

SYLLABUS

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CHAPTER 1 POLITICAL SCIENCE - NATURE & SCOPE

SOME IMPORTANT DEFINITIONS

Society: It may be defined as “the complex of organized association and institution within a community”. It is an unorganized or organized, it is wider or narrow groups of human beings living together in a particular area. The social instinct of man compels him to live in society. According to Laski, by society, “I mean a group of human beings living together for the satisfaction of their mutual wants”.

State: Societies are politically organized under a common law within prescribed boundaries. It stands for the protection to life, liberty and property to individuals and it tries to promote human welfare and good life.

Government: It is the institutionalized power of state or authority. It is the agent through which the will of the state is formulated, expressed and realized. It consists of institutions responsible for making collective decisions for society.

Politics: It is the study of state and activity of person involved with the state i.e. government. It refers to the current problems of state and government, the actual process of co-operation, conflict and competition for power in society.

Science: is the systematic study of the structure and behavior of the physical and natural world through observation, evidence and experiment.

Political Science: is the branch of knowledge that deals with systematic study of the structure and behavior of the state and political institutions through scientific analysis. It is an academic discipline concerned with man's official institutions and activities, such as the state, government, citizenship, public affairs etc. In other words, it is a social science concerned with the theory, description, analysis and prediction of political behaviour, political activities, and political system as a whole.

MEANING OF POLITICAL SCIENCE

The term '**Political Science**' consists of two words, viz, **political** and **science**. The word 'politics' is derived from the Greek word '**Polis**' which means the city-state of Ancient Greeks. In ancient Greece, the basic unit of political organization was the city-state. It was the Greeks who first embarked upon the study of state as distinct from the church. The foundations of political thinking were laid by the great Greek philosophers, Socrates, Plato and Aristotle. Plato was the author of the book “The Republic”. **Aristotle, the father of political science, firstly used the term 'politics' and converted the subject into an academic discipline.** He published his book 'Politics' as a first systematic study of politics.

Science: It is the systematic study of the structure and behavior of the physical and natural world through observation, evidence and experiment. So, political science is the branch of knowledge that deals with systematic study of the structure and behaviour of the state and political institutions through scientific analysis. **Politics refers to the subject matter of our study; science denotes the methodology or the way**

of studying the process of politics. The first term seeks to answer the question "what is studied" and the second term refers to "how is it studied". Therefore, the political phenomenon which should be studied in accordance with a definite plan or system is called political science.

DEFINITIONS OF POLITICAL SCIENCE

It is difficult to give a precise definition to political science, because of its varying scope in different situations. Let us examine some of those definitions.

PAUL JANET

- "Political science is that part of social science which treats of the foundations of state and the principles of government"

H.J LASKI

- "The study of politics concerns itself with the life of man in relation to organized states"

LASSWELL

- "Political science is the study of shaping and sharing of power"

DAVID EASTON

- "Political science is the study of the authoritative allocation of values for a society"

GARNER

- "Political Science begins and ends with the state"

LEACOCK

- "Political Science deals with government only"

ARISTOTLE

- "Science of Polis"

GETTLE

- "Science of State"

LECOCK

- "Politics deals with Government"

GILCHRIST

- "General problem of state and government"

DHAL

- "Politics is shaping and sharing of power"

EASTON

- "Authoritative allocation of values"

MORGENTHAU

- "Politics is the struggle for and use of power"

From the above definitions we may conclude that the 'State' is the central theme of Political Science. It is the study about the state, its origin, its nature, its structure, its functions and so on. Also, it can be observed that there is an omission of the human element.

Modern political scientists have also emphasized the element of power in the study of the subject. **Abraham Kaplan, Harold. D. Lasswell** defined politics as the “*study of shaping and sharing of power*”. It suggests that struggle for power is the subject matter of the study of politics. Since this struggle takes place at all levels-domestic, local, regional, national and international – politics becomes a universal activity. Also, after and during the Second World War, people started deviating from the traditional approach and laid more emphasis on the practical or behavioural aspect of the study. Why one political institution succeeded at one place and failed at another, how the people – the ruler and the ruled – influenced politics, became a matter of serious study.

Robert A Dahl uses the term ‘political system’ instead of ‘politics’ and he defined it as any persistent pattern of human relationships that involves to a significant extent, control, influence, power or authority.

So the study of political science or politics include not only state and government but also an enquiry into the struggles for power that takes place at all levels beginning from the household to the world at large. Hence a comprehensive view of the subject of political science involves everything connected with the life of man in the process of making himself.

NATURE OF POLITICAL SCIENCE

- Political science is still growing and developing subject. So there is no uniformity among political thinkers regarding the nature of political science, whether it should be treated as a science or not. Aristotle, the father of political science, considered it as the master science or a perfect science. Political philosophers like Bodin, Hobbes, Laski, Bluntschli, Montesquie, Bryce also held the view that political science is a science.
- Some other political scientists reject the scientific nature of political science. It is said that in political science there is no uniform principles on laws which are universally valid. Human behavior is unpredictable. It, therefore, does not supply sufficient materials for scientific study. The essence of the scientific method is that it will not accept generalizations unless they are based on facts which can be verified. Political scientists like Edmund Burke, Comte, Metland, Brogan, etc., deny the claim of political science as a science.
- The reality is that, a social science is different from natural science or a physical science. Science is the systematic study of the structure and behaviour of the physical and natural world through observation, evidence and experiment. It is the body of true knowledge acquired through scientific process. But in social science we cannot expect so much accuracy and precision as we see in science subjects. Hundred percentage predictions are not possible in social science because it deals with the behaviour of man and his political institutions. There is only remote chance for verification and prediction in this subject. While in the study of political phenomena, we can apply scientific method and tools.

SCOPE OF POLITICAL SCIENCE

Nowadays, it is very difficult to determine the precise and definite boundaries of political science. It is wide and comprehensive subject and there is no uniformity among political scientists about its scope. It is the study of organizations and activities of the state, both at national and international levels. It also deals with the distribution of governing power among several agencies by which the actions of the state are determined, expressed, and exercised and with the problems of international life. Yet some of the important subjects in the scope of political science are given below:-

1. Political Science is the Study of State and Government - In the political science we study about the theoretical, structural and behavioral aspects of organization and forms of state and government.

According to **Bluntschli**, "political science is a science which is concerned with the state, endeavours to understand and comprehend the state in its essential nature, various forms, manifestations and development."

According to **Robson**, "the purpose of political science is to throw light on political ideas and political actions so that the government of man may be improved". The government is the agency of the state through which the purpose of the state is realized. It is the most lively and integral part of the state.

According to **Paul Janet**, "political science is that part of social science which treats of the foundation of state and the principles of the Government".

2. It is the study of Relationship between the man and the state - The scope of Political science also includes a study of the nature of relationship between the individual and the state. The process of men with the society is an important aspect of political science. The state guarantees certain rights and liberties to its citizens and at the same time impose certain reasonable restrictions on them. In fact, state exists for the welfare of the people. As an agent of the state, it is the function of the government to try to secure welfare for all who live within the territorial boundary of the state.

Again the government of any state is greatly influenced by the thoughts and ideas of that state. Therefore, the study about the state and government is bounded to be inconclusive without the study of the nature of the people who constitute the state. It is in this connection Max Webber has stated that political science is a descriptive¹ and normative science² and describes it as the study of human behavior in the process of enquiry of justice.

3. Study of Political Theory - The theories are the results of the thoughts and research of many scholars and exponents of political science. Political scientists formulate various political concepts and establish theories. According to Gettle, "political science is concerned with the historical survey of origin, development of political theories and ideals, the analysis of the fundamental nature of the state, its organization, relation to the individuals that compose it and its relation to other states". It is the study of the fundamental questions of the state, government, politics, liberty, justice, property, rights, law, the enforcement of legal code by authority etc.

1 **Descriptive science** is a category of science that involves observing, recording, describing, and classifying phenomena.

2 In the applied sciences, **normative science** is a type of information that is developed, presented, or interpreted based on an assumed, usually unstated, preference for a particular policy or class of policies.

It may be subdivided into political philosophy, legal political theory, the concept of sovereignty and legal controls for the exercise of political power, scientific political theory, consisting of empirical observations of political events etc. So a student of political science must start his study of the subject with the theories.

4. Study of political institutions - Political Science is also concerned with the study of political institutions and associations through with the state acts. It covers the study of the constitutions, comparative government, public administration and local government etc. It also deals with the nature of different political institutions including government, their structure such as legislature, executive and judiciary, its working, its merits and demerits etc. Further it studies about some informal groups like social, economic, educational institutions in a society.

5. Study of political dynamics - Political dynamics examines the current forces which exert influence on the government and politics. Along with the change of habits as also are bound to occur with men, social system also changes. This explains why the city states of ancient times are replaced by the nation states in the present century. The search for the cause of this kind of changes in the character of the state and government is the study of political dynamics. It covers a wide range and includes the study of political parties, public opinion, pressure groups, lobbies, etc. The study of these political dynamics helps to explain the political behavior of individuals and different groups.

6. A study of International relations, international organizations and international law - Political science deals with the matters relating to the maintenance of international relations, the international law and the organization concerned with the maintenance of world peace and security. The human society is now thinking in terms of forming a world government in the near future. International law provides the framework within which the states should enjoy their rights and duties. This has made it necessary to include in the study of political science. It is related to the maintenance of international relations and different organizations connected with the maintenances of peace and security among the states of the world.

