the status of statehood. So far as the government is concerned, it has many types. For example, Parliamentary Government is popular in England, France, Italy, Western Germany, Australia, Sri Lanka, India, Japan, Belgium, Holland, Denmark, Norway, Sweden etc. Whereas Presidential Government is popular in the U.S.A. and a few countries of South America. The Communist Government is popular in Russia, China, East Germany, Poland, Hungary, Finland, Bulgaria and Yugoslavia. Monarchy is popular in Nepal, Saudi Arabia. Some years ago Pakistan, Burma, Iraq, Afghanistan, Panama and Chile saw the outbreak of military revolutions. Thus it is quite evident that the state is uniform throughout but the governments are of many kinds.

### (6) Membership of the State is Compulsory but not of the Government

Every person by virtue of his birth or his blood relation is a member of the state. But it entirely depends upon the will of the person concerned to become the member of the government or not. Every one has to become the member of the state. So far as the government is concerned its membership is not compulsory. Those people who actively participate in the functioning of the government are recognised as its members.

### (7) Territory is the essential characteristic of the state but not of the Government.

Fixed territory is an essential constituent of the state but not of the government. No state can exist without territory but a government can function without territory. Sometimes the government of a state is established in some other State. For example, during the Second World War when Norway was defeated by Germany, the Government of Norway was established in England and it functioned from England. When Germany was defeated at the end of the Second World War, the King of Norway came back to his own country and the well-established Government of Norway started functioning properly.

### (8) State is Abstract but the government is concrete

The State is abstract. It is not concrete and nor it has any practical concern. Ancient political thinkers thought of the State as a political organisation having seven essential constituents but according to the western political thinkers the essential elements of the state are only four. American scholar Professor W.W. Willoughby opines that the five essential elements constitute a state. There is no consensus of opinion among experts as to the number of the essential constituents of the state. So far as the government is concerned, it is practical, it has its concrete establishment. It carries out the purposes of the state through its various departments and agencies.

In daily life for the ordinary person there is no distinction between State and Government. "For those who see concreteness rather than abstraction", says *Croce*, "The State is nothing but government and assumes complete reality only in the government", *Laski* is accordingly correct in a way when he says that for the purposes of practical administration the State is nothing but government".<sup>21</sup> *G.D.H. Cole* is also of the same opinion. For him, the State is nothing more or less than the political machinery of the community".

### (9) The people can oppose the government but not the State

The people cannot afford to oppose the state because they have no right to do so. Government is the servant of the state and if it goes against the collective will of the people, they oppose it and a suit can be filed against the government in the court of law. And if the common interest of the people suffer, it becomes the moral obligation of the government to take remedial steps.

21. Harold Laski: "A Government of Politics", p. 131.



**(10) The State includes the whole population but the government includes only a few people**

The whole population of a state forms an essential constituent of the state, but the government includes only those people who actively participate in the working of the government. There is no doubt that broadly the government includes the Executive, the Legislature and the Judiciary, but strictly speaking, it includes only the Executive. Therefore, generally speaking, the President, Prime Minister, other Ministers and their Secretaries are recognised as the members of the government.



# The Legislature

**Three branches of government.** Since the time of Aristotle it has been generally agreed that political power is divisible into three broad categories. There is, first, the legislative power which formulates and expresses the will of the State. Being a representative assembly, the Legislature in a democratic government enacts the general rules of society in the form of laws. The laws of the State prescribe the manner in which people are expected to live in a politically organised society. Secondly, there must be some power to see that the laws of the State are duly obeyed by all and there is no infringement. This is the work of the executive. There is, thirdly, the judicial power. The judges determine whether the law is applicable in a particular case or not. The judicial power determines "the manner in which the work of the executive has been fulfilled. It sees to it that the exercise of executive authority conforms to the general rules laid down by the legislature."<sup>1</sup> If the executive acts in excess of the power vested in it by law, the judges may declare that the order issued by the executive is in excess of the authority given to it and, accordingly, *ultra vires* and inoperative.

But the legislature unquestionably occupies a superior place. The primary and the most important function of the State is legislative. The executive and the judicial departments cannot function until the legislature has functioned. Law must exist before a judgment can be given or the executive takes action. Every executive and judicial act involves primarily an enactment made by the legislature. Gilchrist compared the relation of the legislative, executive and judicial departments to the major and minor premises and conclusion of a syllogism. He says, "The legislative authority forms the major premises; the judiciary, the minor; and the executive, the conclusion... . As the major premise is more important than the minor and conclusion, so the legislature is more important than the executive or judiciary."<sup>2</sup> But the scales are reversed now. The all-round accepted concept of the Welfare State has blurred supremacy of the legislature. The Welfare State tends to concentrate power on the executive level and, consequently, its ascendancy over the legislative branch. This is the inescapable reality of the twentieth century.



### FUNCTIONS OF THE LEGISLATURE

**Varying Extent of Functions.** The functions of the legislature are not identical in every country. They entirely depend upon the form of government. If the pattern is unlimited monarchy, as it was in Czarist Russia, the legislature is merely a consultative body subordinate to the executive for all practical purposes. Under a bureaucratic type, as it existed in the Provinces of India before 1937, and persisted at the Centre till India became a sovereign State in August, 1947, the legislature is completely subservient to the executive. A dictator, like Hitler or Mussolini, pays scant attention to the existence of a legislature. Both Hitler and Mussolini suppressed the powers of the legislatures and ruled mainly by issuing decrees or ordinances. The German Parliament conferred upon the National Cabinet in 1933, in fact, upon Hitler himself, power for four years to make laws, conclude treaties, adopt budgets, and indeed to do, without check or restraint, "anything whatsoever, inside or outside of the constitution..."<sup>3</sup> But the power conferred on Hitler never came to an end during his lifetime. Even the Iron Chancellor Bismarck, who wielded enormous authority in his time, never approached the power placed in the hands of the Nazi chief.

But in a Parliamentary System, as it obtains in Britain and India, the legislature is superior to the executive in the sense that the latter is responsible to the legislature for all its acts and Ministers remain in office only so long as they can retain its confidence. Parliament in Britain is legally sovereign. It plays a double role and combines the constitutional and the legislative powers. It is competent to make and alter the constitution and, at the same time, make ordinary legislation. In the United States of America, on the other hand, the powers of the legislature are co-extensive with those of the executive.

The functions of the legislature, therefore, differ from State to State. There is no uniformity. The main functions of the legislature may, however, be classified as follows:

**Legislative Functions.** As stated earlier, law is now regarded as the expression of the will of the people. The will of the people is expressed through representative assemblies and all other means of making laws have been swallowed up by legislation. Legislation is the most prolific and direct source of law. Again, laws must be consistent with the changing conditions of society and in harmony with the new social environments. Old laws, which have become obsolete, are repealed and new ones substituted in their place. Under a parliamentary system the executive has a direct hand in the making of laws. Before a Bill begins its career in the legislature, the Cabinet discusses the proposal to introduce a Bill on the initiation of a Minister. If the Cabinet accepts the proposal, it is introduced in either House of the legislature and it is the duty of the Minister concerned to pilot the Bill through all stages of parliamentary procedure and see that it is finally passed and duly enacted. But under the Presidential system the executive is not in direct touch with legislature. It only exerts its influence either through Presidential messages or through members of Congress who belong to the President's party. The Government has no place in the legislature and all Bills, public or private, are introduced and defended by members of the legislature.

**Deliberative Functions.** Legislative functions consist of two kinds of work: law-

making and deliberative. In fact, there can be no separation between the two. Both are parts of the legislative functions, although some writers, as John Stuart Mill did, treat them separately. They argue that the function of law-making, particularly drafting of a bill, is a skilled work which needs considerable experience, study and research. Mill said that a "numerous assembly is little fitted for the direct business of legislation."<sup>4</sup> The amateurs make a bad job out of it when entrusted with this specialised function. The making of law should, therefore, be entrusted to a small committee of experts while the actual work of deliberation should be the function of the whole parliament.

To make a law really the mirror of public opinion, it is necessary that it should not be made hurriedly. It needs proper thrashing so that its contents and ends may be considered from all points of view. For discussion two heads are better than one, and two hundred are better than two. In this respect a legislature is par excellence a deliberative body. The term parliament, which may be used for a legislature, is derived from the French word *parler*, which means to talk, and *parlement* which means a meeting for discussion. Legislature is a forum where thinking is done, as it consists of many persons representing numerous interests, various points of view, and different sections of the community. Deliberation, in fact, is at the heart of a democratic polity. It is the chief process by which policy is determined and laws are made.

Since deliberation is a continuous process of debate, it was long felt that political deliberation should be carefully institutionalized and that led to the development of the elaborate codes of parliamentary procedure and practices which pervade the British House of Commons, the Indian Parliament, Congress of the United States and, indeed, parliaments of all democratic countries. This procedure leads to better and fruitful discussion, for deliberation not only gives an opportunity to each participant to promote the views and interests of the political party or group he represents, but also permits him to adjust his own views and even to change his opinions by listening to others. For this reason there are, generally, three readings for every legislative bill before it is finally voted upon. The first reading comprises only introduction of the measure and generally, there is no debate or discussion. After the Bill has been introduced, it is printed and members get its copies to be ready for the second reading. On a day fixed in advance, the Bill is read for the second time. This is a crucial stage in the life of a Bill. The supporters and opponents of the Bill participate in discussion and stoutly present their respective points of view. There is a general discussion and no amendments to the Bill are moved. Upon the conclusion of the debate votes are taken. If the majority votes in its favour, the Bill goes to the next stage. If it is defeated, it lapses.

After the second reading, the Bill automatically goes to an appropriate committee of the House. The size of modern legislatures makes it impossible for full consideration to be given to all measures by all members. Therefore the committee system has evolved. Here the Bill is discussed, voted on clause by clause, and probably amended. The committee may even seek information from any source with respect to any point, invite experts from outside and summon anyone for evidence, both oral and documentary. After the committee stage, it is referred back to the whole House for further discussion. There are many other

4. Mill, J.S., *Representative Government*, Chap. V.

3. Ogg, *op. cit.*, p. 720.



rules of procedure. The objects aimed at are orderly and efficient dispatch of business, the prevention, on the one hand, of precipitate and ill-considered action, and, on the other, fruitless prolixity of debate. Deliberation is, indeed, hammering legislation and chiselling it into a law.

**Financial Functions.** We are well aware of the conflict between the Stuarts and Parliament in Britain. It was all about financial matters and the principal means by which Parliament mounted to power was the power of the purse. The fact of representative democracy is the control and regulation of national finances by the legislature, and this is its most important function. It is a fundamental principle of public administration, and one which is nowadays generally recognised in all civilised countries, that no taxes shall be levied or expenditure authorized without the approval of the representatives of people. The theory 'no taxation without representation' recognises the supremacy of the legislature in raising revenues and incurring expenditure. In some countries, like the United States, war can be declared only with the consent of the legislature. This power is vested in the legislature obviously for the reason that war entails stupendous expenditure and the verdict of the representatives of the people must be taken regarding the justification of war and the expenditure which is to be incurred in fighting it out. In Britain, war may be declared by an executive act, but grants are made available by Parliament. The executive cannot sanction expenditure without parliamentary approval. In this way, the legislature controls the domestic and foreign policy of the State.

The principal financial function performed by a legislature from year to year is the presentation, consideration, and authorization of the budget. Viewed in simple outline, a budget is the nation's annual statement of accounts which shows, on the one hand, estimates of financial expenditure and, on the other, a calculation of anticipated revenues. The financial year generally begins on April first and the estimates of the coming financial year are presented to the representative chamber of the legislature in the second or third week of February. The estimates are discussed by the legislature and the number of days allotted for their consideration vary from two to three weeks or even more. The debate gives an opportunity to the government to explain and defend their proposals and to the Opposition an opportunity to air their grievances or to criticise the general policy of Government.

**Administrative Functions.** Nowhere in the world does a popular assembly actually participate in administration. Its proper jurisdiction is that of superintendence and control. But in countries where the parliamentary or Cabinet system prevails, the control of the legislature over the executive is direct and immediate. The latter is responsible to the former for all its actions. Questions and interpellations are asked to seek information from the government on matters of administration. If any act of government is resented by the public, their representatives may move a vote of censure and condemn that action. If the government abuse their trust or act in flagrant disregard of the public opinion, the legislature may pass a vote of no-confidence and expel them from office and appoint their successors. Strict control of the executive is enforced by the review of government's policies involved in discussions of the budget and the approval of proposed expenditure. If the government fails to get supplies, it must quit office and make room for others who can carry the legislature with them.

In the United States, the Upper Chamber of Congress, the Senate, is vested with certain specific administrative powers. The Senate shares with the President the power of making all federal appointments. Again, all treaties negotiated and concluded by the President are to be ratified by a two-thirds majority of the Senate. The Senate also possesses, by usage, the power of investigating into various administrative scandals and cases of corruption. The investigating committees so set up can summon witnesses, official and non-official, call for papers and documents, and seek any other kind of information which may be deemed necessary. In a Presidential type of government the investigating committees usefully serve the purpose of controlling the executive. The legislature's control over the executive, thus, keeps the government fully informed of what the country is thinking of, what it wants and especially of what it will not stand. Under a parliamentary system control and responsibility naturally go together. Since responsibility of government means its resignation from office whenever the policy of government proves fundamentally unacceptable to the popular assembly, an obligation rests on the house to exercise a day-to-day control over the Ministry in such a way that fundamental disagreement between the executive and the representatives of the people will be clear and manifest. If the actual and possible mistakes of the government were not apparent, the government might become irresponsible. So important is the function of controlling the executive that many statesmen would assign it to the legislature as its first and foremost duty. Bagehot placed legislation last among the functions he allocated to parliament. Taylor, on the other hand, considers it a bit odd suggestion. His opinion is that the very essence of parliament is its power to make laws. "Indeed much of the force of the criticising power of the House," he says, "is derived from this fact: that it is a body which can, by means of passing laws, do anything it likes."<sup>5</sup> Laski does not support Taylor's opinion. To him the function of legislation is not the only function of parliament. "Its real function is to watch the process of administration to safeguard the liberties of private citizens."<sup>6</sup>

The obligation of controlling the Government is more urgent today than before. The functions of the Government are so extensive now that they touch the very bones of individual lives. "The government departments," aptly remarks Herman Finer, "are virtually great monopolies; they need a strong force outside them to shake them up." The Opposition in the legislature does this job on so many counts.

**Judicial Functions.** The legislature in every country, generally, consists of two Houses. One is known as the Upper House and the other as the Lower House. The Upper House, in most countries, performs certain judicial functions. In Britain, the House of Lords is the highest court of appeal. The Senate, in the United States, sits as a court of impeachment for the trial of the President and the Vice-President, while the charges of impeachment are preferred by the House of Representatives. Similarly, the Senate in France, according to the Constitution of 1875, was empowered to sit as a High Court of Justice for the trial of the President and the Ministers for high crimes. In India, either of the two Houses at the Centre can prefer a charge for the impeachment of the President. If the charge is

5. Taylor, E., *The House of Commons at Work*, p. 126.

6. Laski, H., *Parliamentary Government in England*, p. 167.



preferred by the House of the People (Lok Sabha), the Council of States (Rajya Sabha) investigates the charge. If the Council of States prefers the charge, then the House of the People investigates it. But instead of making the investigation itself, the House may delegate the work of investigation to any Court or tribunal appointed by the House for that purpose. The impeachment succeeds if the House investigating the charge passes a motion by a two-thirds majority of the total membership of the House that the charge has been sustained.

**Constituent Functions.** Legislatures have also constituent functions to perform. Parliament in Britain is both a legislative body and a constituent assembly. It can change or abrogate any law whatsoever and by the same procedure. Proposals to amend the United States' Constitution must be made by a two-thirds majority of the Congress or by a national Convention which Congress calls at the request of the legislatures of two-thirds of States. Bills to amend the Constitution of India may originate in either Chamber and be passed by each House of Parliament by a majority of its total membership as well as by a two-thirds majority of the members present and voting. Some specified provisions are, in addition, to be ratified by half the number of states of the Union.

**Electoral Functions.** Not only do legislatures usually elect their own officers, but they may also elect some executive officials. The elected members of both Houses of Parliament in India form a part of the electoral college for the election of the President. The United States Congress has electoral functions too. As a matter of routine, it meets in joint session every fourth year to count the electoral votes cast for the President and the Vice-President. If no candidate receives a majority of the electoral votes for President, the House of Representatives selects, each State voting as a unit, the President from among the candidates with three highest votes. When no candidate secures a majority of the electoral votes cast for the Vice-President, the Senate makes the choice from among the two candidates with the highest number of votes. The President of France was elected by the joint action of the two legislative chambers. The Swiss legislature elects the judiciary, members of the Federal Council, and the head of the civil service.

**Miscellaneous Functions.** Parliament in India has the power to move for the removal of judges of the Supreme Court and of the High Courts on the ground of proved misbehaviour and incapacity, and the address for such a removal must be passed by a two-thirds majority in each House. In Britain judges can be removed only by a joint address of both Houses of Parliament to the Crown. Judges in the United States can be removed by the process of impeachment and the procedure followed is exactly the same as in the case of the President, that is, the Senate sits as a court of trial.

Legislatures also work as organs of inquest or inquiries. They often appoint commissions of inquiry relating to agriculture and industry or to find out the causes of social unrest, or mob violence, etc. Such commissions of inquiry collect information, receive memoranda, hear evidence and make recommendations.

In order that the executive may not interfere in the legislative branch, a good number of constitutional safeguards are provided. It chooses its own Speaker and other officers and adopts its own rules of procedure and business. Its members may not be arrested while attending sessions or travelling to and from them for any reason except the

commission of crimes. They may not be punished for anything they say in debate except by the House to which they belong.

### ORGANISATION OF THE LEGISLATURE

**Unicameral and Bicameral Organization.** Law, according to Aristotle, should be "reason without passion." This statement involves two things. In the first place, it is essential that those who are entrusted with the duty of making laws should avoid the dangers of rash, hasty, and ill-considered legislation. A due amount of caution and reflection are the prerequisites of legislation. Passion is dangerous in law-making. Secondly, as laws are to affect all alike, it is necessary that the legislature should be a representative body of all the people representing numerous interests in order to secure the consent of all sections of opinion. Various means have been adopted to secure these ends. One of them is the manner of the organisation of the legislature.

When there is only one legislative assembly, the system of organisation is called unicameral. When the legislature is organised into two Houses, it is called the bicameral system. It is almost a dogma of Political Science now that the legislature ought to consist of two chambers. Single-chamber government is considered the apotheosis of democratic rashness. Some writers characterise government by a single chamber as visionary, "if not corrupt and violent", which usually ends in depotism. Sir Henry Maine expressed the opinion that almost any kind of second chamber is better than none. He said what ought to be expected of the second chamber is not a "rival infallibility but an additional security."

**Historical Development of the Bicameral System.** The British Parliament is, in a very true sense, the mother of Parliaments. It constitutes the first successful example of a legislature in the modern sense and its most important feature is that it is bicameral in character. "It is safe to say," observes Willoughby, "that had it not assumed this form, there is little likelihood that this mode of organisation would now be so prevalent."<sup>7</sup> It is, thus, of prime importance to know how the system of bicameral legislature came into being in Britain.

In Britain nothing is arranged. It just grows and, like Parliament itself, the bicameral structure is also the child of chance and growth; the result of historical accident. As it was not a deliberate creation, no such thing as a deliberate weighing of the relative advantages of different types of organisation took place. When Edward I called his Model Parliament in 1295, all the different classes of people summoned to attend met in one single assembly. But afterwards they broke into three groups of "estates"—Nobles, Clergy and Commons—to hear separately the King's plea for money and "to make such response as they individually chose." Gradually, however, practical considerations led to a different arrangement. The greater barons and the greater clergy, who were feudal lords and land-holders too, had many interests in common and they began associating together in one body. The lesser clergy found attendance at Parliament very irksome. Moreover, they were jealous of their clerical privileges and preferred to make their money grants in their

7. Willoughby, W.F., *The Government of Modern States*, p. 335.



"Convocations." They soon ceased to attend Parliament altogether. Similarly, the knights, after a good deal of wavering, found their interests identical with the burgesses and finally united with them for all purposes. The result was the division of Parliament into two chambers; in one sat the peers, Temporal and Spiritual, in the other representative Knights of the Shire and the representative Townsmen. How and when exactly this arrangement came about, nobody knows. It was accidental and the result of social and economic circumstances. By the close of the reign of Edward III this bicameral organisation seems to have been fully established.<sup>8</sup> Thenceforward the distinction between the two Houses became political.

The next country to develop strong legislative bodies was the United States of America. Regarding the desirability of creating a national legislature consisting of two chambers, there was little difference of opinion among the members of the Philadelphia Convention. The foremost reason which prompted bicameralism was the spirit of great compromise without which, perhaps, the union would not have come into being. The hitherto sovereign and independent States would not agree to the new administrative set-up, unless their old status was preserved in one branch of the legislature and where they could be represented as constituent political units. On the other hand, the larger States would not agree to a plan of the new constitution unless they were given adequate representation in proportion to their numerical strength. There were economic reasons too. The North, the more populous part of the country, was commercial in interest, whereas the South, the sparsely populated part, was agricultural. The division of legislature into two Houses based on two different principles of representation was in part influenced by these considerations in order to balance and harmonise the two distinct economic interests in the national government.

To these considerations may be added yet another, and it is as important today as before. The Fathers of the Constitution had entertained the fear of majority rule, and they desired to set up a Senate as a conservative check on the turbulence of democracy. And if it could prove an effective check on the radicalism of the popular House, then, it should not be a mere duplication of the latter both in its composition and powers. The propertied class had found another reason for creation of the Senate. Their feeling was that the rule of the majority offered acute dangers, the chief of which was the possible "exploitation of the propertied classes by those less favourably situated." Although it was thought that these dangers could be met largely through the adoption of the representative type of government, still it was felt that certain additional safeguards were desirable. Such safeguards, it was believed, "should be secured by providing for a bicameral legislative system, one of whose chambers would be more directly representative of property interests and be, thus, in a position to protect such interests."<sup>9</sup>

But the historical circumstances which led to the adoption of bicameralism in the United States did not set a stage for its universal adoption. In fact, in the eighteenth and early part of the nineteenth centuries unicameralism was generally favoured. Benjamin Franklin was its enthusiastic advocate in the United States and it was largely under his

8. Adams, G.H., *Constitutional History of England*, pp. 194-95.

9. Willoughby, W.F., *The Government of Modern States*, p. 337.

influence that the legislature of Pennsylvania, under its first Constitution, was made unicameral. In Britain, at the same time, Bentham advocated a single-chamber legislature. In France, reckless belief in popular sovereignty overcame the theories of Montesquieu and Delolme, which suggested a bicameral system of commons and lords. The ideology of Rousseau was accepted and the Constituent Assembly conceded to the argument that sovereignty was indivisible and the nation was sovereign, and hence that its representative body could not but be one. A single-chamber legislature was provided in the Constitutions of 1791 and 1793.

Public opinion, however, soon went in favour of bicameralism and the countries which had previously adopted unicameralism abandoned it for the bicameral system. In Pennsylvania one chamber continued until 1800, when it was replaced by two chambers. In France, two chambers were created in 1795, which remained in existence until 1884, when France again reverted to unicameralism. But this was just for a brief interval. Other States, like Mexico, Spain, Portugal, Naples, and many others, all abandoned it after trial for the double-chamber system. In a few countries, for example, Norway and Israel, the legislature even now is organised as a unicameral body. Commonly, however, a legislature is composed of two Houses and it is a bicameral body.

**Arguments in Favour of Bicameralism.** It will be evident from the foregoing analysis that the bicameral system did not originate because of any reasoned belief in its superiority from a technical standpoint, as an instrument of legislation. In Britain, it was the result, in part of the historical development of Parliament and in part of the affinity of economic interests between the two distinct classes of the people, the landed aristocracy and the common people. In the United States, many historical factors intervened and bicameralism was found valuable for purposes of compromise between hitherto sovereign States, though here, too, the Senate was intended as the guardian of "property generally and especially of the landed interests, the Yeomanry of the State."<sup>10</sup> The same reasons prompted the German Empire. In France, the experience with a single-chamber legislature was not satisfactory and their proceedings "were marked by violence, instability and excess of the worst kind."<sup>11</sup> Other countries adopted it for giving expression to certain political principles that prevailed then. And for a long time it had become axiomatic that legislature should consist of two chambers.

During recent years a great change has been witnessed in the theory and practice of the bicameral system of legislature and this, too, began in Britain. While the struggle between the King and Parliament was continuing, there developed a struggle within Parliament as to which House should speak for Parliament in financial matters. The House of Lords never admitted the claim to sovereignty by House of Commons on financial matters, although by usage gradually the Lords acquiesced in the claims of the representatives of the people. But in 1860, the House of Lords began interfering in financial matters and in the beginning of the present century it made a bid to revive its powers by rejecting the proposals aiming to levy certain new taxes on landed property. The result was the passage of the Parliament Act of 1911, which not only confirmed the

10. Observations of Chief Justice Spencer made at a convention held in 1821 to revise the Constitution of the State of New York. It is cited by W.F. Willoughby in his *The Government of Modern States*, p. 338.

11. Garner, J.W., *Political Science and Government*.



sovereignty of the House of Commons in money matters, but made it omnipotent in matters of ordinary legislation too. The position, today, is that while Britain continues to have a legislature that is apparently composed of two Chambers, the existence of the House of Lords does not matter at all. If the House of Commons were to pass a law abolishing the House of Lords, there is nothing to obstruct it.

This action by Britain in radically diminishing the status of the Upper House as one of the coordinate branches of the legislature had a profound influence on those States which were compelled after World War I to adopt new political systems or to modify their existing systems. Many States discarded bicameral legislatures altogether, and those which adopted them followed the example of Britain, the mother of Parliaments. In the United States, too, the Seventeenth Amendment to the Constitution, adopted in 1913, largely nullified the prime consideration that had led to the original adoption of the bicameral system.

Unicameralism, however, could not persist for long and at present the bicameral system is almost of universal prevalence. But with the changes referred to above, the force of the arguments originally adduced in favour of the adoption of a bicameral system have been greatly weakened, if not entirely destroyed. To illustrate it, the first French Constituent Assembly in 1789 adopted the unicameral system. The second Constituent Assembly reverted to the system of bicameralism, but the powers given to the Council of the Republic were not even near to the weaker second chamber like the House of Lords. It was a Council for reflection, as one of the writers described it, and not a Council of action. There was nevertheless a strong body of opinion to the effect that the bicameral system has certain intrinsic merits. To some extent bicameralism is based on a distrust of popular opinion and its expression in the popular House. Following are the main arguments generally advanced in support of bicameralism.

John Stuart Mill pointed out that the concentration of power in one single Chamber makes it despotic. This means that all power has a tendency to degenerate, and if not checked by a rival chamber, it is likely to go beyond its limits. Lord Acton, accordingly, maintained that the second chamber is "the essential security of freedom." The necessity for two chambers was, thus, based, as Bryce said, on the belief that the innate tendency of an assembly to become hateful, tyrannical, and corrupt needs to be checked by another House.

Second chambers are defended on the ground that popularly elected representatives can be overhasty and they need checking by a less impulsive and more experienced body. "We need a mechanism that enables us to delay the first rough impulses of a body fresh from its contact with the electorate, and eager, in its inexperience, to experiment with every kind of novelty." A popular chamber elected on the basis of adult suffrage is usually radical in its outlook. Its members are comparatively young and they are always keen to establish their mark by doing something radical and thereby ensuring their berth in the next general election. Upper Houses are usually for longer terms and elected under conditions which make for greater conservatism among their members. Conservatism, the advocates of bicameralism assert, is needed to check the radicalism of the popular chamber and it is a brake of considerable political advantage. Moreover, when radicalism is injected with conservatism, the result is reason without passion and that is what law

really ought to be. The essence of the second chamber is that it should not be subject to the same impulses and the same pressures as the representative House. Bicameralism is, therefore, a necessary check upon hasty, rash and ill-considered legislation. It acts as a brake by revising the legislative activity of the popular House and there is a greater likelihood of temperate and deliberate discussion resulting in balanced, equitable and careful legislation.

Interposition of delay is needed to crystallise public opinion on all bills before they become laws. In fact, it is of considerable advantage that the decision of the popularly elected chamber should be given a second thought and that, too, under conditions of a calmer atmosphere in a chamber which is less susceptible to immediate popular pressure. Take, for example, the House of Lords. The Lords can afford to have full and free debates on issues which the Commons are too busy to discuss or which party leaders may consider too explosive to touch. By their debates the Lords prepare the public for the consideration of the important issues, educate public opinion, and make the government susceptible to public reaction. The House of Lords, thus, performs a useful function in influencing the people and the government. Reference of a measure to the second chamber, after having been passed by the first, provides a sufficient pause for reflection and deliberation. Second chambers, accordingly, ensure that opportunity will always be given for a sober second thought, thereby exercising a controlling, modifying, retarding, and steadying, influence on legislation. There is careful scrutiny of legislation by both the chambers. The length of time that elapses between introduction in one chamber and final passage in both reduces the chances of the tyranny of the majority, haste and carelessness attendant thereon, and ill-conceived legislation.

Moreover, this pause also enables the opinion of the nation to be adequately expressed on the proposed legislation. It would be especially needed as regards bills which affect the fundamentals of the constitution or introduce new principles of legislation or which raise issues whereon the opinion of the country may appear to be equally divided. "It is not," says Carl Friedrich, "really so much a matter of expression of opinion, as of crystallization. The cabinet governs in accordance with the general mandate of the majority, but there are issues upon which more than a majority may be desirable."<sup>12</sup>

The system of bicameral legislature is the correct barometer of public opinion. A single chamber may, before the expiry of its term of office, grow out of tune and not keep in harmony with popular opinion. It does not hold any verdict from the electorate on the questions of public importance which the legislature may be required to decide after the representatives have been elected. But this defect can be conveniently remedied, if there are two chambers chosen at different times or for different terms. There will be a constant flow of fresh public opinions under a bicameral system as the legislature reflects the popular will at all times. The House of Representatives in the United States is elected for two years whereas the Senate is elected for six years, one-third of its members retiring after every two years. The House of the People (Lok Sabha) in India is elected for five years while the Council of States (Rajya Sabha) is elected for six years, one-third members retiring after every two years.

12. Friedrich, C.J., *Constitutional Government and Democracy*, p. 306.



The popular chamber in every democratic country is now flooded with work. Growth in the functions of the State has made legislation numerous, complex and specialised. Consequently, there is so much rush of work that one chamber cannot have sufficient time to devote and to fully deliberate upon all measures. Second chambers avoid congestion of business and relieve the popular chambers of many arduous tasks, enabling them to concentrate on important measures. Not only do non-controversial bills originate in the Upper Chamber and find an easier passage in the Lower Chamber after having been fully discussed and put into well-considered shape, but it also usefully does the examination and revision of bills after they have passed through all the stages in the Lower Chamber. This is now more needed since the time of the popular House is rationed and it is obliged almost on all bills to act under special rules limiting debates, thereby curtailing the possibilities of free and full discussion. Upper Chambers generally function under no such limitations. Their membership being reasonably limited and consisting of the best brains of the country, veteran statesmen and seasoned politicians with diverse experiences, there is intimate, practical and highly intelligent discussion and criticism.

Moreover, a finished Act of Parliament must be word perfect. For if mistakes are made, the government may be involved in administrative difficulties or confusion or it may place the community in grave difficulties as a result of legally correct but unexpected and disturbing decisions of courts. The second chamber is a valuable institution in this matter of spotting lack of clarity or doubtful matters of drafting.

Bicameralism provides a convenient means of giving representation to different classes and interests and assures representation of minorities and for professional and vocational interests. Then, there are some talented persons in every country who are election-shy. In a system of bicameral legislature, they, too, can find an easy berth in the Upper Chamber. Take, for example, the Upper Chambers in India both at the Centre and in the States. The President is empowered to nominate twelve members to the Council of States, who should be persons having special knowledge or practical experience in respect of such matters as literature, science, art and social services. Similar provision is made for nomination to the Legislative Councils, wherever they exist, in the constituent states.

Second chambers are indispensable for States with a federal form of government. The Lower Chamber in a federation is elected on the basis of population and is a representative chamber of the people as a whole. The Upper Chamber is representative of the constituent units. In several States units are given equal representation in the Upper Chamber. Equality of representation is claimed to prevent the domination of the legislature by the bigger and prosperous units. Bicameralism thereby secures the spirit of compromise among different interests, as it did in the United States, in the absence of which national unity would not have been possible.

The bicameral system protects individual freedom against legislative despotism. If there is no balancing of authority and all law-making were concentrated at a single centre, it is likely to become tyrannical in its transactions. It is a simple maxim of democracy that if liberty is to be real and lasting, political direction of authority should not concentrate at any one place. "In framing a government which is to be administered by men over men," wrote Madison, "the great difficulty lies in this: it must first enable the government to control the governed; and in the next place oblige it to control itself."

