

1. Details of Module

Module Detail	
Subject Name	Political Science
Paper Name	07: Political Theory and Thought: Western and Indian Traditions
Module Name/Title	The Feminist Understanding of Politics and Power
Module Id	
Pre-requisites	
Objectives	Module tries to understand feminist conception of politics followed by examining the sex-gender debate, which questions the essentialized nature of the 'woman'.
Keywords	Sex, Gender, Patriarchy, Work, Public-Private, Queer, Disability, Caste, Dalit, Difference and Sameness.

2. Development Teams

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Module : FEMINIST APPROACH TO THE UNDERSTANDING OF POLITICS**INTRODUCTION**

This chapter begins with an overview of the feminist conception of politics. This will be followed by examining the sex-gender debate, which questions the essentialized nature of the 'woman'. Subsequently, various themes within feminist politics like the public-private divide, debates on the body including issues like abortion and surrogacy, the sameness vs. difference debate and intersectionality within the feminist movement will be discussed.

THE NEED FOR A FEMINIST PERSPECTIVE ON POLITICS

The Union Budget of India for 2013-14 contained a fairly interesting proposal – setting up of Women's Banks everywhere in the country¹. The idea was seemingly clear. In the shadow of the December 2012 rape and murder case in New Delhi, policy measures concerning women were at their height. Suddenly, law, policy, public debate and activism seemed to have acquired a gendered perspective. In this light the policy statement regarding banks which only women could access is interesting as it throws open a series of debates around feminist politics.

Why would a society need a bank just for women? There could be several explanations. First, given that women, have traditionally been kept out of the public and the economic spheres, there seems to be no logic for women to be able to access financial institutions like banks. They simply did not need it till the gruesome rape and murder reminded us that women do inhabit the public spheres. Providing access to banks was thus one way to recognize that women also need to be able to control their spaces, finances and lives.

¹ 'Finance Ministry seeks RBI approval for all-women bank', The Hindu, June 2, 2013. Accessed on June 6.
URL - <http://www.thehindu.com/business/Economy/finance-ministry-seeks-rbi-approval-for-allwomen-bank/article4774994.ece>

Second, the assumption could also be that since the public space is not adequately designed for women or that due to many structural causes, women do not want to inhabit these public spaces, an exclusive space for women may encourage better participation. Yet, there is also a counter-argument which proposes that such a measure will increase the isolation of women from the rest of the society. Women need not be safe only in isolation but within the larger societal context.

These issues have immense significance for a feminist understanding of politics and its practice. The example of this public policy on banks is symptomatic of the way women have been thought about in philosophy, theory, law and policy. Most of these ways of thinking have treated women as an exceptional case, as the departure from the norm. In the 'normal' course of events such policy measures like separate banks, maternity leaves, laws on domestic violence and affirmative action policies like reservations may never have been required, if it were not for the aberration called 'women'.

The feminist perspective on politics makes us aware of the problem with the above statement. It is precisely because a feminist perspective disrupts our understanding of the 'normal', of the 'everyday' that it is required within the realm of political theory. A feminist reading of politics and society opens up the cracks and the faults of an accepted, traditional way of doing political theory. It reveals the hugely masculine nature of the discipline even when it claims to represent the entire gamut of positions, identities and interests in society.

Feminist political theorists like Carole Pateman(1988) have asserted that the very subject of the political philosophy in the Western discourse has been 'male'. Political theory and philosophy, or what is read and taught as political theory and philosophy, has not only been written by men but in fact they have been written keeping in mind the 'male citizen', the 'male employee and employer', the 'male labourer' and the 'male voter'.

This figure of the male has been masquerading as the unmarked 'Universal'. Thus whenever liberal theory has talked about the 'human' or the 'citizen' or even the 'person', it is almost always talking about the male. This means that the concerns of the female citizen, voter, mother, professional, labourer are all missing. The best example of this could be how the male pronoun, 'his' or 'he' has been treated as the universal signifier in virtually the entire printed world.

It is not as if women did not write literature or philosophy or take part in politics. The issue rather is, was their opinion considered? When the canon of literature and philosophy was being made, women were systematically kept out of it. No wonder then that much of political theory and philosophy is made up of works of men alone or much rather of a masculine perspective. The latter is important here. When women were writing, were they still writing in the framework provided by the masculine political philosophy?

A feminist perspective on politics thus simply does not ask for inclusion of more women in the canon or in the practice of politics, it demands a radically different perspective – one that includes the concerns of women, of females and of all other sexes and genders. Thus a perspective which is largely egalitarian in nature, yet is anti-foundationalist, it attacks the very foundations of disciplines and practices.

In the next sections we will examine some of the basic premises of this feminist perspective.

1. SEX AND GENDER

Any understanding of the feminist perspective of politics, will either begin or come back sometime to the sex-gender debate. The split which the feminist movement made between the two concepts of sex and gender is crucial to our understanding of patriarchy and its gendered critique.

One rather simple way to understand the increasingly complex categories of sex and gender is to say that *sex* refers to the biological differences between women and men. These would include the anatomically different genitals or external sex organs, the presence of different sex hormones and ultimately the different chromosomal configuration of both these sexes. Gender would refer to an array of social and political meanings attached to one's self. This is broadly what we call as the process of socialization. One is reminded hereof Simone De Beauvoir's (1988) famous invocation that one is not born a woman but becomes one. One of the biggest contributions of feminist thought was to bring forth this distinction between sex and gender.

Centuries of oppression and discrimination against women was based on the fact that they are biologically 'different' and thus 'weaker' than men. This may come across as their perceived inability to not participate in activities as diverse as physical labour and math. Women in short, are neither physically not mentally capable of competing with men. This is the rationale for having different gender and professional roles and also discriminatory pay scales

for women as against men. While this discrimination seems to be resting on a biological basis, something which is natural and about which nothing much can be done – people will be born with either of the two types of sex organs (The position will be complicated a little further down the chapter), the situation is much more complex than this.

Men and women are socialized differently, even from before birth, based on which sex organ they seem to have. So people born with penises and what looks largely like a male anatomy, are this encouraged to play sports, play with guns and robots, take up subjects like math and computers in school and college. People born without penises (or with a vulva and vagina) are designated as females and are consequently taught domestic work, encouraged to remain indoors, play with dolls and talk softly. In contexts which are not middle and upper class, most of these people designated as women will probably never go to school and college, simply because of the fact that they are women and may not need that education. Those who do are almost always kept out of ‘serious’ fields like mathematics, physics and engineering.

According to Nivedita Menon (2008) , “A startling study in the USA of inter sexed infants (babies born with both ovarian and testicular tissue or in whom the sex organs were ambiguous) showed that medical decisions to assign one sex or the other were made on cultural assumptions rather than on any existing biological features. Thus, a baby might be made into a female but then still require hormonal therapy all her life to make her stay "female." In other words, maleness and femaleness are not only culturally different, they are not even biologically stable features at all times.”

Thus the very process of ‘sexing’ at birth determines ones ‘gender’ and thus determines one’s life chances. This is broadly known as biological determinism. Another example of this could be race, where one’s skin colour, is deemed as the sole and determining marker of one’s capacities. The sex-gender distinction helps us to complicate the argument of biological determinism. Sex and gender may not always coincide in most individuals. If we were to take out the process of socialization from the process of upbringing children, then there is absolutely no scientific or philosophical logic by which males would turn out to be masculine men and females would necessarily be feminine women.

Feminist anthropologists, like Margaret Mead, have examined different cultural contexts to determine what is meant by masculinity and femininity across various cultures. According to Mead then, different societies have varied understandings of what it means to be masculine

and feminine, without any direct overlapping of the biological specificities of the human body (Menon, 2008)

Roles and activities which are considered feminine, like cooking, crying, being physically weak are largely social constructions. Anyone can cook, clean and participate in care-giving provided that they are trained for it. Women are groomed for this role from even before they are born. Men are consciously kept away from the domestic front and encouraged to go out and 'play'. Obviously then, different skill sets develop. Similarly there is nothing naturally masculine about having short hair or being muscular. These have been fixed as attributes of being male by the societal and historical processes.

Take for instance a newspaper report which came out in 2008.

"She is not very educated, comes from a small town, and has nothing extraordinary about her personality".

This is how a newspaper report, in the Indian Express (dated March 10, 2008) chose to characterize a 27 year old woman, Susheel Kumari, who helped the police arrest two burglars who had entered her house. What is even more significant, according to the report is that she did this a day before International Women's Day, and this is an act which can inspire *all* (stress intentional) women in the Capital. The photograph which accompanies the news article is also worth mentioning here. It shows Susheel, sitting with her family, head covered with a *dupatta*, addressing four males of her family. There are no other females in the picture. The report also mentions that, *'...covering her head with her dupatta in respect for her father-in-law who is visiting them'*.

The report was particularly striking because the focus was the fact that a woman did such a thing rather than the fact that the crime had taken place or had been prevented. Further she has to be characterized as 'someone who was not expected' to do this, especially since she does not fit into the usual category of women with whom we associate such 'acts of courage'.

Thus the whole emphasis of the report is on creating the image of a woman who is very 'traditional' and also subscribes to the usual notions of the Indian woman, like covering her head. Yet she did something which is not a part of her usual gendered role. The very phenomenon of 'catching burglars' is something which strongly resonates with the notions of protecting the family and the idea of security.

Traditionally it is men who are supposed to perform this role. While women may have been able to assert equal identity in several other fields, that of security and protection, especially in terms of physical safety is still something that we associate with males, partly because of the link to physical strength. A case like this, in some ways thus inverts that logic and could serve useful to undo certain stereotypes. But instead the feeling one gets after reading the report is that the issue here is not whether it was a male who should have been doing this. Or did the woman do it better. The focus is that a woman actually did something which is not at all 'expected' of her in 'normal' circumstances and thus she has to be portrayed as an icon.

"After the arrests were made, an exhausted Susheel almost fainted and had to be supported by her neighbours", the report went further to state. Now this is a statement which would almost never appear in any other routine crime story. This statement which comes towards the end of the narration about the day's events, actually in a way conforms to the accepted stereotype of a woman, who is unexposed and thus unprepared for such situations. It is as if by the act of 'fainting' she returns to the fold of the gendered female and re-establishes any patriarchal or social hierarchies that she might have disrupted.

Sexual division of labour thus also means that women do not get paid for the work that they do. Labour activities like cooking, cleaning, rearing of children and care, are not treated at 'labour' at all and are hence not paid for. These are rather considered as the 'duties' or worse still, 'natural inclinations' of women. Work or paid labour activity is what happens outside the house, which constitutes the realm of serious work which only men can do. Consequently women who work only at home are largely unpaid workers.

The distinctions between sex and gender have since then been hugely complicated. According to Nivedita Menon(2008) there have largely been four movements in this regard. Menon writes,

"Firstly, Scholars like Alison Jaggar argue that "sex" and "gender" are dialectically and inseparably related, and that the conceptual distinction that earlier feminists established between the two is not sustainable beyond a point. In this understanding, human biology is constituted by a complex interaction between the human body, the physical environment and the state of development of technology and society. Thus, as Jaggar puts it, "the hand is as much the product of labour as the tool of labour." What is meant here is that two processes are involved: human intervention changes the external environment

and simultaneously, changes in the external environment shape and change the human body”.

There is nothing natural or pre-given about the bodies of a man or a woman then. These bodies are a complex set of relationships and products of history, labour, environment and living conditions. Through this understanding we can safely assume then that sex and gender interact with each other in much more complex ways.

The second kind of complexity in this argument, according to Menon (2008), comes from the school of radical feminism, which argues for retaining the priority of biological differences, as this is what differentiates women from men and prevents us from falling into the unmarked category of the universal individual. Menon (2008) writes, “Radical feminists claim that on the contrary, patriarchal social values have denigrated "feminine" qualities and that it is the task of feminism to recover these qualities, and this difference between men and women, as valuable. The radical feminist position on the sex/gender distinction is that there are certain differences between men and women that arise from their different biological reproductive roles, and that therefore, women are more sensitive, instinctive and closer to nature”.

A third kind of understanding of this issues comes from the post modern perspective about the body and sexuality. Menon(2008)takes recourse to Judith Butler’s understanding of sexuality to say that, “Butler uses the term *heterosexual matrix* to designate the grid produced by institutions, practices and discourses, looking through which it appears to be “a fact of nature” that all human bodies possess one of two fixed sexual identities, with each experiencing sexual desire only for the “opposite sex.” From this view point, the removal of this grid or heterosexual matrix will reveal that sexuality and human bodies are fluid and have no necessary fixed sexual identity or orientation”.

2. FEMINIST UNDERSTANDING OF POWER AND PATRIARCHY

The feminist understanding of power comes from a view point of systemic oppression expressed through institutions like the different forms of patriarchies. The term ‘patriarchies’ is being used here in consciously as there seems to be no one homogenous way in which patriarchy affects men and women. Different social and historical positions makes people experience the power of patriarchy in extremely diverse ways. This kind of understanding has

also shifted the debate to the idea of 'masculinities'. The initial point was that patriarchy affects not just women, but also men and also the society in general. This understanding led us to the observation that interrogating the idea of 'masculinity' carries equal importance to the idea of feminism. Masculinity could be defined as the way in which the idea of the masculine has been constructed by patriarchal power in the society.

How are men affected by patriarchy? Just as women are expected to be homely, delicate, weaker in physical strength and men are expected to be strong and bread-winners. Patriarchy, which is ultimately a system of power, thus also defines the roles and capacities of men. It may appear as if men are the oppressors and women are the victims of patriarchal power, yet, interventions by various scholars have told us that men are equally victimized by patriarchy.

For instance, what happens to men who are not 'masculine' enough? There will be plenty of men who are not very good at physical labour, or who would want to keep their hair long, or who would like to cook and stay at home. But we do not come across many such people in everyday life, because society expects them to behave in a manner fitting to 'men'. Men thus model themselves on this expectation of patriarchal masculinity. On the other hand, this issue of masculinity also affects people who cannot be 'masculine enough' even if they tried hard. Disability, caste, class and sexuality, intersect with this idea of 'being a man' and create increasingly complex modes of being. A Dalit man, considered inferior to an upper caste man, will not be masculine enough. He will be filthy, dirty, weak, emasculated and not a man in the same way in which an upper caste man will be.

Disability also creates its own peculiar conditions. Since, people with disability inhabit a different set of capabilities; our physical built environment may not actually allow them to exercise their abilities and capacities to the fullest. For instance, if our built environments were designed to have ramps instead of staircases, those of us who are on a wheelchair would have the best capability to navigate these spaces. While those of us using legs would find the uphill trudge increasingly tedious. Just as built environments are constituted by power relations, so is the society at large constituted by the power relationship of patriarchy. Imagine a man who is differently abled and cannot work in a typical office environment because there are no lifts or ramps or because the computers do not have screen-reading software installed on them, or simply because the management is not willing to accommodate different abilities. Now this man cannot be the traditional 'bread-winner' for his family, cannot participate in much of the public sphere and also thus cannot fulfill the role of a 'man'

as expected by the society. Patriarchal norms tell this person that he is not a man enough because he cannot work in an office space, or cannot lift heavy weights. This person then is also a victim of patriarchal norms which dictate how men should be.

Sexuality is another such contested arena, which has in the recent years contributed immensely to our understanding of sex and gender roles. The queer understanding of body, sexuality and capabilities rejects the idea of males being masculine and females being feminine. This perspective largely understands the human body, capability and sexuality as a continuum rather than as poles. Thus people who are anatomically male may be considered 'feminine' in other attributes or have so called 'feminine' interests. Other groups like Hijras, present somewhat at the margins of the queer and sexuality discourse also pose a strong challenge to our understanding of gender.

3. PUBLIC – PRIVATE DIVIDE

One of the central conceptions which some branches of feminism have challenged has been the divide between the public and the private spheres. This conceptual and philosophical divide has been the pivot around which liberal political theory bases itself. Consequently, the liberal feminist school of thought also upholds this divide and bases its political philosophy in the realm of rights, entitlements and a separation of the public sphere from the private arena. The challenge comes from the radical and socialist feminist schools of thoughts, which mount the argument that this artificial divide, places politics firmly in the realm of the public. Consequently, the private sphere gets de-politicized to the extent that issues like marriage, child-bearing and rearing, adoption, surrogacy, divorce, property, domestic violence and ethics of care become largely non-political issues. The significant insight that radical feminism brings to this debate is that 'the personal is the political'.

Aristotle considered that the 'political life is the highest life'. A describes a complete human being as 'zoon politikon' – someone who takes part in the political life of the polis. We need to examine what is meant by a political life here. For the Greeks this meant participating in the direct democratic structure of the city, through taking part in discussions, debates and finally voting. It is important to note that only propertied men who were born in the city were actually called citizens. Slaves, women and aliens (people born outside the city) were not allowed to take part in the political process. Thus we have here a structure where public is being collated with the political and the male. Only certain kinds of men can take part in the

political life of the city and thus be called 'zoon politikon'. This situation has not changed much since then. The public is still associated with the male and the masculine so much so that even female presence in the public spaces are somewhat of an aberration. Feminist theorists like Susan Moller Okin and Carole Pateman² have argued that the presence of women in the public sphere is a relatively new phenomenon. Thus this very 'public' sphere convulses every time there is a debate on issues such as breast-feeding, rape, sexual assault and maternity/paternity leaves. Okin tells of a fascinating case in the British parliament where

The debates on rape, sexual assault and safety of women in the public spaces, have almost always relied on the unsaid assumption, that if women venture out there will be consequences. The debate on domestic violence, child sexual abuse and marital rape puncture this argument of only the public being unsafe for women. In fact theorists like Cynthia Enloe propose that the violence women face in extraordinary situations like war is only an extension of the violence they face during peacetime. Women, according to Enloe, thus face a continuum of violence across war and peace. This idea of the continuum seems to be useful for the debate on the public and private spheres as well.

Again one must pause here to reiterate that the public is also not an unmarked universal for women. Women's very access to the public is mediated by their class, caste, racial and religious locations. This is also the problem with opening banks only for women, or having women only public spaces.

This public-private divide then creeps into areas like law and public policy. Two issues will be discussed here. First is the issue of 'abducted women' during the partition of India and Pakistan. The other is the post-independence issue of Shah Bano.

The public-private debate also has implications for the central concept in feminism – the body. In traditional political philosophy, the body and the mind have treated as two distinct entities. Now, these are not just distinct but also hierarchical in nature. The mind has largely been treated as the superior faculty, characterized by reason, rationality, and thinking. The other is the body, which is the realm of bodily functions and emotions but more importantly, the site of un-reason and irrationality. There is not much to be discussed then in the fact that men seem to occupy the realm of the mind, while women, with the emphasis on bodily processes like menstruation, pregnancy and child rearing, inhabit the realm of the body. This

²See Okin (1987, 1989, 1994) and Pateman (2002)

division also links up to other such arbitrary divisions like public and private, culture and nature, masculine and feminine.

The other discourses on the body come from the queer and disability schools. The queer understanding of the body decenters this discourse of the mind and the body and focuses on the primacy of the latter. The disability discourse also focuses on the body.

4. SAMENESS vs. DIFFERENCE DEBATE

Anne Philips, Iris Marion Young and Nancy Frasier have been part of this very complex debate on the positions of sameness and difference. The central question which this debate seeks to address is – should women be treated differently because of their histories of oppression and discrimination and their present status as ‘inferior’? The argument against this position is that if women continue to be treated differently then their position as weaker gets essentialized. This they need to be enabled or made capable to compete with the larger society.

The sameness and difference debate is being used in fields like citizenship and multiculturalism. The initial idea is that of ‘citizenship-as-common-rights’³. This has obvious problems. It leads to homogenization, an oppressive form of Universality and erasure of unique differences among people and groups. This also means that what is promoted as ‘common’ is actually a very specific form of male, white, heterosexual and upper-class perspective. This naturally harms many groups like women, African Americans, homosexuals, native inhabitants. In response Iris Marion Young proposes the concept of ‘differentiated citizenship’. This would ensure that while all the above mentioned groups will get the universal citizenship rights, they will also be entitled to certain special group rights, in order to overcome the disadvantage that incurs as a result of being part of groups such as certain genders and sexualities, ethnic identities and race.

5. INTERSECTIONS

³ See WillKymlicka. (1990). Chapter on ‘Citizenship’ in Contemporary Political Philosophy. OUP

In this analysis we have to realize that these debates do not exist in a vacuum. We exist as a continuum of various selves across caste, class, gender, sex, ethnic and race lines. Any discussion of feminist politics would be incomplete without an understanding about the intersectionality of the feminist position. Caste and gender debates in India have matured greatly over the past decade. The theoretical impulse in this field came from Gopal Guru's evocative statement – 'Dalit women speak differently'. Simultaneously there has also been extensive work on the body and politics of the upper caste women. Women here are seen as markers of caste and sexual boundaries. Prem Chaudhary's work looks at the fault lines of these boundaries and what happens in cases of transgression. Dalit feminism with its very strong insights into the caste biases of the feminist movement in India is thus an important component of these debates. Scholars like Sharmila Rege have made important contributions in the field, by pitching the argument at the level of unique position and experience of the Dalit woman. An interesting intervention in this respect has been the vast number of autobiographies written by Dalit women. These works have opened up several debates around the experience of being a Dalit woman. Most notably the writings of Veerama, Bama, and others have forced social sciences to take into cognizance, the patriarchy inherent within the extremely radical Dalit movement itself. They have forced a realization that even while fighting against caste inequalities, the movement has ignored the concerns of the Dalit women, most of whom suffer what has come to be called, 'triple discrimination' – caste, class and gender based discrimination that these women might face at some points in their life. 'Dalit Patriarchy' is thus another variant, though much contested, of the larger apparatus of power relations of patriarchy.

Susie Tharu and Tesajwini Niranjana look at this issue of in India by examining issues like the Mandal agitation and the rise of Hindu fundamentalism. "In the 70's and 80's, an important task for feminist theory was to establish 'gender' as a category that had been rendered invisible in universalisms of various kinds", write Tharu and Niranjana. This led to a series of movements around dowry, eve-teasing and rights of women in and outside the home. The writers however contend that with the coming up of issues like Mandal and the rise of the Hindu right wing, the concerns for the women's movement in India have also changed. Tharu and Niranjana seem to be hinting at the issue of intersectionality of the gender question with issues such as caste, class, race and sexuality. The Shah Bano case in particular, brought out the difficulties in formulating a coherent feminist position in India.

Both Mandal and Shah Bano⁴ uncovered the deeply Universal nature of the Indian feminist movement, with its inability to handle the complex issues of religion and caste.

The experience of race and gender has also been vastly theorized. bell hooks has been largely instrumental in waging these debates.

CONCLUSION

Going back to the example which we started with – a women's only bank, we will now be in a better position to comment on this policy initiative. Creating exclusive spaces for women can be beneficial for limited purposes and contexts. It will enhance public participation, access to public spaces and economy, which will lead to certain kinds of empowerment. However, in the longer run there is a serious need for changing the overall structure of the public and the private spheres in order for them to become more egalitarian, equal and gender friendly. However, the debate of difference vs. sameness creates a problem here. Do we want a gender-neutral environment which treats everyone equally, without due consideration to specific histories and problems? This is the condition where there is enough stress on formal equality but substantial equality lacks a bit. This is because while formally and legally everyone will be equal, yet in practice, since different people would have had different starting points in life, they would also have different life outcomes. For instance, if we look at existing public institutions like banks and schools, not every woman is able to access them because of varying life circumstances. Poverty, lack of freedom, lack of economic security and community restrictions can be the various reasons why women from certain contexts cannot access education or banks in spite of the facilities being there, i.e., substantial or actual opportunity and equality is missing even though the formal arrangements are present. A woman only school or college or bank will thus improve this state of affairs as women and their communities may feel safer and more enabled in these cordoned off spaces. Our experience with women colleges has been largely positive in this regard.

The problem with this approach is that it creates an opposition between equality and liberty. Affirmative action programs, reservations and privileges, given to minorities or special

⁴Look at works by Anupama Roy (2001), Nivedita Menon (1998) and Nira Yuval-Davis (1997) for a discussion on the Shah Bano and Mandal cases.

groups violate the principals of liberal equality where the citizen is an unmarked individual, worthy of a universal idea of respect, equality and freedom. However, the women's movement has made sufficient critiques of this idea of the universal and also of liberal notions of equality, which can be used to create a much more layered and complex idea of feminist politics and also politics at large.



Module Detail	
Subject Name	Political Science
Paper Name	Comparative Politics
Module Name/Title	Impact of Modernity on Gender
Pre-requisites	
Objectives	<ul style="list-style-type: none"> • To explain Biological Determinism how it determine gender roles in society. • To know about patriarchy and its impact on public institutions. • To understand the main tenets of Liberal Feminism. • To describe how Socialist Feminism relate gender inequality with modern capitalism.
Keywords	Feminism, Patriarchy, Capitalism, Democratization, Division of Labour, Biological Determinism, Equal Franchise, Gender Empowerment Index, Abortion Rights

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Title of the Module: Impact of Modernity on Gender

Introduction

The scholarly understanding of gender as a basis of social stratification and power politics in modern societies is of recent origin although gender division in society is an age-old phenomenon. It is based upon the assumption that women are naturally disadvantaged to assume a subordinate status in the society. On these terms, men are seen as the holders of power and are therefore active players in the public sphere like religion, culture, economy and politics. Women on the other hand are meant to be confined to domestic or household

activities. Their reproductive power makes them skilful at raising and rearing children at home while men become the bread-earners for the family.

Modernity that triggered democratic processes in Western societies also brought the issue of gender and women's rights centre stage. It gave rise to the ideology of Feminism that became the driving force behind women's movement in advanced capitalist societies. Although the origin of feminist ideas could be traced back to Greek civilization, it acquired the form of a concrete movement not until the mid-19th century. It progressed and assumed political significance at different stages. However, the strength and rigour with which it developed in different countries produced differences in its outcome. This requires a comparative analysis of gender issues in modern capitalist societies.

The central themes of gender politics include the understanding of patriarchy, equality, rights, and social movement. The chapter will therefore begin with a comprehensive understanding of these concepts. This will be followed by a detailed discussion on the various theoretical positions on Feminism that developed with the progress of modernity and democracy. It will be shown how modern ideas associated with democracy gave an impetus to women's struggle for rights and equality in the Liberal Feminist discourse. On the other hand, modernity linked with capitalism was cited as a source of gender-based exploitation by the Social Feminists. Different from all these theoretical explanations, Radical Feminism represents an independent ideology of women's liberation. The next section will attempt to understand the gender issues and concerns that have gained salience in women's movement from time to time. This includes political rights and representation, access to education, employment, and more recently sexual and reproductive rights. An emphasis is on the feminist movement in United States during the latter half of the 20th century.

Concepts and Ideas in Gender Politics

The feminist discourse begins with the understanding and explanation the difference between 'sex' and 'gender'. It challenges the argument of 'biological determinism' that gender division in society is naturally determined which implies that distinctions in the social roles of men and women are because of their biological formations. In other words, naturally women are seen as weaker than men. Women, because of their reproductive capacity, are considered to be most appropriate in the role of child-bearing that involves staying at home and nurturing their children. On the other side, men are the primary bread-earners of the family. They are active at the workplace or any public arena.

Such natural or biological differences are also taken as a stereotypical basis to distinguish between the characteristics of 'masculinity' and 'femininity'. Attributes like power, intelligence, knowledge, rationality and ability to take decisions on public front are generally associated with masculinity. In contrast, femininity which gets linked with irrationality, unintelligible, dependence, physical weakness and emotionality is considered to be inferior in the hierarchical order of psychological traits. The division of social responsibilities between men and women is driven by these contrasting features that further becomes a basis for establishing male supremacy in all spheres of human thought and action.

Feminists question the authenticity of 'biological determinism' by highlighting the difference between 'sex' and 'gender'. Sex, according to them is a natural construct while gender is seen as a socio-culturally constructed term. Gender divisions are therefore social constructions supported by several institutions of the society. In this context, Simone de Beauvoir has commented that, 'Women are made, they are not born'.¹ Inequality between men and women is therefore not natural but gendered.

Patriarchy is the outgrowth of a gendered society that firmly established male supremacy and subordination of women in every sphere of life including, social, cultural, political and economic. It is an institution that begins to define the relation between men and women in the family as 'rule by the father'. Men exercise their authority by taking decisions for women and children in the family. This form of male domination then finds its application in other institutions of the society like civil society, state, political parties, market, and above all the state or the government. The exclusion of women from these institutions is clearly reflected in their under-representation or miniscule presence in them.

Patriarchy also becomes a basis to support public-private divide in gender roles. Here public sphere is synonymous with politics and government. Men dominate in politics and therefore occupy high echelons of decision-making. Here politics is understood in a broader sense. It includes all such organizations and institutions that are in some way or the other involved in the power game and takes decisions for rest of the society. Government, bureaucracy, political parties, civil society institutions including NGOs and other voluntary organizations, religious bodies and international institutions are all a part of it. They remain excluded from politics not only in the form of being under-represented but also voiceless. Their passive presence limits the possibility of bringing in their issues and problems in the public forum. Women remained confined to family and domestic responsibilities that constitute the private sphere. Nedelsky argues that in the 18th and 19th century Europe and England men's citizenship was justified on the ground of their rule over women at home and the values and

culture of society so demanded that women must focus on their responsibilities at home. As family was seen as a private realm, the state had no jurisdiction in the structures of familial power even when such structures authorized domestic violence and deprived women of their right to education, employment, association and expression.ⁱⁱ

Streams of Feminist Thought in Modern Societies

Modernity brought significant changes in the ideas and thought process of human beings. It challenged the orthodoxies of medieval times by replacing faith with reason and rationality as guiding principles of human existence. On this basis it held democracy as the most rational arrangement for organizing political life. Modernity thus triggered democratization and provided avenues for challenging the social cleavages that were the creation of medieval ages. It generated political consciousness in masses especially amongst those social groups who faced discrimination and exclusion in all forms and in every possible way. The most visible form of social exclusion was found in case of women who constituted nearly half of the population in most of the Western societies. To begin with they were not even recognized as citizens and were therefore kept completely estranged from public life. The project of democratization in modern societies was carried forward by the struggles led by Feminists from time to time.

The feminist thought became the driving force behind women's movement in Modern Europe and United States. It developed in different stages with new ideas, orientation and concerns. However, it was not until 1960s that the movement assumed political significance as it came to define the personal arena or family in political terms. Broadly speaking, feminist thought that emerged as a result of modernization can be divided into three categories: Liberal Feminism, Socialist Feminism and Radical Feminism.

Liberal Feminism

Liberal Feminist thought and the associated movement found its ideological basis in liberal democracy that firmly took roots in Modern Europe, especially Britain and United States. It also marked the first stage of Feminist movement that primarily focused on achieving equality between sexes. It made forceful claims for extending civil and political rights to women. As individualism is the core theme of liberalism, Feminist thought during this stage demanded equal entitlement for individuals irrespective of their sex, race, colour, creed and religion. They believed that women's equality must be the basic aim of the movement that

could be achieved by removing legal obstacles that denied equal opportunities and rights for women.ⁱⁱⁱ

Two very significant scholarly works that belong to the liberal tradition and in that sense initiated Feminist movement are Mary Wollstonecraft's *Vindication of the Rights of Women* (1792) and John Stuart Mill's *On the Subjection of Women* (1869). Wollstonecraft was highly inspired by the ideas of liberty, equality and fraternity echoed in the French Revolution. She found lack of education as the main impediment before the achievement of equality between men and women. As a result, she demanded equal access to education for women that would have not only open up new opportunities for them in employment but also ensure them a life of dignity and self respect. On a similar note, John Stuart Mill advocated extension of civil and political liberties to women especially the right to vote.

Liberal Feminism reappeared in a modified form during the second stage of Feminist movement in the writings of Betty Friedan. Her book entitled 'The Feminine Mystique' identifies the constraints that inhibit women to pursue different varieties of career opportunities and participation in political life. Observing the plight of American women in the 20th century she says that, 'It was strange stirring, a sense of dissatisfaction, a yearning that women suffered in the middle of 20th century in the United States. Each suburban wife struggled with it alone.'^{iv} In her text, Friedan shows how women tend to confine themselves to homes as responsible mothers and housewives. Preoccupied with such socially-determined roles they lost their independence in choosing a career and taking decisions for themselves.

Socialist Feminism

Socialist Feminism as a stream of feminist thought can be located in the writings of Marx and Engels. The capitalist mode of production is found to be responsible for systematic oppression of women. In the famous text 'Origin of the Family, Private Property and the State' they observe that sexual oppression arose at a particular stage of social development and was conditioned by two simultaneous processes: emergence of modern capitalism and origin of patriarchal family. It is also shown that primitive societies had an egalitarian social and sexual order because of collective production and communal ownership. Families in primitive societies are found to be characterized by matrilineal inheritance.^v

However, this form of egalitarianism in family relationships exhausted with the introduction of private property and modern capitalism. It has enhanced both wealth and social status of men and relegated women to domestic work and household responsibilities. Women became unpaid labour in what Engels calls as the 'bourgeoisie family' and also turned into

instruments of reproducing children. Therefore emergence of modern capitalism became the source of gender inequality in the society. It created gendered patterns of division of labour and established the dominance of men in all spheres of human activity. Engels calls this epoch of social development in human history as one where the ‘overthrow of mother right was the world-historic defeat of the female sex.’

Extending the arguments of Engels, contemporary social feminists highlight the problems of gendered division of labour in modern societies. They trace its origin to 17th century Europe when gender polarization leading division of labour between external workplace and home became firmly established due to the emerging capitalism.^{vi} Women assume the role of housewives and undertake the responsibilities of child-rearing and domestic works like cooking and cleaning. Men remain completely free of these responsibilities and expect their wives, mothers and daughters to do them so that they can focus on their domain of productive and paid employment.

Other than domestic division of labour, the socialist feminist also find a gendered pattern in the international division labour. Women are made to perform unskilled or semi-skilled professions that are normally low-paid in the global capitalist market. Their roles in the international market are again decided by their qualities of femininity. On this basis, they mostly enter professions like nursing, primary school teaching, garments industry, receptionists, low-paid household work, baby sitting, and so on that are considered to be of lesser value. Their salaries only serve as supplements to the income of the male members of their family. Second, when women enter the workforce they become doubly-burdened as they are made to shoulder the responsibilities of both household and outside work.

Socialist Feminism thus held modern capitalism responsible for institutionalizing patriarchal system. Gender inequality was found to be a by-product of class divisions in a capitalist society and was therefore not understood independent of class analysis. Accordingly, it was believed that the only way to uproot patriarchy was through a socialist revolution. Equality between sexes will naturally be achieved once capitalism as a system of production gets overthrown.

Radical Feminism

Radical Feminism represent the second-wave of feminist movement that became popular in the writings of Simone de Beauvoir, Firestone, Eva Figes and Germaine Greer. It indentified gender as separate from other modes of social stratification like class, race, and ethnicity and therefore required independent analysis. Gender difference was considered to be significant

in itself as women irrespective of their other identities face collective discrimination and therefore require collective action to overcome their predicaments. Radical feminists rejected liberal and socialist frameworks to understand gender-related issues precisely on the same ground that a male-bias was implicit in these theories and the alternatives which they gave for achieving gender equality were only concessional in nature and content.

