

CHAPTER - III

I

INTRODUCTION:

The meaning of the term "philosophical bases" differs from the scientific type of theory, if we look to the traditional philosophers of the past. It is also obvious that the philosophical bases are 'normative' instead of 'positive' and any normative study is controversial. The philosophical bases of constitutionalism in India are not free from such a controversy for they appear to be normative. Therefore, an attempt has been made in the Chapter to high-light few important dimensions of the theme.

Any discussion regarding the philosophical bases of constitutionalism in India should highlight at least the following aspects in a greater detail, namely,

- a) Sovereignty of the people with a welfare conception,
- b) Belief in adult suffrage and Rule of Law,
- c) Democratic Republic^{ism},~~ism~~
- d) Socio-economic Revolution,
- and e) Humanitarian Base.

Philosophical Bases of Constitutionalism in India : A general Survey.

Indian Political Philosophy is found mainly in - Ramayana, Maha-Bharata, Manusmriti, Kautilya's Artha Sastra and Sukhracharya Nitisara. The Ramayana describes the ideal kingdom of Ram in which people were happy, peaceful and prosperous. In Shanti Parva Mahabharata, Bhishma enumerates the duties of a kingdom. He states that the chief end of the state is the 'Protection of the citizens so that they may lead a happy righteous and harmonious life, following the respective Dharmas or duties'. Chanakya's Arthashastra deals the duties of king, of his ministers and councillors, of council meetings, of departments of government, of diplomacy. Chanakya who lived in 400 B.C. also emphasises the basic principles that the happiness and welfare of the people are the primary duties of the king or the state. "In the happiness of his subjects lies his happiness, in their welfare his welfare".⁽¹⁾ The king at the time of his coronation, had to take the oath of service to the people - 'May I be deprived of heaven, of life, and of offspring if I oppress you ... 'whatever pleases himself he shall consider as not good, but whatever pleases his subjects he shall consider as good'. If a king is energetic his subjects will be equally energetic.' Public work could not suffer or await the king's pleasure; he had always to be ready for it. And if the king misbehaved, his people had the right to remove him and put another in his place."⁽²⁾

Asoka was an astonishing ruler. He laboured hard

for public welfare and declared that he was always ready to sacrifice for the happiness of the subjects. "At all times and at all places, whether I am dining or in the ladies apartments, in my bedroom or in my closet, in my carriage or in my palace gardens, the official reporters should keep me informed of the people's business ... At any hour and at any place work I must for the Commonwealth." (3)

Though Asoka was a Buddhist, he showed respects and consideration for all other faiths. He proclaimed in an edict : "All sects deserve reverence for one reason or another. By thus acting a man exalts his own sect and at the same time does service to the sects of other people."

Nitisara, the science of polity is an old book of tenth century, written by Shukracharya. In Shukra Niti it is found that the king, is primarily the 'protector and benefactor' of his subjects, he has to discipline the lives of the citizens in such a manner that each follows his own vocation of Dharma without encroaching upon the spheres of others.' (4)

The village was under the charge of the Gramini or the village headman, who was assisted by the Sabha or the village Panchayat. All problems of village administrative like village difference and settlement of disputes were tackled by Gramini and his Sabha. (5)

Village Republic

In the Valmiki Ramayana we find 'Janapada' which was, perhaps, a kind of federation of numerous village republics. It is certain

that this system was widely in existence in this country at the time of Greek invasion. Megasthenes has left vivid impression of the 'Pentads' as he called these Panchayats. Chinese travellers, Hioun Tsang and Fa Hien, tell us how India at the time of their visits was very prosperous and the people were 'flourishing and happy beyond compare.'⁽⁶⁾

An account of the village commonwealth during the seventh century is found in Shukracharya's 'Nitisara', the science of Polity. It deals with the organisation of the Central Government as well as of town and village life, of the king's Council of State and various ^{departments} ~~departments~~ of government. The village Panchayats or elected Councils have large powers, both executive and judicial, and its members were treated with the greatest respect, by the king's affairs. Land was distributed by this Panchayats, which also collected taxes out of this produce and paid the government's share on behalf of the village over a number of these village councils there was a larger Panchayat or Council to supervise and interfere if necessary.

'Some old inscriptions further tell us how the members of the village councils were elected and what their qualifications and disqualifications were various committees were formed, elected annually and women ~~not~~ could serve on them. In case of misbehaviour a member could be removed. A member could be disqualified if he failed to render accounts of Public Fund. An interesting rule to prevent nepotism is mentioned : near relatives of members were not to be appointed to public office.'⁽⁷⁾

These village councils were very jealous of their liberties and it was laid down that no soldier could enter the village unless he had a royal permit. If the people complained of an official, the Nitisara says that the king 'should take the side

Public Opinion.

not of his officers but of his subjects'. If many complained then the official was to be dismissed, 'for who does not get intoxicated by the drinking of the vanity of the office.' The king was to act in accordance with the opinion of the majority of the people. 'Public Opinion is more powerful than the king as the rope made of many fibres is strong enough to drag a lion'. 'In making official appointments work, character and merit were to be regarded -- neither caste nor family' and 'neither through colour nor through ancestors can the spirit worthy of a Brahmin be generated.' (8) Rama renounced his queen Sita hearing the Public Opinion.

The village in India has been regarded as the basic unit of administration as the earliest Vedic age Gramini or the leaders of the village is mentioned in the Rigveda (X.62.II; 107.5). Reference to the Gramsabha or the local village assemblies are found in the Jatakas. "The village continued to be regarded as a corporate political unit throughout the past Vedic period. Thus in the Vishnu and Manu Smritis the village is regarded as the smallest political unit of the state fabric." (9) The Indian rural governments continued to flourish during the Hindu, Muslim and Peshwa governments till the advent of the East India

Company.

In his famous minute of 1830, Sir Charles Metcalfe, the then Acting Governor General of India wrote, "The village communities are little republics, having nearly everything they want within themselves and almost independent of any foreign relations. They seem to last when nothing else lasts. Dynasty after dynasty tumbles down, revolution succeeds revolution; ... but the village community the same. This union of village communities, each one forming a separate little state in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to the happiness, and to the enjoyment of a great portion of freedom and independence."⁽¹⁰⁾

Pataliputra had a municipality elected by the people. It had thirty members, divided up into six committees of five members each dealing with industries and handicrafts, death and births, manufactures, arrangements for travellers and pilgrims, etc. The whole municipal council looked after finance, sanitation, water supply, public buildings and gardens.⁽¹¹⁾

The democratic way was not only well known but was a common method of functioning in social life, in local government, trade guilds, religious assemblies etc. Castes with all its evils, kept up the democratic habit in

Parliamentary

each group. There used to be elaborate rules of procedure, election and debate. The Marquis of Zetland has referred to some of these in writing about the early Buddhist assemblies : "And it may come as a surprise to many to learn that in the Assemblies of the Buddhist in India two thousand or more years ago are to be found the rudiments of our own parliamentary practice of the present day. The dignity of the Assembly was preserved by the appointment of a special officer -- the embryo of Mr. Speaker' in the House of Commons. A second officer was appointed whose duty it was to see that when necessary a quorum was secured -- the prototype of the Parliamentary chiefwhip in our own system. A member initiating business did so in the form of a motion which was then open to discussion. In some cases this was done once only, in others three times, this anticipating the practice of Parliament in requiring that a Bill be read a third times before it becomes law. If discussion disclosed a difference of opinion the matter was decided by the vote of the majority, the voting being by ballot." (12)

In the late Vedic period the kings' power was considerably controlled by an assembly or Parliament known as Samiti. Vidatha, Sabha and Samiti are the three assemblies we come in the Vedic literature. The precise meaning of these terms

Powers of Samiti or Parliament.

can not be determined with certainty, but most probably vidatha was an assembly of scholars and Sabha of the villagers, while the Samiti represented the Parliament of the Kingdom. How it was constituted or elected, we do not know, what were its precise powers and how they were exercised is not clearly revealed by the

sacred texts. In the coronation ritual, however, the hope is fervently expressed that the Samiti of the king, who is being appointed, should be in agreement with him, and the greatest curse which an infuriated Brahmana could think of against the oppressive king was that his Samiti should be in disagreement with him. It is thus clear that the Samiti controlled the king to a great extent. (15)

There is also an endless conflict between the interest of the individual and the group or the state. But the Indian rural Panchayats very successfully integrated these conflicting interests and made socio-political life human and productive. As Acharya Vinoba Bhave puts it, each individual in the Gram Sabhas was his own king; yet he was bound in indissoluble ties to his fellow citizens. (Gwarajya Shastra Hindi edition p. 47) while there was full scope for the development of his personality every citizen was a responsible and useful member of the small state. (14)

There was no theocratic monarchy in India. In Indian Polity if the king is unjust or tyrannical, the right to rebel against him is admitted ... The king had the right to collect certain taxes from the land and his revenue collecting power was all he could delegate to others. The peasant in India was not the Lord's serf. There was plenty of land available and there was no advantage in dispossessing the peasant. Thus in India there was no landlord system, as known in the West, nor was

Individualism and Socialism mixed.

Land Lord system was not known.

the individual peasant the full owner of his patch of land. Both these concepts were introduced much later by the British with
(15)
disastrous result.

Republics were not unknown to the Vedic age, though they were rare. The Aitareya Brahmana narrates how beyond the Himalayas there were Vi-rat or Kingless states where

Republics

 coronation was offered not to an individual, but to the whole population, Uttarakurus and Uttaramadras had this kingless or republican constitution in the later Vedic Period. How this constitution worked, we do not know. It is interesting to note that this republican tradition continued in the Punjab in the later times; for it contained several powerful republics at the time of the
(16)
invasion of Alexander the great."

II

Democracy and Constitutionalism in India:

The basic philosophy underlying Indian Constitutionalism is democracy. India, like many other developing countries of the world have incorporated in its system democratic values and norms of western constitutionalism. Constitutionalism refers to a political order governed by rules and regulations. It upholds principles of nationalism, democracy and limited government. Under Constitutionalism two types of limitations impinge on government - liberatarian and procedural. Liberatarian aspects of constitutionalism restraint the arbitrary exercise of

power by the authorities and fix the field of freedoms of the people. Procedural aspects establish the manner in which government policy shall be formulated and implemented. Constitutionalism governs two separate but related type of relationships between the government and the citizen, and between one governmental authority and another. Consensus is another important element and pre-condition of constitutionalism. Faith in progress based on reason rather than on natural order of society, is yet another aspect of constitutionalism.

In modern India, philosophical bases of constitutionalism can be traced for back in the struggle for freedom. Gandhi undoubtedly contributed to a great extent in this regard. The freedom struggle itself was in a sense aimed at materialising certain philosophies, of all these, non-violence, secularism, socialism, satyagraha and the like deserve special mentioning.

Republicanism:

The Republics were known in ancient Indian literature by the technical term 'Sangha or Jana, used in the strictly political sense. Some recent scholars take these words to signify 'democratic forms of government' or a genus consisting of the species of 'democracies', 'aristocracies', and a mixture of both, or to signify Unitary and federal 'Ksatriya aristocracies' or a 'town wide as well as a country wide democracies'. The correct interpretation seems to be that Sangha signified an aristocratic clan-republic of Ksatriya order and nothing more.

In the early Vedic Period' 'Monarchy was the normal form of the political organisation; republics or oligarchies were rare. (18)

The Vedic literatures preserves several instances of election of kings. The Rig-Veda in one place express describes the Visas as electing their kings. In the Atharva Veda, the hope is expressed that a king to be crowned may be elected by the people (vii). This election, perhaps, was more formal than real, and the electors were most probably the members of the contending factions of the Vispatis, rather than the people in general. Another passage in the Atharva Veda (III - 3.6) contains an assurance given to a king by his partisans, 'let your enemies challenge, we have elected you.' (19)

Different views have been held by scholars about the constitution of the Licchavis (Vajjis), some taking it to be a Unitary republication state, others regarding it as a republic of a complex type (each member of the ruling assembly forming a state in miniature and with the assembly ruling the whole state under an elected president, and still other holding it to be a Federal state with autonomy for each constituent principality. These views are based upon different interpretations of an isolated passage in the Jatakas but on important grounds they appeared to be improbable. Judging from a number of texts of the authentic Buddhist canon in both the Pali and Sanskrit versions, the Licchavis Constitution appears to have been a Unitary Republic with an executive head (Senapati) and a sovereign assembly consisting of the ruling

Kshatriya clansmen. The decrees of the republic were issued jointly in the names of the Senapati and the gana. The Assembly, which met at the note-hall (Santhagara) was noted in its best days for its full and frequent sessions. It had the fullest right of electing the Senapati and full criminal jurisdiction over the citizens and it exercised a severely paternal control over their private lives. (20)

There are some difference of opinion among the scholars as regards the constitution of Sakyas of Kapilavastu. Some take it to have been a hereditary monarchy, while other have held it to be a republic with a sovereign clan assembly and an elected President. In the language of U. N. Choshal, "From a full discussion of the available evidence we are justified in concluding that the Sakyas had a hereditary monarchy as well as an assembly of the ruling Kshatriya clan so as to combine both monarchic and aristocratic elements. The later writers apparently interpreted this unfamiliar type of a mixed constitution in such a way as to fit in with the usual type aristocratic clan republics. (21)

Procedure of the Republican Assembly:-

A few important conclusions have been drawn from the available data regarding the procedure of the republican assemblies. Firstly, the initiative for bringing forward the proposals before the republican assemblies belonged almost certainly to the chief executive officer or (officers) holding office for a fixed term, and not to a presiding officer specially elected

for the occasion. Secondly, the proposals were normally brought forward in the form of resolution which, being put to vote once or thrice (as the case might be) was declared carried if there was no opposition. Thirdly, in the even of an opposition the decision was probably reached by reference to a committee of the assembly, and in the last resort by an appeal to the majority vote subject to a very substantial interference by the presiding officer. Fourthly, there were regular rules relating to the quorum, the recording of absences votes, and so forth. Fifthly, the proposals were probably discussed by the members of the assembly before acceptance or rejection and were not taken to be approved by their mere silence. Sixthly, the decisions were certainly enforced by political sanctions unlike the sanctions permissible to the Buddhist assemblies.