Bicameralism is a device to restrain and control the despotism of either one chamber or the other.

To sum up, bicameralism has been justified as a check on undivided power, rashness and irresponsibility, as a delaying and deliberative mechanism, as representing various interests in the community, as a reservoir of knowledge and wisdom, and as representing small and big states alike in a federation. It protects individual freedom against legislative despotism.

**Unicameral System.** As said earlier, a single, chamber legislature was quite fairly favoured towards the close of the eighteenth century and during the early years of the nineteenth. This was essentially the result of the theory of popular sovereignty which had then become the basis and watchword of democracy. It was believed that sovereignty rested with the people and it was indivisible and hence only a single chamber could represent their will. "The law," said Sieyes, "is the will of the people; the people cannot at the same time have two different wills on the same subject; therefore, the legislative body which represents the people ought to be essentially one."

But this could not last long and many countries, which had adopted single-chamber legislatures originally, abandoned them in favour of the bicameral system. It was generally held that single chambers "were characterised by instability, violence, and passion and that their actions were unbalanced and impulsive." It was consequently thought necessary to check this rash and unwise action by the more serene and balancing power of the second chamber. During recent years, again, the idea of a single chamber has been revived and it found favour with many political writers. It is maintained that unicameral system is simple and responsibility under this system can be definitely located. The bicameral system, in contrast with this, is complicated and responsibility is divided. When both the chambers are popularly elected and possess coequal powers, discord and division is inevitable. Division of responsibility means inaction, thereby paralysing the will of the people. When one House is a replica of the other, it has no utility, because "if the two assemblies agree", as Sieyes said, "the second chamber is unnecessary; if they disagree it is obnoxious." There is duplication of effort as both chambers seek independently to obtain the same information by debating the same questions with their elaborate rules of procedure. MacIver, too, points out that the Second Chamber "unless it is constituted on a broad representative principle, lacks the authority which derives from the support of public opinion; if it is so constituted it tends to be a duplicate of the first house and lacks a *raison d'être*."<sup>13</sup> It is, therefore, suggested to co-opt specialists on the Select Committees of the popular chambers, which should examine the details of the provisions of the bill rather than to make legislatures bicameral.

A second chamber, it is asserted, "is a clumsy addition—a sort of fifth wheel on the coach", which prevents or delays the necessary and urgent transaction of business. In very many countries second chambers have proved citadels of reaction, retarding the forces of progress. Illustrating this point, Laski says that the House of Lords cannot fulfil the demands of democracy, because "where it is tempted to be active in defence is just where democracy is tempted to be active in offence." He argues for abolishing the House

13. MacIver, R.M., *The Modern States*, p. 383.



of Lords, and the critics of bicameralism unequivocally regard second chambers as destructive of national solidarity, creating deadlocks and frictions between the different sections and interests of the people.

It has been further maintained that there is no unanimity of opinion regarding the organisation of the second chambers. This disagreement is itself an argument against bicameralism. In countries which have two chambers there is much discussion about reconstituting them. The House of Lords has always been condemned to be out of tune since it represents no one, except the peers who form a class by themselves. The method of nomination of the members of the Canadian Senate has all through been subjected to serious objections. The utility of the second chamber in a federal State has also been questioned. It is maintained that the representatives of the constituent units of a federation now vote on party lines rather than as representatives of their respective regional governments. There is, as such, no use giving the constituent units separate representation through second chambers. And the minorities get better protection from constitutional safeguards than from doubtful representation through second chambers.

It is also argued that legislation passed by a single chamber is neither hasty nor ill-considered. Almost every measure that becomes law is the result of a long process of discussion and analysis. In fact, every modern legislature takes its cue, while making laws, from the opinions expressed in the press and on the platform. Such being the case, there is no need to give unnecessary duplication to deliberation and delay the much-needed legislation. Nor is there any truth in the assertion that bicameral system prevents legislative despotism. There are many other safeguards, like the suspensive veto of the executive, and a second vote in the same chamber after some interval, against the so-called despotism of a single chamber.

Finally, double-chamber system, its opponents maintain, duplicates work, leads to delay in action and is an unnecessary burden on the national exchequer. Laski and many other writers, therefore, conclude that a single-chamber assembly seems best to answer the needs of the modern State.

Here is a resume of the comparative advantages of unicameralism and bicameralism:

For Unicameralism A Single House:	For Bicameralism Two Houses:
1. Permits speedy action	1. Provide a check on hasty and ill-considered legislation.
2. Avoids obstruction of the will of the people.	2. Avoid despotism of a single chamber.
3. Permits clarity of responsibility of the Cabinet in a Parliamentary system of government.	3. Help public opinion to crystallise by interposing delay.
4. Reduces duplication and confusion of responsibility relating to legislation.	4. Reflect the popular will at all times and there is no time lag.
5. Adds to the quality and prestige of the legislators through absence of conflict.	5. Help divide the workload.

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| 6. Is less expensive and ensures speedy transaction of business. | 6. Do useful and careful revision of legislation.            |
|  | 7. Allow representation to different classes and groups.     |
|  | 8. Account for their necessity in a federation.              |
|  | 9. Protect individual freedom against legislative despotism. |

Bicameralism is now the well established and essential feature of a representative democracy. There is no doubt that genuine bicameralism, if the Upper House does its proper job of being a House of review and reconsideration, slows down the legislative machinery and tends to render radical reforms and changes more difficult. Yet, bicameralism is based on an enduring principle that resolutions of government which have widespread results need a multitude of counsellors. Two Houses are more advantageous as deliberation and solemnity strengthen the prospect of obedience and acceptance. But if second chambers are to do their job, the two obviously must not be carbon copies of each other. They should differ in their composition, method of election, tenure and in powers. They should be so constituted as to make themselves felt through opportunities of organised co-operation with the other organs of government. They should suggest and criticise measures, deliberate on important affairs and assist in planning. But they should not be able to create deadlocks, to interpose long delays or to nullify the policy of the lower chamber. The upper chamber is intended to act as a brake, but not too tight a brake. Its necessary function is to resist and not to persist. The more popularly elected chamber must be the final determining authority.

### STRUCTURE OF LEGISLATIVE BODIES

**Composition of the Upper Houses.** Granting the utility or a delaying authority and a desire for having a multitude of counsellors for discussion, criticism and argumentation, controversy centres round the composition of the two chambers, designated as upper and lower, as well as first and second chambers to distinguish the two Houses. These terms suggest that the upper or the first chamber is of greater significance than the lower or the second chamber. But this is not exactly correct. In the matter of constitutional powers the so-called upper or first House is in all cases, except the American Senate, the weaker of the two. Its functions are secondary and it is not always a representative chamber. It is only a historical legacy that the past name is retained and is called an upper or first House.

It must be at once said that a really satisfactory formula relating to the composition of the Upper Chamber is hard to find. The Upper Chambers in modern States exhibit considerable diversity in their structure and usually contain important survivals of historical development. "In qualification of their members and in the methods by which these members are chosen they often show traces of the class that preceded modern democracy, and on the basis of their representation, especially in federations, they indicate the historic



## The Executive

**Meaning of the Term Executive.** The second branch or organ of government is the executive. The term executive is used to designate all those officers of the government whose business it is to execute, or put into effect, the laws. It is the pivot around which the actual administration of the State revolves and includes all officials engaged in administration. Herman Finer says that "it is most useful to look upon the executive as the residuary legatee, for that explains the mixed nature of its functions and parts."<sup>1</sup> In early times, all power, of every kind, rested with one single person, the prince, and he exercised that power with his narrow circle of advisers. They not only executed policy but planned it and sat in judgment. As the movement for responsible government advanced, it caused "portions of the power to be taken over by other institutions, the remainder itself being subjected to certain norms of constitutional morality and controlled by the new organs." As thus understood, the executive embraces the whole governmental organisation with the exception of the legislative and judicial organs and includes all officials, high and low – the Head of the State, his principal advisers and ministers, as well as the whole body of subordinate officials through whom the laws are administered. In this wide sense the term executive is the aggregate or totality of all the functionaries or agencies which are concerned with the execution of the will of the State as that will has been formulated and expressed in terms of law.

But it is customary to use the term executive in its narrow sense which refers only to the Chief Executive Head of the State and his advisers and ministers. The executive in Britain in this context means Queen Elizabeth II and her Ministers with Prime Minister at the top. In India, it is President of the Union, plus all Ministers headed by The Prime Minister. In the United States of America the President and his Secretaries constitute the executive. The primary duty of this part of the executive is to formulate policy and to see that it is properly implemented. The policy implementation function is the job of the permanent civil service who actually run the various departments of the government and the field officers. Both, those who see that the laws are properly enforced and those who actually enforce them, are really integral parts of the same machinery and all collectively constitute the executive department of the government. The only difference between the two is that the former initiate the policy and supervise its implementation. If it cannot be carried out within the framework of the existing law, they propose new legislation in

1. *The Theory and Practice of Modern Government*, p. 575.

order to enable them to carry it through. The latter, members of the civil service, are not concerned with policy-making though at the top they considerably influence the policy-makers. Their primary function is policy execution or enforcement.

**Nature of the Executive: Real and Nominal.** In considering the nature of the executive we must further distinguish between the real executive and the nominal executive. The distinction is really between the head of the State and the head of government. Before the emergence of parliamentary system such a distinction did not exist; but it is important now. The distinction is relatively easily seen where the two roles are separated, say, the Queen and the Prime Minister in Britain or the President and the Prime Minister in India. In a parliamentary system the head of the State performs ceremonial duties. Normally the area of influence of ceremonial heads is very limited. The real functionaries are the political persons who make the government and are headed by the Prime Minister. There is, thus, a clear difference between *a* executive and *the* executive; the authority of the former is nominal or titular whereas of the latter it is real or actual. There is wide difference between theory and practice here. In terms of law the head of the State may be the source of authority, but his legal functions have become obsolete either as a result of binding conventions or as a result of Constitutional provisions.

When the same person plays both the roles of head of the State and head of the government, he combines unto himself the ceremonial as well as political responsibilities. There is a single identifiable head of the executive, the President of the United States, who will also be the head of the State. He is *a* executive as well as *the* executive. Under absolute monarchy and dictatorship the question of distinguishing the real from the nominal executive does not arise. Here all authority is concentrated in a single person or a group of persons.

**Single and Plural Executive.** Legislature is organised on the principle that two heads are better than one, or that in a multitude of councillors there is wisdom. The function of the executive is not to deliberate, but to enforce the will of the State as expressed by the legislature, and to carry out the decisions of the courts. The prime need for the efficient discharge of such functions is promptness of decision, singleness of purpose, energy of action and sometimes secrecy of procedure. It goes without saying that this is difficult to obtain when authority is equally distributed among a number of persons. Concentration of authority is the first requisite of the executive. A plural executive destroys responsibility, unnecessarily wastes time and is highly dangerous, particularly in times of emergencies. The advantages of a single chief, says Woolsey, "are obvious: he is able to bring unity and efficiency into the government, and being alone, he or his Ministry is responsible; whereas two Presidents would be apt to checkmate one another, if they were of different parties, and would be jealous and rivals if they were of the same party."

The executive, in brief, is organised on the theory that one bad general is better than two good ones. The executive organised on the plural principle is incompatible with force, energy, unity of purpose and independence. It is, therefore, politically expedient that there should be some one person who can, in the last resort, exercise a decisive and final authority. Absolute monarchy and dictatorship are typical examples of a single



executive, Under a Parliamentary system the real executive is the cabinet, plural, no doubt, but the cabinet, headed by the Prime Minister, is a unit which provides political leadership. It comes into office as a unit, it functions as a unit and goes out of office as a unit, and collective responsibility is the method by which this unity is secured and enforced. The Cabinet is a policy-formulating body and its members preside over the administrative departments of government. Both for policy and administration, they are responsible to Parliament and they all act under the leadership of the Prime Minister. "The Prime Minister is," according to Lord Morley, "the keystone of the Cabinet," and occupies a position of exceptional and peculiar authority. "The Government", as Greaves puts it, "is the master of the country, and he is the master of the Government." He forms it, he can alter or destroy it. He is the Chairman of the Cabinet, which formulates policy, and is the chief coordinator of the policies of several Ministers and Ministries. He is also the leader of the chamber to which the cabinet owes responsibility and that chamber looks to him as the fountain of policy. He is also recognised to have an immediate authority to correct what he may consider the errors of omission and commission of his colleagues in the government. Their identity is unknown without the Prime Minister. The Cabinet is, thus, a unity in collectivity and the question of divided responsibility does not arise. In the United States, the President is the real executive and his 'cabinet' works under his direction and guidance. They are his subordinates. His 'cabinet members' may make speeches in support of the general policy of the administration and may even initiate a line of policy, which having been approved by the President, may be described as their own contribution, but the ultimate source of policy remains the President. Laski remarks, "But, in general, the American Cabinet Minister lives and moves and has his being in the context of Presidential thought. However able and distinguished, he is bound to be eclipsed by the major significance of his chief."<sup>2</sup>

States in the past had tried the experiment of a plural executive. In ancient Athens the executive power was divided among a number of officials, each independent of the others. Sparta, in early times, had two kings and the Republican Rome had two Consuls, both invested with the executive power, and each could veto the action of his colleague. France, too, after the revolution, established plural executive under several different constitutions. Till recently, Switzerland, Russia, Yugoslavia and other Communist countries of Eastern Europe presented systems of plural executives. The executive authority of the Swiss federation is exercised by a commission of seven men known as the *Bundesrat* or the Federal Council. The Federal Council is chosen after every four years by the Federal Assembly and one of its members is annually elected to serve its Chairman and is designated as President. The office of President rotates among the members of the Federal Council according to seniority. The President is in no sense the chief executive, although he holds an office of some dignity and enjoys some precedence over his colleagues. Nor is he the chief administrator. He has no more power than his colleagues and is not more responsible for the exercise of executive authority than other Councillors are. All decisions emanate from the Federal Council as a single authority. The President is simply chairman of the Federal Council and he presides over its meetings. As chairman he only exercises

2. Laski, H., *The American Presidency*, pp. 79-80.

a casting vote and that, too, in case of a tie. Such official authority as he may exercise comes to him as a member of the Council and as head of one of the seven administrative departments.

In the U.S.S.R. there was no formal presidency. The Presidium, a body consisting of thirty-nine members and elected for a term of four years by the Supreme Soviet, performed functions executive in character, which were the prerogatives of the chief executive head of the State in other countries with a single executive. The Presidium had its chairman, designated President officially though not constitutionally but he had neither any special privileges nor any individual authority. Stalin called the Presidium a "collegiate President." The Constitution described the Council of Ministers as the highest executive and administrative organ of State power. But under a system of one-party government the policy determining and directing force was the inner circle of the Communist Party. The Presidium was, however, a unique institution indigenous to the Soviet system and without a parallel anywhere else. The People's Republic of China, Yugoslavia and other Communist States patterned their executives on the Soviet model.

Many advantages have been claimed for a plural executive. An executive organised on the collegial principle, it is claimed, does not afford temptations and opportunities for abuse of power. To vest the supreme authority of the State in a single person is a relic of absolutism and is, consequently, opposed to the spirit of republicanism. A plural executive, its admirers argue, may lack the advantage of unity and energy, which characterise a single executive, but a group of men are likely to possess more ability and wisdom than can be found in any single individual. The executive functions involve not merely the ministerial function of executing legislative command but also the formulation of policy. This onerous task can best be performed by a board consisting of the wisest and the talented. Finally, plural executive renders more difficult executive encroachments on the legislative power and on the liberties of the people.

The experience of plural executive has, however, demonstrated its inherent weakness. The practical working of the plural executive in Switzerland has been really admirable. But one single exception does not set a precedent. Its success there is mainly due to certain habits and traditions of the Swiss people. And then the executive in Switzerland is not a separate and independent organ of the government. It is subordinate to the National Assembly, which is sovereign and functions on its behalf. In the USSR the directing force remained the Politburo, the inner circle, of the Communist Party and those who directed the Party had their due place in the Presidium of the Supreme Soviet. Here, too, the Presidium functioned on behalf of the Supreme Soviet. Modern political opinion is almost unanimous in favour of unity in the organisation of the executive. Plural executive lacks force, energy, unity of purpose and independence. It destroys responsibility, delays action by the necessity of consultation and hence establishes feeble government. Feeble government is another name for bad government. "Energy in the executive," Hamilton said, "is a leading characteristic of a good government."

#### MODE OF CHOICE OF THE EXECUTIVE

Five different methods of choosing the head of the State have been followed in



practice: the hereditary principle; direct election by the people; indirect election by a body of electors chosen for that purpose; election by the legislature; and nomination.

**Hereditary Principle.** The hereditary principle is associated with monarchical governments. The term of office is for life and succession goes from father to son governed by the law of primogeniture. Hereditary monarchy is the result of historical conditions rather than of deliberate choice and it now survives in a handful of old countries. It is true that a hereditary executive carries with it certain manifest advantages, but the idea of monarchical government is so distasteful in this age that it now assumes only an academic interest. Its ultimate disappearance will doubtless follow in the course of political evolution in the future. Even in Britain survival of monarchy is being widely discussed.

**Direct Popular Election.** The choice of the Chief Executive by the direct vote of the people is the opposite principle of the hereditary method. This method is the vindication of the principle of popular sovereignty. It grants the people the right to elect their Chief Executive who should represent their will and enjoy their confidence. But, in spite of its popular appeal, the method of direct election has been sparingly adopted in practice. The framers of the American Constitution ruled it out for various considerations. They desired to establish a method which would, as Hamilton put it, "afford as little opportunity as possible to tumult and disorder", and did not "convulse the community with any extraordinary and violent movements." They, accordingly, adopted a plan of indirect election. But, in point of fact, this intention on the part of the framers has been completely defeated, since the system created has been so worked in practice as to establish what is in effect election by popular vote. France adopted direct election at the establishment of the Second Republic in 1848, but abandoned it when the Third Republic was established. In the recent past, France under the Fifth Republic, some of the Latin American States and the former Democratic German Republic deliberately adopted it. But the method is in frequent use in the selection of the "Chief Magistrates" of the territorial divisions of modern States as, for example, the Governors of the constituent states of the United States of America, and of the local executives of the Swiss Cantons.

Many advantages are claimed for the direct mode of electing the Chief Executive. The method of popular election, it is maintained, is more distinctly in accord with the modern ideas of popular government, as it secures the responsibility of the executive directly to the people. When the people themselves have to determine who the Chief Executive should be, they minutely evaluate the merits and virtuous qualities of each candidate seeking election and the final choice falls on a man in whose ability and integrity they have faith. Such a system stimulates interest in public affairs, affords a means of the political education of the masses and presents the example of a government by the people.

But there are some serious objections to this mode of popular choice. The masses are incompetent judges for electing so high a personage as the head of the State. The electors can easily be influenced by the demagogue, who always tries to play with their emotions, and the popular choice may not be the best. Moreover, periodical elections of the Chief Executive of the State create political tension and excitement in the country. Political rivalry, factious intrigues and often corrupt methods employed by the party machines

account for general demoralisation. "As soon as one candidate is elected, those who aspire to succeed him proceed to canvas the people. Party feeling is perpetuated and at election time it often becomes very bitter; it may even lead to foreign intrigue."<sup>3</sup> Hamilton feared that direct election would "convulse the community with extraordinary and violent movements and lead to heats and ferments" that would disturb public tranquillity. Popular election of the Chief Executive under the parliamentary system produces a radical change in the character of public life. The Chief Executive becomes the standard bearer of a party or a combination of parties. He could hardly be expected to maintain, under these circumstances, the mediating role as head of the nation. If he is popular and commands the respect of the people, he may use his position and authority to the detriment of the party in power in case of disagreement between the two and even make a bid to become a hero. If ever it happens, even perchance, it shall be destructive of parliamentary democracy.

**Indirect Election.** Indirect election is more common. It involves election by an electoral college elected by the people. In theory, the President of the United States of America is elected by an electoral college in which every State has as many representatives as it has in both the Houses of Congress. The method of indirect election claims the advantage of avoiding the heats, tumults and convulsions of direct election. The choice of electing the executive head is left in the hands of persons who are better qualified to judge than the masses. When the final choice rests with a small body of representatives, the selection is likely to be intelligent. "It was desirable," maintained Hamilton, "that the immediate election should be made by men most capable of analysing the qualities adapted to the station. A small number of persons selected by their fellow-citizens from the general mass will be most likely to possess the information and discernment requisite to so complicated an investigation."<sup>4</sup>

But all this is a mere theory. The elections are indirect only in name. The immediate representatives, who constitute an electoral college, give little evidence of independence of character and judgment. In almost every country, where political parties are highly organised, the electors are chosen on party pledges to vote for the party's candidate. They hold a definite mandate and are mere party agents with no discretion to exercise their votes. The election of the President in the United States has not only become direct in practice, but it has now assumed the form of an important national pageant. "It is an operation of the first magnitude putting at stake the ambition of individuals, the interest of classes, and the fortunes of the entire country." Nearly everybody in America, from the President in the White House to the man in the street, interests himself in it. It is a momentous event which involves nationwide propaganda and entails an expenditure of millions of dollars on publications, meetings, "rounding up delegates" and "seeing that the goods are delivered." Thus, what was intended to be a scheme of indirect election of the Chief Executive has become in reality a system of direct election.

**Election by the Legislature.** Election by the legislature is another type of indirect election. The Constitution of India provides that the President of the Republic shall be

3. Gilchrist, R.N., *Principles of Political Science*, p. 307.

4. *The Federalist*, No. 68.



elected by an electoral college consisting of the members of both Houses of Parliament and the elected members of the legislatures of the states. The President of France, according to the Constitution of 1875, was elected by the National Assembly consisting of two Houses of the legislature—the Senate and the Chamber of Deputies—sitting in a joint session at Versailles. Under the Fourth Republic, too, the President was chosen at a joint meeting of both Houses. In Switzerland, the Federal Executive Council is elected by the Federal Legislature.

The idea underlying this method of election is that selection should be made by those who are best qualified to exercise their judgment in public affairs. The members of the legislature are sure to make a wiser selection than the general mass of voters or intermediate electors constituting an electoral college. Being actively concerned with public affairs and intimately acquainted with the public careers of the statesmen, the members of the legislative assemblies are, of all the persons, more qualified to choose the best man for this august office. This method ensures greater harmony and cooperation between the legislative and executive departments, thereby avoiding all possibilities of friction between the two.

But election of the Executive Head by the legislature is a negation of the theory of the Separation of Powers. When the Executive Head is elected by the legislature, he becomes its nominee, and this may lead to political bargains, intrigues and jobbery. "It would be in the power of an ambitious candidate," observed Judge Story, "by holding reward of office, or other sources of patronage and honour silently but irresistibly to influence a majority of voters and thus by his own hold and unprincipled conduct to secure choice, to the exclusion of the highest and purest and most enlightened men in the country." Such a method of election is sure to impair the independence of the Chief Executive and make him subservient to the will of the legislature. It, also, seriously interferes with the normal functions of the legislature, particularly at times of great and exciting contests. This may not only lead to unnecessary waste of parliamentary time and energy, but also gives "a party colouring to the consideration of many measures which are in reality non-partisan in character."

There is, however, no doubt that the system of election of the Chief Executive by the legislature has given excellent results wherever it has been experimented with. In all these countries the election of the President takes place with little or no popular disturbance. The modern tendency is, accordingly, in favour of election by a legislature.

**Nominated Executive.** Nominated executive, for the most part, exists in dependencies of some great powers. The Governor-General, during the British rule in India, was a nominated executive. Similarly, the Governor-General of Korea was appointed by the Emperor of Japan and the Imperial Diet. The choice of the incumbent of the office is made on the basis of his qualifications and special fitness for the job which he is called upon to supervise. The Governor-General of Canada as well as that of Australia were appointed by Her Majesty the Queen on the recommendations of the Governments of their respective States from amongst Englishmen in public life, or the nationals of their own countries. These countries had preferred such a method of appointment themselves and it did not make them subordinate to Britain. Both Canada and Australia are sovereign States.

**Term of Office.** Opinions differ as to the length of the term for which the Chief Executive should be elected. In practice, the executive tenure ranges from two years, which is the rule in many states in the United States, to seven years, which is the term of the President of the French Republic, The President of India holds office for a term of five years, whereas it is only four years in the case of the President of the United States. The term of the Swiss Federal Council is four years and the office of its President rotates every year among its members. The nominated Governors-General of Canada and Australia were appointed for a term of five years.

The argument in favour of short tenures for the executive is that the shorter the period of office, the greater the security against abuse of power. There had prevailed a strong belief in the democratic countries that executives with long tenures are always exposed to a temptation to transform their offices by means of a *coup d'etat* into monarchy and then into an imperial office. Whatever be the verdict of history, there is no denying the fact that too short a term of office, like one or two years, is politically inexpedient. A short term makes the executive timid, weak, lacking in independence, and without a policy. There is neither any inducement nor any incentive to initiate either a new policy or a programme. The most that can be expected of the majority of men, under such circumstances, will be "the negative merits of not doing harm instead of the positive merit of doing good."

Popularly elected Executives are generally amateurs in the art of administration. By the time they acquire some familiarity with their duties and responsibilities, their brief term of office expires and they quit. The result is that another amateur comes in who is as much inexperienced as his predecessor was. Continuity of executive policy and stability of administration are impossible under such circumstances. Moreover, short tenures mean frequent elections accompanied by the inevitable popular excitement and commotion.

The term of office for the executive head should neither be too short nor too long. A very short term of office bears no fruit and a very long term may lead to abuse of power. A four to five years' term has much more to commend it. It is long enough to constitute energy, stability and efficiency in administration. It can also ensure responsibility of the executive to public opinion. It is a period, observed Chancellor Kent, reasonably long enough to make the executive "feel firm and independent in the discharge of his trust and to give stability and some degree of maturity to his system of administration." A six-year or seven-year term is not favoured. It is considered to be an unduly long term. A responsibility which cannot be enforced at shorter intervals than once in six or seven years manifestly loses much of its effectiveness.

**Re-eligibility for Office.** A long term of office obviates the necessity of re-eligibility. But when the tenure is short, the desirability of re-eligibility of the executive head becomes an obvious necessity. There is, however, a variety of practice. In some Latin American States the Constitution forbids re-election. In Argentina, Brazil and Chile a second term election is permitted after the lapse of a specified intervening period. The Constitution of the United States, till the Twenty-second Amendment became effective in 1951, was silent over the re-election of the President. It simply provided that the President would be elected for a term of four years. President George Washington set a precedent,



limiting it to two terms. This was scrupulously followed till President Franklin D. Roosevelt broke it and offered himself for the third and fourth terms and was re-elected. The Constitution now limits it to two-term election. The Irish Constitution permits one term re-election. The Burmese Constitution, too, was limited to one term re-election. The Constitution of India does not impose any express limitation to the number of terms for which the President may be re-elected. When the first President Rajendra Prasad was elected for the second term, a non-official Bill was sponsored in the House of People in 1957, favouring restriction to two consecutive terms. The Bill was withdrawn after the Law Minister expressed the view that such matters should be left to convention and not decided by statute. Dr. Prasad did not offer himself for election for a third term, and thus, a two-term precedent was set.

Many advantages are claimed for a single term. Ineligibility to a second term, it is maintained, tends to secure independence in the executive, and it serves as a check upon the personal ambitions of the head of the State. A man who knows that he is not eligible for re-election will not pander to the people. In all his public acts he will maintain independence of character and judgment. When re-election is permitted, he will undertake nothing new and a large portion of the latter part of his term of office will be occupied in matters relating to his election and to the neglect of his official duties.

But the consensus of opinion is in favour of re-eligibility of Executive Heads elected for short terms. The advantages of re-eligibility were nicely summed up by Hamilton in *The Federalist*. He asserted that re-election of the executive was necessary "to enable the people, when they see reason to approve of his conduct to continue him in the station in order to prolong the utility of his talents and virtues, and to secure to the government the advantage of permanency in a wise system of government." The system of re-eligibility enables the State to retain the services of experienced and talented men who command public approbation and confidence. To forbid re-eligibility is to deprive the State of the services of a wise and experienced statesman. "What could be more strange," maintained Judge Story, "than to declare at the moment when wisdom was acquired that the possessor of it should no longer be enabled to use it for the very purpose for which it was acquired." A man who is assured of re-election can best harmonise his interests with duty. Re-eligibility helps him to rise high in the service of the nation. "The desire of reward and fame," to quote Hamilton again, "is one of the strongest incentives of human conduct, and the best security for the fidelity of mankind is to make their interest coincide with their duty." The rule of ineligibility, on the other hand, creates in the Executive Head a tendency to make the best use of the opportunity in order to promote personal ends. He "might not scruple to resort to the most corrupt expedients to make the harvest as abundant as it was transitory." Finally, re-eligibility ensures stability in administration. If re-eligibility is not permitted, administration would drift along without plan or policy.

The expediency of re-eligibility, however, depends upon the length of the term of office and the extent of power which the executive head actually exercises. One elected for six or seven years can manifestly be made ineligible for a second term but the executive head elected for, say, four or five years should obviously be made eligible for the second term to increase his responsibility.

### FUNCTIONS OF THE EXECUTIVE

The most fundamental executive functions are those which relate to essential activities of government. The modern State is a complex structure, and it has to cater for the satisfaction of innumerable human needs. The province of the State has, consequently, considerably increased and modern governments have become more socialistic in their outlook. We do not agree with the old theory of Individualism that the State is a necessary evil and its only function is to preserve internal peace and external security. Our political outlook is entirely changed. The State is now regarded as a means for achieving the welfare of man. It must provide for that atmosphere in which welfare can best be realised. If this is the *raison d'être* of the State, then, no rigid line of demarcation can be drawn to define its functions. There is, however, no uniformity between the executive functions of one State and those of the other. Broadly speaking, the essential functions may be enumerated as:

**Internal Administration.** Every State is a politically organised society. The purpose of the State cannot be realised, unless there is internal peace and order. It is the foremost duty of every executive to devise ways and means in order to ensure the maintenance of peace within the country. The department which is responsible for the maintenance of internal peace and order is called the Home Department, or the Department of the Interior—the nomenclature varies from State to State.

Then, it is the duty of the executive to implement policies and direct the execution of laws. It entails the division of the work of government into different departments and agencies and their organization in such a manner as to ensure efficient and effective administration. It also coordinates the business of government. Various departments of government do not function in watertight compartments. They act and react upon one another.

The political executive appoints secretaries and other top officials to head the various administrative departments. In the United States, Secretaries are appointed by the President with the consent of the Senate. In Britain, India and other countries with a parliamentary government, they are appointed, in terms of law, by the Chief Executive of the State, but, in actual practice, the Cabinet does so and, to be more precise, they are really the choice of the Prime Minister. They hold office at the pleasure of the head of the State, though their removal is governed, according to the provisions of the Constitution and laws enacted by Parliament. In the United States the power of the President is unqualified. The Supreme Court has ruled that the consent of the Senate is not necessary in case of removal, as it is in the case of appointments.

**External Administration.** All States are sovereign and independent. But no State can lead an isolated life or exclusive independence. All States exist under conditions of mutual dependence. To ensure mutual peace and security and to avoid all acts of aggression against one another, States adjust their differences, if any, through diplomatic negotiations. In order to further international goodwill and amity treaties are concluded and representatives are appointed in foreign countries. The department of government which conducts foreign relations is called the Department of Foreign or External Affairs. The



conduct of foreign relations includes the reception and dispatch of diplomatic agents and recognition or non-recognition of the independence or legitimacy of new States and governments. It negotiates and concludes, through its representatives, treaties and agreements. In some States the treaty-making power of the executive is subject to approval and ratification of one or both the Houses of its legislature. In the United States the Senate ratifies all treaties. Although the legislature, generally, controls the foreign policy of a country, yet it rarely interferes in the actual administration of the foreign department, as the conduct of foreign affairs requires high technical skill, secrecy of information and personal tact.

**Defence and War.** It is the essential function of the executive to secure territorial integrity of the State and to protect the country from external aggression, and when necessary, to wage war. The problem of common defence today is entirely different from what it was a century or so before. No country can afford to wait for defence until war is declared. It must always be prepared to ward off the probabilities of war and to win, if it actually comes. The department, which is concerned with the defence of the country and controls its military operations, is called the Defence and War Department. This department may be bifurcated into two—internal defence, and war-department when a country is in the midst of hostilities. The Defence and War Department determines the strength and organisation of the armed forces of the country, Army, Navy and Air Force, and appoints the general and other commanders. In Great Britain, the Executive has the power to declare war independently of the legislature. In the United States war can be declared by Congress and in India it is declared by Parliament. But in every country the powers of the executive during the period of war increase immediately and immensely. Usually the legislature expressly confers powers on the executive to control production and transportation, to establish rationing, to institute censorship, and to suspend the operation of certain guarantees of rights and civil liberties. Even when such powers are not conferred, the executive may take any action necessary to safeguard the safety of the State and ensure the successful prosecution of war.