Patriarchal values in Radical Feminism are seen to influence every sphere of human thought and action like politics, economy, religion, culture, philosophy, and morality. Sexual oppression is institutionalized and recognized as a fundamental problem of modern societies. Firestone in *Dialectic of Sex* states that sexual exploitation does not merely emerge out of social conditioning as the social constructivists argue but from biological capacities. She believes that women must be accorded complete freedom in their sexual existence which is possible through modern technology in contemporary societies.

Radical Feminists during the 1960s and 1970s questioned the established norms and traditions of Western societies that adhered to the notion of public-private divide and advocated non-interference of state in the private or family sphere. They raised the slogan of 'personal is political'^{vii} to state that family involved power politics to establish male supremacy and discriminate against women. Therefore, they claimed state intervention and regulation of family and marriage through strict laws and policies.

Few radical feminists celebrate the sexual difference and show strong resistance to the idea of considering the superiority of masculinity or what is often called as 'manliness'. Continuous reference to masculine qualities for making judgemental statements about ones intelligence, status, position and authority stands questionable. They hold femininity and womanhood in high esteem and believe that women should create a world of their own through a revolution.

Gender Issues and Women's Movement in Modern Societies

Political Rights: Participation and Representation

Women's movement in modern Western societies started during the turn of nineteenth century making strong claims for civil and political rights. Inspired by the writings of J.S. Mill and Mary Wollstonecraft, women's movement at its take-off stage, that covers the period from the French Revolution to the First World War, focussed on attaining voting rights and political equality. During the French Revolution, middle and lower-middle classes got voting rights but women remained excluded from general franchise. In France, the Napoleon dictatorship had secured the domination of men over women by law. Same was

true about other countries where modernization had created avenues for democratization but left almost half of its population deprived from voting rights.

Women's struggle for political representation has been a long-drawn process in modern societies. Modernization facilitated the dissemination of egalitarian values that served a foundation for democracy. However, equality as a goal was far to seek until women remained excluded from politics. Due to the prolonged struggle led by women's organizations across Europe and America, political rights for women were legally sanctioned by many countries after the Second World War.

Political rights that appeared as the central demand of women's movement during the first phase was directly linked with changes in civil laws that inhibited women's participation in politics. This mainly included the revision of marriage and family laws that excluded women from property rights in the family. In Britain, for instance, property qualifications for voting rights naturally inhibited participation of married women in politics and public affairs as they did not possess any claim over family property. Leading proponents of women's political rights however held different viewpoints on this. Lydia Becker, for example, stated that only women holding property should qualify for voting rights. In contrast, advocates like J.S. Mill and Barbara Bodichon felt that absence of voting rights had led to denial of equal citizenship to women. Therefore, right to vote was the most important step to achieve equality between the two sexes. However, the movement led by suffragettes became extremely forceful at the beginning of 20th century by resorting to the techniques of civil disobedience and direct confrontation with the authorities.^{viii} Ultimately, after a prolonged struggle of almost two and a half centuries women attained the right to vote in Britain under the Equal Franchise Act of 1928.

In United States, women voiced their demand for equality in the gathering at Seneca Falls, New York in 1848. On the lines of Declaration of Independence, the Conference prepared a charter popularly called as the 'Declaration of Sentiments' and listed several issues and problems concerning women in American society that included denial of voting rights and male-centric marriage laws that made a wife 'civilly dead'.^{ix} As Britain, women in United States received equal franchise as late as 1920. In France, struggle for equal franchise was supposedly the longest and most exhaustive. The feminist movement in France that was initiated in the 1830s echoed the ideals of French Revolution. However, women were granted voting right only in 1944.

Gender parity in politics still remained a distant goal even after women got voting rights. A cross-regional comparative analysis in Europe given in Table 1 clearly shows the gender gap in political representation in the Parliaments.

Table 1

Regions	1955	1965	1975	1985	1995	2005
Scandinavia	10.4	9.3	16.1	27.5	34.4	38.2
West Europe	3.6	4.0	5.5	8.6	12.8	22.7
Eastern Europe	17.0	18.4	24.7	27.0	8.4	15.7

Source: Pamela Paxton and Others (2007)^x

As shown, the Scandinavian countries take the lead in women's political representation as compared to West and East European countries. There is a fall in women's representation in East European Parliaments from 17% in 1955 to 15.7% in 2005.

A cross country comparison in West Europe shows that representation of women in France stands close to lowest in the region. The data available for 2002 indicates that only 12% of deputies in the National Assembly were women while the figure was 6% for Senate. Representation of women in British Parliament and other government bodies is slightly better. But as per the 2001 data, male members in the House of Commons still outnumbered women by a margin of more than four to one.^{xi} United States also falls behind many other countries in women's representation with only 14% women in Senate and 15% in the House of Representatives in 2006.^{xii}

Another notable feature about contemporary societies in the West is a gendered pattern of voting and party affiliation that varies across countries. It is found that in France and Dutch countries women are mostly affiliated to Left parties while in Spain they are closer to the Right.^{xiii} In fact, when the Left parties acquired a good number of seats in the National Assembly elections of 1997 in France the proportion of women members almost doubled. Similarly, women mostly cast their vote for the Left parties.^{xiv} In Britain, both men and women have similar political attitude. Gender differences are less significant than class or education for party preferences.

Most recently, the extent of women's representation in politics and economy is measured through 'gender empowerment index'. For this, certain values are assigned on the basis of

their membership in political bodies, bureaucracy and private organizations. Table 2 below provides data on GEI measure of some of the advanced capitalist countries of the West.

Table 2

Countries	Value	Rank	Seats in Parliament held by women	Female legislators, senior officials and managers	Female professionals and technical workers	Ratio of estimated female to male earned income
Norway	0.910	1	37.9	30	50	0.77
Australia	0.847	8	28.3	37	56	0.700
Canada	0.820	10	24.3	36	56	0.64
Ireland	0.699	19	14.2	31	52	0.53
Sweden	0.906	2	47.3	30	51	0.81
Switzerland	0.660	27	24.8	8	22	0.63
Netherlands	0.859	6	36.0	26	50	0.64
France	0.718	18	13.9	37	47	0.64
Finland	0.887	3	42.0	30	55	0.71
United States	0.762	15	16.3	42	56	0.63
Spain	0.795	12	30.5	32	48	0.50
Denmark	0.875	4	36.9	25	53	0.73
Austria	0.788	13	31.0	27	49	0.46
United Kingdom	0.783	14	19.3	34	47	0.66

Source: Human Development Report, UNDP (2007/08)^{xv}

Education and Employment

In England, France and Germany the early phase of women's movement that could be located around the mid-17th century remained closely linked with other social reform movements. Similarities can be drawn between the nature of peasant, labour and women's movement during this period. Besides political equality, women's movement made strong claims for equal employment opportunities, improvement of women's education, and regulation of

prostitution. Amongst these, education was given prime importance. It was believed that education was a vehicle of change in the status of women. It will open gateways for employment opportunities and relieve them from their traditional roles at home.

Like education, gender segregation was clearly visible in the matter of employment. The public/private divide in defining gender roles inhibited entry of women in the industry. Women's professional organizations in countries like Germany and Netherlands struggled for equal opportunities in public employment. Some of these organizations were German Association of Female Teachers, Professional Association of Women Clerks in Hungary, and National Committee for the Legal Regulations of Women's Labour.

The Second wave of Feminism that mainly started in United States during the late-1960s left a deep impact on the state policies and laws. The movement was led by Betty Friedan, the president of National Organization for Women. It brought the concerns of women's lack of access to higher education and equal pay centre stage. Parallels can be drawn with the civil rights movement led by Black community during this period. President Kennedy constituted a Commission of Status of Women in 1963 which clearly found that women were denied several rights and opportunities. The government amended the Civil Rights Act of 1964 in 1972 that, 'extended the prohibition of sex-based discrimination to educational institutions receiving federal funds, enhanced women's opportunities for postgraduate education and help enlarge the pool of potential feminist scholars.'^{xvi} Similarly the Government of United States also passed the Equal Pay Act in 1963 to prohibit sex-based discrimination in the matter of employment and pay. However, the feminist movement in United States remained divided between Whites and Blacks. Black Feminists have opposed the feminist movement for having ignored the rights of Black women who are seen to be doubly-discriminated due to their gender and racial identities.

Sexual or Reproductive Rights

Demand and pressures for reproductive rights and sexual liberation by radicals is of recent origin. These areas received wide coverage in American politics since 1970s especially after the verdict of the Supreme Court on Roe v/s Wade case concerning the abortion right of women. The state laws that prohibited abortion on moral and religious grounds were invalidated as abortion was considered to be a matter of personal choice. The Supreme Court decision was widely opposed by Conservative groups particularly the 'New Christian Right' which was primarily concerned with preserving the moral code of conduct that constituted the Christian values and culture. As they became active in politics in the 1970s and 1980s,

religious conservatism that was antithetical modern democratic ideas resurfaced in American society. Abortion was treated as an immoral act for violating Christian values and tradition. The advancements made by feminists including the radical elements during the 1980s were seen to directly threaten the moral values. These concerns were voiced forcefully by a Rightist organization named Moral Majority led by Jerry Falwell in 1979. It campaigned against the abortion rights of women and sexual liberation demanded by women activist groups.^{xvii} Conservative ideas got adequate state support in President Ronald Reagan's administration. Traditional values were reinstated by showing opposition to abortion and starting prayers in US schools.^{xviii} Thereafter, the opinions of different political regimes have fluctuated and conservative elements in politics and government have expressed their resentment over this issue.

Conclusion

Gender issues and debates occupy a central place in policy making. A comparative analysis of women empowerment in advanced capitalist countries has shown how Scandinavian countries that also appear as the most successful welfare states score highest in the GEL. Although modern welfare state in the West has made several provisions for ensuring equality between men and women in all spheres of life, new concerns like sexual rights and liberation in more radical terms have assumed significance in contemporary Feminist discourse.

Recent feminist movement stands divided between liberal and radical ideologies. Lacking a common platform on strategies and modes of struggle, there seems to be lack of collective action in addressing the concerns of women. Second, the emerging multicultural character of European societies and United States results in further complications in identifying the common areas of problem and concern. For instance, the Latina, Hispanic, and Black women may face certain forms of discrimination in their social and economic life that may not be found in case of White women. Gender issues in modern Western societies may therefore assume new dimensions because of convergence and divergence in identities. Women from minority sections are still far from making inroads in politics and public affairs in Western countries. The success of feminist movement in these societies in near future will therefore be determined by the extent to which it makes a concerted effort to empower women from all sections, race, colour and communities.

Learn More

Notes:

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- ⁱ Andrew Heywood (2004), *Political Ideologies*, New York: Palgrave Macmillan, p.248
- ⁱⁱ Jennifer Nedelsky, "Relational Rights in the World Context", Paper prepared for *Women and Human Rights in Muslim Communities Programme*, University of California, Davis, May 8-9, 1998, p.4
- ⁱⁱⁱ J. Ann Tickner (2008) "Gender in World Politics" in John Baylis and Steve Smith's, ed., *The Globalization of World Politics*, New York: Oxford University Press, p.266
- ^{iv} Betty Friedan (1963) *The Feminine Mystique*, New York: W.W. Norton and Company, INC. p.15
- ^v Introduction by Pat Brewer (2004), *The Origin of the Family, Private Property and the State by Fredrick Engels*, New South Wales: Resistance Books, p.10
- ^{vi} J. Ann Tickner, "Gender in World Politics", Op.cit. p.271
- ^{vii} Ann Phillips (1993), *Democracy and Difference*, Polity Press
- ^{viii} Sylvia Palet schek and Bianka Pietrow (2004), *Women's Emancipation Movement in the 19th Century: A European Perspective*, California: Stanford University Press, pp.321-322
- ^{ix} Judith A. Baer (2009), "Feminist Theory and the Law", in Robert E. Goodin's, ed., *The Oxford Handbook of Political Science*, New York: Oxford University Press, p.304
- ^x Pamela Paxton, Sheri Kunovich and Melanie M. Hughes, "Gender in Politics", *Annual Review of Sociology*, 2007, vol.33, p.266
- ^{xi} Gabriel Almond, G. Bingham Powell and Kaare Strom (2006), *Comparative Politics Today*, Pearson Education
- ^{xii} Pamela Paxton and others, "Gender and Politics", Op.cit., p.265
- ^{xiii} Ibid., p.265
- ^{xiv} Almond and others, "Comparative Politics Today", pp.228-229
- ^{xv} http://hdr.undp.org/en/media/HDR_20072008_GEM.pdf, Table 29, accessed on 2 May 2013
- ^{xvi} Judith A. Baer, "Feminist Theory and the Law", Op.cit., pp.305-306
- ^{xvii} Andrew Heywood, *Political Ideologies*, op.cit., p.313
- ^{xviii} Ibid., p.313

1. Details of Module and its Structure

Module Detail	
Subject Name	Political Science
Paper Name	Public Policy, Governance and Indian Administration
Module Name/Title	History of Indian Administration
Pre-requisites	Administration, Public Administration
Objectives	To study the history of Indian Administration
Keywords	History, Evolution, Arthshastra, Mughal, British, Independence, Administration

Structure of Module/Syllabus of a module

History of Indian Administration	Introduction, History of Indian Administration, Ancient Period, Mughal Period, British Period, Indian Administration after independence.
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Objectives of the Module

After reading this module, you will be able to:

1. Understand the origin of Public Administration as an activity and discipline.
2. Understand how the present administrative system evolved in the light of Ancient, Mughal and British Administration.
3. Identify the main administrative features during the Ancient, Mughal and British phase.

Summary

The political system endures a basic change yet the administrative institutions maintain stability, continuity and persistence in the system of any country. Therefore, they enjoy a long life than many other organizations in the society. Indian administrative system aptly goes with this statement. Jawaharlal Nehru expressed his sentiments very appropriately at the time of drafting of a constitution for free India. Referring to Gandhi he said: “The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over”. The working of the administration underwent tremendous changes in the post-independence period- from mere collection of revenues and maintenance of law and order to the establishment of an accountable and responsible system of government and adoption of the goal of a socialist state. While keeping in mind the history of Indian administration, it can be stated that Indian administration passed through a state of rigorous experimentation and continuing modernization¹. Looking back, the ancient phase and Mughal phase added a colourful chapter in the administrative history of India. Even some of the features of Mughal administration were implemented by the British rulers in India. Such combinations of continuity and change have been remarkable features of administrative history of India².

¹Maheshwari, Shriram. Indian Administration, New Delhi: Orient Longman Limited, 1994.

²Arora, Ramesh K and Rajni Goyal. Indian Public Administration: Institutions and Issues, New Delhi: New Age International Pvt. Ltd., p. 06.

1. Introduction

India has adopted a democratic form of government that is based upon procedures and rules by which citizens can exercise substantial influence on shaping public policy. At the same time, democracy is a policy choice and depends on the use of public power. Public polity refers to a purposive course of action established by public officials that is binding on the residents of a community or nation³. Democracy is a form of government in which people are governed by their own elected representatives. It is a government of the people, for the people and by the people. In this government system, it is the people who are supreme and sovereign. They control the government; they are free to elect a government of their own choice. Freedom of choice is the core of democracy. It is a well known fact that Indian democracy is the largest democracy in the world⁴.

The Constitution of India was enforced on 26 January, 1950 and it lays the foundation of a democratic republic infused with the spirit of justice, liberty, equality and fraternity. Every citizen irrespective of his/her caste, creed, religion, property, or sex has the right to cast his vote. After the election, the government is formed by the majority party and its leader becomes the Prime Minister⁵. The objectives of the Preamble are: to secure social, economic and political justice to all citizens of India; to secure to all Indian citizens liberty of thought, expression, belief, faith and worship; to secure equality of status and opportunity; and to promote fraternity among them so as to secure the dignity of the individual and the unity of the nation. This thought/concept is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of the Indian constitutional system. These directives confer certain non-justifiable rights on the people in the form of directions to the State to achieve and maximize social welfare and basic social values like education, employment, health etc⁶. Therefore, Preamble, Directive Principles of State Policy and Fundamental Rights reflect the Indian ideology to provide various opportunities to citizens.

The democratic context in which the Indian administrative system functions is closely linked to the Constitution. The apparent truth is that no political executive can expect to accomplish more than its public administration permits; it takes too much effort on its part to move beyond its public administration. Indeed, the true test of a democratic government lies in the capability of its public administration to execute the programmes laid down by the elected representatives of public. The basic fact is that public administration is normally an instrument designed by a political system to execute its purposes efficiently⁷. Administration is generally a sub-system of the political system. Government today has both regulatory and preventive function, like maintenance of law and order

³Krane, Dale. "Democracy, Public Administration and Public Policy". in Democracy and Public Administration edited by Box Richard. New Delhi: Prentice Hall of India private Limited, 2001, p.21.

⁴Ibid.

⁵Maheshwari, Shriram. Indian Administration, New Delhi: Orient Longman Limited, 1994.

⁶ Ibid.

⁷Maheshwari, Shriram. op.cit.

and collection of revenue, as well as welfare oriented functions that focus on providing health care, education, employment, civic services, infrastructure and sanitation. Before going any further discussion about public administration, it is important first to understand what public administration is and how it was evolved.

1.1 What is Public Administration?

There are numerous ways of looking at public administration in thinking and practice. The public administration discipline has used a number of different perspectives throughout its history which have produced valuable insights and prescriptions. As Dwight Waldo very appropriately stated, “Administrative thought must establish a working relationship with every major province in the realm of human learning”⁸.

Public administration is a relatively young field of study. Certainly, people have been engaged in the management of public programs for thousands of years. However, the self-conscious study of public administration is a recent development, often dated to the work of French and German scholars in the late 19th century.

In the United States, public administration began as the study of governmental administration to reform governmental operations in the late 19th century. The first systematic writer on public administration was the American president Woodrow Wilson. He wrote an article entitled “The Study of Administration” which was published in the political science quarterly in 1887. This article set the ball rolling for the study of public administration as a separate discipline. His essay marked the symbolic beginnings of American public administration⁹. According to Woodrow Wilson the late evolution of public administration was due to the fact that the governments had passed through three stages—the period of absolute rulers; the period of struggle for constitutionalism and popular control; and the period when on winning political battles, people started thinking about freedom and perfect machinery for democratic administration.¹⁰

Woodrow Wilson’s essay was basically highly practical and reformist in nature. It was designed to address the ineffectiveness and open corruption that had become a part of government during the late 1880’s. It also suggested certain remedies within the administration of government. Wilson argued that although scholars and practitioners had focused on political institutions yet little attention had been paid to administrative questions—the question how the government actually operates? Further, Wilson also mentions that this is reason to state that it is harder to run a constitution than to frame one¹¹.

In 1900 Frank Goodnow in his work ‘Politics and Administration’, stated that the fields of politics and administration were separate areas of public life and hence the two must be separate and public administration must study only the field of administration and the study of politics to political science. This resulted in the development of permanent civil service free from political

⁸ Farmer, David John. Public Administration in Perspective. New York: M.E. Sharpe, 2010, p. 03.

⁹ Denhardt, Robert B. and Denhardt, Janet V. Public Administration. New Delhi: Cengage Learning India Private Ltd, 2010, p. 13-17.

¹⁰ <http://blessan.wordpress.com/2010/08/21/evolution-of-public-administration-as-a-discipline-and-its-present-status/> accessed on 26th February, 2014.

¹¹ Ibid.

influence. Woodrow Wilson is known as ‘Father of PublicAdministration’, whereas Frank Goodnow is known as ‘Father of American Public Administration’¹².

Talking about the practical aspect of public administration, it is concerned with the management of public programs. Public managers’ work across the varied interests of the government departments and public affairs, from defence and national security to social welfare and environmental quality, from the design and construction of roads and bridges to the exploration of space, and from taxation and financial administration to human resource management.

Public administration is the management of public programs. It does not operate in vacuum but is deeply inter-wined with the critical dilemmas confronting an entire society. The rapidly increasing number and scope of activities involving public administration led theories to develop a variety of definitions.

Woodrow Wilson stated that “Administration is the most obvious part of government; it is government in action; it is the executive, the obvious, the most visible side of government, and is of course as old as government itself”¹³.

Text for Voice Narration	Chunk Text
Felix A Nigro defines Public Administration as	<ul style="list-style-type: none"> • is a co-operative group effort in a public setting; • covers all three branches – executive, legislative and judicial and their interrelationships; • has an important role in the formulation of public policy and thus a part of the political process; • is different in significant ways from private administration; and • is closely associated with numerous private groups and individuals in providing services to the community¹⁴.

Thus, it can be concluded that Public Administration is a combination of theory and practice. Its purpose is to promote a superior understanding of government and its relationship with the society that it governs. It encourage public policies to be more responsive to social needs and to

¹²Walso, Dwight. “The Study of Public Administration”, in Public Administration: Concepts and Cases, edited by Richard J Stillman II, Boston:Houghton Mifflin Company, 2000, pp. 07-08.

¹³ Wilson, Woodrow. “The Study of Administration”, in Public Administration: Concepts and Cases, edited by Richard J Stillman II, Boston:Houghton Mifflin Company, 2000, p. 06.

¹⁴Chakrabarty,B. and Chand, P. Public Administration in a Globalizing World, New Delhi: Sage Publications, 2012, p. 03.

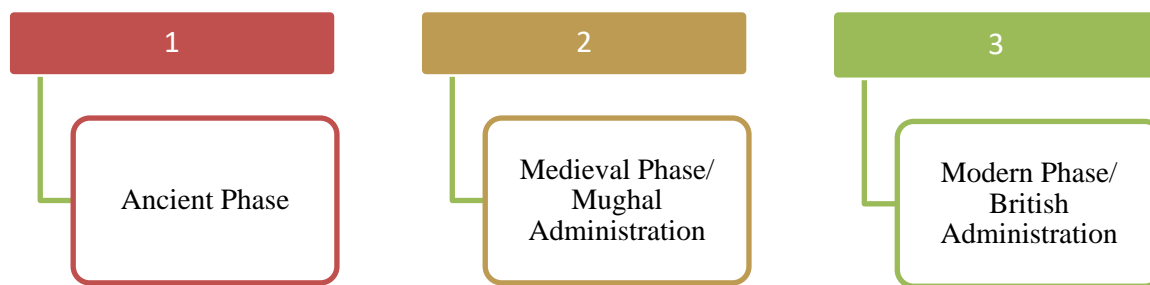
institute managerial practices attuned effectiveness, efficiency, and the deeper human requisites of citizenry¹⁵.

2. History of Indian Administration

India emerged as a sovereign state on 15th August 1947 and on 26th January 1950 the country gave to itself a new Constitution. The Constitution announced India as a sovereign, socialist, secular, democratic and republic nation. Administrative system has been considered as a standard mechanism for carrying out the goals and objectives of the new government. Although the new government was not designed by the new rulers yet inherited from the British government in India. However, this does not advocate that public administration is unchangeable or it has remained stagnant all these years.

Text for Voice Narration	Chunk Text
Administrative History	It can be viewed as that aspect of history which has its bearing and linkages with the political and governing institutions of a country ¹⁶ .

The administration of State in the ancient and medieval period in both east and west was authoritarian, patriarchal and elitist in character. Maintenance of law and order, collection of revenue etc. were its compulsory functions while welfare activities were optional functions. Administrators were small in number and selected completely at the will of the monarch¹⁷. The history of Indian Administration can be broadly divided and discussed in three phases as Ancient Phase, Mughal Phase and British Phase.



2.1 Ancient Phase

¹⁵ Ahmad, F. and A. Ali, “Need for a New Public Governance System: Issues and Challenges”. Indian Journal of Public Administration, October-December Vol. LVII, No. 04(2011): 874.

¹⁶ Maheshwari, Shriram. op. cit.

¹⁷ Ibid.

Different types of administrative systems were in operation during different phases. It is considered that administrative system was started during the Indus Valley Civilization. Excavations had indicated that governance in Mohenjo-Daro and Harappa was systematic due to the fact that the roads and drainage system was found to be methodically planned. This also showed that there existed municipal governments which looked after the needs of public and made systematic arrangements for the city governance. Moreover, standard type of house, a common system of weights and measures and a common script pointed to the presence of an imperial civilization in the valley¹⁸.

Figure 1 Indus Valley Civilization



The ancient period can be further divided into the following categories:

2.1.1 *Rig-Vedic Period*

During the Rig-vedic period, administrative units were known as 'Kul', 'Gram', 'Vish' and 'Nation'. The smallest unit was the family. The head of the village was known as 'Gramini'. A group of villages constituted a 'Vish' under a Vishpati. A number of 'vish' constituted a 'Jan' under an administrative head called 'Gopa' who represented the king. The State was developed form of these villages. The form of government was monarchial and kingship was hereditary yet the kings were generous in nature. The officers like 'Senani' and 'Gramini' assisted him. 'Purohit' was the chief of the ministers. Two democratic bodies known as the 'Sabha' and 'Samiti' controlled the king. The 'Sabha' worked as the council of elders while the 'Samiti' was a public body¹⁹. Infact, at the time of coronation, the king had to take an oath to work in the interest of the people²⁰.

2.1.2 *Post Vedic Period*

This period witnessed the rise of powerful kingdoms. There was a natural increase in the number of officers in administration in the departments like finance, inspection and defence. The king used to take advice from council of ministers for the smooth functioning of the administration. The council of ministers was headed by the 'Mukhyanatya'. The 'Sabha' and 'Samiti' used to put limit on the autocracy of the king. The local government was active under a special minister whose

¹⁸Sarkar, Siuli. Public Administration in India, New Delhi: PHI learning private limited. 2010. p. 05.

¹⁹Ibid, p. 03.

²⁰Ibid, p. 05.

task was to control rural administration and settle disputes. The head of the judicial administration was the king himself though he was assisted by several other officers²¹.

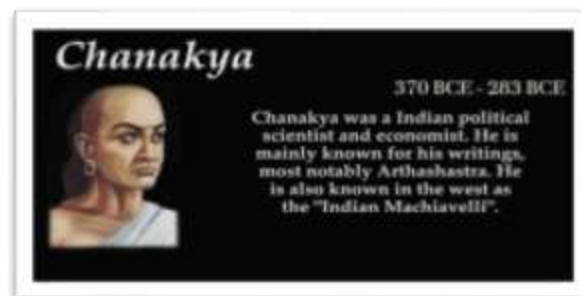
3.1.3 Epic Period

The form of government in the Epic age of Ramayana and Mahabharata was monarchical and public administration was sufficiently developed. The head of the administration was the king. Ministers and councils advised him in the governance matters. The main aim of the State was to fulfill its Dharma, to encourage morality, to increase prosperity, happiness of the people and safeguard their interests. The State has been called ‘Saptanghi’ in Mahabharata by VedVyas. The king set an example of high ideals and performance of one’s duties. He was responsible for the welfare of his subjects. Special emphasis was placed on merit in administrative recruitment²².

2.1.4 Mauryan Period

This period was an era of major development in the history of Indian administration. Decentralization was rampant as the ‘village’ units played a vital role. Villages are considered as base of administration since the ancient times. Empire was divided into provinces, provinces into districts, districts into rural and urban centers for efficient administration²³. Arthshastra by Kautilya was a valuable text during this phase which reflected on the polity and administration of the Mauryan time.

Figure 2 Kautilya/Chanakya



Arthshastra is a manual of practical statecraft for the day to day guidance of the ruler. The practical problems of government, its machinery and functions both in war and peace have been described. The work emphasized the close connection between the art and science of administration. The major areas discussed are:

- The state was considered as an organic whole, like a human body, and its constituent parts were called angas (limbs). Seven limbs of the state were: the king, minister, country, fort, treasury, army, and friend.

²¹ Sharma, P.P. and B.M. Sharma, Indian Administration: Retrospect and Prospect, op.cit p. 03.

²² Sarkar, Siuli. Public Administration in India, op.cit.

²³ <http://publicadministrationtheone.blogspot.in/2012/09/evolution-of-indian-administration.html> accessed on 25th February, 2014.

- The essential pre-requisites of a State were piece offixed territory, an organized government with adequate means (both financial and military) of maintaining internal peace and resisting foreign aggression, and recognition by other states.
- Functions of the Stateincluded the security of life and property, administration of justice, maintenance of economic control (including nationalization of trade and industry), maintenance of proper relation between members of a family, and the strict observance of rules prescribed by religion or social custom and etiquette. State has to control large scale trade and industry, every profession and occupation and even public amusement.
- It also laid down what should be the proper relation between husband and wife, father and son, brother and sister, etc.
- The text prescribed it to be duty of the State to protect the helpless, aged, orphan, and save the people from effect of natural calamities. It also prescribed under what conditions one might renounce the world and adopt life of a recluse or ascetic.
- He had given a very elaborate account of the relation between different states. According to him, material interests alone should guide the relation of one State towards another. A ruler, says the Arthshastra, should adopt the policy which is calculated to increase the power and wealth of his state, irrespective of any legal justice or moral consideration. It allowed the use of four traditional expedients Sama (conciliation), Dana (gift), Bheda (sowing dissension in a hostile state) and Danda (aggressive action) for achieving this purpose²⁴.
- Treasury was a part of saptangas of State. Kosa was important than danda (army). The Arthshastrarecognizes threeprincipal vacations as means of livelihood: agriculture, cattle-lending and trade. Most important tax was on agriculture. Other taxes included toll tax, octroi, fines and present to kings etc.
- Kautilya recognized that the importance of personnel administration and discuss different aspect such as recruitment, training, pay and service conditions, promotion, transfer, tenure and removal of the employees.
- Though the machinery of the government designed in Arthshastra does not closely resemble our modern day polity, it reflects clearly some of the principles which form part of the science of public administration. These are like principles of unity of command, division of labour, coordination, job classification, hierarchy etc²⁵.
- Three levels were existed as machinery of governmentsuch as Central, Provincial and Local Administration.Monarch was the pivot of machinery and he was assisted by a body of ministers. Further, the system was highly centralised.
- The king was bestowed with wide extensive powers. He was the source and centre of authority, the head of administration, law and Justice.The Empire was divided into a number of provinces with a viceroy in-charge of each.

²⁴<http://www.preservearticles.com/2012012721851/short-notes-on-arthashastras-political-and-administrative-theories.html> accessed on February 24, 2014.

²⁵Ibid, p.06.

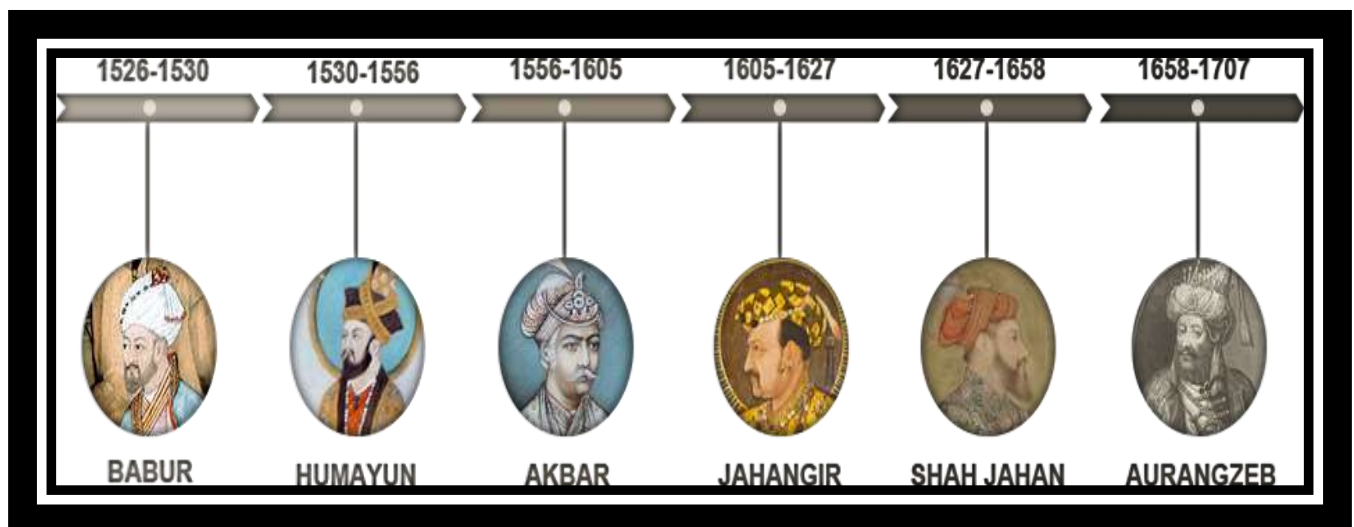
- Village was the basic unit of administration. Various examples of urban bodies are mentioned like in the city of Patliputra, Taxila etc. where urban local bodies worked.

Therefore, it can be stated that Arthshastra is a valuable text and reference to the administration of those times. It can be called something of a marvel for it was far ahead of its times. It would be a mistake to regard Kautilya's model of State confined to time and place rather, it is a model on the basis of which a very strong State can be organized irrespective of the time and place. So it is a model of permanent value and its relevance exists even in the context of modern political system as well. Professor Dikshitar has rightly stated that, "Kautilya wrote a book on polity for all time and for all kings and for all places"²⁶.

2.2 Medieval Phase/ Mughal Administration

The Mughal administration was the most organized and long lasting and has carried on to the modern times as well. The reason for this stability was the rule of Mughal sultanate for more than three centuries. Babur, Humayun, Akbar, Jahangir, Shah Jahan and Aurangzeb were some of the famous rulers of Mughal period. The period of Mughal administration existed in India between 1526 and 1707 AD from Babur to Aurangzeb. Babur's victory in the battle of Panipat in 1526 enabled him to establish Mughal rule in India. However he did not live longer; died in 1530 and then Humayun, his eldest son, ascended to throne of Agra. Further it was during the rule of Akbar that major changes took place in administration. His successors with slight variation here and there followed the pattern set up by him.

Figure 3 Mughal Rulers in India



A very detailed, reliable and brilliant account of Akbar's empire, society and administration is given in the famous detailed document by AbulFazl titled 'Ain-i-Akbari' (Constitution of Akbar). The Mughal upheld the earlier traditions in political and administrative matters. The

²⁶Arora, Ramesh K and Rajni Goyal,. Indian Public Administration: Institutions and Issues, op.cit, p. 06.

emperor was perfect autocrat and the administration was centralized. The king symbolized the State and was the source and centre of all power agencies²⁷.

The key features of Mughal administration such as role of King, Police, Army, Judicial administration and Machinery of government can be visualized in the following discussion.

2.2.1 Role of the King

The entire administrative machinery revolved around the king; he was viewed as a ‘father figure’ by his people. The king was seen as kind despot who worked for the welfare of his people. The theory of absolute monarchy was based on the divine right to rule. The king was everything and source of all authority and the fountain-head of justice. The administrative system was highly centralized and personalized.

2.2.2 Army

The army must be understood largely in terms of the ‘Mansabdari’ system. In addition, there were the supplementary troopers and a special category of “gentlemen troops” whose were horsemen owing exclusive allegiance to the king. The army had cavalry which was the most important unit, the infantry, made up of townsmen and peasants and artillery with guns and navy. The Mughal army was a mixture of diverse elements. As it grew in numbers, it became too heterogeneous to be manageable. The army on the move was like a huge moving city, with all its paraphernalia of elephants, camels, harem, workshops etc.