(32)

Type of Republics:

At the time of the invasion of Alexander of Macedon (326 B.C.) there were two types of republics in India namely (I) The Aristocracies and (II) The Democracies. The constitution of the Indus Valley republics had three elements namely - (a) a Cabinet, (b) a second chamber, and (c) a Parliament. The Cabinet was consisted of the heads of the gana; the second chamber was elected by the people and the Parliament was consisted of the popular representative. But these conclusion drawn on the constitution of Indus Valley republics is based on guesses and nothing more. But H. N. Ghoshal observed, "In fact, the only certain conclusion that can be drawn from the evidence of the Greek writers is that those ancient republics had, as a rule, a supreme

magistrate (or board of magistrates a Council of elders, and a general assembly. The magistrates were evidently elected by the assembly, but the constitution and functions of the Council of elders are not known with certainty. Of the general assembly we can only say this much with confidence that it was confined in the case of the aristocracies to the members of the ruling Katriya - Clan, and that it was open to all free men in the case of democracies." (23)

Popular control over kingship:

Although the early rulers were elected; kinship in the course of time became hereditary. But some vestiges of popular control are still visible in epic and Puranic literature. Vena began to oppress his subjects. The sages warned him but he turned a deaf ear to their entreaties, whereupon he was slain by them, and Prthu was created out of his arms. Prthu, according to Mahabharata, asked the sages what he was expected to do, and being advised by those assembled that he should fear perform all righteous acts, promised to do so and became the King. Other instances of the election of kings are also evident in Mahabharata. Thus Kuru was elected on account of his virtue. Again Janamejaya, although he was only child, was installed in the position of the king by the people on the death of Parikshit. Ordinarily the crown descended from the father to the eldest son; but if that son was a minor, if a younger son had to be preferred to an elder; if an heir apparent had to be ordained, or if an interregnum had to be avoided by the appointment of a temporary ruler, the express consent

of the people was imperative. The same was the case in the event of a king's desire to abdicate. Thus Devapi, although he was the eldest son of Pratipa, was prevented by the people from succeeding him, since he was a victim of leprosy, and Santanu had to be preferred by the father, much against his natural inclinations. Dasaratha proposed the appointment of Shri Rama as Yovaraj (Crown Prince) after taking the representatives of the people into his confidence and discussing the question with them in all its bearings. (24)

Apart from these rights, which include the tacit assent of the people even in cases of regular succession, there were several other ways in which the king's possible leaning towards the exercise of unbridled authority was kept in check. In the first place, the right to oust an unrighteous king was emphasised, although seldom exercised in practice in India. In the Anusandaparvan of the Mahabharata, it is stated that a king who tells his people that he is their protector, but who does not or is unable to protect them, should be killed by his subjects in a body like a rabid dog. In the Santiparvan we come across a passage to the effect that a king who follows the advice of bad ministers and becomes a destroyer of righteousness deserves to be killed by his subjects and becomes ruined of all his family. The appellation naradeva, a god among men, is applied only to virtuous kings. Sukra, in his Nitisara, has stated that, while a

virtuous king is a part of the gods, a vicious king is a part of the devils. Manu says that a king who does not afford protection but receives his tax will soon sink into hell and that he takes upon himself all the foulness of all his people. (25)

III

A: Secularism - Its meaning:

The concept of secularism was interpreted by different writers in different ways. The interpretation has also varied from country to country. Some Philosophers like Marx and Freud treat secularism as anti-God or anti-Religion. They take the extreme view of the necessity to eliminate religion altogether from human life.

A working definition of 'Secularism' which is suggested by Donald Eugene Smith in his book "India as a secular state" is as follows: The secular state is a state which guarantees individual and corporate freedom of religion, deals with the individuals as a citizen irrespective of his religion is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion. After close analyses it is found that this conception involves three distinct but interrelated sets of relationships concerning the state, religion and individual namely, (I) Religion and the individual (Freedom of religion) (II) The state and individual (citizenship) (III) the state and religion (separation of state and religion).

A secular state should not have any particular religion as state religion nor should it seek either to promote or interfere with any religion. The state should deal with the individual as a citizen irrespective of his religion and it should guarantee freedom of religion.

(1) Freedom of Religion (Religion and the individual).

This may be discussed with reference to personal or individual religion and organised or collective religion.

"Freedom of religion means that the individual is free to consider and to discuss with others the relative claims of differing religions, and to come to his decision without any interference from the state. He is free to reject them all. If he decides to embrace one religion, he has freedom to follow its teachings, participate in its worship and other activities, propagate its doctrine, and hold office in its organisations. If the individual later decides to renounce his religion or to embrace another, he is at liberty to do so." (26) The state is excluded here. It can not force or compel anybody to profess a particular religion. It can not impose any tax to support a religion.

Freedom of religion also includes the right of two or more persons to associate for religious purposes and form permanent association for the purpose. In a secular state all religious groups have the right to organise to manage their own affairs in religious matters, to own and acquire property, and to establish and administer educational and charitable institutions.

Limitation: The right of freedom of religion is not absolute. The state can regulate the manifestation of religion in the interest of Public order, morality, health and safety.

(ii) The state and the individual (citizenship).

Citizenship is purely a secular concept. Religion is excluded from here. "The secular state views the individual as a citizen, and not as a member of particular religious group." (27) The rights and duties of citizenship are entirely secular and are not affected by the individual's religious beliefs.

(iii) The state and religion (separation of state and religion).

The state and the religion function in two basically different areas of human activity. Each has its own objectives and methods. The state does not promote, regulate, direct or otherwise interfere in religion. Similarly political power is outside the scope of religion. "The democratic state derives its authority from a secular source ("the consent of the governed") and is not subordinate to ecclesiastical power." (28)

Both state and religion have freedom to develop without interfering with each other. Organised religion can frame their own creeds and regulations, choose their own affairs, establish their own educational institutions and finance their own expenses without any interference from the state. On the other hand the state is free from any financial responsibility of

supporting any official religion and deciding any religious question. The state deals in the temporal affairs while the religion deals in the spiritual affairs. Render therefore unto Caesar the things that are Caesar's; and unto God the things that are God's." "The conception of the secular state outlined in this chapter is an ideal which is perfectly achieved in no country." (29)

B. Indian Secularism : Genesis and Historical Roots.

Indian secularism is not anti-God or anti-religion. It recognises the fact that religion serves a very important purpose in human life. But it subscribes to the fundamental Hindu Philosophical tenet that all religions have element of truth and no religion can claim the monopoly of truth. From ancient times Hindu Philosophers have consistently proclaimed that all religions lead to God.

C. The State in relation to religion:-

Ancient and Medieval Period in India. The chief aim of the state in the ancient India was the promotion of dharma (law, duty morality, religion). "One becomes a king for advancing the cause of dharma and not for acting capriciously. All creatures depend on dharma, and dharma depends on the king. He, therefore, is the true king who maintains dharma. The question, what is dharma, has been clearly answered in chapter 109 of the Santiparvan. Dharma is that which is conducive to the advancement of everybody, which prevents injury to everybody, and which is capable of upholding everybody." (30) Government was not based on dogma. Considerable impartiality was evidenced in the treatment with various

sects.

In promoting dharma the Hindu kings built temples, granted them endowments and exercised supervision over their affairs. The state was tolerant of all creeds^e and frequently aided them all. The religious tolerant Hindu state which patronized all sects impartially provided one of the historical (31) bases of secularism.

There was a clear cut distinction between the function of the priest and the king. In Vedic age the king performed no priestly function. "There is no evidence that in India the king performed the public sacrifice as in Homeric Greece." (32) On the other hand the king had a Purohita (lit. one placed before) who was not merely the priest of the royal family, but a public functionary who shared with the king the responsibility for the safety of the state by counteracting the magic of the enemy through the performance of necessary ritual. A conception of the two powers - the temporal and the spiritual -- existed from earliest times, and was supported by a divinely ordained social order. The Purohita or Brahmana was the spiritual authority and he alone could perform the sacrifices and utter the sacred incantations. The Kshatriya castes provided the rulers and warriors. The Brahmana stood at the apex of the caste system. But his duties were limited within the priestly functions only. "His superior position gave him no direct authority in matters of government." (33) This tradition supports one aspect of secularism."

There was no effective ecclesiastical organisation within the Hinduism. The divinely ordained social system had clearly given the Kshatriya the power of governance. The Brahmana could not enjoy any effective political role. "The striking fact that this class (the Brahmana) throughout our history failed to assert (except in theory and in legend) its claim to control kings and emperors." (34) This is also a factor in the development of secular state in India.

But there was some part which was completely against the secular principle. The system of justice may be cited here. It was based on the principle of inequality. The smritis prescribed lighter punishments for Brahmana than for others guilty of the same offence. In fact all penalties were graded according to the respective castes of the offender and the person against whom the offence was committed. According to the law of Manu, a Brahman who slandered a Kshatriya would be fined fifty Panas, but for slandering a Vaishya or a Shudra his fine would be only twenty-five and twelve Panas respectively. And the penalties were much more severe for slandering one's supervisors. The Principle of the equality of all before the law finds no support in the ancient Indian thought and practice. (35)

"However from the earliest days religious liberty prevails in India. It represents one essential aspect of secular state. Government never sought to impose a particular creed upon the people. Various schools of thought propounded the doctrine of agnosticism, atheism and materialism. Jainism,

Buddhism and later Judaism, Christianity Zoroastrianism, and Islam were permitted to propagate their teachings, build their places of worships, and establish their respective ways of life." (36)

State and religion under the rule of Asoka : A Brief Survey.

Asoka made an open confession of his faith in the Buddhist doctrine. But with his faith in Buddhism Asoka was not intolerant of other creeds. He sought to put an end to practices and institutions that he considered to be opposed to the fundamental principles of morality which, according to him, constituted "the essence of all religions." "That Asoka was by means unfriendly to other faith is evident from his exhortations addressed to his xxxxx subjects to honour the Brahmanas as well as Srastanas (Buddhist monks) and by his presentation of three good sized caves with polished interiors to Ajivakas and others in the Khalatika mountain (Barabar hills). (37) The spirit of tolerance is the foundation of the theory of Indian secularism, which therefore, treats all religions alike and does not expect any citizen to believe that one religion is better than other. This was illustrated by the edict of Asoka. "The increase of spiritual strength is of many forms. But the root is the guarding of one's speech so as to avoid the extolling of one's own religion to the degrading of the religion of another, or speaking lightly of it without occasion or relevance. As proper occasions arise, persons of other religions should also be honoured suitably. Acting in this manner, one certainly exalts one's own religion and also helps persons of other religions. Acting in a contrary manner, one injures one's own religion and also does disservice to the religions of others.

One who reverses one's own religion and disparages that of another from devotion to one's own religion and to glorify it over all other religions, does injure one's own religion most certainly." (38)

Asoka inculcated the virtues of compassion, liberality and toleration; "but this policy of toleration did not stand in the way of Asoka's undertaking and carrying out humanitarian reforms even where they involved interference with current practices closely bound up with religion. He preferred the method of persuasion to that of force, but did not shrink from the use of the minimum force needed to secure his ends through the elaborate machinery of administration which he controlled and directed. He deprecated the observance of many vulgar and useless (Kuroa and Mirarthaka) ceremonies, particularly by women, on sundry occasions, as during marriage, child birth, illness and so on. Again, he laid great stress on Ahimsa and devised an elaborate code for its practice and for the prevention of cruelty to animals." (39)

D. Muslim period.

The historical antecedent of the secular state in Muslim period may found in the policies of Akbar. He followed a policy of broad religious tolerance and equality of treatment for all his subjects. He forbade forcible conversions to Islam and permitted Hindus, Christians and Shias to make converts also. "If Akbar permitted his Hindu wives to conduct idol worship in the

palace, how could he reasonably prohibit it outside?" (40)

Akbar abolished the hated Jizya tax construction of temples was not restricted. Mansingh, one of the provincial governors of Akbar, built a temple at Brindaban costing half a million rupees. He encouraged the spirit of tolerance by religious discussion in his "Hall of worship". Akbar and his successor further encouraged freedom of thought by ordering the preparation of Persian translations of such Hindu religious books as the Atharvaveda, the Mahabharata, the Ramayana and others. Out of Akbar's own religious quest came his syncretistic Divine Faith, which incorporated elements of Sufi, Shia, Zoroastrian and Hindu doctrines." (41)

It is certainly true that Akbar did much to create a common citizenship with equal rights for all irrespective religious differences. In this matter Akbar's state came much nearer to the modern conception of common citizenship than the Hindu state. Hindu state was religiously tolerant but it dealt with the people in legal and administrative matters according caste status. Freedom of religious and common citizen are two of the three components of secularism. Humayan Kabir referred Akbar's policy as "perhaps the first conscious attempt to formulate the conception of a secular state." (42) However, the third factor, the separation of state and religion, would probably have appeared as strange to Akbar as strange to a sixteenth century Hindu Monarch in South India.

The British Policy of religious neutrality.

The British policy of religion neutrality provided the direct antecedent of the secular state in India. This policy was re-inforced by an equalitarian legal structure, a secular educational system and a tradition of a modern administrative state.

The British had been ruling millions of Hindus and Muslims. British commonsense dictated its policy of non-interference in the religious life of the country, for any other policy would be unlikely to produce either sound business relations or loyal subjects.

The British government established the principle of equality before law. Hindu criminal law had scaled punishments according to the caste of the offender, and Muslim law had discriminated against infidels. The introduction of a uniform criminal law was an indispensable foundation for the development of a secular state.

In 1858 queen victoria proclaimed the religious neutrality of the government in relation with its Indian subjects - "we declare it to be our royal will and pleasure that none be any will favoured, none molested or disquieted, by reason of other religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that

they abstain from all interference with the religious belief or (43)
 worship of any of our subjects on pain of our highest displeasure.

The British government was the protector and patron of Indian religions large amount of public money was spent towards the support of Hindu and Muslim religious institutions. "The British participated in religious festivals such as tradition dictated Government officials were present to augurate annual festivals; troops and artillery were used to make each occasion as splendid as possible. In the military salute which ushered in Ramzan, in the official breaking of coconuts at the commencement of Monsoon, and in the employment of Brahmans to invoke propitious weather, and government was careful to enact its time honoured role to perfection." (44)

As a result of the pressure from Bishops and missionaries the government issued a despatch in 1833 -- "That in all matters relating to their temples, their worship, their festivals, their religious practices, their ceremonial observances, our native subjects be left entirely to themselves."

E. Religious Policies Of the Indian States.

There were large number of princely states which continued to be governed by rajas, Maharajas, and Nizams. "Most of the states were ruled by Hindu dynasties, and in general they carried on the traditions of the ancient and medieval Hindu state." (45)
 Following the ancient law of Manu, punishment for crime varied

with the caste of the offender long after equality before the law had been finally established in British India. Untouchability was legally enforced in a number of the states, especially in Rajasthan, right up to the day of independence.

"In some of the small kingdoms the rajas ruled in the most autocratic fashion, and freedom of religion suffered along with other liberties. In a number of states religious conversion was made practically impossible. Just two years before independence the Surguja Apostasy Act was promulgated. This measure provided that conversions from "the Hindu religion" to "an alien faith" could not take place without the sanction of the government authorities.

The religious policies of the Indian states were a part of the heritage which India received with her independence in 1947. With few exceptions these policies were not nearly as conducive to the realization of a secular democracy as those evolved in British India.

(46)

F. Religious Policy of National Congress : An overview.

With the attainment of independence the National Congress became the ruling political Party in the central government and in all the state governments. Hence the root of the Indian secularism must be sought in the history of the Indian National Congress.

Allan Hume, a retired British Civil Servant was

prominently associated with the formation of National Congress in 1885. Four of the early presidents of the Congress were English men. The leading members were western educated Indians and they subscribe to the ideals of British liberalism. Most of them had a sincere appreciation of the beneficial results of Western rule in India. The British government was also sympathetic to the Congress in the early years.