**Financial Functions.** All governments spend huge sums of money every year to perform their multifarious functions. When money is to be spent, it must be obtained by some means. Governments meet their expenditure by taxing the people and by tapping other sources of income. This is an executive function and the department which makes provision of ways and means is called the Finance Department or the Treasury. This department is the most powerful, because it not only allocates money to the different departments but also regulates and controls their expenditure through audit.

**Legislative Functions.** The legislative functions of the executive vary with the form of government that prevails in the State. It is everywhere the right of the executive to summon, adjourn and prorogue the sessions of its Parliament. In countries where there is a parliamentary government, the executive dissolves the popular House and orders fresh elections. It can also convene special sessions of the legislature whenever necessary. The executive furnishes necessary information to the legislature regarding the needs of the country, either at the beginning of the session, or from time to time, during the continuance of the session. The Speech from the Throne, at the opening of Parliament in Britain, or the Presidential Address, on the opening day of the session of Parliament

in India, is, generally, the exposition of the policy which the government desires to pursue and the legislation in pursuance of that policy which it intends to enact. In the United States the President has the right to send messages to Congress, embodying the various legislative actions considered expedient, including the budget.

In a parliamentary government the real executive, that is the Ministry, is part of the legislature; it controls the time schedule of the legislature and, thus, provides the much needed element of leadership to the legislature. It is the function of the executive to initiate and pilot all public bills and see them through in the legislature. All bills passed by the legislature must receive the assent of the executive head in order to become laws. He can also veto or refuse his assent thereto. The veto power has, however, fallen into disuse in most of the countries with parliamentary government; in others it is only a suspensive veto. For example, in India the President can withhold his assent to a bill. But when he does so, he must send the Bill to Parliament for reconsideration along with his message. If Parliament again passes it either with or without amendments, the President must give his assent thereto. In Britain, legally the King may refuse assent to any bill passed by Parliament. But this power of the King has now become obsolete; it has never been exercised since 1707. In a non-parliamentary or presidential government the power of vetoing a bill by the Chief Executive is an effective control over the legislature, although it may not be an absolute veto, as in Britain. The President's veto in America can be negated on reconsideration of the Bill by a two-thirds majority vote in each House of Congress. Nevertheless, it is a potent instrument in his hands, because two-thirds majority in each House is difficult to secure. The President also exercises what has come to be known as a "pocket veto," and it is absolute. If the President fails to sign a Bill within the specified period of ten days and if Congress adjourns within that period the Bill lapses and is automatically killed. A considerable number of last-minute Bills, to which the President may be opposed or for which he does not want to take responsibility, are not assented to and, thus, fail to become law. The Presidents have generously used this device. President Jimmy Carter killed in a single day, November 11, 1980, three Bills he considered inflationary. The veto power vested in the executive is, therefore, valuable as a means of preventing hasty and ill-considered legislation and gives the executive a means of defence against encroachments on its powers and prerogatives.

In every country the executive is armed with the power of issuing Ordinances. It is a sort of subsidiary power of legislation which takes the form of decrees. Frequently, this power is expressly conferred on the Chief Executive by the Constitution. The Constitution of India empowers the President to issue at any time, except when both Houses of Parliament are in session, Ordinances, which will have the same effect as Acts of Parliament. Every such Ordinance must be laid before both Houses of Parliament and it ceases to operate at the expiry of six weeks from the reassembly of Parliament or if before the expiry of that period resolutions disapproving it are passed by both Houses. In the absence of an express authority in the Constitution, it is deemed to be an inherent power of the Chief Executive to issue Ordinances. In countries with a monarchical form of government, the Ordinance issuing power is considered a part of the royal prerogative, unless there is a constitutional or statutory limitation to it. This device of legislation has still more enhanced the legislative powers of the executive.



The increased range of activities of the State has forced Parliaments, during recent years, to delegate wide legislative powers to the executive. The legislative delegation of authority may be effected in various ways. For example, in Britain Parliament may legislate in general terms on some question and leave one of the departments to work out the detailed regulations necessary to give effect to the statute. It may also merely empower a department to make rules with regard to a specified matter. Rules, Regulations, and Orders so made are known as delegated or subordinate legislation and have the force of law. They are declared unconstitutional only if they offend against the parent law.

Delegated legislation is quite inescapable in the context of a modern State and it has significantly added to the powers of the executive. It is also an ideal arrangement for an emergency as it arms the executive with power to take immediate action. The Committee on Ministers' Powers in Britain, while dealing with this aspect, reported: "In a modern State there are many occasions where there is a sudden need for legislative action. For many such needs delegated legislation is the only convenient or even possible remedy." Moreover, delegated legislation enables the Executive to provide for all the unforeseen contingencies arising out of reform without having to return to Parliament for amending acts or for additional powers. Delegated legislation also relieves the pressure on parliamentary time by removing details of administration from Acts of Parliament.

**Judicial Functions.** The right of pardon or clemency is, by common consent, regarded as a natural and necessary part of executive function. This is a semi-judicial function and is justified for various reasons. In the first place, it is intended to correct an error of judgment of the judiciary which cannot be rectified otherwise. Moreover, a judge decides the case on its merits and not on grounds of political expediency. Many persons may be convicted of political offences, but with the lapse of time their detention may become inexpedient. By vesting the executive with the power of pardon, the release of such persons can be ensured.

A very important result of delegated legislation is the emergence of administrative adjudication empowering the executive agencies designated by statutes to hear cases involving particular fields of administrative activity. Finer maintains that "wherever there is administration and law, there is administrative law." The great majority of legislation passed by Parliament of every country and Regulations made thereunder relate to matters of public administration and vest judicial power in the executive to administer the law. Delegated legislation has naturally made the executive more powerful than before. This has evinced a stout protest and Lord Hewart in England reflected the attitude of alarmed jurists in his book, *The New Despotism*, and called to the attention of the public the dangers that he believed to be attendant on this development.

**Other Functions.** The functions enumerated above are usually regarded as essential functions of the executive. But, as stated above, we cannot circumscribe the functions of a modern government. No government can afford to ignore subjects like commerce, education, agriculture, transport, communications, etc. These are beneficent departments and without their proper development it is impossible to promote that atmosphere which helps to advance the welfare of man. Similarly, most of the governments now actually run certain public utility services, and impose statutory restrictions on the production and sale of various commodities. These changes in the province of the State have been

introduced as a result of conscious attempts to bring the economic organisation in conformity to the moral and political ideas. Much has been done to moralise our economic system and "coordination, regulation and control, initiative and encouragement, in many cases ownership, are regarded as essential in these fields; and the departments concerned are little less important in the eyes of the public than the so-called essential or major departments."<sup>5</sup> The scope of the modern State has, in fine, increased enormously and with it have expanded the functions of the executive. Finer has given a matter-of-fact summing up of the enormity of its task. He says that the scope of the State today "hardly fails to envisage any branch of the moral or material sides of human endeavour. The record is written on the roads, the gutters and the buildings and spells what the State has done in order that society may have a modicum of wisdom, protection of persons against criminals and mechanically propelled vehicles, and environmental and personal defence against deadly bacteria. The annual thousands of Rules and Orders, the detailed and present plan of activity of all modern States, reveal how the State concentrates upon each individual and weaves his very impulse into the myriad threaded warp of its existence.... The State is everywhere, it leaves hardly a gap."<sup>6</sup>

**Executive Leadership.** The development of the executive into what may be called a multi-functioning organ is one of the notable features of the modern government. To quote Ernest Barker, "If the growth of the legislative organ, in consequence of the development of the cabinet system, was the notable feature of the eighteenth century, it may be said that the growth of the executive organ, in consequence of the extension of rights and the corresponding extension of services which mostly fall to the lot of the executive, is the most notable feature of the twentieth." For a brief era between the decline of absolute monarchies and the twentieth century, parliamentary supremacy was proclaimed, the functions of the government were limited, and the power of the executive seemed to give way before the "omnipresent hand of Adam Smith which brought economic and political equilibrium." But the normal situation is that the executive leadership is concerned, as Chester Bernard argued in *Functions of the Executive*, with the determination of objectives, the initiation of policy, the manipulation of the means, control over the instruments of action, and stimulation of coordinated action.

The core of political power in modern systems, both developed and developing, lies in the executive organ of government and the administration it serves. Its legislative leadership is unchallengeable both in Parliamentary and Presidential patterns. It initiates, guides and pilots legislation in a Parliamentary government. When Cabinet has determined on a policy, the appropriate ministry or department carries it out either by administrative action within the framework of the existing law or submits a new bill to Parliament so as to change the law for the effective implementation of the new policy. Legislation is the handmaid of administration and Cabinet is the instrument which directs Parliament to action in a certain way and so long as it can command a majority in Parliament it gets the necessary approval. We cannot make a vivid distinction between legislation and administration. "In modern State," writes Jennings, "most legislation is directed towards

5. Gilchrist, R.N., *Principles of Political Science*, p. 316.

6. Finer, H., *The Theory and Practice of Modern Government*, p. 1165.



## The Judiciary

**Importance of Judiciary.** The administration of justice, the chief task of the judiciary, comprises the third organ of the governmental machinery. The welfare of citizens greatly depends upon speedy and impartial justice. James Bryce has aptly remarked that there is no better test of the excellence of a government than the efficiency of its judicial system. The judiciary is the guardian of the rights of man and it protects these rights from all possibilities of individual and public encroachments. The feeling in an average citizen that he can rely on the certain and prompt administration of justice maximizes his liberty. If there is no adequate provision for the administration of justice, the liberty of the people is jeopardized, for there is no definite means which should ascertain and decide rights, punish crimes, and protect the innocent from injury and usurpation. "If the law be dishonestly administered," says Bryce, "the salt has lost its flavour; if it be weakly and fitfully enforced, the guarantees or order fail, for it is more by the certainty than by the severity of punishment that offenders are repressed. If the lamp of justice goes out in darkness, how great is that darkness."<sup>1</sup>

In ancient polity the executive and the judicial functions were combined. The early monarch was the fountain of justice. But it afterwards came to be realized that justice could not be secured if the judicial and executive functions were combined in one person. Historically, the concentration of power to interpret and administer in the same hands has always been associated with tyranny.<sup>2</sup> Every citizen needs the amplest protection against the danger of a capricious interpretation of law. The modern State is, accordingly, inconceivable without a separate judicial organ functioning independently and impartially.

**Principles of modern justice.** Such being the importance of the judiciary, it is necessary to know some basic principles of almost universal application on which modern justice rests. The first, of course, is that there is in every State one judicial system, and one law, both the creation of the State, and administered by judges and other officials appointed for that purpose. Every member of the community is subject to that law, and is entitled to its protection. It means that law must apply to all men as men and equal protection of life for everyone under the law, and equal penalties for everyone violating it. Justice must, therefore, be administered strictly according to law and no one may be

1. Bryce, J., *Modern Democracies*, Vol. II, p. 284.

2. Laski, H.J., *A Grammar of Politics*, p. 129.

punished for any offence, which the law does not consider an offence. Punishment must only be what the law prescribes for a particular offence and it must always remain the same for the same kind of offence. The object of punishment is not vengeance, but the protection of society from the criminal and those who may imitate him. Also independence of the judiciary is practically a universally accepted principle of modern justice. It is a crime for the judges to receive "a bribe or for anybody to offer them one, or to threaten them, or bring any kind of pressure to bear on them. It is also wrong for the government to interfere, by trying to secure condemnation or acquittals; verdicts must be given in accordance with the facts and with the law governing the case, and not to suit the desires of politicians or other influential persons."<sup>3</sup> This means that in modern civilised life the character, means and methods of justice raise or debase a nation in the estimation of other people. Laski expresses the same idea rather emphatically when he says, "When we know how a nation-State dispenses justice, we know with some exactness the moral character to which it can pretend." Sidgwick, too, had said that "in determining a nation's rank in political civilisation, no test is more decisive than the degree in which justice, as defined by law, is actually realised in its judicial administration, both as between one private citizen and another, and as between private citizens and members of the government."<sup>4</sup>

**Functions of the Judiciary.** Administration of justice is, thus, the chief function of the judiciary. Courts are agencies for the decision of disputes between individuals, and between them and the State, and for the trial of persons accused of crime. But while deciding disputes and punishing criminals, courts do a number of important things beyond the settlement of controversies. The first thing that the courts do is to investigate and determine facts. In the greater majority of cases coming before courts, whether civil or criminal, the law involved is clear and no legal issue is presented. The function of courts in all such cases is simply to determine facts according to the recognised procedure. The procedure is that the parties involved in the case produce evidence. Evidence consists of oral or written statements of witnesses. With the facts determined, the next step is to apply the existing law to such facts and render decisions. To a judge it is a matter of no importance whether, in his opinion, the law is good or bad, just or unjust. He is to accept the law as it is and apply it to the ascertained facts. A judge is, therefore, the interpreter of law.

But it may happen, as it does frequently, that the existing law may be ambiguous and it may be so worded that it is difficult to determine its exact meaning, or that with constantly changing conditions, issues are presented which were not considered when the laws were made or the existing laws may be inconsistent with each other and doubt may exist in respect of which two provisions or which of two laws, should govern in a particular case. It is here that the courts have the very important function of determining what law is, what is its scope and meaning, and when there is an apparent conflict between different laws, which shall prevail. Judges weigh the merits of the case and are guided in their decisions by the principles of justice, equity and commonsense. And in doing so, they set precedents to be applied and followed by others in similar or analogous

3. *Ibid.*, p. 542.

4. Sidgwick, H., *Elements of Politics*, p. 431.



cases. Under the doctrine of what is known as *stare decisis* (the matter has been decided) a legal principle enunciated in a decision made by a court, is deemed to be of a controlling force in similar or analogous cases thereafter arising. Dicey observed, "The adherence by our judges to precedent, that is their habit of deciding one case in accordance with the principle, or supposed principle, which governed a former case, lends inevitably to the gradual formation by the courts of fixed rules for decision, which are in effect laws." Apart from removing ambiguities in the law and filling in the gaps, the judges adopt and recognise customs, and give them the decisive support of the public power. Here the judges act in a quasi-legislative capacity and judge-made law is an important feature of the judicial system in Britain, the United States, India, and many other countries. The judges are, thus, interpreters of law as well as law-makers and a large volume of law is made up of 'judge-made' laws.

There is yet another way in which the courts can, and to a certain extent do, participate in the determination of law. This consists in the duty, which the constitution may impose upon judges of the Supreme Court of a country, to give advisory opinions. The Constitution of India confers on the President the power to refer to the Supreme Court any question of law or fact which, in his opinion, is of public importance. He may refer such a question not only where it has actually arisen, but also where it appears to the President that it is likely to arise. The President can refer to the Supreme Court whether a proposed bill will be *intra vires* of the legislature or not. Similarly, the Canadian Supreme Court Act, 1906, authorises the Governor-General to refer important questions of law and fact and obtain the opinion of the Supreme Court. Some of the American States impose a duty upon Justices of their Supreme Courts to give advisory opinions on legislative proposals, whenever the legislatures may feel grave doubts concerning their constitutionality. In all such cases the judges participate in the determination of law, as the advice asked from the courts may have considerable influence in the creation of law. In some countries a more formal pronouncement of a court, known as a declaratory judgment, may become a device of lawmaking. Here the chief purpose is to secure a clarification of the law and the courts set forth what the law requires, when parties solicit such opinions, without compelling them to go to the expense of litigation. The opinion rendered is binding, not advisory. Declaratory judgments have been used increasingly since 1900 by British Courts and in the United States since 1920.

Another function performed by courts is that of preventing infractions of law and the violation of rights. Originally, courts had no such function. But gradually courts in Britain and the United States took the position that it was not necessary that private parties should wait until their rights had been actually violated before they could appeal to the courts for protection. If such persons had sufficient reasons to believe that attempts would be made to violate their rights, they could appeal to the courts and the courts would issue orders prohibiting such attempts or at least restraining their commission until the rights of the parties were determined. The orders so issued are known as "restraining orders" or "injunctions." If the authority to which such orders are issued disobeyed them, the courts have the power to punish for contempt. In the beginning courts exercised this

5. Dicey, A.V., *Law of the Constitution*, p. 60.

power rather arbitrarily and it had been the cause of a good deal of criticism. Now legislation determining the power of courts to issue injunctions and for punishment for contempt has been enacted in most countries.

The judiciary is also the guardian of a federal constitution. In a federation, the constitution delimits the jurisdiction of the various branches of government. Neither the Central Government nor the federating units can pass legislation which is contrary to the prescriptions of the constitution. This necessitates the presence of an agency entrusted with the function of deciding whether the ordinary legislature has transgressed the provisions of the constitution and it is *prima facie* a strictly judicial function. In some countries their constitutions specifically provide for such a court competent to declare a law passed by the legislature as *ultra vires*. In States where such a constitutional provision is not made, it is assumed that it is inherent in or incidental to the judicial power to question the validity of any law duly made by the legislature. The Constitution of India empowers the Supreme Court to interpret the Constitution (Article 132/147), declare the law (Article 141), and enforce the limitations of the rule of distribution of legislative powers between Parliament and the state legislatures, and other constitutional limitations, for instance, prohibition against enactment of laws in derogation of the Fundamental Rights as enshrined in Part III of the Constitution. This was amplified to the clearest extent in *A.K. Gopalan v. The State of Madras*.

There is no direct authority in the Constitution which empowers the United States Supreme Court to declare the constitutionality or otherwise of federal or states acts. Chief Justice Marshall decided in *Marbury v. Madison* (1803) that the courts had the inherent right to declare the actions of Congress and the executive invalid. In 1810 the case of *Fletcher v. Peck* extended the power of judicial review to the acts of state legislatures, and in 1819 the *Dartmouth College* case put contracts anywhere in the country under federal protection. Since then judicial review has been the prerogative of all courts from the highest to the lowest. Even a Justice of the Peace may exercise this authority in proper cases, although his decision will be certainly appealed against.

Judicial review is, therefore, a term to describe the power of courts to declare acts of legislature or executive of no effect and consequently, invalid if they are found to be in conflict with the Constitution. Summing up this power of the courts, Harold R. Bruce says, "Judicial review is 'a rights protecting service' rendered by the courts—to protect personal rights against legislative and executive action, states' rights against national action, national rights against state action, and the respective rights of executive and legislative bodies—as these various rights are held to exist under the national constitution. It is a virtual necessity in governments having a written constitution, federal division of powers, agencies of limited powers, and guaranteed personal rights."

The power of judicial review has been subjected to serious criticism. The critics maintain that the courts have expanded their authority by this process to such an extent that they have become non-elective superlegislatures. Carl Friedrich says that "The institution of judicial review substitutes the judgment of judges for the judgment of elective representatives of the people whenever doubts exist regarding the full meaning of a constitutional provision." The judges while giving decisions, and in whatever legal dress such decisions are clothed, it is contended, render political decisions. They do not



confine themselves to such legal questions as the limits of the federal or state jurisdiction or the carrying out of legal regulations which are essential to make due process of law (in the United States), but they discuss the advisability of legislation and its conformity to the law of reason. The law of reason and essential justice are what the temperaments, characteristic attitudes and views of the judges are. It is further maintained that all such decisions had come forth with five to four majority in the United States and six to five hitherto in India. The Forty-second Amendment to the Constitution of India fixed the minimum number of seven Judges of the Supreme Court for determining any question of constitutional validity of Central and state laws. No law could be declared invalid unless two-thirds of such Judges held it to be constitutionally invalid (nullified by the Forty-third Amendment). There is much truth in the claim of Chief Justice Hughes of the Supreme Court of the United States that "we are under the Constitution but the Constitution is what the judges say it is." Justice Frankfurter expressed it rather bluntly when he said that "The Supreme Court is the Constitution."

Despite such a severe criticism, judicial review is the "balancing wheel" of the constitution. Judicial interpretation neutralises and rationalises and, thus, balances the various interests and groups in the community. This is a wholesome sign of the strengthening of constitutionalism. No other "constitutional jury than such a judiciary will be sufficiently neutral and detached to exercise effectively the function of the guardian of the constitution." Justice Holmes of the United States made a beautiful statement of the deeper insight into the function of courts and judicial interpretation. He wrote in his famous treatise on the *Common Law*: "The life of law has not been logic; it has been experience. They felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellowmen, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been and what it tends to become."

But with the emergence of the Welfare State the role of the judiciary has become arduous. Human liberty and human progress function not in isolation or antithesis but in synthesis and the law has to reconcile the two concepts. Individual rights must, accordingly, be defined in the context of public purpose, social utility and personal and social development. At times property rights are given precedence over the public good. The letter of the law may ordain so, but it may be flagrant violation of the spirit of the constitution. Chief Justice Gajendragadkar, of the Supreme Court of India, while delivering the Feroze Gandhi Memorial Lecture in New Delhi (1964), observed: "If the judicature is the custodian of the Fundamental Rights of the citizens, it is also the interpreter of socio-economic philosophy underlying the welfare laws."<sup>6</sup> The judges must realise that the constitution is a living document meant for the welfare of living human beings. Its words, therefore, must not be interpreted in a static manner or in the strict dictionary sense, if the constitution is to endure long.

6. *The Indian Express*, New Delhi, September 10, 1964.

Judges may be called upon to conduct a judicial enquiry into some serious incidents resulting from the alleged errors of commission or omission on the part of some public servants or agents of the government. A Committee or a Commission, presided over by a Judge, may also be appointed to enquire into some important and complicated matters which require thorough investigation. The Commission may even consist of a single judge as in the case of the Life Insurance Corporation of India, or the Commission, known as Das Commission, to enquire into the allegations made to the President against the Punjab Chief Minister, Pratap Singh Kairon. A similar enquiry was held against the former Chief Minister of Jammu and Kashmir, Bakshi Ghulam Mohammad. The Sarkaria Commission enquired into the alleged charges of corruption against the former Tamil Nadu Chief Minister M. Karunanidhi and some of his other colleagues in the Government. The demand for judicial commissions of enquiry is much too frequent in India and the people are so vocal as to make the demand even on a minor affair or even when there exists no cause for it.

The judiciary may also perform a variety of miscellaneous functions. Strictly speaking, these functions are not essentially judicial in character, but have been assigned to the courts as a matter of economy and convenience. In many cases where the ownership, use or rights, in property are in dispute, courts will take over the administration of such property pending the final settlement. This occurs in the settlement of the estates of deceased persons, and where corporations have failed to live up to their financial obligations. In these cases the court appoints a receiver or administrator to take over the property and administer it subject to its orders. In the case of minors, the court appoints guardians and trustees.

In a number of other ways courts at times perform functions of an administrative character, for example, granting of licences, naturalization of aliens, performance of marriage ceremonies and appointing certain officials.

### INDEPENDENCE OF THE JUDICIARY

**Need for Independent Judiciary.** Justice is considered to be one of the divine attributes and a judge is described as a blindfolded person who holds the scales of justice, which he administers even-handed. In ancient times the function of the judge was vested in the priest. Though in the modern States religion has nothing to do with the machinery of government, except for Islamic countries, yet the sanctity attached to the office of a judge remains unchanged. The functions of a judge are multifarious and arduous. Howsoever just and sound the laws be, unless they are applied by an upright, honest and impartial authority, citizens cannot secure justice. The judges should, accordingly, be men of keen intellect, high legal acumen, integrity, dignity, and independence of judgment. If they lack wisdom, probity, and freedom of decision, the high purposes for which the judiciary is established cannot be secured. Bacon had succinctly said that there was no worse torture than the torture of laws. The torture of law can only be removed or mitigated when judges who apply and interpret the law are independent and impartial. Impartiality and independence go together. By the independence of the judiciary we mean that judges should exercise unfettered discretion in the interpretation of laws and administration of



justice, and they should remain uninfluenced in the discharge of their duties. The maintenance of the independence and impartiality of the judiciary both in letter and spirit is the basic condition of the Rule of Law and, as such, that of the liberty of the people, and human progress.

An independent judiciary is as much the need of a popular government as it is that of governments of an autocratic character. In the latter, it is essential to protect the people against the arbitrary interference and oppression of one single person, and in the former it is essential to protect the minorities against the tyranny of the majority and uphold the rights of the people. Truly speaking, no tyranny is so great as that of a majority and a people establishing a popular government had never been oblivious of this. They devised means to avoid this danger and entrusted to the courts the duty of seeing that no branch of government exceeded its powers and that no temporary majority shall infringe the rights of the minority. This point was most cogently explained by President Taft of the United States in his address on the "Judiciary and Progress." He said, "But the judiciary are not representative in any such sense, whether appointed or elected. The moment they assume their duties they must enforce the law as they find it. They must not only interpret or enforce valid enactments of the legislature according to its intention, but when the legislature in its enactments has transgressed the limitations set upon its powers in the constitution the judicial branch of government must enforce the fundamental and higher law by annulling and declaring invalid the offending legislative enactment. Then, the judges are to decide between individuals on principles of right and justice. The great body of the law is unwritten, determined by precedent, and founded on the eternal principles of right and morality. This the courts have to declare and enforce. As between the individual and the State, as between the majority and the minority, as between the powerful and the weak, financially, politically, or socially, courts must hold an even hand and give judgment without fear or favour. In so doing they are performing a governmental function, but it is a complete misunderstanding of our form of government or any kind of government that exalts justice and righteousness to assume that judges are bound to follow the will of the majority of an electorate in respect of the issue of their decision."<sup>7</sup> The judges must, accordingly, do everything possible to create confidence among the people in the purity, fairness and impartiality of the administration of justice.

The need for independence of the judiciary has acquired an added dimension. Under modern conditions of the Welfare State the more modern government interferes, administers, and regulates, the more urgent is the need to preserve a check on the way these activities affect individuals and groups. The helplessness of the individual in the absence of such control is all too obvious in systems where the judiciary is either dependent or powerless. The courts must, therefore, be separate, independent agencies, bound by their own rules of procedure and determining cases according to publicly known law.

The factors which ensure independence of the judiciary and enable judges to fearlessly discharge their duties are the following:

**Mode of Appointment of Judges.** Since judicial decisions demand mature judgment.

7. As cited in W.F. Willoughby's *The Government of Modern States*, pp. 433-34.

knowledge of contemporary social and economic conditions, thorough knowledge of law, and the highest personal integrity with ability to be impartial and non-partisan, it is prerequisite that judges should be selected by some method which will emphasise these qualities and minimize political considerations. There is a wide variation of opinion as to the method by which a merited selection can be made.

Three methods of appointing judges are followed in practice: (a) election by the legislature; (b) election by the people; and (c) appointment by the executive. Election by the legislature is not a common and accredited method of appointing judges, because this system is a violation of the principle of the Separation of Powers. But more importantly, it makes the judiciary subservient to the legislature. Moreover, election by the legislature means election of party candidates. When party affinities intervene in the selection of judges, merit is discounted and independence of the judiciary disappears. Such party election encourages a type of judge far removed from the ideal of fairness and reasonableness which judicial decisions demand.

The system of popular election of judges was first introduced in France in conformity to the theories of popular sovereignty and the Separation of Powers. It now prevails in some of the Cantons of Switzerland, and in a few states of the United States of America. But popular election of judges is even more objectionable than election by the legislature. "Of all the methods of appointment," says Laski, "that of election by the people at large is without exception the worst."<sup>8</sup> Popularly elected judges can never be impartial, honest, independent and dignified. Popular election means party election and judges so chosen become subject to popular passion and prejudice. It tends to lower the character of the judiciary. The position becomes still worse when judges are elected for short periods. The desire to court popularity is a temptation few will be able to resist when their re-election is dependent on their popularity. This would create a strong temptation in judges to tailor their judicial decisions and, indeed, their whole judicial conduct in such a way as to meet the approval of those to whom they have to look for re-election. The voters, too, are not in a position to equitably weigh the qualities which a judge should necessarily possess. Moreover, candidates for judicial offices make frequently poor candidates. They cannot possibly put before the electorate either a programme or a personal plea concerning their judicial conduct. The result is that a politician becomes a judge whose entire outlook is partisan, and there can be no independence of the judiciary.

The appointment of judges by the executive is the most common and the best available method of choice, and it is in practice in nearly all countries of the world. It is claimed that the executive is the most appropriate agency to judge the qualities necessary for a judicial office. Judges chosen by the executive are likely to be independent of popular influence and political or sectional considerations. The opponents of this method contend that personal favouritism and political consideration may determine the appointments and instances are cited from Britain, the United States and India. It is maintained that often the appointees are those who had an active political career than a judicial one before their appointment as was the case with Chief Justice Warren, former Governor of California. Laski did not consider simple nomination by the executive as an adequate system. He

8. Laski, H. J., *A Grammar of Politics*, p. 545.



suggested that all judicial appointments should be made "on the recommendation of the Minister of Justice, with the consent of a standing committee of the judges, which would represent all sides of their work."<sup>9</sup> This method, no doubt, represents the best guarantee we could have that appointments are made consistent with the qualities essential in a judicial officer. In Britain, and many countries in the Commonwealth of Nations, the judiciary is generally selected from among practising lawyers. On the Continent of Europe, where court systems are unified under the Ministry of Justice, the judiciary is a career. The entrants are selected as a result of competitive examination and are promoted from court to court. In India, too, recruitment to the subordinate courts is through a competitive examination whereas in the case of courts above, it is according to the method as prescribed in the Constitution, but the appointing authority is the executive.

**Judicial Tenure.** The judicial tenure is as important as the method of appointment in securing the independence and impartiality of judges. The most common judicial tenure is during good behaviour, with compulsory retirement at a definite age. In most of the Swiss Cantons and some of the States of America, where judges are popularly elected, there are short terms of tenure subject to re-election. But popular election of judges and their short tenures are not politic as they tend to rob the judge of their independence. Freedom and independence are best secured by long tenures. Judges appointed for short terms are likely to abuse their position. They would make the best of their short term disregarding all canons of justice and even the principles of decency. Good behaviour till the age of retirement is, therefore, the method which is the best and is now generally recommended and followed. "The standard of good behaviour for the continuance in office of the judicial magistracy," said Hamilton, "is certainly one of the most valuable of the modern improvements in the practice of government. In a monarchy, it is an excellent barrier to the despotism of the prince; in a republic, it is no less excellent barrier to the encroachments and oppressions of the representative body. And it is the best expedient which can be devised in any government to secure a steady, upright and impartial administration of the laws."<sup>10</sup> Finally, a good-behaviour tenure is necessary to secure full minute and mature knowledge of law and judicial precedents which constitute one of the most important sources of strength in the judicial office. In the course of a long and uninterrupted judicial career, a judge can and does acquire a complete knowledge of precedents, the nature and operation of laws as in other countries, of the psychology that determines human conduct and the social and economic changes which characterise a dynamic society. To understand man and the principles on which law is built is as important as to know the law itself. This obviously cannot be gained by one whose tenure is brief and precarious.

**Removal of Judges.** Good-behaviour tenure involves the question of removal of judges from office. In all States a provision is made for the removal of corrupt and inefficient judges. But it must be a difficult process so as to obviate the abuse of power and its capricious operation. If the tenure of a judge is to depend upon the pleasure of a particular person or agency, neither independence nor impartiality can be ensured.

9. *Ibid.*, p. 548.

10. As quoted in J.W. Garner's *Political Science and Government*, p. 800.

because the slightest ill-will incurred by a judge may result in the termination of his services. It is, therefore, deemed desirable that the process of removal of a judge from his office should involve much consideration and should pass through the hands of more than one person or agencies. In Great Britain, a Judge can be removed by the King on a joint address by Parliament indicting him for corruption or moral turpitude. In the United States, the Judges of the Supreme Court are removed by impeachment. The process of impeachment is that the House of Representatives prefers the charges and the trial is held by the Senate. In India, judges held office, before 1947, during the pleasure of the Crown. Judges of the Federal Court and of High Courts were removed from office by the Crown for misbehaviour or infirmity, on a report of the Judicial Committee of the Privy Council. The Constitution of India (1950) provides that a judge of the Supreme Court and of a High Court shall be removed from office by an order of the President after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.<sup>11</sup> A difficult method of removal, where more than one agencies intervene, ensures security of office and it is one of the most important factors responsible for the impartiality of the majority party. But in countries where the system of recall exists, the independence and dignity of the judiciary has considerably deteriorated. Judges become plaything of the people and their vagaries. This method is also opposed for the same reasons for which popular election of Judges is deemed unwise.

**Salaries of Judges.** Next to permanency of office nothing contributes more to the independence of the judiciary than a fixed and adequate salary. It was judiciously remarked by Hamilton that "in general course of human nature a power over a man's subsistence amounts to a power over his will." To give to Judges courage and firmness in the dispensation of justice, it is necessary that they should be confident of the security and adequacy of their salaries. The salary must be paid regularly and it should be sufficient enough to befit the status of a Judge. Low-paid Judges are very often ill-behaved and susceptible to corruption and bribery. Finally, the salaries should not be alterable during their tenure of office. When in 1931, a special law was passed in Britain to enable the salaries of all government servants, from the Prime Minister downwards, to be reduced as an economy measure, the Judges protested against their inclusion as involving an encroachment upon their absolute independence. The salaries of the Judges of the Supreme Court and High Courts in India are specified in the Constitution. But the President has the power to reduce their salaries during the continuance of the Proclamation of Financial Emergency under Article 360(4) (b).