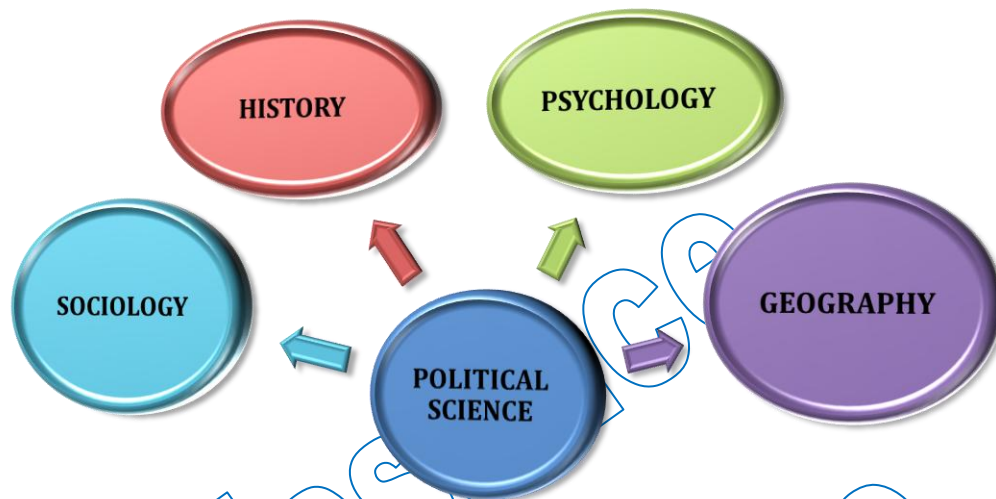
The subject matter includes international law, international and regional organizations like UNO, European Union, NAM, SAARC and League of Nations, diplomatic relations, treaties and agreements, arms control, human rights, pollution control and global warming, sustainable development etc.

7. Study of political parties and related organizations - In a democratic state, political parties play an important role in formation and functioning of government. They are regarded as an unavoidable and central part for the successful working of democratic political system. Its studies are important for understanding the nature and working of political institutions of a country. The study of political science is also concerned with the study of informal institutions through which the state acts i.e. pressure groups, interests groups and other related social, economic, educational institutions etc.

8. It studies the past, present and future development of State - The scope of Political Science includes the study of the past, present and future of states and its activities. According to **Gettle**, *"In the historical aspects, Political Science deals with the origin of the state and the development of political theories in the past; in dealing with the present it attempts to describe and classify existing political institutions and ideas. Political Science also looks to the future, to improving political organizations and activities in the light of changing conditions and changing ethical standards"*.

So, its scope is not restricted to the study of the past and the present alone, but it directs future course of the development of the state. The study is also helpful to improving the political institutions and modifying political activities in order to meet the changing national and international demands.

RELATIONSHIP OF POLITICAL SCIENCE WITH THE OTHER SOCIAL SCIENCES



1. **POLITICAL SCIENCE AND SOCIOLOGY:** Sociology is the science of the society. It deals with the origin, development and structure of the society and attempts to study its aims and achievements. It describes social traditions, customs and beliefs and deals with the origin and advancement of the human culture and civilization. Sociology as the mother of all social sciences and as a general social science has been closely related to political science in ways more than one: the latter as the offspring of sociology is also a particular social science. Political science is only a branch of sociology. **Ratzehofer** believes that “the State is a sociological as well as political phenomena and during its early stages it is in fact really more of a social than a political institution.”

Sociology deals with the principal, religious and economic progress of man, while political science is chiefly concerned with the political progress of man. Since political facts form only a part of social facts, the scope of political science is narrower than that of sociology. In other words, it can be said that sociology is the mother of all social sciences and political science is only a branch of sociology. The scope of political science is limited. It is a specialized discipline and concerns itself with the particular aspect of social life. Sociology studies political as well as non-political phenomena, while non-political phenomena are beyond the scope of political science.

2. **POLITICAL SCIENCE AND HISTORY:** The relationship between political science and history is very close and mutual. The two are contributory and complementary. As Seeley says, “History without political science has no fruit, and political science without history has no root.” The affinity between history and political science is so intimate that **Freeman** goes to the extent of saying that “history is past politics and politics is present history.” In so much as history not merely records events but analyses causes and points out tendencies, it overlaps political science. Political science, however, goes further. It uses historical facts to discover general laws and principles; it selects analyses and systematizes the facts of history in order to extract the permanent principles of political life. In a nutshell, both are inter-dependent and complementary in true sense. This however does not mean that history and political science is the same rather they substantially differ from each other.

Differences-

- a) The subject-matter of both is different. History is only the chronological record of the past events. On the other hand, political science studies the present and the future also.
- b) History is descriptive. It simply explains in a systematic way and describes the events of the past; it doesn't see the ideals. Political science is ideological while utilizing the materials provided by history, it discovers the common theories and laws.
- c) Political science studies from the point of view of the past, present and future too but the history studies only regarding the past.
- d) There is basic difference from the point of view of the object or purpose. History describes the origin and development of the state. The political science is mainly concerned with the fact as to what should be the purpose and nature of the state. The jurisdiction of history is more extensive, it covers everything like the art, culture, wars, etc.

3. **POLITICAL SCIENCE AND PSYCHOLOGY**: Psychology is the science of the nature, functions and phenomena of the human mind. Man's social behaviour is governed by the activity of his mind. Political science studies the political aspect of man's social behaviour. It is, therefore, closely related to psychology. If the political behaviour of man has to be properly understood, it is necessary that its psychological roots be discovered. The scholars who think psychologically hold that the state and other political institutions are a product of the human mind. Hence in any country those political institutions and systems can be successful which are in harmony with the mental states of its people. The spread of democracy and consequent increasing significance of public opinion and propaganda have brought psychology and political science close to each other.

4. **POLITICAL SCIENCE AND GEOGRAPHY**: The thinkers from ancient times believed that the geographical position of a country affects its political system. Geography is a study of climate, land, physical features, natural and political divisions, production, population etc. French thinker Montesquieu held that the climate determines the habits and thinking of the people. We can find out which form of government will be successful in a country only if we know its geographical situation. Aristotle said that a state must have water at least on one side. It helps in trade with the foreign countries. Similarly he maintained that countries surrounded by sea are safer because they cannot face large-scale attacks. Similarly, nature of land, availability of mineral resources, network of natural waterways etc., do affect the economy.

UNIT II : STATE AND IT'S AUTHORITY

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| 1. | State- Origin and Development |
| 2. | Power and Authority |
| 3. | State- Essential Elements |
| 4. | Sovereignty. |

The term 'State' occupies the highest place and central theme in the study of political science. The modern term "state" is derived from the word "**status**" earlier used by the German tribe '**Teutons**'. The Greeks used the word 'Polis' to denote the 'city-state' and Romans used the term 'Civitas' which means state. It was the Italian scholar **Niccole Machiavelli** (1469-1527) who used the term 'state' in political science in the modern sense.

In political science the term 'state' we mean an association of people who live within a geographical area under an organized government and subject to no outside control. State is an institution to ensure law and order and maintain harmony of social relations. It creates those conditions, which are necessary for the development of individual personality. It creates laws and rules to regulate human behavior. It stands for the welfare of society as whole and protects the rights and life of citizen from internal and external disturbances or war. The ordinary people usually use the word state in a wrong way. It is wrong to equate the word state with government, nation or society. When they say 'state aid to industries' 'state bus' etc., actually they mean 'government aid to industries' 'government bus' etc. Further, the constituent units of a federation are called "states", for example, various states in India and the federal states in the U.S.A. But as far as our study is concerned the term state is used in a different way in the scientific sense of the term "the state means an assemblage of human beings occupying a definite territory, organized under a government supreme within the country and subject to no outside control".

DEFINITIONS OF STATE

The term 'state' has been defined differently by various political thinkers. Some of the popular definitions are given below:

To quote Mac Iver "some writers define the state as essentially a class structure, others regard it as an organization that transcends class and stands for the whole community. Some interpret it as a power system, others as welfare system. Some view entirely as a legal construction either in the old Austinian sense which made it a relationship of the governors and governed or as a community organized for action under legal rules. To some it is a necessary evil and to a very few, an evil that will someday be unnecessary"

- According to **Bodin**, the state is "an association of families and their common possessions, governed by supreme power and by reason".
- **Dr. Garner**- "A state is a community of persons more or less numerous, permanently occupying a definite portion of territory independent or nearly so of external control of possessing an organized government to which the great body of inhabitants render habitual obedience"
- **Woodrow Wilson**- "The state is a people organized for law within a definite territory".
- **H.J. Laski**- "State is a territorial society divided into government and subject claiming with its allotted physical area, a supremacy over all other institutions".

- **Bluntschli** - "The state is politically organized people of a definite territory".
- **Holland** defines the state as "a numerous assemblage of human beings generally occupying a certain territory amongst whom the will of the majority or class made to prevail against any of their number who oppose it".
- **Aristotle** defined the state as "a union of families and villages having for its end a perfect and self-sufficing life by which we mean a happy and honorable life".

According to Marxist opinion, *"the state arose as a result of division of society into antagonistic classes for the purpose of curbing the exploited majority. The state is the political organization of ruling classes which uses it for the purpose of suppressing the resistance of its class enemies. It is an organization for the maintenance of the rule of one class over the other classes. To achieve this, the state possesses such instrument of power as an army, the courts, a police force, etc."*

THE MODERN CONCEPTION OF THE STATE (Views of Gabriel Almond and Robert Dahl)

Almond used the term "political system" instead of the state. According to him "political system is the system of interactions to be found in all independent societies which perform the functions of integration and adaptation (both internally and vis-a-vis other societies) by means of employment, threat of employment, of more or less legitimate physical compulsion". "The Political System" he explains, "is the legitimate, order maintaining or transforming system in the society".

THEORY OF STATE

State is the central subject of study of political science. So, political scientists have shown keen interest in understanding the origin and development of state. Many theories have come up on the origin of the state. But there is no precise answer to the question how and when the state came into being.

The theories advanced so far by the political thinkers on the origin of the state are-

**THE THEORY OF
DIVINE ORIGIN**

**THE THEORY OF
FORCE**

**THE THEORY OF
SOCIAL CONTRACT**

**THE PATRIARCHAL
THEORY**

**THE MATRIARCHAL
THEORY**

**THE EVOLUTIONARY
OR
THE HISTORICAL
THEORY**

1. The divine theory of origin of state: This theory was based on the following 3 notions-

- a) State is God-made
- b) The king is God's representative
- c) King is responsible to God.