2.2.3 Police

In the rural areas, policing was undertaken by the village headman and his subordinate watchmen. This system continued well up to the 19th century. In the cities and towns police duties were entrusted to Kotwals. Among their many duties Kotwals had to arrest burglars, undertake watch and ward duties, regulate prices and check weights and measures. They had to employ and supervise work of spies and make an inventory of property of deceased or missing persons. However, the Kotwal’s main job was to preserve peace and public security in urban areas. In the districts, law and order functions were entrusted to Faujdars²⁸. The Ain-i- Akabri delineated the duties of a Kotwal as under:

²⁷ Ibid.

²⁸ Ibid.

1. to detect the thieves and criminals; 2. to oversee prices and check weights and measures; 3. to keep vigil and do night patrolling;	4. to keep register of houses and movements of citizens and foreigners; 5. to employ spies;
Duties of Kotwal	
6. to gather information about the income of people; 7. to prepare inventory of persons with property and without heirs;	8. to prevent slaughter of horses, camels and buffalos; 9. to prevent the burning of women.

2.2.4 Revenue Administration

The Sultan of Delhi laid the foundation of land revenue system for rural India. The system underwent radical changes at the hands of Akbar. His revenue minister, Todarmal had been credited for the systematic land administration. The administration of land revenue was organized in three parts, namely:

- i) Land mapping and land registration;
- ii) Land revenue assessment on the basis of land classification as polaz, parti, banjar; and
- iii) Land revenue realization which was done by an army of civil servants under various exceptions and concessions.

The Wazir or Diwan were in charge of the system at the Centre. The Emperor took interest in the supervision and Akbar appointed ‘Diwan-i-tan’ and ‘Diwan-i-Khlesa’ to assist the wazir. Two junior functionaries called as ‘Mushriff’ and ‘Mustaufi’ helped them in controlling the accounts of revenues to the treasury. There was a public record office and the Diwan signed revenue documents including major collection and payments. The Mughal State was essentially a revenue gathering state without its due returns to the farmer. It is also observed that there were leakages in the land revenue administration and the offices of patwari and tehsildars were seeped in corruption. The petty revenue officials were poorly paid and collected illicit money through ‘nazaranas’ or ‘gifts’ from exploited peasantry.

2.2.5 Administration of Civil Justice

The Mughal emperor regarded it as their sacred duty to dispense impartial justice and to organize a judicial system accessible to their subjects. The liberal among them did not strictly enforce the Islamic law which was not acceptable to a large majority of Hindu population²⁹. Being a Muslim state, justice was based on Quranic law. The judges followed the Quranic precepts, the ‘Fatwas’ or previous interpretations of the holy law by eminent jurists and the ordinances of the Emperor. They did not disregard customary laws and sought to follow principles of equity. The Emperor’s

²⁹Arora, Ramesh K and Goyal, Rajni. Indian Public Administration: Institutions and Issues, op.cit, p. 10.

interpretations did not run counter to the sacred laws. For the dispensation of justice, there were two types of tribunals. There was the ‘Chief Qazi’ with ‘Subordinate Qazi’ who followed the Islamic law, both civil and criminal. The other was the ‘mir’adl’, a secular officer who took care of suits not specifically provided for by the religious law of the two communities. The king was the supreme court of both original and appellate jurisdiction³⁰.

2.2.6 Personnel Administration

The Mughal ‘Mansabdari’ system was a mixture of Hindu feudalism and Persian borrowings. It combined the military and civil administration in a meaningful manner. The main features are:

- Historian Irwin calls it a system of positional hierarchy which classified the levels and quantum of salaries of officials. These rankings were from 10 to 10,000 which Akbar raised to 12,000.
- These Mansabdars have three categories determined on the basis of number of horses or elephants which each mansabdari had to maintain.
- There were no fixed institutions and rules for recruitment and promotion of Mughal bureaucracy. Recruitment was on the basis of caste, kin, heredity and personal loyalty to the king. Administration was based on the fear of force. Promotion system followed fixed criteria with loyalty as the major characteristic. Bravery, tact and commitment as additional qualification for promotion.
- Pensions were granted to widows and the children of the deceased public servants.
- Officials were primarily engaged to maintain law and order, safeguard the interest of the king from the internal uprisings and revolts, defend and extent the boundaries of the empire and collect revenue and other taxes.
- Organization of the administrative machinery was unstable. It depended upon the whims and fancies of the king.
- In the name of the king, officials struck terror in the hearts of the people. They wielded much awe and respect among the people. Every officer of the State held a Mansab or official appointment of rank and profit and was expected to supply a certain number of troops for the military service of the state.
- Hence, bureaucracy was military in character. Officials or Mansabdars were classified into 33 grades, ranging from commanders of 10 to those of 10,000 soldiers.
- Each grade carried a definite rate of pay, out of which its holder had to provide a quote of horses, elephants etc. State service was not by hereditary succession, nor was it specialized. Officers received their salaries either in cash or through jagirs for a temporary period.
- The officers did not have ownership of land in their jagirs, but only the right to collect the revenue equivalent to his salary.
- The jagir system provided scope for exploitation of the masses and gave undue power and independence to the holders of jobs³¹.

2.2.7 Structure of the Mughal Administrative System

³⁰ Ibid.

³¹ Ibid.

Mughal administrative system was divided into three levels; Central, Provincial and District administration for the smooth functioning and the same is discussed in the following sections.

i. Central Administration

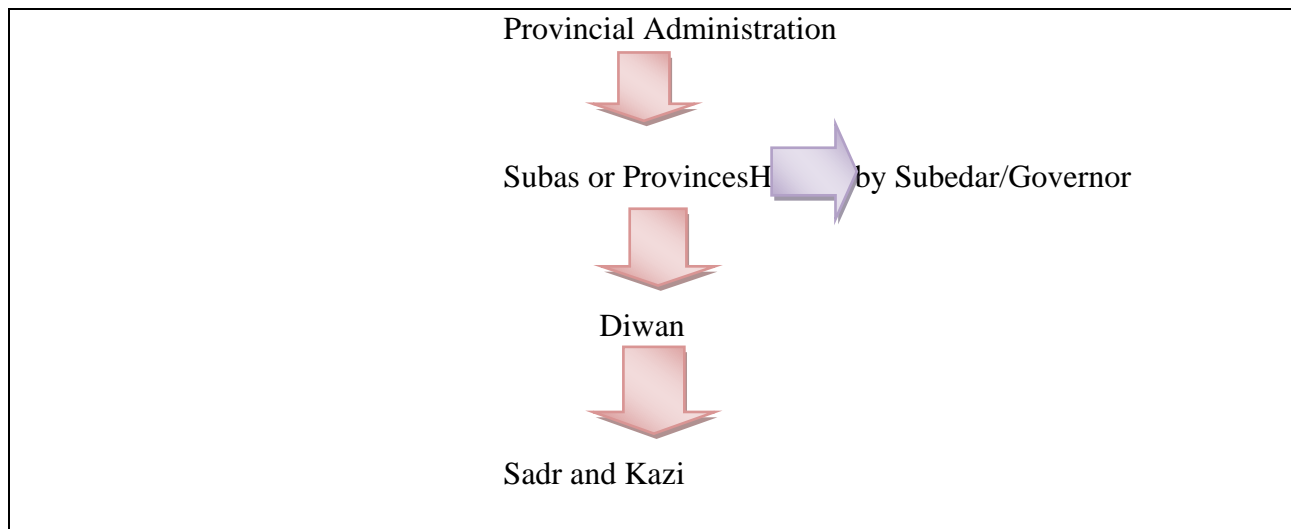
Central administration, like administration in general, was personal and paternal. The system operated with a fair degree of efficiency as long as the king was able to exercise control from above. As soon as his grip loosened, the system fell into pieces, as seen in the reigns of Shahjahan and Aurangzeb. The two highest officials were the 'Vakil' and the 'Wazir'. The Vakil, in fact, was higher of the two. He functioned as regent of State and was in overall charge of the State. The 'Wazir' or 'High Diwan' was the highest officer of the revenue department. The 'Chief Diwan' supervised revenue collection and expenditure. He was the head of the administrative wing of government. He supervised the work of all the high officials. He controlled and guided provincial diwans who along with their subordinates were in touch with him. He signed all kinds of documents and put his seal authenticating government transactions.

The Mughal administration had many Diwans. Under the 'High Diwan', that is, 'Diwan-e-Ala', there was the 'Diwan-e-khalsa' in charge of State lands. At times, the diwans were also successful military commanders. There was also the 'Mustaufi' who audited income and expenditure and the 'Waqia-Navis' who kept a record of all important farmers. Among other officials there was the 'Khan-e-sama' or the 'High Steward' in charge of royal expenditure, the 'Diwan-e-Buyutat' who was the understudy of the 'Khan-e-Sama' and 'Mir-e-Bakshi', the paymaster general of the empire and the 'Sadr-e-Sudur', the head of the ecclesiastical department. Apart from other officials of the Central government, there were several others of minor importance who kept the system going. The administrative pattern was based on regulations, traditions and practices.

ii. Provincial Administration

The provincial authorities were only administrative agencies of the Centre. The Empire was divided into 'Subas' or 'Provinces'. At the head of the province was the 'Subedar' or 'Governor'. He was appointed by imperial order and was given the insignia of office and instrument of instructions which defined his powers, functions and responsibilities. As executive head, he was in charge of the provincial administration staff and ensured law and order in the provinces. He tackled local civil and intelligence staff with a firm hand and realized tributes from the local chiefs under him. He also controlled the local zamindars and contained their political influence.

The 'Provincial Diwan' was supported by the 'Imperial Diwan'. He was next important to the Governor; he functioned independently of him and was subordinate to the Imperial Diwan. He was in charge of the finances of the province and appointed 'Kroris' and 'Tehsildars' to compel farmers to pay government dues in time. The diwan also performed functions of an auditor and exercised full control over public expenditure. His office included the office superintendent, the head accountant, the treasurer and clerks. The provisional 'Bakshi' performed a role similar to that of the 'bakshi' at the centre. He was responsible for the maintenance and control of troops and kept an account of the salaries and emoluments of all provincial officers in term of their 'Mansabs'.



The ‘Sadr’ and ‘Kazi’ were the two officers at the provincial level which were sometimes united in the same person though there was a distinction in the jurisdiction of the two. ‘Sadr’ was exclusively a civil judge, but he did not handle all civil cases. ‘Qazi’ was concerned with civil suits in general and also with criminal cases.

iii. *District and Local Administration*

The provinces were divided into ‘Sarkars’ that were of two types. These were ruled by officers appointed by the emperor and those under the tributary rajas. At the head of each sarkar was the ‘Faujdar’ who was the executive head. Faujdar were subordinates to the provincial governors, yet they could have direct communication with the imperial government. On his appointment, Faujdar received advice regarding policy and conduct. He was also in charge of military force. Apart from the ‘Faujdar’, the other head of the ‘Sarkar’ was the ‘Amalguzar’. He was also in-charge of revenue. Each of them had their own set of subordinate officials.

A sarkar was divided into ‘Paragans’. Each ‘Paragan’ had a ‘Shiqqdar’, and ‘Amil’, ‘Qazi’. The ‘Shiqqdar’ was executive head and combined in himself the functions of the ‘Faujdar’ and ‘Kotwal’ of the sarkar. He took care of law and order, criminal justice and general administration. The duties of ‘Amil’ were similar to those of the ‘Amalguzar’ and ‘Qazi’s were judicial. The ‘Paragans’ were further divided into ‘Chaklas’, which were created to facilitate and improve the realization and assessment of revenue and had their own set of local officials like the ‘Chakladars’. Each of the officials was responsible and accountable to their senior officials³².

Therefore it can be concluded that the Mughal phase of administrative history adds a colorful chapter and brings administrative organization and personnel to a point from where the Britishers could take off. The Islamic nature of state was superimposed but the non-Islamic elements of the country made it somewhat secular. The military pattern and nature of administration

³²Arora, Ramesh K and Rajni Goyal, op.cit.

were emphasized in civil affairs also, but the mixture of two could evolve a unique and comprehensive system of administration in various fields of governmental activity. Historians judged this administrative phenomenon as an advance on the previous phase but find it loose, corrupt, discriminatory and even tyrannical. The vast empire though unitary, practiced decentralized administration which gradually gave birth to Indian federalism. Being a public administration of a monarchy it could not accept the principles of rule of law or popular accountability but it did give uniformity of institutions and their bureaucratic working on all India level. As the situation differed from emperor to emperor, the discontinuities entered into the system³³.

2.3 Modern Phase/ British Period

The history of British rule in India can be traced back to 31st December, 1600 - when the British Crown granted a group of merchants a monopoly over trade in the eastern waters. In 1765, the East India Company, which was earlier a commercial body, was granted the 'diwani' (the right of collecting revenues) of Bengal, Bihar and Orissa from the Mughal Emperor Shah Alam. The acquisition of the diwani rights made the company to emerge out as the de facto ruler of this country. From 1765 to 1833 the company got engaged in the dual role of the trader and ruler. In 1833, it abandoned its commercial role. The Regulating Act of 1773 is a major landmark in the evolution of British administration in India. It was the basis of all subsequent legislation for determining the form of Indian government and is the first statute that recognizes the company to fulfill its functions other than that of trade.

A Governor-General with a council of four members in Bengal was appointed. The Governor-General was given the power of controlling the presidencies of Madras and Bombay and, in all cases relating to war and peace; they were obliged to follow with the order of the Governor-General-in-Council. The appointed Governor-General, according to this Act, was Warren Hastings and his councilors were Clavering Monson, Barwell and Philip Francis. Later in 1833, the Governor-General of Bengal became the Governor-General of India and in 1853, a separate Lieutenant-Governor was appointed for Bengal.

The company, during this regime, emerged out from a trader to a government and took up functions of revenue collection and maintenance of law and order. The secretariat, an important organ of modern administration, had its beginning in those early days when a nucleus of administration existed. The origin of the modern secretariat was in the office of the factory writers. In August 1784, the British Prime Minister Pitt, introduced the famous Pitts India Act (1784). According to this Act, a Board of Control was established in England for better control of Indian affairs. Later on, the Board of Control became the real ruling authority over the Indian territory. Lord Warren Hastings was succeeded by Lord Cornwallis and the regime of Lord Cornwallis marked a major change in the civil service of India. He introduced a liberal system of remuneration, in lieu of pittance in the form of pay until then allowed to all classes, and it offered the recipient no alternative between poverty and dishonesty. He did much to eliminate patronage and saw to it that all important offices were held by the Covenanted Civil Servants³⁴. The major legislations were Charter act of 1853, Pitts India Act, Government of India Act 1919, Government of India Act, 1935 etc. and the same are discussed in detail as follows.

³³Maheshwari, Shriram. op.cit.

³⁴ Ibid.

2.3.1 Charter Act of 1853

The Charter Act of 1853 abolished the system of patronage and introduced the system of open competition as a method of recruitment. The entrance examination was to be conducted in London by a Civil Service Commission set up in 1854. The age limit was 19-22 years. The first competitive examination was held in 1855 at London, on the basis of the report of the Macaulay Committee. The Act did not renew the charter of the company but left it pending till the decision of the parliament. The appointment of the Macaulay Committee was the beginning of an experiment on the Indian soil for the first time. The Macaulay Committee report of 1854 is considered the Bible on competitive recruitment and training. It proposed a detailed scheme of the examination to be held in England. It passed order that candidates for senior government jobs should be appointed on the basis of a competitive examination open to young men in the age group of 18 to 23 years³⁵.

2.3.2 Administrative system between 1858-1947

After the uprising of 1857, the Crown took over the government from the East India Company, through the Queen's Proclamation of 1858. According to the Act of 1858, India shall be governed by and in the name of her Majesty; it also authorized the appointment of an additional principal secretary of State (for India) and created the Council of India. The first Viceroy was Lord Canning. In 1859, he introduced the 'Portfolio' system. Under this, the work of the government was divided into several branches, and was entrusted to different members of the Governor-General's Council.

Lord Canning's innovation was legalized by the Indian Councils Act of 1861, which the British parliament passed in order 'to make better provision for the constitution of the Council of the Governor-General of India, and for the local government of the several presidencies and provinces of India' The Aitchison Commission (1886-87) supported the formation of a lower, local civil service to call the Provincial Civil Service. Below the Provincial Civil Service, a lower service called Subordinate Civil Service was set up. In accordance with its recommendations, the term 'covenanted' civil service was abolished resultantly, three services were carved out.

- (i) The Imperial Civil Service
- (ii) The Provincial Civil Service
- (iii) The Subordinate Civil Services

The commission also recommended that the imperial and the provincial civil services be put on footing of social equality. Resultantly, the members of the provincial civil service were made eligible for promotion to the listed posts in the Imperial Civil Services. The Indian Councils Act, or the Morley Minto Reforms, of 1909 was an extension of the Act of 1889, further increased the size of the legislative councils. The Decentralization Commission appointed in the same year, also made recommendations for, revival and growth of Panchayats and lessening of government control over local bodies³⁶.

2.3.3 The Montague Chelmsford Reforms or the Act of 1919

The Government of India Act 1919, which followed next, was based on the premise that popular contract in the field of local government be established, the provincial governments be made responsible to the popular representatives and the control of British parliament and the secretary of

³⁵Arora, Ramesh K and Rajni Goyal., op.cit.

³⁶ Ibid.

state be relaxed. The act primarily dealt with the structure of provincial governments and the provisions concerning these were embodied in a system called 'Dyarchy'. Under this scheme, the provincial subjects were reserved into 'reserved' and 'transferred'.

The administrations of the reserved subjects were entrusted to members of the Governors' Executive Council, who were appointed by the Crown for the period of five years on fixed pay. They were not responsible to the provincial legislature. All the important subjects like the home, police, press, finance etc. were included in this list. The 'transferred' subjects were entrusted to the ministers who were to be nominated by the Governor from among the elected members of the Provincial Council and who were to hold office during his pleasure. The 'transferred' list included those departments, which afforded opportunities for local knowledge and social service like medicine, health, education etc. But the division of powers and revenues did not make India a federation. The powers of the centre were so formidable that its decisions were final and always binding on the provinces - irrespective of whether such decisions related to central or provincial subjects³⁷.

2.3.4 Government of India Act 1935

The Government of India Act of 1935 was the last of the Constitutional measures prepared by the British Parliament for India. It again proclaimed the supreme authority of Crown over India, but relaxed its control, in certain spheres, for a more popular government. The Secretary of state remained in overall control, with a new body of advisers in lieu of the old council. The Government of India Act 1935 was the culmination of the process of decentralization initiated in 1861. It envisaged three important changes at the centre.

- (1) All India Federation
- (2) Dyarchy
- (3) Creation of the post of Crown Representative.

Table 2.3 Legacy of British Rule in Indian Administration	
Central Administration	<ol style="list-style-type: none"> 1. The concept of Central Secretariat was introduced in 1784 by the British. 2. Concept of Council of Ministers and executive agencies was introduced. 3. The post of President is akin to that of governor general of British India. 4. The split system of administration that is separation between policy making institutions and policy implementation institutions is the contribution of British.
State Administration	<ol style="list-style-type: none"> 1. The present form of State administration also owes their existence to the British. 2. The post of Governor and State Secretariat is on the pattern of Central Secretariat is created by British.
Revenue Administration	<ol style="list-style-type: none"> 1. The most important innovation in revenue administration was introduction of budget in 1860. 2. Creation of Central Revenue Department in 1860 to integrate and

³⁷Arora, Ramesh K and Rajni Goyal., op.cit.

	<p>coordinate the activities of all the revenue authorities.</p> <ol style="list-style-type: none"> 3. Imperial Audit department and audit board was also set-up and post of CAG was created. 4. Central Public Accounts Committee and Standing Finance Committee was created. 5. Paper currency was introduced in 1860. 6. The 1935 act established the Reserve Bank of India.
District Administration	<ol style="list-style-type: none"> 1. District was established as a unit of administration. 2. The post of district Collector was created by Warren Hastings in 1772 and perhaps is one of the most significant legacy of British administration.
Local administration	<ol style="list-style-type: none"> 1. The need for establishing local level administration was emphasized especially by Lord Ripon through Ripon resolution 1882 creating rural and local governments.
Law and Order Administration	<ol style="list-style-type: none"> 1. Police Station as basic unit of law and order was created. 2. The post of SP, IGP etc. and department of criminal investigation was created. 3. Rule of law and judicial independence was introduced by British. 4. Legislation like Police Act 1861, Indian Penal Code 1860 and Indian Evidence Act of 1872 are still the major legislation of present police and judicial system.
Personnel Administration	<ol style="list-style-type: none"> 1. The most important legacy of the British rule in India was the creation of Civil Service. 2. The idea of merit based service originated in India for the first time with the submission of the Macaulay report in 1854. 3. The idea of specific age limit to compete in the examination also evolved in 1854. 4. The training system was institutionalized by the British by setting up William College in 1800 at Calcutta and continued with several other modifications till the end of the rule. 5. A well developed pay structure for civil servants was also devised by the British. 6. The system of promotion also brought about an onslaught on the tradition bound Indian society. The condition of service provided for promotional opportunities according to seniority, conduct, and quality of performance. Even as early as 1834, the system of annual returns existed wherein the merit and conduct of the subordinate officers were graded by the superior officials. 7. Another important contribution was the idea that the competitive examinations be conducted by an independent agency. Accordingly, the Federal public service commission was created in 1926 and entrusted

	with the task of recruiting civil servants.
System of Government	<ol style="list-style-type: none"> 1. Indian Constitution envisages a parliamentary democracy and a federal system of government. First time it was implemented by Diarchy system, introduced by Government of India Act 1919 and later at the central level through the GOI Act, 1935. 2. At the centre Bicameral Legislature is also British Legacy. 3. Lord Canning introduced the Portfolio system in 1861 under which each member of his council was placed in the charge of particular department. The present system of Ministries and departments has its origin to it.

The pre-British Mughal system of administration had a highly bureaucratized hierarchy of officials. The British made full use of this apparatus of administration, and gradually molded it to its own requirements. An immediate cause of deviation from the Mughal constitution was the commercial character of the East India Company with its emphasis on the civil authority being invested with control over the military. The deviation proceeded still more from the local private agencies being dis-vested of a great many functions previously exercised by them under the Mughal administration. What a British did was to transfer the exercise of these functions to an official apparatus either reconstituted or newly created.

3. Indian Administration after Independence

The most significant influence on the nature, structure and functioning of Indian administration is that of the Indian Constitution. The democratic context in which the Indian Administrative system functions is closely linked to the Constitution as mentioned earlier. Indian administration operates within the framework of the Constitution which has been in operation since 1950. The two fundamental features of the Constitution which condition its function are:

1. Parliamentary type of Democracy, both at the Centre and in the States, in which the executive is held responsible to the elected legislature.
2. Federal nature of Constitution in which functions have been constitutionally divided between the union government and the States-the former playing a more important role and, in times of emergency, its authority extends even to taking over of administration of the individual States in its own hands.

The parliamentary democracy which is enriched in the Indian Constitution has numerous implications but the following have direct relevance to the public administration of the country:

1. The supremacy of Parliament over the executive and the right of Parliament to review the working of administrative machinery;
2. The collective responsibility of the Council of Ministers to Parliament and the determination of major policies by the cabinet;
3. The individual responsibility (as a part of collective responsibility) of each minister holding a portfolio for formulating departmental policies, to oversee their implementation and to ensure efficient working of the administrative machinery under his charge;

4. The obligation of ministers as well as civil servants to uphold the Constitution and the rule of law;
5. The obligation of every civil servant to implement faithfully all policies and decisions of the ministers, even if these be contrary to the advice tendered by him;
6. The freedom of civil servants to express themselves frankly in tendering advice to their superiors, including ministers; and
7. The observance by civil servants of principles of political neutrality, impartiality and anonymity.

India has a Parliamentary form of government. The constitutional head of the Indian executive is the President. Parliament consists of the President, the upper house- the Council of States (RajyaSabha) and the lower house (LokSabha).The members of LokSabha are Members of Parliament and they are democratically elected. The President is head of the India and the union government runs under his name. Article 74 of the Constitution provided for a Council of Ministers with the Prime Minister as its head, to aid and advice the President in the exercise of his functions. The Prime-Minister is the head of the major party in parliament and has been, normally, a member of the lower house. The Council of Ministers is a three-tier organization consisting of Cabinet Ministers, Ministers of State and Deputy Ministers.The Council of Ministers must be distinguished from the Cabinet. In fact, the Cabinet is the real directing and controlling instrument of government, both in administration and in legislation, although it is a body which finds no mention in the Constitution. The Cabinet is a relatively small body consisting of more important Ministers.The Cabinet determines the national policies, has supreme control over the executive, and brings about, on a continuing basis, co-ordination of the activities of several ministries³⁸.

The government has three branches: the executive, the legislative and the judiciary. Indian President is the head of the State and exercises powers directly or through offices subordinate to him. LokSabha is the lower house and RajyaSabha is the upper house, from the legislative branch. The Supreme Court, high courts, and many civil, criminal and family courts at district level from the judiciary.

Indian Constitution provides for a federal government, having separate system of administration for the union and its units, namely, the States. The Constitution contains provisions for the governance of both. Each State has a similar structure, with the Governor of State reporting to the President acting on his behalf and a state Legislative Assembly which consists of the Members of Legislative Assembly (MLAs) which are democratically elected. The Council of Ministers with Chief Minister as the head of the Legislative Assembly, advice the Governor in discharging executive functions.

³⁸Maheshwari, Shriram, Indian Administration, opp.cit.

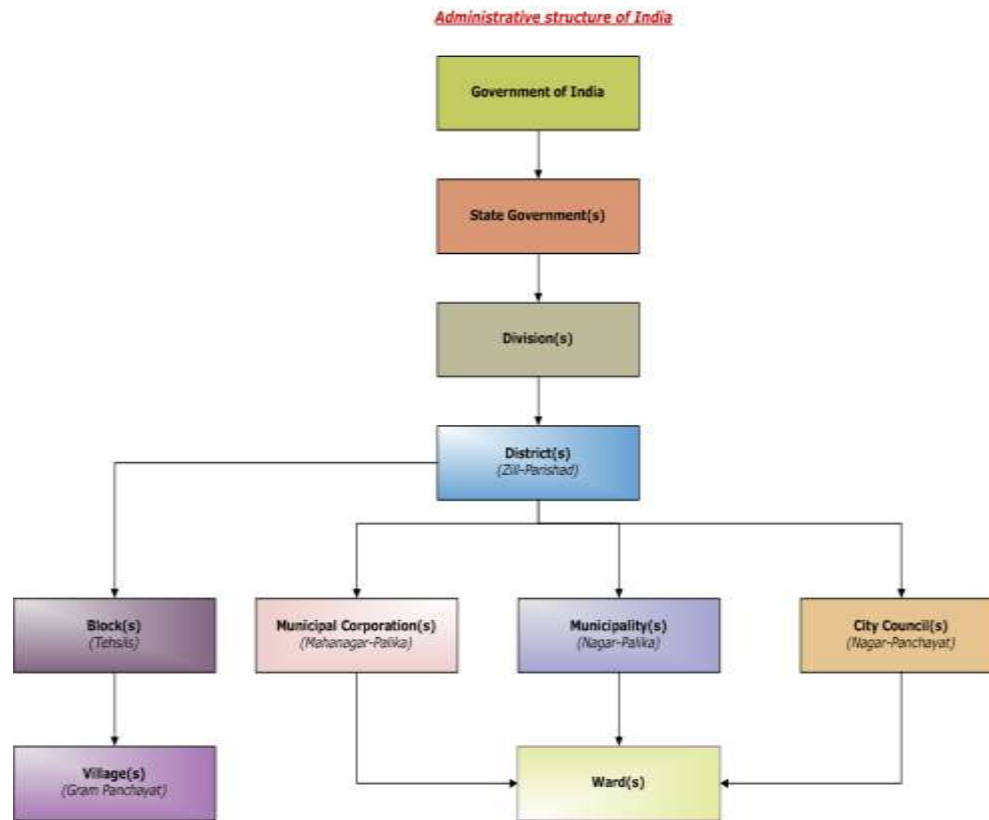


Figure 3.1 Administrative structure of India

Legislative powers are distributed between parliament (Central Government) and State Legislature (State government) as per the Seventh schedule to the Constitution. From the smooth functioning, States are divided into divisions and divisions are further divided into districts. District Collector runs the administration of concerned district. The district is divided in blocks and administration is taken care by the local government.

Local government is the regulation and administration of local affairs by the people inhabiting the locality through representative bodies composed mainly of elected representatives. Local government refers to the operations of Municipal corporations, Municipalities, Town area committees, Notified area committees, Cantonment boards, village panchayats and Townships which are entrusted with the execution of functions, relating to and concerning the residents of a locality.

4. Conclusion

It has to be admitted that the governance in India has not changed much since Independence. Certainly, some ‘gestures’ and ‘noises’ such as adoption of citizen’s charter, passing of laws on right to information, downsizing of the government and promoting the mantra of public accountability and transparency were adopted and enacted. However, the impact of these measures is hardly visible to the common person. There is a widespread dissatisfaction with the functioning of governments all over the country, irrespective of which political party is in power. People are

demanding a clean, open, transparent, accountable, corruption free and sensitive administration. Thus, it is necessary to underline that good governance can also be good politics.

Good governance must be founded on moral virtues, ensuring stability and harmony. Confucius described righteousness as the foundation of good governance and peace. The art of good governance simply lies in making things right and putting them in their right place. Confucius’s prescription of good governance is ideally suited for a country like India where many of our present day players in governance do not adhere to any principle and ensure only their own interests. Confucius emphasises the righteous for life and character building. This is in conformity with Dharma or righteous as taught by all religions in the world and preached in Buddhism very predominantly in its fourth noble truth. He also emphasized that man himself must become righteous in the World. This is comparable with what Gandhiji said, “Be the change you want to see in the World”³⁹ .

5. Assessment and Evaluation

5.1 Multiple choice Questions with Answers

Correct Ans.	Q-1	Public Administration as an discipline is recognized in:
	A	1886
Correct Ans.	B	1887
	C	1888
	D	1889

Correct Ans.	Q-2	Public Administration as an activity is as old as human:
Correct Ans.	A	Civilization
	B	Traditions
	C	Values
	D	Culture

³⁹ Ibid.

Correct Ans.	Q-3	Arthshastra was written in the period of
Correct Ans.	A	Ancient
	B	Mughal
	C	British
	D	After independence

Correct Ans.	Q-4	Mansabdari system was started by:
Correct Ans.	A	Akbar
	B	Jahangir
	C	Aurangzeb
	D	Babar

Correct Ans.	Q-5	Dyarchy was introduced by the Act of:
Correct Ans.	A	1909
	B	1853
	C	1919
	D	1935

5.2 True and False Statements

Correct Ans.	Q-6	The essay “The Study of Administration” was written by Woodrow Wilson.
Correct Ans.	True	
	False	

Correct Ans.	Q-7	Fredrick Goodnow is known as Father of Public Administration.
	True	
Correct Ans.	False	

Correct Ans.	Q-8	Provincial government was introduced by the Act of 1935.
Correct Ans.	True	
	False	

Correct Ans.	Q-9	Portfolio system was not introduced by Lord Canings
	True	
Correct Ans.	False	

Correct Ans.	Q-10	The post of district collector was created by Warren Hasting.
Correct Ans.	True	
	False	

5.3 Sequencing

Q-11	The history of public administration in chronicle order:
A.	British
B.	Medieval
C.	Ancient
Correct Ans.	C, B, A

5.4 Fill in the Blanks

Correct Ans.	Q-12	Public Administration is_____.
	A.	An activity
	B.	A discipline
Correct Ans.	C.	An activity and discipline

Correct Ans.	Q-13	Reserve Bank was established in ____.
	A.	1919
Correct Ans.	B.	1935

Correct Ans.	Q-14	First competitive examination was held in London in ____.
	A.	1853
Correct Ans.	B.	1855

Correct Ans.	Q-15	The 'budget' was first originated in ____.
	A.	1858
Correct Ans.	B.	1860

Correct Ans.	Q-16	Arthshastra was written by _____.
	A.	Manu
Correct Ans.	B.	Kautilya

5.5 Interesting Facts

No.	Interesting Facts
1.	Public Administration is as old as civilization but as a discipline, originated recently in 1887.
2.	The very nature of administration is changed according to changing environment, resulting origin of New Public Administration, New Public Management etc.
3.	From time to time the discipline is enriched with new theories and principles.
4.	The study of Public Administration is inter-disciplinary in nature.
5.	Kautilya in his book 'Arthshastra' also talked about the principles of Public Administration and later the same were discussed by classical thinkers.

5.6 Web-links

No	Web-links
1.	http://onlinelibrary.wiley.com/journal/10.1111/(ISSN)1467-9299
2.	file:///C:/Users/HP/Desktop/history%20of%20indian%20admin/part2_16.htm%20mughal%20admin.htm
3.	file:///C:/Users/HP/Desktop/history%20of%20indian%20admin/KKHSOU.htm
4.	http://aspanational.wordpress.com/2013/09/12/history-of-public-administration-2/
5.	http://global.oup.com/academic/product/public-administration-9780199693894;jsessionid=17E601673047C79C6E82F1AFB9EBDB8A?cc=in&lang=en&#

5.7 Glossary of Terms

1.	Act	Act is a formal written enactment of a legislative authority that governs a state, city or country.
2.	Administration	The process or activity of running a business or organization.
3.	Government	A government is the system by which a State or community is governed.
4.	Society	A Society, or a human society, is a group of people involved with each other through persistent relations, or a large social grouping sharing the same geographical or social territory, typically subject to the same political authority and dominant cultural expectations.
5.	State	A nation or territory considered as an organized political community under one government.

5.8 Points to Ponder

No.	Points to Ponder
1.	Administration is most obvious part of government; Infact it is government in action.
2.	Public Administration is an activity/process in one hand and a discipline on the other hand.
3.	The administration of Akbar has been known as best among all the Mughal rulers.
4.	Present Indian Administration is a legacy of British administration.
5.	Indian Constitution is one of the lengthy Constitution of the World.
6.	Woodrow Wilson is known as Father of Public Administration.
7.	Frank Goodnow is known as Father of American Public Administration.

Module Detail	
Subject Name	Political Science
Paper Name	Indian Politics: I
Module Name/Title	Local Self Government
Module Id	
Pre-requisites	
Objectives	<ul style="list-style-type: none"> • To trace the history of evolution of local self government institutions in India from pre-independence till the 73rd Constitutional Amendment. • To critically analyse the causes of failure of the Balwant Rai Mehta Committee and the Ashok Mehta Committee. • Basis of the 73rd Amendment Act which lead to decentralization in India. • Key features of the 73rd Amendment Act.
Keywords	Self Government, Panchayat, Gram Sabha, Panchayat Samiti, Zila Parishad, Committee, Amendments, Decentralization

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Local Self Government

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Introduction

The system of local self government, more commonly known as 'panchayats', had been established to provide empowerment to the lowest rungs of democracy in India. Panchayats or local-self rule is a three-tier system in each state which has elected bodies at the village, taluk and district level. The concept panchayats has been present in the Indian society since ancient times. Over the centuries the concept has undergone various changes and modifications and in the recent past has taken the form of *panchayati raj* institutions after decentralization reforms in early 1990s. These institutions for grassroots level democracy were formally included in the Constitution through the 73rd and 74th Amendment Act in 1993. The main idea of setting up local-self government institutions

was to enable and empower the local people to manage their affairs by being a part of the decision-making process and to participate in implementation of policies in a more effective manner.