Apart from the adequacy of salary, it is equally essential that the conditions of service of the Judges should be such as to ensure their independence and impartiality. and are consistent with the dignity of the office that they hold. They should be in receipt of handsome allowances as permissible under rules and be in the enjoyment of other amenities. Their allowances and other privileges should not be altered to their disadvantage during

11. Article 124 (4).



the tenure of their office. Their postings and transfers must not be subject to the vagaries of the executive, if they are to perform their duties with dignity, integrity and efficiency. And above all, the fear of tomorrow must not haunt them. There should exist a specific provision for payment of adequate pension after retirement or retirement compensation. Rules framed regarding termination of their services and removal from office should be such as to protect them against any kind of arbitrary action.

**Qualifications of Judges.** "The importance of the judiciary in political construction," to quote Sidgwick again, "is rather profound than prominent... in determining a nation's rank in political civilisation, no test is more decisive than the degree in which justice, as defined by the law, is actually realised in its judicial administration..."<sup>12</sup> The men who are to make justice in the courts must be legal luminaries, learned and skilled in their profession. An incompetent judge, not fully conversant with legal niceties and technicalities, is sure to taint the eminence of the judiciary. It is, again, essential that a judge must be reputed for his impartiality and independent views and he scrupulously avoids straying in politics. The strength of the administration of justice depends upon gaining the confidence of the public in general and the litigant public in particular. All these qualifications can best be secured if Judges are selected from the bar; those who have spent their life in the legal profession and have specially prepared themselves for the difficult task of knowing and interpreting law.

**Separation of Judicial Functions.** It is highly desirable that the judicial and executive functions should be distinct and separate from each other. The same person should not be a prosecutor as well as a judge. If both these functions are combined in the same person, there cannot be justice worth its name. If the prosecutor sits also as a judge there is abuse of judicial authority and capricious administration of justice. The most familiar example in this respect was that of the Deputy Commissioner-cum-District Magistrate in pre-Independent India, who combined the executive and the judicial functions. It is a well recognised complaint that there can be neither independence nor impartiality of the judiciary under such a system. The subordinate magistrates could not go against the wishes of the District Magistrate who was also the executive authority in the district. They decided cases, very often, as the District Magistrate expected them to do. Sir Harvey Adamson, at one time Home Member of the Government of India, pointed out that "the exercise of executive control over the subordinate Magistrates by whom the great bulk of criminal cases are tried is the point where the present system is defective. If the control is exercised by the officer who is responsible for the peace of the district there is the constant danger that the subordinate Magistracy may be unconsciously guided by other than purely judicial consideration." Many States in India have now separated judicial and executive functions but there still remains much to be achieved. The Directive Principles of State Policy, as embodied in the Constitution, enjoin the separation of both these organs of government in order to ensure justice and as a safeguard against encroachments on the rights and liberties of the people.

**Committed Judiciary.** Judiciary in the former USSR was an arm of the administration and not an independent branch of the government. The Courts there functioned as part

12. Sidgwick, H., *Elements of Politics*, p. 481.

of the political machinery "for guidance, and it has to be ensured", as Polyansky wrote, "by appropriate means that they are truly instruments of the policy of the Communist Party and the Soviet Government...The Party's decisions have absolute binding force for all the State officials, and, therefore, for the judiciary also." In 1967 a clamour was heard in India for a committed judiciary; the type obtainable in the erstwhile USSR and other countries having the same political system. The advocates of committed judiciary wanted from the Judges conformity with the political philosophy of the party in power, if not with their policies and programmes. This meant to appoint persons as Judges who would interpret law in the light of the ideology of the ruling party, and it was only a short step from asking the Judges to decide cases according to the wishes of that political party.

The object of the Constitution framers of India was to keep the politicians off the Bench and to ensure the independence of the judiciary and to enable the Judges to discharge their duties impartially necessary safeguards were provided into the document. But the concept of committed judiciary wanted politicians to reach the Bench. It is difficult to imagine a more dangerous trend in a democratic set-up. It is fraught with the gravest danger to individual liberty and society, if the Judges cloud their judgment with the ideology of the political party in office. A Judge must dispense justice unaffected by the political changes in the moods of the people. The pattern and conception of justice cannot change every time a government changes. Tinkering with judiciary by appointing committed Judges, on political basis, would mean the end of the Rule of Law and the democratic way of life.





# Forms of Government

**Forms of State and Government.** Some writers on Political Science classify the forms of government as the forms of the State. But this is wrong. There can be no forms of the State. All States are alike in their nature and all combine the same essential elements—population, territory, organisation and unity or sovereignty. Differences in population and territory do not make any difference in their status of Statehood. A distinction is sometimes made between a City-State, a nation-State, and a world empire. But this distinction has no practical value in Political Science, for the classification of States on the basis of territory and population is a mere historical description, and a fallacy coming down from Aristotle's time when no distinction was made between the State and government. To classify States on the basis of unity or sovereignty is also impossible. All States are sovereign and all sovereign States are equal. It is, therefore, illogical to classify equals.

But States do differ in their organisation. The organisation of the State is its government and it is through the instrument of the government that the State formulates, expresses, and realises its purposes. The purpose of every State is the same, the well-being of its people, and the form of government is the expression of the way in which the purpose of the State is to be realised. This involves the problem of determining: in whose hands is vested the legal authority of the State, to what extent is actual use made of it, what are the instrumentalities of organs employed in its use, and what rules and procedure are followed by such organs in performing their functions? These differences are wide from State to State and matter a good deal in differentiating the organisation of one State from another. The form of government is, therefore, the actual basis of division.



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## 14

## CHAPTER

## Forms of Government (Contd.)

## UNITARY AND FEDERAL GOVERNMENTS

The State is unity and a like quality attaches to its government as well. But the term government is also used for its various levels of administration and the contemporary use of the term extends to the internal "government" of various corporations, groups and associations and all these "governments", its innovators claim, operate in response to forces that it seems natural to call political. It would appear from such a use as if there could exist within the State a number of governments at the same time. But it is not so. It may be called a traditional approach, but in the real sense there can be no government within a government. What seem to be separate governments are in reality parts of one governmental system. They all form parts of one integrated governmental organisation. This point is important to grasp for proper appreciation of the distribution of powers among its different levels of administration and the character of the governmental system resulting therefrom. The conventional use of the term for all levels of administrations however, is universally accepted and practised. All the same, its use for the internal management of corporations, associations and groups is likely to cause confusion and even ambiguity in properly understanding the operative part of the machinery of the State.

Though a State can have but one government, yet such is the extent of territory over which many modern States exercise jurisdiction and so numerous and varied are their functions that it is impossible for any single authority to do its work from one single centre. Then, it is not only the problem of doing the work. It must be done effectively and efficiently. It is, therefore, imperative that the sum total of governmental powers should be split up and distributed among different organs and authorities, and, together, they should all constitute one harmonious scheme for the administration of public affairs.

**Territorial and Functional Division.** There are two methods of dividing governmental powers, territorial and functional. The territorial division of powers seeks to divide the territory of the State into a number of distinct divisions and sub-divisions each of which is charged with the performance of certain governmental functions within its boundaries and is provided with a machinery of governance for that purpose. The result of such territorial divisions and sub-divisions is the existence of national government and a series of local authorities. The functional method is that where the distribution among particular



organs or authorities is made in accordance with the character of the functions to be performed. These two are not alternate methods. Both are used in the organisation of all modern governments, but differently, this leads to different characters of the resulting governmental systems.

**Division on Territorial Basis.** The desirability of distribution of governmental powers among territorial units results not only from the extent of the territory of modern States, but also from the fact that many functions of government affect exclusively, or primarily, the interests of particular localities rather than the country as a whole. It does not, however, mean that one single central authority cannot perform these functions. But if it does, the burden of work and responsibility would be too heavy for effective and efficient administration. It would also result in intolerable expense and delay. Moreover, it is politic to entrust the smaller communities with the affairs that concern them alone, because of the presumption that the people belonging to a particular locality can best know and appreciate their needs. Besides, it gives to a larger number of persons an interest and share in political affairs. "We cannot realise the full benefit of democratic government," says Laski, "unless we begin by the admission that all problems are not central problems, and the results of problems not central in their incidence require decision at the place, and by the persons, where and by whom the incidence is most deeply felt."

The system of territorial sub-division is essentially similar in all modern States. First, for certain purposes which are vital to the life of the nation, the entire country is treated as one political unit and the organisation managing all such affairs is called the Central or National government. Next, the country is divided into a relatively small number of important divisions, variously designated as constituent States, Provinces, and Cantons, etc., with a complete governmental organisation of their own. These grand divisions are, in their turn, further sub-divided into smaller areas known as Districts, Countries, Townships, Communes, etc., each also having its political organisation. Further sub-divisions, if there are any, are usually of a purely administrative character. In addition, all States recognise that urban and rural areas present different problems of government and, consequently, grant to them distinct political organisations for the performance of the governmental duties specially affecting their peculiar interests.

**Analysis of the Problem.** But the real problem is that of determining how the sum total of governmental powers shall be distributed territorially. If we analyse this problem, it will be found that in it are involved four distinct questions: (1) What authority shall decide the distribution of powers? (2) What shall be the geographical system of division into different political units? (3) What shall be the powers of the government of each territorial unit? (4) What shall be the type of governmental organization in each territorial unit?

For a student of Political Science the first of these four questions, viz., what authority has the legal right to determine the distribution of governmental power among the different territorial units, is much the most important, for its decision determines the character of the resulting governmental system.

**Two Types of Government—Unitary and Federal.** Two systems are found in modern States with two types of resulting governments, unitary and federal. A unitary government

is a single integrated system of government for the exercise of all powers. The legal sovereign confers all the powers of government in the first instance upon a single central government. The central government may exercise all these powers by itself or create political sub-divisions and delegate to them such powers as it may deem wise to delegate. The central government is competent to change their boundaries as well as powers at its pleasure, by ordinary legislative enactment. A federal government, on the other hand, is a system of government in which powers are divided and distributed between the central government and governments of political divisions. Both sets of governments exercise powers granted to them by the Constitution and are, within a sphere, coordinate and independent, that is, both are free and autonomous within the spheres assigned to them by the Constitution and neither is helplessly dependent on the other for its existence and proper functioning. It means equality of status between the two sets of government; the one is not simply the creation of the other. Both, the national government and the regional governments, enjoy a juridical status and a corporate personality.

**Unitary System.** Britain, France, Italy, Belgium, Japan, Afghanistan, Iran, and many other countries have unitary governments. There is one integrated system of government and the supreme power belongs to the central government. For administrative convenience and other considerations the country may be divided into political divisions of different categories, but all authority flows from the central government. These sub-divisions have no original existence of their own. They are the creation of the central government and may be altered at its will. The power exercised by them is only a delegated and subordinate authority which can be increased, diminished or withdrawn at the discretion of the central government. The sub-divisions are, therefore, the agents of the central government and whatever autonomy or governmental competence may have been conceded to them, exists by sufferance rather than by constitutional guarantee.

The real point to know is the authority by which such areas are established and their powers and governmental organisation determined. Britain allows maximum autonomy to her local areas, but they are the creatures of Parliament and all such powers are determined and derived from the Acts of Parliament and can be enlarged or restricted at the will of the government at London. Whitehall also exercises considerable administrative control over all such areas and, as Ogg sums up: "All told however, central control is both wide and deep; not only so, but it is steadily penetrating to new phases and levels."<sup>1</sup>

France is divided into administrative units called "Departments" which are divided into cantons, *arrondissements*, and communes, each having its organs for local administration. But general opinion is that it is almost misleading to talk about local government in France.<sup>2</sup> Centralization is the essence of French local government—"Centralization raised to a superlative degree. All authority converges inward and upward."<sup>3</sup> The local organs are merely agents of the central government. From the communes to the Ministry of Interior the administration is linked up in one chain. The Minister of the Interior just "presses a button—the prefects, sub-prefects and mayors do

1. Ogg, F.A., *English Government and Politics*. p. 366.

2. *Ibid.*, p. 583.

3. Munro, W.B., *The Governments of Europe*, p. 566.



the rest. All the wires run to Paris." Ogg and Zink give a matter of fact summing up of the nature of local government in France. They say, "Not only are there no constitutionally separate spheres of governmental authority, there is really one government, functioning equally through Ministers and Parliament at Paris and prefects and councils throughout the country at large. Local areas have only governing organs, local bodies only such powers as are given to them by national law. All of the threads are gathered ultimately in the hands of the central government at Paris. More than this, the entire mechanism of departments, *arrondissements* and communes, heads up at a single ministry at the capital, i.e., Interior."<sup>4</sup>

The Government of India, too, was unitary in character under the Act of 1919. Although the Provinces were given a partial responsible government, called *dyarchy*, and the central and provincial subjects were demarcated, normally allowing the Provinces to legislate on provincial subjects, yet the Government of India was supreme in all affairs of Provincial governments, executive and legislative. The Act of 1919 had vested the superintendence, direction and control of the civil and military government of India in the Governor-General-in-Council who was required to give due obedience to all such orders as he might receive from the Secretary of State for India. The Governor-General had wide powers of assenting to, vetoing, or of reserving for the significance, of His Majesty the King-Emperor, and of returning for further consideration bills passed by the Central Legislature. He could exercise similar powers in relation to bills passed by the Provincial legislatures. The Indian Legislature was competent to make laws for all persons and all things within British India, except that the previous sanction of the Governor-General was necessary for the introduction of any measure regulating any provincial subjects as classified according to the Act of 1919. Similarly, the Central Legislature had the power to repeal or amend any law in force in any part of British India, except that the previous sanction of the Governor-General was necessary for introducing a bill, repealing or amending any Act of a Provincial legislature.

**Merits of Unitary Government.** The unitary type of government represents the most effective type of governmental organisation. The whole problem of the organisation of government is enormously simplified and the system possesses the merit of flexibility. One of the essential features of a good governmental system should be its ability to modify and adjust its organisation, and the manner in which its powers are exercised, as new needs and conditions demand such a change. In a unitary government territorial division of powers is a matter for the government itself to determine; it has, accordingly, full powers to modify its scheme of internal organisation and distribution of powers, as and when need arises.

The outstanding feature of the unitary government, as the name itself implies, is unity. All powers of government are concentrated in the hands of a single set of authorities and all organs of government constitute integral parts of one piece of administrative mechanism. There is uniformity of laws, policy, and administration. All the organs of government can thus be brought to bear directly upon the problems of administration to be solved. There can be no conflict of authority, no conflict or confusion regarding

4. Ogg, F.A. and Zink, H., *Modern Foreign Governments*, p. 583.

responsibility for work to be performed, no over-lapping of jurisdictions, no duplication of work, plant or organization which cannot be immediately adjusted. In the fields of foreign policy and national defence the strength of the centralised government is especially manifest. It exhibits promptness of decision and firmness of action. Unified administration checks centrifugal forces and saves the administration from disruption. The focus of loyalty is not divided; it concentrates at one single point. It, thus, injects a sense of single patriotism and vouches for the unity and integrity of the State. Finally, a unitary government, being simple in organisation, is less expensive. There is no duplication of political institutions.

**Defects of Unitary Government.** The one major defect which can be ascribed to a unitary government is that it tends to repress local initiative, discourages rather than stimulates interest in public affairs, impairs the vitality of local governments, and facilitates the development of centralised bureaucracy. The present-day central governments, it is maintained, have to tackle so many complex problems, national and international, that they have neither the initiative nor the time to devote to local affairs. Local areas cannot, accordingly, progress. But such a criticism will not hold valid once we distinguish between centralization of authority and centralization of the use of this authority. A really centralised government is one in which the central government, instead of making use of agencies to which large powers of discretion are granted, attempts itself directly to administer local affairs. It is in this sense that France, in comparison with other countries, has a highly centralized government, and not because it has adopted a unitary form of government. There is nothing in the unitary form of government which does not permit decentralization in the actual exercise of governmental powers, or the conferring of autonomy or powers of self-government upon political sub-divisions. All the same, unitary government is best suited for small countries which have a geographical unity and which are racially and culturally homogeneous. It does not suit a country with a large territory and huge population consisting of diverse races and cultures, as India and the United States of America. Only a federation can bring unity out of this diversity.

### FEDERAL POLITY

**Federal System.** The term federation is derived from the Latin word *foedus* meaning treaty or agreement. A federal polity comes into existence either as a result of centripetal or centrifugal forces. When hitherto sovereign and independent States, either because they are too weak to resist foreign aggression individually, or because they remain economically backward by standing alone, voluntarily agree to unite, as in union there lies strength, they form a federal union. Such a union comes into existence as a result of centripetal forces. The instrument by which a federation is brought about is of the nature of a treaty or agreement between independent States and the new unit of government, national or central, which they agree to create. A new State is, thus, created to which hitherto sovereign States surrender their sovereignty and agree to become its component parts, known by different names—*States* in the United States, Australia and India, *Provinces* in Canada and Pakistan, *Cantons* in Switzerland, *Union Republics* in the erstwhile Soviet Union, and the *Lands* (Lander) in the former German Federal Republic—in different federal States.



The central or national government, which comes into existence, as a result of such a union, and the resultant new State is entrusted with powers of general character, which concern the nation as a whole. Other subjects, which are of local interest, or in which variety of practice can be permitted, are left within the jurisdiction of the regional government, States, Provinces or Cantons whatever be their name. The powers so distributed between the two sets of government, central and regional, are protected by the Constitution and neither of the two can encroach upon the jurisdiction of the other or destroy its existence by itself. Alterations can be made by amending the Constitution alone. Sovereignty lies neither in the central government nor in the regional governments. Neither can it be divided between the two, as many writers have held. It resides in the State alone and it is exercised by the authority which has the power to amend the Constitution. In a federation, therefore, separate States disappear, their sovereignty being destroyed; and their citizens having divested themselves of the old allegiance, create, on the basis of a national unity, a federal polity within a new State.

A federation may also come into existence when a unitary State with a large area, which needs unity out of its diversity, divides its power into two sets of government and grants constitutional autonomy to its units. The new apparatus of government comes to be like this: the central government retains only those subjects which are of national importance and transfers the rest to the jurisdiction of the units, each autonomous within the sphere assigned to it. In this case centrifugal forces operate and bring about a federal form of government. For example, the Government of India Act, 1935, envisaged a federation consisting of all the eleven Provinces, which then comprised British India and those Princely States which were to express their desire to accede to the federation after signing the Instrument of Accession.

Whatever be the method of its coming into existence and whatever be the system of division of powers, a federal polity is a dual government, in which powers are divided and distributed by the Constitution between a central government and regional governments. Unlike the unitary government, powers of the units in a federation are original and not derived. They are not the grant of the central government, but the gift of the Constitution and they are constitutionally protected. Both the central and regional governments are coordinate, independent authorities within their allotted spheres of jurisdiction. Neither can encroach upon the powers of the other. If any change is desired to be made in the distribution of powers, it cannot be made by any one of the two sets of government alone. It must be made by amending the Constitution as prescribed by law. This means equality of status and this is the essence of federalism, although equality of status does not necessarily imply absolute equality of powers. This is an impossible task and not within the reach of practical politics. The distribution of powers between the central government and regional governments depends upon various factors and every country has its own peculiar problems. Carl Friedrich observes, "It goes without saying that such divisions of the 'competencies', that is, the sphere within which each may operate, must and will vary according to time and space. Economic and social life, the military and geographical factors, all will play their role in determining the particular arrangement. From a political standpoint, no distinctive generalization or principle can be derived."<sup>5</sup> The balance of

5. Friedrich, C.J., *Constitutional Government and Democracy*, p. 204.

powers is, accordingly, differently tilted in different federations; in some it is in favour of the central government and in others it is in favour of regional governments. But it does not deprive the government of its federal character so long as the one is not rendered helplessly dependent on the other for its existence or proper functioning. By the federal principle, observes Wheare, "I mean the method of dividing powers so that the general and regional governments are each within a sphere, coordinate and independent."<sup>6</sup> The existence of a sphere of activities for either government central and regional—where they are coordinate and independent—is the essential attribute of federalism. Dicey defines federation as a "political contrivance intended to reconcile national unity with the maintenance of State rights", the desire for national unity and determination of each individual unit to maintain its identity and independence.<sup>7</sup>

The basic features of a federation may, thus, be summarised:

1. A federation is born out of the desire for union rather than unity. Unity is the essence of a unitary system whereas union is the basis of a federation. Federation allows the federating units to preserve their identity by retaining their independent jurisdiction, save in matters that are of common national interest;
2. the States willing to federate lose their sovereign character as soon as a federation is formed. A new State emerges as a result of this union and it, accordingly, becomes sovereign;
3. the mechanism of a federal government consists of two parts, national or central government, and the regional governments called by various names, states and provinces usually;
4. the powers of government are divided and distributed into these two parts. The central government is given jurisdiction over subjects of a general nature, which are common to all and among others those promoting the union. The regional governments are given power over matters of local importance and utility, which do not require uniformity;
5. a federation is made, it does not grow. It is made deliberately with a view to having the benefits of union. And since the union establishes a system of dual government in which powers are divided and distributed, a written Constitution is the logical necessity of such a government;
6. it also involves rigidity of the Constitution so that neither the central government nor the regional governments may be in a position to deprive the other of its powers. If any change is desired to be brought about, it must be made by amending the Constitution wherein both parts of a federation are participants;
7. the process of constitutional amendment is prescribed in the Constitution. This establishes the supremacy of the Constitution. The supremacy of the Constitution is essential, if the government is to be federal;
8. federation is a permanent union in contrast to various other kinds of unions and alliances between States.

**Federal and Unitary Governments.** In a unitary government there is a single

6. Wheare, K.C., *Federal Government*, p. 11.

7. Dicey, A.V., *Law of the Constitution*, p. 157.



integrated authority and the entire territory of the State forms one single political unit. For administrative convenience, it may be divided into various subdivisions, but they are created, their powers defined and their forms of organisation determined by the central government. Federation is a device towards union and not unity. While making a union, the hitherto sovereign States still desire to retain their individuality, and for that matter, all issues involved are decided by common agreement and all this is incorporated in the Constitution of the newly established State. The Constitution clearly defines the jurisdiction of the two sets of government, national and regional, it establishes and any change desired to be made therein can be effected by amending the Constitution in accordance with the prescribed procedure.

It means equality of status between the two sets of government and this is one of the cardinal principles of a federal polity. In a unitary government, it is not so. The central government is supreme and its various political sub-divisions are subordinate to it. The central government can make and unmake them, enlarge or diminish their authority at will, as and when it deems necessary. In a federation, the Constitution is supreme.

All cases of conflict of jurisdiction between the central government and the units of a federation or between one unit and another are decided by an impartial judiciary, called the Supreme or the Federal Court. It is the guardian of the Constitution and it can declare any law, federal or that enacted by any of the units, or an executive order unconstitutional and, consequently, inoperative. A unitary government does not need such a process, because the powers of the various sub-divisions are not their original powers. They are delegated to them by the central government and what it delegates it can withdraw, diminish or increase. The authority of the central government in this respect is undisputed and unchallengeable.

In a federation there are two sets of laws as there are two sets of government, each government legislating on subjects assigned to its jurisdiction. A citizen of a federal State must obey the laws enacted by the national as well as local governments. It also envisages double citizenship. In a unitary system of government there is single citizenship and a uniform system of law prevails throughout, as in Britain and France. All this means that the loyalty of a citizen is divided and local jealousies and dissensions plague the federal system. A unitary system of government does not suffer from any of these drawbacks.

**Federation and Confederation.** Sometimes the terms federation and confederation are used interchangeably as if they are one and carry the same meaning and set up a similar form of government. For example, the Swiss Constitution of 1874 is entitled Swiss Confederation and the use of the term is continued in the Preamble and various Articles of the Constitution. Even a modern authority like Dicey uses the terms interchangeably in a single sentence.<sup>8</sup> A federation and a confederation resemble one another inasmuch as both the words come from the same root; otherwise there is a fundamental difference between the two. "A confederation," says Hall, "is a union strictly of independent States which consent to forego permanently a part of their liberty of action for certain specific objects, and they are not so combined under a common government that the latter appears to their exclusion as the international entity."

8. Dicey A.V., *Law of the Constitution*, p. 603.

A Confederation is an association of sovereign States formed for the purpose of promoting or achieving certain specific objects. They unite on a basis of equality and the most obvious motive for such a union is to gain security and strength in foreign relations and economic matters. A central organisation is set up, usually consisting of a congress of delegates, who represent the governments of the States composing the Confederation. The delegates usually vote by States and under instructions from the governments that they represent. The member-States retain their sovereignty and they do not create a new State. The instrument which creates a Confederation and defines the powers of the central organisation so created, is of the nature of a compact or treaty among sovereign States. It has certain powers, as defined in the treaty, over the member-States, but has nothing to do with the citizens of these States. Any member of a Confederation may withdraw therefrom. A confederacy, in the words of Oppenheim, consists of "a number of full sovereign States linked together for the maintenance of their external and internal independence by a recognised international treaty into a union with organs of its own, which are vested with a certain power over the member 'States', but not over the citizens of these States"<sup>9</sup>

Confederations have been numerous in the historical development of the State. More recent examples were the old German Confederation from 1815 to 1866, the Swiss Confederacy from 1815 to 1840, and the union of the Thirteen American States under the Articles of Confederation from 1781 to 1789.

A Confederation is similar to a Federation in two respects. Both in a Confederation and a Federation different States associate with one another for certain specific purposes, and in both cases a central authority is established for the realisation of common objects. Beyond this the similarity does not go and the differences between the two appear fundamental. The most important difference between the two is that the States entering a Confederacy preserve their full independence and sovereignty and that the States entering a Federation lose them. According to the expressive German term, the former is a *staatenbund* or league of States, and the latter is a *bundesstaat* or a united State. Through Federation one State appears in the place of several; through Confederation no such change occurs. A Confederation does not bring a new State into being; it only creates a new relationship between the existing States.

A Federation is created by a Constitution which is legally a law, and which depends upon the consent of the people. A Confederation, on the other hand, is created by an agreement or a compact which is of the nature of an international treaty concluded by the confederating States and, accordingly, it rests upon the consent of the member-States. A Federation is a permanent union and it is illegal for the units composing it to secede or withdraw therefrom. But the confederating States may withdraw from the union whenever they desire and when they do so, their action is not illegal, though it may be deemed a violation of international good faith. If there is armed conflict between the various units of a Federation, as there was once between the Northern and Southern States of America on the question of slavery, it is a civil war. If hostilities break out between two or more confederating units, then, it is an international war and not a civil war.

9. Oppenheim, M., *International Law*, Vol. I, p. 178.



The national or central government in a Federation is created by the Constitution and its powers are defined therein. The federating units can neither destroy the central government nor modify its powers on their own initiative. That can only be done by amending the Constitution and according to the prescribed method. But in a Confederation the member-States create the central authority, sometimes called even government, which they can destroy, or widen or narrow its powers. Control of such an authority or a government over the member-States in a Confederation may be of a shadowy sort. Under the Articles of Confederation, the Congress in the United States could requisition the States for soldiers and money upon a fixed system of quotas and make treaties with foreign countries. But while the States were bound by the agreement to honour the requisition and comply with the treaties, there were no means of compelling them to do so; the power of the Congress was only recommendatory and not mandatory. Finally, a Federation deals with the citizens of a federal State; in a Confederation the common organ of authority deals with governments of the member-States; it is a union of States and not of the people. A Confederation has no citizens or subjects to whom its commands can be directly addressed. To sum up:

1. A Federation makes a new State as a result of the union of hitherto sovereign States whereas a Confederation remains an agglomeration of independent and sovereign States.
2. A Federation creates a new one single sovereignty, but in a Confederation there are as many sovereignties as the number of sovereign States composing it.
3. A Federation creates a new nation. It is not so in a Confederation. There are as many nations as States composing a Confederation. Each State remains an international entity.
4. A Federation is a permanent union and is indissoluble. A Confederation is temporary and the member-States can withdraw therefrom at their will. Confederate authorities have no constitutional power to compel a dissatisfied member to remain within the Confederation.
5. In case of conflict between the various units of a Federation, it is a civil war. But war between the member-States of a Confederation would be an international war.
6. In a Federation there are two sets of government with powers divided between the two as prescribed by the Constitution. In a Confederation every member-State has its own system and machinery of government unrelated to others in any manner. Similarly, every State has its own laws and its own citizenship distinct from others.
7. The statutes and laws in a Federation are made by its legislative assemblies, both central and regional. The rules and regulations which govern a Confederation are the result of the conference of the member-States wherein their nominees participate.
8. A Federation is a union of the people. A Confederation is a union of the States. Both are in the nature of an alliance. But a Federation is a permanent Union whereas a Confederation is a temporary alliance.

**Prerequisites of a Federal Polity.** A federal polity envisages a dual government of divided powers. The division between the two sets of government rests upon the basic principle that there is a single independent authority for the whole country in respect of some matters that are of national importance and concern the interests of the community

as a whole and that there are independent regional authorities for other matters of local importance, and each set of authorities is coordinate with and not subordinate to the other within its own prescribed sphere. Such a system of government demands the presence of certain conditions which should exist to pave the way for a federation to materialize. According to Dicey there should be, in the first place, a strong desire to have a union. The will to have a union and to be under a single independent government for some purposes is really the basis of a Federation. It means that the federating units must be inspired and bound together by a sense of oneness with a desire to objectify it politically. Unless they become a community of interests, sharing each other's weal and woe, their cohesion into a new State is extremely difficult. The second requisite condition is that the federating States must desire union rather than unity, that is, while there should be a desire on the part of the federating States for national unity and to be under a single independent government, they must desire, at the same time, to maintain their individuality and autonomous existence by establishing independent regional governments in some matters at least. The aim of federalism is to give effect to both these sentiments. It is in this context that Dicey defined a Federation as a political contrivance intended to reconcile national unity and power with the maintenance of State rights. Or to express it in the words of Wheare, the group of States or communities "must desire to be united, but not to be unitary."<sup>10</sup>

But this is not all. Something more is needed. There should not be the desire to have a Federation, but the power or ability to operate it as well as to maintain it. The States or communities desiring to have a Federation, explains Wheare, "must have the capacities to work the system they desire. Federal government is not appropriate unless the communities concerned have the capacity as well as the desire to form an independent general government and to form independent regional governments." The factors which determine their desire or aspirations as well as their capacities to make them operative ideals may be called the prerequisites of a federal polity. It may, however, be noted that it is unlikely that all these factors will be present among States desiring union, but it is necessary that most of them must be present if the federal system is to work smoothly and efficiently.

One of the main incentives to closer association is a feeling of homogeneity; what Mill calls mutual sympathies among the population. "The sympathies available for the purpose," he says, "are those of race, language, religion, and above all, of political institutions as conducing most to a feeling of identity of political interest."<sup>11</sup> In his earlier enumeration of the factors making for nationalism, Mill included geographical unity and common memories, that is, a common historical tradition. Obviously, both should appear here. Geographical unity and common historical traditions help to create a sense of oneness even if other factors do not exist. Mill observes that people may bind themselves together in resistance to oppression. The Swiss did so and they continued to cooperate in spite of the diversity of language and religion, at a time when religion was the grand source of irreconcilable political enmity throughout Europe. Exposed frontiers

10. Wheare, K.C., *Federal Government*, p. 36.

11. Mill, J.S., *Representative Government*, p. 36.







been the nominees of their rulers and not elected representatives of the peoples of the States. The British Government, in the words of Sir Samuel Hoare, the then Secretary of State for India, had really intended to counterpoise democracy with aristocracy. Before inaugurating the new Constitution of India in 1950, which declares India a Union of States, all the Princely States were liquidated and homogeneous political institutions established in all the component States of the Union. The States Reorganisation Act, 1956, abolished the distinction between Part A, B and C States, which the Constitution had established in 1950. The States Reorganisation Commission aptly remarked that the "only rational approach to the problem, in our opinion, will be that the Indian Union should have primary constituent units having equal status and a uniform relationship with the centre, except where, for any strategic security or other compelling reasons, it is not practicable to integrate any small area with the territories of a full-fledged units."<sup>17</sup>

Similarly, there should be similarity of social institutions generally. It is true that the desire for union can be created in spite of dissimilarities of social institutions, as happened in the United States and Canada, "but such differences," says Wheare, "do make a government more difficult, and there is a limit to the degree of dissimilarity which can be permitted. The capacity to work together cannot survive in extreme divergence."<sup>18</sup> The capacity of States to form and work a federal union, he adds, "depends upon some agreement to differ but not to differ too much."<sup>19</sup> A stable federalism demands a considerable capacity to agree in practice upon what is a matter for unity and what is a matter for diversity. It is, accordingly essential that the nature of the diversity and of the unity be such that, in practice, views can be adjusted and the differences reconciled. There should be a common meeting ground upon national policy as well as upon the local liberties of the constituent units.