"Every effort was made to place the Congress on a solidly non-communal basis, despite the fact that the first meeting was pre-dominantly Hindu gatherings. (47) The report of the second Congress made it clear that religious community was irrelevant to membership in the National Congress : "The Congress is a community of temporal interests and not of spiritual convictions that qualify men to represent each other in the discussion of political questions, we hold their general interests in this country being identical, Hindus, Christians, Muslims and Parsis may fitly as members of their respective communities represent each other in the discussion of public secular affairs." (48) There were Europeans, Burarians, Hindus of many castes and sects, Shia's and Sunni Muslims, Jain, Jews, Parsis and Sikhs in the early Congress session. Badruddin Tyabji, a Muslim was elected President of the National in 1887 and after nine years the same position was occupied by Rahmatullah Mahammad Sayani. In 1888 the attendance in the Congress session was divided as follows: (49) Hindu 965, Muslim 221, and other 62. In the same year the Congress adopted a resolution which stated that any subject

introduced for discussion would be dropped if the Muslim or the Hindu delegates objected as a body. There was no unwillingness to measure the minority group. The Muslim community as a whole, however, remained aloof from the Congress, following the lead of Syed Ahmed Khan. And by 1906, the militant Hinduism of the extremists had reduced the number of Muslim delegates to a handful.

(50)

The two factions of the Congress, the moderates and the extremists had different views as to the political goal and the method to achieve it. Moderates were led by such men as M. G. Ranade and G. K. Gokhale. They continued the liberal tradition. Convinced of the "blessings of the British rule," they sought to promote the gradual political evolution of India along Parliamentary lines, and to press for social reforms. "Although they were not men devoid of religious faith" wrote Stephen Hay, "They accepted the divorce of religion from government and maintained a secular view of politics which contrasted markedly with the religious outlook of the extremists." The extremists were represented by such men as Balgangadhar Tilak and Aurobinda Ghosh. They combined the Western ideas of patriotism and ~~nationalism~~ nationalism with religious symbolism of Hinduism ~~with religious symbolism of Hinduism~~. Rejecting the slow methods of the moderates, who submitted cautiously worded petitions to the government, the extremists urged a programme of action, immediate and even violent if necessary. Nationalism, identified with religion, became an absolute; India became the mother, the

(51)
the goddess to whom fervent and undivided devotion must be given.

In 1907 the Extremists split off from the Congress and they were re-united with it in 1916. However, they made it doubly difficult for the Congress to attract the already suspicious Muslim minority.

In 1920 the Congress came under the control of Mahatma Gandhi, whose nationalism had deep roots in the religious faith. In his autobiography Gandhiji asserted that "those who say that religion has nothing to do with politics do not know what religion means". He thought India would become Rasrajya, the kingdom of Rama, a golden age of peace and prosperity.

Gandhiji declared that Hinduism included all that he knew to be best in Islam, Christianity, Buddhism, Zoroastrianism. Gandhi strove unceasingly for Hindu Muslim Unity, convinced that ultimately both religions were true and valid. (52)
Gandhiji's leadership of the national Congress gave it somewhat Hinduised appearance, but his constant emphasis on the religious, social and political unity of the various communities helped to lay the foundation of the secular state.

There were other factors in the National Congress which helped to maintain it a non-communal character. The lawyers among the Congress continued the nineteenth century

liberal tradition through the entire independence movement. Muslim leaders of the Congress, especially Abulkalam Azad, and other members of the minority community helped by their very presence the non-communal character of the national movement. Abulkalam Azad could speak with a sense of complete identification with the ancient cultural heritage. "It is possible that other nations may have to learn new lessons for broadening their outlook and for cultivating a spirit of tolerance. But so far as India concerned we can say with pride and glory that it is the main trait of our ancient civilization, and that we have been steeped in it for thousands of years. In other countries differences of thought and action led to mutual warfare and bloodshed but in India they were resolved in a spirit of compromise and toleration. Here every kind of faith, every kind of culture, every mode of living was allowed to flourish and find its own salvation." (53) Men such as Jawaharlal Nehru and Subhas Ch. Bose subscribed to a secularist view of life and helped to produce a growing temper of mind which relegated religious matter entirely to the individual's conscience. The growth within the Congress a socialist organisation added the teachings of Marx and Laski to the other forces promoting secular (54) nationalism.

The Karachi resolution of 1931 is a land-mark in the history of the growth of Indian secularism. It adopted resolution on fundamental rights which were to be incorporated in the future constitution of India. There were statements relating religious liberty and protection of the rights of minorities. The

Karachi resolution was drafted by Jawaharlal Nehru. It declared "The state shall observe religious neutrality in regard to all religious." (55) The pledge made by the National Congress was fulfilled by the secularism of the constitution of 1950.

Paradoxically, the Muslim league also contributed to the secularism of the Indian National Congress. In the late 1930's and early 1940's M.A. Jinnah repeatedly claimed that the league represented all the Muslims of India. He publicly stated that the Congress was a purely Hindu organisation. This challenge made it imperative that the Congress emphasise all the more its non-communal character. The league's demand for Pakistan in 1940 re-inforced Congress men's thinking about the nature of the independent Indian state of the future. If the proposal for the partition of India and the creation of a Muslim state was unsound, what was the Congress alternative plan? The alternative could only be interm approximating the secular state -- a united India in which government would be kept separate from religion and in which all citizens would have equal rights. (56)

British Policy of separate electorate was partly responsible for the tragic creation of partition. According to Dr. Radhakrishnan "Separate electorates intensified communal consciousness and created such an atmosphere of mistrust and hostility as to arouse the demand for Pakistan." (57)

British writers, on the other hand, tend to find

that the Congress inflexibility was the Chief cause. Sir Percival Griffiths asserted that "It is undoubtedly true that the real creators of the demand for Pakistan were the Congress high Command. If they had been prepared to abate their claim to be the sole spokesman for India and had tried to allay Muslim fears even slightly Pakistan might never have come to birth." (58)

"It is clear that the emergence of India as a secular state in the mid twentieth century did not represent an abrupt break with the past, as in the case of Turkey in 1928. It was rather the result of attitudes, policies, and forces which had taken shape over hundreds of years, thousands of years if one considers the tradition of Hindu religious tolerance." (59)

With regard to the inclusion of the concept of secularism, it may be stated that the secular state is 'a fundamental aspect of India's democratic experiment, an experiment which might conceivably break down as much as much by establishing Hinduism as the state-religion as by eliminating freedom of the press.' (60)

The problem of India as a secular state is as complex as anything. The existence of a number of religious, dominant place of Hinduism, Communalism and vigorous impact of the West -- all these factors have directly or indirectly contributed to the complexity of the problem. Again, the political set-up of different neighbouring countries with their leanings on Islam and Buddhism exerted tremendous influence on the Indian

(61)
Political setting.

It is interesting to note that nowhere in the Constitution, the word 'secular state' has been used. A careful reading of the debates in the Constituent Assembly will show that Prof. K.T. Shah tried to include the word 'secular' in the Constitution. He brought the proposal in the form of a new article which provide : "The state in India being secular shall have no concern with any religion creed or profession of faith." (62) But he failed to get the proposal adopted in the Constituent Assembly since it was decided that had the proposal been included in the Constitution, it would result in a conflict with Article 25 which has permitted the State to intervene in matters connected with religion in the interest of social reform. (63)

The Constitution of India in Part III from Art. 25 to Art. 28, guarantees freedom of religion, under Art. 25(1), concepts like freedom of conscience, 'profession', 'practice' and 'propagation' have been used, making the implications of the provision much more important. In Ratilal V. the State of Bombay. (64) Chagla, C.J. in course of delivering his judgement held that "the religious freedom which has been safe-guarded by the Constitution is religious freedom in the context of a secular State." A similar opinion was expressed in Saifuddin Saheb V. the State of Bombay. (65) when Ayyangar, J., held that provisions of the Indian Constitution relating to freedom of religion "emphasise the secular nature of Indian democracy which the founding fathers considered should be the very basis of Constitution."

But the judgement suffers from a flaw. Neither Art. 25 nor Art. 26 prohibits the State from recognising any religion as the State religion. On the other hand, these two articles cannot, in any way, be construed to confer the State to recognise any religion as state religion. Since the Constitution refers to various communities, it can be inferred that the Constitution gives indirect recognition to that religions.

Again Art. 27 of the Constitution declares that "no person should be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination."

Art. 28 of the Indian Constitution is concerned with freedom as to attendance at religious instruction or religious worship in certain educational institutions. Art. 28 of the Indian Constitution may be taken as an example of compromise between two opposite considerations. On the one hand, exploitation in the name of religion had dominated the scene for a long time thereby causing conflict among rigid religious dogmas. Since there were more than one religion, it was not possible on the part of the State to impart religious instructions. On the other hand, religion forms the central core of India's national life and considering its importance state could not ban religious instructions at all. Naturally, the Constitution of India follows a middle course. It totally bans religious instructions in the State-owned educational institutions,

but does not ban it in other denominational institutions.

Concluding observations:

The foregoing discussion makes it clear that the Constitution of India strictly adheres to the principle of secularism without using the term in the body of the Constitution. Moreover, the national leaders like Gandhi and Nehru, throughout their life time, supported this doctrine in their actions and speeches. The ideal of secularism was best expressed by some members of the Constituent Assembly and the present scheme of the Constitution does really reflect the intentions of the Founding Fathers.

IV

Socialism : Meaning and Nature.

The word "Socialism" is a very vexed term. "Socialism is not a single theory, complete in itself to suit each and every country, nor a theory eternally valid for all stages of societies from the past to the future. Socialism has relevance only in the context of a given society, its problems and aspirations at a given stage in history. It is rather a theory continuously related to the present."
(66)

Modern socialism is a doctrine chiefly concerned with eradicating inequality in a capitalist and technology -

oriented civilization. As such, all theories concerning removal of inequality, in the ancient and medieval period are not socialism, whatever they be.

The old order of 'Chaturvarna' as propounded in the 'Manusmriti' as well as the principles underlying the 'Varnashrama Dharma' and the joint family system provide a better basis for Indian socialism although this "ancient scientific socialism" (67) is far different from the modern ideology of Socialism.

The main features of Indian Socialism may be outlined as follows:

(a) Indian Socialists have realized and expounded the intricate relationship of socialism and the innate nature of man and his craving for equality. They have approached socialism as a problem of reform in the human nature.

(b) Socialist thinkers in India have maintained that man is basically a spiritual entity in a philosophical sense. They did never regard man as a biological product.

(c) They have consistently put faith in the machinery of the state and avoided reaching, even remotely, the periphery of the concept of the 'withering away' of the state.

(d) In the sphere of the method and means, probably Indian socialism has attracted the focus. Whether it is the Gandhian method of non-violent Satyagraha or its many latest variations, none of the socialists in India, generally, have

suggested the method of bloody revolution and outright violence.

(e) Indian Socialist thinkers such as Jawaharlal Nehru, Asoka Mehta and many others have contributed much in the evolution of the concept of democratic socialism. They conceived and experimented planning under parliamentary framework. (68)

Roots of Indian Socialism - Historical over-view.

The revivalist ideology suggested that the socialist principles and programmes were nothing new and in the ancient socio-economic order, the Principles of socialism were already present to a considerable extent.

Socio-Economic content of the Movement.

The 'Brahma Samaj' and the 'Prarthana Samaj' had not much economic motivation, but through the awakening of social consciousness and the spread of education, such forum did enlighten the ignorant masses considerably and made the people receptive to new ideas. According to B.B. Misra, to some extent, the class which greatly stimulated the revivalist movement was the economically unemployed discontented men of the lower middle classes. To that extent it had some economic content as well. (69) Ram Mohan Roy, the founder of the 'Brahma Samaj' and Western education, which went far in softening the crudities of the traditional social life, caste rigidity, dogmatism and blind beliefs. This created a new social and informed outlook.

From the point of view of the indigenous inspiration to the regeneration of the socio-economic order in India, the revivalist forums, such as the 'Arya Samaj', the 'Ramkrishna Mission' and the 'Theosophical Society' have had more pointed relevance. These movements increasingly looked back to India's traditional heritage, her spiritual basis and her ancient social order. The reformers and philosophers from these folds greatly admired the ancient philosophical as well as institutional bases and did not consider even socialism a novelty. (70) (70)

Dayananda Saraswati: Dayananda Saraswati, the founder of the 'Arya Samaj', was born only six years after the birth of Karl Marx and died in the very year of the death of the latter, i.e. in 1883. "while Karl Marx devoted himself to the analysis and solution of the socio-economic maladies flowing from the machine age capitalism, Dayananda devoted himself to the socio-economic as well as the spiritual depravity of a social order flowing from the orthodox beliefs of a society from within and imperial exploitation from without." (71)

Dayananda worked hard to demolish the image of Brahmin's superiority in Society in as much as he tried to uplift the untouchables. He had great contribution in the field of social equality and in the mitigation of the evils of the caste untouchability. If these are at all the concern of the socialists, these were in full measure the objectives of Swami Dayananda and of his organisation -- the 'Arya Samaj'.

He derived considerable inspiration from 'Manu-smriti' and propounded the justification of 'Varnashrama Dharma' which some thinkers later on named as socialistic order of the ancient India. His teaching reflect the concept of 'Vaidic Samyabad'. He also came in contact with the 'Brahma Samaj' and the 'Prarthana Samaj', but differed from them, in so far as "his imperation was genuinely indigenous and his approach uncompromisingly revivalist." (72) He may be regarded pioneer in the field of social equality.

Annie Besant: Annie Besant was so profoundly influenced by Indian religion and philosophy that the spiritual and ethical motivation, and not materialistic alone, formed the primary basis of her own socialistic ideas. She greatly admired the ancient village order[⊗] and its autonomous 'Council Government'. Annie Besant pleaded for the revival of the old order so as to improve the position of the peasants who formed the bulk of the Indian society. Her^{NS} inspiration in this regard came from the study of Kautilya's Arthashastra. (73) She wanted the masses to become conscious of their present condition vis-a-vis their condition in the past.

Besant was moved by the poverty of the Indian masses and advocated the economic ~~transformation~~ transformation of society even without the aid of state legislation. For that purpose, she regarded the building up of a sound economic system as vital. It was not just enough to evolve an equitable economic theory, what was required was to make determined efforts for its

a. She
Corporate
The Ancient
Order

achievement with a sense of reality and urgency. She reminded :
 "you can not persuade people for the most part of listen very
 patiently to other sorts of reforms, if they are suffering from
 pressing physical needs, if their bodies are ill-nourished, if
 they dwell in slums, if the general conditions of health ... are
 unattainable by them in their daily lives. Disquisition on
 economics even can hardly interest them unless these Economics
 point to method of remedy, remedy for which those who speak of it
 are prepared to work and to bring about in a reasonable time." (74)
 This is indicative of her pragmatic approach.