The divine theory was criticized on the following grounds-

- In the age of scientific progress and democracy, this divine theory began to be considered as unscientific, unpractical, illogical, undemocratic and much anomalous.
- This theory is against democracy and blindly supports absolutism
- This theory is not applicable to modern states.
- This theory is reactionary and not progressive
- The state is not a divine institution but human or natural
- This theory is more religious and not political
- This theory has no significance to atheists

2. The Force Theory- This theory holds that the state originated and developed by the use of bare force applied by the strong over the weak and their consequent subjugation or suppression. In the very beginning man lived in small groups (guilds) and wandered from one place to another in search of food and other necessities. Many a times a fight broke out in these groups. Whenever the strong group succeeded in having its control over the weak group, State was organised. The leader of the strong group used to become the king and brought the defeated group into his subjection. Oppenheim, Jenks, Bernhardt are the chief exponents of this theory.

3. The Social Contract Theory of State- This theory occupies most important place in political science. Hobbes and Locke in England and Rousseau in France gave this theory its final form. Its chief postulates are-

- a) The state is not a divine creation but the result of a deliberate and voluntary agreement among men.
- b) State is not a growth but a make i.e. not the outcome of slow process of development but a sudden phenomenon.
- c) State, according to this theory, is an artificial mechanism, deliberately created by men to serve a definite purpose.
- d) That, human institutions including the state are maintained, directed and controlled by formal acts of will.
- e) That acts and decisions of the citizens are more important than the forces of nature and her laws.

The social contract theory has following criticisms-

- The relation of individual to state is not a voluntary one. Man is born into the state and cannot avoid its obligation or withdraw from its control.
- This theory tends to reduce the state to the level of a joint stock company, an artificial creation rather than the product of historical growth and social necessity.
- A contract implies previous existence of a legal authority which can enforce it. Since no political organization existed to define and enforce the contract, it would not be legally binding, and all rights will be without legal bias.
- No law or rights existed before the state arose out of contract.

4. **The Patriarchal Theory of the State**- State is the outcome of the historical evolution. Because family is the oldest of all human institutions and because family is the first constituent of society, it has played a dominant role in the organization of the state. This theory explains that the family with the father as head expanded into the clan and the clan into the tribe and finally the state came into being. The tribe expanded into the state. Sir Henry Maine was the strongest supporter of Patriarchal theory of State. This theory was also criticized on several grounds.
5. **The Matriarchal Theory of State**- Macleannan, Morgan and Jenks are chief exponents of this theory. In their books, "Primitive Society" (1866), "Studies in Ancient Society" (1877), "A History of Politics" (1900), they have explained this theory and rejected outrightly the proposition that patriarchal family was the earliest form of society. They maintained that primitive families had no common male head and kinship was traced through mothers. The matriarchal family was prior to patriarchal families. This theory was again criticized and hence failed on several grounds.
6. **The Evolutionary or Historical Theory of State**- This theory attempts to explain the origin of State most scientifically. According to this theory, the state is a historical growth. The state is neither the result of an artificial creation nor it originated at a particular period of time. Garner has very aptly observed that **"The State is neither the handwork of God, nor the result of superior physical force, nor the creation of resolution or convention, nor a mere expansion of the family. The state is not a mere artificial mechanical creation but an institution or natural growth of historical evolution."**

Of all the above theories of origin of state, except the Evolutionary theory the other theories are not accepted as correct theories on the origin of the state. To quote **Leacock** "the state is a growth, an evolution, the result of a gradual process running through all the known history of man and reaching into remote and unknown part". **John Morley, Gettel, Garner, Burgess and Leacock are the supporters of this theory.**

THE ELEMENTS OF THE ORIGIN OF THE STATE

According to the advocates of the Evolutionary theory, kinship, religion, natural social instincts, force, war and conflict, economic activities and political consciousness were some of the various factors which contributed to the origin of the state. The part played by each of them may be stated as follows.

1. **Kinship**- In the primitive societies people were united on the basis of Kinship. It has been a significant factor in the evolution of the state. It has played an important part in early civic development. R.N. Gilchrist says that "blood relationship is an inevitable bond in society". The closest bond of kinship is the family composed of father, mother and children. With the expansion of the family arose new families and by the multiplication of the families of the same stock, tribes or clans were formed. These tribes or clans play a very important part in the organisation of the state by their unification.

Henry Maine says "Kinship created a common consciousness, common interest and common purpose". According to Mac Iver it is the Kinship which creates the society and society at length create the state. Thus we understand that kinship played an important role in the growth and development of the state.

2. **Religion**- Influence of religion over primitive society was very great. National phenomenon like floods and thunderstorms were believed to be the will of God in ancient times. They, therefore, sought remedies for them in the worship of god alone. Since everyone did not know the procedures of worship they authorised a priest to worship god on their behalf. The priest in course of time turned into a ruler, and thus, the state came into existence.

As supplementary to the religion the influence of magic may also be mentioned here. Magicians exerted some influence on the minds of the people, who were ignorant and superstitious.

We have historical evidences in support this view. The Jehova worship was the strongest force, which united the tribes of Israel. Prophet Mohamed united the scattered and unsettled races and tribes of Arabia. Consequently the people of Arabia emerged into a powerful nation. Thus religion assisted in the formation and the development of the state by strengthening the unity of the tribe and authority of the chief.

3. **Force**- Force played a dominant role in the growth of the state. The formula generally accepted in the primitive communities was "might is right". Huntsmen and herdsman possessed a crude type of organisation. But they were powerful and subjugated the peasants who were compelled to pay tribute to their victor. Big groups called tribes, having some common features, organized a joint force. The tribe having a better organisation started attacking and conquering its group.

War and conflict help in the amalgamation of families into clans, of clans into tribes and tribe into larger units that become the state. With the weakening of kinship, the application of forces became necessary for the maintenance of peace and order. The coercive force exercised by the leader eventually developed into political sovereignty. This resulted in the domination of the strong over the weak. According to Mac Iver conquest and domination paved the way for the emergence of the state.

4. **Economic Activities**- Economic factors such as possession of wealth and property contributed much to the origin of the state. The primitive people had three successive economic stages that brought about corresponding changes in the social organisation. They were Huntsman stage, the Herdsman stage and the Husbandman or Agricultural stage.

In the huntsman stage people were wandering people and had no private property -there was no distinction between the rich and the poor. Hunting was only the source of livelihood. In the herdsman stage there was some accumulation of property in the hands of some people, so certain laws became necessary. In this stage, private property emerged in the elementary form. The state acquired territorial character only in the husbandman stage. With the growth and development of agriculture, people were forced to settle down in a particular territory. Laws became necessary to protect property and to settle disputes regarding property.

Gettle says "Differences in occupation and wealth created social classes or casts and the domination of one class by another for the purpose of economic exploitation was an important factor in the rise of Government"

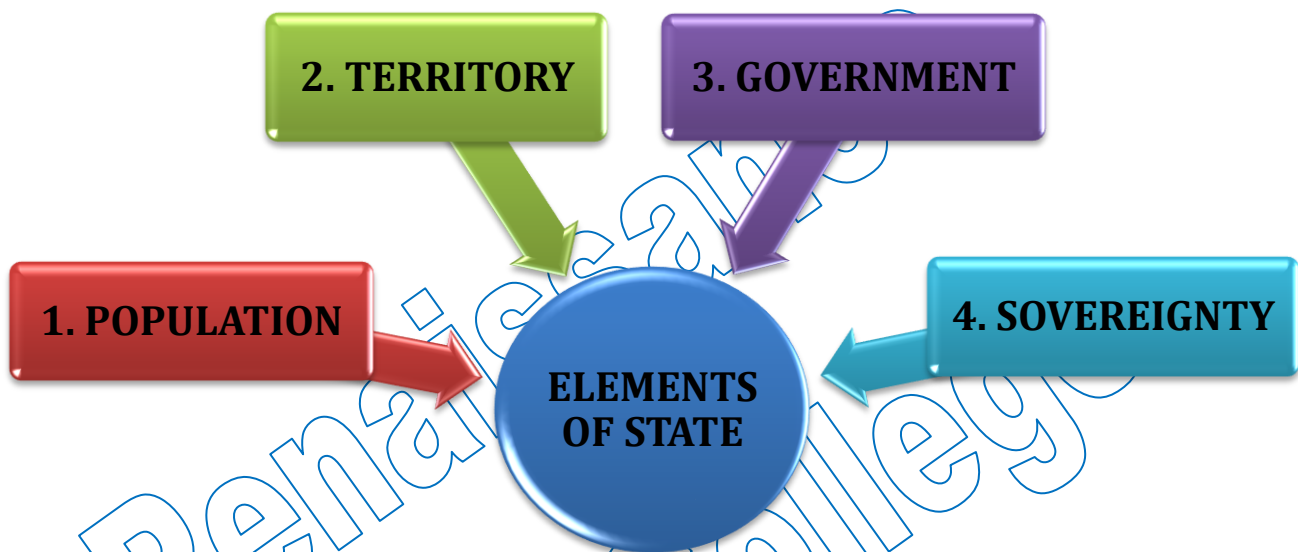
5. **Political Consciousness**- Political consciousness of the people is the last contributing factor for the development of modern state. Political consciousness means an awareness among the people of common purposes and end to be realised through political organization, which including the security of life and property, to protect from external attack , social ,economic, moral and intellectual development and the like. With the rapid increase in population and the wealth, a political organization like the state was needed for the maintaining law and order and for settling the disputes. All these led to the emergence of political power and the conscious adaption of political institutions contributed much to the origin of state.