The capacity of States to work a federal union is also greatly influenced by their size. It is desirable that there should be, as far as possible, equality among the component parts of a Federation in their size and population. If there are wide differences in size and population, as in India where the States of Uttar Pradesh, Madhya Pradesh, Bihar and Rajasthan are in no comparison with the small states of Punjab, Haryana, Sikkim, Goa and many others, the federating States are not equal partners in a union. Units larger in size and population and more powerful in resources than others may be too proud and domineering for smaller ones. They may even overrule the others and bend the will of the central government to themselves. The idea of dominance by some creates suspicion and lack of confidence in others. Confidence is the essence of the will to federate and the capacity to work the federal government. The essential prerequisite of a federation, says Mill, is that there "should not be any one State so much more powerful than the rest as to be capable of vying in strength with many of them combined. If there be such a one, and only one, it will insist on being master of the joint deliberations; if there be two, they will be irresistible when they agree and whenever they differ everything will be decided by a struggle for ascendancy between the rivals."<sup>20</sup>

17. *Report of the States Reorganisation Commission*, para, 237.

18. Wheare, K.C., *Federal Government*, p. 48.

19. *Ibid*, p. 49.

20. Mills, J.S., *Representative Government*, pp. 367-8.

It is true that some divergence in size between the units must necessarily be present before a federal union is desired and this is an important factor in the making and maintenance of federal systems today. But "there must be" succinctly observes Wheare, "some sort of reasonable balance which will ensure that all the units can maintain their independence within the sphere allotted to them and that no one can dominate the others. It must be the task of those who frame and work a federal government to see that no unit shall be too large, and, equally important, none too small."<sup>21</sup> Equality of the federated units is a key to federal organization.

Finally, the federating States must possess adequate economic resources to support both an independent national government and independent regional governments. A federal government establishes a new national government and it must be given sufficient independent economic resources if it is to perform its duties efficiently and effectively. Likewise, it is also imperative that the regional governments must also be left with adequate economic resources to run their administrations and perform the functions assigned to them satisfactorily without being dependent on the doles of the national government. If the resources left are not sufficient to support an independent regional government, "then no matter how much states desire a federal union and no matter whether a federal constitution is drawn up, in practice federal government will not be possible. Soon the regional governments will be unable to perform their functions or they will be able to perform them only at the price of financial dependence upon the general government, that is, at the price of financial unification." One of the reasons for which the leaders in South Africa rejected a federal union was that the country would be unduly taxed if they were required to support both a central government as well as independent regional governments. A federation is an expensive mechanism and it should be adopted only when the constituent units can pay the price of retaining their separate identity and independence of action in the sphere assigned to them.

**American Federalism, the Start of an Invention.** Federalism is of extreme modernity. Its theory and practice in the modern States are not older than the American federation, which came into existence in 1787. Prior to 1776, the thirteen Colonies were severally and separately bound to Britain. In no way were they connected together. The Declaration of Independence announced the Colonies States, each independent of the Crown and politically independent of each other. But to declare independence, to fight and win the war against British Imperialism, and to build a new nation, required union and the result was a Confederation, a "firm league of friendship" under the name of the United States. The declared purpose of the Confederation was to provide for the common defence of the States the security of their liberties, and their mutual and general welfare.

The war against the British ended and the Treaty of 1783 acknowledged the independence, freedom and sovereignty of the thirteen Colonies. But the Confederation became a league of disgruntled independents, which revealed the powerlessness of the Congress created under the Articles of Confederation. It lacked the authority to weld the States into a unity, to mitigate their commercial rivalries, to establish a sound currency, to remove the causes of domestic disorders, and to foster American interests abroad.

21. Wheare, K.C., *Federal Government*, p. 53.



Washington, Hamilton, Madison and many others, who had laboured to bring together the States in bonds of union, were convinced that the government of the Confederation must either be revised or superseded entirely by a new system. Washington wrote, "I do not conceive that we can exist long as a nation without having lodged somewhere a power which will pervade the whole nation in as energetic a manner as the authority of the State Governments extends over the several States." They all experienced the feeling that all America should be one, a feeling which cements the bonds of oneness, giving birth to a nation. "We are now a new nation," said Rush, "... the more a man aims at serving America, the more he serves his colony. We have been too free with the word— independence; we are dependent on each other, not totally independent States ... when I entered that door I considered myself a citizen of America."

Here are the germs of a union which now carries the nomenclature of a federal government. The delegates to the Philadelphia Convention of 1787, who were sent by the States for the purpose of preparing a revision of the Articles of Confederation, went beyond their instructions and drafted a new constitution without knowing that they were devising an entirely novel and ingenious scheme of government, and that it would become a distinctive and influential contribution of America to the art of government. And here is the illustrious example of right leadership at the right moment.

The Founding Fathers sought to remove the two principal defects of the Articles of the Confederation: (1) to remove the predominance of the parts over the whole and to reconcile two different powers, the power of the States and the power of the central government; and (2) to remove the dependence of the government at the centre upon the governments of the States that acted as intermediaries between it and the individual. They adopted the principle that the functions and powers of the national government being new, general and inclusive, had to be carefully defined and stated, while all other functions and powers were to belong to the States. To make the powers of the central government real, they accepted the fact that it be empowered, among other things, to coin money, to regulate commerce, to declare war, to make peace, and to levy taxes. The central government was endowed with a Congress, to make laws on subjects assigned to its jurisdiction; an executive with adequate means of enforcement; and a judiciary with authority to preserve an equilibrium between the whole and parts and to uphold the supremacy of the Constitution. Above all, the national government was to derive its support and mandate from the people as voters and to carry its services directly to them as individuals.

**Other Countries that Followed.** Once the example of the United States had demonstrated that a federal union could work successfully, a precedent was established that others, whose situations were similar, could follow. The first to do so was Switzerland. In 1847, the Swiss Confederation was convulsed by an attempt of seven Catholic Cantons to secede. The Protestant majority crushed the secessionists, who had formed a separate league called the *Souderbund*. The defeat of the seven Catholic Cantons was, in fact, the triumph of the movement of national unity. Next year the Swiss Diet approved a new constitution which created a federal union closely patterned on that of the United States.

The next to adopt this system was Canada in 1867, although the Canadian federation was produced by a different combination of factors. The direct cause of the federal

movement was the racial conflict between the British and French "national groups, two nations warring within the bosom of a single State" as the Durham Report had lamented, which rendered the unitary government unworkable. Economic problems also plagued a divided Canada. Nor was defence unimportant. In 1864, a coalition government took office, pledging unification. The final outcome was the North America Act, 1867, and the Dominion of Canada was established. The scheme of distribution of powers between the Centre and the Provinces was just the reverse of the American model and it was essentially due to the lessons of America's civil war of 1860. The Provinces were given exclusive legislative control over a list of enumerated subjects, reserving the rest for the Dominion. The Dominion government was also given the power to disallow any Act passed by a provincial legislature, to appoint the Lieutenant-Governor of a Province, and to instruct him to withhold his assent from provincial bills and to reserve them for consideration of the Governor-General, who might refuse assent to such reserved bills. Finally, appointments to all the important judicial posts were placed in the hands of the Dominion executive.

In the formation of the Australian federation the need for common defence was probably the strongest, though economic issues were also involved. The Commonwealth came into existence on January 1, 1901. The Constitution enumerated substantial powers for the federal government, the residue remaining in the hands of the States. The main taxation powers were given to the federal government with three-quarters of the revenues to be returned to the States during the first ten years.

The Soviet Union adopted the federal form of government as a concession to the various nationalities and tribes inhabiting Russia, with a view to building a strong and powerful State. Lenin characterised federalism as a step towards "the most solid unification of the different nationalities into a single, democratic, centralised Soviet State." The Constitution of 1936 gave certain specified powers to the Union government and left the residuary powers with the constituent Republics; and each Republic exercised its authority independently of the central government. The Constitution also gave to the constituent Republics the right to secede. The 1977 Constitution closely followed the federal pattern set by its predecessor Constitution.

When India became independent, the Government of India Act, 1935, provided a working machine in the Provinces, and, as Jenning correctly points out, "it was not possible to start afresh when Provinces became States." The scheme of federation under the Constitution of 1950 is fundamentally the same as that under the Act of 1935. There are three lists of subjects, the Union List, the State List and the Concurrent List, exhaustively enumerated in the Constitution, and the residuary powers rest in Parliament. The Constitution empowers the Union Governments to give directions to the States and failure to comply with such directions entitles the President of India to supersede a State government for the time being and thereby bring it under the unitary rule of the Union. State Governors are appointed by the President and a State government can be superseded on a report from the Governor. The Governor may reserve a bill passed by the State legislature for the consideration of the President. The Upper House of the Union Parliament may, by resolution passed by two-thirds majority, declare a particular subject or subjects in the State List to be of national importance and interest, empowering Parliament to make laws thereupon. Then, there are the Emergency Powers of the President. When the



Proclamation of Emergency is in operation, Parliament is empowered to make laws for the whole or any part of the territory of India with respect to any matter contained in the State List. Finally, the Union Parliament is also empowered to pass legislation implementing any treaty, agreement or convention with another country.

**Methods of Distribution of Powers.** These variations on the federal theme show that two methods have been adopted in the distribution of powers between the central government and the regional governments. The system of the United States, Switzerland and Australia are that their central governments have been given enumerated powers whereas the residuary powers are left with their State governments. For the United States this point is covered by the Tenth Amendment which provides that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." The Swiss Constitution expressly declares that the Cantons "are sovereign in so far as their sovereignty is not limited by the Federal Constitution, and, as such they exercise all rights which are not transferred to the Federal power." The reasons for the adoption of this system are largely historical. The federal union was, in each case, formed by the union of previously independent sovereign States. At the time of the union, the latter desired to retain to themselves all governmental power except such as was plainly necessary to confer upon the central government in order that an effective union might be established.

In Canada the method adopted was just the reverse of that in the United States and Switzerland. Here, too, historical events determined the course. "All Constitutions," as Jennings remarks, "are the heirs of the past as well as the testators of the future." The persistent racial conflict between the British and the French and the failure of the unitary government, coupled with the cool relations with the United States, enforced the argument for unification and for a national authority. Federal government seemed the obvious solution. But the experience of the near-dissolution of the American Union in the Civil War led British and Canadian statesmen to the conclusion that the central government must possess more powers than those that belonged to its counterpart in the United States. The Canadian Constitution—the British North America Act, 1867—accordingly divided the powers between the Provincial and Dominion governments in such a way that the Provinces had exclusive control over a list of enumerated subjects, and the Dominion had exclusive control over the rest, which "for greater clarity" were enumerated, though not exhaustively. The legislatures of Dominion and the Provinces are distinct from each other; neither has the power to alter the Constitution so far as the distribution of powers is concerned. In Canada, therefore, enumerated powers are given to the Provinces and residuary powers are left to the Dominion government.

The Constitution of India contains three lists of subjects, the Union List, the State List and the Concurrent List, and the residuary powers rest in Parliament. The total number of subjects exclusively given to the Central government are ninety-seven as compared with sixty-six which are under the actual exclusive control of the States. The Concurrent List contains forty-seven subjects upon which both Union and State legislatures make laws. Here is an enumeration more than anything attempted in any other federation. The provisions which deal with a conflict between the Union and State laws are interesting.<sup>22</sup> In general, they require that State laws on concurrent subjects must give

22. Article 254.

way to the laws of the Union government to the extent of their repugnancy to such laws. The Union legislature has also been empowered to legislate on any matter in the State List, if the Council of States (Rajya Sabha) passes a resolution by a two-thirds majority, declaring a particular subject or subjects of national importance or interest.<sup>23</sup> When Emergency is in operation Parliament makes laws for the whole or any part of the territory of India with respect to any matter enumerated in the State List.<sup>24</sup> Article 253 further empowers Parliament to pass legislation implementing any treaty, agreement or convention with any other country. The last phrase is remarkably vague, as Jennings maintains, because under this provision the Union Parliament can acquire jurisdiction on any subject, as for example, even over university education "by the simple process of decision of the Inter-University Board of India which is an international body because it contains representatives of universities in Burma and Ceylon."<sup>25</sup>

B. R. Ambedkar, Law Minister, in the Government of India and the principal architect of the Constitution, admitted in the Constituent Assembly that "the constitution has not been set in a tight-mould of federalism." The federal principle has, indeed, been so much modified by unitary elements in the form of control by the Central government over the State governments and the intervention in the conduct of affairs of the State governments has become so proverbial<sup>26</sup> that the Indian Constitution, many critics maintain, cannot claim to establish a federal union. And the Constitution nowhere uses the word federation. The omission is deliberate and shows the intentions of the authors of the Constitution. It is true that the federal principle has been introduced into the terms of the Constitution to some extent and Wheare deems it "justifiable to describe it as a quasi-federal constitution,"<sup>27</sup> but a system of government in which one partner can unmake another cannot claim to have even the semblance of a federation. The Indian Constitution may have the form of a federation, but to have federal form does not make it a federation. A Federation is a partnership among equals; oneness of the State with the separateness of the units is its formula, although equality of status does not mean absolute equality of powers.

There are some students of federalism who hold that the federal principle consists in the division of powers in such a way that the powers to be exercised by the central government are enumerated in the Constitution and the residue is left to the regional governments. It is not enough for federalism, they assert, that the central and regional governments should each be independent in its own sphere. That sphere must be marked in a particular way, that is, the residuary powers must lie with the regional governments. Applying this criterion, a government is not federal if the powers of the regional governments are specified and the residue is left to the central government. The Constitutions of the United States, Switzerland and Australia embody the federal principle, because they distinctly enumerate subjects over which their central legislatures exercise

23. Article 249.

24. Article 250.

25. *Same Characteristics of the Indian Constitution*, p. 66.

26. Refer to Anup Chand Kapur's *Government of Indian Republic*, Chap. IV.

27. Wheare, K.C., *Federal Government*, p. 28.



control and they further provide that powers not so given to the central governments remain with their states and Cantons.

But such a test of federalism, in the opinion of Wheare, concentrates on a relatively superficial characteristic. "The essential point," he says, "is not that the division of powers is made in such a way that the regional governments are the residuary legatees under the constitution, but that the division is made in such a way that, whoever has the residue, neither general nor regional government is subordinate to the other."<sup>28</sup> It is, no doubt, true that the question of residuary power is important as it affects the balance of power in a federation, but this factor itself does not make a government federal. The fundamental point in a federal principle is whether the powers of government are divided between coordinate, independent authorities or not. It is immaterial what the system of distribution of powers is and where the residuary power rests. The circumstances of each country decide which method is adopted. Carl Friedrich points out, "The existence of residuary powers has ever been held to constitute the decisive test of 'statehood' for the component units. In reality, such residuary powers are an illusion, if the powers and functions delegated to the central government are practically all-embracing, as they were in Weimar Germany, broad delegated powers would mean more 'local government' in actual practice than such a residue of 'genuine' self-determination'. In either case, the only guaranty (guarantee) for whatever distribution of functions there is, delegated or residuary, is the constitution which determines the governmental structure as a whole."<sup>29</sup>

What distinguishes a federal from a unitary government is that the regional governments are not subordinate to the central government; the one is not simply the creation of the other. Both enjoy a juridical and corporate personality, no matter whether division of powers is made by enumerating the powers of the central government and leaving the rest for the regional governments, or the division is made by enumerating the powers of both the central and regional governments and leaving the residue to the former. What made the Canadian Constitution "quasi-federal" was the matters in which the Provincial Governments were subordinate to the Central Government, and not coordinate, with it. These matters were: the power of the Dominion executive to disallow any Act passed by a Provincial legislature even if it fell within its sphere of jurisdiction, the Dominion executive appointed the Lieutenant-Governor of a Province, and it could instruct a Lieutenant-Governor to withhold his assent from Provincial bills and to reserve them for consideration by the Dominion executive, and it might refuse assent to such reserved bills if it deemed fit.

These are all unitary elements in an otherwise strictly federal form of constitution. But the law of the constitution is one thing; the practice is another, thus, signifying the difference between a federal constitution and a federal government. Wheare places particular emphasis on this difference and says, "A country may have a federal constitution, but in practice it may work that constitution in such a way that its government is not federal. Or a country with a non-federal constitution may work it, in such a way that it provides the example of federal government." In actual practice the unitary elements

28. *Ibid* p. 13.

29. Carl, J. Friedrich., *Constitutional Government and Democracy* p. 204.

in Canada had either become obsolete or were being so worked as not to compromise with the federal principle. "If Canada, therefore," as Wheare says, "has not a federal constitution, it has a federal government." The United States, Switzerland and Australia have federal Constitutions as well as federal governments, though the process of centralisation in all these countries is assuming alarming proportions.

A concurrent jurisdiction is found in all modern federal governments and with it a provision that when the laws of the central government upon matters in the concurrent field conflict with the laws of the regional governments in that field, then, the regional laws must give way to the central laws to the extent of their repugnancy. The extent of the concurrent jurisdiction varies greatly. In Canada it consists of only two subjects whereas in the United States and Australia the concurrent field is extensive. In Switzerland it is smaller than in the United States and Australia, though wider than in Canada. In India, the concurrent list covers forty-seven subjects. Concurrent jurisdiction is not incompatible with the federal principle. There are, indeed, many good reasons for providing concurrent jurisdiction.<sup>30</sup> Wheare is of the opinion that "it is better always, if possible, to admit concurrent jurisdiction, if only perhaps, as a transitional measure. In most cases it will be unavoidable. But what is likely to work best is a short exclusive list and a rather longer concurrent list."<sup>31</sup>

**Doctrine of Implied Powers.** The Doctrine of Implied Powers has assumed a very great constitutional importance ever since it was propounded by the Supreme Court of the United States. The Constitution only enumerates the powers assigned to the Central government, leaving the rest to the State governments. But the concluding part of Article VIII, enumerating these powers, authorises Congress "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any Department or officer thereof." Chief Justice Marshall came to the conclusion that this provision authorised the Congress to make laws on subjects, though not specifically assigned, yet implied or latent in some other specified powers. This doctrine of Implied Powers "is imperceptibly pervading the decisions of Supreme Courts in almost all federations thus filling up a gap in the specification of powers" and thereby strengthening the Central government where it has been assigned certain specified powers. Referring to Article VIII of the American Constitution, Charles Beard remarks that it has really proved a Pandora's box of wonders.

### ESSENTIALS OF FEDERAL GOVERNMENT

The division of powers between central and regional governments, involves three consequences. First, the arrangement must be embodied in a written constitution, secondly, the constitution must be rigid, and, finally, the presence of a federal Court.

**1. A Written Constitution.** For a federal government the Constitution must almost necessarily be a written Constitution which defines the relation between the Central

30. Report of Joint Select Committee on Indian Constitutional Reform, 1934, para. 51.

31. Wheare, K.C., *Federal Government*, p. 83.



government and the regional governments, marks out the sphere of each, and is paramount over the Constitutions of the regional governments, if each component part of the union has its own separate Constitution. "To base an arrangement of this kind", writes Dicey, "upon understandings or conventions would be certain to generate misunderstandings and disagreements."<sup>32</sup> The articles of the treaty, or in other words of the constitution, must, therefore, be reduced to writing; the constitution must be a written document for it is the "charter of rights and duties of the federal and state authorities."<sup>33</sup> Wheare says, that if the government is to be federal, its constitution must be supreme. By the supremacy of the constitution he means that "the terms of the agreement which establishes the general and regional governments and which distributes power between them must be binding upon the general and regional governments. This is a logical necessity from the definition of federal government itself."<sup>34</sup> If the Central government and the regional governments are to be coordinate with each other, neither must be in a position to override the provisions of the constitution regarding the powers and status which each is to enjoy. Definiteness of constitutional status and powers stimulates the will to federate and creates confidence in the federating units that the sanctity of their spheres of jurisdiction will be maintained. In case of invasion on their rights and encroachment on their constituent functions there are constitutional remedies to seek judicial redress. The power of judicial review is inherent in a federal polity.

**2. A Rigid Constitution.** The natural corollary of the supremacy of the constitution, and it being a written document, is that it should not be alterable either by the central legislature or by regional legislatures under their ordinary law-making procedure. "The law of the constitution," says Dicey, "must either be immutable, or else capable of being changed only by some authority above and beyond the ordinary legislative bodies, whether federal or state legislatures, existing under the constitution."<sup>35</sup> It is essential for a federal government, says Wheare, that the power of amending the constitution, "so far at least as concerns those provisions of the constitution which regulate the status and powers of the general and regional governments, should not be confined exclusively either to the general government or to the regional government."<sup>36</sup> If it is confined exclusively to one set of the government, it does not give equality of status to both and it is also probable that the one which possesses this power may in an ordinary process of legislation make an invasion on the powers of jurisdiction of the other.

It does not matter legally where the power of amending the constitution is placed, but "there can be no doubt," as Wheare suggests, "that practically it is wise to associate both the general government and the regions, either their governments or their peoples, in the process" of amending the constitution. In the United States amendments to the constitution may be proposed by a majority of two-thirds of both Houses of Congress or by a convention summoned by Congress on the application of the legislatures of two-thirds of States. The proposed amendments become effective when ratified by the legislatures of

32. Dicey, A.V., *Law of the Constitution*, p. 142.

33. Strong, C.F., *Modern Political Constitutions*, p. 101.

34. Wheare K.C., *Federal Government*, p. 55.

35. Dicey, A.V., *Law of the Constitution*, 142.

36. Wheare, K.C., *Federal Government*, p. 57.

three-fourths of the States or by conventions in three-fourths of the States according to the one or the other method of ratification proposed by Congress. No alterations in the boundaries of the existing States, the constitution further prescribes, can be made without the consent of the legislatures of the States concerned as well as of Congress.<sup>37</sup> In Australia the constitution can be amended<sup>38</sup> on a proposal by an absolute majority of the two Houses of Parliament of the Commonwealth—or in certain circumstances one House—and its ratification at a referendum of the people. If at this referendum a majority of all the electors voting approve the proposed law, and if, in a majority of the states, a majority of the electors voting also approve the proposed amendment, then, it is submitted for the royal assent. It is further provided, that amendments relating to changes in the representation of the states in either House of Parliament or any alterations in the boundaries of the states must be approved by a majority of the electors in the states concerned.

In Canada, the power of amending the North America Act, 1967, rested with the Parliament of Britain. No authority in Canada had power till 1982, after the, division of powers between the Dominion and Provincial governments. The convention, as it existed, was that Parliament in Britain would amend the Canadian Constitution on a request from Canada. But there was no settled convention whether the request for amendment should come from the Dominion Parliament and government alone, or from the Provincial Legislatures and governments alone or through some sort of cooperation between the two. With the patriation, of the Canadian Constitution in 1982, the Constitution can now be amended by a resolution of the Senate and House of Commons of the federal government and seven Provinces representing 50 per cent population of the country. The amending formula gives for the first time a legal role to the Provinces in making constitutional changes.

The Constitution of India, like the Union of South Africa Act of 1909, makes no pretence of making a federation. Since Wheare says that the "new constitution of India . . . established, indeed, a system of government which is at most quasi-federal, almost devolutionary in character; a unitary state with subsidiary federal features rather than a federal state with unitary features."<sup>39</sup> It would be interesting to note the process of constitutional amendment. The Constitution prescribes three different methods of amending it. Some parts of the Constitution can be amended by a simple majority in both Houses of Parliament, for example, new States may be created or the existing States reconstituted,<sup>40</sup> and Upper Chambers created or abolished in the States.<sup>41</sup> Then, certain specified subjects, as amendments affecting the method of electing the President, the extent of the executive and legislative powers of the Union or the States, the provisions regarding the Supreme Court, the representation of the States in Parliament, and the method of amending the Constitution, require a majority of the total membership in each House of Parliament majority of two-thirds of the members present and voting in each House of Parliament and ratification by the legislatures of one-half of the States. Finally, for the remaining

37. Article IV, 3 (1).

38. Article 128.

39. *Ibid.*, p. 60.

40. Article 4.

41. Article 169.



provisions there must be a majority of total membership in each House of Parliament and a majority of not less than two-thirds of the members present and voting in each House of Parliament.

It follows that if the constitution of a country is to be a living document, responsive to the needs of the people and times, it must contain a provision for amending it, and every federal constitution contains such a provision. But the process of amending the constitution, which provides a federal polity, must be distinct, involving a different procedure, from the ordinary law-making procedure, and all interests and parties in the federation should be participants therein. The method of amending a federal constitution is, therefore, more difficult and complex than amending a unitary constitution and it is peculiarly rigid.

**3. Presence of Federal Court.** In a federation the necessity of a supreme or federal court with authority to interpret the constitution is an established fact. The federal judiciary performs two important functions: (1) it decides disputes of jurisdiction arising between the central government and the regional governments or between one regional government and another; and (2) it keeps different governments within their limits so that none may encroach upon the sphere of jurisdiction of the other. If the federal principle is to really work, it is necessary that there should be an umpire independent of both the central and regional governments which should ever be vigilant to prevent either set of government from disturbing the balance between the centrifugal and centripetal forces. Happy balancing between the two forces is the essence of federalism and there can be no other authority than an independent and impartial judiciary which can act as the guardian of the constitution and thereby protect the constitutional distribution of powers. The need for the federal judiciary has been expressed by Mill and his words have often been quoted or paraphrased. "It is evidently necessary," he says, "not only that the constitutional limits of authority of each (central and regional governments alike) should be precisely and clearly defined, but the power to decide between them in any case of dispute should not reside in either of the governments, or in any functionary subject to it, but in an umpire independent of both. There must be a Supreme Court of Justice, and a system of coordinate courts in every State of the Union, before whom such questions shall be carried, and whose judgment on them in the last stage or appeal, shall be final."<sup>42</sup> Sidgwick says that the more stability is given to the constitution by making the process of changing it difficult, the greater becomes the importance of this judicial function of interpreting its clauses.<sup>43</sup>

Every federal constitution, accordingly, provides for an independent and impartial judiciary entrusted with the work of deciding disputes between the several governments, to uphold the supremacy of the constitution and to interpret it. But while interpreting, the judges also expound the constitution by explaining its implications, as happened in the case of the Doctrine of Implied Powers propounded by the Supreme Court of the United States. The Supreme Court derives its authority directly from the constitution and the method of appointment of the judges, their removal and the pay and allowances they are

42. Mill, J.S., *Representative Government*, p. 370.

43. Sidgwick, H., *Elements of Politics*, p. 540.

entitled to are all prescribed by the constitution ensuring the independence and impartiality of the judiciary.

### APPRAISAL OF FEDERALISM

**Advantages of a Federal Government.** Federalism is a device which has rendered immense service in the past and may still render in knitting together under a common government peoples whose political interests are alike. Many regard it as a panacea for so many economic and political ills from which the world suffers today and even envisage the scheme of a World Federation. Without going into the realm of political speculation regarding the feasibility of a World Federation, and accepting federalism as it is, it can be said that small independent States cannot exist in the midst of modern competing States and they find a good substitute in a federal system of government which brings them the advantages of union while retaining their political autonomy at the same time. Federalism offers a new hope to small nationalities claiming the right of self-determination. While acquiring local autonomy as constituent units of a federation, they save themselves from the risks of perpetual insecurity that haunts the smaller sovereign States in the present competing international politics.

In fine, in large countries federalism is calculated to afford scope for local development and administrative experimentation, to localise discord, to prevent "apoplexy at the Centre", and "anaemia at the circumference" and to checkmate the tendency of a metropolis to absorb all control. It saves national legislatures from being overweighted and overwhelmed with business. But the autonomy of the constituent units must now be of a somewhat different order from that which political theory and American experience have familiarised us.

Federalism, as a principle, is the combination of unity and diversity. Such a need exists particularly in countries with a large territorial expansion or deep-seated racial, cultural, religious, or linguistic differences. For the solution of such problems, a federal government is probably the only possible answer. It harmonises local autonomy with national unity and thereby provides an equilibrium between the centripetal and centrifugal forces. The central government is assigned functions which are of national importance and general concern. Problems of local interest that differ in different sections of the country are left to the people of those areas for solution. In this way, a federal government presents a happy blending of centralization and decentralization.

A federal government prevents the rise of a single despotism, checks the growth of bureaucratic authority and conserves the political liberty of the people. Abuse of power by the central authority is more easily checked by a vigorous federalism than by any other form of government. Federalism, observes Bryce, allows experiments in local legislation and administration that might be dangerous if applied to the entire country. Territorial division of functions also relieves congestion of legislative and administrative work at the centre. It adds to the efficiency of administration as well, because the division of powers is related to the actual needs of life.

Federal governments also afford excellent schools for political education, as they are found on the democratic principles of free election, free criticism, and representative



institutions. Each citizen has a full-pledged miniature government relatively near the abode on which he can make his mark far more easily than on national administration. He is encouraged to take greater interest and initiative in public affairs. His needs and aspirations are also better satisfied.

**Drawbacks of a Federal Government.** It cannot, however, be denied that federalism has its disadvantages too. The constitution framing body of a federal government has to bear the burden not only of providing for two sets of government, but also of determining the manner in which the total governmental power shall be distributed among them. This is a task of such difficulty that a satisfactory performance of it at one time is impossible. What might formerly have been safely left to the separate units may, with the lapse of time and under changed conditions, demand a national regulation and decision. This leads to bitter contests regarding the jurisdiction of the two governments and the political history of the United States and other federal countries is marked by such controversies. "The proper adjustment of central to local governments thus becomes," says Gettell, "a constant source of difficulty and the danger of rebellion or the formation of sectional factions is always present."

Then, the prerequisite of a federal government is the supremacy of the constitution, which implies a written and rigid constitution. Supremacy of the constitution means that the terms of the agreement, which establish the central and regional governments and which distribute powers between them, must be binding upon them. If any change is desired to be brought about, it must be made by amending the constitution as prescribed by law and not by the unilateral action of any of the two sets of government. But the process of amending a federal constitution being difficult and circuitous, it is not possible to get the desired results as and when the needs of the people and the country demand. It is also possible that the capricious policy of a number of regional governments may create unnecessary difficulties in the passage of the amendment. All constitutional amendments in the United States require ratification by three-fourths of the States after having been passed by a two-thirds majority of Congress. There is no prescribed time-limit for ratification unless specifically determined by a resolution of Congress. The absence of such a prescription makes the issue a plaything of the states and indefinite delay takes away the purpose underlying the amendment. For example, the child labour amendment was proposed by Congress in 1924, without specifying the time-limit for ratification. So far only twenty-eight States have ratified it, the last one being Kansas in 1937. On one occasion Ohio ratified an amendment submitted eighty years earlier. Connecticut, Georgia and Massachusetts voted in 1939 to ratify the first Ten Amendments one-hundred and fifty years after they had been submitted to them for ratification. The American system of amending the Constitution also makes possible for thirteen small states to pool together and hold up an overwhelming majority of the remaining states in their effort to make a much wanted constitutional change.

The powers in a federation are divided and the organs of government, instead of being parts of one highly integrated piece of administrative machinery, are parts of as many different administrative systems as there are federating units. Being coordinate in status a uniform policy for the common good can only be secured by voluntary agreement among all the units to cooperate. This is something which it is often difficult, if not

impossible, to secure. The particular interests of all the component units of a federation are not always identical and each unit is likely to pursue a policy which seems to be conducive to its own interests over those of the State as a whole. More serious still, this divergence of interests may bring the several units into sharp conflict with one another or collectively into conflict with the central government. Even when there is no conflict of interest, great loss often results when a given job is not to be done under a single direction.

In the conduct of foreign affairs, the federal government exhibits inherent weakness and inconsistency. The experience of the United States in particular has shown that the individual members of the federal union, by virtue of their reserved powers over the rights of person and property, may embarrass the national government in enforcing its treaty obligations in respect to aliens residing in the United States. When internal differences are carried into foreign relations, the national government loses its international prestige. A fluctuating foreign policy leads to manifold troubles. Federation becomes a weak government both internally and externally. Similarly, in times of war the federal government may sometimes be found lacking in promptness of decision and firmness of action, due to the multiplicity of powers, which a national emergency of this kind demands. It was, perhaps, for this reason that Adolph Hitler altered Germany from a federal to a unitary State in 1934.

A federal government is financially expensive, since there is much duplication of administrative machinery and procedure. There are as many sets of legislatures, courts and administrative departments, with Ministers and Ministries, as the number of the units composing the federation plus the top-heavy identical institutions at the Centre. And all these function within the framework of a democratic machinery which is often cumbersome and usually expensive. Moreover, mechanics of federalism are wasteful of time and energy in that it much depends on negotiation, both at political and administrative levels, to secure uniformity of laws and proper administrative compliance.