Bhagavan Das: Bhagavan Das was one of the most prominent exponents
 of the theme of 'Ancient Scientific Socialism' in India based on
 the principles of 'Varnashrama Dharma'. His pioneer work,
 'Ancient Vs. modern scientific Socialism' provoked Jayaprakash
 Narayan to formulate his own 'Marxian' socialist ideas in 'why
 socialism? J. P. 's main purpose was to repudiate the ideas of
 Bhagavan Das and others.' (75)

Manu's social order appealed to him greatly.
 Under the changed circumstances he realised the importance of its
 adoption with considerable modifications. The embryonic prin-
 ciples underlying the 'Varnashrama Dharma' appeared to him as
 scientific and universal nature, capable of being applied even
 to the present mechanized stage of society. He felt that if the
 Varnashrama state, propounded under 'Manusmriti', could be
 correctly followed the 'conduct of individuo - social and socio-

individual life' could proceed smoothly. (76)

With reference to the place of individual and family, Das observed " ... an individual as such, is an incomplete personality with unfulfilled destiny, and can not be regarded as the unit of society. The family is the unit of society. The Family Home is the first and the best school of true socialism. Without the heart experience which the Family provides, it is not possible to realise why and how one can and should sacrifice his own ease, health, even life itself, if and as necessary, for any one else. The joint family patiently embodies and acts upon the essential principles of socialism, ('To all according to their needs, from all according to their capacities', 'Each for all, all for each.' (77)

Das also pointed out that in any scheme of socialism the human nature and the Psychological factors were very important. It was necessary that man's spirit was ennobled, which could be possible by discovering the laws of nature and the power latent in man, i.e. in the Universal self imminent in all beings. (78)

Das observed "of course strict economic or any other equality is impossible and a monotonous sameness is even undesirable. Evolution is differentiation. But the avoidance of extreme inequality is possible and very desirable." (79) In order to avoid extreme inequality, it was necessary that multiplication of needs must also be avoided. For that he pleaded --

"since capital, in the sense of money as mechanism of exchange, is indispensable, and at the same time excessive accumulation of it in any pair of hands is very dangerous; since absolute economic equality is impossible, but equitability in the distribution of wealth is necessary; since without some personal incentive human beings do not put forth their best, and yet also unrestrained competition is disastrous; therefore the principles of ancient Socialism seem to suggest that, in modern conditions, a lower limit or minimum of necessities, in the way of food, clothing, housing, tools of occupation, should be fixed for all alike, by the legislature, in accordance with the principle of 'Plain living' ... and 'Living wage.' (80)

Das stated "India's slogan should be not the merely materialistic interpretation of History, but the spirituo-materialist interpretation of History, since the universe is obviously compounded of both spirit or Mind and Matter, Purusha and Prakriti, not class war but 'class co-operation' through class balance and class reconciliation, not a classless society." (81)

Swami Vivekananda Probably Swami Vivekananda was the first Indian thinker to claim in clear terms that "I am a socialist". Ever since Bhaugendra Bhatta depicted him as the first socialist of India in 1923, attempts have been made to trace the roots of socialistic ideas into his writing and speeches. (82)

During his visit to Europe Vivekananda cultivated

intimate knowledge of schools of socialism prevalent, then, including anarchism. He met Kropotkin and Plekhanov in Paris in 1909 and also met Plekhanov's party men in England. Kropotkin was a great anarchist and Plekhanov was a Russian Communist. (83)

Swami Vivekananda wrote in one of his letters :
 "The doctrine which demands the sacrifice of individual freedom to social supremacy is called socialism, while that which advocates the cause of the individual is called individualism." (84)

As a revivalist Vivekananda devoted himself spiritedly to the understanding of the original caste (Varma) system and found it fundamentally not only glorious institution but also socialistic in its very nature. He observed : In Indian social order, 'I am born for the caste I live for the Caste ...' In other words, in the present day language the western man is ^{born} individualistic, while the Hindu is socialistic, ... so, I have no in my marriage, nor my sister. It is the caste that determines all that. (85)

Vivekananda, however, admired the caste system only in the original form and not in the degenerate ^{born} form in which it existed in the present society. He pitied that not one among a million understood what caste was. Caste to him was a hereditary system, it was purely functional and vocational in character. Since the modern concept of caste had degenerated and was determined by birth alone, he advocated the destruction of such a caste system. He warned that the Brahmins, the Kshatriyas and

the Vaishtyas have had their day, and rightly so, but the coming time are now for the Shudras. Not that Shudras should vocationally and by their knowledge or valour or wealth (the respective qualities of the first three classes) rise to the level of those classes in order to have their survey, but that they would dominate even as Shudras. (86)

Vivekananda was fully conscious of the strength and the importance of masses, the poor, the down trodden classes in society : "whether the leadership of society be in the hands of those who monopolise learning, or wield the power of riches or arms, the source of its power is always the subject masses ... But such is the strange irony of fate ... that they from whom this power is directly or indirectly drawn ... soon cease to be taken into account by the leading class." (87)

Equally conscious he was of the role and the importance of the labourers in society. Referring to them he observed : "If the labourers stop work, your supply of food and clothes also stops ... They have worked so long uniformly like machines guided by human intelligence and the clever educated section have taken the substantial part of the fruit of their labour ...

The lower classes are generally awakening to this fact and making a united front against this determined to exact their legitimate dues. When the masses will wake up, they will come to understand your oppression on them and by a

puff of mouth you will be entirely blown off." (88)

On at least two important points Vivekananda's thinking struck a curious note of similarity with the Gandhian ideas propounded later. One was the need for diffusion of power and the other was the distrust of machine and machine made products. Referring to the former, he observed : Accumulation of power is as necessary as its diffusion, rather more so. The accumulation of blood in the heart is an indispensable condition for life - its non-circulation throughout the body means death ... If this diffusion be withheld, the destruction of that society is, without doubt, near at hand." (89) This was an evidence that Vivekananda stood for a plural decentralised socio-political order which has of late been greatly advocated by the socialists.

The maladies of the machine age civilization of the West which exercised the minds of Marx and other socialists appeared to Vivekananda as totally blind alley, and, hence fundamentally mistaken. What was distinctive of India was that she never regarded material comforts alone as the real objective of life. He considered it a point of vital difference between the Indian and the Occidental approaches to the real goal of life. He pointed out : "They (Indians) know that behind this materialism lives the real divine nature of man which no sin can tarnish, no crime can spoil, no lust can taint, which fire can not burn, nor water wet, which heat can not dry, nor death kill; and to them this true nature of man is as real as is any material object to the sense of an Occidental." (90) He made a strong plea to follow the

old Vedantic philosophy and revive the pattern of original communal and collective sort of Indian living. The Vedanta Philosophy gave a direction to the growth of socialism in India and later some of the Indian socialists including Sampurnanda and Nehru derived great inspiration from Vivekananda's Vedantic teachings. (91)

Vivekananda was opposed to untouchability and believed in the social as well as the religious equality of all men. He was not enamoured of a mere economic equality; rather he stood for cultural and spiritual fraternity in which there would be not only economic socialism and political freedom, but also moral and intellectual kinship. In short he did not believe in levelling down, but rather in levelling up. Thus his motto had been "From caste to socialism through culture." He knew well that unless social inequalities were done away with and privileges were given, class conflict would be inevitable and the upper classes might be "blown off" completely. He warned that any delay in it would be "dangerous". (92)

Although Vivekananda had a full knowledge about socialism and the other Western ideologies, he did not choose to affix himself to any dogma. He sincerely believes in the objectives of equality, social justice and welfare of the workers and the poor.

Mahatma Gandhi: While working among the peasants workers and the masses of Indian Society, Gandhiji was greatly affected by the problem of poverty of the masses. The disparity between the rich and the poor appeared to be so great as to command

his immediate attention. He realised probably as clearly as a socialist did, that labourers were not paid their due wages, rather not even their living wage, and were being 'exploited by the Capitalists for their profit-motive only. (93)

He knew that the peasants in were equal sufferers who were progressively becoming landless. The Zamindars exploited their labour for their own ends. Even though the peasants were the tillers of the soil, they were deprived of its natural fruit. His concern was also with that section in society, which had no job, either in the factory or in the field, i.e. with the vast section of the unemployed labour in India which was being driven to starvation and beggary. The problem was not only limited to the poverty of a class, but also wide enough to cover the masses as a whole. This prompted Gandhiji's to take up the cause of the masses and not only of classes as such. (94)

Gandhiji keenly realised that the real problem of socialism was to bring about equality in society. Indian society as it stood then, appeared to have been devoid of this ideal in all spheres. He found caste and communal cleavages in the Indian social order. To him, therefore, the urgent task was to bring about social equality in India.

A significant problem that engaged his attention was the use of big machines and factories on a vast scale in India. He put the problem thus : "What I object to is the craze for machinery, not machinery as such ... Men go on saving labour' till

thousands are without work and throng on the open streets to die of starvation ... To-day machinery merely helps a few to ride on the backs of million. The impetus behind it all is not the philanthropy to save labour, but greed. It is against this constitution of things that I am fighting with all might." (95)

He had full faith, however, in the reform of human nature, hence in possibility of establishing a socialist society of his own vision. Referring to the Western socialist, he observed; "when some reformers lost faith in the method of conversion, the technique of what is known as scientific socialism was born." (96) Gandhiji fully believed in the method of conversion. He was also convinced that the economic equality, or the material well being of all, was intimately related to the human nature and its sociability.

The out and out economic concern of the socialists became an ethical problem to Gandhiji. No wonder that this "socialism" was couched in spiritual terms and based on the possibility of reform in the human nature.

Believing, as he did, in the fact of social and economic inequality, Gandhi suggested the adoption of the principle "trusteeship" in society. Along with it, he also advocated the doctrine of 'renunciation' or 'voluntary poverty'. The twin principles of trusteeship and voluntary poverty were suggested under the overall conviction that corrective to the socio-economic maladies were possible only through a certain disciplining of the

human nature. Unless the crudities and the material craze in human nature were softened and tamed to an appreciable degree, a possible or workable corrective to the socio-economic maladies could never be fully evolved.

Gandhi, while attacking the inequitable and unjustifiable basis of capitalism and vested interests went on pleading for, went on pleading for trusteeship. The theory of trusteeship occupies a central place in the scheme of Gandhian thought.

Whatever talents, physical strength, wealth or other capacities a person might possess, he should take them as having been given to him as a trustee, for the benefit of the world. This is noble idea of trusteeship. (97) Where persons possess property, whether that possession is vested them in a manner deemed legal at the time or otherwise, they must be deemed to hold it in trust for society and not for themselves. (98)

In the nature of things, some will have ability to earn more, and they will utilize their talents for this purpose. If they utilize their talents kindly, they will be performing the work of the state. Such people exist as trustees, on no other terms. Gandhi said, "I will allow a man of intellect to earn more, I would not cramp his talent. But the bulk of his greater earnings must be used for the good of the state." (99)

What was instinctively Gandhian in his suggestion was that he completely disagreed with Marx in his philosophical

approach to what man was. With regard to this difference it has been pointed out that "according to Gandhiji the basic principle is life not matter. Even what we perceive as insentient matter has its being in and by life; it has no existence independent of it; at any rate, in the absence of life none can testify to its existence. The universe, rises, exists and disappears in life, which alone is"⁽¹⁰⁰⁾

Gandhiji believed in the existence of soul or of the Atman and his belief was firmly anchored to the philosophical knowledge of the a priori existence of God -- the all-pervasive life-force and the ultimate Truth and Reality. This fundamental difference with Marx, who considered matter itself to be the Primary entity, combining and giving effect to the consciousness of the being, was at the root of the correctives advocated for the socio-economic maladies. The correctives suggested were ethical and spiritual.

Gandhiji derived another corrective from the ancient social order of India. He was convinced that the Varna Dharma was based on the socialistic principles of society. Gandhiji observed, "every person is born with certain definite limitations which we can not overcome. From a careful observation of these limitation the law of Varna was deduced. It establishes certain spheres of action for certain people with certain tendencies. This avoided all unworthy competition, whilst recognising limitations, the law of Varna admitted of no distinctions of high and low ... my conviction is that an ideal social order will only be evolved

when the implications of this law are fully understood and given effect to." (101)

Gandhiji thought Varnashrama Dharma ensures 'hereditary skill' and 'limited competition' and it was the 'best remedy against pauperism.' (102) He further maintained that 'Varnashrama Dharma defines man's mission on this earth ... for the purpose of holding body and soul together ...' (103)

The other solutions put forward by Gandhiji were

1. The Principle of bread labour.
2. Decentralization of Power.
3. The ideal of co-operation, and
4. Panchayat Raj.

These principles, if followed together in society, could ensure the smooth working of a social order on the basis of equality and justice.

The ideal of society that could be achieved through the solutions or correctives put forward by Gandhiji, was described by him as Sarvodaya -- the welfare of all. It has already been pointed out that Gandhiji's concern was not only with a class but with the masses as a whole. He considered both the poor and the rich to be afflicted with similar maladies ... the poor by their poverty and the rich by their lust for wealth, and he pitied both. His ideal, therefore, was Sarvodaya, and described it as his concept of socialism.'

Sarvodaya was an ideal mansion propped up on many pillars and each pillar was anchored to a rock like foundation. It is this picture of Gandhian Sarvodaya that has often been referred to as the 'Gandhian Socialism' or 'the Indian way to Socialism'.
(104)

Gandhiji was not a doctrinaire socialist believing in the state ownership of the means of production. If he was a socialist at all, his type of socialism was village socialism. To quote him "My socialism means even unto this last. I do not want to rise on the ashes of the blind, the deaf and the dumb I want freedom for the full expression of my personality. . . Under the other socialism, there is no individual freedom you own nothing, not even your body."
(105)

Socialism and communism of the west, are based according, on their belief in the essential selfishness of human nature. Gandhi did not subscribe to that view. He did not approve of the idea of class war. His own method was 'conversion' not compulsion. In his opinion class war was not inevitable, if the doctrine of trusteeship is accepted and implemented. Gandhi wrote in young India in 1929 : "The idea I want to realise is not spoliation of the property of private owners, but to restrict its enjoyment so as to avoid all pauperism, consequent discontent and the hideously ugly contrast that exists to-day between the lives and surroundings of the rich and the poor."
(106)

Gandhiji believed that his end 'the greatest good of all could be realised only in the classless stateless democracy

of autonomous village communities based on non-violence instead of coercion, on service instead of exploitation, on renunciation instead of acquisitiveness and the largest measure of local and individual initiative instead of centralization. (107)

Gandhiji Sarvodaya Society was the stateless democracy, the state of enlightened anarchy where social life has become so perfect as to be self-regulated.