Tracing Panchayati Raj Institutions in Pre-Independence India

Historically, self-rule in villages had been present since many centuries in India. However, Panchayati Raj as we know it today has evolved or shaped over the last one and a half centuries. Over this period, decentralisation movement in India has shown that the initial experiments were of ad hoc nature and were not very well planned. Hence they failed to bring out a comprehensive decentralisation process. During the early British rule, it was a necessity to establish some system of local administration for maintenance of law and order, communication and transportation activities, collection of revenues, carry out other administrative works etc. Lord Ripon's reforms are considered a landmark in local self-government in India. The situation at the district level at that point of time was that the committee meetings were not attended by people who did not live in the vicinity. Their demands were never brought up and hence never fulfilled. This resulted in undue development of the areas in and around the district headquarters while the rest was left unattended.

In 1882, Lord Ripon proposed a resolution of decentralisation through a large network of local self governing bodies. The resolution recommended that the smallest administrative unit – the sub-division, taluk or tehsil- should be placed under a local board. Above these local boards, the district boards could be created with powers of co-ordination and control. Regarding financial decentralisation, Ripon proposed that budgetary freedom should be given to the local bodies and in case of abuse of power, the central government would have power to supersede the local boards. However, Ripon's schemes could not be carried out and they were followed by a series of committees and commissions by the British government.

In 1909, the Royal Commission on Decentralisation reviewed the work of local and district boards and came to the conclusion that due to the unrepresentative character, and inadequate powers, these bodies had not been able to work successfully. To

overcome these defects, the commission recommended creation of an electorate consisting of members of the village panchayat, so that due representation could be provided to the people along with nomination of members from minority communities. They also recommended formation of village panchayats and constitution of the local boards so that local self-government could be built from the bottom. These proposals finally became a part of Government of India's Resolution 1918. It accepted the principle of elective majorities on all boards, even at the lowest level. The recommendation of nomination for minority community members was also accepted. Therefore we find that systematic effort was made during the British rule to build and strengthen the local self-government institutions. But despite various recommendations and improvisations over the years, these institutions did not emerge as centres of power and suffered from a number of weaknesses.

Panchayati Raj Institutions in India after Independence

After independence, the government focused a great deal on rural development since a majority of our population was living in the villages. Decentralised planning assumed greater importance and the panchayat raj system evolved through various stages. To begin with, the idea of decentralisation was included in the Constitution, which gave guidelines in the Directive Principles of State Policy section for setting up the panchayat system in the villages.

“Organization of village panchayats — The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

- Part IV, Article 40 of the Constitution of India

The idea was furthered in the First five-year plan (1951-55) which launched community development projects in select localities of some states. These plans were to be implemented by trained personnel with the help of the locally nominated bodies. However, the plan failed to bring about active participation and involvement of the people in the planned processes which included plan formulation, implementation and monitoring. The Second five-year plan (1956-60) attempted to cover the entire

countryside with National Extensive Service Blocks through the institutions of Block Development Committees, lead by block development officers, assistant development officers, Village Level Workers, in addition to nominated representatives of village panchayats of that area and some other popular organisations like co-operative societies. But this plan also failed to satisfactorily accomplish the proposed decentralisation. Hence, the centre constituted various committees chaired by eminent authorities to advise the government on different aspects of decentralisation.

Balwant Rai Mehta Committee

In 1956, the government of India appointed a committee under the chairmanship of Balwantrai Mehta to study the existing problems and recommend certain guidelines and methods through which the panchayati raj system could be implemented uniformly across the whole country. On 12th January 1958, the National Development Council accepted the recommendations of the Mehta Committee and subsequently gave instructions to the states to implement these recommendations. The Central Council of the Local Self-Government met in 1959 to take stock of the states' implementation of this decision of the NDC. Acknowledging the vastness of the country, the council recommended that though the broad pattern and the fundamental features have to be the same throughout the country, the pattern of implementation could differ from state to state; As far as the states maintained the spirit of genuine transfer of power to the people, they could experiment with different implementation patterns depending upon the conditions prevailing in the states. The fundamental principles of panchayati raj to be necessarily followed by every state were:

- 1) A three-tier structure of local self government from the village to the district level has to be established, with the village at the bottom level and the district at the top. The intermediary institution will provide the link between the three tiers.
- 2) There should be genuine transfer of power and responsibility to the local self-government institutions.

- 3) Adequate resources should be transferred to these bodies so as to enable them to carry out their duties and responsibilities.
- 4) All programmes of social and economic development formulated through the network of planning should be channeled through these institutions.
- 5) The new established system should be tried and encouraged to facilitate the work of further devolution and dispersal of power and responsibility in future.

This new system of decentralization as a three-tier structure started in 1959 in many parts of the country. At the lowest level, the village panchayats composed of all the adults residing in the village within their jurisdiction. The panchayat was an executive body consisting of members directly elected by the people of that rural area. Thus the general body of all the adult members in that area was known as the *gram-sabha* or the *gaon-sabha*, the executive body was known as the Panchayat. The *gram-sabha* had certain administrative duties such as reviewing accounts of previous years, auditing the panchayat report, examining the working of the panchayat and taking decisions regarding development and welfare programs for the subsequent year. The functions of the panchayats included public health and sanitation, maintenance of village roads and street lighting, maintenance of schools, drinking water, keeping records of births and deaths, establishing social and child welfare centres, propagation of family planning, promotion of agriculture and animal husbandry, construction of public buildings and tanks, promotion of cottage industries, establishment of cooperative societies, hearing and settling minor disputes etc. The panchayat was also empowered to collect revenues from taxation on property, cess on land revenue, rent, taxing vehicles and professional tax. They could also levy taxes such as octroi, drainage and water fare, charges on lighting, taxes on shops and usage of rest houses etc.

At the taluk level, the institutions were known as Panchayat Samitis. These samitis consisted of the heads of all villages under its jurisdiction, few co-opted members of the disadvantaged classes and women, representatives of co-operative societies and members of the state and union legislatures representing the area. The members of the samiti could elect their chairman from among themselves. The main function of the Panchayat Samiti was to look after the general development work in that area. For this

work, it prepared plans and after its approval by the state government, worked towards their implementation. The samiti was also responsible for the execution of community development program and took steps for the advancement of health, primary education, sanitation and communication within that area. It also had to power to supervise the panchayats working under its jurisdiction, scrutinize their budgets and provide suggestions for better working.

At the highest level, the bodies were called Zilla Parishads. A zilla parishad constituted of the representatives of the Panchayat Samitis, representatives from the disadvantaged sections including women, and elected representatives of the state and union legislatures representing the area. The presidents of the panchayat samitis were *ex-officio* members of the zilla parishads. The zilla parishad was a coordinating body that supervised the working of the panchayat samitis and gave recommendations to/ advised the state government with regard to development schemes. In some states the zilla parishad sanctioned the budgets of the panchayat samitis and distributed funds among them as well. The functions of the zilla parishad were establishment, maintenance and inspection of primary and secondary schools, hospitals, dispensaries, primary health centres, maternity and child welfare centres, construction and maintenance of roads, parks, lights, water-supply and drainage, minor irrigation work, promotion of local arts and industries, execution of cooperatives, rural broadcasting and communication centres etc. The financial resources of the zila panchayat consisted of the grants received from the state government and share in land cess and other local taxes. In certain cases, the zilla parishad was granted permission by the state to levy taxes or enhance certain taxes already levied by the panchayat samitis, to a certain limit.

However, the system of panchayati raj as recommended by the Balwantrai Mehta committee failed to realize the goals of decentralization. The institutions could not function as envisioned by its architects and did not improve even after a decade of implementation. A need was felt to relook at the recommendations for which the Janata Party government, in 1977 set up a committee under the chairmanship of Ashok Mehta.

Ashok Mehta Committee

The Ashok Mehta committee came out with its recommendations in a report in 1978. It articulated a new approach by replacing the three-tier system by a two-tier system which had mandal panchayats at the base and the zilla parishads at the top. The mandal panchayats were to consist of 15 members elected by the village population along with farmer representatives and two women members. It recommended reserving seats for scheduled caste and scheduled tribe members on the basis of their population. The president of the mandal panchayat was to be elected by the members from amongst themselves. One mandal panchayat would be constituted from a group of villages with a population of about 15,000 to 20,000. This would be the point of decentralization below the zilla parishad.

The zilla parishad would be constituted of six types of members elected from the suitably demarcated electoral wards, presidents of panchayat samitis, nominee of bigger municipalities and cooperative federations, two women (having secured the highest number of votes in election) and two co-opted members (one having special interest in rural development and one from the local teaching profession). Seats were to be reserved for the scheduled caste and scheduled tribe members on the basis of their population. The state and union legislature representatives from that region would be the *ex-officio* members. The president of the zilla parishad also had to be elected from among its members and the term of both mandal and zilla panchayats had to be fixed at four years.

It was also recommended that the panchayati raj institutions were to have compulsory powers of taxation so as to not depend on the state government for funds. The committee desired certain changes in the provision of the constitution so that the panchayats could levy taxes and be self-sufficient in generating financial resources for their work. Another recommendation by the committee was that the state government should not have absolute powers to supersede the panchayati raj institutions on political grounds. One highlight of the report was that it recommended political party participation in panchayati raj affairs. Moreover, the report recommended the creation of certain monitoring forums to safeguard the interests of the socio-economically vulnerable groups. It proposed a social justice committee in each zilla parishad to ensure that the panchayati raj bodies function for the welfare of these communities.

With these recommendations, the Ashok Mehta Committee made an attempt to rejuvenate the panchayati raj bodies after two decades after the Balwantrai Mehta Committee. Though it was clear that this committee based its recommendations on the previous report, it did give a series of new suggestions and guidelines. However, there were certain reasons which could not lead to the proper implementation of all the recommendations. First was the problem of uniformity. India being a vast country with different socio-economic sections of population within each state, found it almost impossible to maintain uniformity in implementing the recommendations. Only two recommendations were of the Balwantrai Mehta committee could be somewhat established all through the country; establishing a three-tier system of local government and devolution of powers to these institutions. The second problem faced by these institutions across states was the dearth of funds. The panchayats were given very little power in terms of levying taxes and generating their own funds, and they did not get proper financial support from the state governments as well.

Both these committees provided an important framework for the panchayati raj institutions to function and also provided space for the people to interact with the government officials. The panchayats in the states of Andhra Pradesh and Karnataka have been set up and function on these recommendations. However, all recommendations of this report could not be accepted or implemented because the Janata Party government fell and the report was not acceptable to the Congress party which came to power in 1980.

Constitutional Status for Panchayati Raj Institutions

All past attempts to strengthen the local self-government institutions had failed in their attempts and required constant rethinking and reimplementation of different plans of experiment. Three bills were introduced in the Parliament in 1989, 1990 and 1991 respectively which attempted to provide constitutional status to the panchayati raj institutions. The Sixty-Fourth Amendment Bill introduced in the Parliament in 1989, suffered from a lot of drawbacks and came in for severe criticisms and was defeated in the Rajya Sabha. The Seventy-Fourth Amendment Bill was introduced in 1990 but could not be taken up for consideration since the Lok Sabha was dissolved and the bill lapsed. The

Seventy-Second Amendment Bill introduced in 1991 was passed by near unanimity in December 1992 by both houses of Parliament and after having being ratified by 17 state assemblies became the 73rd Amendment Act to the Indian Constitution. This was a result of all the recommendations and proposals made for the panchayati raj institutions earlier. The main features of this Act were:

- There would be a gram sabha in each village which would exercise such powers and functions as provided by the state law.
- The elections to all members of the panchayats at all levels will be direct and the election of the chairman at intermediate and district level will be indirect. The mode of election of the latter was left to the state governments to decide.
- Reservation of seats for scheduled castes and scheduled tribes will be made according to their population at each level. Atleast one-third of the seats shall be reserved for women in all panchayats.
- A fixed term of five years for all panchayats was provided. In case of supersession, the re-election was to take place in the next six months from the date of dissolution.
- State legislatures were given the power to authorize panchayats to levy and collect local taxes and also give grants-in-aid from the consolidated fund of the state.
- Panchayats were to be constituted in every village of every state, at the village, intermediate (taluk) and district levels. However, states having a population of less than 20 lakh were given the option of not constituting panchayats at the intermediate level.
- A finance commission was to be constituted every five years to review the financial position of the panchayats and make suitable recommendations for distribution of funds between the panchayats and the state.
- All panchayats existing before the commencement of this Act were to continue till the expiration of their term or unless dissolved by a resolution passed by the state government.

- The state legislatures were expected to bring about the necessary amendments in their respective states within one year of the commencement of this Act so as to conform to uniformity.
- Schedule XI was included in the Constitution for the devolution of powers to the Panchayats. 29 functions were devolved by the state governments to the panchayats in their respective states so that the panchayats could function as institutions of self government and implement plans of social and economic development.

The 73rd Amendment instructed the state governments to devolve such functions and powers to the Panchayats as would enable them to function as institutions of self-governance. All state governments formulated their own guidelines for implementation of the 73rd Amendment Act and devolved planning and implementation of 29 functions to the local panchayati raj institutions through respective state acts and notifications. In some states such as Karnataka, Rajasthan and Madhya Pradesh the Act was implemented almost immediately (1993 - 1994). As mentioned above, the state governments devolved 29 functions to the panchayats under this Act which were mentioned in Schedule XI, Article 243 G of the Indian Constitution. The local self-government institutions were now responsible for the planning and implementation of the following:

1. Agriculture including agriculture extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor Forest produce
8. Small scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural Housing
11. Drinking Water

12. Fuel and Fodder
13. Roads, culverts, bridges, ferries, waterways and other means of communication
14. Rural electrification, including distribution of electricity
15. Non-conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural Activities
22. Markets and fairs
23. Health and sanitation, including hospitals, primary health centres and dispensaries
24. Family welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes
28. Public distribution system
29. Maintenance of community assets

Along with the above-mentioned subjects, the panchayat institutions have also been given centre-stage in the implementation of various central and state government sponsored social-sector schemes and programs. For example, the panchayat at all three levels of District, Taluk and Village are the primary bodies to implement the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) in rural areas. Under this Act, the gram sabha in all villages can recommend and audit developmental plans and projects, and is also responsible for spending 50% of the total funds for the project.

Innovations and Good Practices

Over the last decade there have been several attempts to improve the working of the local-self government institutions and to bring about innovative practices to empower the village community through these institutions. Examples of innovations and good

practices by the panchayats can be observed in many states: Rajasthan- a panchayat in the Thar district converted the area into a tourist destination thereby increasing the income of its inhabitants; Kerala- a panchayat was committed to education and made sure the entire village was literate; Assam- Dibrugarh Zilla Parisha revived a defunct milk supply scheme in 2011 which was defunct since 2003. This opened up livelihood options for the local population and also supplies them milk at lower prices; Uttarakhand- Charba Gram Panchayat in Dehradun district has become total addiction-free in 3 years due to the efforts of the chairperson and ward members. The money spent earlier on alcohol by men is now being spent on education and health of the family members; Maharashtra- Bhiwandi panchayat samiti in Thane district has a long list of good practices. With the help of technology the panchayat samiti has experimented with introducing virtual classrooms for better learning of all students of the district. It has been observed that the exposure to various methods of learning has brought about an improvement in the students' learning abilities and scientific temperament. Along with this the block panchayat has adopted a biometric system of attendance for ensuring punctuality of staff at schools, health centres and other offices. The panchayat samiti has also made special efforts to promote women and child health by adopting various measures to make the expectant mothers aware about reproductive care. These experiments showcase the will and determination of the panchayat members to bring about a social change in their respective villages.

The other good practice which is officially a part of the panchayat working and institutional organization is the reservation for disadvantaged groups in the panchayat. The Indian government has passed the bill for 33% reservation for the scheduled castes, scheduled tribes and women in the panchayats in order to bring about increased equality at the grassroots level. This increased the representation of the socially disadvantaged groups in the panchayats and attempted to provide them with a platform to voice their opinion. The most recent innovation in this regard has been the Bihar government's attempt to reserve 50% seats for women in the panchayats in 2009- 2010. Apart from empowering the women office-bearers, this has also made a difference in the general attitude of women in Bihar's villages. The latter confess that a women panchayat members or sarpanches is much easier to approach and talk to about the issues in the

village than their male counterparts. There is a hope that if this law is implemented in all villages in rural India, it will help in substantially increasing the participation among/ of women at the grassroots level.

Conclusion

As mentioned earlier, the system of local self-governance has evolved over a long period of time in India. It existed in various structures and forms during the ancient times and was modified during the British rule to suit the latter's needs. After independence, it was envisioned as an institution for democratic participation at the lowest level in the state and finally received constitutional mandate in 1993. Over the last two decades, the state governments have made a lot of amendments in their respective state acts to improve the working of the panchayats and enhance empowerment of the members and the village community. More than 2.5 lakh panchayats lie at the heart of the local-self-governance system in rural India. Given the total population that these panchayats aim to serve, it is only fair for the system to remain vibrant and open to new suggestions and methods of working. The idea behind the genesis of the panchayat structure was self-rule and empowerment at the lowest level of the governance structure so as to strengthen working of democracy in the country. For this purpose, the state political will and institutions hold a major responsibility in ensuring the empowerment and proper functioning of these self-governance bodies.

Module Detail

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Module Name/Title	MAKING OF THE CONSTITUENT ASSEMBLY OF INDIA
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MAKING OF THE CONSTITUENT ASSEMBLY OF INDIA

Vikas Tripathi

Objectives:

- To discuss the necessity of having constitutions
- To elaborate the challenges that the Constituent Assembly of India faced and the concerns that the constitution makers had,
- To give a brief sketch the features that the Indian model unique
- To provide a historical overview of the formation of Constituent Assembly of India

INTRODUCTION

The idea that states should be governed by a set of fundamental rules gained ground since the Glorious Revolution of 1688. As monarchies have come to be replaced by democratic governments, constitutions have become the bed-rock of how the country is to be governed. The constitution provides a guiding light to the government of the day by establishing the procedural rules through which institutions of that particular country are to be run. Constitutions may also lay down substantive rights to be enjoyed by the citizens of that country. Fundamentally, the constitution of a country as a political document is a reflection of the common ground that citizens share. A constitution is not only the product of a shared sense of nationhood but also promises to uphold and forge that common identity. It is, therefore, not surprising that the drafting of a constitution is a task of gargantuan responsibility. When the Constituent Assembly of India met for the first time on 9th December, 1946 the members present were cognizant of the historic role that they have been

entrusted to play. Even, Pt. Jawaharlal Nehru exclaimed, 'I tremble a little and feel overwhelmed by the mighty task.' But the task was carried out carefully and painstakingly, producing at the end a lengthy document that had 395 articles and eight schedules.

Traditionally, arguments about the necessity and desirability of a constitution hinge on the procedural design that constitutions create and therefore ensures the entrenchment of a democratic set up. As Bhargava also iterates that "it is widely agreed that one reason for having constitutions is the need to restrict the exercise of power...Constitutions provide these basic rules and therefore prevent states from turning tyrannical."¹ The framers of the Indian constitution, being aware of the immense power that the colonial state wielded, sought to create a structure that was inspired by separation of powers and ensured that a system of checks and balances worked to keep tyranny at bay. In the words of Madhav Khosla, constitutions are concerned with the difficult question of institutional design, "the constitution matters because it structures the norms that govern our politics; it maps out, as it were the rules of the game."²

Moving ahead in the institutional design argument, Bhargava asserts that since democracies do run the chance of turning into majoritarian tyrannies, constitutions in such cases become the bedrock of protection not just for individuals but also for minority groups. By providing a set of rights which are to be enjoyed equally by all the citizens of the country, the constitution aimed to "break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice."³

Finally, as far as the benefits of the institutional design argument goes, constitutions by setting down the rules of the game, also ensure that 'popular passions' cannot sway 'law culled over from years of collective experience and wisdom.' It simmers down the "mentality of the mob" by stressing on the procedure established by law.⁴

Fundamentally different than the institutional design argument but equally important is the constitutive task that constitutions play. Khosla sums up that constitutions, "at once recognizes and creates an identity, articulating at once a vision of what it means to be an Indian."⁵ The Indian constitution is an apt example of this task that constitutions perform. The Indian freedom movement had been an exercise in demanding the right to self determination, in other words a claim to determine the set of rules which will govern the country by the countrymen themselves. For

¹ Bhargava, Rajeev (2008) 'Introduction: Outline of a Political theory of the Indian Constitution' In Rajeev Bhargava (ed.) 'Politics And Ethics Of The Indian Constitution', Delhi: Oxford University Press. pp. 14

² Khosla, Madhav (2012) 'The Indian Constitution'. New Delhi: Oxford University, p. xii

³ Bhargava, Rajeev (2008) 'Introduction: Outline of a Political theory of the Indian Constitution' In Rajeev Bhargava (ed.) 'Politics And Ethics Of The Indian Constitution', Delhi: Oxford University Press. P 15.

⁴ Ibid, . 15

⁵ Khosla, Madhav (2012) 'The Indian Constitution'. New Delhi: Oxford University.p. xiii

Bhargava, the Indian constitution is a breakthrough in constitutional theory as it shows that “constitutions exist not only to disenable people in power but also to empower those who have traditionally been deprived of it.”⁶ Constitutions, which are a product of popular movements, are a symbol of the aspirations of the people and it binds them into a collective unit. Cognizant of such an important role that constitutions play in the political life of a nation, Nehru spoke about the Indian constitution thus, “it is a nation on the move, throwing away the shell of its past political and social structure, and fashioning itself a new garment of its own making.”⁷

CHALLENGES BEFORE THE INDIAN CONSTITUENT ASSEMBLY

As the Constituent Assembly drafted the Constitution, the members realized that the task ahead was made complicated due to the transition that the country was undergoing on account of transfer of power and partition. The issue of religion as a marker of diversity propounded forcefully through the two-nation theory had partitioned the country and this had an impact on the composition of the Constituent Assembly as well. In an assembly that already had a clear majority for the Congress with 208 members out of 389 members prior to the partition, post-partition the Congress presence plummeted to 192 out of 299. This raised questions regarding the representative nature of the Assembly. That the Constituent Assembly was dominated by the Congress was not only due to its numbers but also because of the political and intellectual stature of the leaders from Congress. The partition played an important role in the nature of deliberation that members of the Constituent Assembly had. Since, the colonial creation of separate electorate was seen as the seed from which claims of ‘difference’ emerged within the Indian territory; any reference to political safeguards on the basis of ascriptive identities was seen with suspicion. Emphasis on ‘unity in diversity’ was the overriding thread in the Constituent Assembly Debates. As Bipan Chandra sums up, “The emergence of a strong national identity and the preservation of India’s rich cultural diversity were seen as simultaneous processes. Regional cultural identities would develop not in conflict but as a part of the all-India identity.”⁸

Despite the nature of the debates being such, centrifugal forces emerged and challenged at different moments, different provisions of the draft constitution. Since the partition hovered around the minds of the members of the Constituent assembly, political safeguards for minorities were seen

⁶ Bhargava, Rajeev (2008) ‘Introduction: Outline of a Political theory of the Indian Constitution’ In Rajeev Bhargava (ed.) ‘Politics And Ethics Of The Indian Constitution’, Delhi: Oxford University Press. P 15

⁷ Nehru quoted in Ibid, p.15

⁸ Chandra, Bipan (2000) ‘India After Independence: 1947-2000’, New Delhi: Penguin. p. 84

as a potential threat to national unity. According to Bajpai “in the assembly’s deliberations, the minorities question was regarded as encompassing the claims of three kinds of communities: religious minorities, backward castes and tribals, for all of whom safeguards in different forms had been instituted by the British and by princely states during the colonial period.”⁹ All minorities, especially religious minorities, were encouraged to see themselves as part of the wider nation and therefore “minority safeguards in such utterances were referred to variously as ‘privileges’, ‘concessions’ and ‘crutches.’”¹⁰ However, representatives like Rev Jerome D’Souza, and Sardar Ujjal Singh did argue how their distinct cultural identity did not stand in way of national unity and instead was a connecting thread to it. Other than religion, another factor that stood out as a debatable identity concern was that of language. Concerns were raised against linguistic imperialism of Hindi vis-à-vis tribal and regional languages by members such as Jaipal Singh, K.T. Shah, Z. H. Lari and Damodar Swarup Seth. Constituent Assembly Debates show a vivid debate between Hindi protagonists, Sanskrit enthusiasts, Hindustani advocates and English supporters. Though Hindi was instated as the Official Language and English was retained for a period of 15 years, subsequent language riots have proven the fact that the Constituent Assembly failed to understand “that monolingual solutions to multilingual societies would not work.”¹¹

While religion and language as markers of difference remained a debatable issue among the members of the Constituent Assembly, another minority question- of the tribals – posed a challenge of equally formidable strength. The tribal population of the country had been integrated with the rest of the country by the colonial rulers through policies that allowed penetration into their relatively isolated territories. This radically changed the social structure of the tribal societies. On the aftermath of independence, the Constituent Assembly members had to design an institutional structure that allowed the tribal population of the country an enabling condition to develop themselves and they found that there were two options that seemed equally compelling as well contesting: isolation and assimilation. Consensus around the issue was built by favoring “the policy of integrating the tribal people in Indian society, even while maintaining their distinct cultural identity and culture.”¹² In keeping with this approach special provisions, like special care towards educational and economic interests of the tribals, flexibility in application of central and state laws in tribal areas, reservation of seats in legislatures and administrative positions, setting up of Tribal advisory Councils, and Fifth and Sixth Schedule were made in the constitution which would ensure progress and welfare for the

⁹ Bajpai, Rochana (2000) Constituent Assembly Debates and Minority Rights. *Economic and Political Weekly* May 27, 2000. P. 1838.

¹⁰ Ibid, p.1839

¹¹ Agnihotri, Rama Kant (2015) Constituent Assembly Debates on Language. *Economic & Political Weekly*, February 21. Vol I no 8.p 45

¹² Chandra, Bipan (2000) ‘India After Independence: 1947-2000’, New Delhi: Penguin. P.108.

tribals. These were over and above the recognition of tribals as equal citizens of the country-having full political rights. Despite the cautious approach taken by members of the Constituent Assembly, the question of intra-tribal diversity was not adequately discussed and therefore, later day demands for secession from India arose from the tribes of North-East India. The historical association between tribals of the North-East and tribals of the rest of India with the national movement had been different and this therefore affected the ways in which the tribals (of these areas) looked towards the post colonial state and the Constitution.

While territorially, the tribes of the North-East did not feel any affinity towards the newly independent country, political aspirations of hereditary rulers of princely states such as Junagarh, Hyderabad and Jammu and Kashmir stood in the way of India being a contiguous territorial entity. As these states had to be acceded to India, a policy of carrot and stick was applied by Sardar Patel and Junagarh and Hyderabad joined the Indian Union through a public plebiscite. The question of Kashmir was, however, complicated by the Pakistani led invasion which led the Maharaja of Kashmir to appeal to India for help. As per international conventions, Kashmir had to accede to India prior to receiving any military support. Therefore, a plebiscite in Kashmir was not done, unlike in the case of Hyderabad and Junagarh. For the Constituent Assembly, therefore, though national unity and integrity remained an over-emphasized concern, on the ground national unity was being challenged by several factors that had raised its head on the pretext of the departure of the British. In order to assert that India was indeed one entity the members of the Constituent Assembly had to constantly harp at the feelings of nationalism that had been aroused through the national movement.

The task of the Constituent Assembly was also complicated by the state to which the colonizers had reduced the economy of the country to. Years of neglect towards agricultural productivity and decline of indigenous handicraft industries ensured that the per capita income of the countrymen remained deplorable. While the income yielded by agriculture was low, 70-75 percent of the population remained occupationally tied to it. Thus, widespread poverty marked the Indian economy on the eve of independence. Coupled with poverty, other growth parameters such as life expectancy, literacy and unemployment rate provided a grim picture. Keeping in view, such an appalling image of the circumstance in which the Constituent Assembly was functioning, Pt. Jawaharlal Nehru remarked,

“The first task of this Assembly is to free India through a new Constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.”¹³

¹³ Chandra, Bipan (2000) ‘India After Independence: 1947-2000’, New Delhi: Penguin. P.39.

While the economic condition of the country was pitiable, the social order that characterized India was the caste system. In Shah's words, "the caste system is sui generis of the social structure of the Indian sub-continent in general and of Hindus, in particular. In this system, the group identity supersedes individual identity."¹⁴ Not surprisingly, therefore, the caste system is antithetical to the dream of democratic structure and individual freedom that liberals like Nehru had been advocating. The social structure of caste finds a firm foundation to sustain and thrive in the village. Therefore, debates in the Constituent Assembly on caste and the undemocratic social order also encompassed the desirability of the "traditional" Indian village. Jodhka identifies three different positions on this debate: Gandhian, Nehruvian and the Ambedkarite.¹⁵ While the Gandhian vision has an utopian and romantic picture of the village, "uncorrupted by the modern life of the city and Western technology", the Ambedkarite vision dismisses villages as "the ruination of India.... a sink of localism, a den of ignorance, narrow-mindedness" and the Nehruvian vision looked to a newly re-constituted village through the aid of technology and shrugging off old agrarian relations. In brief, the vision of the promised new social order was not uncontested and therefore, taking a stock of the provisions of the constitution vis-a-vis the prevalent social order, Ambedkar stated that,

"On the 26th January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment else those who suffer from inequality will blow up the structure of democracy which this Constituent Assembly has so laboriously built up."¹⁶

DOMINANT CONCERNS OF THE CONSTITUTION MAKERS

While the challenges posed by the circumstances rocked the Constituent Assembly, none could overshadow the conscious efforts of the makers of modern India. The members carved a

¹⁴ Shah, Ghanshyam. (2002) 'Social Backwardness and the Politics of Reservations' in Ghanshyam Shah (Ed.) Caste and Democratic Politics in India. Delhi: Orient Longman. P 389.

¹⁵ Jodhka Surinder S, Democracy And Socio-Economic Transformation In India. Available at democracy-asia.org/qa/india/Surinder%20Jhodka.pdf accessed on 12/08/2015

¹⁶ <http://www.ambedkar.org/Quotation6.html> accessed on 12/08/2015

constitution that carefully listed out the institutions and political players that were to govern the country; the principles that would guide the newly independent nation and the outlook that would govern India's relation with the world. The Preamble of the constitution encapsulates, in brevity, the concerns that weighed heavily on the minds of the members of the Constituent Assembly:

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

JUSTICE; social economic and political;

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

EQUALITY of status and of opportunity;

And to promote among them all

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

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

At the very outset of the preamble, the constitution makers made it very clear that independent India was to be a democratic country. Creating a democratic set-up by universal adult franchise, in a country which had an overwhelming number of illiterate population with no experience in electing their political representatives, was itself a risky proposition. Despite this, members of Constituent Assembly drafted a constitution that advocated a model of direct election to the popular house of Parliament and state Legislature. Following the Westminster model, they made the head of the government responsible to the Parliament which ensured that the executive cannot override the legislature. The Indian constitution is an example of detailed constitution which not only lists down the positions and powers of public institutions but also the way in which these are to be filled up. With such extensive details, it is therefore, not a wonder that the Indian constitution is one of the lengthiest constitutions of the world.

From the time the Objectives Resolution was passed on the 13th of December, 1946 the makers of the Indian constitution were committed to the principles of justice, liberty and equality. Since, "it may well be claimed that the constitution is a solemn promise to the people of India that the legislature will do everything possible to renovate and rebuild society on new principles."¹⁷ Granville Austin calls the Indian Constitution as a 'modernising force.' It is a document that promises to usher in a social revolution by leading the country away from the shackles of hierarchies

¹⁷ Santhanam quoted in Austin, Granville (1999) 'The Indian Constitution: Cornerstone of A Nation', Delhi: Oxford University Press, p.46

perpetuated on the grounds of religion, caste, class, and likewise. The members of the Constituent Assembly strove to bring the social revolution not only by emphasizing on equality of all individuals before the law and granting a set of fundamental rights, but also by proposing measures for establishing socio-economic equitableness. In doing so, the Constituent Assembly was trying to bridge the gap that existed on the basis of caste, class and religion.

While the Constituent Assembly emphasized on the unity of the country they understood that regional and linguistic variations abound India and therefore establishing a unitary structure would invite fissiparous tendencies. At the same time, creating a confederation would imply that the pull of centrifugal forces would be too huge for a newly independent country to resist. A unique resolution of the problem was reached by creating what Austin calls as a “highly centralized federalism, characterized among other elements, by central government distribution of much revenue, national development planning, continuation of the inherited central civil services, state governors who were presidential appointees, the well-known emergency provisions, and a wide variety of state-centre coordinating mechanisms.”¹⁸

The three dominant concerns or goals of the members of the Constituent Assembly discussed above: national unity, democracy and social revolution- has been termed by Granville Austin as the ‘the seamless web’. Austin argues that the constitution makers were aware that these goals are inter-dependent and have to be pursued simultaneously in order to reach a new society and therefore the constitution of India provided a model that is likened to a beautiful patch work- borrowing from other constitutions but bending it to suit its own complex situation.

THE INDIAN MODEL

With a constitution that had such a broad vision of catering to the needs of a diverse set of population, divided by language, ethnicity, religion and region- the Constituent Assembly deserves credit for being able to provide a fertile ground for sowing the seeds of a strong democracy in this country. The Constituent Assembly provided a unique model with features that guided India’s footsteps into its democratic experiment. Features in the Indian constitution such as federalism, separation of powers, amendment procedure, secularism and affirmative action, have been borrowed from other countries but have been adapted to suit the Indian context so well that the form of each of these features has undergone transformation. Over and above these, the process of amendment of the constitution has been conceived so ingeniously, that it counterbalances both centralizing as well as centrifugal forces.

1. Federalism:

¹⁸ Austin, Granville (1999) ‘The Indian Constitution: Cornerstone of A Nation’, Delhi: Oxford University Press, p.x

At the historic juncture when the British left India, concerns about consolidating India into a cohesive whole loomed so large on the minds of the constitution makers that during the drafting of the federal provision there “the relative absence of conflict between the ‘centralizers’ and the ‘provincialists’... Assembly members loudly demanded increased revenue for provincial governments, yet they agreed that the Union Government should collect the money and then distribute it among the units.”¹⁹ While discussing the consensus among the constitution makers to have a federal structure with a strong centre Austin lists out the factors that necessitated the same: the communal tension which led to partition of the country, the aspiration of improving the standard of living and increasing industrial and agricultural productivity of the people, past constitutional experience during the colonial concessions made between 1919 to 1935 and finally the existence of a powerful nation-wide party accompanied by the absence of any provincially based political party. According to Austin, the federal structure set up the Indian constitution can be labeled as ‘cooperative federalism’ where the presence of a strong centre does not imply weaker provincial governments. The scheme in which the division of legislative arenas have been divided between the Parliament and the state legislatures have been clearly demarcated in Seventh Schedule. While List I deals with the areas on which the Parliament will have jurisdiction, List II enumerates the jurisdiction of the states. The federal structure in India tilts in favor because if conflict arises with regard to legislation from items in List III, the union legislation will prevail. Additionally, the parliament can legislate on any other item not listed in the three lists. This power of Parliament to override the legislations by the state legislatures has raised questions regarding how ‘co-operative’ Indian federalism is. However, one realizes that members of the Constituent Assembly were drafting the constitution at a phase in Indian history where the unity of India had to be established, notwithstanding criticisms of over centralization of power.