Finally, though federation is an irrevocable union, yet the possibilities of secession are there. Regional loyalties seldom die and linguistic differences ever remain uppermost. There is conflict of economic interests too. Then, there are racial prejudices. The American Civil War and collapse of the Soviet Union in 1991 are reminders of such tendencies. The United Arab Republic disintegrated with the separation of, Syria. There is a ferment now in Canada. In May, 1964, the Quebec legislature set up a committee to report on all the implications of a breakaway from the federation. The French-Canadian grievance has been building up over the rival scope of the two languages and the two cultures in Canada. But more realistically the problem is economic. The development of the English-speaking Provinces is held to be at the expense of the French-speaking Quebec. Till recently, the separatist groups had not spelt out their separation in terms of outright secession. But Quebec's Premier Rene Levesque, who headed the separatist Parti Quebecois' (PQ), immediately after assuming office in December 1976 threatened secession. It was averted as the proposal was negated at a referendum. But the separatist tendencies have not disappeared. It will be a sad development in the career of federalism if at all it ever happens. India is also torn asunder into twenty-five linguistic States with territorial, economic, and cultural disputes plaguing the solidarity of the nation. Recent



events in the North-East region, particularly in Assam, Punjab and Jammu and Kashmir, show that Indian nationalism is fragile and the federal set up, although forty-four years old now, has not helped to dissipate separatist tendencies.



# Parliamentary, Presidential and Totalitarian Patterns

A modern democratic government may have a parliamentary or presidential pattern of government and the difference between the two hinges upon the principles governing the relations between the executive and legislative branches of government. If the executive and legislative branches are unified and coordinated under the control of the same persons, so that they must work in harmony, such a system is called parliamentary. If the executive and legislative branches are largely independent of one another, but each possessing checks on the powers of the other in order to make power limited, controlled and diffused, the system is presidential. Here the head of the executive is constitutionally independent of the legislature in the matter of duration of his tenure and is in no way responsible to it for his political policies and actions.

**Parliamentary System.** In a parliamentary system a clear distinction is made between the head of the State and the head of government, *a* executive and *the* executive. Here the head of the State, King or Queen in Britain or President in India, possesses nominal or titular authority whereas the real authority rests with the government of which Prime Minister is the head. The King/Queen or President has a *de jure* authority, no doubt, and legally he possesses all the powers and privileges which the constitution and laws may confer upon him, but in practice he exercises none. He is simply the bearer of authority. Constitutional conventions in Britain deprive the King or Queen of all his or her powers, privileges and prerogatives. In India the authority of the President was governed by Conventions inherited from Britain and deemed as the *sine qua non* of a parliamentary system of government. The Forty-second Constitution Amendment Act, 1976, gave the convention a constitutional sanction and provided that the advice of the Council of Ministers shall be binding on the President. The Forty-fourth Amendment (1978), however, gives discretion to the President to refer the advice tendered to him on a particular matter for the reconsideration of the Cabinet, if he felt hesitant to accept it in the first instance.

The government is constituted from the majority party or a combination of parties, if they had agreed on certain fundamentals for purposes of a coalition, in the legislature. The normal procedure is that the Chief Executive, monarch or President, summons the leader of the majority party or a coalition of parties to form the government. The person so summoned is the Prime Minister-designate who chooses his own team of ministers



from among the members of his party, in the legislature, including a few from outside if deemed necessary, and in case there is no constitutional bar to such an inclusion. The Council of Ministers, thus, constituted functions under the leadership of the Prime Minister and is collectively responsible to the representative chamber of the legislature. Out of the Council of Ministers, the Prime Minister chooses some fifteen or more but generally not more than twenty, persons, who are the most influential and important, and they make a Cabinet. Cabinet is a wheel within a wheel and it is the pivot on which the whole political machinery revolves. It is the supreme directing authority; the magnet of policy, as Barker calls it, which coordinates and controls the whole of the executive government and integrates and guides the work of the legislature.

There is a sharp distinction between a Cabinet and a Ministry or the Council of Ministers. The Cabinet, wherever the parliamentary system exists, has an extra-constitutional growth and consists of about twenty or less Ministers, who are the most influential and the most important of the Council of Ministers or the Ministry. These members of the Cabinet meet collectively, under the chairmanship of the Prime Minister, generally once a week, decide upon policy and in general 'head up' the Government, whereas the Council of Ministers or the Ministry includes some fifty or more Ministers of different categories—Cabinet Ministers, Ministers of the Cabinet rank, Deputy Ministers and Parliamentary Secretaries. The Council of Ministers, or the Ministry has no collective functions. It never meets as a whole and it never deliberates on matters of policy. The duties of a Minister, unless he is a Cabinet Minister, are individual duties relating to the administrative Department or Departments of which he holds the charge or to which he is attached. The Cabinet is, thus, the motive power of all political action. Such a system of government is commonly known as the Cabinet government, because Cabinet is the master of the government.

The Council of Ministers is headed by the Prime Minister. He is the captain of the team which plays the game of politics in accordance with the mandate which the majority party in the legislature, of which the Prime Minister is the duly accredited leader, had received at the general elections. The Prime Minister performs four important functions: (1) he is the head of the Ministry, that is, the government of his country; (2) he is also leader of the legislature of the country—the one whose intervention in the debates has the greatest weight, who states and interprets government policy, who is responsible for obtaining the approval of the legislature for the policy of his government; (3) he is the person through whom the head of the State, King/Queen or President, normally communicates with the Cabinet, with the legislature, and ultimately, with the country; (4) he is head of the legislative wing of the party and responsible for maintaining harmony with its organisational wing. They are the two limbs of the party that had been returned by the electorate in majority and to form the government.

**Mechanism of Parliamentary Pattern.** The Council of Ministers is the hub of a parliamentary pattern of government. It may be made up either entirely of members of the same political faith, or of members of somewhat differing affiliations, yet able to agree on a programme of immediate action. In any case, the Ministry is formed by a person who seems to the head of the State best able to form a team in conformity with

the existing parliamentary majority. Under the dual-party system the choice of the head of the State is obvious, and he summons the leader of the majority party to form the government.<sup>1</sup> He is the only possible Prime Minister and there is no discretion. But when the party has not elected its leader or when there is not one single party having a legislative majority, as it happens usually under the multiple-party system, the head of the State has, a real choice. The Ministers are, by law or by binding convention, members of the legislature. Sometimes a Minister may not be an elected member of the legislature, for example, Ramsay MacDonald and Malcolm MacDonald were both members of the Cabinet in Britain, from November 1935 until early in 1936, though they were not members of Parliament. But the House of Commons is extremely critical of such exceptions and Ministers remain out of Parliament only while they are trying to find seats. If they cannot get in and are unwilling to be created peers, they resign their offices. The Constitution of India provides that a Minister may not be a member of either House of Parliament for a period of six consecutive months. But such a Minister ceases to be a Minister at the expiration of that period unless he is duly elected. In Britain no one may speak in either House of Parliament unless he belongs to that House. In India, a Minister enjoys the privilege of occupying a seat in either House of the Legislature, of being heard, and of participating in its deliberations, but with the right to vote in the House of which he is a member.

A parliamentary or Cabinet system works on the well-accepted principle that Ministers are responsible to the legislature for all their official acts and they remain in office as long as they retain its confidence. This is called ministerial responsibility and it is this responsibility that gives to the parliamentary system the name of a responsible government as well. In Britain, legally, Ministers hold office during the pleasure of the King/Queen. But a legal truth in Britain is a political untruth and the pleasure of the King/Queen means the pleasure of Parliament. The Constitution of India also provides that Ministers hold office during the pleasure of the President.<sup>2</sup> But the pleasure of the President vanishes when the Constitution simultaneously prescribes that the Council of Ministers is collectively responsible to the House of the People (Lok Sabha).<sup>3</sup> This means the individual and collective responsibility of Ministers to the House of the People. It also means that whereas the Council of Ministers is collectively responsible to the House of the People for its policies, a Minister can be removed from office for his individual indiscretion or for acts of omission and commission and the President exercises his pleasure on the advice of the Prime Minister. Without such an advice he cannot act independently. Ministerial responsibility is the essence of parliamentary government. Responsibility to the legislature means that so long as the policies and official conduct of the ministers command the support of the majority of the members of the legislature, they continue to hold the reins of office and govern the country. But as soon as the majority is reduced into a minority and the Ministry loses the confidence of the

1. President Zail Singh exercised his discretion in selecting Rajiv Gandhi, after the assassination of Indira Gandhi on October 30, 1984, to become the Prime Minister, although he had not been elected the leader of the Congress (I) Parliamentary Party.

2. Article 75 (2).

3. Article 75 (3).



representative House, House of Commons in Britain, and House of the People (Lok Sabha) in India, it must resign from office and give an opportunity to the Opposition to assume office, or the legislature may be dissolved on the advice of the Prime Minister and new elections held in order to ascertain the opinion of the electorate. The party returned in majority to the legislature as a result of elections, then, forms the Ministry. The second alternative is more common and is generally resorted to. The legislature reveals its disapproval of the acts of the Ministry either by an adverse vote on an important measure, or by a specific vote of no-confidence.

The ministerial office, is not incompatible with legislative mandate.<sup>4</sup> It means that the executive and legislative functions are "inextricably co-mingled" and there is no such separation between the executive and legislative powers as that which forms the distinguishing mark of the American system of government. On the contrary, there is a close and intimate inter-dependence of both the executive and the legislative departments. Dicey emphasised that the parliamentary system is founded on a fusion of the executive and legislative powers and, at the same time, upon the maintenance of harmonious relations between them. Bagehot defines cabinet as a "hyphen that joins, the buckle that binds the executive and legislative departments together." The members of the cabinet are members of the legislature as well as heads of the executive departments of the government. They are responsible for defining the broader lines of national policy, collectively constituting the government, and running the administration. They resolve, initiate and pilot in Parliament legislation which they deem essential for carrying out their policy. The Ministers must always be prepared to answer the questions put to them while the legislature is in session, impart all information which members consider necessary to elicit from the government, and defend their policies whenever questioned, criticized or called upon to give an account of their official conduct. The Ministry, therefore, is a committee of the legislature sharing in both the creation and the administration of law and responsible and subject to the control of the legislature. It cannot successfully function independently of the legislature.

Parliamentary system is a party government. The government comes into office as a unit and goes out of office as a unit. This means that the essence of the parliamentary government is its solidarity, a common front, and it becomes binding on every member of the Cabinet, and, of course, on every Minister outside the Cabinet, to pursue an agreed policy for which all accept responsibility and on which they stand and fall together. It is, therefore, important that Ministers must essentially belong to one single political party. Collective responsibility, which is the *sine qua non* of the stability of government, can be obtained only when Ministers come in office as a team and go out as a team. When a Ministry is composed of heterogeneous parliamentary groups, as under a multiple party system, it is most unstable, for compromise, which brings the various groups together, is sure to break down at the slightest pretext. In a composite cabinet there is no homogeneity in the ranks of Ministers and there is no team spirit which can ensure oneness of purpose, and, consequently, collective responsibility of the Ministry rarely exists.

**Prerequisites of Parliamentary Government.** Parliamentary system is the most

4. Garner, J.W., *Political Science and Government*, p. 324.

cherished and aspired for as it is based on the fact that the government is carried on in the name of the head of the State, King/Queen or President, by Ministers who are members of the majority party in Parliament and are responsible to Parliament for all their public acts, both individually and collectively. There are, however, certain prerequisites without which parliamentary system easily turns into something quite different.

The first prerequisite is the presence of a *titular* executive head of the State. The head of the State is not the directing and deciding factor responsible before the nation for the measures taken. The executive power of the government is exercised in his name by political men who belong to the majority party in Parliament. Legally, government is vested in the head of the State, and the officers of the State are appointed in his name and dismissed by him. The Ministers are his Ministers and they remain in office during his pleasure. He summons, dissolves and prorogues Parliament. Laws made by Parliament cannot be enforced without his assent and if he so wishes, he may withhold his assent thereto. But all this remains in theory and the Chief Executive does nothing by doing everything. Herbert Asquith, Prime Minister of Great Britain, wrote in 1913 a Memorandum on the rights and obligations of the King. He said, the King "is entitled and bound to give his ministers all relevant information which comes to him; to point out objections which seem to him valid against the course they advise; to suggest (if he thinks fit) an alternative policy. Such intimations are always received by ministers with the utmost respect and considered with more respect and deference than if they proceeded from any other quarter." Beyond this he must not go. In the oft-quoted phrase of Bagehot, the King has three rights—the right to be consulted, the right to encourage, the right to warn. "A king of great sense and sagacity," he added, "would want no others." This is the classical exposition of the powers of the head of the State in a Parliamentary system of government.

It is necessary that there must be a clear and stable majority in Parliament. Cabinet government means party government. The party provides the machinery to secure a stable government under a unified command of politically homogeneous and disciplined leaders. The fall of the Ministry is the fall of the party and the strength of the party in the legislature determines the solidarity and stability of the government. This is best achieved when there is a two-party system, one in office, the other in Opposition. But fairly good results can also be obtained when there are fairly solid blocs, each consisting of parties who habitually work together and who have enough in common to permit them to evolve a definite political programme. The classical example of a two-party system is Britain. Britain hates a coalition government, because it contradicts the fundamental principle that the cabinet represents a party united in principle. Britain's example has been admirably followed in the Dominion countries, although in Australia and New Zealand the anti-Labourite groups formed a partnership in order to defeat their Labourite opponents in 1949. In France and other Continental countries the multiple-party system exists and coalition government was the only possibility before the Fifth Republic in the former came into being. The result was that the government was a combination of strange bed-fellows who had nothing in common; no leader to follow, no definite programme to pursue, and no discipline to observe. All this led to a precarious tenure of the government. For example, during the twenty-three years from the end of the First World War to the French collapse in the Second World War, France had forty-two governments, while



Britain had eleven, averaging six months, and twenty-five months respectively. When the life of government is precarious and short, it is hesitant and unable to take a long view of policy. Its work is largely limited to matters of daily administration and its chief purpose is to remain in office instead of really governing. Moreover, when no party can definitely be made responsible because of a coalition, the government can neither be responsive nor really representative. An irresponsible government coupled with an incoherent public opinion is always a sectional government, which encourages corruption, jobbery, nepotism, toadying, and various other accompanying evils. The final result is the failure of the Parliamentary system as it happened in France. The Constitution of the Fifth Republic cannot legitimately be called a Parliamentary government. It was deliberately designed to correct the imbalances of the preceding Constitutions.

Two results flow from the two-party system as it operates in a Parliamentary government. One is the accepted leadership of the Prime Minister and the other is the principle of ministerial responsibility. Both are correlated and upon these two important institutions hinge the success of the Parliamentary system. The Cabinet is a team that plays the game of politics under the captaincy of the Prime Minister. He is the undisputed leader of the Parliamentary majority party who brings about unity and close association between Ministers on the one hand, and the cabinet and the Parliamentary majority on the other. C.F. Strong has succinctly said, "It is the party system which gives the cabinet its homogeneity, it is the position of the prime minister which gives it its solidarity."<sup>5</sup>

The Ministers in a Parliamentary system are answerable to the legislature and they remain in office as long as they can individually and collectively retain its confidence. Each Minister directs the work of the department over which he presides, in accordance with the policy as determined and decided by the cabinet, and he is answerable to the legislature for its successful implementation. In addition to this individual responsibility, each Minister shares a collective responsibility with other members of the government, "for anything of high importance that is done in any other branch of public business besides his own." On matters of high policy the Ministry comes into office as a unit, remains in office as a unit, and goes out of office as a unit. Ministerial responsibility ensures cohesion and solidarity and accounts for the stability of the government. Moreover, responsibility and responsiveness go together and it is only in a Parliamentary system of government that both can be secured.

Another essential feature of a successful Parliamentary system is a certain degree of moderation among political parties. Cabinet system is a democratic mechanism and democracy is inseparable from a belief in the methods of peaceful persuasion, in the ultimate reasonableness of man, and his response to rational arguments. It is, accordingly, necessary that both the majority party and the Opposition should understand and observe the rules of the game. The public duty of the Opposition is to criticise and oppose the policy of the government; to attack the government and individual Ministers. The majority party, at its end, must govern openly and honestly and it should meet criticism not by suppressing Opposition, but by rational argument. It means that there should prevail a sense of give and take; the habit of tolerance and compromise. They must have a strong

5. Strong, C.F., *Modern Political Constitutions*, p. 221.

commitment to the democratic process itself. A simple rule of British politics is, "if you wish to govern, you must first show yourself fit to govern." This rule acts as a powerful and valuable stimulus both to the majority and minority, for the minority party is legally recognised in Britain as His or Her Majesty's Opposition. Just as the party in power must reconcile differences with the Opposition in order to ensure a stable government representing public opinion and to win approbation of the electorate, similarly, the Opposition must remain moderate and sensible, if they are to win approval as an alternative government. When political parties become intolerant of one another and virulent in opposition and attacks, orderly government cannot exist. "Every trick, every method of obstruction and filibuster, is used to effect a certain political result, and if everything else fails, force may eventually be applied ... when that occurs orderly government often comes to an end and emergency decree takes the place of legislative act. From there it is only a step to dictatorship." For the success of the Parliamentary system of government rational and responsible Opposition is as necessary as the rational and tolerant majority imbued with the sense of give-and-take.

Experience has shown that the right of dissolution is vital to the smooth working of a Parliamentary system. If judiciously used, it is the solution to any possible deadlock. If Cabinet and Parliament disagree, the electorate will decide between them. The appeal to the people, as the ultimate source of political authority, is the only logical manner of settling any serious dispute between rival agencies of the State. Lack of it means Parliamentary absolutism. Being safe from dissolution and confident that its tenure goes by calendar, the legislature can overthrow the cabinet with impunity. This is what happened in France in the Third and the Fourth Republics and it made infinitely worse the tendency towards cabinet instability already created by the multiple party system.

Finally, cabinet is a secret body which is collectively responsible for its decisions. It must deliberate in secret, if mature, rational and independent discussion is to shape the policy. Publicity reduces the independence of mind of Ministers in relation to each other and harmony of views becomes well-nigh impossible. When it becomes known that members of the Cabinet have differed amongst themselves the spontaneity of party support disappears, and gives a rude shock to party solidarity. It also gives an opportunity to the Opposition to plague the government for their dissensions.

**Merits of Parliamentary System.** Parliamentary system is the only form so far devised in any representative democracy, which ensures harmonious cooperation between the executive and legislative branches of government. Ministers are the heads of the various administrative departments, and, at the same time, they are members of the majority party in the legislature. In the latter capacity they lead the legislature and provide Parliament with the policy on the basis of which decisions are to be made. There is no working at cross purposes between the executive and the legislative departments, as may be found in the United States when the President belongs to one party and the majority in Congress to another. On the contrary, under Parliamentary system, "from first to last there is full and harmonious collaboration between the law-making and money-granting authorities, on the one hand, and the law-enforcing and money-spending authorities on the other." There are, thus, few chances of conflict of authority and jurisdiction. With



authority thus concentrated, the full power of government can be promptly brought to bear upon any great emergency.

Bryce adds two more advantages of the presence of Ministers in the legislature: "(1) being in constant touch with the Opposition as well as in still closer contact with the members of their own Party, the Ministers can feel the pulse of the Assembly and through it the pulse of the public opinion and can thereby obtain useful criticism, in a friendly way, of their measures. The members of the legislature can also call to the attention of the Government any grievance felt by their constituents and secure quick redress." (2) The system secures "swiftness in decision and vigour in action, and enables the cabinet to press through such legislation as it thinks needed, and to conduct both domestic and foreign policy with the confidence that its majority will support it against the attacks of the opposition."<sup>6</sup>

Parliamentary system is the best example of representative democracy, for it recognizes the ultimate sovereignty of the people. Ministerial responsibility is immediately to the legislature, but no majority dare ride rough-shod over public opinion. The ultimate appeal rests with the people, and the government must remember those to whom it will have to account in the future. "Government with us," says Jennings, "is government by opinion, and that is the only kind of 'self-government' that is possible." The government is ever under scrutiny and the Parliamentary system provides for daily as well as periodic assessment of what the rulers do. It is kept on the *qui vive* (alert) by the constant probing and questioning of the Opposition and by the publicity given to governmental policies and actions by the more responsible segments of the press. Parliamentary democracy, thus, keeps more nearly in step with public opinion than the Presidential system.

Parliamentary system is in the real sense a government by criticism. The majority party forms the government. The minority constitutes the Opposition. The Opposition must oppose and criticize the government. There is a saying in Britain that the Prime Minister knows the leader of the Opposition more than he knows his own wife. It explains how far the Ministry is alive to the opinion of the Opposition and apprehensive of its criticism. A government which neglects the Opposition, does so at its peril. The lapses of the government are its opportunities and the Opposition uses them to appeal to the public opinion. "The House is its platform, the newspapers are its microphones, and the people is its audience." No other form of government can, therefore, meet the ideal of rationality and responsiveness better than parliamentary democracy. In his inaugural address to the 37th Commonwealth Parliamentary Conference at New Delhi, on September 23, 1991, the President of India, R. Venkataraman described the system of parliamentary democracy as "superior to all other systems that human ingenuity has so far been able to devise" and emphasised that if worked properly and honestly, there was perhaps no better substitute than the representative parliamentary democracy.

Another merit claimed for the Parliamentary system is its flexibility and elasticity. Bagehot highly eulogised this aspect and pointed out that people can, under this system of government, "choose a ruler for the occasion" who may be especially qualified to successfully pilot the ship of the State through a national crisis. Churchill replaced

6. Bryce, J., *Modern Democracies*, Vol. II, pp. 510-511.

Chamberlain as Prime Minister, because national emergency demanded it and this change was brought about without any political upheaval in the country. But such a smooth change is not possible under a Presidential type of government. The office of the President goes by calendar. Come what may, Presidential elections must be held after every four years. "The American Government," says Bagehot, "calls itself a government of the supreme people; but at a quick crisis, the time when the sovereign power is most needed, you cannot find the supreme people ... all the arrangements are for stated times. There is no elastic element; everything is rigid, specified and stated. Come what may, you quicken nothing and can retard nothing. You have bespoken your government in advance and whether it suits you or not, whether it works well or works ill, whether it is what you want or not, by law you must keep it."<sup>7</sup> This is one way of expressing the flexibility of the Parliamentary system. Another is the ease with which it can meet the crisis in the social and political life of the people. The executive can explain to and impress upon the legislature its assessment of the situation and the methods proposed to meet the emerging situation. Even well established customs may be waived temporarily, as was done in Britain in 1931, when the Ministers "agreed to differ" as against the constitutional convention of collective responsibility, to meet the abnormal situations.

Moreover, Parliamentary system can claim a high educative value. It cannot function without well-organised political parties. The object of every political party is to win elections and to capture government. To win elections means that the party should be in a position to secure the majority of votes and the electorate should approve its programme. It is like placing one's cards on the table and acquainting the nation with the party's political programme. It is for the people to judge one party and the other on its merits. If an issue of national importance arises subsequently, on which the verdict of the people had not been obtained by the party in power, the legislature may be dissolved and an appeal made to the electorate. Dissolution also helps to remove deadlocks between the executive and the legislature and makes the electorate the policy-determining factor. According to K. Leoewenstein, "In the authentic form of parliamentary government, dissolution is the democratic fulcrum of the entire process of adjusting power conflicts by making the electorate the ultimate policydetermining factor."<sup>8</sup> Moreover, by-elections, which are so frequent during the life of Parliament, serve as a barometer of public opinion and the government corrects or adjusts its policies according to the results obtained from such elections. All this democratic process has immense educative value. It makes the people politically conscious of their rights and responsibilities, and vigilance is the true price of democracy.

Finally, Parliamentary system has succeeded in democratizing governmental machinery in all civilised countries, particularly where exists the institution of hereditary monarchy. If Britain is called the citadel of democracy, it is because there is constitutional monarchy and the King or Queen does not actively govern. He reigns but does not rule. The latter is the function of his responsible Ministers. Bryce has aptly explained this aspect. He says, "As the actual working Executive has necessarily a party character it is a merit of this system that the National Executive, be he King or President, should be outside party,

7. Bagehot, W., *The English Constitution*, Chap. 2, Sec. 9.

8. Zurcher, A.J., *Constitutions and Constitutional Trends Since World War II*, p. 208.



and represent that permanent machinery of administration which goes on steadily irrespective of party changes ... when a cabinet fails, the transfer of power to another is a comparatively short and simple affair."<sup>9</sup>

**Drawbacks of the System.** In spite of the many practical merits of the system some objections have been urged against it. It has been argued that Parliamentary system violates the theory of Separation of Powers and, accordingly, it cannot commend itself. Combination of executive and legislative functions in the same set of individuals leads to tyranny. Sidgwick, while admitting the undeniable gain of harmony between these two chief organs of government, maintains that it is "to be purchased by serious drawbacks."<sup>10</sup> Ministers, he says, "are liable to be distracted from their executive duties by the work of preparing legislative measures and carrying them through parliament while parliament is tempted away from legislative problems by interesting questions of current administration in which, especially in foreign affairs, it is liable to interfere to an excessive extent."<sup>11</sup> The advantages of the division of government into different departments are, thus, "lost in the fusion or confusion of legislative and executive functions." This criticism, however, does not seem to be valid. Practical experience tells us that collaboration between the executive and legislative powers is essential for the well-being of the States. These departments cannot be divided into water-tight compartments. The theory of the Separation of Powers, in its traditional and consequently rigid form, is inconceivable and inoperative. While the same men may be at once members of the legislature and the executive, their functions in the two roles are distinct.

It is further pointed out that the Parliamentary system is unstable. The government has no fixed life. It remains in office only so long as it can retain parliamentary majority which is subject to the vagaries of the representatives, particularly "if dominant majority in the representative chamber is either small or wanting in cohesion; and in the latter case it is also liable to be upset by a new combination of parties in the chamber—aided perhaps by personal intrigues—if the opportunity for the combination is skilfully chosen so that the newly-formed majority is not reversed on an appeal to the country."<sup>12</sup> The uncertainty in the tenure of office, the critics maintain, provides no incentive to the party in power to adopt a farsighted and consistent policy. Nor does it venture to embark upon durable projects. A new Ministry which assumes office, is sure to reverse the policy of the defeated Ministry, for it comes in with its own definite policy and programme. It may, however, be said that much of the above criticism is true only in countries with multiple political parties where the lease of life of the cabinet is short and precarious. Countries, like Great Britain, having dual party system in practice, do not demonstrate such a state of affairs as dual party system is really the true basis of parliamentary democracy.

It is sometimes deplored that the Cabinet system divides the country into two antagonistic sets of men, those who strive their utmost to get things done and those who do their utmost to obstruct. The Oppositions under the Cabinet government, must oppose tooth and nail all measures sponsored by the government, irrespective of their practical

9. Bryce, James, *Modern Democracies*, Vol. II, pp. 511-12.

10. Sidgwick, H., *The Elements of Politics*, p. 444.

11. *Ibid.*

12. *Ibid.*, p. 445.

utility. Sometimes governmental policy is subjected to such a scathing criticism, that it proves detrimental to national solidarity and prestige. When Opposition indiscriminately opposes what the government may say or propose, it retards the progress of the country and it, also, amounts to national wastage, both of money and time. The antagonism between the parties is not confined to the legislature alone. They keep the country in a spirit of commotion and turmoil. As Bryce puts it, "the system intensifies the spirit of party and keeps it always on the boil. Even if there are no important issues of policy before the nation there are always the offices to be fought for. One party holds them, the other desires them, and the conflict is unending, for immediately after a defeat the beaten party begins its campaign to dislodge the victors. It is like the incessant battle described as going on in the blood vessels between the red corpuscles and the invading microbes."<sup>13</sup>

But the fact is otherwise. The essential feature of Parliamentary democracy is a certain degree of moderation among the political parties, or what may be described as political forbearance. The minority agrees that the majority should govern and the majority agrees that the minority must criticise. The Opposition is the prospective government and it understands and observes the rules of the game, as the majority does. The government so arranges the parliamentary programme as to give due opportunity to the Opposition to discuss and criticise its actions. The government even becomes wiser by that criticism and arrives at a compromise. This is the essence of discussion and Parliamentary system succeeds *par excellence* in this respect. The situation of ruthless opposition prevails only when extremist and anti-democratic forces gain a substantial membership in the legislature which they proceed to terrorise and ridicule. But this is not the way of Parliamentary system. "Whatever be the form of government," says Guerin, "a regime is democratic when the will to social cooperation of its members is stronger and more spontaneous than its anarchical impulses." Parliamentary system recognises and welcomes differences and it provides the machinery for their expression. But these differences must not go so far as to make the work of government impossible. If such things are allowed to happen, as they do in some of the states India, it is the end of parliamentary democracy.

Again, Cabinet system is said to be inefficient because it is a government by amateurs. The headship of different departments of government is entrusted to persons who may not be familiar even with the rudiments of administration "A youth must pass," as quoted earlier, "an examination in Arithmetic before he can hold a second class clerkship in the Treasury; but a Chancellor of the Exchequer may be a middle-aged man of the world who has forgotten what little he ever learnt about figures at Eton or Oxford, and is innocently anxious to know the meaning of those little first dots when confronted with Treasury accounts worked out in decimals."<sup>14</sup> Disraeli, while forming a Ministry, offered the Board of Trade to a man who wanted instead the Local Government Board. "It does not matter," said Disraeli, "I suppose you know as much about trade as the first Lord of the Admiralty knows about ships." Dr. Baldev Prakash was the Finance Minister in the Punjab Government, but with everything to learn about public finance; for the whole of his life Dr. Prakash had belonged to the medical profession. The Prime Minister is not

13. Bryce, J., *Modern Democracies*, Vol. 11, p. 512.

14. Sidney Low, *Government of England*, pp. 201-202.



concerned in the choice of Ministers with their aptitudes and knowledge of the departments they have to preside over. His choice is seriously limited by political considerations, the foremost of which is the preservation of a stable parliamentary majority. Hence, the amateur who obtains office is not always a gifted amateur. "Weak men, incompetents, are sometimes appointed to office or to inappropriate departments, out of such consideration of popularity, sometimes gained or faded a decade or more ago, or through the personal esteem or friendship of the Prime Minister." And once in office, the major part of their time is devoted to Parliament and cabinet meetings, social and other political activities and in nursing their constituencies. Nor does the brief and precarious tenure of their office leave any stimulus for them to learn the departmental technicalities. The result is, as the critics say, that Cabinet government is a government by inefficient who are mere tools in the hands of their permanent civil servants.

But this is not a correct appreciation of the Parliamentary system. Its essence is the responsibility of Ministers to the legislature. It is, no doubt, preferable to appoint a Minister who is well informed about the working of the department over which he presides. But it does not mean that he should be an expert. The business of the Minister is not to do the work of the department. He is only to see that it works properly and consistently with the declared policy of the government. In fact, there are many advantages if the head of the department is an amateur. A layman sees the department as a whole and his appraisal of the problem requiring solution is entirely different from that of an expert. "The cabinet", according to Ramsay MacDonald, "is the bridge linking up the people with the expert, joining principle to practice. Its function is to transform the message sent along sensory nerves. It does not keep the departments going; it keeps them going in a certain direction."

Another serious difficulty of the Parliamentary system is the ever-growing size of the cabinet in every country. Cabinets have grown everywhere too large for prompt and effective discussion and decision. The huge amount of work to be done by the Cabinet and the tremendous burden on each Minister—departmentally, parliamentarily, electorally, and socially—leaves very little margin of time for serious thought on any subject beyond the immediate task. Then, participation in international conferences imposes on several Ministers, particularly on the Prime Minister, the Foreign Minister, and the Finance Minister, rather long occasional absences from current duties of administration at home. All taken together, the period of office of Ministers, as Herman Finer observes, "is a period of practical work, not of reconsideration and survey." The obvious result is, as the critics point out, a deep and continued reliance on the administrative services. Bureaucracy under the circumstances, according to Ramsay Muir, "thrives under the cloak of ministerial responsibility." Whatever be the justification of criticism, there is no denying the fact that the necessity of reducing the size of the cabinet is being felt in every country and in Britain it was reduced in 1947 to sixteen members only, and so was the size of Churchill's Cabinet in 1951. Anthony Eden continued the practice when he formed his government in May 1955 and Macmillan followed Eden after the latter's resignation. It is now the usual norm in Britain and India, too, has followed more or less the same pattern. Amery has suggested that no cabinet should exceed six or seven ministers. But this is not a practical number considering vast expansion in the activities of the State and other political compulsions to a parliamentary system of government.

Parliamentary system, its critics maintain, has degenerated into a party government in which political power is monopolised by the majority party. So long as parliamentary majority is assured, it assumes dictatorial powers. The minority party is completely left out of active participation in the government and the nation is deprived of the talented persons who might be belonging to the minority party. Public opinion has no sweep over the policies of the government. The critics, thus, very often allege that Great Britain practises a form of "plebiscitary democracy" in which people vote 'yes' or 'no' on the record of the government in general but are deprived of any share in the "formulation of the individual policies."<sup>15</sup> The charge of dictatorship of the Cabinet is not quite baseless. But there is a redeeming feature too. Lowell correctly says, "if the parliamentary system has made the Cabinet of the day autocratic, it is an autocracy exerted with the utmost publicity under a constant fire of criticism."<sup>16</sup> Cabinet government provides its own safeguards and accountability to the electorate is the primary constitutional safeguard.