We can conclude by saying that the Historical or Evolutionary theory appears to be more realistic theory than any other theory regarding the origin of the state. Mac Iver says," we cannot say when and

where the state begins. It is implicit in the universal tendency to leadership and subordination, but it only emerges when authority becomes government and custom is transacted into law".

ELEMENTS OF STATE

The above definitions given by various writers show that there are four elements of a state namely-



(Of these four elements, the first two are physical, the third political and the fourth spiritual)

POPULATION

Since state is a human institution and highest of all human associations. There can be no state without human beings. No state can exist in an uninhabited land. There is no limit for the number of citizens in a state. According to Plato, an ideal state should consist of 5050, while Plato's disciple Aristotle was not willing to be bound by any set figure. However, in the modern times the scholars have not ventured to fix any upper or lower limits of population. They are of the view that the number should neither be too small to be self-sufficient nor too large to be well-governed. The People's Republic of China is the largest state in respect of population and San Marino in Italy is the smallest.

The modern state gives preference to the big size population because the bigger the size of population, the greater will be its manpower. They can fight for a bit longer period of time during the war period. This is the reason why Nazi Germany, Fascist Italy, and communist Russia encouraged mothers to have more issues. Such mothers were called "Heroine mothers". While the problem of these countries is one of decline of population, the problem of state like India is one of phenomenal increase in her population. The acceptable rule, as Dr. Garner says that, population must be sufficient to provide a governing body and number of persons to be governed and of course sufficient to support a state organisation.

TERRITORY

A modern state cannot exist without territory. Nomadic tribes and gypsies wandering from one place to another could not form a state. But no limit can be laid down on territory as in population.

The largest state in size is the former U.S.S.R, whose area covered about one by sixth of the world whereas Vatican in Rome has an area of about 4 square miles. The advantage of small state is that they remain compact and well governed. But at the same time, they are at great disadvantage as in the matters of difference and natural resources. But size is no index of greatness. Any how the modern age is definitely of large territorial state because a large state can mobilise all its resources for the economic and social welfare and defence.

GOVERNMENT

Government is an essential element of the state. It is the agency through which the will of the state is formulated, expressed and realized. It is the duty of the government to protect the sovereignty and integrity of the state, maintain law and order, protect citizens from external aggression, solve the dispute among citizen and work for the all round development of the people. Hence Government is indispensable because there can be no civilised existence without it. Government may vary from state to state. Democracy is popular in India, England, America, France, Italy etc, communist government is popular in Nepal and Military government in Pakistan, Turkey etc.

SOVEREIGNTY

Sovereignty means supremacy of the state. It is the most important element of the state. It is sovereignty that differentiates the state from all other social organization. Since state is supreme in internal and external matters. Sovereignty is of two types-internal sovereignty and external sovereignty. Internal sovereignty means that the state has no control over the institutions and the people of the state. External sovereignty means that the state is free from the control of other states.

POWER AND AUTHORITY OF STATE

Following are the differences between state and society.

S.No.	STATE	SOCIETY
1.	State came into existence after the origin of the society.	Society is prior to the state.
2.	The scope of the state is limited.	The scope of society is much wider.
3.	State has fixed territory.	Society has no fixed territory.
4.	State is a political organization.	Society is a social organization.
5.	State has authority to enforce laws	Society has no authority to enforce laws

S.No.	STATE	NATION
1.	Existed not only at present but also in the ancient period.	Modern phenomenon.
2.	It is legal political.	It is racial cultural.
3.	People organized for law within a definite territory.	People psychologically joined together with common will to live together.
4.	A state must be sovereign.	People continue as a nation even if they do not remain sovereign.
5.	Inhabited by heterogeneous groups of people.	Inhabited by homogeneous groups of people.

S.No.	STATE	GOVERNMENT
1.	State consists of population, territory, government and sovereignty.	Government is part of the state.
2.	State possesses original powers.	Powers of the government are derived from the State.
3.	State is permanent and continues forever.	Government is temporary. It may come and go.

FUNCTIONS OF MODERN STATES

- Essential functions and other ancillary optional functions
- Defence against foreign attacks (Military functions)
- Maintenance of internal peace and security i.e. law and order.
- Protection of life, liberty, property of the people.
- Determination of contractual rights between individuals.
- Defining and punishing crimes.
- Administration of justice.
- Determination of political duties, privileges and relations of citizens.
- Maintenance of foreign relations, protection of its sovereignty–internal and external.
- Financial functions like taxation, currency, and coinage etc.
- **Optional or voluntary functions such as-**
 - ✓ Education
 - ✓ Health and physical well-being of the people.
 - ✓ Social and economic improvement
 - ✓ Proper use of natural resources of the country
 - ✓ Arrangement of recreation
 - ✓ Regulation and encouragement of trade and industry.
 - ✓ Regulation of wages.
 - ✓ Management of transportation.
 - ✓ Maintenance of communication system.
 - ✓ Maintenance of sanitation

SOVEREIGNTY

The word sovereignty is derived from the Latin word “superanus” which means supreme or paramount. Although the term sovereignty is modern yet the idea of sovereignty goes back to Aristotle who spoke of the “supreme power of the state”. In this technical form it was first used by the French writer Bodin in his book 'Republic'. According to Bodin “sovereignty is the supreme power of state over citizens and subjects unrestrained by law.”

Sovereignty is the most important characteristic which distinguishes the state from all other social organizations. The state is supreme and it is above all individuals as well as associations. In one word we can say sovereignty denotes the supremacy of the state internally and externally. Hence the concept of sovereignty is one of the most fundamental concepts in the study of political science.

DEFINITIONS OF SOVEREIGNTY

BODIN

- "Sovereignty is the supreme power of state over citizens and subjects unrestrained by law."

GROTOIUS

- "Sovereignty is the supreme power vested in him whose acts are not subject to any other and whose will cannot be over ridden"

BURGASS

- By sovereignty I understand the original, absolute, universal power over the individual subject and all association of subject. It is underived and independent power to command and compe obedience."

WILLOUGHBY

- "Sovereignty is the supreme will of the state"

DUGUIT

- Sovereignty is the "commanding power of the state; it is the will of the nation organized in the state, it is the right to give unconditional orders, to all individuals in the territory of the state"

TWO ASPECTS OF SOVEREIGNTY

1. INTERNAL SOVEREIGNTY

2. EXTERNAL SOVEREIGNTY

Internal sovereignty refers to the supreme authority exercised by the state over the people and territory that it controls. It is absolute in authority over all individuals or associations within the state. It issues orders to all men and all associations within that area and it receives orders from none. The will of the state is absolute and it is subject to no legal limitations. In the words of Laski, "Sovereignty is legally over an individual or group, he possesses Supreme Coercive Power."

External sovereignty- By external sovereignty we mean that the state is independent of any compulsions or interference from the part of other states. Each independent state reserves the authority to renounce trade treaties and to enter into military agreements. Thus by external sovereignty we mean that every state is independent of other states. In other words, external sovereignty means national freedom.

CHARACTERISTICS OF SOVEREIGNTY

According to Garner, following are the characteristics or attributes of sovereign state:

- **PERMANENCE**: It is the chief characteristic of sovereignty. Sovereignty lasts as long as an independent state exists. The death of a King or the overthrow or the change of a particular system of the government does not lead to the destruction of sovereignty. Justice Sutherland of U.S.A. said "Rules come and go; governments end and forms of government change; but sovereignty is never held in suspense". This is the reason why people in England used to say "King is dead, long live the King".
- **EXCLUSIVENESS**: The sovereign power is exclusive prerogative of the state and is not shared by it with any other authority or group. In the state there can be only one sovereign who can legally compel obedience from all persons and associations within its jurisdiction. By this we mean that there can be no two sovereigns in one independent state. If two sovereigns exist in a state the unity of that state will be destroyed. There cannot exist another sovereign state within the existing sovereign state.
- **ALL COMPREHENSIVENESS**: The state is all comprehensive and the sovereign power is universally applicable. Every individual and every association of individuals is subject to sovereignty of the state. No association or group of individuals however rich or powerful cannot resist or disobey the sovereign authority. Sovereignty makes no exception and grants no exemption to any one.
- **INALIENABILITY**: Sovereignty is inalienable. By inalienability we mean that the state cannot part with its sovereignty. In other words we can say that the sovereign or the sovereign state does not remain, "if the sovereign or the state transfers his or its sovereignty to any other person or any other state. Sovereignty is the life and soul of the state and it cannot be alienated without destroying the state itself. Indivisibility: It is the essence of sovereignty. Sovereignty cannot be divided without being destroyed. The division of sovereignty leads to the disunity of state. In the words of Gettell "the concept of divided sovereignty is a contradiction in terms. If the sovereignty is not absolute, no state exists; if sovereignty is divided, more than one state exists". American statesman Calhoun has declared "sovereignty is an entire thing to divide it is to destroy it. It is the supreme power in a state and we might just as well speak of half square or half a triangle as half a sovereignty".
- **ABSOLUTENESS**: Absoluteness of sovereignty means that there is no legal power within the state or outside the state superior to it. The authority of the sovereign is not subject to any internal or external limitations. He is absolute and unlimited the sovereign is entitled to do whatever he likes.
- **INDIVISIBILITY**: Sovereignty cannot be divided. Division of sovereignty means destruction of sovereignty. If sovereignty is not absolute, no state would exist.

THEORY OF SOVEREIGNTY

LEGALISTIC VIEW OF SOVEREIGNTY / AUSTINIAN THEORY OF SOVEREIGNTY / MONISTIC THEORY OF SOVEREIGNTY

This is also known as monistic theory of sovereignty which finds its expression in the works of John Austin an English jurist of the 19th century. He explains his theory in his book "Lectures on Jurisprudence". He formulated his theory based on the teachings of Hobbes and Bentham. His theory of sovereignty may be summarised as follows-

"if a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society, and the society(including the superior)is a society political and independent, law is the command of a determinate human superior to an inferior".