While the legislative areas are clearly demarcated for the Union Parliament and the state legislatures, the Constitution devises a plan to deal with situations of threat with a sharp and swift action by the executive. Under part XVIII of the constitution, “the executive assumes great importance during emergencies, moments during which ordinary provisions are insufficient to meet extraordinary problems.”²⁰ During an emergency, the Union executive can exercise legislative as well as executive powers over a state, in other words, the constitution becomes unitary one. Members of the Constituent Assembly debated the implications of vesting so much power in the hands of the Parliament. While S.L Saksena, H.V. Kamath, P.S. Deshmukh, H.N. Kunzru opposed the provisions

¹⁹ Austin, Granville (1999) ‘The Indian Constitution: Cornerstone of A Nation’, Delhi: Oxford University Press, pp.186-187

²⁰ Khosla, Madhav (2012) ‘The Indian Constitution’. New Delhi: Oxford University, p. 23.

on the ground that it violated the principles of provincial autonomy under a federal structure; A.K. Ayyar, K. Santhanam and B.R. Ambedkar stood in support citing the prevalent difficult times which might recur in future too. The supporters were certain that the emergency provisions will not translate into central government becoming all powerful, as all emergency proclamations have to be ratified by the Parliament within six months of such declaration. While this feature of the Indian constitution “to convert it into a unitary or quasi-federal system under specified exceptional circumstances”²¹ has been abused in the past, has also allowed a level of flexibility in times of need. One cannot ignore the circumstances in which the Constituent Assembly was operating and how it gets reflected in the provisions of the Indian constitution.

Similar to the division made on legislative subjects, even the fiscal federalism designed in the constitution to allow both the Union and the states to have their own share of resources as per the items listed in Seventh Schedule. Furthermore, since states would not be able to collect adequate revenues to meet its social responsibilities, there are several other forms of taxes- such as taxes which are levied and collected by the Union are distributed among the Union and the states, taxes levied and collected by the Union but assigned to the states within which they are leviable and duties levied by the Union but collected and appropriated by the States. The Union may also provide grant-in-aid and loans to states. This may be in lieu of the jute export duty (as in the case of Assam, West Bengal, Bihar and Orissa) or because of budgetary deficits that states may incur. Besides these, the Union government may also make conditional and unconditional grants available to the states. Thus, even a cursory examination of the fiscal provisions shows that the members of the Constituent Assembly envisioned the Union government as “the banker and collecting agent of state governments.”²² According to Austin, such a necessity arose out of two factors: first, that the financial situation of the states was unstable at that time and; second, since the states had to usher in the social wellbeing of the people they had greater need of revenue. As the question of fiscal equalization among states arose, as a result of the Union government being assigned a collector and distributor role, the Constituent Assembly realized that a Finance Commission is to be drawn, “as an institution entrusted with recommending the distribution of central tax revenues. The Finance Commission is...an example of a constitutional institution that is independent and yet subordinate to the executive.”²³ The intricate system of distribution of revenues among the Union and the states may have been made with the best interests of the states in mind but it increased the vulnerability of

²¹ Basu, Durga Das (2006) ‘Introduction to the Constitution of India’, New Delhi: Wadhwa’s Legal Classics .p. 62

²² Austin, Granville (1999) ‘The Indian Constitution: Cornerstone of A Nation’, Delhi: Oxford University Press, p 221.

²³ Khosla, Madhav (2012) ‘The Indian Constitution’. New Delhi: Oxford University, pp. 67-68

the states to Union interference as “the provinces are very largely dependent for their resources upon grants made to them by the Centre.”²⁴

2. Separation of Powers:

Driven by the idea that power concentrated in the hands of a single body is likely to encourage despotism and inefficiency, “the doctrine of separation of powers divides power horizontally, between institutions at the same tier. This division typically takes place between three bodies: the legislature, executive and judiciary.”²⁵ The members of the Constituent Assembly, considering India’s familiarity with cabinet government devised a scheme inspired from the British Parliamentary model but deviated from it by having an indirectly elected President as the head of the State.

The Indian constitution establishes the President as the constitutional head of the country. As a titular head, the President was to be elected indirectly and is expected to be impartial in his behaviour during office. The Constituent Assembly members looked at the position of the President as one ‘of great responsibility and dignity’ but with no ‘real power’. In the true spirit of a parliamentary system, the President would have to succumb to the directions of the democratically elected council of ministers, headed by the prime minister.

Effectively, the Parliament of India is the locus of governmental power. The union legislature is divided into two houses: the Lok Sabha and the Rajya Sabha. While members of the Lok Sabha are directly elected by the people of the country; members of the Rajya Sabha are elected indirectly through the members of the legislative assemblies. The Constituent Assembly of India debated extensively on the composition of both the houses of legislature and how the executive would be drawn from amidst the parliament. The Lok Sabha has strength of 450 and the Rajya Sabha has 245 members. It is from the Lok Sabha that the council of ministers headed by the prime minister is drawn and being the popular chamber, motions of no-confidence can be raised only from this house. While laying down the foundations of India’s democracy, members of the Constituent Assembly believed that the Lok Sabha as the popular house, elected through universal adult franchise will symbolize the unity of the country. While the composition of the houses was debated furiously, Austin comments that “the Assembly did not consider in detail the authority and powers of the legislatures when framing the legislative provisions.”²⁶ As mentioned in the section on federalism, the Seventh Schedule of the constitution provides for segregation of items on which the Union Parliament and state legislatures have jurisdiction. This gives the Parliament a very wide scope to

²⁴ Ambedkar quoted in Austin, Granville (1999) ‘The Indian Constitution: Cornerstone of A Nation’, Delhi: Oxford University Press, p 234.

²⁵ Khosla, Madhav (2012) ‘The Indian Constitution’. New Delhi: Oxford University. P.1.

²⁶ Austin, Granville (1999) ‘The Indian Constitution: Cornerstone of A Nation’, Delhi: Oxford University Press, p. 146.

legislate. But the categorization is made complicated by the way in which the Parliament can have its way as far as the Concurrent list and residuary powers are concerned. Moreover, in times of emergency the scope of Parliament's function can extend to state legislation as well.

The wide gamut of powers that the Parliament enjoys also ensues from the fact that in a parliamentary system the executive is formed from within it. In a parliamentary form of government, "the real executive power vests under the Constitution in the council of ministers headed by the Prime Minister. The President appoints as prime minister the leader of the party that has the majority in the Lok Sabha or, if no party has a clear majority, a person who has the confidence of majority of the members of the Lok Sabha."²⁷ Since, the council of ministers was collectively responsible to the Parliament, the parliamentary system provides a safeguard against executive excesses. At the same time, the constitution makers also inserted certain measures like promulgation of ordinances and emergency provisions in order to enable the executive to work in a decisive manner, in extraordinary situations. Thus, a precarious balance between the legislature and executive was sought to be achieved.

In order to ensure that the legislature and the executive do not overstep their powers, "the exercise of both legislative and executive power is subject to review by the judiciary. Courts are authorized to strike down actions by the legislature and the executive which violate the constitution."²⁸ The judiciary of independent India was envisaged as the vanguard of the constitution and its final interpreter. K. M. Munshi, emphasizing on the need of the power of judicial review, argued that it was "necessary for the safeguarding of fundamental rights and for ensuring the observance of due process."²⁹ The members of the Constituent Assembly, having reposed such powers on the judiciary, therefore ensured that the courts remained independent from the clutches of political power and established strict procedures for the appointment, dismissal and salary regulations for the judges. The power of constitutional review that the judiciary is vested with ensures that checks and balances is adequately exercised on both the legislature and the executive. While the judiciary is to act against any over-stepping of the limits imposed by the constitution on the two organs, the Indian model also provides an equally ingenious solution to keep the threat of judicial authoritarianism at bay. Since the composition of the Supreme Court and High Court is determined co-jointly by the President in consultation with the Judges of the Supreme Court (and High Court in the states) it allows for a counter-balance to be exercised by the executive.

3. The Amendment Procedure:

²⁷ Chandra, Bipan (2000) 'India After Independence: 1947-2000', New Delhi: Penguin. P.55.

²⁸ Khosla, Madhav (2012) 'The Indian Constitution'. New Delhi: Oxford University. P.25

²⁹ Austin, Granville (1999) 'The Indian Constitution: Cornerstone of A Nation', Delhi: Oxford University Press. P. 171.

While allowing the judiciary to have the final say in the interpretation of the constitution, the Constituent Assembly also enlisted the way in which the constitution can be amended to suit the needs of the time by the Parliament. Ambedkar asserted in the Constituent Assembly itself that “the principles embodied in the constitution are the views of the present generation”³⁰ and may be found unsuitable in the future. In such an eventuality, therefore, the future generation can make suitable adjustments to the constitution. However, the constitution makers did not provide for amendment through simple majority for the entire constitution. According to Ambedkar, deviating from the extremely flexible model of the Canadian constitution or the extremely rigid model of the American constitution, the Indian constitution has provided the most facile procedure for amending the Constitution. While certain parts of the constitution may be amended by a simple majority, some require a majority of the total membership of the house and two third of members sitting and voting and certain other section must be ratified by one half of the states in addition to the two-thirds majority. For changes such as formation of new states, alteration of state boundaries, changing the names of states, citizenship matters, delimitation of constituencies, quorum of Parliament, privileges and immunities of members of Parliament, salaries and perks of the MPs, rules of procedure in each House of parliament, continuance of English as official language, appointment of Judges and their salaries, allowances and jurisdiction of Supreme Court, creation and abolition of Upper Chamber, creation of legislature and Council of Ministers for Union Territories, Official languages and changes in Second, Fifth and Sixth Schedules only a simple majority is required. As far the requirement of two-thirds majority is concerned, almost all section can be amended with this strength. However, the sections that pertain to the federal structure of the country require ratification by one-half of the states and these are: manner of election of the President, extent of executive powers of the Union and the States, the Supreme Court and the High Courts, distinction of legislative powers between the Union and the States, any of the lists under seventh schedule, representation of the states in Parliament and provisions of Article 368.

In replying to criticisms from members of the Constituent Assembly like B. N. Rau, P. S. Deshmukh,, H. V. Kamath, Mahavir Tyagi among others who believed that insisting on two-thirds majority for amendment is too rigid within the federal scheme, Ambedkar in his concluding address to the Constituent Assembly pointed out that if those who are dissatisfied with the constitution “cannot obtain even a two-third majority in the Parliament elected on adult franchise in their favor, their dissatisfaction with the Constitution cannot be deemed to be shared by the general public”³¹

³⁰ Ambedkar quoted in Khosla, Madhav (2012) ‘The Indian Constitution’. New Delhi: Oxford University. P.xviii

³¹ Ambedkar quoted in Basu, Durga Das (2006) ‘Introduction to the Constitution of India’, New Delhi: Wadhwa’s Legal Classics. P. 154.

Ambedkar believed that the constitution that was drafted enabled it to face the “both the grievances of everyday life and the troubles of extraordinary times”³² and the prediction of Ambedkar has been proved to be true due to the resilient nature of the Indian constitution, which makes it a living document.

4. Affirmative Action

The question of providing affirmative action for the minorities had been a prickly issue for the Constituent Assembly. As discussed earlier, in the Constituent Assembly debates, the term minorities encompassed religious minorities, backward castes and tribals. While moving the Objectives Resolution, Nehru had made it clear that special measures would have to be taken in favor of minorities, backward and tribal areas and depressed and other backward classes. The conscious usage of the word ‘class’ by Nehru and its subsequent addition in the constitutional provisions “reflected the leftist inspiration of Nehru and others, and a widespread idea that India had to move away from caste-like organization”³³. However, the reality of a caste divided India was strongly emphasized by Ambedkar and therefore provisions for eradicating untouchability, reservations in legislative bodies and education and job quota for empowering the scheduled castes are found in the Indian constitution. While political reservation was provided to the backward castes and tribals, no such provisions were made for religious minorities. Since the system of separate electorate was seen as the seeds of communal tensions leading eventually to the partition of the country, the possibility of having reserved seats for separate communities was viewed with extreme suspicion. In fact, the sub-committee on minorities resisted the idea of having separate representation of the Scheduled castes based on the argument that they were a part of the Hindu community. It is noteworthy, therefore, that when the Constituent Assembly eventually established a system of reserved seats, it was for a duration of ten years.

The Indian constitution clearly lays down the principles of non-discrimination and equal opportunity for all citizens. While Article 14 lays down equality before law and equal protection of law; Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth; Article 16 lays down equality of opportunity in matters of public employment. Taken together, articles 14-16 “enshrine the principle of equality and absence of discrimination.”³⁴

³² Khosla, Madhav (2012) ‘The Indian Constitution’. New Delhi: Oxford University. P.xvii

³³ Jaffrelot, Christophe (2008) ‘Containing the Lower Castes: The Constituent Assembly and the Reservation Policy’ In Rajeev Bhargava (ed.) ‘Politics And Ethics Of The Indian Constitution’, Delhi: Oxford University Press. P 261.

³⁴ Basu, Durga Das (2006) ‘Introduction to the Constitution of India’, New Delhi: Wadhwa’s Legal Classics. P. 91.

Furthermore, Article 17 clearly lays down that untouchability is prohibited by law and punishable under law.

Ashok Acharya lays down that the Indian Constitution follows a threefold categorization while dealing with affirmative action (acronym used by Acharya as AA) for the backward classes:

“first are reservations- and in the sense used here they denote a broader category than AA- which cover (a) special representation rights of SCs and STs by way of reserved seats in legislatures, and (b) quotas in government jobs and educational institutions... Second, preferences target a few groups- SCs, STs, and women with regard to provision of certain expenditures, services and ameliorative schemes such as scholarships, grants, loans, land allotments, health care and legal aid...Third, certain preferences take the form of special protections that safeguard vulnerable groups from oppression and exploitation, like measures to prohibit forced labor and others.”³⁵

The Indian model of affirmative action is unique as it is based not only on the liberal ideas of equality as non-discrimination and equal opportunity but also because it considers the ‘group disadvantage argument’ as equally valid. While recognizing that the state has to enable certain categories of people, members of the Constituent Assembly demonstrated their sensitivity to historic injustices done on the basis of ascriptive identities and attempted to rectify these. However, scholars like Jeffrelot have pointed out how the Constituent Assembly refrained from widening the ambit of depressed classes to include the lower caste and therefore, the mission to achieve social transformation remained incomplete.

5. Secularism:

As the Constituent Assembly stood witnessing the partition of the country on religious lines, the path that India choose was to establish itself as a secular country. According to Bipan Chandra, secularism in India is not a replica of the Western formulation but has evolved “as a part of the struggle of nationalist forces against communal forces that wanted to use religion for political purposes and divide the emerging nation on the basis of religion.”³⁶ While secularism remained a uncontroversial issue for the members, what remained perplexing was the kind of secularism that the Indian constitution should advocate.

³⁵ Acharya, Ashok (2008) *Affirmative Action for Disadvantaged Groups: A Cross-Constitutional study of India and the US* In Rajeev Bhargava (ed.) ‘Politics And Ethics Of The Indian Constitution’, Delhi: Oxford University Press. P. 270.

³⁶ Chandra, Bipan (2000) ‘India After Independence: 1947-2000’, New Delhi: Penguin. P.48.

When the Constituent Assembly was inserting provisions to entrench secularism as a political principle for the newly independent country, it had two models to fall back upon: “one derived primarily from America and the other from the experiences of countries such as Britain, Germany and Sweden. The former combined disestablishment with the policy of separation, while the latter continued with the practice of an established religion even as it simultaneously extended the liberties granted to other non-recognized faiths.”³⁷ Deviating from both these models, India established its own model of secularism that is driven by “endorsing the principle of non-establishment of religion but without advocating the separation of religion from politics.”³⁸

Thus, while the Indian state does not give priority to any religion, it also allows religious denominations access to public resources and participation in public life. Articles 25-28 enumerating freedom of conscience and free profession, practice and propagation of religion forms the core of Indian secularism. While the state cannot discriminate amongst religions, it can exercise regulations on grounds of public order, morality and health. This, according to Mahajan, has given the Indian state fairly extensive powers to regulate religious activities and non-religious affairs of religious institutions.

The unique form of Indian secularism that was devised after prolonged debates in the Constituent Assembly was necessitated by three important considerations: first, of providing an assurance to the religious minorities in the aftermath of the partition that they were to be equal citizens in this country; second, an understanding of the self as constituted by several elements, one of which is religion, and therefore religion has a public presence and; finally, religion as a form of collective and associational life cannot be left aside from the purview of state action.³⁹ The conception of secularism has undertaken drastic transformation through the intervention of the Constituent Assembly of India. While the West understood it as separation of state from matters of religion, the constitution makers of India understood that religion remains central to identity and therefore to attempt such a separation was bound to be fraught with failure in the Indian context. In effect, what the Constituent Assembly of India did was to re-conceptualize the idea of secularism itself and added a different dimension to it.

FORMATION OF THE CONSTITUENT ASSEMBLY OF INDIA

³⁷ Mahajan, Gurpreet (2008) *Religion and the Indian Constitution: Questions of Separation and Equality* In Rajeev Bhargava (ed.) *Politics And Ethics Of The Indian Constitution*, Delhi: Oxford University Press. P 300.

³⁸ Ibid, p.301.

³⁹ Mahajan, Gurpreet (2008) *Religion and the Indian Constitution: Questions of Separation and Equality* In Rajeev Bhargava (ed.) *Politics And Ethics Of The Indian Constitution*, Delhi: Oxford University Press. p. 304

When the Constituent Assembly met for the first time on 9 December, 1946 it was fulfilling an aspiration of a nation that had demanded the formation of such an assembly since 1924. On 8 February 1924, Motilal Nehru had introduced the 'National Demand' in the Central Legislative Assembly insisting that a representative Round table conference be summoned to facilitate a scheme of constitution for India. Though this resolution was passed with a large majority in the Central Legislative Assembly, it received a contemptuous reaction from the Secretary of State, Lord Birkenhead who dared the Indians if they could produce such a constitution at all. Notwithstanding the demand by Indians to formulate their own Constitution, the colonial government appointed the Indian Statutory Commission or the Simon Commission on 8 November 1927 to ascertain if India was prepared for further constitutional changes. The Commission caused great furor in the country due to its exclusive White composition and met with boycotts wherever it went on its arrival in India. It was in response to this twin challenge posed by Lord Birkenhead's provocation and the appointment of the Simon Commission that the famous Motilal Nehru Committee was constituted by the All Party Conference in May 1928 'to determine the principles of the Constitution of India.'⁴⁰ The Nehru Report which submitted a draft Constitution for India on 10 August 1928 laid down several provisions which were later incorporated into the Constitution. The bone of contention in the Report was, however, the proposed dominion status for India which was unacceptable to the radical younger group led by Jawaharlal Nehru, Subhash Chandra Bose and Satyamurthi, who demanded 'Complete Independence'. Moreover, the Muslim League was also unhappy with the Nehru report because "it rejected the principle of separate communal electorates on which previous constitutional reforms had been based. Seats would be reserved for Muslims at the centre and in provinces in which they were in a minority, but not in those where they had a numerical majority."⁴¹ While the Muslim League withdrew support to the report, the objections put forth by the younger radicals forced Gandhi to propose a compromise solution in the Calcutta Session of the Congress in December 1928, adopting the Nehru Report on the conditionality that if the government did not accept it by 1929 the Congress would launch a non-cooperation movement demanding complete independence. As the government failed to make any progress on the demands being made, the Congress in the Lahore session of 1929 declared 'Purna Swaraj' as its goal and launched the Civil Disobedience Movement in April 1930. While it was becoming clear that nothing short of self determination would be accepted in India, the idea of a Constituent Assembly was first mooted by Jawaharlal Nehru in 1933 and after 1943 it became the official stand of the Congress to accept nothing short of a Constituent Assembly to chart out the future of the country. The Congress Working Committee, while refusing to accept the

⁴⁰ Bipan Chandra (2000) 'India After Independence: 1947-2000', New Delhi: Penguin, p. 35.

⁴¹ Bipan Chandra (2001) 'India's Struggle For Independence', New Delhi: Penguin, p. 263

Proposals for Indian Constitutional Reform of 1933, stated in 1934 that, “The only satisfactory alternative to the White paper is a Constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible...”⁴²

At the Congress sessions of Wardha (1936), Faizpur (1937), Haripura (1938) and Tripuri (1939) this position was re-asserted. Even in the Central Legislative Assembly, a resolution was introduced on 17 September 1937 by S. Satyamurthi who recommended that the Government of India Act 1935 be replaced with a constitution framed by a Constituent Assembly. Increasingly, there was a growing consensus in Britain as well that India as an independent nation should be let free to frame its own Constitution. “In a meeting with Nehru in 1938 in London, Sir Stafford Cripps and Clement Attlee had agreed on the idea of an Indian Constituent Assembly elected on the basis of universal adult franchise, drafting its own constitution.”⁴³ However, as the war approached “British policy towards India was caught between two polarities: Churchillian negativism and Crippsian constructiveness.”⁴⁴ The elections of May 1940 had brought a coalition government to power in Britain which was to be steered by Winston Churchill as the Prime Minister. On the eve of the World War II, when the strategic location of India in the face of the Nazi advance struck fear in to the hearts of the colonial rulers, an offer was extended by Viceroy Linlithgow in 1940 which came to be called as the ‘August Offer’. It accepted that the framing of a new Constitution for India should *primarily* be, and therefore not solely, the responsibility of the Indians. Moreover, it did not spell out the ways in which the proposed body was to be formed. Having failed to earn the good will of the Congress as well as the Muslim league, the August Offer was turned down and the phase of individual Civil Disobedience began. Meanwhile, the Japanese progress in Southeast Asia demanded Indian cooperation toward the colonial government. Keeping in mind their vested interest, Churchill dispatched the Cripps Mission in March 1942 to negotiate with the Indian Political Parties. While Cripps made it clear that Indians would have the sole responsibility of writing their own Constitution, it failed to provide any assurance on immediate self government and was therefore rejected by Congress leaders. Gandhi even criticized the Mission by saying that its offer of Dominion Status within the Commonwealth was a ‘post dated cheque drawn on a crashing bank.’ The mission was also rejected by the Muslim League because it did not recognize the Muslims’ right to self-determination and therefore, rejected the idea of partition. With the failure of the Cripps Mission, the struggle for independence led by the Congress entered the next phase where the demand to ‘Quit India’ was accompanied with the resolution that a Constituent Assembly would be evolved from the

⁴² Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press.p. 2

⁴³ Shekhar Bandopadhyay (2004) ‘From Plassey to Partition’ New Delhi: Orient Longman, p. 439.

⁴⁴ Shekhar Bandopadhyay (2004) ‘From Plassey to Partition’ New Delhi: Orient Longman p.439

Provisional Government of Free India which would lay down the constitutional provisions for the country.

As the war came to an end, there was a growing recognition that the day for grant of independence to India was not far away. In July 1945, the Labour party came to power in Britain and fresh attempts were initiated to resolve the Indian issue. The Governor General, Lord Wavell convened a conference at Shimla which tried to resolve the differences among the Congress and the League and promised to convene a constitution making body as soon as possible. However, the conference failed and the British cabinet decided to send three of its own members to resolve the Indian problem. On 24 March 1946, the Cabinet Mission arrived in India aiming to discuss two issues- “the principles and procedures for the framing of a new constitution for granting independence, and the formation of an interim government based on widest possible agreement among Indian political parties.”⁴⁵ The Cabinet Mission which comprised of Lord Pethick-Lawrence, Sir Stafford Cripps and Lord A.V. Alexander failed in making the two parties concur and reach an agreement, and therefore announced their own proposals on 16 May 1946. The Cabinet Mission had already clarified that its aim was not lay out the future constitution of India but to put in place machinery through which Indians could write a constitution for themselves. The mission realised that though Universal Adult Franchise would be the most appropriate formulation to such an end it would deal to inordinate delay and, therefore, recommended that the newly elected legislative assemblies of the provinces should elect the members of the Constituent Assembly. While one representative would be elected for a million population, the Sikh and Muslim legislators were to elect their quota on the basis of their population. The Cabinet Mission proposed a confederation, a three tier structure, where the Union government would be responsible for affairs such as defence, revenue, and foreign affairs and communications. At each level of the confederation a separate constitution could be adopted, which by implication provided the space for autonomy demanded by the League. The three-tiered Constituent Assembly structure proposed by the Mission comprised of sections of states drawn from British India:

- Section A would consist of Hindu majority states such as Madras, United Province, Orissa, Bombay, Bihar and Central Provinces.
- Section B which would comprise of Muslim majority provinces of the north-west such as, Punjab, Sindh and N.W.F.P
- Section C would include Assam and Bengal.

⁴⁵ Ibid. p. 449.

Overall, from these three sections of British India a maximum of 292 members were to be elected through single transferable vote. Indian States were to be represented through 93 members and Chief Commissioner's Provinces through 4 members. Thus, the number of the proposed structure stood at 389 members.

The Cabinet Mission scheme further proposed that the Constituent Assembly after electing the chairman and other officials, complete the formalities and split into the three groups and work out separate constitutions. Only after the separate constitutions were formulated the Constituent Assembly was to meet as an entity to deliberate and formulate a constitution for the Union of India.

While both the Congress and the League had problems with the Plan, the Congress decided to move ahead with the Constituent Assembly. Though the League continued its opposition to the Plan, it decided to contest the elections. Since Constituent Assembly was constituted through indirect election, the results and composition of the state legislative assemblies of 1945 were reflected in the Constituent Assembly as well. The Congress captured 208 seats, while the Muslim League could garner 73 seats and the remaining 15 seats went to other parties and interest groups like those representing landlord and Commerce, the Panthik Akali Party, the Unionist Party, the Krishok Praja Party, the Scheduled Castes Federation, the Communist Party and the Sahid Jirga.

Paper No. : Women, Governance and Politics

Module : Political Participation as tool of Women's Empowerment

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(B) Description of Module

Items	Description of Module
Subject Name	Women's Studies
Paper Name	Women, Governance & Politics
Module Name/ Title, description	Political Participation as tool of Women's Empowerment
Module ID	Paper-11, Module-
Pre-requisites	The Reader is expected to have the preliminary knowledge of Political Participation and Women Empowerment
Objectives	To study the current status of women empowerment and transformation through participation politically.
Keywords	Empowerment, Participation, Authority, Citizenship, Development, Decentralization

POLITICAL PARTICIPATION AS TOOL OF WOMEN'S EMPOWERMENT

2.1 Participation as a tool

Political Participation can be understood as actions on the part of individuals which either directly or indirectly affect the authoritative allocation of scarce resources, either material or symbolic, in their community or between communities either within or outside their society.

Within a wide range of countries there is a uniformly high correlation between citizen's socio-economic resources and their psychological involvement with politics-that is their interest in politics and their inclination to discuss political questions. But there is a much lower and more variable correlation between 'citizens' socio-economic resources and their actual, physical participation. Conversely, particular groups may be legally excluded from the franchise- like conscientious objectors after the First World War in Britain for instance, or women in Spain before 1977.

Although 'the women questions' has often figured as a political issue since the middle of the nineteenth century, the question of the political significance of gender only became an issue in the study of politics in the 1970s.

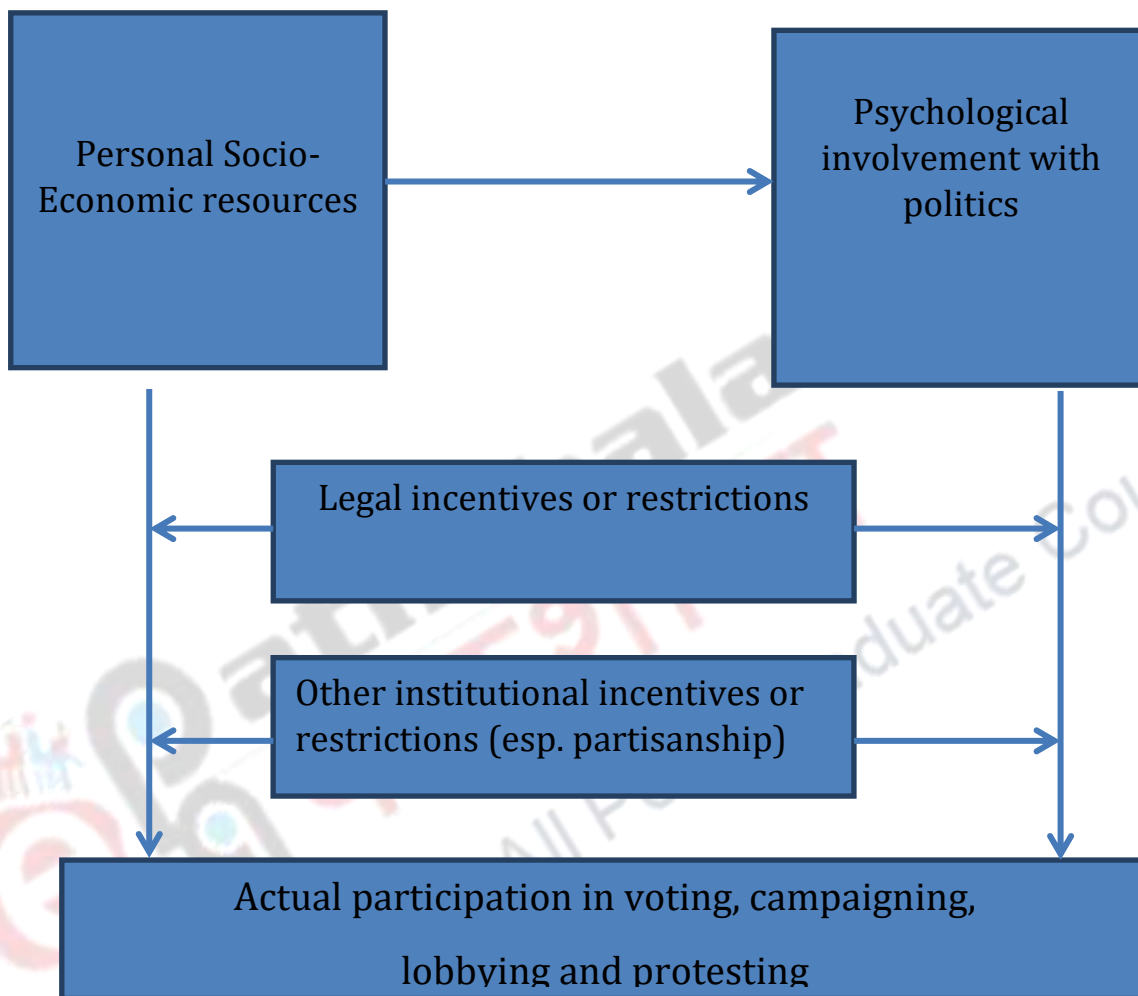


Fig. 1 A general model of participation

It arose partly in response to the women's studies movement which first emerged as part of the Women's Liberation Movement (WLM) which began in the 1960s. Prior to that, the study of women and politics was not regarded as important enough to warrant any special attention. During the 1970s these prevailing views were challenged and a wide-ranging debate was generated which continued

throughout the 1980s. It has evolved from an initial and modest concern with mapping women's political behavior using traditional categories of analysis –the '**add women and stir**' approach to a challenging critique of the very basis of political science. Women have played key roles in national liberation struggles and in the great political revolutions of modern times. There is a robust and growing women liberation movement in India. There are also data which indicate that women who are in paid employment, full or part time, participate more frequently than full-time housewives. This suggests that where women are economically integrated they are more likely to be politically integrated, a finding that has been replicated in a number of countries.



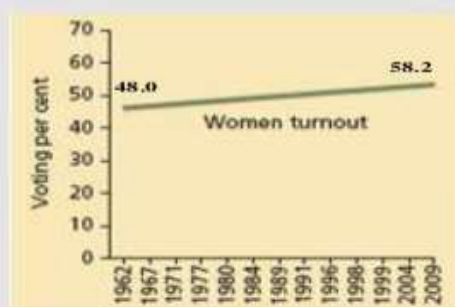
The Danish political scientist, Drude Dahlerup, studied the changes brought about when women became a sizable minority in a national legislature. She tested the notion that only when the minority of women in legislatures reaches a certain size (critical mass) the presence of women makes a difference. She hypothesized that one would expect to find six different kinds of change:

1. In reactions to women politicians
2. In the performance and efficiency of the women politicians
3. In the political culture

4. In the political discourse
5. In policy (Political decisions)
6. In the empowerment of women

Women should be able to act on the strength of being women and not merely despite being women. Democracy and the constitutions have provided women in most of the countries with political freedom and rights to plan for their own future and pursue their own interests. According to the Jakarta Declaration, "*Involvement of women in the political arena and in decision-making roles is an important tool for empowerment as well as monitoring standards of political performance.*"

POLITICAL EMPOWERMENT



Source: Election Commission of India

- Participation of women in elections increased over the years
- Proportion of women turnout for voting (2009) – 58.2%

Election commission of India-<http://www.slideshare.net/raghurh/women-empowerment-2>

2.2 Understanding Empowerment

Before coming to the theme of Women Empowerment, let us understand the concept of Empowerment.

Empowerment means 'to invest within power'. 'Empowerment' has become a frequently used and buzz word. If essentially means, decentralized of authority and power. In other word giving voice to voiceless. Empowerment aims at getting participation of deprived sections of people in decision-making process. Unless capacity is built in these sections in reality the power is used by others rather than the section for which they are meant.

Activists want government to empower poor people including women by legislative measures and welfare programmes. Empowerment is the process by which the disempowered or powerless people can change their circumstances and begin to have control over their lives. It results in a change in the balance of power, in the living conditions and it the relationships.



2.3 Women Empowerment and Political participation

Women empowerment means equal status to women, opportunity and freedom to develop herself. The focus of empowerment is equipping women to economically independent, self-reliant, have a positive self esteem to enable them to face any difficult situation and they should be able to participate in the process of decision-making.

Women's Empowerment as a phenomenon is not something new. It has been present throughout history in almost all societies for various reasons. What is recent is the increasing realization and

recognition that empowering women is absolutely essential rather significant, for familial, societal, national and international development and progress.

The term 'Women empowerment' has become popular in the development field since 1980s. It is vividly recognized that women empowerment is essential for sustainable economic growth and reduction in poverty in developing countries. 'Empowering' women has become a frequently cited goal of development interventions. Women empowerment is central to human development. Targeted actions aimed at empowering women and righting the gender inequalities in the social and economic share, as well as in terms of social and political rights, must be taken alongside effort to en-gender the development process.



The extent of women empowerment in a country is largely determined by three factors:-

1. Economic
2. Social and
3. Political identity

The term 'empowerment' denotes women's increased control over their own lives, bodies and environment. In discussion of women's empowerment, emphasis is often placed on Women's decision making roles, their economic self-reliance and their legal rights to equal treatment, inheritance and protection against all forms of discrimination. The popular UNESCO slogan should be considered as an ideal for not only empowerment but also development of women:

"Educated a man and you educate an individual, educate a women and you educate a family".