It is argued that the pressure and complexity of the affairs of a modern government have led to certain changes in the manner of operation of cabinet government. The cabinet has been regarded as the centre of governmental coordination and of policy-making, and as being collectively responsible for all decisions on major issues and approver of all other decisions. But the seemingly great power of the cabinet and its control over all policy matters is qualified by three factors. The first is the existence of politically more powerful individuals within the cabinet who constitute an hierarchy of their own and try to overlord the cabinet and the various ministries and departments. The second is the development of a structure of cabinet committees. These cabinet committees are the real decision-making bodies within the spheres assigned to them. And above all is the ascendancy of the Prime Minister to unprecedented heights. He no longer remains *primus inter pares*. He generally formulates the policy of the government and often takes decisions without consulting the whole cabinet. Ramsay Muir has said that the dictatorship of cabinet in the last resort means the dictatorship of the Prime Minister. The Prime Minister makes and unmakes the government, shuffles his pack as and when he likes, may advise dissolution of Parliament and being leader of the party may take disciplinary action against the members of his party who flout the party whip and do not toe the line of the Prime Minister.

But it must not be forgotten that the Prime Minister's position is bound up with the party. His prestige, no doubt, is one of the elements that make for the success of the party. He is also responsible for party cohesion. But without his party the Prime Minister is nothing. Whatever he is and whatever he can claim to be, is due to what the party has made him. Once the party disowns him, he meets the fate of Ramsay MacDonald. Within the cabinet he cannot do all that he wishes to do. He must listen to and respect the opinions of his colleagues. It is essential for the Prime Minister to retain the loyalties of his political friends who owe him a personal as well as party allegiance. Laski explains, "The parliamentary system is conducted on the vital hypothesis that no man is indispensable; and its daily operation is a constant and salutary reminder to the Prime Minister that his fortune depends upon the recognition of this truth."

15. Carter, Herz and Ranney, *The Government of Great Britain*, p. 326.

16. Lowell, A.L., *The Government of England*, Vol. 1, p. 326.



Finally, Cabinet government is charged with lack of promptness in deciding and taking immediate action in times of national crisis or emergency. In emergency promptness and vigour of initiative are essential for success. But a cabinet consists of a large number of Ministers, which need many minds to be consulted. A quick and decisive opinion cannot, accordingly, be secured. Moreover, a cabinet under the parliamentary system with its divided responsibility, open discussions, and shifting majorities can hardly be expected to take prompt, united and vigorous decisions. These objections are also not borne by facts. World War II had fully demonstrated how cabinet government withstood the test of time. In India, too, there is cabinet government, both at the Centre and in the states. How successfully the Central and the state governments grappled with the refugee and other post-partition problems is now a matter of contemporary history.

### PRESIDENTIAL PATTERN

**Nature of the Presidential system.** Bagehot said, "The independence of the legislative and executive powers is the specific quality of Presidential Government just as *fusion* and *combination* is the principle of Cabinet Government." Both Cabinet and Presidential systems are representative in character, but responsibility of the executive to the legislature is the *sine qua non* of the former, whereas the latter is constitutionally independent of the legislature. Under the Presidential system the legislature and the executive are two distinct departments of government. There is more or less a separation between the two. The executive is neither the creature of the legislature, nor is it responsible to that body for its public acts or dependent on it for remaining in office. The head of the State, the President, is the real executive both as a matter of law and fact, and such power is the result of a direct grant from the constituent authority effected through express provisions of the constitution. The fact that the President is not merely a Chief Executive but also the Executive makes all 'ministers' or 'cabinet members' his assistants and, thus, denies them the more independent positions of ministers in a Parliamentary system.

It is a misnomer to describe as 'ministers' who constitute the Presidential 'cabinet'. Neither is there 'cabinet' in the Presidential system nor are there 'ministers'. Both are the product of the Parliamentary system. The members of the so-called cabinet in the Presidential system are not members of the legislature and they do not belong to the legislative majority party. They have no access to the legislature. They do not take part in the debates and have no *locus standi* to initiate and pilot legislation or to defend the policy of government or stand in need of seeking its confidence. Nor have they any power to advise dissolution of the legislature and appeal to the electorate, if the legislature does not approve their policy. They have, indeed, no policy of their own. The policy of the government is that of the *head* of the State, who appoints them and retains them in office as long as it pleases him. They are responsible to him alone and to no one else. The 'cabinet' under a Presidential system, in brief, is the tool of the head of the State. He can override the opinions of its members or he may not seek it or even if he does, it is for him to decide whether to consult them individually or collectively. And as for its members, a breath unmakes them as a breath had made.

The Chief Executive in a Presidential system has a status independent of, and coordinate with the legislature, and is not subject to the direction or control of the latter either for his continuance in office or in respect to the manner in which he exercises his powers. The duties of the Chief Executive and his administrative officers (members of the cabinet, by law designated Secretaries in the United States) lie wholly in the executive and administrative field and they have no responsibility in respect of the legislative functions, except as it may be their duty to make known to the legislature the need for legislation in order that their executive and administrative functions may be more effectively performed.

Garner gives a matter of fact analysis of the Presidential system. He says, "What has been called 'residential' government as contra-distinguished from cabinet or parliamentary government, is that system in which the executive (including both the head of the state and his ministers) is constitutionally independent of the legislature in respect to the duration of his or their tenure and irresponsible to it for his or their political policies."<sup>17</sup> The system is not Presidential because it has an elected President as the Chief Executive. It is Presidential because President is the real executive who does not owe his office to the legislature nor can he be removed from office. In a Parliamentary system real executive is the creature of the legislature and remains in office at its will.

**Presidential System in the United States.** The Presidential pattern of government has its origin in the United States and is now confined to certain countries which are exclusively in the Western Hemisphere as well as in some other countries. Pakistan too adopted this system under General Ayub Khan, but, again, reverted to the Parliamentary system in 1973. It shall be instructive to know the factors which contributed towards its emergence in the United States and the shape of the governmental machinery which it assumed. There were two factors which influenced the framers of the American Constitution against the Cabinet form of government. In the first place, Montesquieu's theory of the Separation of Powers had a great appeal for the Americans. The theory of limited government, which is the natural corollary of the doctrine of popular sovereignty, had convinced the framers of the Constitution of the necessity of separating the three branches of government as it prevented tyranny and absolutism. If liberty had to last, they argued, the political direction of authority should not concentrate in any one of the branches of government. Secondly, they knew that Cabinet government could function only when the life of the nation was divided into distinct political parties, each with its separate programme and platform. Political parties, the framers of the Constitution believed, weakened national solidarity by creating sharp cleavages whereas the need of the time then was unity out of diversity of the new nation. They, accordingly, created an executive department independent of and coordinate with the legislative department; an "energetic yet dignified" executive capable of enforcing national laws firmly and one which should lend a note of stability to the new government.

The Presidency of the United States is one of the greatest political offices in the world. Its occupant has become—with the exception of the Central European dictators—

<sup>17</sup> Garner, J.W., *Political science and Government* pp. 311-12.



the most powerful head of a government known to our day. He is absolutely free with respect to the exercise of his powers and tenure of office, except that all appointments made and treaties concluded by him are ratified by the Senate. As his term of office goes by calendar, his responsibility to the electorate is unenforceable. He can only be impeached by the Senate. His conviction by the Senate cannot carry a greater penalty than removal from office and disqualification to hold and enjoy any office of honour, trust, or profit in the United States.

In the exercise of his executive duties, the President is assisted by his Secretaries who are heads of different departments and are now ten in number. The Secretaries of the President are merely his personal assistants. They are appointed by him and are responsible to him. None of them is a member of Congress nor is he responsible to it. Though popular usage collectively gives to these departmental heads the name of 'Cabinet', yet it is a misnomer to designate them as such. The President cannot shift his responsibility to this body or any officer of it. He cannot make them individually or collectively accountable to the legislature or the country for the policies and actions of the federal government over which he presides. Their responsibility is to the President alone. 'Cabinet' in the United States is a mere creation of the President's will. It is an extra-statutory and extra-constitutional body. It exists only by custom and if the President desires to dispense with it, he can do so. The procedure, as it stands today, is that the 'cabinet' meets ordinarily once a week and the President places before it questions upon which he thinks he needs their advice, and the members bring to the cabinet such matters in their respective departments as they deem appropriate for 'cabinet' conference and general discussion. Votes are seldom taken as they are of no importance beyond securing a mere expression of opinion. And even if ever they are taken, they have no value. 'Cabinet' members have no corporate rights as in Britain. This is well illustrated by two anecdotes, one relating to America and the other to Britain. "Seven nays, one aye, the ayes have it," announced President Lincoln, following a 'cabinet' consultation in which he found every member against him. This attitude is so often contrasted with Lord Melbourne's putting a question on corn laws to the vote in the cabinet saying, "it does not matter what we will say, as long as we all say the same thing." Cabinet, in the United States, has been aptly described as the President's family.

The executive in the United States has no initiative in legislation, except that the President may send messages from time to time to Congress, recommending the enactment of particular laws. It is true that Presidential messages are favourably received by Congress and greatly influence the course of legislation, yet the executive in America lacks all initiative and guidance which is so important rather basic, feature of the Parliamentary government. Nor has the President the right to summon (except for extraordinary session) congress and the dissolve it. Congress meets automatically on dates specified in the Constitution and its duration is fixed. No doubt, the President can veto laws passed by Congress, but it is only a suspensive veto. If the Bill vetoed by the President is again passed by both the Houses of congress, with a two-third majority in each House, it becomes law without the signatures of the President and is forthwith promulgated.

According to Herman Finer the American Presidency has six outstanding characteristics.<sup>18</sup>

- "It is a 'made' executive but it has grown;
- "It is a 'solitary' not a 'collective' executive;
- "It is popularly elected, in practice directly;
- "It is more than an executive;
- "It is separated from Congress;
- "It may be tinkered with, but cannot be reformed."

**Merits of the Presidential System.** The chief merit of the Presidential system is that without being responsible it retains a representative character. The President is an elected representative of the people, but his tenure does not depend upon the fluctuating will of the legislature. A fixed tenure of office accounts for greater continuity of policy and firmness in administration, and it can be successfully carried out without any fear of break. The principal virtue of Presidential system is the fact that it creates a stable executive within the framework of a democratic order. This means promptness, vigour and initiative in administration. All executive authority is vested at one-centre and the head of the State is *a* executive as well as *the* executive. He is, in a word, the generalissimo of administration and, as such, there can be no question of divided policy. His Secretaries or 'ministers' follow the policy initiated by him.

Unity of control, quickness in decision, and concerted policy, which emergency of any kind may demand, can best be obtained in the Presidential system. The head of the State is the chief foreign policy maker and the Commander-in-Chief of the armed forces of the country. As Commander-in-Chief, he may even take, in case of war, the command of military operations and effectively control matters of vital importance in domestic and foreign affairs, just as Woodrow Wilson and Franklin Roosevelt did in the United States in the two World Wars. What President Roosevelt did, during the economic crisis of the thirties of the present century and George Bush in the Gulf War in 1991, are matters of contemporary history. All this is not possible in a Cabinet system of government. Even Winston Churchill, who attained new heights of power and authority, had not the personal powers of the President of the United States. To illustrate the difference in the position and powers of the President of the United States and the Prime Minister of Britain, Jennings writes that "the President pledged the United States to the realization of the objectives of the Atlantic Charter while the War Cabinet, not the Prime Minister, pledged the United Kingdom."<sup>19</sup> The President is also head of the nation and is not merely a party leader. This gives him greater dignity, prestige and authority. The nation looks to him to steer the country through any kind of national emergency.

The Presidential system also makes possible the appointment of experts to head the various departments of the government without consideration of their party affiliations. President Cleveland, a Democrat, appointed Waliter G. Gresham as Secretary of State and he had been thought of as a Republican candidate for the Presidency. Theodore Roosevelt and Taft each appointed a Democrat Secretary of War and Hoover made a Democrat

18. Finer, H., *The Theory and Practice of Modern Government*, p. 669.

19. Jennings, I., *Cabinet Government*, p. 181.



Attorney-General. Roosevelt's choice of Henry L. Stimson as Secretary of War and of Franklin as Secretary of Navy in 1940, both prominent Republicans, are two more notable examples. A Prime Minister in a parliamentary system cannot normally do this. If the Cabinet is to work as a team, it must consist of persons who think alike and belong to the same party to act alike. Again, though a Prime Minister has a choice in selecting his colleagues, yet his party expects certain men to be in the Cabinet and the country, too, expects them to be there. Then, the allotment of various departments to Ministers is a matter of political consideration and expediency rather than of aptitude for the work they are expected to perform. There is no political expediency which may weigh with the President and there is no party crisis which he may be afraid of.

Since the President's Secretaries or 'Cabinet ministers' have no berth in the legislature, the congressional load of work with them is negligible. Nor have they any constituency to nurse or to look forward to the day of election. They have, thus, the time and energy to devote themselves exclusively to administrative work and pursue the policies of the government unaffected by political exigencies. There is another advantage too. Since the executive is not responsible to the legislature and its adverse vote does not bring about a crisis in the government, the tumult of the party spirit is less in evidence. It is also claimed that due to the presence of the system of checks and balances there prevails a greater sense of stability and the administrative machine works more efficiently and effectively.

The advocates of the Presidential form argue that such a system is best suited for countries inhabited by different communities with diverse interests. Homogeneous dual party system, which is so essential for the success of a Cabinet government, cannot be secured under these conditions. Multiple party system is the general outcome, when the people are divided both horizontally and vertically. But a government formed out of heterogeneous elements is a weak and unstable government. Under the Presidential system there is a "solidarity" executive. The President is the unmistakable focus of responsibility. Government, either for its creation or for existence, does not depend upon the complexion of the legislature. In the United States, however, two-party system is firmly rooted.

**Drawbacks of the system.** The critics of the Presidential system are numerous and they urge that it divides government into watertight compartments, as it is based on Separation of Powers. In actual practice there can be no rigid division between the executive and legislative departments and to divide them into independent and coordinate departments is to create friction between them which is highly injurious to good and efficient government. Much time is consumed in struggles among the various branches of government to determine the extent of their respective powers. Also, the very stability of the system verges on inflexibility. By establishing the Presidential system, Finer says, the Fathers of the American Constitution "separated the executive sources of knowledge from the legislative centre of their application; severed their connection between those who ask for supplies and those who have the power to grant them; introduced the continuous possibility of contest between two legislative branches; created in each the necessity for separate leadership in their separate business; and made this leadership independent of the existence and functions of the executive."<sup>20</sup> When powers are divided

20. Finer, H., *The Theory and Practice of Modern Government*, p. 101.

between the executive and legislative departments without any means of proper coordination, there is always inordinate delay to arrive at an agreement even on pressing matters which demand expeditious disposal. One branch of government may be operating on one policy whereas the other may be following quite a different one, particularly when the executive belongs to one party and the legislative majority to another. This condition may produce a stalemate which, in time of crisis, as during 1931-32, can be disastrous.

Lack of direct initiative in legislation on the part of the executive is really a very serious defect in the Presidential system. Legislation is the main function of the executive and here the legislature does not act under its instructions. There can, accordingly, be no cohesiveness and the party ties, which bind the executive and the legislature, are too flimsy for an integrated policy. The result is that the legislative procedure is different essentially from the one in a country having the parliamentary system; financial procedure is worlds apart; there is no coordination of political energy or responsibility; but each branch has its own derivation of authority and its morsel of responsibility. And in order to remove the possibilities of concentration of authority at one single end, a system of checks and balances may have to be introduced as in the American Constitution. The system of checks and balances is not only the negation of the theory of Separation of Powers, but it is also highly injurious to administrative efficiency. Somewhat ironically, Prof. Beard remarks, that the checks and balances in the United States "designed to promote over-all equilibrium, often operate rather to aggravate than to ameliorate the ill-effects of separation, as for example, in the case of the Presidential veto and senatorial assent to treaties."<sup>21</sup> If the system of checks and balances has prevented the likelihood of authoritarian government, it has also led at times to the weakening of effective government.

Moreover, the Presidential system is characterised to be "autocratic, irresponsible and dangerous." Once the President has been elected the nation must continue with him, whether they like and approve of his policy or not. He may become autocratic and even degenerate into a dictator, subject to the provisions of the Constitution. The legislature has no constitutional power to withdraw the mandate which the electorate gave him at the time of election. This has been well explained by Bagehot. He says, "You have bespoken your government in advance and whether it suits you or not, whether it works well or ill, whether it is what you want or not by law you must keep it." The Presidential system is also criticised for its rigidity, for the constitutional provisions must always be adhered to both in times of peace and war. During World War II Presidential elections in America were held twice, whereas general elections were postponed in the United Kingdom by an Act of Parliament. In America there could not be any postponement without amending the Constitution which is a difficult and lengthy process. The rigidity of the Constitution does not take cognisance of the needs of the hour. It must take its own course, though it may, at times, prove harmful to the interests of the nation.

Finally, the Presidential system has frequently been criticised for being unequal to the task of conducting a vigorous foreign policy. It is asserted that the President's dependence on the cooperation of a frequently recalcitrant Congress makes United States'

21. Beard, C.A., *American Government and Politics*, p. 16.



foreign policy a slow moving and uncertain affair. No one, including friends and foes, can guess about the degree to which executive actions or commitments will be sustained or repudiated by Congress. Absence of dissolution in the Presidential system is responsible for less harmony and more tension than in the parliamentary system. The executive has no means to bring to book a refractory legislature.

Bryce maintains that "the parliamentary system has many advantages for countries of moderate size, the Presidential, constructed for safety rather than for promptitude in action, and not staking large issues on sudden decisions, is to be preferred for states of vast area and population such as are the United States and Germany." In the United States of America the Presidential system has worked vigorously well. Wherever basic unity was required in an exceptional crisis, statesmanship and patriotism has always provided it. By effective appeals to the voters through the spoken words, press, radio, and lately television, the Presidents have succeeded in dramatizing their programmes and compelling consideration of their views. But a system of government, which cannot be generally and easily applied to ordinary conditions, fails to command universal respect and approbation. In countries influenced by the model of the United States, the Presidential system has not been altogether successful. Latin American systems have tended to become dictatorships, and only in a few countries such as Paraguay, Costa Rica, Chile, Brazil and Peru have attempts been made to limit executive power.

### CONSTITUTIONAL AND NON-CONSTITUTIONAL POLITICS

**Constitutional democracies.** The recent norm is to divide politics into constitutional and non-Constitutional regimes. This division has been necessitated by the confusion caused by the contemporary regimes when all describe themselves as democratic in some fashion or the other. The former USSR, the People's Republic of China, the German Democratic Republic, and quite a few more like these are Communist States, though all claim their governments to be essentially democratic. Many of the new, developing countries of Asia, which began their careers as democracies soon shifted to totalitarian regimes, but retained the symbols of democracies realising that outright tyrannies are rare in the world now. 'President Sukarno of Indonesia thought of his regime as "guided democracy" and President Ayub Khan of Pakistan established "basic democracies" from the village level up.

Constitutional democracies include those regimes which have essentially similar ethos to be classified in one group without reference to the nature of political executive available in one or the other. The common characteristics of constitutional regimes are the presence of effective restraints on the holders of power so that they act in a responsible manner and not arbitrarily. The society is pluralistic and no single group or element enjoys dominant position or plays a unique role. In such a society there prevails a spirit of tolerance, willingness to compromise and commitment to constitutionalism. Elections are free, unrestricted and uncontrolled. Freedom to dissent is the accepted political norm and consequently the presence of a strong and responsible Opposition is the *sine qua non* of a constitutional democracy. Both the majority and the minority have a strong commitment to the democratic process and, accordingly, the victors and the vanquished at the polls

accept the positions they assume and believe that at some future date their positions may be reversed without any violent action. As there is wide agreement on the benefits of the present rules of the game, there prevails a sense of unity; a consensus binds the people together and gives them a concern for the welfare of the community as a whole. The Opposition and other interest groups exercise a tangible impact on the decisions and policies of the government.

Constitutional democracies have in common the traditions of civility, political neutrality of the army and the civil service and the existence of the rule of law. Rule of law is the crucial factor which ensures legal impartiality and absence or reduction to a minimum of arbitrariness. There is only one kind of law and one set of courts to which those who make and enforce law are amenable together with the citizens. All governmental acts are according to the law and subject to control by appropriate authorities and effective remedies are available against the State, if ever it ventures to transgress the law. Constitutional democracies invariably ensure the presence of an independent and impartial judiciary which protects individual rights. There is only one commitment of the judiciary, to uphold the Constitution and the law. In politics of this kind government does not control, not even largely influence, the mass media of communication.

Constitutional democracies exist, with few exceptions, in the older and more developed countries where politics is obviously competitive and free and where ruling group is responsible and participation widespread. The influence is not concentrated nor are the avenues to influence closed. The dispersal of influence means that limits are set to what rulers may do and also to what is generally regarded as 'political.'

Democracy in its traditional Western form has not spread to the newer nations of the world. Even in contemporary Western Europe regimes, such as French and the Spanish have come into existence by non-legal action or pressure. Similarly, regimes in the first lap of industrialization can rarely afford the luxury of political democracy or constitutional restraint or power. Economic development, especially industrialization, tends to disrupt traditional social relationships and behaviour. Economic planning is the prerequisite of industrialization, but it is a process of standardization and concentration of authority which demands from the people acquiescence and submission.

"Constitutionalism, the allocation of a higher sanction to the basic laws than to the immediate wishes of a ruler," says Michael Curtis, "marks an important stage to a democratic regime."<sup>22</sup> Power in a constitutional regime is limited, diffused and competitive and a large number of the persons who wield it are directly and periodically accountable to the people from whom they ultimately derive power. There is a continuous public scrutiny of what the ruler does and he is subject to daily and periodic assessment. The problem for the tyrant, as Aristotle knew, is to find people who will tell him the truth. Constitutional regime rarely suffers from this disadvantage. The people to tell the truth are obvious, the *ultima ratio* in a democratic polity.

### NON-CONSTITUTIONAL REGIMES

**Non-Constitutional regimes.** Non-constitutional democracies include regimes of different

<sup>22</sup> Michael Curtis, *Comparative Government and Politics*, p. 52.



## SECTION IX

# PUBLIC OPINION, POLITICAL PARTIES AND PRESSURE GROUP

25

## Public Opinion

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*Plan:* A. Public Opinion : Its Meaning and Emergence. B. Formation of Public Opinion. C. Agencies of Public Opinion. D. Public Opinion in Backward Countries. E. Books for Further Study.

### A. Public Opinion : Its Meaning and Emergence

Public opinion is a topic studied under democracy, which is supposed to be a form of government, which respects public opinion.

*Difficulty of Definition:* Like several other terms in political science, 'public opinion' cannot be defined easily, though the expression appears to be simple and self-explanatory. As Finer points out, in spite of extensive study on the subject, public opinion "is still perhaps lacking proper analytical definition."

*Government by Public Opinion:* The study of what we call public opinion assumed great importance in the 19th century with the rise of democracy, which is described in one way as government by consent or criticism or public opinion. While a non-democratic government does not care much for public opinion (though it also depends at least on passive consent), a democratic government is supposed to function according to public opinion.

*What People Think and Want to be Made Effective:* According to Bryce, "public opinion is commonly used to denote the aggregate of the views men hold regarding matters that effected or interest the community." R.H Soltau says : "The term is usually applied to what people think and want for their common life.... Public opinion in politics is not just what people think, nor even that part of their thinking, which they express in public; it is what they want to be made effective in practice. There are many things that people like and dislike, but what matters in politics is what they like enough to demand, what they dislike enough to resist." (*An Introduction to Politics* - 1959, p. 197.)

*Propaganda, Indoctrination, Inculcation and Appeal:* In modern times, the latest scientific devices are being used to develop and influence public opinion. There are specialists today all over the world to disseminate new ideas



and principles. J.S. Roucek and others explain the meaning of terms like propaganda, indoctrination and inculcation, and appeal. "At present propaganda is a one-sided effort frequently by secret or undercover methods to present information which the author knows to be at least partially false...Indoctrination and inculcation mean a one-sided effort to present information which is untruthful only to the extent that any partial presentation is false...An appeal is a frank statement of position usually in the form of an opinion, in which no effort is made to disguise the source or intent." (J.S. Roucek and Others, *Op. cit.*, p. 497.)

**Public Opinion neither Public nor Opinion:** R.G. Gettell says: "What is generally called public opinion has been criticised on the ground that it is neither public nor opinion. Prevailing opinions are often of a small minority or of an interested class or of outstanding leaders. The masses are often indifferent or ignorant or misinformed. In this sense public opinion may not really be public." (*Political Science* - 1956, p. 284.) However, this view is not quite correct, because on certain issues people do have clearcut opinion.

**Views on Matters Open to Discussion:** It must be remembered that there can be opinion on subjects which are open to doubt or controversy; there can be no opinion on established facts. Nobody speaks of public opinion on the need of good government; for this is accepted by all, and is not a subject of controversy.

**Important Role of Public Opinion Today:** Public opinion plays a vital role in modern democracy; in fact democracy has been defined as government by public consent or government responsive to public opinion. There was a time, when government did not care for the opinion of the people; in fact, there was no need to care for it, as the opinion of kings, nobles and priests, only counted. In democratic states today, the old order has gone, and it has become history; the people and their opinion count much and can even do or undo government.

**Origin of Public Opinion:** It is difficult to say when exactly the term was used for the first time, though one can refer to the use of similar expressions in the ancient and medieval periods.

The ancient Romans spoke in terms of *consensus populi*, in the legal sense. In the middle ages the saying: "*vox populi, vox dei*" (voice of the people is the voice of God) gained currency. Machiavelli also gave importance to the voice of the people, which he compared to the voice of God. The credit of introducing it into political vocabulary in Europe goes to the French writers, particularly Rousseau, who perhaps was the first to employ it before the outbreak of the French Revolution.

**Public Opinion, a Social and Political Force not to be Ignored:** Public opinion is a tremendous social and political force not to be ignored in the modern world. In highly advanced democracies, much thought has been given to study the problems connected with public opinion.

So much is the importance attached to public opinion now-a-days in countries like Britain and the USA that political parties, newspapers, journals,

books, films, radio and television are put to the most effective use to create and mould public opinion in favour of or against something. Political parties feel that money invested in the means of shaping public opinion is not lost but well invested; for it is believed that the seizure of political power in a democracy depends much on the possibilities of creating, directing and moulding public opinion.

**Success of Democracy Depending on Effective Public Opinion:** It is now an accepted fact that the success of democracy depends upon an effective public opinion. R.G. Gettell says: "The success of democratic government depends upon the degree to which the public opinion is sound, well developed and effective in controlling the actions and policies of government." (*Political Science and Government* - 1956, p. 286.) Democracy sets its face against conflict based on violence, but it recognises or even encourages a conflict of opinions. In a democracy people are free to express their opinion, provided the opinion is not libellous or defamatory.

**Public Opinion Feared Even in Dictatorship:** Even in dictatorships, government attaches much importance to public opinion. The very fact that public opinion is ruthlessly suppressed and people are forced to develop opinion as approved by government shows how even in totalitarian and authoritarian states public opinion is dreaded by rulers. Hitler's government spent large sums of money on propaganda and on controlling public opinion. Dr. Goebbels put the "manufacture" of public opinion on a scientific basis. Hitler believed that the thinking power of the masses is limited and that they understand things slowly and forget them easily. He, therefore, used his technique of propaganda with the belief that the masses would believe anything, if it was often repeated.

## B. Formation of Public Opinion

**Opinion Formation a Complex Process:** It is difficult to say how exactly public opinion is formed, for it is a very complex process. The process can originate in different ways. It may begin from the book of a writer, the speech of a leader or a dialogue between two thinkers or leaders. What important men and women say or write is carefully watched in a country, in which people are deeply interested in public affairs. The thoughts of a great leader reach the public through the newspapers and other agencies of public opinion, and these are bound to provoke at least a section of the population. Many people or rather most of them do not have any original opinion on any subject. But they begin to express it after hearing what other people (for whom they have respect) say.

**Importance of Views of Leaders:** Generally speaking, ordinary people even in advanced countries are not capable of giving original ideas or of thinking correctly. They generally voice the views of their leaders, though they may not blindly follow them. In backward countries, people can neither read nor think properly, and the process of the formation of public opinion is restricted to a very small circle. This small circle consists of leaders, members of legislature and other public bodies, scholars, journalists, government officers or administrators and politicians.



*Emergence of Public Opinion from Vague Ideas, Prejudices and Beliefs:* A keen observer finds that public opinion emerges out of a shapeless mass of vague ideas, prejudices and beliefs. In the formation of public opinion, besides original thoughts and views, all kinds of hazy ideas, beliefs and prejudices play a great part. This explains why public opinion may not always be correct; it may be subjective on issues on which the public holds strong yet prejudiced views. In villages in India, public opinion is favourable to the practice of untouchability, and is against its abolition. This explains why it becomes difficult for government to remove untouchability in spite of the legislation against the practice of untouchability.

*Conditions Necessary for Public Opinion:* The following conditions are necessary for the formation of public opinion:

1. *People's Capacity to Think:* If people are to give their opinion, they should have the capacity to think, and without this there can be no opinion either for or against a certain issue. Ignorant or illiterate people are not competent to give their opinion on political and other issues.

2. *People's Interest in Problems:* People must have a high degree of political consciousness and deep interest in studying the problems of government. They must have at least some education so that they are mentally equipped and competent to deal with these problems.

3. *Formation of Groups:* People must form groups and communicate with one another regarding the various problems confronting them. Well organized political parties can do much in the evolution of public opinion.

4. *Initiative by Political Leaders:* Political leaders can take the initiative in creating and moulding public opinion. Enlightened and far-sighted leaders play a great role in educating the people "politically" and inactivating healthy public opinion. For instance, Mahatma Gandhi and Pandit Jawaharlal Nehru released enlightened currents of public opinion.

5. *Role of Writers:* Good writers can prepare the background for the formation of public opinion. Leaders, writers and journalists can provide the public with the necessary "raw material" for the formation of public opinion.

6. *Homogeneity and Community of Interests:* R.G. Gettall says that homogeneity and community of interests are necessary for the emergence of public opinion. "Wide differences in race, religion or class interests interfere with the formation of a general consensus of opinion on public questions. If the political mind of a people is to be sound, there must be, behind minor differences, and essential agreement on the nature of the government to be maintained and the national ideals to be realised." (*Ibid.*, p. 281.) It is hardly possible for white people and coloured people to come together in a country and hold common opinion, when there is a wide and unbridgable gulf between the two.

7. *Freedom of Expression:* The conditions stated above have relevance only in a democratic country, where there is complete freedom of expression,

which may be regarded as a basic condition. The freedom of expression includes freedom of the press. There cannot be anything like public opinion in a dictatorship or authoritarian state, where all agencies of public opinion are muzzled and where people are punished for criticising government.

### C. Agencies of Public Opinion

*Expenditure of Large Sums:* In highly advanced Western countries. the various agencies of public opinion are fully developed in a scientific manner for the propagation of opinion in a conspicuous manner.

The following are the most important agencies which influence and mould public opinion:

1. *Political Parties and Associations:* Political parties play an important part in the formation of public opinion. These can function effectively only when there is full freedom of thought and expression. Each political party in a country, with the ultimate aim of seizing power places facts, figures and comments before the public through platform, motion pictures, radio, books, magazines, pamphlets, posters, and handbills so that the public becomes convinced about the correctness of its stand and attitude.

Associations also play a conspicuous part in the growth of public opinion. Gettall points out: "In the United States such organisations as the American Federation of Labour, the Congress of Industrial Organisations Political Action Committee, the National Association of Manufacturers, the National Education Association, the American Legion and the Grange have been active in influencing public opinion for or against certain measures." (*Ibid.*, 288.)

2. *Public Platform:* The public platform enables leaders to establish contact with the people to whom they can communicate their views and people get opportunities to see and meet their leaders for knowing their views or opinion on the important issues of the day. Political leaders, scholars, journalists and other people can express their views at public meetings and influence public opinion. On the eve of elections, public platforms are fully exploited. Every speaker puts his views before the people to convince them that his stand or that of his party is correct and better than that of the other parties and individuals.

3. *Press:* Among the various agencies of public opinion, the press occupies the first place. Walter Lippmann regards the newspaper as the Bible of Democracy. The press serves all those who rule and those who are ruled. The press is helpful to the government to keep in touch with the people. The press gives the written word and this carries much weight. Daily newspapers, journals, periodicals and pamphlets also play a great part in the formation of public opinion.

Many people do not have views of their own, but newspapers can help them to form views. News of various types, the important daily events, activities of the various political parties, the opinion of leaders inside or outside the government, and the opinion of editors are all available to the public at a low price.