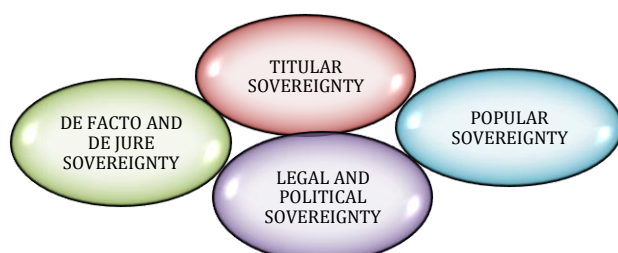
An analysis of Austinian theory of sovereignty shows the following distinctive features of sovereignty and law-

- ✓ According to Austin, in every independent society there is a sovereign power and this sovereign is a determinate person or body of persons.
- ✓ The power of sovereign is legally unlimited. There is no law to limit the powers of the sovereign.
- ✓ The sovereign receives habitual obedience from the bulk of its people. Obedience must be a matter of habit not merely occasional.
- ✓ The power of the sovereign is indivisible. The sovereign power is absolute and incapable of limitations.
- ✓ Laws are the commands of the superior and without the superior, there can be no law.

In short, Austin affirms the existence of supreme power, which is determinate, absolute, inalienable, indivisible, all comprehensive and permanent.

KINDS OF SOVEREIGNTY

Sovereignty can be classified into different kinds. This classification is based on the location of sovereignty.



TITULAR (NOMINAL) AND REAL SOVEREIGNTY

By titular sovereignty we mean sovereignty by the title only. It refers to the sovereign powers of the king or monarch who has ceased to exercise any real authority.

In theory he may still possess all the powers but in practice sovereign power is enjoyed by some other person or body of persons. Titular sovereign is only a symbol of authority, a legacy of past. Britain presents a good example of titular sovereign. The king is the titular head and he does not enjoy any real powers. Actual powers are enjoyed by council of ministers and parliament. In India president is a titular sovereign and the cabinet is a real sovereign.

DE FACTO AND DE JURE SOVEREIGNTY

De facto sovereignty indicates to a sovereign who without legal support or constitutional support enjoys sovereign power. De jure sovereign is recognized by law or the constitution, but not in position to practice its power.

In case of revolutions, that is a successful overthrow of the existing regime in a state there may be de facto and de jure sovereigns. For example when Mussolini came to power in Italy in 1922, de facto sovereignty passed into his hands although Victor Emmanuel was the de jure sovereign. The military dictatorship of the present world, established after a coup d'état also represents de facto sovereignty until it evolves suitable means to legitimize its authority.

Usually de facto and de jure sovereign stay together for a very short period and the de facto sovereign tries to become de jure sovereign. The de facto and de jure sovereigns should ultimately coincide; otherwise there is danger of conflict between them. New laws are made in order to give him definite status to the de facto sovereign to give it legal support.

LEGAL AND POLITICAL SOVEREIGNTY

Distinction is sometimes drawn between legal and political sovereignty. The sovereign is supposed to be absolute i.e. supreme and omnipotent (i.e. all powerful). It functions according to its own will. Law is simply the will of sovereign.

There is none to question its validity. Legal sovereign grants rights to its citizens and there can be no rights against him. It means rights of citizens depend on the will of legal sovereign and any time he can take away.

Legal sovereign has following characteristics-

1. The legal sovereignty is always definite and determinate.
2. Legal sovereignty may reside either in one person or in a body of persons.
3. It is definitely organized, precise and known to law.
4. Rights of citizen are gift of legal sovereign.
5. The will of state is expressed by the legal sovereign only.
6. Legal sovereignty is absolute. It cannot be questioned.

In Britain, King in Parliament is the sovereign. In U.S., the legal sovereign consists of the constitutional authorities that have the power to amend constitution.

But behind the legal sovereignty there is another power, which is unknown to law. It is political sovereignty. In practice absolute and unlimited authority of the legal sovereignty does not exist anywhere. Even a dictator cannot act independently and exclusively. The will of legal sovereignty is actually sharpened by many influences, which are unknown to law. All these influences are the real power behind the legal sovereign; and this is called political sovereignty. As **Professor Gilchrist** says- "The political sovereign is the sum total of the influences in the state which lie behind the law." The political sovereignty is not known to law. In modern representative democracies the political sovereignty is very often identified with either the whole mass of the people or with electorate or with public opinion. **The legal sovereign cannot act against the will of political sovereign.**

Dicey says that "body is politically sovereign which the lawyers recognize there is another sovereign to whom the legal sovereign bows- that body is political sovereignty; that which is ultimately obeyed by the citizens of the state." A lot of confusion arises when we attempt the exact definition of political sovereignty. It is a vague and indeterminate and cannot be located with exactness. It is suggested by some writers that there is no justification for making a distinction between legal and political sovereignty, as that involves the division of sovereignty, which is not possible.

POPULAR SOVEREIGNTY

When the sovereignty resides in the people of the state it is called as popular sovereignty. This theory was expounded by **Rousseau**, when later became the slogan of French Revolution. The doctrine of popular sovereignty regards people as the supreme authority. It is people who decide right or wrong. People are not bound by any natural or divine law. Government exists only as a tool for the good of the people. It should be held directly responsible to the people. It can exercise authority only on the basis of the law of land. Will of the people should not be ignored popular sovereignty is the basis of modern democratic system.

AUSTIN'S THEORY OF SOVEREIGNTY **(MONISTIC VIEW)**

In modern times, the development of sovereignty as a theory coincided roughly with the growth of the state in terms of power, functions and prestige. In the nineteenth century, the theory of sovereignty as a legal concept (i.e. sovereignty expressed in terms of law) was perfected by John Austin, an English jurist. He is regarded as the greatest exponent of the Monistic theory of sovereignty. It is called the **Monistic Theory of Sovereignty** because it envisages a single sovereign in the state. The sovereign may be a person or a body of persons. Furthermore, as sovereignty is considered to be a legal concept, the theory is called **the Legal-Monistic theory of Sovereignty**.

John Austin, in his book '**Province of Jurisprudence Determined**' (1832), Austin observed "**if a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society that determinate superior is sovereign in that society and that society (including superior) is a society political and independent.**" To Austin in every state there

exists an authority to whom a large mass of citizen show compliance. This authority is absolute, unlimited and indivisible. **Austin's** theory of sovereignty depends mainly upon his view on nature of law. According to **Austin** "Law is a command given by a superior to inferior".

On an analysis of the above definition, we could find the following implications-

Firstly, sovereignty must reside in a "determinate person" or in a "determinate body" which acts as the ultimate source of power in the state.

Secondly, the power of the determinate superior is unlimited and absolute. He can exact obedience from others but he never renders obedience to any other authority.

Thirdly, the obedience rendered by a people to an authority occasionally will not turn the authority into sovereign power.

Fourthly, obedience rendered to sovereign authority must be voluntary and as such undisturbed and uninterrupted. Austin also points out that it is not necessary that all the inhabitants should render obedience to the superior. It is enough if the "bulk", i.e., the majority of a society renders habitual obedience to the determinate superior.

Fifthly, the sovereign is the supreme law maker. Laws are the commands of the sovereign which are binding upon all within the territorial jurisdiction of the state. Breach or violation of these commands leads to punishment from the sovereign.

Sixthly, sovereignty is one indivisible whole and as such incapable of division between two or more parties. There can be only one sovereign authority in a state.

THE MAIN TENETS OF AUSTIN'S THEORY OF SOVEREIGNTY ARE AS FOLLOWS-

- Sovereignty is a person or body of persons. It is not necessary that sovereign should be a single person. Sovereignty may reside in many persons also. Austin explains that a "Sovereign is not necessarily a single person, in the modern western world he is rarely so; but he must have so much of the attributes of a single person as to be a determinate."
- To Austin state is a legal order, in which there is a supreme authority, which is source of all powers. Sovereignty is concerned with man, and every state must have human superior who can issue commands and create laws. Human laws are the proper subjects of state activity.
- Sovereign power is indivisible. Division of sovereignty leads to its destruction. It cannot be divided.
- The command of sovereignty is superior to over all individuals and associations. Sovereign is not bound to obey anyone's order. His will is supreme. There is no question of right or wrong, just or unjust, all his commands are to be obeyed.
- Austin's theory says that the obedience to sovereign must be habitual. It means that obedience should be continuous. He also includes that it is not necessary that obedience should come from the whole society. It is sufficient, if it comes from the lay majority of people. Obedience should come from bulk of the society otherwise there is no sovereign.

In brief we can say that sovereignty according to Austin is supreme, indivisible and unquestionable.

CRITICAL EVALUATION OF AUSTIN'S THEORY

The theory of Austin has been strongly criticised by many writers like Sidgwick, Sir Henry Maine and others. The main point of criticism against Austin's theory is that the theory is inconsistent with the modern idea of popular sovereignty. In his fascination for the legal aspect of sovereignty, Austin completely loses sight of popular sovereignty according to which the ultimate source of all authority is the people. It is also pointed out that sovereignty may not always be determinate. It is very difficult to locate the sovereign in a federal state. For example, in the federal state of USA, sovereignty resides neither with the President nor with the legislature, namely, the Congress. It resides with the people as expressed in the constitution. The same is the case in India.

However, inspite of the criticisms levelled against the monistic view of sovereignty as propounded by John Austin, it must be mentioned that Austin is an exponent of absolute and unlimited sovereignty purely from the legal or formal point of view. Fundamentally, he does not prescribe for an irresponsible sovereign, but maintains that the sovereign cannot be formally made responsible to any authority similar to himself. His authority is legally superior to all individuals and groups within his jurisdiction. Austin has done a distinct service by clearly distinguishing the legal from the political sovereign.