It has been accepted that genuine commitment and efforts have to be made by each country at the government, non-government and individual levels to work, towards establishing women's empowerment as nationally and internationally discussed in UN World Conference on Women and agreed upon in the Plan of Action. A general awareness of the exploitation of women on various fronts like social, cultural, political and economic fronts has led to strong protests manifested in women's liberation movement, which emerged in the United States since the early 1970s.

Some prominent organizations associated with this movement were: National Organization for Women (NOW), Boston's Bread and Roses, Berkeley Women Liberation Group, Women's Radical Action Project, Women's Equity Action League (WEAL), National Women's Political Caucus (NWPC) and others. According to Peterson and Runyan,

'A gender-sensitive lens enables us to 'see' how the world is shaped by gendered concepts, practices and institutions...'

Feminists assert that until the condition of equal participation of women in public life is fulfilled, the concept of citizenship cannot be brought to its logical conclusion. In India a beginning in this direction has been made by making reservation of one-third of the seats in Panchayats for women. This will encourage women to join politics at grass-root level.

By and by their representation at this level can be increased to one-half, and provision can also be made for their adequate representation in legislative assemblies and parliament. The opening up of vast opportunities of higher education would prove to be instrumental to their larger representation in administration and high-profile professions. In this way the idea of equal citizenship can be fully realized from the feminist point of view.

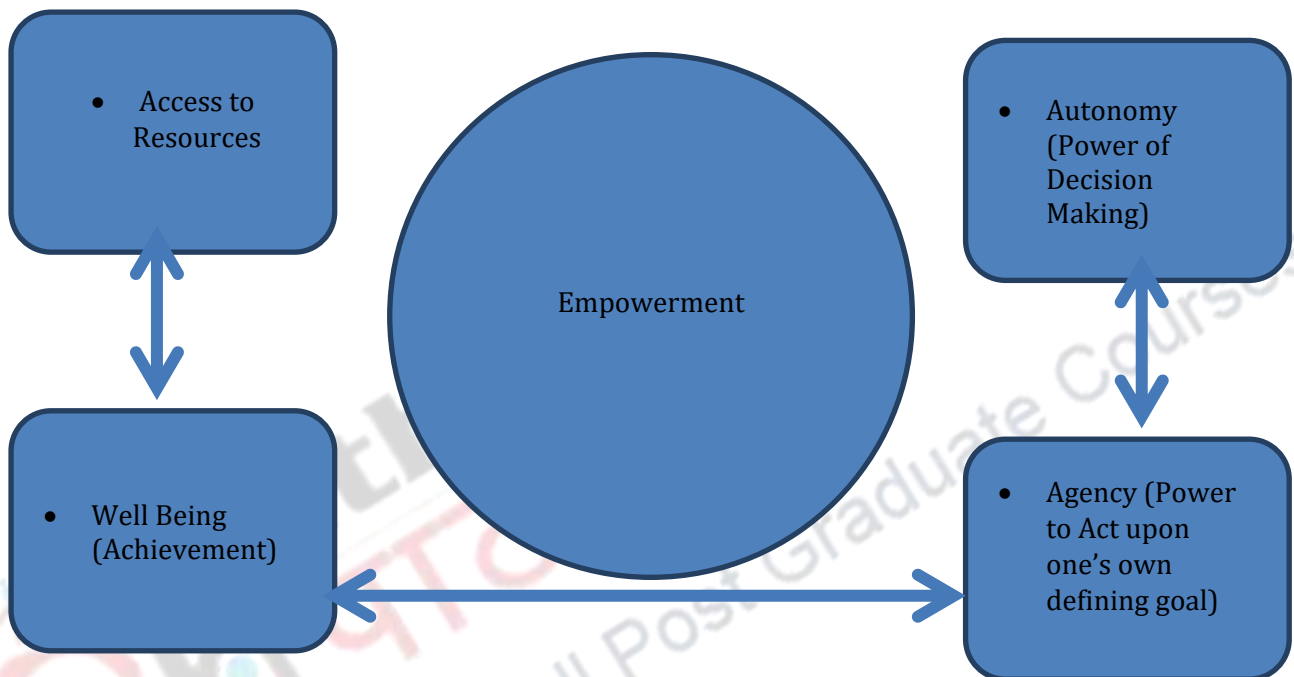


Fig.2 Four Components of Empowerment

However in practice, famous few women can be mentioned in politics such as Indira Gandhi and Margaret Thatcher. Such personalities acquiring women were strong leaders, who showed no hesitation to take firm decisions and also to use force in international conflicts. This led some to say that the only difference between men and women is that women are rarely in power, if they are, they behave like men. Similarly, men who appear compassionate or seek to negotiate away from conflict may accuse of

being 'women' like. The 'public-private dichotomy' has played a vital role for suppression of women's rights.

2.4 International Scenario

At the International Conference on Population and Development in Cairo (1994), Women's empowerment was recognized as a cornerstone for effective policies. Empowerment of women in all spheres, in particular the political sphere is critical for their advancement and the foundation of a gender-equal society.

Text Box (i):

Women's political empowerment is premised on "three fundamental and non-negotiable principles:

- (a) The equality between women and men;**
- (b) Women's right to the full development of their potentials; and**
- (c) Women's right to self-representation and self-determination."**

In empowerment, the key indeed is 'power', it is power to 'access', 'control' and make 'informed choices.' In the sphere of international politics the participation of women is still meager. However some instances can be given of outstanding women internationally, who are renowned for their achievements in politics:

- Margaret Thatcher was the first women Prime Minister of Great Britain. She has been called the 'Iron Lady' for her strong decisions.
- Sirimavo Bandaranaike became the Prime Minister of Srilanka in 1960 and was the first women Prime Minister of the World. Her daughter Chandrika Bandaranaike Kumartunga is the first women president of Srilanka.
- Golda Meir was one of the founders and the fourth Prime Minister of the state of Israel.

- Hillary Clinton is a leading candidate for the presidential election in United States in present time and earlier in 2008. She is also a famous lawyer and served as foreign secretary in US government.
- Aung San Su Kyi, is the leader of the movement for democracy in Myanmar. She has spent many years under house arrest. In 1991, she is awarded with the Nobel Peace Prize for her non-violent resistance to the military dictatorship in Myanmar. She has been released from her house arrest as a result of constant pressure from the general public.
- Benazir Bhutto was the Prime Minister of Pakistan and the first women to be elected head of a Muslim country in modern times. She was killed before an election in December, 2007 to remove her from the national politics of Pakistan.
- Begam Khaleda Zia is the first women Prime Minister of Bangladesh.
- German Chancellor Angela Merkel is also one of the strong women in contemporary international politics. By the end of 2005, Germany had elected its first women chancellor.

Happily, by the beginning of 2006, Chile and Liberia had elected their women presidents. Then in 2007 India and Argentina had the distinction of having women presidents. Srilanka, Israel, India Pakistan and Bangladesh have the record of having women Prime Minister or Head of Government. Thus, in Indian-subcontinent from ancient time, women have played important role in leadership and statesmanship. Some women have excellent record of performance in various important positions, like those in legislatures, cabinets, bureaucracy, diplomacy, journalism, legal profession, fine arts, academics and scientific research etc. This record is enough proof of the potential of women's power.

2.5 Indian context

In our country though we find anomalies in Panchayati Raj, where a woman is selected as sarpanch, it is possible that her way of working is mostly influenced by a male member of her family.



However this tendency should not be taken for granted. Looking back to the Indian history, one can find that women have played a vital role in politics. Though, before independence Indian politics is not formally well structured as it exists in contemporary period, still for understanding the journey of political empowerment of women in India, we have to take into account the contribution of the earlier empowered women. Symbolically some instances can be given in this context:

- Razia Sulatana, who ruled over Indian from 1236 to 1240 AD, was the very first ruler in Muslim history. She became one of the most powerful rulers of the Delhi Sultanate.
- Rani Lakshmibai of Jhansi organized her fight against the British conspiracy and torture. She lived a short life of 23 years only, gave arousing call to the free-princely states to be united for

the freedom of motherland. She moved the British Queen by her fierce leadership, lead the movement of 1857, but did not surrender. She died while fighting against the British rulers.

- Similarly, Rani Durgavati and Rani Ahilyabai had also played significant role in pre-independence period.
- Indira Gandhi, at age 12, she had already joined the fight for India's independence and at an advance age became the first women Prime Minister of India. But she was brutally killed by terrorists.

In modern times, the place of women in Indian politics reflects the opportunities and constraints that are associated with its democracy. Women have been key actors in the numerous social movements and non-governmental organizations that underlie India's vibrant civil society.

India's most influential, Prime Minister was Indira Gandhi, and her daughter-in-law, Sonia Gandhi, is the major force within the Congress party today. India's former president Pratibha Patil and several state leaders have been women, including Mayawati, who served four times as Chief Minister of Uttar Pradesh.



<http://www.newindianexpress.com/thesundaystandard/It%E2%80%99s-Official-Women-are-Smarter-Than-Men-Even-in-the-LokSabha/2014/11/16/article2524932.ece>

In India, numerous steps have been undertaken to provide constitutional safeguards and institutional framework for activities of women welfare. There have been various shifts in policy approaches during the last 40 years from the concept of 'welfare', in the 1970s to 'development' in 1980s, now to 'empowerment' in the '1990s and afterwards.

- The Government of India has declared the year 2001 as year for the Empowerment of women. The concern for women's political equality in India first emerged as political issue during the national movement in which women were active participants. Act of 1935, provided with the right to vote to all women over 21 years if they fulfilled the conditions of property and education.
- In Post-Independence period, women continued to play a significant role in less conventional political activities such as environmental movement, anti-alcohol agitation and peace movements.
- It was only with the setting up of the Committee on the Status of Women in India (CSWI) in September, 1971 that the demand for greater representation of women in political institutions in India was taken up in a systematic way.

- The CSWI Report "Towards Equality" (1974) reveals that political parties have "tended to see the women voters and citizens as appendages of the males...." It also refers to the 'tokenism' involved in having a few women's rights on account of their dependent and minority status.

In Indian scenario, with women's concerns gaining prominence in both governmental and non-governmental organizations during eighties (1980s), women's issues became an important agenda for all political parties. While the subjugation of women is gaining attention everywhere, women's organizations will be forced to choose their political allies within the existing political set up.



Over a million women are represented in the three-tiered panchayats. With the growth of a multi-party system since the early 1990s, political parties have increasingly sought women's electoral support. And yet most women continue to lack effective political power in parties and the state. Women's access to power is still mediated by their relationship to male kin, and is often indirect and symbolic. Parties have done little to provide women access to the networks and resources that would enable them to ascent the ranks of party hierarchies.

Hopefully, the continued administrative decentralization through programs like NRHM, have demonstrated the Government of India's commitment to increasing the political participation of marginalized groups, especially poor women. The bureaucratic structure of India is very complex and

messy and because of that we find lot of departmentalization in ministries and various administrative posts. Women here can play a very effective role and in fact women have been doing so but the level of participation has decreased.



Further the 73rd and 74th amendments to the Indian Constitution in 1992 and 1993, provided with 33 percent reservation for women in panchayats and urban local bodies. Women have acquired resources and the development of skills, which have enabled them to excel in managing development. They have been able to articulate their priorities for basic needs and amenities such as food, drinking water, schools, healthcare centres, roads, and security. Some instances can be given to prove that how political participation works as tool of women's empowerment:

- Two detailed village surveys carried out in two districts, Birbhum in West Bengal and Udaipur in Rajasthan; found that women invest more than men in projects that meet community needs, which are water and roads in West Bengal and water in Rajasthan. In West Bengal, the panchayats are authorized to establish informal education centres. In Rajasthan, the panchayats can spend money on local infrastructure.

- In rural Punjab, over 4500 women heading 2446 panchayats have a common minimum programme: to work for uplift of weaker sections of society, adult literacy, pensions for aged and the poor, better education and healthcare facilities, and the development of their villages in their five-year term.
- Another success story is the Belandur gram panchayat in Karnataka, where six out of twelve members are women. It is estimated that collections of taxes have risen more than seven times. With the devolution of responsibility to the panchayats, the cost of the delivery of government services has gone down significantly, and a system of transparency and accountability has developed.
- Women panchayat members have also taken up questions of gender inequality in many places. In UP, 100 village leaders have banned the practice of giving or demanding dowry.
- In Akola district in Maharashtra, an all-women panchayat had the only liquor shop of the village closed down as it was resulting in the men of the village returning home drunk and beating their wives.
- In Madhya Pradesh, the Institute of Social Sciences, New Delhi, awarded a woman sarpanch in the Jamunia taluk in district Sehore the “Outstanding Woman Panchayat Leader Award” for 2003. Her achievements included providing women with land rights, distributing land to ninety-five couples under a housing scheme, and ensuring that the documents were in woman’s name.
- In Orissa, the Narayanpur gram panchayat under the leadership of its sarpanch Rajehwari Rao passed a resolution banning child marriage. Even families who had

performed child marriages before the ban was put in place were not spared- the adults responsible were required to pay a fine of Rs. 1000, to be used for the children's education.

The enactment of the 73rd and 74th Constitutional Amendments represented a milestone in the process of decentralization. The 73rd Amendment Act made the Gram Sabha, comprising all adult villagers, the pillar stone of village governance. The amendments contain provisions for the reservations of 33 percent of elective seats for women in the village, block and district councils and an equal number in the urban municipal councils. Consequently, an estimated five million women entered local politics directly or indirectly in the last ten years. India's population consists of 15% Scheduled Castes and 7.5%, Scheduled Tribes. As a result, 22.5% of seats are reserved for them, out of which one-third are for women. The reservation of seats in each state is proportional to their population. The reservation of seats for women, SCs and STs applies also to office bearers, so that one-third of sarpanch must be women. These amendments, as a strategy of affirmative action, served as a major breakthrough towards ensuring women's equal access and increased participation in political power structures.



2.6 Conclusion

Women empowerment is one of the momentous issues of contemporary development policies in developing countries. Society should take initiative to create climate in which there is no gender discrimination and women have full opportunities of self-decision making and participating in political life of the country with the sense of equality. The past two decades have witnessed two new patterns:

1. Attempts by political parties to foster closer ties to social movements and non-governmental organizations.
2. Attempt by some feminists to work with parties and the state.

The most significant example of collaboration between women's organizations and the state has occurred around the issue of reservations for women in local government. For increasing women's political participation, gender quotes has been recognized as a significant measure. In this context, statement made by Sushma Swaraj can be quoted here,

'We have tried reserved parliamentary seats for village panchayats, and from my experience, this is a very effective measure. We have reserved 33% of the seats in panchayats for women. Before this policy, we did not have women prepared for leadership positions, but as a result of the policy, political parties have to search for women. We got a mixed response. Some men did not want women to come forward, so they put forward their wives, sisters-in-law and mothers. But talented, educated women also came forward. Now the old argument that there are no able women to become candidates for legislature assemblies no longer holds. Because now the women serving as mayors and as chairman of the municipal committees will be groomed as prospective candidates for parliament. More and more

women have been elected to panchayats and this is a valuable pool of women for legislative assemblies. Thus the reservation of seats is a very effective measure, especially in countries such as India where there is such meager representation of women in parliament. In India, only 6.5 percent of parliamentarians, 39 members of a house of 543, are women. A bill for reservation of seats for women in parliament is also pending; discussions are going. It was not yet passed, but I think it will see the light of day.'



Women empowerment which is declared as Millennium Development Goal by UNDP could be achieved only when all concerned bodies will work in cooperation. Empowering Women politically is an important end in itself not only as human right but also as having the potential to enhanced human wellbeing.

2.7 Summary

- The question of the political significance of gender became an issue in the study of politics in the 1970s.
- The extent of women empowerment in a country is largely determined by three factors: Economic, Social and Political identity.
- Empowerment aims at getting participation of deprived sections of people in decision-making process.
- Women Empowerment means equal status to women, opportunity and freedom to develop herself.
- Empowerment of women in all spheres, particularly in the political sphere is critical for their advancement and foundation of a gender-equal society.
- 73rd and 74th Constitutional Amendments have strengthened women's political participation and democracy in India.
- At the International Conference on Population and Development in Cairo (1994), Women's empowerment was recognized as a cornerstone for effective policies.
- For increasing women's political participation, gender quotes has been recognized as a significant measure.

Paper-11 Module-17

Quota Politics and Gender

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Description of Module

Subject Name	Women's Studies
Paper Name	Women, Governance and Politics
Module Name/Title	Quota Politics and Gender
Module Id	Paper-11 Module-17
Pre-requisites	The reader shall have an interest in understanding the issue of women's representation.
Objectives	To orient the reader towards how gender plays as a category in the dynamics of the quota politics.
Keywords	reservation, quota, women's reservation, gender

QUOTA POLITICS AND GENDER

INTRODUCTION

Promoting citizenship and equality have been the central concerns of all newly formed liberal democracies, particularly with a multicultural or plural society, based on hierarchies. Positive discrimination in the form of reservations implying the creation of statutory quotas for specific groups was believed to provide a solution.

In the Indian context, however, the subject of reservations has remained a 'critical issue in the political history of 20th century India.'¹ In the 21st century, it still continues to be so, more so in the context of reservations for women. In the words of Mary E John, "...The fact that a subject like reservations carries such a powerful emotive charge, especially among the middle classes is yet another reason why a special effort is needed to uncover the many latent fears and tensions that may be implicated."²

Quota system is one of the modes of positive discrimination. "A quota is a numerical goal or requirement for the hiring or admission of the members of specified groups within a certain time and until a certain percentage is reached."³

Gender quota in legislative bodies has been an issue surrounded with controversy. There have also been proposals of gender quotas within the political parties themselves as an alternative to gender quotas in legislative bodies. The Nordic countries were the first ones to adopt gender quotas in political parties as the policy directed towards positive action for women in the 1970s. In Germany too, gender quotas have been operated at the level of political parties. Through the 1990s, twelve countries in the Latin America adopted national quotas for women in parliament. Even some African countries and the East Asian country Taiwan have adopted gender quotas. Gender quotas have been seen as an effective way of redressing gender imbalance, and have been justified on grounds of gender justice and equality. However, this proposal also has been the ground for intense debate in the case of India.

TYPES OF QUOTAS

The two most common types of electoral gender quotas are candidate quotas and reserved quotas.

¹ John, Mary E, "Alternative Modernities? Reservations and Women's Movement in 20th Century India", *Economic and Political Weekly*, Vol.35, No. 43/44, (Oct. 21- Nov. 3, 2000), p 3822.

² *Ibid.*

³ Nickel, James M., "Preferential Policies in Hiring and Admissions: A Jurisprudential Approach", *Columbia Law Review*, Vol. 75, No. 534, 1975.

Candidate Quota

Candidate quotas applies to the lists of candidates for election given by political parties. It specifies the minimum percentage of candidates for election that must be women. It could be done in two ways-

- (i) Legal candidate quotas which may be laid down by the Constitution, in electoral laws or in the laws regulating political parties. Enacted by legislation, such a quota may force all the political parties to nominate/ select women as constituting the required percentage of electoral candidates.
- (ii) Voluntary party quotas which may be adopted voluntarily by political parties.

Reserved Quota

In this system, a certain number of seats in a legislature are set aside for women among the representatives. This may be done by specifying in the Constitution or enforcement through legislation. A constitutionally provided electoral quota for women is found in Nepal, Burkina Faso, the Philippines and Uganda. Legislative quotas are provided in many parts of Latin America, Belgium, Bosnia-Herzegovina, Serbia and Sudan.

Reserved seats may be filled by appointment or by election. Filling the reserved seats by election implies counting them among the electoral quotas. This is practiced in Uganda (where 56 seats are reserved for women, one woman in each district to be elected by a special electorate), Rwanda (where 30% of the seats are reserved for women by the Constitution, where women are elected by a special procedure), and Tanzania (where 20% of the seats are reserved for women, which are allocated to the political parties in proportion to the number of parliamentary seats won in an election). Reserved seats can also be filled by appointment. Examples of such a system being practiced are such as in Kenya and some Arab states.

Gender-neutral quotas

Instead of being gender-specific, as the abovementioned quota systems are, quotas can be gender-neutral. Quotas for women require a minimum number or percentage of women. Gender-neutral quota provisions set a minimum and maximum for both sexes, typically no more than 60 per cent and no less than 40 per cent of positions for either sex. In the case of gender-neutral quota provisions, the quota sets a maximum for both sexes, which quotas for women do not.⁴ In countries with a high level of female parliamentarians, such as the Scandinavian countries, gender-neutral quotas have in a few cases led to men moving up on lists in order to fulfill the quota provisions.⁵ Gender neutral quota

⁴ Dahlerup, Drude, 'Increasing Women's Political Representation: New Trends in Gender Quotas', in International IDEA, *Women in Parliament: Beyond Numbers. A Revised Edition* (Stockholm: International IDEA), 2005, p 142.

⁵ Freidenvall, Lenita, Dahlerup, Drude and Skjeie, Hege, 'The Nordic Countries: An Incremental Model', in Drude Dahlerup (ed.), *Women, Quotas and Politics*, Routledge, New York and London, 2006, p 69.

rules are sometimes used as a strategic choice in order to refute the arguments of opponents of quotas that they are discriminatory against men.

1.3 DEBATE ON QUOTA

Arguments in defense of Gender Quotas

Anne Phillips has divided the arguments relating to proportion of women elected into four groups (1) those who dwell on the role model successful women politicians offer; (2) those that appeal to principles of justice between the sexes; (3) those that identify particular interests of women that would be otherwise overlooked; and (4) those that stress women's different relationship to politics and the way their presence will enhance the quality of political life.⁶ The following arguments have been made in favour of quotas for women, largely falling within Phillips four groups of arguments:

- (a) It has been argued that 'institutionalised inequalities' require 'institutionalised counter measures'.⁷
- (b) The question of women's under-representation in legislative bodies is also cited as one of the causes why gender quotas are considered to be necessary. As Kumud Sharma writes, "The number of women Parliamentarians has never exceeded more than seven per cent. The protagonists of reservation for women argue that the male dominated political system refuses to provide space for women, and reservation of seats will help in creating political space for women and will also lead to the social mobilisation of women. Women are arguing for parity and not charity and see reservation was a vehicle for social justice".⁸
- (c) It has been argued that only women can speak on behalf of women, expressing their wishes and concerns, and the diversity of their views. Women as representatives is thus expected to bring women's issues and perspectives into focus in the political space, and affect decision-making positively.
- (d) It is contended that 'fewer the women in public life the lesser the likelihood of distinctively female values, priorities and characteristics finding expression. Hence women's involvement in political process and decision-making in greater numbers can make a significant difference.' A faith in 'women's moral superiority in providing clean politics' is expressed.

Arguments against Gender Quotas

- (a) Firstly, those arguing against gender quotas called it 'inherently undemocratic and against the principle of inequality'.

⁶ Phillips, Anne, "Quotas for Women", in Dhanda, Meena (ed.), *Reservations for Women*, Women Unlimited, 2008, p 87.

⁷ Mazumdar, Vina, "Historical Soundings", *Seminar*, No. 457, September 1997, p 19.

⁸ Sharma, Kumud, "Power vs. Representation: Feminist Dilemmas, Ambivalent State and the Debate on Reservation for Women in India", CWDS Occasional Paper, 1998, p 14.

- (b) As Dhanda has pointed out, “It (gender quotas) raises troubling doubts about what it means to be ‘represented’.⁹ There have been doubts regarding whether the quotas would sufficiently ensure women’s issues to be taken up. Whether the women representatives would be able to and willing to voice out women’s concerns in the Parliament?”
- (c) It has been argued that gender quotas do not take into account the differences between women. In the Indian context, this argument has been extended to the demand for quotas within quotas, or sub-quotas.
- (d) There have been doubts regarding the efficacy of such an intervention without necessary structural changes in the society. As Singh commented, “To try and push reforms without necessary social support is mere adventurism, mere symbolism...the damaging impact of ill-thought intervention, even if the intention is noble, is no less serious than inaction and paralysis.”¹⁰
- (e) ‘Questions have been raised against reservation as to whether an increase in numerical strength of women in the political process and decision making bodies automatically leads to a qualitative shift in power and whether women on balance pay greater attention to the concerns of women more than male politicians. Problems of tokenism, visibility, marginality etc. are often discussed in referring to women as a ‘minority’ operating in a male domain. Women’s rights and responsibilities to participate equally in political life should not however be treated as a ‘minority’ issue. The political space must belong to all citizens – women and men.’
- (f) There have been doubts about the caliber of women parliamentarians who might benefit from a quota, without having any work to show for it.
- (g) There are doubts that gender quotas will lead to women being entrapped in divisive politics, where women will be pitched against women.
- (h) Some have even referred to the problem of ‘ghettoization’ of women’s issues.
- (i) Even those like Kishwar, who are in favour of increasing women’s political participation, raise technical questions regarding the suggested procedures for instituting gender quota in legislative bodies.¹¹
- (j) There have been doubts regarding the goal of gender quotas which is construed to be just ‘mirror representation’ without any change in the power equations.
- (k) There has been skepticism regarding rise of nepotism, and tokenism; even to the extent where Kishwar explicitly raises concerns regarding ending up with a ‘*biwi-beti brigade*’.¹² Even in the case of women representatives in local bodies, many of them have been labeled as ‘proxy women’,

⁹ Dhanda, Meena, “Representation for Women: Should Feminists Support Quotas?”, *Economic and Political Weekly*, Vol. 35, No. 33 (Aug. 12-18, 2000), p 2969.

¹⁰ Singh Tejbir, “The Problem”, in Singh, Tejbir (ed.), *Empowering Women: A Symposium on Political Reservations for Women*, Seminar, 457, New Delhi, September 1997; cited in Dhanda Meena, *Op. cit.*, 2000, p 2969.

¹¹ Kishwar, Madhu, “The Logic of Quotas: Women’s Movement Splits on the Reservation Bill”, *Manushi*, No. 107, p 31-39.

¹² *Ibid*, p 32.

where their husbands may act as stand-ins for them so much so that they can take decisions on their behalf.

- (l) It has been alleged that the bid to introduce the Women’s Reservation Bill on gender quotas is an upper caste ploy to stem the rising tide of lower caste men in legislative bodies. Wandana Sonalkar contends that the question of caste and gender as aspects of the citizen-subject has been brought to the fore, even as the 81st constitutional amendment brought up the issue of reservations for non-upper caste women within the reservations for women in parliament and state legislatures.¹³ Vasanthi Raman also writes, “In a plural society like ours, the political system has to ensure a modicum of equality between all the groups and communities if history’s longest oppression is to be seriously tackled. This would imply that the struggle for gender justice and equality will have to be woven into the struggle for emancipation of each of the oppressed groups and communities.”¹⁴

Dhanda has tried to analyze the impasse that is reached between those debating in favour of and against the gender quotas.¹⁵ While doing so, she has argued that justifications for gender quotas in legislative bodies must move beyond a ‘consequentialist framework’. She has rather suggested paying more attention to ‘identity concerns’, as a ‘more fruitful way of understanding the opposition and support for the use of gender quotas in ensuring the representation of women in legislative bodies.’¹⁶

1.4 OTHER ISSUES

Besides the above arguments for and against quotas, there have been other discussions and debates on the issue of quotas for women. These range from discussion on the determination of 33% as the ‘critical mass’, to theoretical issues, to challenges in implementation of quotas.

Why 33%? The Critical Mass Theory

The Women’s Reservation Bill seeks to reserve 33% of the seats for women in the lower house of the Parliament and the state legislatures, based on the ‘critical mass theory’. The theory stems from the seminal works of Kanter,¹⁷ and Dahlerup¹⁸. In a study of an American corporation with culturally diverse population, she found that the numerically many- the ‘dominants’ control the group’s culture, while the numerically few- the ‘tokens’ are reduced to symbolic representatives of their social

¹³ Sonalkar, Vanadana, “An Agenda for Gender Politics”, *Economic and Political Weekly*, Vol. 34, No. 1/ 2 (Jan. 2-15, 1999), p 24.

¹⁴ Raman, Vasanthi, “Women’s Reservation and Democratisation: An Alternative Perspective”, *Economic and Political Weekly*, Vol. 34, No. 50 (Dec. 11-17, 1999), p 3495.

¹⁵ Dhanda, Meena, *Op. cit.*

¹⁶ Dhanda, Meena, p 2975.

¹⁷ Kanter, Rosabeth Moss, *Men and Women of the Corporation*, Basic Books, 1977.

¹⁸ Dahlerup, Drude, “From a Small to a Large Minority: Women in Scandinavian Politics”, *Scandinavian Political Studies*, Bind 11 (New Series), No. 4 (1988), pp 275-297.

category. Taking Kanter's work further to women in politics, Dahlerup argued that minorities in proportion ranging between 15 to 40 are strong enough to begin to influence the culture of the group. The notion of the critical mass is borrowed from Physics, which refers to the quantity needed to start an irreversible process. Dahlerup studied the Scandinavian Parliament, taking 30% as the critical mass for a minority to make difference. The Scandinavian Parliament had around one-third of its seats occupied by women at the time of this study. In 1990, the United Nations Economic and Social Council endorsed the implementation of measures to reach the target of 30% women in national legislatures by 1995.

However, there have been questions on the 'magic number' of 33% by some scholars. Madhu Kishwar points out that reservations to the SCs and STs in India was determined on the basis of their proportion in the overall population. Extending the same logic to reservations for women would imply extending 49% reservation to women.¹⁹

Theoretical issues

The discussion on quotas includes discussions on some important theoretical issues. As Dahlerup points out, "Quotas represent a change in public equality policy, from 'equal opportunities' to 'equality of results'."²⁰ However, there are more theoretical questions regarding the concept of 'representation' itself. In her classic text, *The Concept of Representation*, Hanna Pitkin argues that there is no common understanding about the nature of representation and about what fair representation is.²¹ In regard to the distinction between the representation of ideas and social representation,²² quotas for women relate to the latter position. Opponents of quota systems often argue from the standpoint of the former. Menon also refers to this in her paper, where she alludes to the phenomenon of groups seeking recognition in representative bodies on the basis of ethnic, religious or gender identity as a shift from 'ideology' to 'identity'.²³

While analyzing the many arguments against quotas, Anne Phillips asks why everybody accedes to the demand for women's participation, but not for equal representation. She advocates gender quotas in

¹⁹ Kishwar, Madhu, "Women and Politics: Beyond Quotas", *Economic and Political Weekly*, Vol. 31, No. 43 (October 26, 1996), p. 2872.

²⁰ Dahlerup, Drude, "Comparative Studies of Electoral Gender Quotas", Paper presented at the International IDEA Workshop, Peru, 23-24 February, 2003.

²¹ Pitkin, Hannah, *The Concept of Representation*, University of California Press, Berkeley, 1967.

²² Esaiasson, Peter and Soren Holmberg, *Representation from Above – Members of Parliament and Representative Democracy in Sweden*, Dartmouth Publishing, Aldershot, 1996; cited in Dahlerup, Drude, "Comparative Studies of Electoral Gender Quotas", Paper presented at the International IDEA Workshop, Peru, 23-24 February, 2003.

²³ Menon, Nivedita, "Elusive 'Woman': Feminism and Women's Reservation Bill", *Economic and Political Weekly*, Vol. 35, No. 43/ 44 (Oct. 21-Nov. 3, 2000), p 3839.

a system that combines the politics of ideas with politics of presence.²⁴ Phillips only, thus, as Menon notes, 'makes a minimalist case for quotas, while rejecting the idea of representation.'²⁵

Electoral Systems and Quota Designs: Quotas in Proportional Representation Systems

It has also been argued that quotas work differently under different electoral systems. As Dahlerup writes, "Quotas are most easily introduced in proportional representation (PR) systems and other multi-list systems."²⁶ In general, it is much more complicated to construct gender quotas that are appropriate for single member constituency electoral systems (Dahlerup and Freidenvall, forthcoming). Only one-third of the countries around the world with plurality/majority electoral systems have introduced some sort of gender quota, as compared to four-fifths of the countries with PR systems (Dahlerup 2007: 80– 1).

Randall also writes that, "Ceteris paribus, women are much less likely to be selected as party candidates in single member districts under a first-past-the-post electoral system, because they will be in direct competition with men in a zero-sum contest. In addition, although in these circumstances gender quotas might seem more necessary, the evidence from developed countries indicates that parties are more reluctant to adopt them."²⁷ Adoption of gender quotas is positively associated with party-list proportional representation systems and, perhaps more significant, multimember districts.²⁸ It is to note that India adopted a single member first past-the-post system after independence in continuance of the one during the colonial times, rejecting the demands from minority groups, on the plea of it being a complex system to carry on.

Quotas in Political Parties

Many political parties in Europe have introduced party quotas through party statutes. Party quotas have been a common policy in Norway, Sweden and Germany. Table 1 shows the ways in which political representation had been granted to women in various countries.

²⁴ Phillips, Anne, *The Politics of Presence*, Clarendon Press, Oxford, 1995.

²⁵ Menon, *Op. Cit.*, p 3841.

²⁶ Dahlerup, Drude, "Comparative Studies of Electoral Gender Quotas", IDEA, 2003.

²⁷ Randal, Vicky, "Legislative Gender Quotas and Indian Exceptionalism: The Travails of the Women's Reservation Bill", *Comparative Politics*, Vol. 39, No. 1 (Oct., 2006), p 75.

²⁸ Caul, Miki, "Women's Representation in Parliament: The Role of Political Parties", *Party Politics*, No. 5, 1999, pp 79-98; cited in *ibid.*, p 75.

Table 1: Country data on political representation of women

Country	% of elected women	Quota in Parliament	Quota in political parties
Sweden	47 (2006)	No	Yes
Argentina	40 (2007)	Yes	Yes
Norway	36 (2005)	No	Yes
Canada	24 (2006)	No	Yes
Pakistan	21 (2008)	Yes	No
United Kingdom	20 (2005)	No	Yes
France	18 (2007)	No	Yes
USA	17 (2006)	No	No
Sri Lanka	6 (2004)	No	No

Sources: Global Database of Quotas for Women, International IDEA and Stockholm University and Inter Parliamentary Union (<http://www.ipu.org/wmne/classif.htm>).

The table shows that the countries where women are getting widest representation are mostly those providing for quota in political parties. In general, the political parties are the gatekeepers to gender balance in political decision making because they control ‘the secret garden of nominations’.²⁹ In democratic political systems, parties control or dominate the selection and nomination processes. This points towards recruitment, and an admission of the importance of such recruitments may lead to the contention that even legislative quotas may be rendered ineffective in the wake of absence of party quotas. Even the supporters of quotas have been skeptical regarding the possibility of reaching the level of quota even if it is enacted. There are others who consider quotas in political parties to be a better alternative. However, the reluctance of political parties to accept or implement party quotas offers a big hurdle in this. In India, only very few of the political parties have tried to increase the number of women in party organizations. This may have to do with the tacit acceptance of the fact that the political climate of the country renders it difficult for women to enter and survive in politics.

Menon refers to a proposal made by the Election Commission, whereby all political parties should mutually agree on the percentage of seats where they will mandatorily field women candidates in parliamentary and Assembly elections.³⁰ This was, however, construed to be a ‘compromise formula’ by the Left parties, that will only ensure tickets for women, and not guarantee their victory.³¹ Menon says that such a move should be a self-regulatory move instead of being a kind of ‘policing by the

²⁹ Dahlerup, D. and Freidenvall L., “Electoral Gender Quota Systems and their Implementation in Europe”, Directorate General for Internal Policies, WIP and IDEA, 2008.