Gandhi said "one (book) that brought about an instantaneous and practical transformation in my life was 'Unto This Last.' I translated it later in Gujarati entitling it 'Sarvodaya' (the Welfare of all)". The teachings of "Unto This Last" he continued "I understand to be : (1) that the good of the individual is contained in the good of all (2) that a lawyer's work has the same value as the barber's in as much as all have the same right of earning their livelihood from their work. (3) That a life of labour i.e. the life of the tiller of the soil and the handi-craftsman, is the life worth living ... Sarvodaya (108) implies welfare of all secured by the conscious effort of everyone in the community. It is a new social order, planned by goodwill and co-operation. A believer of Sarvodaya and votary of Ahimsa cannot subscribe to the utilitarian formula, - 'greatest good of the greatest number', because under it the interest of a substantial minority could be sacrificed for the good of the majority. But a ~~believer~~ believer of Sarvodaya will strive for the greatest good of all and die in the attempt to realize the idea. (109)

Sarvodaya postulates that development of self-governing village communities, decision of local issues by consensus or near unanimity, limitation of wants and the development of people's capacity to run their affairs with minimum governmental control and assistance lead to the welfare of all and social harmony. (110)

It will be based on truth and non-violence in which "Everybody would know how to earn an honest living by the sweat of one's brow and make no distinction between intellectuals and physical labour. No one would then harbour any distinction between community and community, caste and outcaste. Everybody would regard all as equal with oneself and hold them together in the silken net of love." (111)

The Congress Socialist Party:

The Congress socialist Party was formed in the year 1934. The immediate factors that led to the origin of the C.S.P. were the Prison Confinement of a number of youthful and socialistically inclined leaders in the four walls of the Nasik Central Jail, where they found time to meet together and discussed their socialist programmes and they studied secretly Marxist literature in their cells. The failure of the 1930 and 1932 Civil Disobedience Movements convinced them of the futility of the Gandhian method of struggle. The failure of the Gandhi - Irwin Pact of 1931 and two successive Round Table Conferences generated in them a firm conviction that radical

method of struggle alone could be effective. The decision of some congressmen to revive the old Swaraj Party greatly disappointed these radical youths. In the wake of it, the decision of Mahatma Gandhi to retire from the Congress was interpreted by some of them as the proof of failure of non-violent methods to achieve national Independence. Further during this period the communists had been isolated owing to their anti-nationalist stand. (112) There had been much deeper and wider reasons also that led to the formation of the Congress Socialist Party. Narendra Deb observed: "The Party has come into existence as a result of a group of Congress men in the course of the struggle. They came under the impact of the socialist thought of the world. They saw that a crisis had come over democracy in the West and that Parliamentary institutions were crumbling on all sides. They also saw the fascist menace was growing apace, that Capitalism was in a decadent condition and had entered its last stage of imperialism. They saw clearly that the choice before the world now lay between fascism and socialism and that capitalist democracy seemed to have no future before it. They found the world in the midst of grave economic crisis which did not seem to end. They found that it was Russia alone which had made substantial advancement towards socialism and that in the midst of the surrounding gloom it was the only hope of the poor the oppressed and the downtrodden for whom it was a great inspiration to-day because it is precursor of a new era for the masses of humanity having studied the history of revolutions of in other countries they came to the conclusion that the Programme of the Congress should be fundamentally altered in

order to achieved complete independence. The dire necessity of the anti-imperialist struggle led to their conversion and they quite rightly desired to develop the Congress platform for an anti-imperialist struggle." (113)

Among the pioneers of the Party at least three distinct ideological strands were clearly discernible, the Gandhian strand represented, to an extent, by Rammo^{HO}zohar Lohia and Achyut Patwardhan, the social democratic strand represented largely by Mr. Masani and Asoka Mehta, and Marxian strand represented largely by Narendra Deb and Jayprakash Narayan. Among these three strands, it has been rightly pointed out that there was no clearly defined ideology but an uneasy compromise between the Marxist and the Non-Marxist. (114) Probably among the Pioneers there was not a single thinker who could be said to be unreservedly Marxian or unreservedly Gandhian.

Genesis of Democratic Socialism:

The independent way of thinking by the Indian socialists, even during the hey-day of Marxist fervour, were suggestive of the fact that those who intended to constitute the Congress Socialist Party were consciously alive to the need for evolving Indian Socialism largely on Marxian lines, but only as a mixture diluted with the Indian conditions.

In his article "My picture of socialism", Jayprakash Narayan maintained that "the state in socialist India must be

a fully democratic state. There can be no socialism without democracy." (115) He reminded that Marx himself visualised both

'dictatorial and democratic process'. The later process, Marx thought, could be effectively used and in countries like England and Holland. For India also, J. P. Maintained, that the proletariate dictatorship was not required, and even in the 'transitional' phase democratic processes could be useful and adequate. J.P. further added that the 'dictatorship of the proletariat' never meant dictatorship of a single party, as has been the case in Soviet Russia. He visualised democratic socialism with 'more than one political party of the working people.' (116) It also implied 'full freedom for expression of opinion' and the right to form 'voluntary organisations for political purposes. He also considered that the trade unions should not be the limbs of the state and subservient to it, but independent bodies supporting the state, and also exercising a check over the government of the day.' (117)

Many factors influenced the ideological shift from Marxism to democratic socialism. An important factor was the realisation that the conditions in India were different from that of Russia or other communist or socialist countries -- a fact on which the Zealous socialists had not applied their minds fully earlier. The Gandhian influence and the predominantly democratic faith of the Congress also had much bearing on the socialist Party's newly found goal of democratic socialism. They realised that much of their popularity was due to their association with the Congress and Mahatma Gandhi. All these inclined the socialists

(118)
to embrace the ideal of democratic socialism.

It is interesting to note that nowhere in the objectives Resolutions, the words like 'Socialist' and 'secular' were used. (These were subsequently incorporated the 42nd Amendment Act.). Equally interesting to note that the final shape of the preamble adopted in the present Constitution, had dropped the word 'integrity' originally included in the Resolution.

The roots of shifting change of attitude of the leaders towards socialism and secularism could well be noticed as early as in 1946. Nehru wrote in that year : "In the context of society to-day, the caste system and much that goes with it are wholly incompatible, reactionary, restrictive and barriers to progress. There can be no equality in status and opportunity within its framework, nor can there be political democracy, and much less, economic democracy. Between these two conceptions, conflict is inherent and only one of them can survive." (119)

(120)
The Congress Socialist Party's statement that "there could be no socialism without democracy" was further strengthened by the observation of Nehru in 1951 when he held: (121)

"After all, the whole purpose of the Constitution ... is to move towards what I may call a casteless and classless society."

In a same vein, Nehru made a statement in the National Development Council in 1954 that he was aiming to frame

a 'socialistic picture of society'. Again, this was well reflected in the Industrial Policy Resolutions of the Government. The Cabinet, while reviewing the Industrial Policy Resolution, 1948, decided that it "had to be interpreted in terms of the socialistic objective." (122)

In late December, after two days of debate, the Lok Sabha passed a resolution which made the "socialist pattern" the official policy of the Government and a guide to the Planning Commission in drawing up the Second Plan. (123)

In conformity with the declaration of the objective of 'socialist pattern of society' in the Lok Sabha, the Congress in its Avadi Session at Madras in January, ¹⁹⁵⁵ 1955 passed a resolution which stated that 'in order to realise the objective of the Congress Constitution and to further the objectives stated in the Preamble and the Directive Principles of State Policy in the Constitution of India, Planning should take place with a view to the establishment of a socialistic pattern of society, where the principal means of production are under social ownership or control, production is progressively speeded up and there is equitable distribution of national wealth.' (124)

Though the Congress Party's decision was welcomed in general it did not escape criticism. The orthodox followers of Gandhi viewed the stand of the Congress as a radical departure from Gandhian concepts. To this criticism, Shriman Narayan was quoted to have replied. (125)

"Is not Gandhianism socialism of a type? In the content of the economic policy resolution, it has been made clear what socialism is. That means full employment, more production and economic and social justice for all. We have laid emphasis on small scale and cottage industries in order to provide fuller employment. According to our idea the state will be encouraged on a co-operative basis. Therefore the contents of the Economic Policy Resolution are in no way opposed or inconsistent with the Gandhian conception. On the other hand, we are moving close to the same ideal. Gandhiji's socialism was of the Sarvodaya type and that is what we are aiming at. Ours is not the Western type."

A study of the Constituent Assembly Debates will make abundantly clear that the Constitution was the result of a combined influence of Patel's conservatism and Nehru's inclination towards socialism, though it was Fabianism. But it should be noted that over the years leading to the Constituent Assembly he changed from Marxist or a Laski style socialist to an empirical gradualist. (126) It was perhaps Patel's conservatism that prevented Nehru from putting "socialism" in the Objectives Resolution. A beautiful summary has been given by Austin when he observed: "The difference between Nehru and the other three members of the Oligarchy was one of approach, not of basic belief. Nehru felt an emotional and intellectual obligation to attack India's social problems. Patel, Prasad and Azad, somewhat more conservative than Nehru, were committed only to effective government. Yet, the atti-

tudes of all four were rooted in humanitarian ground. (127)

A careful reading of the proceedings of the Constituent Assembly will establish the fact that the members sought to frame 'a democratic constitution with a socialist bias' with a view to allowing' the nation in the future to become socialist as its citizens desired as its needs demanded. (128)

V

Humanism.

The essence of Indian humanism is the Proclamation *Ayamatas brahma* - the human self is big, or great or cosmic. According to several schools of Indian thought the Atman or the Purusha is infinite.

'The basic values of a humanistic political system are liberty, equality, justice, fraternity and international fellowship, and fearlessness. (129) Humanism accepts a philosophy and ethics of tolerance, co-operation, mutual trust and universal acceptance. (130)

Revival of the Positivistic and World - affirming gospel of the Upanishadic Vedantism the Bhagaved gita and Buddhism : Ancient Indian Political Philosophy specially as propounded by the Vedanta and Buddhism has taught the vital importance of a spiritually oriented moral code of injunctions for the development of human life. This is one of the sources of the modern humanism." The dynamic and inspiring teachings of

Bhagavadgita that man should bring about his transformation by his own efforts and that one is one's own friend and one's own enemy, and of Buddhism that one should be a light (atma-dipa) and refuge unto one self (atma - sharanam) can be interpreted as supporting humanism ^{because} ~~became~~ they neutralise the view that faith in or surrender to an incarnation or a prophet or a teacher will bring about one's redemption." (131)

In the Bhagavadgita the lord said "whenever there is a decline of righteousness and rise of unrighteousness, O Bharata, then I send forth Myself. For the protection of the good, and for the destruction of the wicked and for the establishment of righteousness, I come into being from age to age." (132)

The concept of Samadarshana, Sarvabhutahita and Samya which propound universal compassion can be the ideological foundation of a humanist democracy. The Gita inculcates Samadarshana not merely with reference to human beings but also in ~~express~~ regard to the animal world and thus propounds the noble transmutation of humanism into a profound universalism ... The concept of Swaraj founded on natural right based on a spiritual world view and oriented to the realisation of the total equality of the sweeper and the lawyer in the matter of the receipt of remuneration has been nurtured by ancient Indian idealism. (133) One of the important factors which contributed towards the growth of modern Indian humanism was a revival of the humanistic spirit of the ancient Indian culture and religion and the medieval Indian

efforts to integrate staggering humanity into a single fold on the basis of universal brotherhood. Under the influence of the Sufis and saint-poets a fresh humanistic religious outlook firmly established itself during the middle ages which may be referred to as Bhakti movement. It laid emphasis on tolerance and respect for life, the conviction that God could be understood in terms of love for all living beings rather than anything else. As a matter of fact, the theistic humanistic outlook evolved through the efforts of the Hindu and the Muslim saints during the medieval period because the foundation for contemporary humanist. (134)

The neo-Vedantism of Vivekananda, Aurobinda, Rantirtha, Satysdeva, Radhakrishnan, the concept of Swaraj of Dayananda, Tilak Gandhi and Aurobinda and the integral humanism of Beendyal have their roots in the ancient Indian traditions. They re-interpreted the Indian humanism and dispelled the false picture of Indian values which shocked Western World in the beginning. Explaining the Vedanta Philosophy Vivekananda said "love every man as your ownself and not as your brother as in Christianity. Brotherhood should be superseded by universal selfhood. Not universal brotherhood, but universal selfhood is our motto." (135) Vedanta serves the basis of humanism. Vivekananda often used to say "If you want to find God, serve man." (136)

"He fleyed social injustice and dreamed a harmonious order in a society founded on the lofty ideals of freedom and equality." (137) In the words of Romain Rolland, "He tried to

remedy social injustices by preaching inter-marriage between castes and sub-division of castes, so that they might draw near to each other, by ameliorating the conditions of out caste, by occupying himself with the fate of unmarried women and of Hindu widows, by fighting sectarianism wherever it was to be found and vain formalism, the dont-touchisa, as he called them." (133)

His humanism was based on his tremendous faith in the powers of man. He tried to direct his religion philosophy to the service of India and mankind for their spiritual uplift and total emancipation from injustice, fear and evil." His voice at the end of the last century had telling effect on the people of India, they were awakened to revolt against suppression of human rights and all kinds of political economic and social inequalities. (139) Dayanand wanted to make humanism the basis of social reconstruction. This could be possible only through the revival of the vedic culture and civilization. He laid down certain general principles for the re-organisation of various social elements in order to make the world happier. These principles were concerned with adopting a caste system based on action, four stages through which man must pass his life, education of the society, and uplift of the governing machinery of the society "Swami Dayananda said that all men were equal in the eyes of God and the conception of high and low castes was false." (140) He thought that so long as the masses of India were ignorant, were slave of dogmas, and were suffering under the imperialism of the Brahmin priest, they could not have political freedom. He always reminded the Indians that

"social order based on the principles of the vedic religion could itself lead to the emancipation of India and the world, to the restoration of human rights of freedom, equality and justice." (141)

He loved all men regardless of religion, castes or sex. He had a message to deliver to man - message for making man happier, better and nobler." (142)

In "Satyarth Prakash" Dayanand expressed his view on ideal government -- "let all men elect most learned men as members of the educational assembly, most devout men as members of the religious assembly, and men of most praiseworthy character as members of the legislative assembly; and let that great (man) among them, who posses most excellent qualities, is highly accomplished and bears most honourable character be made the Head or President of the Political assembly." (143)

Gandhi accepted the two Western criteria of human wellbeing -- justice and liberty. But to these he gave an Indian emphasis. By justice he meant to the cause of the oppressed and the out caste. He decided to fight against the British rule in India because it led to the degradation of the poor. Similarly, he considered it his duty to uplift the untouchables. By liberty he meant realisation of one's duties and complete dedication to perform them without any emphasis on the rights. The centre of his activity was on the good of the people. In the words of F.R. Moraes "Posterity, in assessing the place of Mahatma Gandhi, will rank him higher as a humanist than as a politician." (144)

Gandhi tried to see God through the service of humanity. He knew that God did not live in some far off place in heaven but in the heart of everyone of His creation. He said, "The immediate service of all human beings becomes a necessary part of the endeavour simply because the only way to find God is to see him in His creation and be one with it. This can be done by service of all." (145) To him the nearest approach to truth or God was through love of mankind.

Gandhi's humanistic treatment of the whole problem of untouchables led him to fight for their religious, economic, social and political rights. "God did not create men with the badge of superiority or of inferiority, and no scripture which labels a human being as inferior or untouchables because of his or her birth can command our allegiance." (146)

Gandhi had faith in the inherent equality of all men. On the basis of this conviction Gandhi aimed at establishing an ideal society where men of different castes could meet and live as brothers. He supported the idea of inter-caste marriage and inter-caste dining for removing social barriers.