PLURALIST THEORY OF SOVEREIGNTY

Pluralism or the Pluralist theory of sovereignty emerged as a reaction against the Monistic theory of sovereignty. The Pluralist theory emerged in response to the undue emphasis on the power of the state as advocated by the monists. Some of the leading exponents of the Pluralist theory include Emile Durkheim, Otto von Gierke, F.W.Maitland, G.D.H. Cole, Sidney and Beatrice Webb, Miss M.P.Follet and Prof. Harold Laski. The Pluralist theory of sovereignty rejects the monistic theory of sovereignty and denies that sovereignty is the absolute and indivisible supreme power of the state. To monistic theory, state is supreme association and all other associations are the creation of state and their existence depends on the will of the sovereign power. The pluralist theory rejects this and tries to establish that there is no single source of authority that is all competent and comprehensive.

Laski says that sovereignty is neither absolute nor a unity. It is pluralist, constitutional and responsible. State has no superior claim to an individual's allegiance³. It can justify itself as a public service corporation. State exists to coordinate functions of human association in the best interest.

Another exponent of pluralist theory **Robert Mac Iver** propounds that state is one of the several human associations, although it exercises unique characteristics.

³ **Meaning:** Loyalty or faithfulness

The chief tenets of pluralist theory of sovereignty are as follows-

- Pluralist sovereignty deals with political aspects of sovereignty.
- State is one of the several human associations catering to various interests of the individuals.
- State is arbiter over conflicting interests of different associations.
- State should compete with other human associations to claim superior authority.
- State was not absolute or supreme legally.
- State is not the only source of legislation or law.
- Law is very antithesis (i.e. the exact opposite) of command.
- The state is both the child and parent of law.
- The root of obedience of law isn't coercion but the will to obey.
- State and government are not different.

PLURALISTIC NATURE OF SOCIETY

The Pluralist theory recognises the role of several associations in the society, formed by men in pursuance of their varied interests. Such associations include the church and other religious organisations, trade unions, cooperative societies, voluntary associations and the like. At best, the state is but one of these associations, standing side-by-side with them and not above them. The state is not distinct from these associations.

ROLE OF THE STATE AS COORDINATOR

Just as an association coordinates the activities of its members, the state also coordinates the activities of the other associations in the society. The state is a means of resolving the conflicting claims of these associations. It does so by evolving a common basis of their functioning, not by imposing its own will on them but by way of harmonising and coordinating their several interests so as to secure the "common good" or the interest of the society at large.

The Pluralist theory maintains that the claim of the state to superior authority cannot be taken for granted. The state enjoys a privileged position in the sense that its jurisdiction is compulsory over all individuals and associations within its fold. It is equipped with coercive powers so that it can punish those who defy its commands. But the state must justify the exercise of its special powers. As an association of associations, the state must fulfil its moral obligation of harmonising the interests of all associations operating in the society, without letting itself be influenced by any "vested interests" while exercising its authority.

DECENTRALISATION OF AUTHORITY

The Pluralists hold that the complexity of the economic and political relations of the modern world cannot be dealt with by a monolithic view of the state. Therefore, the management and control of society must be shared by various associations in proportion to their contribution to the social good. Accordingly, the pluralists stand for the decentralisation of authority so that all authority is not concentrated in the hands of the state.

CRITICAL EVALUATION OF THE PLURALIST THEORY

The pluralist theory of sovereignty is criticised on the ground that if sovereignty is divided among the various associations existing in the society, this division will lead to the destruction of sovereignty. As a result, there will be chaos and anarchy in the society. Furthermore, some groups in the society may be more organised and vocal than other groups. In such situations, the interests of the dominant groups may prevail over the vulnerable sections of the society. Under such circumstances, the responsibility for protecting the common interests rests with the state, which has to harmonise the conflicting claims of different interest groups.

However, inspite of the criticisms levelled against the Pluralist theory of sovereignty, it must be mentioned that the pluralist theory was a democratic reaction against state absolutism. It pointed out the limitations on the authority of the state while acknowledging the role and importance of various groups and associations in the society.

Renaissance
Law College

POWER

The concept of power is the most influential one in the whole of political science. Socrates, Plato, Aristotle etc. have admitted the importance of power in their own way. However, it can be noted here that there is no unanimity among the political scientists regarding the definitions of power. Political scientists have actually used a variety of terms; power, influence, authority, control, persuasion, might, force and coercion to convey the same meaning.

DEFINITIONS OF POWER

LASWELL & KAPLAN

- "The concept of power is perhaps the most fundamental in the whole of political science. The political process is the shaping, distribution and exercise of power"

KARL BAKER

- "The simple fact is that politics is inseparable from power. States and government exist to exert power. In each country and in the world at large there is either a balance of power, an unstable balance or no balance of power at all"

HERBERT & EDWARD SHILLS

- "Power is the ability to influence the behaviour of others in accordance with one's own ends."

M.G. SMITH

- "Power is the ability to act effectively over people and things using means, ranging from persuasion to coercion"

NATURE/FEATURES OF POWER

- Power is relational
- Power is reciprocal
- Power is relative
- Actual power and potential power

SOURCES OF POWER

- KNOWLEDGE
- WEALTH
- ORGANISATION
- PERSONALITY
- FAITH
- SOCIAL LEVEL
- AUTHORITY

Power may be held through-

- Authority
- Delegated authority (for example in the democratic process)
- Social class (material wealth can equal power)
- Resource currency (material items such as money, property, food)
- Personal or group charisma (including public opinion)
- Ascribed power (acting on perceived or assumed abilities, whether these bear testing or not)
- Expertise (ability, skills) (the power of medicine to bring about health; another famous example would be "in the land of the blind, the one-eyed man is king" – Desiderius Erasmus)
- Persuasion (direct, indirect, or subliminal)
- Knowledge (granted or withheld, shared or kept secret)
- Force or punishment (law) (violence, military might, coercion).
- Moral persuasion (including religion)
- Operation of group dynamics (such as public relations)
- Social influence of tradition (compare ascribed power)

RELATIONSHIP BETWEEN POWER AND POLITICS

Power is the fundamental basis of the politics. It has been described as a common urge or inclination of mankind. The basis of political power is psychological influence, leadership and its will power.

AUTHORITY

Political leaders constantly endeavour to magnify their influence but they know that it is highly flexible, fluid, dynamic, indefinite and uncertain though at times more effective than power itself. Therefore, they remain in search of stabilizing their influences by way of transforming it into authority. Authority is the legitimate or socially approved use of power. It is the legitimate power which one person or a group holds over another. The element of legitimacy is vital to the notion of authority and is the main means by which authority is distinguished from the more general concept of power. Power can be exerted by the use of force or violence. Authority, by contrast, depends on the acceptance by subordinates of the right of those above them to give them orders or directives.

TYPES OF AUTHORITY

TRADITIONAL AUTHORITY

CHARISMATIC AUTHORITY

RATIONAL-LEGAL AUTHORITY

TRADITIONAL AUTHORITY

Power legitimized by respect for long-established cultural patterns. Traditional authority (also known as traditional domination) is a form of leadership in which the authority of an organization or a ruling regime is largely tied to tradition or custom. The main reason for the given state of affairs is that 'it has always been that way'. Subjects or subordinates accept commands of their superiors on the basis of precedents and past history.

CHARISMATIC AUTHORITY

Max Weber defined charismatic authority as "resting on devotion to the exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him." The concept has acquired wide usage among sociologists. Other terms used are "charismatic domination" and "charismatic leadership". Power legitimized by extraordinary personal abilities that inspire devotion and obedience. When the subordinates defer to the orders of their superior on the basis of

his personal qualities and put themselves under their impact, charismatic authority occurs. There is no delegation as such. Subordinates are treated as disciples and followers.

RATIONAL-LEGAL AUTHORITY

Also known as rational authority, legal authority, rational domination, legal domination, or bureaucratic authority, is a form of leadership in which the authority of an organization or a ruling regime is largely tied to legal rationality, legal legitimacy and bureaucracy. The majority of the modern states of the twentieth and twenty-first centuries are rational-legal authorities, according to those who use this form of classification. Also known as bureaucratic authority, it is when power is legitimized by legally enacted rules and regulations such as governments.

Weber wrote that the modern state based on rational-legal authority emerged from the patrimonial and feudal struggle for power. The pre-requisites for the modern Western state are:

- monopolization by central authority of the means of administration and control based on a centralized and stable system of taxation and use of physical force
- monopolization of legislative
- organisation of an officialdom, dependent upon the central authority

Weber argued that some of those attributes have existed in various time or places, but together they existed only in Occidental civilization. The conditions that favoured this were-

- emergence of rational-legal rationality (various status groups in the Occident promoted that emergence)
- emergence of modern officialdom (bureaucracy), which required
 - ✓ development of the money economy, where officials are compensated in money instead of kind (usually land grants)
 - ✓ quantitative and qualitative expansion of administrative tasks
 - ✓ centralization and increased efficiency of administration.

Weber's belief that rational-legal authority did not exist in Imperial China has been heavily criticized, and does not have many supporters in the early 21st century.

MODERN STATE

According to Max Weber, a modern state exists where a political community has-

- an administrative and legal order that has been created and can be changed by legislation that also determines its role
- binding authority over citizens and actions in its jurisdiction
- the right to legitimately use the physical force in its jurisdiction

An important attribute of Weber's definition of a modern state was that it is a bureaucracy. The vast majority of the modern states from the 20th century onward fall under the rational-legal authority category.

UNIT III: RIGHTS, DUTIES, PRIVILEGES & CIVIL LIBERTIES OF CITIZENS LAW

- RIGHTS OF CITIZENS,
- THEORIES OF RIGHTS,
- RIGHTS AND DUTIES,
- HUMAN RIGHTS,
- LIBERTY,
- EQUALITY AND LAW

LAW- Meaning, Evolution, Sources and Classification of Law

Men live in a society. They differ in their ideas, aims and ideals. Hence, there must be some uniform rules to control their behavior and activities. These uniform rules which regulate human behavior and activities are called laws. The concept of law holds a significant place of political theory. Law and State are closely associated in the sense that State without law is anarchic and law without State is meaningless.