³⁰ Menon, *Op. cit.*, p 3842.

³¹ Shahid Faridi 'Left Criticises Gill Formula for Women's Reservation', *Asian Age*, April 25, 2000; cited in Menon, *Op.cit.*, p 3842.

Election Commission'.³² Gail Omvedt also, while supporting the proposal of parties reserving a proportion of their tickets for women, does not talk about any role of EC in it.³³

Kishwar, while proposing the Alternative Women's Reservation Bill (AWRB), also proposes enacting of a law to making it mandatory for all political parties to nominate women candidates in election in one-third of the constituencies. This should be done also in the case of seats reserved for SCs and STs.³⁴

The Implementation of Gender Quotas

There have also been debates about whether quotas may work for women, or they have to be made to work for women. This points towards implementation issues, which may render quotas useless.

1.5 SUMMARY

- A quota is a numerical goal or requirement for the hiring or admission of the members of specified groups within a certain time and until a certain percentage is reached.
- Gender quotas have been operated at the level of political parties in Nordic countries, Germany etc., while several other countries adopted national quotas for women in parliament.
- In spite of controversies, gender quotas have been largely seen as an effective way of redressing gender imbalance, and ensuring gender justice and equality.
- The two most common types of electoral gender quotas are candidate quota and reserved quota. Candidate quota applies to the lists of candidates for election given by political parties. Reserved quota implies a certain number of seats in a legislature being set aside for women among the representatives.
- Besides, there may be gender-neutral quota which sets a minimum and maximum for both sexes, typically no more than 60 per cent and no less than 40 per cent of positions for either sex.
- Arguments are given both in defence and opposition of quota for women.
- It has also been argued that quotas work differently under different electoral systems.
- Implementation of quotas is a challenging task, and may render them useless if not done properly.

³² Menon, *Op. cit.*, p 3842.

³³ Omvedt, Gail, "Women and PR", *The Hindu*, September 12, 2000.

³⁴ Kishwar, Madhu, "Equality of Opportunity vs Equality of Results: Improving Women's Reservation Bill", *Economic and Political Weekly*, Vol. 35, No. 47 (Nov. 18-24, 2000), pp 4151-4156.

Module Detail	
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Module Name/Title	The Constituent Assembly Of India: Functioning
Module Id	
Pre-requisites	
Objectives	<ul style="list-style-type: none"> • To provide a historical overview of the formation of Constituent Assembly of India and its functioning • To describe the socio-economic composition of the Constituent Assembly • To give an outline of the ideological spectrum visible in the Constituent Assembly deliberations
Keywords	Adult Franchise, Constitution, Democracy, Committees, Fundamental Rights, Government, Self Determination, Social Revolution.

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THE CONSTITUENT ASSEMBLY OF INDIA

Vikas Tripathi

INTRODUCTION

The idea of a Constituent Assembly germinated in the social contract tradition. That the Constitution of a sovereign democratic nation would be framed by the citizens themselves is a powerful democratic assertion. A Constituent Assembly is a body *extraordinaire* – it is constituted with a specific purpose of drawing up a Constitution and dissolves on the completion of its task. Also known as a constitutional convention or a constitutional assembly, it frames a constitution through “internally imposed” actions.

The formation of a Constituent Assembly is an acknowledgement of sovereignty as well as the right to self-determination of a people. Across the world, major democratic upheavals like the French Revolution, Russian Revolution and the American Revolution were followed by framing of a Constitution written by the citizens’ representatives of respective countries in an elected Constituent Assembly. Sir Ivor Jennings has noted three situations in which a Constituent Assembly comes into being:

- When there is a “great social revolution” or
- “when a nation throws off its foreign yoke” or
- When “a nation is created by the fusion of smaller political units.”

In this scheme of Sir Jennings, the Indian Constituent Assembly falls into the second category.¹

FORMATION

When the Constituent Assembly met for the first time on 9 December, 1946 it was fulfilling an aspiration of a nation that had demanded the formation of such an assembly since 1924. On 8 February 1924, Motilal Nehru had introduced the ‘National Demand’ in the Central Legislative Assembly insisting that a representative Round table conference be summoned to facilitate a scheme of constitution for India. Though this resolution was passed with a large majority in the Central

¹ Sir Ivor Jennings referred to in B.L. Fadia (2008) ‘Indian Government and Politics’, Agra: Sahitya Bhawan Publications, p. 73.

Legislative Assembly, it received a contemptuous reaction from the Secretary of State, Lord Birkenhead who dared the Indians if they could produce such a constitution at all. Notwithstanding the demand by Indians to formulate their own Constitution, the colonial government appointed the Indian Statutory Commission or the Simon Commission on 8 November 1927 to ascertain if India was prepared for further constitutional changes. The Commission caused great furore in the country due to its exclusive White composition and met with boycotts wherever it went on its arrival in India. It was in response to this twin challenge posed by Lord Birkenhead's provocation and the appointment of the Simon Commission that the famous Motilal Nehru Committee was constituted by the All Party Conference in May 1928 'to determine the principles of the Constitution of India.'² The Nehru Report which submitted a draft Constitution for India on 10 August 1928 laid down several provisions which were later incorporated into the Constitution. The bone of contention in the Report was, however, the proposed dominion status for India which was unacceptable to the radical younger group led by Jawaharlal Nehru, Subhash Chandra Bose and Satyamurthi, who demanded 'Complete Independence'. Moreover, the Muslim League was also unhappy with the Nehru report because "it rejected the principle of separate communal electorates on which previous constitutional reforms had been based. Seats would be reserved for Muslims at the centre and in provinces in which they were in a minority, but not in those where they had a numerical majority."³ While the Muslim League withdrew support to the report, the objections put forth by the younger radicals forced Gandhi to propose a compromise solution in the Calcutta Session of the Congress in December 1928, adopting the Nehru Report on the conditionality that if the government did not accept it by 1929 the Congress would launch a non-cooperation movement demanding complete independence. As the government failed to make any progress on the demands being made, the Congress in the Lahore session of 1929 declared 'Purna Swaraj' as its goal and launched the Civil Disobedience Movement in April 1930. While it was becoming clear that nothing short of self determination would be accepted in India, the idea of a Constituent Assembly was first mooted by Jawaharlal Nehru in 1933 and after 1943 it became the official stand of the Congress to accept nothing short of a Constituent Assembly to chart out the future of the country. The Congress Working Committee, while refusing to accept the Proposals for Indian Constitutional Reform of 1933, stated in 1934 that, "The only satisfactory alternative to the White

² Bipan Chandra (2000) 'India After Independence: 1947-2000', New Delhi: Penguin, p. 35.

³ Bipan Chandra (2001) 'India's Struggle For Independence', New Delhi: Penguin, p. 263

paper is a Constitution drawn up by a Constituent Assembly elected on the basis of adult franchise or as near it as possible...”⁴

At the Congress sessions of Wardha (1936), Faizpur (1937), Haripura (1938) and Tripuri (1939) this position was re-asserted. Even in the Central Legislative Assembly, a resolution was introduced on 17 September 1937 by S. Satyamurthi who recommended that the Government of India Act 1935 be replaced with a constitution framed by a Constituent Assembly. Increasingly, there was a growing consensus in Britain as well that India as an independent nation should be let free to frame its own Constitution. “In a meeting with Nehru in 1938 in London, Sir Stafford Cripps and Clement Attlee had agreed on the idea of an Indian Constituent Assembly elected on the basis of universal adult franchise, drafting its own constitution.”⁵ However, as the war approached “British policy towards India was caught between two polarities: Churchillian negativism and Crippsian constructiveness.”⁶ The elections of May 1940 had brought a coalition government to power in Britain which was to be steered by Winston Churchill as the Prime Minister. On the eve of the World War II, when the strategic location of India in the face of the Nazi advance struck fear in the hearts of the colonial rulers, an offer was extended by Viceroy Linlithgow in 1940 which came to be called as the ‘August Offer’. It accepted that the framing of a new Constitution for India should *primarily* be, and therefore not solely, the responsibility of the Indians. Moreover, it did not spell out the ways in which the proposed body was to be formed. Having failed to earn the good will of the Congress as well as the Muslim league, the August Offer was turned down and the phase of individual Civil Disobedience began. Meanwhile, the Japanese progress in Southeast Asia demanded Indian cooperation toward the colonial government. Keeping in mind their vested interest, Churchill dispatched the Cripps Mission in March 1942 to negotiate with the Indian Political Parties. While Cripps made it clear that Indians would have the sole responsibility of writing their own Constitution, it failed to provide any assurance on immediate self government and was therefore rejected by Congress leaders. Gandhi even criticized the Mission by saying that its offer of Dominion Status within the Commonwealth was a ‘post dated cheque drawn on a crashing bank.’ The mission was also rejected by the Muslim League because it did not recognize the Muslims’ right to self-determination and therefore, rejected the idea of partition. With the failure of the Cripps Mission, the struggle for independence led by the Congress entered the next phase where the demand to ‘Quit India’ was accompanied with the resolution that a Constituent Assembly would be

⁴ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press.p. 2

⁵ Shekhar Bandopadhyay (2004) ‘From Plassey to Partition’ New Delhi: Orient Longman, p. 439.

⁶ Ibid, p.439

evolved from the Provisional Government of Free India which would lay down the constitutional provisions for the country.

As the war came to an end, there was a growing recognition that the day for grant of independence to India was not far away. In July 1945, the Labour party came to power in Britain and fresh attempts were initiated to resolve the Indian issue. The Governor General, Lord Wavell convened a conference at Shimla which tried to resolve the differences among the Congress and the League and promised to convene a constitution making body as soon as possible. However, the conference failed and the British cabinet decided to send three of its own members to resolve the Indian problem. On 24 March 1946, the Cabinet Mission arrived in India aiming to discuss two issues- “the principles and procedures for the framing of a new constitution for granting independence, and the formation of an interim government based on widest possible agreement among Indian political parties.”⁷ The Cabinet Mission which comprised of Lord Pethick-Lawrence, Sir Stafford Cripps and Lord A.V. Alexander failed in making the two parties concur and reach an agreement, and therefore announced their own proposals on 16 May 1946. The Cabinet Mission had already clarified that its aim was not lay out the future constitution of India but to put in place machinery through which Indians could write a constitution for themselves. The mission realised that though Universal Adult Franchise would be the most appropriate formulation to such an end it would deal to inordinate delay and, therefore, recommended that the newly elected legislative assemblies of the provinces should elect the members of the Constituent Assembly. While one representative would be elected for a million populations, the Sikh and Muslim legislators were to elect their quota on the basis of their population. The Cabinet Mission proposed a confederation, a three tier structure, where the Union government would be responsible for affairs such as defence, revenue, and foreign affairs and communications. At each level of the confederation a separate constitution could be adopted, which by implication provided the space for autonomy demanded by the League. The three-tiered Constituent Assembly structure proposed by the Mission comprised of sections of states drawn from British India:

- Section A would consist of Hindu majority states such as Madras, United Province, Orissa, Bombay, Bihar and Central Provinces.
- Section B which would comprise of Muslim majority provinces of the north-west such as, Punjab, Sindh and N.W.F.P
- Section C would include Assam and Bengal.

⁷ Shekhar Bandopadhyay (2004) ‘From Plassey to Partition’ New Delhi: Orient Longman, p. 449.

Overall, from these three sections of British India a maximum of 292 members were to be elected through single transferable vote. Indian States were to be represented through 93 members and Chief Commissioner's Provinces through 4 members. Thus, the number of the proposed structure stood at 389 members.

The Cabinet Mission scheme further proposed that the Constituent Assembly after electing the chairman and other officials, complete the formalities and split into the three groups and work out separate constitutions. Only after the separate constitutions were formulated the Constituent Assembly was to meet as an entity to deliberate and formulate a constitution for the Union of India.

While both the Congress and the League had problems with the Plan, the Congress decided to move ahead with the Constituent Assembly. Though the League continued its opposition to the Plan, it decided to contest the elections. Since Constituent Assembly was constituted through indirect election, the results and composition of the state legislative assemblies of 1945 were reflected in the Constituent Assembly as well. The Congress captured 208 seats, while the Muslim League could garner 73 seats and the remaining 15 seats went to other parties and interest groups like those representing landlord and Commerce, the Panthik Akali Party, the Unionist Party, the Krishok Praja Party, the Scheduled Castes Federation, the Communist Party and the Sahid Jirga.

The League continued to oppose the Constituent Assembly and decided not to participate in the proceedings. So, when the Constituent Assembly was convened for its first session from 9th December to 21st December 1946 it was marked by the conspicuous absence of the League. The total strength of the House for its first session was 207. The name of Dr. Sachidananda Sinha was proposed for the temporary chairmanship of the assembly. During its first session, the Constituent Assembly had four sittings and discussed matters like presentation of credentials and signing of the register, electing the permanent Chairman, constituting a committee for rules of procedure, moving the Objectives Resolution etc. On 11th December, the Constituent Assembly elected Dr. Rajendra Prasad as its Chairman. The 'Objectives Resolution' was introduced by Jawaharlal Nehru on 13 December 1946 (though it was adopted in the Second Session). According to D.D. Basu, the Objectives Resolution provides the backdrop to the philosophy of the Indian Constitution and it has inspired the shaping of the Constitution through all its subsequent stages. For Nehru, it was "something more than a resolution. It is a declaration, a firm resolve, a pledge, an undertaking and for all of us a dedication."⁸ Through the Objectives Resolution, the Constituent Assembly declared "its firm and solemn resolve to proclaim

⁸ Jawaharlal Nehru quoted in Durga Das Basu (2006) 'Introduction to the Constitution of India', New Delhi: Wadhwa's Legal Classics, p. 20.

India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.”⁹ Unequivocally, therefore the Objectives Resolution proclaimed that though the Constituent Assembly may have been drawn as per the Plan of the Cabinet Mission but the sovereignty of the Constitution is not derived from any other source but from the people of India. The second session of the Constituent Assembly which was convened from 20 January 1947 elected V.T Krishnamachari and H.C. Mookherjee as Vice-Chairmen of the Constituent Assembly. It adopted the Objectives Resolution on 22 January 1947. The Muslim League still showed no signs of co-operation. Though it did not partake in the session, it objected to the passage of the Objectives Resolution, especially the sections where it mentioned the word “Union”. Moreover, the Second session had carried out routine work like establishment of committees and the League had problems with this as well, especially the appointment of the Union Powers Committee. To add to the troubles of the Congress the League decried that “the continuation of the Constituent Assembly and its proceedings and decisions are ultra vires, invalid and illegal and it should be forthwith dissolved”¹⁰ arguing that the Cabinet Mission Plan’s proposals were conditional its acceptance by both parties and since the two parties did not see eye to eye, the proposal of summoning the Constituent Assembly was itself invalid. Increasingly, the volatile situation indicated that partition was inevitable. All prospects of reconciliation within the framework of the Plan ended with the Vallabhbhai Patel- Liaqat Ali controversy

The third session was held from 28 April to 2 May 1947. Lord Mountbatten, who succeeded Lord Wavell, sent by the Attlee government tasked with winding up the British Rule from India by 30 June 1948, announced on 15 April 1947 that if no solution was found to the intransigent problem, partition would happen. Even in this backdrop, when the Constituent Assembly was working it did not foreclose the possibility of participation of the League. Infact, N. Gopaldaswami Ayyangar requested a postponement of consideration on the first report of the committee on Union Powers.

However, when the June Plan, which partitioned the country, was announced it brought about significant changes in the composition of the Constituent Assembly. Prior to partition, “the Congress had a built-in majority of 69 percent, in the Assembly, and, after Partition, when the number of Muslim League representatives fell to twenty-eight, the Congress majority jumped to 82 percent.”¹¹ The Congress which earlier had 206 elected members out of the total strength of 296 of British India, now had 192 members out of the sanctioned strength of 229. With partition, the limitations attached to the

⁹ Durga Das Basu (2006) ‘Introduction to the Constitution of India’, New Delhi: Wadhwa’s Legal Classics, p. 20.

¹⁰ Shibankinkar Chaube (2000) ‘Constituent Assembly of India: Springboard of a Revolution’, Delhi: Manohar Publishers., p. 68

¹¹ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press., p.10.

Constituent Assembly (that the Congress and the league will have to work together) were also over. The Constituent Assembly was also to function as the Union legislature by August 1947 till a legislature under the new constitution came into being. However, the business of the Assembly as a constitution-making body was to be unambiguously differentiated from its business as Union legislature.

In all, the Constituent Assembly sat for a total of 12 sessions spanning nearly three years, of which the first six sessions “were devoted to preparatory functions. The seventh to eleventh sessions covering 110 days were devoted to the discussion of the Draft and other necessary business.”¹² The Constituent Assembly had 23 committees to work on substantive and procedural issues. Sub-Committees and ad-hoc committees were also set up on the direction of the Committees of the House. The following committees find mention in Granville Austin’s ‘The Indian Constitution: Cornerstone of a Nation’ as the most important Assembly Committees.

Table 1: Committees of the Constituent Assembly of India

	NAME OF COMMITTEE	CHAIRMAN	NO. OF MEMBERS (including the chairman)
1	Rules Committee	Rajendra Prasad	Sixteen Members
2	Steering Committee	Rajendra Prasad	Twelve Members
3	Drafting Committee	B.R. Ambedkar	Eight Members
4	Union Powers Committee	Jawaharlal Nehru	Sixteen Members
5	Union Constitution Committee	Jawaharlal Nehru	Sixteen Members
6	Provincial Constitution Committee	Vallabhbhai Patel	Twenty Four Members
7	States Committee	Jawaharlal Nehru	Six Members
8	Advisory Committee	Vallabhbhai Patel	Sixty Four Members
	(a) Minorities Sub-Committee, and	H.C. Mookherjee	Twenty Nine Members
	(b) Fundamental Rights Sub-Committee	Archaya J.B. Kripalani	Twelve Members
9.	Ad-hoc Committee on the Supreme Court	S. Varadachariar	Five Members

¹² Shibani Kinkar Chaube (2000) ‘Constituent Assembly of India: Springboard of a Revolution’, Delhi: Manohar Publishers., p. 110.

Source: Author's own compilation from : Granville Austin, (1999) 'The Indian Constitution: Cornerstone of A Nation', Delhi: Oxford University Press

The Drafting Committee was appointed on 29 August 1947 with seven members: Alladi Krishnaswami Ayyar, N. Gopalaswamy Ayyangar, B.R. Ambedkar, K.M. Munshi, Saiyad Mohammad Saadulla, B.L. Mitter (resigned and replaced by N. Madhava Rau) and D.P. Khaitan (expired and replaced by T.T. Krishnamachari). The first task of the Committee was to consider the draft prepared by the Constitutional Advisor, B.N. Rau. When the committee met for the first time on 30 August 1947, it elected B.R. Ambedkar as its chairman. Under the stewardship of Ambedkar, the Committee worked for over 40 days and published the first Draft Constitution of India in February 1948, which was made open for public discussion. The Committee met again from 18 to 20 October 1948 to consider the comments, criticisms and recommendations that were made from across the country. Incorporating the necessary amendments a reprint of the Draft was published in late 1948. The Draft was moved in the Constituent Assembly on 4 November 1948 and from the seventh to the tenth sessions was almost devoted to the first two readings of the Draft. On 17 November 1949, the third reading of the Draft Constitution began and after nine days of intense discussion was passed by the Assembly. The Draft Constitution of India comprised of 395 articles and 8 schedules. When the Assembly met again for its twelfth session on 24 January 1950, all the members signed the historic document.

During the entire exercise, the modus operandi of Constituent Assembly according to Granville Austin was to follow any of the three principles:

- Decision-making by Consensus
- The Principle of Accommodation
- The Art of selection and Modification.

In Austin's opinion, the first two principles are India's original contribution to the process of Constitution making. Consensus is a manner of making decisions by unanimity or near unanimity and it is informed by the belief that the principle of simple majority voting is not always desirable in deciding political conflicts. The Constituent Assembly adopted the principle of consensus on areas such as the federal and language provisions. Accommodation refers to the ability to reconcile seemingly incompatible concepts and this principle has been successfully used in combining the federal and unitary system, membership of commonwealth and republican status of government, panchayati raj provisions with strong central government. Finally, the art of selection and modification was used to

create a 'beautiful patchwork' drawing from different constitutions of the world but adapting them to suit the specificities of the Indian context. Constitutional amendment is an example of this principle.

SOCIO-ECONOMIC COMPOSITION

The composition of the Constituent Assembly was largely determined by the Electoral College laid down in the Government of India Act, 1935. The Sixth Schedule of the Act allowed limited franchise on the basis of property ownership, tax payments, education etc. Though it had expanded the number of electorates substantially- from seven million to thirty-five million- majority of Indians were still placed outside the electoral roll. Because the members of the Legislative Assemblies of 1946 elected the members of the Constituent Assembly, one cannot lose sight of the fact that socio-economic composition of the members of the Assembly would be largely determined by the framework laid down by the Government of India Act, 1935. In fact, it can be stated that possession of property, payment of income tax and educational criteria clearly laid down a bias against the common Indian and lend a kind of class homogeneity to the Constituent Assembly of India. According to Austin's calculations a mere 28 per cent could vote in the provincial assembly elections of early 1946. "Economically and socially depressed portions of the populations were virtually disenfranchised by the terms of the 1935 Act."¹³

The socio-economic positionality of the members, however, can only be deductively arrived at, as Shibankinkar Chaube notes that an attempt to draw a Who's Who of the Constituent Assembly members was unsuccessful.¹⁴ It is, however, noteworthy that this body of constitution makers though drawn from the propertied, tax-paying and educated sections of the country were not blind to situations of the marginalized and it goes to the credit of the members of the Assembly that they formulated a Constitution that established Universal Adult Franchise, laid down Civil Liberties, showed a commitment to Group Rights, provided for caste-based Affirmative Action, introduced asymmetrical federalism and importantly, emphasized a spirit of compromise and accommodation.

As stated in the foregoing section, after the partition the strength of the Assembly (British India) came down from 296 to 229. For Chaube, the membership of the Assembly fell into four groups:

1. The representatives of the Congress.
2. A few independent members elected with Congress tickets
3. Independents representing non-Congress provincial legislators

¹³ Granville Austin (1999) 'The Indian Constitution: Cornerstone of a Nation', Delhi: Oxford University Press., p. 13

¹⁴ Shibankinkar Chaube (2000) 'Constituent Assembly of India: Springboard of a Revolution', Delhi: Manohar Publishers., p. 96

4. The Muslim League who had chosen to stay in India.¹⁵

In all, the Congress had 192 members. It had returned its senior most leaders to the Assembly including its past Presidents, Provincial Congress Committee Presidents, members of the Working Committee. People like Shanmukham Chetty, John Matthai, Syama Prasad Mookherjee, B.R. Ambedkar, A. K. Ayyar, N.G. Ayyangar and M.R. Jayakar were amongst the outsiders who were offered Congress tickets. This enabled a broader representation of interests within the Constituent Assembly as well as the benefit of legal expertise that most of them possessed. Though there was no separate seats reserved for women, 15 were returned to the Constituent Assembly prominent amongst them were G. Durgabai, Hansa Mehta, Sarojini Naidu, Sucheta Kripalan, Vijayalakshmi Pandit, Rajkumari Amrit Kaur, Renuka Ray, Kamala Chaudhri, Purnima Banerjee, Begum Aizaz Rasul, Amma Swaminathan, Dakshayani Velayudhan and Annie Mascarene. In the post-partition India, the Muslim League had 29 members. Saiyid Mohammed Saadulla was made a member of the Steering Committee as well as the Drafting Committee. The lone member from the Akali was Ujjal Singh who was returned from East Punjab. The non-Congress opposition (the Akali and the Muslim League) mainly demanded greater provincial autonomy within the new constitutional structure but it was not conceded. Infact, S.K. Chaube says that though the opposition was vocal it remained ineffective due to the lack of a common perspective.¹⁶

The Congress with its overwhelming majority exercised a gargantuan influence over the Constituent Assembly. In the words of Granville Austin, “The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India.”¹⁷ The pre-eminent position of the Congress party in the Constituent Assembly was the result of two important factors: the 1945 provincial legislature elections where it had secured 925 seats out of 1585 and the Partition. The position of the Congress was not just determined by its numerical strength but also because of the stature enjoyed by its senior members-the ilk of Jawaharlal Nehru, Vallabhbhai Patel, Maulana Azad, Rajendra Prasad, C. Rajagopalachari, G. B. Pant- who were also made part of the Constituent Assembly. Infact, the role of the Congress Party in ensuring a sense of discipline and order in the Constituent Assembly as well as its role in enabling a smooth sail of the Draft Constitution was also attributed by Dr. B. R. Ambedkar. The Congress Party also played another crucial role: on 4 July 1946 it had formed a Committee of Experts to prepare material and proposals for the Constitution. In effect, each proposal that was raised in the Constituent Assembly was already scrutinized by the

¹⁵ Shibanikinkar Chaube (2000) ‘Constituent Assembly of India: Springboard of a Revolution’, Delhi: Manohar Publishers., p. 97

¹⁶ Ibid, p. 99

¹⁷ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press, p. 10.

Committee of Experts and this process continued till the Constitution was adopted. While members like Dr. Ambedkar was appreciative of such a committee, severe criticisms came from others like Shibban Lal Saxena. Again to quote Granville Austin, “The Congress Assembly Party was the unofficial, private forum the debated every provision of the Constitution, and in most cases decided its fate before it reached the floor of the House.”¹⁸

Leadership in the assembly and the socio-economic composition of the leadership has generated a lot of interest amongst Political Scientists. In Granville Austin’s account, the mantle of leadership was assumed by a group of twenty influential members who enriched the constitution making process by bringing their diverse backgrounds and qualifications with them. The following table provides a bird’s eye view of Austin’s account:

	NAME	RELIGION AND CASTE	CONGRESS AFFILIATION (Y/N)	OCCUPATIONAL BACKGROUND
1.	Rajendra Prasad	Hindu, Kayastha	Yes, Working Committee	Advocate
2.	Maulana Azad	Muslim	Yes, Working Committee	Journalist
3.	Vallabhbhai Patel	Hindu, Vaishya	Yes, Working Committee	Advocate
4.	Jawaharlal Nehru	Hindu, Brahmin	Yes, Working Committee	Advocate
5.	G. B. Pant	Hindu, Brahmin	Yes, Working Committee	Advocate
6.	Pattabhi Sitaramayya	Hindu, Brahmin	Yes, Working Committee	Doctor
7.	Alladi K. Ayyar	Hindu, Brahmin	No	Advocate
8.	N.G. Ayyangar	Hindu, Brahmin	No	Civil servant
9.	K.M. Munshi	Hindu,	Yes, Working	Advocate

¹⁸ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press., p. 27

		Brahmin	Committee Member,	
10.	B.R. Ambedkar	Hindu, Dalit	No	Advocate
11.	Satyanarayan Sinha	Hindu, Rajput	Yes, Chief Whip	Advocate
12.	M.A. Ayyangar	Hindu, Brahmin	Yes, Deputy Whip	Civil servant
13.	Jairamdas Daulatram	Hindu, Amil	Yes, Working Committee	Advocate
14.	Shankarao Deo	Hindu, Brahmin	Yes, Working Committee	Congress Party worker
15.	Mrs. D. Deshmukh	Hindu, Brahmin	Yes, Member	Advocate
16.	Acharya Kripalani	Hindu, Amil	Yes, Working Committee	Educator
17.	T.T. Krishnamachari	Hindu, Brahmin	Yes, member.	Businessman
18.	H.C. Mookherjee	Christian	Yes, member	Educator
19.	N.M. Rau	Hindu, Brahmin	No, Princely States	Civil servant
20.	Mohammed Saadulla	Muslim	No, Muslim League	Advocate

Source: Author's own compilation from : Granville Austin, (1999) 'The Indian Constitution: Cornerstone of A Nation', Delhi: Oxford University Press

For Austin, this group of twenty individuals can again be divided into three groups: the first eleven members representing 'an inner circle'; the next nine names representing 'secondary Congress personalities' and Nehru-Patel-Prasad-Azad constituting the triumvirate within the Assembly that took initiatives and, at times, decisions. As is evident from the table, advocates constituted a clear cut majority over any other occupational group and steered the process of constitution making.

The triumvirate proposed by Austin is modified in Chaube's study. Chaube divides the leadership present in the Constituent Assembly into three segments:

- (a) Those within the Congress Party: Here Nehru-Patel-Prasad-Azad leadership assumes the first rung closely followed by the cabinet ministers like K. M. Munshi, Pattabhi Sitaramayya, J.B.

Kripalani, C. Rajagopalachari. On the fringes were another group of leadership provided by Thakurdas Bhargava, A.V. Thakkar, Sri Prakasa, B.M Gupte and Brajeshwar Prasad.

- (b) Those outside the Congress Party: Here lawyers of exceptional ability like Alladi Krishnaswami Ayyar, N. Gopaldaswami Ayyangar and B.R. Ambedkar stood at the top with people like K.M. Panikkar, S.P. Mookerjee and B.L. Mitter following closely.
- (c) The 'mid-way' group: This included people like K. Santhanam and T.T. Krishnamachari who were not associated with the Congress Party for long but whose voices were carefully heard because of their intellectual brilliance.

It is noteworthy that even in Chaube's account; it is lawyers who hold almost a sweeping presence. Other than Pattabhi Sitaramayya who was a doctor, A.V. Thakkar who was a social reformer and T.T. Krishnamachari who was a businessman, the rest have law as their educational background. It can be easily established from such deductions that the socio-economic composition of the Constituent Assembly was largely constrained (or facilitated) by the provisions regarding franchise in the Government of India Act, 1935. "The electoral process itself could not have produced a representative body because it was based on the restricted franchise established by the Sixth Schedule of the 1935 Act, which excluded the mass of peasants, the majority of small shopkeepers and traders, and countless others from the rolls through tax, property and educational qualifications."¹⁹ However, the lack of socio-economic heterogeneity from the Constituent Assembly did not mean that ideologically homogenous. As is shown in the section below, the Constituent Assembly represented diverse view points of voters and non-voters. Such diversity was made possible only because the Congress was a catch-all party with a mass base. This created spaces for dissent within the Congress Party itself.

VISION

When the Constituent Assembly met for the first time on 9 December 1946 it was acutely conscious of the expectations that the people of India held. The Constituent Assembly stood on the shoulders of nationalist struggle that had constantly harped on the principle of self determination and it had to formulate a constitutional design which could bring about equality in a highly unequal society. Steered by individuals of impeccable integrity, the Constitution held out a vision for the future, which was couched in a liberal world view tweaked to suit the peculiar conditionality of the country. The Constituent Assembly despite being a product of the circumstances of that time had a futuristic mission and envisaged an institutional structure that was expected to withstand the test of time.

¹⁹ Granville Austin (1999) 'The Indian Constitution: Cornerstone of a Nation', Delhi: Oxford University Press., p. 12

For Granville Austin, the Constituent Assembly aimed at creating a 'seamless web' constituting unity, social revolution and democracy through the Constitution. It is this 'seamless web' which lays down the horizons of the Constituent Assembly's vision for independent India. It is noteworthy that none of the three goals could be achieved in isolation from each other. The Constitution makers laid down that unity as a goal could be achieved and sustained only through a highly centralized federalism. The structure of federalism envisaged included a central government distribution of revenue, national development planning, central civil services, governors as presidential appointees, emergency provisions and several centre-state coordinating mechanisms. The goal of a social revolution was to be driven by the provisions of the Directive Principles of State Policy, present in Part IV of the Constitution. These provisions, even though non-justiciable, lay down the ways in which the Indian State was to become a Welfare State by bringing about economic and social democracy. Finally, the democratic aspect of the seamless web is buttressed by representative government under adult suffrage; Fundamental Rights under Part III which allows inter alia equality under law and personal liberty; and an independent Judiciary. Additionally, safeguards to minorities, assistance to under privileged groups and eradication of oppression of Scheduled Castes and Tribes were also reinforced to strengthen democracy.

While Austin tries to comprehend the revolutionary potential of the Constituent Assembly through the analogy of a 'seamless web', for Shibanikinkar Chaube, a parliamentary government, a politically centralized but culturally diversified federal state and a dynamic social order are markers of the vision that the Congress along with many other sections of the Indian opinion had about the future Constitution.

While trying to understand the vision laid down by the Constituent Assembly for the future polity, one is confronted according to Rajeev Bhargava to three discernible ways in which the Constitution is studied:

- The Constitution as politico-legal document, best exemplified in the works of Ivor Jennings and C.H. Alexandrowicz
- The Constitution as political history, exemplified by Granville Austin, and
- The Constitution as an epiphenomenon of social relations, exemplified in the works of Shibanikinkar Chaubey and Shobhan Lal Dutta Gupta.

The vision of the Constituent Assembly is restricted by the approach one adopts in studying the Constitution. Though the aforementioned approaches are valuable, these are insufficient and therefore a political-theoretical approach towards the reading of the Indian Constitution should be adopted. For

him, “it is important to see the Constitution as a moral document, as embodying an ethical vision.”²⁰ A political-theoretical reading of the Indian Constitution is advocated by Bhargava because the existing works are deficient on the following three grounds: firstly, insufficient elaboration of the conceptual structure of the Constitution; secondly, the structure of the ideals embedded in the Constitution are inadequately grasped and; thirdly, there is a disconnect in the reading of the Constitution and the Constituent Assembly Debates.

Through a political-theoretical approach, it is apparent that the vision laid down by the Constituent Assembly for the future polity is undergirded by both substantive and procedural measures. The procedural measures that define the vision of the Constituent Assembly for the country are dealt below:

First, the Constituent Assembly established Universal Adult Franchise under Article 326, without any qualification of sex, property or taxation. The concept of popular sovereignty had been gaining ground with the surge of nationalism. But the half-hearted colonial Acts never legitimized this popular sentiment. Infact, the Government of India Act, 1935 was opposed by Nehru for restricting franchise on grounds of property, taxation and education qualifications. By entrenching Universal Adult Franchise the Constitution makers were fulfilling a long standing demand of equal participation in the decision making process. The grant of equal franchise rights to all entrenches ideas of equality and individualism. And in a society marked by significant caste and class hierarchies, the vision of one man-one vote-one value was revolutionary.

Secondly, the Constituent Assembly laid down a set of civil liberties which are treated as sacrosanct and inviolable for all citizens. Part III of the Constitution lays down a Bill of Rights that “were to foster the social revolution by creating a society egalitarian to the extent that all citizens were to be equally free from coercion or restriction by the state or by society privately; liberty was no longer to be the privilege of the few.”²¹ The demand for a set of legally enforceable civil rights was made as early as in 1895 and was a recurrent demand of Indians but was never granted. By inserting the Fundamental Rights in the Constitution itself, the members of the Constituent Assembly foreclosed the option of discretionary curtailment of civil rights of citizens, either by the legislature or the executive. The Constituent Assembly laid down a vision of a free and fearless society through such an institutional mechanism.