**Drawbacks of the Press:** The press all over the world, including in advanced countries, has certain drawbacks.

(1) The press is not entirely free, fearless, unfettered and independent. In fact, it is difficult to find a press which is entirely free, for directly or indirectly certain interests either in the government or outside exert pressure on it. In many countries, the press is owned and controlled by millionaires, who desire that chains of newspapers in their hands should support their views and policies. Editors have no right to express themselves freely, but are forced to toe the lines of their "bosses."

(2) The press may not maintain high standards, and may be found wanting in the presentation of authentic news and healthy views.

(3) The press may be forced to win support or increase its circulation by placating and serving a particular group of interests. It may try to create ill will and enmity among groups and communities.

(4) The press may cater to the low tastes of the public, and indulge in blackmailing and character-assassination.

**4. Educational Institutions and Associations:** Educational institutions, which have also an important place in influencing public opinion, prepare youngsters for good citizenship. The work of educational institutions may not have an immediate effect in the political field; but its value has to be realised from the long range point of view. Schools and colleges enlighten and educate students and enable them to develop their personality. Students, who emerge from good schools and colleges in the long run, become good citizens and excellent agents of moulding public opinion.

Various political, social, economic and cultural associations are also instrumental in moulding public opinion.

**5. Cinema, Radio and Television:** Everywhere in the world the cinema has also become an effective instrument to spread ideas; but it is mainly used for entertainment, and commercial purposes and not for educating and enlightening the people. Perhaps, if properly exploited, the film can be more powerful than other agencies of public opinion, as few people read books and newspapers, but almost all people see films.

**6. Legislature:** The discussion in the legislature have immense educational value and can go far in developing and moulding healthy public opinion. In advanced countries, the standard of discussion in the legislature is high. On various important issues of the day discussions are held on the floor of the legislature, and in the course of these enlightening discussions, the different approaches and points of view of important people are known.

**Measuring Public Opinion:** It is not an easy task to measure public opinion. In recent years, under the statistical method, Gallup poll is used. This is a method of gauging public opinion by the distribution of framed questions. The value of the method depends on the sampling technique.

#### D. Public Opinion in Backward Countries

There is a great contrast between public opinion in Western countries and that in backward countries. In the West, people are educated, and illiteracy is almost absent and therefore strong and enlightened public opinion can be easily formed. This is not the case with people living in the backward countries of Asia and Africa. Ignorance, illiteracy and poverty are rampant, and these are great obstacles in the way of the formation of public opinion. In India, public opinion is really not that of the public, for it is of the elite as given in newspapers. The masses of people have neither facts nor opinion; even then they have votes. Their opinion is the same as the one given by their leaders from time to time. Only a few people are educated and deeply interested in political and own opinion. Most of the people in India live in villages in which there are no reading rooms or libraries. Very few people read newspapers.

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## ROLE OF CIVIL SOCIETY IN STRENGTHENING DEMOCRACY

\*Dr. S. Subba Rao

Like many social science concepts, civil society is a highly contested concept. In different contexts and for different ideological purposes, the concept 'civil society' has numerous meanings. Both the diffuseness and richness of the concept of civil society reflect the deep historical sediments of meaning, which have accumulated, layer upon layer, from days as far back as those of the ancient Greece. In our times, two distinct traditions have shaped thinking about civil society: the liberal-democratic tradition and the Marxist tradition. Both the traditions relate the rise of civil society to the development of capitalism and identify civil society as an arena of power that is separate from the state. Though the liberal-democratic tradition encompasses a range of perspectives on the desirability of civil society, there is a general consensus that civil society can play a politically significant role in checking the power of the state and holding government officials to account.

The concept of civil society, to give it a meaning, embraces an entire range of assumptions, values and institutions, such as political, social and civil rights, the rule of law, representative institutions, a public sphere, and above all a plurality of associations. Neera Chandhoke sums up the meaning of civil society "as the public sphere, where individuals come together for various purposes both for their self-interest and for the reproduction of an entity called society." "It is a", she continues, "sphere which is public because it is formally accessible to all, and in principle all are allowed entry into this sphere as the bearers of rights." Robertson defined it as "civil society is the framework within which those without political authority live their lives – economic relationships, family and kinship structures, religious institutions and so on. It is a purely analytic concept because civil society does not exist independently of political authority, or vice versa, and it is generally believed, neither could long continue without the other; therefore, no very clear boundary can be drawn between the two."

Broadly speaking civil society is commonly defined as "the area outside the family, market and state", encompassing of purposes, structures, degrees of organization, membership and geographical coverage. While descriptions vary across institutions and countries, the "civil society ecosystem" typically includes:

- NGOs, non-profit organizations and civil society organizations (CSOs) that have an organized structure or activity, and are typically registered entities and groups
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- Online groups and activities including social media communities that can be “organized” but do not necessarily have physical, legal or financial structures
- Social movements of collective action and/or identity, which can be online or physical
- Religious leaders, faith communities, and faith-based organizations
- Labour unions and labour organizations representing workers
- Social entrepreneurs employing innovative and/or market oriented approaches for social and environmental outcomes
- Grassroots associations and activities at local level
- Cooperatives owned and democratically controlled by their members.

These civil society actors work positively to reduce societal harms and increase societal benefits. They aim to improve social cohesion; increase levels of economic and social development; reduce the burdens of poverty, ill-health and inequality; promote the interests of marginalized groups; extend the protection of social, civil and political rights, protect the environment, and provide services such as health, education and other forms of community development.

In contemporary discourse, the term ‘civil society’ is used in two senses. In one sense civil society comprises the social institutions like school, church, club and other similar groups of citizens which serve as structures of legitimation of the state. These institutions largely lend support to the state. This meaning of civil society corresponds to Gramsci’s view of its role in sustaining the capitalist system. In the second sense, civil society stands for a set of public interest organizations set up by some conscious citizens which make various demands on the state or launch social movements to mobilize ordinary citizens on the way to social reform. The state must respond promptly to their demands in order to ensure smooth functioning of society. The role of civil society in this sense has assumed special significance in recent years.

Present-day concept of civil society closely corresponds to Alexis de Tocqueville, a French philosopher’s view on the role of ‘intermediate voluntary associations’. In order to protect the freedom of citizens, Tocqueville suggested that a vigorous system of voluntary associations could act as counterweights to the state power. They could crystallize and publicize opinions and interests which would otherwise go unheard. Moreover, these associations could stimulate collective self-help rather than reliance on state initiative. They could draw people into cooperative ventures, breaking down their social isolation and making them aware of their wider social responsibilities. They could function as ‘schools of democracy’, instilling habits of civic virtue and public spirit into their members. In short, these associations would serve as an effective instrument of defence of individual liberty and encourage close cooperation between the citizens to solve their common problems. Tocqueville was an ardent champion of freedom of association. He earnestly hoped that free political parties and a free press would prove to be most effective among these



voluntary associations. In the contemporary context, various humanitarian groups and non-governmental organizations (NGOs), independent mass media, think tanks, universities and social and religious groups could be added to this list.

Civil society is now regarded as an important organ of democratic society. It includes a wide range of associations and social movements which provide ample opportunities to the citizens to develop their capacities and express their varying interests and diverse identities. It creates an atmosphere where the citizens are able to enjoy some level of autonomy or independence from government control or influence. It promotes a moral sense of obligation among the citizens and motivates them to participate in civic causes. It discourages their dependence on the government for the solution of their common problems. Thus, it serves as the true source of democratization.

Public associations involved in democratic development, together with other civil society stakeholders can play an important supporting role for local, regional and national governments of the states. Civil society encompasses most of a democratic country's population. It is you and I, non-elected people – students, members of clubs, associations, churches and sports teams. In highly authoritarian countries, however, the lines between government and civil society are blurred. There are well known situations where civil society (that is, entities not connected to the government) barely exists at all.

One of the greatest threats to democracy has been the politicization of social life. The state has been so central and pervasive in distributing what people want that every major group has wanted desperately to obtain access to or control over it. Virtually all major groups (political and civil) has been oriented to what they could get from the political system, rather than to make it work fairly...What is virtually needed in these circumstances is some neutral, trusted umpires and monitors whose commitment is unequivocally to the process, not to any particular outcome, party, faction group or leader.

When this is the case, the government is tasked to provide or control most or all services to its constituents, a daunting task even for the richest of countries. Inevitably, resources are limited and people often have to settle for nothing, or something that is less than what they want or need, but what the government is able to offer them. Although there may be good reasons to believe the government has the best interests of everyone at heart, the task of delivering the goods and services that people need is a goal best shared with civil society.

Civil society also plays a key role in all aspects of community development and outreach. Health, education, welfare, sport, the arts, business – each can be seen as



Civil society groups are independent of the state, voluntary, and at least to some extent self-generating and self-reliant. In a democracy, civil society groups have respect for the law, for the rights of individuals, and for the rights of other groups to express their interests and opinions. Part of what the word "civil" implies is tolerance and accommodation of pluralism and diversity. Civil society groups may establish ties to political parties and the state, but they must retain their independence, and they do not seek political power for themselves.

The first and most basic role of civil society is to limit and control the power of the state. Of course, any democracy needs a well-functioning and authoritative state. But when a country is emerging from decades of dictatorship, it also needs to find ways to check, monitor, and restrain the power of political leaders and state officials. Civil society actors should watch how state officials use their powers. They should raise public concern about any abuse of power. They should lobby for access to information, including freedom of information laws, and rules and institutions to control corruption. Civil society should expose the corrupt conduct of public officials and lobby for good governance reforms. Even where anti-corruption laws and bodies exist, they cannot function effectively without the active support and participation of civil society. Civil society also promotes political participation. NGOs can do this by educating people about their rights and obligations as democratic citizens, and encouraging them to listen to election campaigns and vote in elections. NGOs can also help develop citizens' skill to work with one another to solve common problems, to debate public issue, and express their views. Civil society organization can also help to develop the other values of democratic life: tolerance, moderation, compromise, and respect for opposing points of view. Without this deeper culture of accommodation, democracy cannot be stable. These values cannot simply be taught; they must also be experienced through practice. Civil society also can help to develop programmes for democratic civic education in the schools as well. Civil society must be involved as a constructive partner and advocate for democracy and human rights training. Also civil society is an arena for the expansion of diverse interests, and one role for civil society organizations is to lobby for the needs and concerns of their members, as women, students, farmers, environmentalists, trade unionists, lawyers, doctors and so on. NGOs and interest groups can present their views to parliament and provincial councils, by contacting individual members and testifying before parliamentary committees. Another way the civil society can strengthen democracy is by providing new forms of interest and solidarity that cut across old forms of tribal, linguistic, religious, and other identity ties. Democracy cannot be stable if people only associate with others of the same religion and identity. When people of different religions and ethnic identities come together on the basis of their common interests as women, artists, doctors, students, workers, farmers, lawyers, human rights activists, environmentalists and so on, civic life becomes richer, more complex, and more tolerant. Civil society can provide a training ground for future political leaders. NGOs



important public issues and can be recruited to run for political office at all levels and to serve in provincial and national cabinets. Experience from other countries shows that civil society is a particularly important arena from which to recruit and train future women leaders. Civil society can help inform the public about important public issues. This is not only the role of the mass media, but of NGOs which can provide forums for debating public policies and disseminating information about issues before parliament that affect the interests of different groups, or of society at large. Civil society organizations can play an important role in mediating and helping to resolve conflict. In some countries, NGOs have developed formal programmes and training of trainers to relieve political and ethnic conflict and teach groups to solve their disputes through bargaining and accommodation. Civil society organizations have a vital role to play in monitoring the conduct of elections. This requires a broad coalition of organizations, unconnected to political parties or candidates, that deploys neutral monitors at all the different polling stations to ensure that the voting and vote counting is entirely free, fair, peaceful, and transparent. It is very hard to have credible and fair elections in a new democracy unless civil society groups play this role. It can be said civil society is not simply in tension with the state. Because civil society is independent of the state doesn't mean that it must always criticize and oppose the state. In fact, by making the state at all levels more accountable, responsive, inclusive, effective – and hence more legitimate – a vigorous civil society strengthens citizens' respect for the state and promotes their positive engagement with it. A democratic state cannot be stable unless it is effective and legitimate, with the respect and support of its citizens. Civil society is a check, a monitor, but also a vital partner in the quest for this kind of positive relationship between the democratic state and its citizens.

Civil society is evolving in impactful and dynamic ways. Definitions are changing as civil society is recognized as encompassing far more than a mere "sector" dominated by the NGO community: civil society today includes an ever wider and more vibrant range of organized and unorganized groups, as new civil society actors blur the boundaries between sectors and experiment with new organizational forms, online and off. Roles are also changing: civil society actors are demonstrating their value as facilitators, conveners and innovators as well as service providers and advocates, while the private sector is playing an increasingly visible and effective role in tackling societal challenges. Renewed interest in the role of faith is identifying powerful sources of social capital. Furthermore, the context for civil society is changing: economic and geopolitical power is shifting away from Europe and North America; technology is disrupting traditional funding models and dramatically shifting social engagement; and political pressures are restricting the space for civil society activities in many countries. All of these shifts pose challenges, create opportunities and require rapid adaptation on the part of traditional actors. Underpinning all of this is the sense that civil society today is a vibrant, diverse and evolving space, which is increasingly innovative in its attempts to solve societal challenges and support local, national and global governance.



Looking forward to future, civil society leaders need to understand how shifting external contexts will shape their opportunities to achieve impact, and, in particular, what this evolution means for their relationships with businesses, governments and international organizations. In a turbulent and uncertain environment, actors can no longer work well in isolation – new, more effective ways of tackling societal challenges will inevitably transcend traditional sector boundaries. This means civil society actors need to look to unusual sources for inspiration and relevance in order to adapt successfully.

Four future contexts are particularly challenging for civil society actors to consider in light of these shifting roles:

- **Mad Max** raises the spectre of international conflict;
- **Transparently Blurred** focuses on the impact of openness and technology;
- **Turbulence and Trust Deficits** looks at the prospect of low growth combined with low institutional trust; and
- **Privatized World** asks what civil society would do if the corporate sector were the primary actor “for the common good”.

These scenarios allow civil society leaders to test strategies and think through opportunities presented by a rapidly changing world. By being engaged with government, business and international organizations, civil society actors can and should provide the resilient dynamism the world urgently needs. The power and influence of civil society are growing and should be harnessed to create trust and enable action across sectors. The changes that civil society is undergoing strongly suggest that it should no longer be viewed as “third sector”; rather, civil society should be the glue that binds public and private activity together in such a way as to strengthen the common good. In playing this role, civil society actors need to ensure they retain their core missions, integrity, purposefulness and high levels of trust. The world will always need independent organizations and individuals to act as watchdogs, ethical guardians and advocates of the marginalized or under-represented. Civil society in all its forms has an important role in holding all stakeholders, including itself, to the highest levels of accountability.

The shifting definitions, roles and contexts described in this paper suggest that leaders across civil society, business, government and international organizations possess the opportunity to harness these shifts in order to design new solutions to societal challenges. Civil society can play a particularly powerful role in this process as an enabler and constructive challenger, creating the political and social space for collaborations that are based on the core values of trust, service and the collective good.

A term originally formulated in the eighteenth century, civil society became much more widely used at the end of 1980s when a number of regimes were overturned by tides of apparently unorganized, previously non-political forces. Some of these took place in the Far East. In 1986, the authoritarian President Ferdinand Marcos of the Philippines was



overthrown by waves of 'people power' demonstrations in Manila supporting Corazon Aquino, the widow of one of his most famous victims, Benigno Aquino. In 1987, demonstrations in Seoul destabilized the plans for an orderly handover of power by South Korean President Chun Doo Hwan to his chosen successor, General Roh Tae Woo. This set in train a sequence of events which led to the reintroduction of democracy. In spring 1989, a demonstration in Beijing by thousands of students mourning the death of the Chinese Communist Party's former General Secretary, Hu Yaobang, turned into a massive challenge to the nation's leaders on Tiananmen Square and in many other cities of China that drew in hundreds of thousands of protestors and was only put down on 4 June with the loss of thousands of lives.

The biggest demonstration of the potential power of civil society, however, came in the autumn of that year in Eastern Europe. It was civil society that brought down the Communist regimes there and hastened the end of the Soviet Union in 1991. This was despite the fact that those regimes had had decades to organize the repression of opponents and to establish very powerful secret police forces. They had brutally suppressed demonstrations in Hungary in 1956 and Czechoslovakia in 1968, which served as enduring lessons. The victory of the demonstrators in Eastern Europe was achieved with minimal casualties. It was a striking affirmation of the potential political power of civil society, if roused. They had achieved this despite other more 'regular' political groupings such as parties that had been more relentlessly repressed. The Communist regimes had devoted enormous resources to identifying, dispersing, and punishing organized opposition, and yet it had all been in vain. The more amorphous civil society had overcome it.

After this, civil society became the focus of intense attention, as it seemed to offer the promise of an alternative, more consensual, non-coercive democratic politics. For some it acquired a normative status. It became a metaphor for the good society.

Civil societies performs the crucial task of providing external analysis of domestic and regional political developments, including relations with neighbouring states and the status of human rights in society. The scope of civil society analysis needs to be expanded and deepened with aim of keeping governments in check and stimulating democratic transition. Developed and strong civil society is one of the guarantees of democracies. Through its active participation, following the work undertaken by the authorities, performing analysis and participating in the everyday issues of the country, civil society assists the authorities in pushing for reforms and makes the steps needed for full democracy and to be accountable to its people.

It was in civil society that individuals and groups set out to challenge unresponsive and authoritarian states through peaceful and non-violent methods: strikes, protest marches, demonstrations, dissemination of information through informal networks and the formation of associational life through the setting up of reading clubs and discussion



forums. The net effect of mobilization in civil society is well known: some very powerful states collapsed, in the face of mass protests, like the proverbial house of cards.

In retrospect, two aspects of the argument on civil society appear tremendously significant. The first aspect was the sustained demand for political rights, and more particularly civil rights: the right to freedom of all kinds, from freedom of expression to freedom to form associations. The second aspect was signified by complete disenchantment with vocabularies that spoke of taking over state power through revolutionary means, smashing the state, or transforming the state. Born into a world disenchanted with overbearing states, with political parties that preferred to follow the impulse to power rather than representing their constituencies, and with trade unions which had become bureaucratic and unrepresentative, the concept of civil society highlighted one basic precondition of democracy: state power has to be monitored, engaged with, and rendered accountable through intentional and engaged citizen action.

It is clear that civil societies have won their most momentous victories against authoritarian states. That is why civil society, as the antonym of authoritarianism, is on everyone's lips – government officials, journalists, funding agencies, writers, and academics, not to mention the millions of people across the globe who, find it an inspiration in their struggles for a better world. Cited as a solution to social, economic, and political dilemmas by politicians and thinkers from left, right and all perspectives in between, civil society is claimed by every part of the ideological spectrum as its own.

There was a time when civil society was an 'essentially contested' concept. Today it has become a consensual concept and a matter of tiresomely unanimous acclaim. In the process, civil society has been flattened out. The reasons for this flattening out are the following. Firstly, the close connection between the 'civil society' argument and the demise of authoritarian regimes came to be perceived by many multilateral and donor agencies as a sure recipe for democracy. Secondly, the generalized discontent that political parties and trade unions as agents of representation had become bureaucratic, unresponsive, and concerned more with the pursuit of power than with representation of their constituencies led scholars and activists to look to other agents in civil society to deepen democracy. In the process, civil society came to be interpreted as an alternative to the formal sphere of party politics. Thirdly, in the wake of the post-Washington consensus forged by the World Bank, the state was brought 'back in': it was expected that the state would share its functions with civil society organizations. In other words, the state came to be pluralised, and a number of NGOs emerged to perform the many tasks heaped upon the shoulders of civil society.

No where in the history of civil society has it been conceptualized as an alternative to or as independent of the state. For De Tocqueville (1835, 1840), civil society limits the state; for Hegel (1821), civil society is a necessary stage in the formation of the state; for Marx, civil society is the source of the power of the state; and for Gramsci (1929-1935), civil society is the space where the state constructs its hegemony in alliance with the dominant



classes. Not only are the state and civil society a precondition each for the other, but the logic of one actually constitutes the other. Today, however, the two have been uncoupled. Today, however, civil society is readily and smoothly presented as an answer to the malaise of the contemporary world.

The concept of civil society swept into prominence in the 1980s for reasons that are by now well known. Intellectuals in Eastern Europe began to realize that the two options that had been historically available to people struggling to emancipate themselves from unbearable political situations were no longer accessible to them. The first opinion was reform of state power from above. The second was that of revolution from below. Both had been ruled out by Brezhnev doctrine, namely that the (former) Soviet Union would not hesitate to intervene in the affairs of Eastern European states, wherever and whenever the need arose.

Reeling under obdurate state power and imperious bureaucracies, people found the lack of civil and political liberties, state monopoly over economic and social transactions, and absence of participative citizenship or representativeness both claustrophobic and intolerable. Some remedy had to be found. The only opinion that presented itself as credible in this context was to carve out a 'free zone' within the existing system. Here people could associate and express their sentiments without fear amid warm networks of their solidarity. The Eastern Europeans called this free zone, peopled by social associations, self-help and self-management organizations, and characterised by mutual solidarity, 'civil society'.

Theorised as a metaphorical space between the household and the state, the call to civil society served to repopulate the public sphere, which had been disastrously emptied out by regimes intent on monopolizing the nooks and crannies of social and political life. The slogan of civil society naturally appeared attractive to people who for long had inhabited politically arid, remorseless, and desolate political spaces. It offered the promise that a rather tormenting deficit in the lives of people would be filled up by arm and personalized social interaction, even as these very people turned their back on the state.

Forged as it was in the historical context of Eastern Europe, three features of the civil-society argument stand out as significant. First, it announced the determination of people who had been banished from the political arena to insert themselves into the political discourse on their own terms. The invocation to civil society conveyed a statement of intent: that ordinary people have the capability to fashion their own lives. Second, the argument asserted that the nurturing of self-help and solidarity through thick and overlapping associations – reading clubs, discussion societies, trade unions, self education groups – was a good thing in itself, for it provided a counterpoint both to the state and to the atomism of individual life.



Civil society emerged in Eastern Europe as the site where people, organized into groups, could make and pursue democratic projects of all kinds in freedom from bureaucratic state power. Third, then, the argument sought to institutionalize state-society relationships, even as it asserted the procedures such as the rule of law, institutionalization of political and civil rights, and accountability should be codified in order to limit the power of the state over all areas of social life. In the process, the historical pairing of state and civil society was uncoupled.

Because of the powerful political movement, in 1989, we were to witness the awesome spectre of so many powerful states in Eastern Europe literally collapsing before agitating and agitated crowds assembled in the streets. Even as a purportedly self-limiting social revolution, transformed itself into the political public, concerned with the form and content of power. The 'civil' in 'civil society' no longer signified non-political; it meant that people inhabiting the sphere outside the state had the right to debate about the nature of the state and the politics it pursued.

In retrospect, two aspects of the civil society argument in Eastern Europe give use cause for thought. First, if we look closely at the details of the argument the demand for civil liberties, especially the right to freedom of expression and the right to associate, rule of law, limited state power, political accountability and the freeing of the market – it is clear that the Eastern Europeans were practically re-enacting the bourgeois revolution that had taken place in England in the seventeenth century against the absolutist state power. John Locke, the quintessential liberal thinker, may well have authored the civil-society script for and in Eastern Europe in the 1980s.

Secondly, the message conveyed by the experience of Eastern Europe was to validate precisely what Antonio Gramsci had conceptualized in the 1930s: that wherever and whenever states – whether absolutist or socialist – deny their people political and civil rights, we can expect the eruption of discontent against exclusions from structures of citizenship and representation. Gramsci's dictum that states that do not possess civil societies are more vulnerable than those that do possess them was to prove more than prescient in this case. The tragedy here was that because people in Eastern Europe were deprived of civil rights, and because the civil society argument concentrated on resuscitating those rights, the Eastern Europeans, through and by the civil society argument, proclaimed a final end to the revolutionary imagination. The argument effectively killed off the idea of politics as social transformation. From the 1980s onwards, civil society replaced revolutions as the prime locus of passions and imaginations. It is not surprising that scholars and political commentators wedded to bourgeois liberalism hastened in the aftermath of the velvet revolution to proclaim an end to ideology and an end to history.

The civil society argument, fashioned in the historical context of Eastern Europe, was to have a powerful influence on the way that scholars and activists conceptualized the human condition in other parts of the world. It was to prove extraordinarily influential. The



reasons had partly to do with the bourgeois liberal acclaim of the end of ideology, its insistence on the bankruptcy of the socialist tradition, and its emphasis on the validity of liberal democracy as the sole option for politics. The attraction of civil society in such instances had less to do with the intrinsic value of the concept and more to do with its ideological association with the end of socialist societies.

The civil-society argument was also enthusiastically embraced by activists and scholars, for reasons that were relatively independent of the 'end of ideology' thesis. These had largely to do with the failure of the state especially in developing countries, to deliver a minimum standard of life to its people. Powerful bureaucracies and political elites, consolidating their power in the interstices of post-independence states, had simply turned their backs on the very same masses who had put them there in the first place. Scholars in India were to speak of corrupt bureaucracies and of even more amoral and power-hungry political leaders, who were completely impervious to the fact that state-led development had failed miserably.

It is not as if authoritarian state policies had not been resisted earlier. Since the late 1960s, militant struggles against state power had been launched by the Naxalite movement. The early 1970s saw the formation and consolidation of a number of social movements challenging the agenda of the state, such as the anti-caste movement, the farmers' movement, and the Women's movement. After the lifting of emergency in 1977, two of the most important movements in contemporary India in the 1980s – the civil liberties movement and the environmental movement – appeared as dominant actors on the political scene. The public sphere of India's civil society became noisy, untidy, vibrant, and creative. The language of civil society which, as the product of specific historical processes in England and France, is arguably an alien import, proved peculiarly apt for societies that were struggling to consolidate new democracies.

As part of the "social basis for democracy", civil society represents a fundamental part of the democratic system and highlights issues of importance. It has the ability to express controversial views; represent those without a voice; mobilize citizens into movements; build support across stakeholders; and bring credibility to the political system by promoting transparency and accountability. In terms of policy formulation, civil society is a valuable partner in providing deep subject-matter expertise based on first-hand experience, trailing and scaling up innovations in social services and facilitating citizen engagement.

Civil society representatives often act in the public interest as whistle blowers, holding institutions and individuals to account – for example with regard to environmental pollution and tax avoidance. This is a valuable service that compliments government regulation and oversight, but one that can be under-valued. Similarly, CSO activities, both alone and in public-private partnerships, often complement government assistance in providing a wide range of services to populations. Society can act as an enabler of and



catalyst for cross-sector change, creating for governments the political and policy "space" to make difficult or otherwise unpopular decisions.

An active, diverse civil society often does play a valuable role in helping advance democracy. It can discipline the state; ensure that citizens' interests are taken seriously, and foster greater civic and political participation. A weak civil society leads to a lack of "civic engagement" and "social trust". But other evidence suggests that a strong civil society can automatically reflect dangerous political weaknesses. In a 1997 article that some have nicknamed "Bowling with Hitler", Princeton Professor Sheri Berman presented a sobering analysis of the role of civil society in Weimar Germany. In the 1920s and 1930s, Germany was unusually rich in associational life, with many people belonging to the sorts of professional and cultural organizations that are thought to be mainstays of pro-democratic civil society. Berman argues, however, that not only did Germany's vibrant civil society fail to solidify democracy and liberal values, it subverted them. Weak political institutions were unable to respond to the demand placed on them by the many citizens' organizations, leading the latter to shift their allegiance to nationalist, populist groups and eventually to the Nazi party. In the end, the density of civil society facilitated the Nazis' rapid creation of a dynamic political machine.

Even in established democracies with strong political institutions, however, there are reasons to doubt the simplistic idea that when it comes to civil society, "the more the better". As early as the 1960s, some scholars warned that the proliferation of interest groups in mature democracies could choke the workings of representative institutions and systematically distort policy outcomes in favour of the rich and well-connected or, more simply, the better organized. In the 1990s, warnings about "demo sclerosis" have intensified as advocacy and lobbying organizations continue to multiply.

There is no guarantee that democracy ensures a strong civil society. Japan has been a stable democracy for half a century but continues to have a relatively weak civil society, particularly in terms of independent civic groups working on the kinds of issues that activists in the United States and Europe hold dear, such as the environment, consumer protection, human rights, and women's issues. In France, one of the mother countries of Western liberal democracy, civil society takes a distant back seat to a powerful state. Spain, the exemplar of recent democratic transitions, is relatively weak in associational life. Political parties and elections are what ensure a pluralism of political choices; they can certainly operate in a country with only lightly developed civic associations. Some American political analysts criticize Japan, France, Spain and other countries where civic participation is low, arguing that these states are at best stunted democracies because they lack what Americans believe is an optimal level of citizen engagement. Many Japanese, French and Spanish people, however, contend that their systems better accord with their own traditions concerning the relationship of the individual to the state and allow their governments to



that a democracy is not a real democracy unless it has American style civil society is not only wrong but dangerous. A strong belief in civil society should not fuel an intolerant attitude toward different kinds of democracies.

When civil society groups wage campaign for freedom in a dictatorship, a key element of their political bona fides is complete independence, financial and otherwise, from the government. In democratic and democratizing countries, however, the rules are different. Many civil society groups receive government funding. In parts of Western Europe, government support for civil society is widespread, including among groups that take on the government, such as human rights and environmental organizations. Even in the United States, governmental funding of civil society is much more extensive than many people realize. A major non-profit sectors, sponsored by John Hopkins University, found that "Government is thus almost twice as significant a source of income for American non-profit organizations as is private giving, despite the presence there of numerous large foundations and corporate giving programs."

The rise of civil society includes some to see a nearly state-free future in which tentative, minimalistic states hang back while powerful non-governmental groups impose a new, virtuous civic order. This vision is a mirage. Civil society groups can be much more effective in shaping state policy if the state has coherent powers for setting and enforcing policy. Good non-governmental advocacy work will actually tend to strengthen, not weaken state capacity. A clear example is U.S. environmental policy. Vigorous civic activism on environmental issues has helped prompt the creation of governmental agencies, laws, and enforcement mechanisms. Nothing cripples civil society development like a weak, lethargic state. In Eastern Europe, civil society has come much further since 1989 in the countries where governments have proved relatively capable and competent, such as Poland and Hungary, and it has been retarded where states have wallowed in inefficiency and incompetence such as Romania, and for parts of the decade, Bulgaria.

Outside of dictatorial contexts, states can play a valuable role in developing a healthy civil society. They can do so by establishing clear, workable regulatory frameworks for the non-governmental sector, enacting tax incentives for funding of non-profit groups, adopting transparent procedures, and pursuing partnerships with non-governmental organizations. Civil society can and should challenge, irritate, and even, at times, antagonize the state. But the civil society and the state need each other and, in the best of worlds, they develop in tandem, not at each other's expense.

Civil society has an important role to play in consolidating democracy. The basic roles of civil society and the media in democratic systems of governance are of utmost importance, and one can say that their main scope is to limit and control the power of the state, to raise public concern, to promote political participation, to develop values of



everyday issues of the country, civil society assists the authorities in pushing for reforms and makes the steps needed for the full democracy and to be accountable to its people. Civil society needs to be autonomous and able to resist manipulation by the state and business interests. There are signs of an increasing strength and assertiveness in civil society in India. It will be stronger, more autonomous and play a meaningful role for democratic consolidation in the future. Civil society organizations will be more active in stimulating the political awareness of the mass public and encouraging their political participation to protect their own interests. Through these efforts, government can become more accountable and responsive to the people's needs, and the elites and the mass public will be more committed to democracy. Hence, democratic consolidation will be achieved.

The governments in democracies can accelerate the development of civil society. Instead of using a corporatist model to co-opt civil society and restrict its autonomy, states can provide assistance to civil-society organizations to perform their functions more effectively. This assistance should be in form of financial support and training or personnel. In addition, civil society's autonomy should not be violated. The governments should not be afraid of free civil society since it encourages governments to be more honest, accountable, transparent and responsive to the public demands, which will win the support of the people and strengthen their legitimacy.

Just as current role of civil society actors vary widely in the turbulent present, across and within the unique contexts of countries and cultures, the future roles of civil society will be diverse and multiple. However, individual factors such as technological change, demographic shifts, environmental pressures and political and economic uncertainty, as well as the demands of multi-stakeholder models strongly suggest that the re roles that civil society plays will gain in importance, particularly in relation to populations that are better educated, connected and aware than at any point in history.

The opportunity for leaders across civil society, business, government and international organizations is to harness these shifts in new configurations to design solutions to collective challenges. Civil society can play a particularly powerful role in this process as an enabler and constructive challenger, creating the political and social space for relationships that are based on the core values of trust, service and the collective good.

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