He wanted to abolish untouchability, conflict among different castes and other social evils by changing the hearts of the people. He wrote in Harijan, March 7, 1942 "The present inequalities are surely due to the people's ignorance, with a growing knowledge of their natural strength, inequalities must disappear. If the revolution is brought about by violence, the position will be reversed but not altered for the better. With non-violence, that is

conversion, the new era which is people hope for, must be born." (147)

In reply to a friends question during September, 1947, Gandhi said, "communal unity is a vital part of my being". (148) On June 29th, 1947, Gandhi advised Hindu to be friend Muslims, to share this joys and sorrows and to help them in distress. He was so much pained by the communal classes (149) that he decided to sacrifice his life for the cause of communal peace. Declaring his fast unto death on January, 12, 1948 Gandhi said "The fast will end when and if I am satisfied that there is a reunion of hearts of all communities brought about without any outside pressure, but from awakened sense of duty." (150)

The ideal of self-rule or Swaraj, as Gandhi termed it, meant kingdom of God or Ramrajya. Gandhi said "The Swaraj of my dream recognises no race, no religious distinction." (151)

Mere political freedom, for Gandhi, meant nothing without economic freedom, that is enough opportunities for economic growth. Freedom is a mockery if millions go about naked and starving. For this the only human approach, according to Gandhi, was to provide work for workless. He stressed on the basic economic fact that man must have to eat. Freedom from want was the first article of his economic theory and he worked through out his life to free Indians from the degradation and poverty. (152) On the occasion of his first trial in 1922, Gandhi said, "little do town dwellers know how the semi starved masses of India are slowly sinking into lifelessness. No sophistry, no jugglery in figures

can explain away the evidence that the skeletons in many villages present to the naked eye." (153) He warned that such crime against humanity would have to be answered for one day.

Gandhi advocates the methods of non-violence for solving all human problems, whether religious or social, whether political or economic.

The another source of modern Indian humanism is the exposure of the ancient and medieval Indian soul to the Western scientific methods and criteria of enquiry and a quest for the national enlightenment of the spirit. The advance of modernity in India has been fostered by the adoption of large scale western methods of growth, developmental planning and technological rationalisation. (154) It can not be denied that the British rule contributed towards the political unification and administrative stability to the country. It also brought new awakening in the people through education. The scientific temper of the western education proved to be a great force and spear-headed the humanistic efforts of the contemporary thinkers.

During the Eighteenth and the beginning of the nineteenth century, religion in India came under the complete domination of designing and corrupt priestly class. To maintain their supremacy, the Brahmin priests were interested in keeping people ignorant, and fed them with false hopes of rewarding after life. "The printing press made unpractical the realisation of

the priestly claim that the Vedic literature was to be kept immune from being studied by the Non-Dvija. Large scale printing of the old literature and their study by modern intellectuals reveals the ugliness, prettiness and crudeness of the claims to caste superiority sponsored in the *smritis* and the Puranas." (155)

It was the synthesis of the ancient Indian values and modern western science. A sincere attempt was made to bridge the gulf between faith and reason, between spirit and matter. The "Lockean gospel of liberty, the Rousseauic slogan of equality, the Marxian call for the socialisation of the means of production and the ideologies of the individualistic liberalism and imperial collectivism have provided the intellectual roots for the programme of the conquest of alienation, pain and distitution. The modern means of transportation and communication have made possible the growth of a dynamic intellectual atmosphere and the consequential acceptance of a intersubjective mode of enquiry and verification. Thus the western rationalism, scientific cosmology, critical mode of investigation and sociological philosophies of history have been the second major source for the release of humanistic trends in the modern thinking. Reason took the place of orthodoxy, dogmatism and superstition and individual rights and freedom." (156)

The humanistic elements in the thinking of Ramzohan, B. N. Seal, Ramavataara Sharma, M. K. Roy, Jawaharlal, Beni Prasad, J.P. and Lohia have their roots in western thought patterns. (157)

It is self-evident that an idealist humanist political philosophy

can never sanction the mechanism of superiority - subordination nor can it support the old smriti conception of the divine legitimacy of Varna subordination resulting in the denial of the rule of law to Vaishyas and Sudras. Humanism is fully committed to an open, mobile, dynamic socio-economic order where status is temporary. A permanent hereditary status group is totally alien to the humanism. The implementation of legal equality and the continued resort to adult franchise will gradually ~~be~~ ~~usher~~ ⁽¹⁵⁸⁾ into being an equality of status for citizens.

As a humanist Ram Mohun thought that mankind could be united if the basic elements of the major religions were brought home to the people. In the words of M.A. Bueh "He tried to interpret and assimilate into himself the highest elements of Islam, christianity and modern Nationalism or Humanism and transformed them all into a single creed which he found in the ancient Upanishadic Philosophy of his own community. Thus in him India is reborn not as a slavish repetition of orthodox Hinduism not as an epish imitation of Christianity or Islam but as a genuine revival of a pure theistic and rational humanitarianism inherent ⁽¹⁵⁹⁾ in essential Hinduism".

Like other humanists of the Bhakti Movement. Ram Mohun asked people to discard caste prejudice for the greater good of the society. He said all the four classes had equal rights and to deprive the low castes from spiritual progress was a sin. In a letter written on January 12, 1828, he wrote, "The distinction of castes, introducing incurable divisions and sub-

division among them has entirely deprived them of patriotic feeling, and the multitudes of religious rites and ceremonies and the laws of purification have totally disqualified them from undertaking any difficult undertaking." (160)

Some of the other social evils which Ramachun Roy wanted to eradicate from the Hindu Society were the burning of widows, selling of female children, polygamy and all the inhuman practices which heaped suffering on women is the name of religious sanctity. In spite of an organised opposition from Dharma Sabha, RajaRamachun came out successful in getting the law passed in 1829 against the Sati Practice." (161) He refused the argument that women were inferior to men and morally weak. He always wanted equality between men and women in matters of education and social life and in property rights. As a humanist he thought that the human could not advance if either sex remained in a degraded condition.

Ramachun Roy always emphasised that all human problems must be solved in humane ways. The social problems in India were only due to inhuman practices. He condemned religious sanctity attached with all social evils. He wanted to infuse Christian idealism into Hindu life and society for reforming the life of Hindu on the basis of equality service and truth. Among the means he suggested for solving various social problems were inter-caste marriages, widow remarriages and education for all, in the interest of a better integrated humanity. (162)

Jinnah never remained confined to national problems - he was equally concerned with the liberty, peace and happiness of the entire human race.

This position exemplified most clearly by Prime Minister Nehru, is characterized by a secular and scientific view of the universe combined with a commitment to human values stressed by nineteenth century liberalism. Those who represent this position are thus members of the westernized elite, and have largely cut themselves off from the religious outlook of traditional India.

As a liberal humanist thinker, Nehru's first concern had been the general welfare of the common people - their freedom of belief and expression. He was of the opinion that only through such basic human values, such fundamental freedoms could be realized. In 1949 Nehru declared : "Nothing can be worse for the world, 'I think, than a deprivation of human freedom of the individual."
(163)

From this detached position with respect to the various religion the humanist liberal thinker throws his weight on the side of unrestricted freedom to propagate religions as well as other ideas, subject only general regulations in the interest of public safety and order.

VI

Fundamental Rights : Genesis and Development : A General Survey.

The modern conception of rights was unknown in ancient Greece where society was divided into free citizens and slaves who had no rights. The Roman period was not conducive to the development of such a conception in a universal sense. The advent of Christianity improved matters considerably from the stand point of human life and personality, but it was not until the late seventeenth and eighteenth centuries that the necessity

Historical Roots

for a set of written guarantees of human freedoms was seriously felt, as the symbol of a new philosophy and new way of life, unthinkable, in the feudal, monarchical and absolutist society preceeding it. Even the historically famous Magna Carta, which has been hailed in some quarters as the greatest charter of human liberty, should be considered as no more or no better than an attempt of the feudal Barons of the Middle Ages to secure their privileges and position against the monarchs. It was not a declaration of rights of all citizens, much less of all men. (184) It was Locke, Rousseau and Thomas Paine's sincere and zealous advocacy of the rights of man that initiated the process of constitutional

Rousseau and Thomas Paine

incorporation and safeguard of rights of individuals living in a

free democratic society free from the arbitrary shackles of an

authoritarian absolutist rule, not of laws but of man.

Locke was of the opinion that the original state of nature was one in which peace and reason prevailed. It was not lawless, since men lived under natural law. Under the law of nature all men were equal and possessed equal natural rights. Locke defined these as the rights to life, liberty and property. In his opinion, the powers of the legislatures were not to be absolute, behind it stood the community, which retained its natural rights, and which might dissolve the government if it acted contrary to its trust.

"Men are born and remain free and equal in rights" and "the law is the expression of the general will", were the opinions of Rousseau, which influenced the governmental changes of the period. His doctrines of human equality, of popular sovereignty and many of his other principles had great impact on the political experiments of the French Revolution and were expressed in the Declaration of the Rights of man in 1789. (165)

In America, the growth of democratic and republican sentiment was stimulated by the writings of Thomas Paine (1757-1809) Paine urged the Colonists to declare Independence. The later American attitude towards monarchy and the system of nobility, the emphasis on popular elections, and the ideas of independence owed much to the influence of Paine. (166)

The French Revolution was supported in England by Paine. He held that a republican form of government and a

written constitution were necessary for the proper organisation of the popular consent. Paine strongly upheld the natural law philosophy of the Declaration of the rights of man. He believed that men are free and equal, that they possess the natural right of security, liberty and property, and that all authority is derived from the people. He insisted that the state was made for man and that government should be his servant. (167)

The French Revolution.

The British constitution, being unwritten, contains no formal declaration of rights; never-the-less, it can not be denied that the earliest charters of fundamental rights are to be found amongst the British Constitutional documents of these the most important and ancient is the Charter granted by King John, in ¹²¹⁵ 1216, generally known as Magna Carta. (168) The next constitutional Charter was the petition of Rights of 1628, the Preamble of which expressly states that it concerns "Diverse rights and liberties of the subjects". The next was the Bill of Rights 1689, which was expressly described as "an Act declaring the rights and liberties of the subject." These three declaration were the forerunners of modern Bill of Rights.

A direct descendant of these Constitutional Charters was the Virginia Declaration of 1776. As Prof. Goodhart says "Magna Carta crossed oceans in the 17th and 18th centuries because (169)

Magna Carta

the colonists brought these documents with them." Originally, the British settlers in these colonies claimed the same rights as were enjoyed by their fellow

citizens in Great Britain under the common law. Though there was no declaration of fundamental rights in the Constitution of the United States which came into force on the 25th September, 1789, the gap was subsequently filled up by the first ten amendments which armed the people with all important rights.

On the 27th of August, 1789, the French Constituent Assembly gave its final approval to a Declaration of Rights which, because of its historical importance, became the source of the Declaration of Rights. charters of liberties not only on the continent of Europe, but also in the other part of the world.

Internationalisation of fundamental rights really began with the charter of the United Nations, which reaffirms The U. N. Charter "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of the nations large and small." (170) The second step in this direction was taken by the General Assembly on the 10th Dec. 1948, when it proclaimed the Universal declaration of Human Rights.

With its long history of foreign rule and sensitive to its disabilities and discriminations, the Indian mind had come to regard a Bill of Rights as an essential part of their constitution.

Pandit Jawaharlal Nehru held that we did not have to go abroad for ideas of religious and cultural toleration, these

were inherent in Indian life. In regard to individual and Political rights and civil liberties, we were influenced by the ideas of French and American revolutions, as also by the constitutional history of the British Parliament. Socialistic ideas, and the influence of the Soviet revolution, came in later to give a powerful economic turn to our thoughts. (171)

In his memorandum on Fundamental Rights, which was submitted to the Constituent Assembly, Shri B. N. Rau, the Constitutional Adviser, refers to Magna Carta, the Petition of Rights, and the Bill of Rights -- the triple pillars of the British Constitution, and also invites attention to the following declarations of rights. (1) Amendments to the Constitution of the United States, (2) Articles of the Swiss Constitution dealing with fundamental rights, (3) Articles 109 - 160 of the German (Weimar) Constitution of 1919 (4) Articles 118 - 128 of the 1936 Constitution of the USSR and (5) Articles 40-44 of the Constitution of the Republic of Ireland. (172)

But there is no denying the fact that the American Bill of Rights became the foundation of the declaration embodied in the Indian Constitution. The rights which the Indian Constitution recognises as "fundamental" are generally to be found in the American Bill of Rights.

In spite of the long association of the Indian Statesmen and Politicians with the British Political system, the

Constituent Assembly deliberately departed from the British conception and adopted a formal declaration of fundamental rights in the Constitution in accordance with the American practice. Historically speaking the persistent refusal on the part of the British rulers to grant even a semblance of human freedom to the oppressed Indians, and the ardent conviction of the Indian leaders that an unwritten assurance was no effective guarantee or remedy against a possible interference by the state, perhaps accounted for this departure. The history of this country, the composition of its population, ideological differences amongst the different section of the population, India's social traditions, and the requirements of true democracy, were determining factors with the members of the Constituent Assembly in their task enunciating a set of justiciable rights for the newly independent people of India. (173) Apart from this "the notion for many years had great appeal not only as representing advanced democratic thought but more particularly as a convenient way of setting at rest the fears of minorities." Moreover, that a declaration of rights had assumed such importance was not surprising. India was a land of communities, of minorities, social, religious, linguistic and caste. For India to become a state, these minorities had to agree to be governed both at centre and in the provinces by fellow Indian members, perhaps, of another minority -- and not by a mediatory third power, the British. On both psychological and political grounds, therefore, the demand for written rights proved overwhelming.

The rights embodied in the Indian Constitution are not absolute. The notion of qualified or restricted rights is of recent origin. Modern states are Welfare states. The existence of the Welfare state is conditioned by a right balance between individual liberty and social welfare. This balance between individual liberty and social control implies qualified rights.

In the twentieth century, especially after the first World War, Fundamental Rights and human freedoms have acquired altogether new dimensions. While in the 18th century, people talked of inalienable and unchangeable natural rights basic to human development, in the second half of the nineteenth century, they talked more and more of civil liberties, especially those concerned with political participation. A new dimension was added in the twentieth century ~~when~~ when, thanks to President Roosevelt's famous declaration of "four freedoms" namely, freedom of expression, freedom of participation, freedom from want and freedom from fear, liberty was transformed into freedoms. This new dimension of freedom calls for social security, for right to work, education and leisure, and requires a rich cultural life and internal order. This was partly epitomised in the Bill of rights of the Soviet Constitution of 1936, and received complete fruition and fulfilment in the Universal Declaration of Human Rights of the U. N. when fundamental rights were, for the first time, internationalised. This, indeed, has been a revolution in itself. One other development requires attention. While there has been significant and substantial addition to the quantum and content of the

freedoms, the corresponding restrictions and limitations on such freedoms have also increased, due partly to the growth in their activities and functions of the state, and partly to the growing need for discipline, order, security and stability of the society. This has resulted in a new equilibrium between freedom and authority. The Constitution of India, in a large measure, seeks to recognise these changing dimensions and patterns in the field of human freedoms.

The difference between the Indian Constitution and the Constitution of the U.S.A., so far as fundamental rights are concerned, is really, as Dr. Ambedkar rightly pointed out in the Constituent Assembly on November 4, 1948, "one of form and not of substance". The fundamental rights of the American citizens as justiciably interpreted, are not absolute rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases the fundamental rights are not absolute.