²⁰ Rajeev Bhargava (2008) *Introduction: Outline of a Political Theory of the Indian Constitution* in Rajeev Bhargava (ed.) ‘Politics And Ethics of the Indian Constitution’, Delhi: Oxford University Press., p. 4

²¹ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press., p. 65

Thirdly, despite the incompatibility of individual rights vis-à-vis culture-specific rights, the members of the Constituent Assembly showed extreme sensitivity to cultural particularities. The protection of group rights through the insertion of Cultural and Educational Rights in Part III (Articles 25-30) was the result of several request petitions that came from several minority groups who wanted that their interests be protected. Though the Constitution abolished the practice of separate electorate for minorities, the 'preferential provisions for religious minorities' was based on an understanding that even minorities had a 'way of life' which needs acknowledgement and protection. While the debate on necessity and desirability of multicultural rights emerged within the American academia in the 1970s, the Indian Constitution makers had already laid down a vision that saw no contradiction between participation in the political realm and one's cultural positionality. In other words, the Constituent Assembly laid down a delicate balance between the notions of universal and differentiated citizenship

Fourthly, the Constitution makers provided a statutory commitment to caste-based affirmative action. The Constituent Assembly was aware of the limitations procedural equality produced in an unequal social set up and therefore laid down Article 334 and 335 which provides reservations for seats in legislatures and public services to Scheduled Castes and Scheduled Tribes. The members of the Constituent Assembly realised that a policy of radical redistribution leading to equality of outcome had to be conceptualized because of the structural inequalities that work to the disadvantage of Scheduled Castes and Scheduled Tribes. While defending the scheme of reservations in India, Ashok Acharya says that, "a justification of affirmative action on an equal outcome approach involves not only egalitarian considerations per se, but also the added normative requirement of compensating for past wrongs. When making a case for compensation for disadvantaged groups we bridge the important divide that separates equality of opportunity from equality of results."²² Other than articles 334 and 335, certain other measures embodied in Articles 15 (4), 16 (4), 46, 330 and 332 are attempts to secure inclusion of under-represented and disadvantaged groups into full citizenship rights. Through the constitutional provisions for affirmative action, Bhargava iterates that a concern for liberal justice becomes evident.

Fifth, the Constituent Assembly introduced asymmetrical federalism as a unique concept to accommodate differences that exist between groups of citizens. Such 'differentiated citizenship' is institutionalized, according to Rodrigues, through provisions for autonomy secured in Article 370, 371, Schedule V and VI of the Constitution. These federal arrangements are an acknowledgement that the

²² Ashok Acharya (2008) *Affirmative Action for Disadvantaged Groups: A Cross-Constitutional study of India and the US* In Rajeev Bhargava (ed.) 'Politics and Ethics of the Indian Constitution', Delhi: Oxford University Press., p. 281

relations between the Indian Union and the states are not uniform and such a differentiated treatment is aimed at the preservation of the distinct identity and culture of the natives of such regions.

While the above mentioned five measures are the substantive visions laid down by the Constituent Assembly, the procedural measures are equally important and are as follows.

Firstly, the Constituent Assembly Debates demonstrate that outcomes can be justified with reference to reason and not necessarily self-interest. Here Austin's assertion that the Constituent Assembly worked through the principle of compromise and accommodation can be recalled. More than the outcome, here the emphasis is laid on the procedure that ultimately leads to acceptable outcomes. The deliberative vision laid down by the Constituent Assembly as the viable way of reaching outcomes is as important as the outcome itself.

Secondly, extending the principle of compromise and accommodation, Bhargava argues that trade-offs done in the course of the Assembly Debates need not be decried in to. That the trade-offs were done "in an open process of free deliberation among equals"²³ remains important and therefore should not invoke disapproval and degradation.

Finally, the emphasis laid down by the Constituent Assembly on consensus generation rather than majority opinion is also a morally commendable position. Though this position has to be carefully supported, for Bhargava the merit of the Constituent Assembly lies in its ability to provide a platform for different voices to engage in a deliberation. Thus the spirit of deliberation, derived from an innate rational capability of each human being irrespective of their positionality, fostered by the Constituent Assembly is praised by Bhargava as a procedural good.

IDEOLOGICAL MOORINGS

The incredible feat achieved by the Constituent Assembly, in laying down a Constitution that has acted as a guideline of successful democratic functioning of the country, is the product of diverse voices speaking in the Constituent Assembly Debates. It is noteworthy that the debates disclose a wide spectrum of ideological variations, even when the presence of the Congress was overwhelming in the Assembly. The Indian Constitution mirrors the ideological divergences witnessed and one could attribute this variation due to 'the principle of accommodation' adopted by the Assembly. According to Rajeev Bhargava, there are at least five competing ideological positions in the Constituent Assembly: the non-modernist, quasi communitarian vision of Gandhi; the liberal-democratic vision of Ambedkar;

²³ Rajeev Bhargava (2008) *Introduction: Outline of a Political Theory of the Indian Constitution* in Rajeev Bhargava (ed.) 'Politics And Ethics of the Indian Constitution', Delhi: Oxford University Press., p. 25

the social-democratic vision of Nehru; the radical egalitarian vision of K.T. Shah; and the Hindutva ideology.

For V.R. Mehta, “Gandhi is a very complex figure in the history of modern thought...Gandhi was not only a man of action but also a prophet of modern India who truly attempted to transcend the class conflicts of society by devising a method which, for the first time, brought about the national aggregation of an all-India character.”²⁴ His mass appeal and thinking, however, does not find any reflection in the Constitution of independent India. Gandhi’s commitment to democracy was closer to the grassroots and he envisaged that the panchyats would work as the base for erecting a superstructure of indirect and decentralized government. “Each village panchayat, in Gandhi’s plan, would form a unit; two such panchayats would constitute a working party with an elected leader. Fifty leaders would elect a second-grade leader, who would co-ordinate, their efforts and who would also be available for national service. Second-grade leaders could elect a national chief to ‘regulate and command all the groups’.”²⁵ At the root of Gandhi’s conceptualization of a decentralized village based polity was the understanding that the village as a traditional institution could work as the cradle of democracy. within the Gandhian ideological framework, the village is romanticized as a space built on foundations of truth and ahimsa. The village is to be a self-contained, self-reliant unit which has the ability to defend itself against the whole world. This republican version of democracy, with its emphasis on direct participation of the citizens, has communitarian leanings and runs contrary to ‘modern’ representative democratic models. Within the Constituent Assembly, the broad consensus on the desirability and feasibility of a Parliamentary form of government placed the Gandhian model on the peripheries. Though Article 40 laid down Panchayati Raj to be established by the State, it remained within the non-justiciable part of the Constitution. In contrast to the Gandhian vision, it is the liberal democratic Ambedkarite vision and social democratic vision of Nehru which laid down the ideological contours of the Indian Constitution.

For Ambedkar, representative parliamentary democracy based on Universal Adult Franchise was the desirable structure to organize the future polity of independent India. Unlike Gandhi, Ambedkar was skeptical of the idea that villages can be rid of its evils. These remain “a sink of localism, a den of ignorance, narrow-mindedness and communalism”²⁶ and therefore should be discarded. Ambedkar’s locus of rights and freedom is the individual, over which there could be no

²⁴ V.R.Mehta, (2008) ‘Foundations of Indian Political Thought’, New Delhi: Manohar, p. 217.

²⁵ Granville Austin (1999) ‘The Indian Constitution: Cornerstone of a Nation’, Delhi: Oxford University Press., p. 35

²⁶ Ambedkar Quoted In Thomas Pantham (2008) *Gandhi and the Constitution: Parliamentary Swaraj and Village Swaraj*, Rajeev Bhargava (ed.) ‘Politics and Ethics of The Indian Constitution’, Delhi: Oxford University Press., p. 86

overriding unit. While truth and ahimsa were the foundational values for a village-centric polity advocated by Gandhi, for Ambedkar it was law which would regulate the 'good society'. Within the Ambedkarite paradigm, a rights based approach –both for protection as well as development of the individual- is advocated and therefore calls for the establishment of a interventionist state. Provisions of Part III and the governmental structure imbibed in the Constitution mirrors the liberal outlook of Ambedkar. The developmental model of the state as well as the emphasis on constitutionalism is not peculiar to Ambedkar alone. Nehru's similarity to Ambedkar in these aspects cannot be overlooked.

What distinguishes Nehru from Ambedkar, however, is his emphasis on socialism. Socialism along with democracy, national unity, industrialisation, scientific temper, secularism and non-alignment constituted for Nehru, according to Bhikhu Parekh, the 'national philosophy of India. His position in the Congress ensured that his ideas would influence not just the party but also the Constituent Assembly. Nehru's version of socialism entailed an attack not just on capitalists but also landlords as he held them jointly responsible for poverty in India. As a social democrat he called for control and nationalization of industries, land reforms and co-operative farming, heavy industry and distributive justice within the parameters of a planned economy. In the words of V.R. Mehta, "Nehru was conscious of the limitations of both capitalism and communism... In a country where there is so much of mass poverty, squalor and inequality he could not think of any other solution than socialism combined with representative institutions."²⁷ While the influence of Nehru's core socialistic ideas is strongly visible in Part IV of the Constitution, secularism finds its place in Part III. Nehru's strong commitment to democracy came from the understanding of a plural society, which could not be held together without a democratic form of government in place. Nehru's understanding of democracy is contrary to the Gandhian ideal of a decentralized polity. For Nehru, India was to be a federal state with a strong centre where the Parliament had a decisive role to play. Even a cursory glance at the organs of government, as framed in the Indian Constitution, would reflect the impact that Nehru's ideological predisposition had on the Constituent Assembly. The Objectives Resolution, adopted by the Constituent Assembly and framed by Nehru, is a reminder of the emphasis that he had laid towards the goals of democracy, national unity and secularism.

If Nehru's socialism was moderated in the Constituent Assembly by capitalists interests, K.T. Shah's radical egalitarian vision provided the most doctrinaire socialist position within the same. He favoured not only state ownership and control of all natural resources, important large scale industries and all other aspects of the economy but also advocated a programme of progressive nationalization of

²⁷ V.R.Mehta, (2008) 'Foundations of Indian Political Thought', New Delhi: Manohar, , P. 254

existing industries. Within the ideological framework laid down by Shah, the state had an extremely interventionist role to play in re-structuring the economy and society. Critical, as he was of vested class interest subverting the project of equality, Shah demanded that within a specified time period all the Directive Principles of State Policy be made justiciable. Additionally, his demands also included a scheme of an economic council which was to be provided for within the Constitution. Though Shah's demands were not formally incorporated in Constitution, its significance is derived from the fact that it represented a radical departure from the liberal language in which the Constituent Assembly Debates are couched- emphasizing again of the plurality of ideological positions available with the Assembly.

The final ideological strand visible within the Constituent Assembly is Hindutva ideology. Though the Hindu Mahasabha and the Rashtriya Swayamsevak Sangh did not have any representatives in the Constituent Assembly, the conservative Hindu viewpoint was voiced through individuals like P. D. Tandon, M.R. Jayakar and S.P. Mookerjee. For those who advocated a Hindu majoritarian position, the unity of the subcontinent on a federal basis was necessary but also insisted on a strong centralization to reduce the bargaining powers of the Muslims. Centralised power was equated with solidarity and therefore, exemptions provided to Jammu and Kashmir (Article 370), under the Constitution was vehemently opposed. Moreover, these individuals worked as a pressure group to ensure that the Constitution provides for cow protection (Article 48), established pre-eminent status for Hindi in the Devanagari script (Article 343) and also bargained for special importance for Sanskrit (Article 351).

CONCLUSION

The resilience of the Indian Constitution stands testimony to the collective wisdom of the members of the Constituent Assembly. Though criticisms have been leveled against the unrepresentative composition of the Constituent Assembly, one cannot deny the fact that the members did give a voice to the concerns of the under-represented sections of the society. A dispassionate appraisal of the Constituent Assembly would involve not just a stock taking of its limitations but also an appreciation of the foresight of the Assembly.

For Granville Austin, the Constituent Assembly did not foresee with a few eventualities which arose after the Constitution was adopted. Firstly, the possibility of conflict between Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) was not anticipated and therefore, a long drawn tussle between the legislature and judiciary ensued which finally ended with the First Amendment Act. Secondly, the possibility of abuse of the powers bestowed under the President's Rule was not considered. Thirdly, though Adult Franchise was a revolutionary and egalitarian step at the

founding moment of the country, the framers could not comprehend the ways in which a changed pattern of hierarchical relations may emerge with oppression still operating. Fourthly, the founding members could not envisage the possibility of Congress decline in the years to come. Finally, the Assembly left the space of Constitutional Conventions unwritten which in the years to follow lead to manipulations through amendments.

However, even Austin considers these lacunas as ‘small oversights’; the gargantuan task of drafting a Constitution for a nation that was divided on lines of caste, class, language and religion was accomplished with élan. The nation had taken steps into democratic structure within the framework laid down by the Assembly. That the Constitution is amenable to amendment with the exigencies of times has made it a dynamic document; or in the words of Zoya Hasan et al. a ‘Living Constitution’.

To conclude, one could again use Austin’s sagacious words, that, “It has taken time for the Constitution to become secure. In the future, governments or citizens may slight or ignore it, yet it is accepted as the nation’s foundation document, some say the new *dharmasastra*.”²⁸

²⁸ Granville Austin (2011) The Expected and the Unintended in Working a Democratic Constitution in Zoya Hasan et al. (eds.) ‘India’s Living Constitution: Ideas, Practices, Controversies’, New Delhi: Permanent Black, p. 342

1. Details of Module and its Structure

Module Detail	
Subject Name	Political Science
Paper Name	03: Comparative Politics
Module Name/Title	Constitutional Government
Pre-requisites	
Objectives	<ul style="list-style-type: none">✓ to understand the meaning of ‘Constitution’✓ to be familiar with the principles of Constitutional government✓ to know the importance in the way of Constitutional government✓ to understand the causes and failures of the Constitutional government in developing countries.
Keywords	Constitution, political democracy, authority, limited government, sanctions

A Gateway

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Constitutional Government

Introduction

Constitutional government is a government that runs according to the Constitution of the land. It refers to a government which is limited by the Constitution which might be written or unwritten. The rules and policies of the government are limited by a constitution which describes the basic law of the land. A constitution is a set of established principles according to which a state is governed. The constitution is a set of legal document or documents and they are concerned with different levels of organization. It is a government of law and not of arbitrary rulers. Constitution resolves many conflicts before they arise for the constitution provides a framework within which the government has to function. ‘... Constitutions are scripts in which a

people inscribe the text of their professed collective destiny. They write down who they think, they are what they want to be, and the principles that will guide their interaction along that path in the future'.¹ Constitution presents the people of a vision, shared vision for which they would aspire collectively. The Constitution authorises the government to act and to frame rules, regulations and laws for the country it governs. It limits political power and puts and puts certain constraints on the government of the day. The Constitution acts as a regulator of the state's activities over its citizens. It stops the state and its agency, the government, from intruding into the sphere of the individual. It limits the government of the day and acts as a stern elder to the government. The restraints are effective and reasonable. It sees to it that the rule of law prevails. '...Constitutions express the overtaking principles within which non- constitutional law and the legal system, generally operates'.² The Constitution gives sufficient authority to the government while clearly demarcating the role of the state and the rights of the individuals.

They help in compromises within the political system. A Constitution defines how a country is to be governed. A Constitutional government, then, governs according to the powers given to it by the Constitution. In a Constitution law, rule of law is established and the institutions, their functions are recognised. Constitutional government is a limited government, a government which acts according to a specific set of rules.

Constitutionalism is a system where the functions of the government are distributed by a legal document called the Constitution and the majority agrees with it. '...a Constitution differs how a country is governed, if there in power governs according to the Constitution'.³ The aim of a Constitution is to establish in the country it governs. The concept of Constitutionalism is old as it was developed by Aristotle. The authority to derive power comes from the Constitution. Democracy gives an added impetus to the idea and spirit of Constitutionalism. It is not individuals who are supreme, even if they are elected but the law which is supreme. Constitutionalism encourages liberty, equality and justice to flourish. 'Constitutionalism

¹ Uday S. Mehta, Constitutionalism in Nirja Gopal Jayal, Pratap Bhanu Mehta, *The Oxford Comparison to politics in India*, 2015, Oxford University Press, p. 15.

² Rod Hague and Martin Harrop, *Comparative Government and Politics*, 2015. OUP, p. 233.

³ Peter B. Harris, *Foundations of Political Science*, 1976, Hutchinson, London, p. 87.

embraces the idea that a government should not be permitted to do anything its officials please, but should conduct itself according to equitable and agreed procedures. The purpose of this restriction on its freedom of action is of course to safeguard a fundamental area of freedom for its citizens'.⁴ The Constitution prevents the government from doing many things. Constitutionalism is concerned with how power should be used. A government without a Constitution can degenerate into absolutism, chaos and further lead to tyranny.

Growth of Constitutionalism

Constitutionalism has a long history. We can trace the growth of Constitutionalism to the Greeks and the Romans. Plato was against the idea of Constitutional government but his disciples, Aristotle had faith in constitutionalism. Aristotle believed in limiting the authority of the government. The Romans laid down the principles of representation, codifying the law and laying the ground for law, both civil and criminal. They strengthened the idea of constitutionalism by separation as well as distribution of powers. After the fall of the Roman Empire, the world was eclipsed by feudalism, which was characterized by disintegration and degeneration. But Christianity and its universalism provided a new way to the world. The Pope's supremacy led to the subservience of the monarchs. France, Spain, England were the countries which challenged the authority of the Pope and developed the idea of constitutionalism. The Renaissance and Reformation movements gave a big impetus to constitutionalism. These ages were characterized by rationality, reasoning and a secular outlook. In England, the glorious Revolution of 1688 was the first step so usher in Constitutionalism and put it on firm footing. The powers of the King were reduced and the Parliamentary form of government became deeply entrenched. In U.S.A., the American Declaration of Independence of 1776 declared that all men are equal and when any government doesn't respect the individuals than the latter have the right to challenge it, change it and remove it. In France's Declaration of the Rights of Man tried to establish Constitutional government by declaring that men are born and equal in rights and the aim of every political association is the reservation of the practical and imprescriptibility of the rights of man'. Thus, these western countries have helped in evolving and cementing the spirit of Constitutionalism.

⁴ Smita Srivastava, *An Introduction to Political Ideologies*, 2012, Pearson, p. 49.

Constitutional government in developing countries

In the developing countries, there are instances where there are many governments that have flouted the norms of their respective Constitutions but these are encompassing examples of governments which have functioned according to the dictates of their Constitutions. The developing countries in Asia, Africa and Latin America are besotted by too many problems. Having a colonial past has not helped much. As soon as a country declares itself independent, a certain set of leaders take over the reins of the country. The struggle that they have led for independence has to be converted into a struggle to pull out the country from the malaise of poverty, hunger, deprivation as well as the evils left by the colonial masters. Every country has paucity of funds vis-à-vis the problems it faces. Finance is required for everything. Moreover, the people do not understand the nature and extent of the problems. They were shown a vision and they just want its fulfillment. The successive leaders, at times, do not have the knowledge, skill and the urge to serve the people. They are more bothered about their petty interests, retaining their seats, encouraging their family members to enter the political arena (dynasty politics) or busy consolidating their gains. This leads to the people getting frustrated. A section of the people take advantage of the situation and either manage a coup or overthrow the elected government by means that are not considered fair. The Constitution is brushed aside and the leaders rule by their own whim. There is scant regard for the Constitution or the ideals that are professed by it. Thus, in the developing countries, we have many examples of governments that are Constitutional and many that are non-Constitutional.

Usually, wherever the Constitutional government fails to take off or maintain its legality, the military led by a leader with a greater vision takes over. Constitutional government is not guaranteed if a country is casually introduced to Universal Adult Franchise, elections, political parties, rule of law, Parliament and a Constitution. These ingredients go vital to democracy and to the Constitution have to be well-ingrained into the political system. Unfortunately, in the developing countries, these countries have not been able to penetrate deep into the political system. 'It is evident that a building to house what looks like a parliament does not in fact create a parliament. Still less does it create the most difficult and subtle of all western political devices,

a legal opposition'.⁵ In most of these countries, Constitution exists, is codified and a lot of effort has gone into framing the Constitution but it has not been absorbed by the country's political culture. The Constitution in most of the electorate as a whole, who do not, at times, even know about its sanctity and importance. The Constitutions are just not taken seriously. Probably, the failure of the Constitutional government is also because there are too many structures in these traditional societies that cannot be assimilated or incorporated in the formal Constitutions. We have the example of the 'Ombudsman', the grievance officers who are a great asset in the western political systems but have not found many takers in the political systems of the developing countries. 'The significance that the Ombudsman has in Asia is that he has an important public 'face' while it is interesting that the officers of the Japanese Inspection Bureau (who are in effect those who deal with problems and grievances) receive 'matters' and 'requests' rather than 'complaints'.⁶ In the developing countries, personal links, 'face' 'law as a means of obtaining their rights' and the VIP (Very Important Person) are major detriments to the effective functioning of the Constitutional government. In the developing countries, the government is limited as dictated by the Constitution but in fact ground reality differs. The government assumes powers promising to enjoy only those powers granted to it by the Constitution but many flout Constitutional norms once in power. They stop being accountable to people or to any other body for e.g., the Judiciary and go out of the way to suppress it or go around it. In many countries, the government elected for a limited tenure extends its tenure with the help of un-constitutional means.

Case of Asia

The countries which were a colony of the British were more successful in the experiment of a Constitutional government than their counterparts which were colonies of the French. 'In Asia, and Africa and in the Caribbean, the former colonies of Britain, such as India, Nigeria, Zambia etc. have been more successful in operating a Constitutional government than the former colonies of continental European powers. The British colonialism was of much mild vanity and in a way, fostered the growth of democratic institutions in the colonies. When, therefore, these

⁵ V Peter B. Harris, op. cit., n. 3, p. 89.

⁶ Ibid.

colonies gained their independence they had each functioning democratic apparatus and also mentrained in them'.⁷ Besides a few countries, like India, most of the countries could not maintain the spirit of a constitutional government for a long time r there were long pauses. The Constitution of India came into existence on January 26, 1950 after debates and much discussion. The government is limited, rule of law prevails and the government is elected by the citizens of the country. The precedents of the Constitution, the Government Acts of 1909, 1919 and 1935 had emphasized the need for having a Constitutional government in India. Dr, Ambedkar, who contributed immensely to the framing of the Indian Constitution believed in Constitutional democracy.

'As a liberal thinker, Ambedkar was hardcore believer in the value of Constitutional democracy having irrevocable elements of social and economic democracies, in addition to political democracy'.⁸ He was impressed by the concept of 'rule of law' which helped in establishing equality, justice and stability. Except the period of Emergency in India, the governments have proved themselves to be Constitutional governments. With periodic elections, limited government, accountability to the people and a limited tenure, India has managed to nurture Constitutional governments despite the occasional hiccups of caste, language, religion and region.

Pakistan, India's immediate neighbor, has not been so fortunate. Pakistan took birth on August 14, 1947 but could not continue for long as a constitutional, democratic government because of the high ambitions of its leaders, military generals etc. Though the Quadi-i-Azam, Mohammed Ali Jinnah, 'advocated the compatibility of democracy and Islamic principles',⁹ these successors did not seem to agree. He behaved that 'the ideological structure of Islam's world view was conducive to democracy'.¹⁰ Yet, Liaquat Ali Khan, the first Prime Minister of

⁷ S. R. Maheshwari, *Comparative Government and Politics*, 2004, Lakshmi Narain Agarwal, Agra, p. 70.

⁸ Chkarabarty, Bidyut, Pandey Rajendra Kumar, *Modern Indian Political Thought Text and Concept*, 2014, Sage, New Delhi, p, 95.

⁹ Ibid., p.152

¹⁰ Ibid.

Pakistan was assassinated in 1951. Pakistan got its first Constitution in 1956 the then President, Iskander Mirza suspended the 1956 Constitution in 1959.

In Pakistan, the founding leaders believed that sovereignty was with the Almighty alone. 'The authority of the people was a sacred trust from Allah to be described within the limits prescribed by him'.¹¹ But, despite all the limitations, there have been too many violations. Iskander Mirza did all this with the support of the Army. General Mohammad Ayub Khan exiled Iskander Mirza and the former controlled the government. Ayub Khan ruled for ten years, citing different reasons till he was deposed by General. Yahya Khan. Zulfikar Ali Bhutto came to power in 1971 but the military intervened and Gen. Zia-ul-Haq seized power and ruled without the Parliament or people's verdict, In 2000, General Pervez Musharraf overthrew the elected government and ruled till 2007.

Bangladesh took birth as a nation on December 16, 1971. The Constitution included features like, secularism democracy, nationalism and socialism besides giving the people Fundamental Rights. President Mujibur Rahman was assassinated on August 15, 1975 and the Army with the military generals ruled Bangladesh for the next 15 years i.e. upto 1990. The authoritarian rule sapped at the nation's strength and curbed people's freedoms. Lt. Gen. Ziaur Rahman assumed power through a military coup in 1977 and was, then, assassinated in 1981. He was succeeded by Lt. Gen. Hossain Mohammad Ershad in 1982 and ruled arbitrarily till December 1990. The tussle for power continues. The military tried to step in 2007 but the Awami League won the elections in 2009. The civilian governments are trying hard to establish a constitutional government and Bangladesh is rambling towards the idea of a constitutional government.

In Burma (Myanmar), the Burmese armed forces is not a constitutional government. There is no respect for rule of law, freedoms of the people and the opposition is suppressed. Aung Sen Kuyi, the principle opposition leader was placed under house arrest for many years. The government comprising of military generals wrote a new Constitution and ruled by their ever-changing rulers. Though, things are changing now in Burma, with the release of Aung Sen Kuyi, but the past many years have seen Burma in the grip of an unconstitutional government.

¹¹ Smita Srivastava, op. cit., n. 4, p. 57.

Turkmenistan adopted a new Constitution in 1992 with all the provisions of rights for its citizens. One of the breakaway Republics of the erstwhile U.S.S.R. it soon degenerated into a personal fiefdom of President Sapamurat Niyaz ____ruled by decree by bypassing the legislature. A one-man dictatorship, elections were a farce and he was accountable to none. He renamed the months of year after his family members and banished dissidents to mental hospitals.

President Gurbanguly Berdymukhamedov who was re-elected in Turkmenistan in 2012 continues to rule keeping Constitutional norms at bay. Life imprisonment is given liberally and prominent leaders are not traceable. The internet is heavily regulated and any opposition to the government is considered treason.

Thailand is controlled by a military junta. The ruling party, whose name is, ironically, National Council for Peace and Order (NCPO) has persecuted all critics. The media is censored and all discussions and debates are prevented. Nepal, once a monarchy, has modified itself with the changing times, though the going has been very tough. King Mahendra ascended the throne in 1955 and bypassed the Council of Ministers. Elections were held in February 1959 but the King dismissed the first popularly elected Prime Minister, B.R. Koirala in 1960. He banned opposition. After his death, his son, King Birendra ascended the throne, but organized the 'Back-to-the Village National Campaign (BYMC). It was only a ploy to control all political parties. The Jan Andolan' of 1990 challenged the powers of the King which resulted in the King conceding many concessions to the people. His brother, King Gyanendra, came to the throne in 2001 after the assassination of his brother, King Birendra. King Gyanendra dismissed whatever rights the people had attained after a long struggle. But after large scale protests, he had to resign in 2006 and relinquish powers.

Nepal is in the midst of adjusting itself to a new Constitution. The government in Nepal is trying to accommodate various groups and interests. Thus, it can be called a Constitutional government for it is adhering to the Constitution which was adopted on September 20, 2015.

Sri Lanka is one country that remained embroiled in a civil war for many decades. The Liberation of Tamil Tiger's Elaam (LTTE) spearheaded a campaign against the governments for depriving the Tamil population of equal rights from the Sinhalese population. The government,

then, ruled by coercion and force. 'Rule of Law' and constitutional norms were ignored. But after decades of efforts, the government has managed to wipe off the LTTE and the endeavours to maintain the sanctity and legality of a constitutional government.

President Maumoon Abdul Gayoom ruled Maldives for 30 years since 1978 without holding elections or answerable to the people. He repressed people, silenced critics and brutally killed people. The MDP (Maldivian Democratic Party) led by Mohammed Nasheed won the elections in October 2008 but the judiciary which was connected to the old regime created hurdles in his path that he was forced to step down. Nasheed was arrested and imprisoned for 13 years.

Constitutional Government in Africa

Many countries of African continent ruled by customs and traditions have not taken very kindly to the idea of a Constitution and Constitutional governments. The idea of kinship, tribes, hierarchy is deep-rooted which leads to tight power structure and control in the hands of a few. Brumundi under President Nkuninziza remained isolated from all Constitutional norms when the President decided to continue in power for the third tenure. When the opposition protested the suppressed all dissent and protests. President Joseph Kabila got a bill passed in Congo to remain in power indefinitely. Hosni Mubarak of Egypt, who was ousted from power in 2011 during the Arab spring ruled the country since 1980 without holding elections. Keeping the Constitution aside he has his own logic and reasoning. He bludgeoned his way through all legislation.

In Liberia, Charles Taylor ruled till 2003 denying the people the basic rights. Consecration of children below 15 years, torture, detention and suppression of dissent was a norm till he was imprisoned and was sentenced to 50 years in prison.

Rule of Law doesn't prevail in Robert Mugabe's Zimbabwe. Ordering the killing of 20,000 civilians in a fit of madness in Matabeleland in Western Zimbabwe is one example of his brutality. Systematic killing of people and gradually crushing opposition has been Mugabe's mission and he has been successful. Equatorial Guinea under President Teodoro Obiang Ngueme Mbasogo engages itself in torture, unfair trades and arbitrary detention. There is no talk of Constitution or following constitutional norms. Muanmmer Gaddafi in Libya remained in harness for 40 years since 1969. He hanged his opponents publicly and dissent was declared

illegal under Law 75 of 1973. He used his personal Revolutionary Guard Corps to crush opposition. Nigeria's General Sani Abacha bade goodbye to freedom of speech, expression, assembly and rule of law from 1993 to 1998. President Bashar-al-Assad banned freedom of assembly, association and expression in Syria and arrested people and made them prisoners of conscience. Every news was filtered and any excuse was used to intimidate and people. The situation in Sudan, Somalia's Rivanda, Ethiopia, Cameroon etc. does not augur well for the people as the governments, in a majority of the cases, are not Constitutional government. The idea of democracy and a Constitutional government is alien to the people of the African Continent.

One dictator is replaced by another who is equally, if not worse. The Constitution and all its norms are freely violated with no rationale, reason or logic.

Conclusion

'A Constitution sets out the formal structure of the state, specifying the powers and institution of central government, and its relationship with other levels. In addition, Constitutions express the rights of citizens, and, in doing so, create limits on government. A codified Constitution is set out in a single document; an uncoded Constitution is among a range of documents and influenced by tradition and practice.¹² A Constitution specifies a power map which defines the various structures of government. A Constitutional government draws its strength from the Constitution of the land. The Constitution is a holy document of the political system and adherence to it can only iron out the various problems of the government. A Constitutional government would always find its journey made easy when it would adhere to the rule of law, separation of powers, checks and balances, equality, freedom, which are all professed by any Constitution committed to democracy. Burundi and Libya met their doom at the hands of a few republican elites between 1960 and 1970. Many African monarchies were wiped off in the name of progress, development to be headed in by democracy. The Constitutional government has not been a success story in Africa because of the lack of internalization of the Constitutional spirit in the system. The breakdown of the traditional order and inability of the countries to reconnect and institutionalize modern concepts of democracy

¹² Hague and Harrop, *op. cit.*, n. 2, p. 234.

lead to the present problems of breakdown or failure of Constitutional governments. The African countries fall prey to ethnic conflict. They are highly volatile because of the dangerous rush of corrupt leaders and political institutions, poverty, instability and insecurity. People are polarized along racial lines. The societies are highly stratified. Economic mismanagement and unequal distributions of gains leads to lack of trust between the people and the leaders. The authoritarian leaders, governments get chance to good power. A leader like Nelson Mandela, because of his personal struggle and charisma could bring about negotiation and accommodation in Africa. But no other leader has that aura to bring about reconciliation among the various warring groups and bring about the formation of a responsible, Constitutional government. Poverty and politicization of every issue complicates the process of government formation. Denial of basic human rights and lack of security among the people leads to rise of authoritarian regimes and failure of Constitution norms.

In many countries of Asia and Africa, the traditional order that worked well according to their societies was broken down when the colonial masters stepped in with their own rules, habits and attitude. These traditional societies could not adjust and adapt to the new political order completely. Problems, thus, persist in these countries. 'Many Asian and African governments could not co-opt the changes due to lack of social and economic infrastructures for the will of the government. They do not possess the dynamic, class-based industrial social order. Besides, the ideology of individualism underlying the western parliamentary system is alien to the people of Asia and Africa'.¹³ A few countries like India have been able to adapt, though it too had the small but dangerous stint of Emergency clamped on the nation by the then Prime Minister, Mrs. Indira Gandhi. The stability of the government is a serious issue in the developing countries. The political institutions in these countries have failed to develop[which leads to the breakdown of the constitutional machinery. A constitutional government is one in which the authority of the government is limited and is the authority of each organ of the government. The powers of the government, when restrained by a constitution achieve legitimacy. The restraints are legally enforceable. A Constitution is an arrangement of governance and tells a way as to how to go about in the administration of a country. Extending rights to the citizens, implementing rule of law in letter and spirit, protecting the citizens against undue and uncalled interference by

¹³ Smita Srivastava, op. cit., n. 4, p. 58.

authorities, division of powers and checks and balances are all hallmarks of constitutionalism and a constitutional government. According to Carl J. Friedrich, constitutionalism is both the practice of politics according to 'rules of the game', which insure effective restraints upon governmental and other political action, and the theory – explanatory and justificatory – of this practice'.¹⁴ Democracy, Constitution and constitutional government can flourish only in a particular culture, a culture where mature public opinion exists and is encouraged. In most of the African countries, the norm is, 'one man, one vote, one-time where one-party, 'dictatorship' becomes a norm after a certain period. The challenge is to make the people vote thoughtfully. People have reached that democracy or not lead to freedom. Constitutions unheated from the colonial powers did not guarantee establishment of democratic institutions. The Constitutions failed to work without a strong alert middle class and efficient leaders. So, we have Omar Bongo who ruled Gabon for 41 years and 155 days.

Paul Biya who ruled Cameroon for 40 years and 313 days, Kaison Phomvihane, who ruled Laos for 37 years and 244 days, Joap Broz Tito of Yugoslavia who ruled for 36 years and 157 days and Akdon Diouf who ruled Senegal for 30 years and 35 days. The list is endless and so are their atrocities. The different dictators used different titles to get reverence of the people. Kim Il-sung and Kim Jong Il used titles like 'Great Leaders' and 'Dear Leader' respectively. Muammar-al-Gaddafi used the titles of 'Guide of the First of September Great Revolution of the Socialist People's Libyan Arab Jamahriya' and 'Brotherly Leader and Guide of the Revolution, Nicolas Ceausescu of Romania called himself, 'Conducator' (Romanian for leader) and Saparmurat Niyazov of Turkmenistan called himself 'Turkenbashi' (Head of all the Turkmens). These dictators at all the democratic institutions aside alongwith the concept of constitutional government. Thus, we can conclude that constitutional government has to go a long journey in the developing countries of Asia and Africa,

¹⁴ Carl J. Friedrich, "Constitution and Constitutionalism", *International Encyclopaedia of the Social Sciences*, Vol. 3, pp. 319-20.