It is difficult to give an exact definition of law. Laws have different meanings at different times. It prescribes the general conditions of human activity in the state. It refers to body of rules which regulate and guide human conduct in various spheres of state and individual activities. It is a body of principles recognized and applied by the state through a set of institutions. They are virtually commands, ordering or prohibiting certain actions and affect everyday life and society in a variety of ways. The policies of the state are expressed through law and disobedience to laws involves punishment. Violation of law is a crime and is punishable. Law is concerned with the external behavior of man. Obedience of law is compulsory. Law is meant for the welfare of all.

DEFINITIONS

The term law is derived from the old Teutonic root '**lag**' which means something which lies fixed. The word 'law' is also associated with the Latin word '**jus**' which again is associated with the Latin word '**jungere**' giving the meaning 'a bond' or 'a tie'. In English language the term law is used to denote something which is uniform. The Oxford dictionary defines law as "a rule of conduct imposed by an authority". Some of the definitions of law are as follows:

DEFINITIONS OF LAW

WOODROW WILSON

- "law as the portion of that established thought and habit which has gained distinct and formal recognition in the sphere of uniform rules backed by the authority and power of the government".

JOHN AUSTIN

- "law as a command of a sovereign who receives habitual obedience from the people living within his jurisdiction".

HOLLAND

- "A law is a general rule of external human action enforced by a sovereign political authority".

SALMOND

- "Law is a collection of the rules which the state recognises and applies in the administration of justice".

T.H.GREEN

- "The law is a system of rights and obligations which the state enforces".

POUND

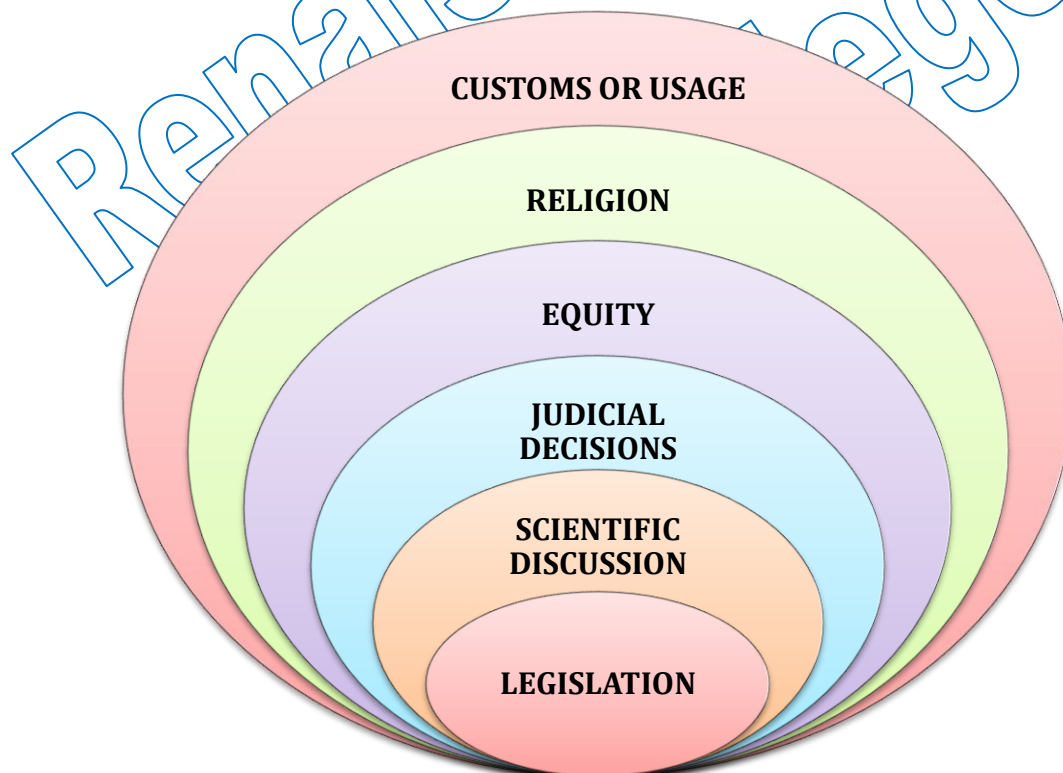
- "The law constitutes body of principles recognised or enforced by public and regular tribunals in the administration of justice".

CHARACTERISTICS OF LAW

1. Law is concerned with the external actions of the people.
2. Law is definite and is universally applicable.
3. Law is enforced by the supreme authority of the state.
4. Law is essential for maintaining peace and order in the state.

SOURCES OF LAW

According to **Holland**, following are the major sources law-



CUSTOMS OR USAGE: Customs play a decisive role in the framing of the laws. It is the earliest source of law and plays an important role in the growth of laws. Most of law spring from the customs and are recognised by the state. In every society people observe certain common rules of conduct. These rules of conduct are popularly known as customs. It may be defined "as a body of rules universally accepted and followed due to

their utility". When the state came into existence it recognised some of the customs and these acquired the status of law.

RELIGION: In primitive society religion played a decisive role in the framing of laws. Like customs religion has been the earliest school of law. It highly influenced and regulated the social conduct of the people. With the passage of time, the religious principles went deep into human psychology. The modern jurists had to incorporate the religious principles in the body of law. In India we can get the Hindu Law based on the Code of Manu, the Mohammedian Law based on Quran and the Christian Law based on the Bible. In ancient India, it was the duty of the King to uphold Dharma and the source of the Dharma was the Vedas.

EQUITY: Another source of law is equity. It means fairness or justice. Judges in every country have contributed a lot towards the process of law making. They make new laws in the course of their judicial decisions. Sometime a case about which existing laws are silent may come up before a judge. In such case, he will give his judgement by consulting his own sense of justice and fair-play. In the words of Gilchrist, "Equity is an informal method of making new law or altering old law, depending on intrinsic fairness or equality of treatment".

JUDICIAL DECISIONS OR ADJUDICATIONS: Judicial decisions play an important role in the framing of laws. Gettell said that "the state arose not as the creator of law but as the interpreter and enforcer of custom". The function of the Judge is to interpret and declare law. Through its interpretations, the Judge makes new laws and later on recognised by the state. In this way judicial decisions are another source of law.

SCIENTIFIC COMMENTARIES: Scientific discussion and commentaries are the other source of law. The commentaries or writings of great jurists sometime become the important source of law. They are valuable for the lawyer and judge. It is referred during the discussions of a particular case in a court of law." It provides the basis for new law, not the new law itself"

LEGISLATION: Legislation is the modern and most important source of law especially in democratic countries. Legislature constantly repeals and amends the old laws which are outdated. It makes new laws to meet the requirements of time. It is absorbing other sources of laws. Hence in the words of Woodrow Wilson "All means of formulating laws tend to be swallowed up in one great, deep and broadening sense, legislation". Gilchrist says "it is the chief source of law and is tending to supplant the other sources. Customs and equity are both largely replaced by legislative acts. The codification of law tends to narrow down the field of judicial decisions as a source of law and scientific commentaries are used merely for discussions".

- INTERNATIONAL LAW
- NATIONAL OR MUNICIPAL LAW
- PRIVATE LAW
- PUBLIC LAW
- CONSTITUTIONAL LAW
- ORDINARY LAW
- COMMON LAW
- ADMINISTRATIVE LAW

KINDS **OF** **LAWS**

International Law: It is a body of rules which governs the relationship among independent sovereign states. These laws are not framed by any sovereign law making authority nor has any sovereign authority to enforce them. These laws are meant for regulating the conduct of various states in the world.

National or Municipal Law: It is the body of the rule interacted by the state and governs the rights and duties of the citizen towards each other and towards the state within the municipal boundaries. While International Law is the law between the states, National or Municipal Law is the law within the state.

Public Law: It is the law which determines the relationship between the state and the citizens. According to Holland, "the public law is concerned with the organization of the state, the limits on the functions of the government and the relation between the state and the citizens".

Private Law: It is the body of rules which governs the relationship of people among themselves. It regulates and determines the relations of citizens to one another. In the words of Holland, "the parties concerned the private individuals above and between whom stands the state as an impartial arbiter".

Constitutional Law: It is the supreme law of the land. The laws that define, interpret and regulate the functions of the government are known as Constitutional Law. It is through these laws that various organs of the government are regulated and relation between the state and citizens are established. It may be written or unwritten and usually enacted by a constituent assembly setup for framing the constitution.

Ordinary Law: The Ordinary Law is framed by the government as the part of national law by which the relations of individuals are determined. It is permanent in nature and considered to be the part of the law of the land.

Administrative Law: Administrative Law is the part of public law which regulates the conduct of public officials in discharge of their duties. Administrative Law determines the mutual rights and duties of public officials and the citizens. This law is not administered by the the ordinary courts but by the administrative courts. In the words of Dicey, Administrative Laws interpret the office and the responsibilities of government servants.

Common Law: Common law is based on customs, traditions, and usages. They are recognised and enforced by courts in England. When this common law attain in written form it is known as civil law.

LIBERTY

The term liberty is derived from the Latin word '**liber**' which means **free**. It has been defined in various ways. The centre theme of liberty is the absence of all restraints and freedom to do whatever one likes. But it is not possible to have such a liberty while living in society. Man is a social animal and he is living in society. He must, therefore, adjust his liberty with due regard to the liberty of others. Regulation of human conduct and behavior is indispensable in social life. The fundamental maxim of liberty is that law is the condition of liberty.

Prof. Barker has pointed out that just as the absence of ugliness does not mean presence of beauty, so the absence of all restrains does not mean the presents of liberty. Freedom is a very precious condition without which neither the state nor the individuals can make any progress.