The urge for liberty in India was the product of a mixture of events. Mill's essay "On liberty" in 1859 was a source of inspiration to the educated Indians. The foundation of High Courts in Calcutta, Bombay and Madras in 1862 was an important landmark in the history of civil liberties in India. The immortal documents like Magna Carta, petition of Rights and the Bill of Rights inspired the students of constitutional history and the lawyers. Indians educated in the Western lines,

inspired by teachings of Lock, Hume, Paine and Bentham, were suffering from a sense of frustration seeing the glaring contrast between the ideal of civil liberty which the Indians got from the study of English history and literature and its virtual denial in their every day life under the British rule. American Bill of Rights and the French Declaration of the Rights of man and citizen had immense effect in this direction.

The Indian National Congress which led the national movement of the country, was the most important political organisation in British India. From 1885, the year of its inception, ~~upto~~

upto 1905, it was dominated by
 The Indian National Congress. leaders, who were known as the
moderates. Demands like (1)

Indianisation of the services (2) expansion of the Legislative Councils (3) removal of the restrictions on the Press, (4) the extension of the rule of law by taking such steps as the separation of the judiciary from the executive, were articulated by such stalwarts as Banerjee, Surendranath Banerjee, Pherozeshah Mehta and G. K. Gokhale; and the line of activity the Congress pursued, was to apply Constitutional pressure both in India and in England through the normal channels of political communication.

National consciousness began to grow fast. The development of transport and communications through the railways, posts and telegraphs and press, helped the growth of such consciousness. The first popular movement began under the leadership of B.C. Tilak in Maharashtra in 1890, and the Partition of Bengal (1905) gave

a great fillip and a radical turn to this nationalist movement. It is significant that in 1906 Dadabhai Partition of Bengal (1906) Naoroji, in his Presidential address to the annual session of the Indian National Congress, placed before the people "Swaraj" or "Self government" as the goal to be attained. (175)

Fundamental Rights and the Directive Principles had their roots deep in the struggle for Independence, they were included in the constitution in the hope and expectation that one day the tree of liberty would be securely planted in India. The rights and principles thus connect India's future, present and past, adding greatly to the significance of their inclusion in the Constitution and giving strength to the pursuit of the social revolution in India. (176)

The majority provisions of the constitution are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing the condition necessary for its achievement. Though the entire constitution is directed towards this end, the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive Principles of state policy. These, according to Granville Austin, are the 'Conscience' of the constitution. (177)

The Preamble to the Constitution of India lays down "Justice, social economic and Political", and "equality of status

and of opportunity", as objects to be secured to all its citizens. Part IV explains more precisely what it means by the objective of the Preamble. Article 38, the essence of the Directives, echoing

The Preamble to The Constitution
of India.

the Preamble, states that
"the state shall strive to
promote the welfare of the

people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

The formulation of the social and economic objectives in national constitutions owes its origin essentially to the realisation that the content of political freedom is impaired by the absence of social justice and that without adequate protection for social and economic rights constitutional guarantees of what are known as "classical individual liberties" such as the right to equality, liberty of person and freedom of speech and association may lose much of their significance. This close association between political freedom and social justice has become a common concept since the French Revolution. (178)

In India, it was hoped that the constitution would be framed in such a way that a true socio economic revolution could be heralded and through this revolution the basic needs of the common man could be fulfilled. The Assembly members were also conscious of the need for a fundamental change in the structure of Indian society and of a powerful infusion of energy and

rationalism. And as a result the theme of social revolution runs throughout the proceedings and documents of the Assembly. (179)

Jawaharlal Nehru stated in 1938 - "the service of India meant the service of the millions who suffer. It meant the ending of poverty and ignorance and diseases and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye." (180) Nehru believed that two revolutions, the national and the social, had been running parallel in India since the end of the First World War. With independence, the national revolution would be completed but the social revolution must go on. Freedom was not an end itself, only a means to an end, that end being the raising of the to higher levels ~~xxxxxx~~ and the general advancement of humanity. (181)

The choice for India, wrote Gandhianes, was between rapid evolution and violent revolution because the Indian masses could not and would not wait for a long time to obtain the satisfaction of their minimum needs. (182) On the eve of his departure for London to attend the Round Table Conference in 1931, being asked by a correspondent what type of constitution he would like to bring home, if he was allowed to, Gandhi asserted that he would strive for a constitution, which would release India from all thralldom and patronage, and give her if need be, the right to sin. He reiterated his view to work for an India in which the poorest should feel that it was their country -- in whose making they had an effective voice, an India in which there would be no high class and low class of people, ~~xxx~~ an India in which all communities would live in

perfect harmony. There could be no room in such an India for the curse of untouchability or the curse of intoxicating drinks ~~and~~ and drugs. Women would enjoy the same rights as men This was the India of his dreams. He would be satisfied with nothing else.

(183)

'Gandhian Constitution of free India' by S. N.

Gandhian Constitution for
Free India

Agaral was published in 1946. The following are the rights enumerated

in the book.

(1) All citizens shall be equal before the law, irrespective of caste, colour, creed, sex, religion, or material wealth. (2) No citizen shall suffer from any disability on account of his or her religion, caste or creed in regard to public employment, public honour, trade and commerce. (3) Subject to the principles of non-violence and public morality, every citizen shall enjoy freedom of person, freedom of speech, freedom of assembly, combination and discussion (4) Every citizen shall enjoy freedom of conscience and the right to follow personal and social customs, subject to the public order and morality. (5) All citizens shall be free to preserve and develop their script, language and culture. (6) All citizens shall have an equal right to the use of wells, tanks, roads, schools and places of public resort, maintained out of state or local funds, or dedicated by private persons for the use of the general public. (7) Every citizen shall be entitled to free basic education, otherwise known as "Nai Talim". (8) Every citizen shall have the right to obtained legal and public protection from

violence, compulsion or intimidation in regard to his or her persons and personal property. (9) Every citizens shall have the right to obtain a minimum living wage through lowest work or employment (10) Every citizen shall have the right to rest, by not being compelled to work for more than eight hours a day. (11) Every citizen shall have the right to medical freedom. (12) Every citizen shall have the right to take part in public Administration through his or her vote on the basis of adult franchise. (13) Every citizen shall have the right to keep and bear arms in accordance with rules and regulations made in this behalf.

Duties:

(1) All citizens shall be faithful to the state specially in times of national emergencies and foreign aggression. (2) Every citizen shall promote public welfare by contributing to state funds in cash, kind or labour as required by law (3) Every citizen shall avoid, check and, if necessary, resist exploitation of men by man. (134)

Genesis and growth of Fundamental Rights in India:

The demand for the inclusion of a Bill of Rights in our constitution had its root deep in the history of struggle for freedom in India. It was implicit in the establishment of National Congress in 1885. The Presidential address of Mr. W.C. Banerjee ran thus. "He thought that the desire to be governed according to the ideas of government prevalent in Europe was in no way incompatible with the thorough loyalty to the British govern-

ment. All that they desired was that the basis of the government should be ordered and that the people should have their proper and legitimate share in it." (185) Indians wanted the same rights and privileges that their British masters enjoyed in India.

The first explicit demand for fundamental rights appeared in the constitution of India Bill, 1895. This Bill guaranteed to every one of her citizens freedom of expression, inviolability of one's house, right to property, equality before

The Constitution of India Bill, 1895.

the law and in regard to admission to public offices, right to present claims, petitions and complaints

and right to personal liberty (clauses 16-21 and 23, 24 of the Bill, Select Documents 1, 2, p. 7). (186) This was the starting point and

subsequent resolutions of the Indian National Congress sought to lay emphasis on the securing of fundamental rights, in any future constitution in India, as an article of faith.

The Calcutta Congress in 1906 resolved that in the opinion of this Congress, "The time has arrived for the people all over the country earnestly to take up the question of National

The Calcutta Congress 1906

Education for both boys and girls and organise a system of education -- literary, scientific and tech-

nical, suited to the requirements of the country on national lines and under national control. (187)

The Calcutta Congress of 1907 demanded equality of

women and men in regard to the franchise and education. On the allied question of the Depressed classes, the Congress urged upon the people of India the necessity, justice and righteousness of removing all disabilities imposed by custom upon the Depressed classes, the disabilities being of a most oppressive character, (138) subjecting these classes to considerable hardship and inconvenience.

By the mid twenties, Congress and Indian leaders had generally achieved a new forcefulness and a consciousness of their Indianness and of the needs of the people, thanks largely to the experience of the First World War, to the disappointment of the Montague Chelensford Reforms, to Woodrow Wilson's support for self determination, and to Gandhi's arrival on the scene. These influence were reflected in the tone and form of demands for civil rights. (139)

Even since his advent into Indian Politics, Gandhi exercise tremendous influence in moulding public opinion and guiding Indian leaders.

Following the publication, in 1913, of the Montague Chelensford Report, the Indian National Congress at its special

The Bombay Session of The Indian National Congress.

session, held in Bombay in August, 1913, demanded that the new

Government of India Act should include a Declaration of the Rights of the people of India as British citizens. The proposed declaration was to include, inter alia, guarantees in regard to equality before the law, protection in respect of liberty, life and ~~xxxxxxx~~

property, freedom of speech and press, and right of association. In the same year at its Delhi session in December, the Congress Passed another resolution demanding the immediate repeal of all laws, regulations and ordinances, restricting the free discussions of political questions and conferring on the executive the power to arrest, detain, intern, extern or imprison any British subject in India outside the process of ordinary civil or criminal law. (190)

The war ended in a victory for the British, the feeling grew that the attitude of the British would turn for the worse. The Government of India announced in January 1919, its intention to make new laws with a view to restrict freedom of expression and movement and to arrest a person without showing cause. In February 1919 the Rowlatt Bills made their appearance. Gandhi characterised these as unjust, subversive of the principles of liberty and justice and destructive of the elementary rights of an individual. (191) Government turned a deaf ear and passed the Rowlatt Bill, Gandhi threatened Satyagraha, if the Bill which was subversive of the principles of liberty and justice and destructive of the elementary rights of an individual was passed.

Under the inspiring leadership of Gandhi the Amritsar Congress in 1919 passed a resolution supporting vigorously the civil liberty and denouncing the excesses committed by the Government. He had impressed the Congress with his principles and philosophy, his code of ethics, his cult and truth and non-violence. (192)

The Amritsar Congress
1919

Many important changes took place at Nagpur in 1920. Resolution No. 8 of this session proclaimed that "The Congress is of opinion that Indian labour should be The Nagpur Session, 1920 organised with a view to improve and promote their well being and secure to them their just rights and also to prevent the exploitation (1) of the Indian labour (2) of Indian resources by foreign agencies, and that the All India Congress Committee should appoint a Committee to take effective steps (193) in that behalf.

Resolution No. 14 read :- "as free elementary education is the Primary and urgent need of the masses of India, this Congress urges on all Congress organisations to introduce and to (194) enforce the same in their respective areas on national lines."

The Ahmedabad Congress of 1921, in its resolution No.2, put an appeal to the Congress workers and the nation "to help the cause of prohibition and removal of untouchability and to The Ahmedabad Congress, 1921 help the condition of the submerged classes." (195)

At the Gaya session of the Congress in 1922, there appeared a fight between those that raised politics to a spiritual level, and those that worked The Gaya Session of The Congress, 1922 politics on the intellectual and material plans. That the leader of the former group was not present in flesh and blood made no difference. The ~~XXXX~~ issue was council entry. To Gandhi

it was opposed to non-co-operation. The spirit of Gandhi was all pervading. Every one took it to be an act of disloyalty to the master to turn his back on him, the moment he was found to be absent from the Congress. (196) This Congress places on record its grateful appreciation of the services of Mahatma Gandhi to the cause of India and humanity by his message of peace and truth and reiterates its faith in the principle of non-violent, non-co-operation inaugurated by him for the enforcement of the rights of the people of India." (197) The Gaya Congress also reiterated its previous stand taken in the Nagpur Congress, 1920, (resolution No. 8) on the right of the labourers.

The Indian National Congress, in its Belgaova session in December 1924, took resolutions on removal of untouchability, prohibition of intoxicating drinks, abolition of race distinction in services and religious freedom to various denominations. Among these the first two items found prominence (Items No. 7 and 13 of the resolutions) (198)

The 40th session of the Congress at Kanpur, in December, 1925, adopted the following programme of political work

Kanpur Congress 1925.	(1) The work in the country shall be directed to the education of the people in their political rights, and training them to acquire the necessary strength and power of resistance to win those rights by carrying out the constructive programme of the Congress with special reference to popularising
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the spinning wheel and Khaddar, promoting inter-communal unity, the removal of untouchability, ameliorating the condition of the suppressed classes and the removal of the drink and drug evil, the organisation of labour, both industrial and agricultural, the adjustment of relations between employers and workmen and between landlords and tenants and the general advancement of the national, economic and industrial and commercial interests of the country. (199)

In the same year Mrs. Annie Besant's commonwealth of India Bill appeared with seven fundamental rights. The rights were : - individual liberty, freedom of conscience, free

Commonwealth of Indian Bill.	expressions of opinion, free assembly, equality before the law, free elementary education equal right to the use
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of roads, courts of justice and all other places of business or resort dedicated to the public. Thus the Bill may be said to have been the precursor of several provisions of Fundamental Rights and the Directive Principles. By now, Indian opinion, including that of the minorities, had become altered to the necessity for such a list of fundamental rights. The minorities regarded these rights as the sheet anchor of their political existence, and even the Muslims found in such declarations a solution to all their problems. (200)

Again in the Gauhati Congress in 1926, special attention was given to untouchability and prohibition, freedom of

The Gauhati Congress 1926.	person, speech, association and of the press. Improvement of agriculture and protection of the rights of labour, agricultural
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(201)

and industrial, were taken to be the aim.

Within two years of the appearance of the Annie Besant Bill came the announcement that the Simon Commission would undertake a study of possible constitutional reforms in India. In response, the annual session of the Congress at Madras in 1927 resolved that the working Committee should draft a "swaraj" constitution for India on the basis of a declaration of rights. Since the problem of minorities in India further strengthened the general argument in favour of the inclusion of fundamental rights in the Indian Constitution, this Congress passed a resolution which categorically laid down that the basis of the future Constitution of India must be a declaration of fundamental rights.

The session of Indian National Congress held in Calcutta in the month of December, 1928 demanded removal of the disability of the women (resolution No. 2) and removal of untouchability (resolution No. 3).⁽²⁰²⁾

This Congress also urged the ruling Princes of the Indian states to introduce responsible government based on representative institution in the states, and to issue immediately proclamations or enact laws guaranteeing elementary fundamental rights of association, free speech free press and security of persons and property.⁽²⁰³⁾

The Nehru Committee appointed by the All parties conference in its report in 1928, incorporated a provision for the

enumeration of rights. The rights of the Nehru Committee Report ultimately formed the basis of the fundamental rights in the constitution of India. "Ten of the nineteen sub-clauses re-appear materially unchanged, and three of the Nehru rights are included in the Directive Principles ... in this report the desire (204) to afford protection to minorities was specially prominent."

Some of the more important rights recommended by Nehru committee may be summed up as follows:

(1) Personal liberties and inviolability of dwelling place and property. (2) Freedom of conscience and of profession and practice of religion (3) Right to free expression of opinion and to assemble peaceably, to form associations or unions; (4) Right to free elementary education without distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the state; (5) equality for all citizens before the law and in civic rights; (6) non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment, (7) equity of the rights to all citizens in the matter of access to and use of public roads, public wells and all other places of public resort; (8) Freedom of combination and association for the maintenance and improvement of labour and economic conditions; (9) equality of rights to men and ~~XXXXXX~~ women as citizens. (205)

The resolution which was issued on behalf of the working committee for adaption by public meetings all over the country on Purna Swaraj Day, January 26th

1930, proclaimed : "We believe that it is an inalienable right of the Indian people to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth."
(206)

The Simon Commission which was appointed by the British Government in 1928, published its report in 1930, totally rejecting the demands voiced by the Nehru Committee Report. However, this could ^{not dampen} dampen the Indian enthusiasm; in 1931, a new

The Simon Commission dimension was added to the demand for constitutional rights. The Congress session held at Karachi in March 1931, adopted the resolutions on fundamental rights and economic and social change, which was both a declaration of rights and a humanitarian socialist manifesto. The Provisions did, in fact, become in some cases the direct antecedents of the Directive Principle. There were, in all, 17 articles in this resolutions, divided under four heads as (1) fundamental rights and duties (article 1 with 14 subclauses) (2) Labour (articles 2 to 6) (3) taxation and expenditure (article 7 to 11) and (4) economic and social programme (articles 12 to 17).
(207)

Karachi resolution stated that, 'in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions'. The state was

Karachi Resolution to safe guard 'the interests of the industrial workers', ensuring that 'suitable legislation' should secure them a living wage, healthy

conditions, limited hours of labour, and protection from the economic consequences of old age, sickness and unemployment, women and children were also to be protected in various ways and accorded various benefits. The state was to own and control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport. Another item called for the reform of the systems of land tenure, revenue and rent. (208)

The question of a Bill of Rights for the Indian people came up before the Round Table Conference. The subject of fundamental rights designed to secure either to the community in general or to specific sections of the people of India rights and immunities, was discussed at length and memoranda was also submitted by individuals and groups for the inclusion of a chapter on Fundamental Rights in the proposed constitution of India. This demand was vigorously championed by Dr. B. R. Ambedkar. And strong care for social and economic rights was made out by prominent labour members like N. K. Joshi, E. Shiva Rau and V. V. Giri. (209)

A memorandum circulated by Gandhi at the second session of the conference, demanded, inter alia, that the new constitution should include a guarantee to the communities concerned of the protection of their culture, languages, scripts, education, profession and practice of religion and religious endowments, and protect personal laws, and that the protection of political and other rights of minority communities should be the concern of the Federal government. (210)

At the third session of the conference, the subject of fundamental rights was discussed on the 17th and 19th December, 1932, and although the British Government realised the importance attached to them, it expressed the practical difficulties which might result from including many, indeed most of them as conditions which might be complied with as universal rules by executive or by legislative authority. (211)

In 1932 a spate of correspondence between Gandhi and the Vice-Roy proved futile. Gandhi was arrested, along with other leaders including Jawaharlal Nehru and Sardar Patel. Amongst the leaders, only Pandit Malavya remained free, terrible repression took place everywhere. Two Congress sessions, apparently insignificant, were held in April, 1932 in Delhi and in 1933 in Calcutta. The Delhi session (1) reiterated complete independence as the goal of the Congress, (2) endorsed civil disobedience (3) congratulated the nation on its splendid response to Mahatma Gandhi's call and expressing complete faith in his leadership, (4) re-affirmed deep faith in non-violence. (212)

The Calcutta Congress (1) regarded civil disobedience to be a perfectly legitimate means for the protection of the rights of the people, (2) asked the people to boycott foreign clothes, (3) held that "no constitution framed by the British Government, while it is engaged in conducting a campaign of ruthless repression involving the imprisonment and internment of the most trusted leader of the nation and thousands of their followers suppression of the fundamental rights of free speech and xxxxxx

association, stringent restraint on the liberty of the press and replacement of the normal civil law by virtual martial law, deliberately initiated by it on the eve of Mahatma Gandhi's turn from England with a view to crush the national spirit, could be worthy of consideration by a acceptable to the people of India (213)

(4) The Congress offered its congratulations to the country on the successful termination of Mahatma Gandhi's fast of Sept. 1932, and hoped that untouchability would before long become a thing of the past (5) it reiterated the resolutions on fundamental rights of the Karachi Congress. (214)

In the Year 1934, the Working Committee met at Wardha on June 12 and 13 and in Bombay on June 17 and 18 and laid down for the newly organised Congress Committees a constructive programme which contained removal of untouchability, the promotion of inter communal unity, the promotion of total abstinence from intoxicating drinks and drugs and advocacy of prohibition, promotion of education on national lines, promotion and development of useful small industries, organisation and re-construction of village life in its economic, educational, social and hygienic aspects, spread of useful knowledge amongst the adult population in the villages or organisation of industrial labour. (215)

The Government of India Act, 1935, was passed without any Bill of Rights, much to the disappointment of Indian leaders. Based as it was on the recommendations of the joint select Committee of the British Parliament, it provided for only a few rights and privileges under section 275, 297, 298, 299 and 300. Under section 298, the act aimed at preventing discrimi-

nation against citizens in matters relating to holding of office under the crown, holding, acquiring and disposing of property, and carrying on any trade in British India, on grounds of race, religion, or place of birth or any of them. Section 299 provided that no persons shall be deprived of his property in British India save by authority of law. Over and above these constitutional provisions, there are ordinary provisions of statutory enactments turning on individual rights, privileges and immunities.

In the whole, however, the position was not very satisfying; rather, it failed to come upto the Indian expectations and was bitterly resented by those sections of Indian leaders who wanted nothing short of complete independence and a full scale Bill of rights for the subjugated Indian people, long denied the basic human freedom as members of a civilized society. By and large the Act was ineffective in safeguarding the people against executive despotism.

The session of the Indian National Congress at Lucknow in the month of April, 1936 resolved that, "the Congress draws public attention again to the widespread and intensive

The Lucknow session 1936 suppression of civil and in many instances personal liberties in India by the British Government : Crushing labour and peasant movements, banning of books and periodicals restriction of the free movement of persons within the country, prevention from carrying on their usual occupations and business." The demand for a constituent

Assembly, elected by the people, to frame a constitution for India and to determine India's political destiny, which was first seriously made in 1934 by the Indian National Congress, was reiterated in the Lucknow session and in this session an exhaustive agrarian programme was also taken. (216)

The draft election manifesto prepared in connection with the election to the provincial legislatures in Feb. 1937, which was approved at a meeting of the All India Congress Committee, held in Bombay on 22nd and 23rd of August 1936, was to a great extent manifestations of Gandhi's wishes. The manifesto stated that "it stands by the Karachi resolutions relating to fundamental rights and duties and will give its first attention to prohibition. Various agrarian reforms were also suggested. It was further stated that, "in the domain of industrial labour, settlement of disputes and relief against old age, sickness and unemployment and the right to form unions and to declare strikes, will be the reforms aimed at removal of sickness, disability, maternity of benefits and protection of women workers, equality with men in regard to privileges and obligations of citizenships and the removal of untouchability and uplift of the Harijans and backward classes, encouragement of Khadi and village industries, will largely constitute the programme of the Congress in the legislatures. (217)

The Faizpur Congress was from all accounts a great success. India claimed for herself the right to frame her own constitution, and if a genuine democratic state, with its

political power transferred to the people as a whole, should come into existence, it could only come through a Constituent Assembly elected by adult suffrage and invested with the power to determine finally the constitution of the country. (218) Nehru, in his Presidential address, said that the Congress to-day stands for full democracy in India and fights for a democratic state. (219) Gandhi added his voice and by political independence he interpreted "Ramarajya". (220)

The Indian National Congress, after assuming office in some of the provinces under the scheme of provincial autonomy, once again voiced its demand for Fundamental Rights at its Calcutta session in October, 1937.

The Labour commission formulated a comprehensive programme of reform which was accepted by the All India Congress Committee in October 1937 in a resolution. The Congress included in its resolution on fundamental rights that (1) "Every citizen of India has the right of free expression of opinion, the right of free association and combination and the right to assemble peaceably and without arms. (2) Freedom of conscience and the right freely to profess and practice his religion. (3) The culture, language and script of the minorities and of the different linguistic areas shall be protected. (4) All citizens are equal before the law irrespective of religion, caste, creed or sex. (5) No disability attaches to any citizen by reason of his or her religion, caste, creed or sex in regard to public employment, office of power or honour or in the exercise of any trade or calling (6) All

citizens hold equal rights and duties in regard to wells, tanks, roads, schools and places of public resort maintained out of state or local funds or dedicated by private person for the use of the general public. (7) The state shall observe neutrality in regard to all religions. (8) The franchise shall be on the basis of universal adult suffrage. (9) Every citizen is free to move throughout India and to stay and settle in any part thereof to acquire property and to follow any trade or calling and to be treated equally with regard to local prosecution or protection in all parts of India." (221)

The Congress also approved of the resolution of the Working Committee on Minority Rights, passed in Calcutta, in October, 1937, and declared a fresh that it regarded its primary duty and fundamental policy to protect the religious, linguistic, cultural and other rights of the minorities in India so as to ensure and safe guard them in any scheme of government to which the Congress would be a party. (222)

Apart from this, the pledge for the Independence Day on January 26, 1933 declared that "it is the inalienable right of the Indian people, as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth, and that the Congress believes that if any government deprives a people of these rights and oppresses them, the people have a further right to alter it or to abolish it. (223)

The Congress pledged a new to the independence of India and solemnly resolved a carry on non-violently the struggle for freedom till Purna Swaraj was attained. (224)

The 52nd session of the Indian National Congress, held at Tripuri in March 1939, demanded full freedom and a constitution through a Constituent Assembly, and declared its

Tripuri Session.	↓ ↓ ↓	firm adherence to the fundamental policies which have governed its programme in the past years under the
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guidance of Gandhi, and opined that there should be no break in these policies, and that they should continue to govern the Congress programme in future. In view of the critical situation that might develop during the coming year, and in view of the fact that Gandhi alone could lead the Congress and the country to victory during such crisis. The Congress regarded it as imperative that its executive should command his implicit confidence and requested the President to appoint the working in accordance with the wishes of Gandhi. (225)

Independence Day pledge for January 26, 1940 said that "non-violent action in general and preparation for non-violent direct action in particular, require successful working of the constructive programme of Khadi, Consumal harmony and removal of untouchability." Distinction on the basis of caste and creed and Harijans was denounced. (226)

The 53rd session of the Indian National Congress held at Ramgarh in March, 1940 resolved that "the Congress has

always aimed at a constitution where the fullest freedom and ~~and~~ opportunities of development are guaranteed to the group and the individual, and social injustice yields place to a juster social order." (227)

Then in the holocaust of the war, sank all clamour for rights and liberties. The end of the war saw the revival of this demand, and the major contribution in this direction was made

by the Sapru Committee appointed by the Sapru Committee. All Parties Conference (1944-45) Report of 1945. The Report pointed out that the

fundamental rights will be 'standing warning' to all "that what that constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights and equality of liberty and security in the enjoyment of the freedom of religious, worship and the pursue of the ordinary application of life." (228)

For the first time the Report distinguished between "justiciable" and "non-justiciable" rights, i.e. "breaches of some may form the subject of judicial pronouncement, and the "breaches of others may be remedied without resort to courts of law. (229)

This distinction exercised tremendous influence later in the framing of the fundamental rights for the new Constitution of India.

During these years, Gandhi was the key figure. The nation experienced his leadership including the "quit India" movement, during this great crisis. A meeting of the Working

Committee of the Congress was convened in Poona and later in Bombay in September, 1945. Azad presided and Gandhi, who was present in most of the sittings, declared that "fundamental rights as laid down by the Karachi Congress and subsequently added to must form an integral part of this Constitution." (230) In October the Congress Working Committee issued a 12 point election manifesto (231) which was a combination of socio-economic and constitutional rights for the people. A good number of these rights were later incorporated in the present Constitution of India.

The British Cabinet Mission in 1945 recognised the need for a written guarantee of fundamental rights in the Constitution of India. In paragraphs 19 and 20 of its statement of May 16, 1946, envisaging a Constituent Assembly for framing the Constitution of India it recommended the setting up of an advisory Committee for reporting inter alia on fundamental rights. (232)

By the objective Resolution adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a Constitution where in "shall be guaranteed and secured to all the people of India justice - social economic and political; equality of -- status, opportunity and before law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to the law and public morality." and where in adequate safeguards

would be provided for minorities, backward and tribal areas and depressed and other classes. (233)

Two ~~1/2~~ days after the adoption of the Resolution the Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas. (234) Sardar Vallabhbhai Patel was the Chairman of the Advisory Committee on Fundamental rights and minority. The Advisory Committee in its turn constituted on February 27, 1947, five sub-committee one of which was to deal with fundamental rights.

The members of the constituent Assembly sought to reconcile two guiding principles which motivated and inspired them: the desire for incorporating guaranteed rights for the individuals, including the minorities, and the ushering in of a welfare state which would bring maximum good to the maximum people. (235) (235)

A thorny problem that faced the Constituent Assembly at the outset was what to leave out and what to include as rights, some 'leftist' (sic) pressure to make fundamental rights all inclusive was resisted on the common sense ground that, it was pointless to give men/~~xxxxxxxx~~ ^{guaranteed} rights to things that no one would have the capacity, for it least sometime, to provide. The Irish Constitution came to the rescue.

The Fundamental Rights sub-committee recommended, in the line with the Irish model, division of rights into two parts -- one part consisting of justiciable rights, i.e. rights enforceable

by appropriate legal process, and the other part consisting of

The Fundamental Rights
Sub-Committee.

non-justiciable rights in the same way as Directive Principles of

Social Policy of the Irish Constitution, which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. (236)

The sub-committee had before it draft list of rights by Shri B. N. Rau, K. T. Ghosh, K. M. Munshi, Dr. B.R. Ambedkar, Harnam Singh and other Congress experts. In these the sub-committee drafted the rights in its ten meetings during March and April, 1947 and then submitted the report to the Advisory Committee on 16th April. Sardar Patel then presented the interim Report of the Advisory Committee on Fundamental Rights to the Constituent Assembly on 29th April, 1947. (237) Sardar Patel disclosed that there were two schools of thought in the Committee -- one school in favour of inclusion of as many rights as possible easily and straight way enforceable in a court of law, and the other school in favour of restriction of fundamental rights to a few very essential things, and that, the final report represented a compromise. The recommendations of the Committee were accepted by the Constituent Assembly in the third session of the preliminary meeting. The decisions of the Assembly were incorporated by the Drafting Committee in Part III of the draft Constitution. (238) The Drafting Committee under the Chairmanship of Dr. B. R. Ambedkar, prepared a draft of the Constitution and presented it to the Constituent Assembly, on November 4, 1949. Except for several controversial provisions, the drafting of the rights was completed in mid

December, 1948.

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