DEFINITIONS OF LIBERTY-

1. **G.H. Cole** defines liberty “as the freedom of every individual to express without external hindrance, his personality.”
2. **Prof. Seeley** defines liberty “as the absence of restraints or the opposite of over government.”
3. **Herbert Spencer** - “Liberty is the freedom to do whatever one likes provided it does not injure the feelings of others.”
4. **Gandhi** - "Liberty does not mean the absence restraint but it lies in development of Liberty."
5. **Burns** - "Liberty means liberty to grow to one's natural height, to develop one's abilities".
6. **Harold Laski** maintains, "without rights there cannot be liberty because, without rights, men are the subjects of law unrelated the needs of personality"

Renaissance
Law College

NATURE OF LIBERTY (NEGATIVE CONCEPTS OF LIBERTY)

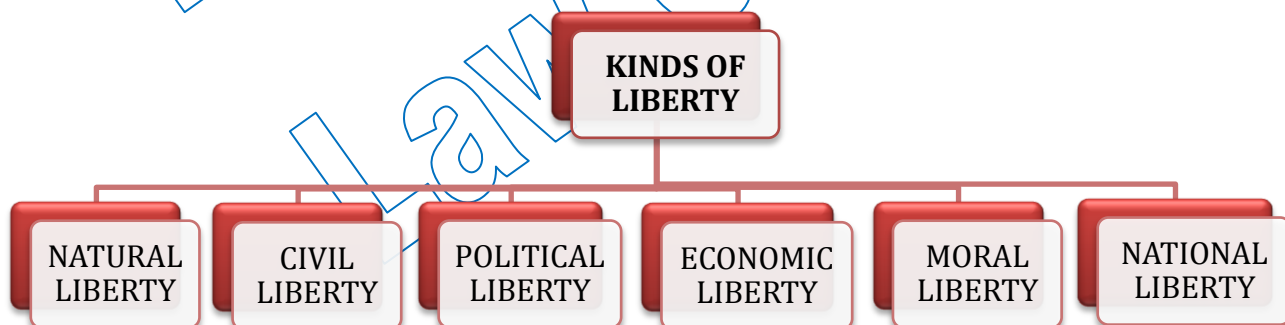
Berlin defines Negative Liberty as a freedom from interference from others. It means absence of unreasonable restraints. Simply negative liberty means, the absence of coercion by individuals or institutions over interference into the private sphere of an individual. It assures dichotomy between two areas of activity, the area of public authority and area of private life. How wider or narrow are the two respective areas is a matter of discussion and determined by social and economic circumstances. The negative meaning of liberty expects the State to keep itself away from certain areas of human life.

Liberty alone can enable a person to develop his personality. The state should guarantee that non-interference by one with the other. So far as the choice of the individual is concerned, he must be his own master. The individualist school of thought was the main supporter of negative concept of liberty. The major exponents of negative concept of liberty are J.S.Mill, Herbert Spencer, Bentham, Smith etc.

POSITIVE CONCEPTS OF LIBERTY

Positive concept of liberty means that the state creates positive conditions for a good life. It demands conditions which are essential for self development of the individuals. Every individual must enjoy the benefit of social life. The positive meaning of liberty expects the states to take initiative in protecting the interests of those who are underprivileged.

In the words of Laski, "liberty means the eager maintenance of that atmosphere in which men can have the opportunity to be their best selves". Thus positive concept of liberty means the removal of hindrances from the way of good life and the creation of equal opportunities for all. All the modern democratic states have more or less accepted this positive concept of liberty. Positive concept of liberty was advocated by Laski, T.H. Green, Kant, Hegel.



1. NATURAL LIBERTY: Natural liberty is generally identified with unlimited and unrestricted freedom. Natural liberty according to Hobbes, is the absolute right of man in the state of nature to all things including the right to kill other man. In the social life no man enjoys natural liberty since he is subject to regulations and rules named by the government and moral pressures of society.

The advocates of natural liberty hold that man is free by nature and that it is civilization, which is responsible for his bondage. Rousseau was the chief exponent of the concept of natural liberty, and natural liberty existed in that state of nature. He says men lost his natural liberty with the emerge of the state or civil society.

2. CIVIL LIBERTY: Civil liberty implies freedom enjoyed by the people in civil society. Civil liberty is created by the civil rights guaranteed by the state. The more there are civil rights; more will be the civil liberty. According to Gettle, "civil liberty consists of the rights and privileges which the state creates and protects for its subjects". It is manifested in concrete terms in rights such as the right of freedom, the right of life, freedom of speech and expression, property, association, education etc.

3. POLITICAL LIBERTY: Political liberties are based on the political rights of an individual and it is the freedom to participate in the political life and affairs of the state. Political liberty is essentially associated with democracy and it makes a state into a democratic one. Without political liberty neither the state can be democratic nor can the individual enjoy full civil liberties. The two essential conditions necessary for the existence of political liberties are education and free press. It consists of the right to vote, right to stand for election, right to hold public office and the right to criticise the government.

4. ECONOMIC LIBERTY: Economic liberty implies that the basic necessities of life should be assured to everybody. It means absence of economic disparities, exploitation, insecurity, unemployment and starvation. Economic liberty is said to be the mother of all other liberties. Civil and political liberties become meaningless in the absence of economic liberty. In his book 'Grammar of Politics', Prof. Laski defines economic liberty thus "By economic liberty, I mean security and the opportunities to find reasonable significance in the earning of one's daily bread..."

5. MORAL LIBERTY: Moral liberty implies the right of an individual to act according to his conscience. It means the freedom of an individual to act as rational being. It is given an opportunity to express and develop his personality. It is possible in a democratic state and not in a totalitarian state. In totalitarian state people are expected to act according to the orders of the government and not according to their inner conscience.

6. NATIONAL LIBERTY: It implies the liberty of the nation or the country. It exists where the nation or the community is independent and sovereign. It means that, a nation which is completely free from foreign domination. Every nation has a birthright to regulate its national life as it likes. If a nation is under the control of others no cultural, social, economic and political developments are possible.

SAFEGUARDS OF LIBERTY

1. Establishment of Democracy: In a democratic form of government, sovereignty belongs to the people. The government is carried on in accordance with the wishes of the people. Liberty can exist only in a democratic form of government. In a democratic government run by the elected representatives of the people, government is accountable to and removable by the people. In this system, political power really resides in the hands of the people as democratization of powers ensured freedom. It checks the authorities from becoming autocrat because persons in authority are bound to face the electorate at intervals at the time of election. In democracy, a strong and well organised opposition party is regarded as a safeguard to individual liberty, which also keeps a vigilant eye on the activities of the ruling party.

2. Enumeration of rights in the Constitution: Another prerequisite of liberty is that there should be a supreme law of the country, namely, the Constitution. It is only the constitution that confines the authority of the state. Constitution of democratic countries like America and India incorporates certain fundamental rights to the people. These rights protect the personal liberties of citizens from the state interference. Thus constitution safeguards the liberty of the people and it is a custodian of those liberties.

3. Independence of Judiciary through separation of powers: The judges are the interpreters of the constitution and the courts are the custodians of the liberty of the people. So liberty can be enjoyed if there

is an independent judiciary. It is completely free from the influence of legislature and executive. Only an impartial and independent judiciary can safeguard the rights and liberties of the people

4. Eternal vigilance: Lord Byron has aptly remarked, “Eternal vigilance is the price of liberty”. People should be conscious of their rights and duties and they should be always ready to safeguard them. They should always be alert and ready to resist any irresponsible interference or encroachment on liberty from the state.

5. Separation of powers: Another condition of liberty is that there should be separation of powers. Separation of powers is an effective safeguard for individual liberty. In the interests of individual liberty, legislature, executive and judiciary wings of the government should be vested separate and distinct organs, each independent of the other.

6. Rule of Law: Rule of law is an essential prerequisite of liberty. It means equality before law and equal protection of law. Nobody is above law, law applies to everyone equally and violation of law will be punished equally. It also means that no person can be deprived of his life, liberty and property except in accordance with law. In the rule of law the government work must be done in accordance with the procedure prescribed by law. Thus the rule of law is an effective instrument of individual liberty.

7. Decentralisation of Powers: Decentralisation of powers ensures a large participation of people in the democratic process of the country; reduces work load and improves the efficiency of the government and prevents the rise of dictatorship. Laski observes that “the more widespread distribution of power in the state, the more decentralised its character”. So at every level of administration there should be representation of the people and that is essential for safeguarding the liberty of the people.

8. Absence of special of privilege: Another prerequisite of liberty is that none in society should enjoy any privileges based on caste, sex, colour, religion, language, region or any other ground. If in a state when certain persons are given special privileges, the rights of the common man cannot be safeguarded. The existence of special privileges for some spoils the spirit of liberty and that creates chaos and confusion in the society. So absence of special privileges is an essential safeguard of the liberty.

9. Free and Independent Press/Media: This is yet another essential condition of liberty. A free and independent press ensures liberty of individuals. It makes available objective and unbiased news, criticises government policies and enables the people from correct attitudes towards various problems of the day. This information helps the people to choose their representatives in elections.

10. Healthy Party System: This is necessary in a democratic set-up as it provides choice to the people in elections. It is also an important instrument for improving the political consciousness among the people. It is the best safeguard of people's liberty as it enables them to resist unjust and cruel laws.

RELATIONSHIP BETWEEN LAW AND LIBERTY

Liberty exists only in an ordered state. The state frames laws and the sovereign state operates through these laws. Now it is universally accepted that laws are the protectors of liberty and liberty ceases to existence independent of law.

Law is actually the condition of liberty. First of all law provides amiable atmosphere for the smooth running civil life in society. Law punishes the criminal and defends the rights of the individuals. Secondly law guarantees the enjoyment of individual rights and duties and protect them from hinders. Thirdly, constitution is the custodian of liberty. It's only the constitution that confines the authority of the state and protects the fundamental rights of the people. Law and liberty are complementary to each other.

EQUALITY

Equality, like liberty is one of the fundamental pillars of democracy. The concept of equality has evolved in tune with the theory of natural rights. The American Declaration of Independence in 1776 proclaims that "We hold these truths to be self-evident that all men are created equal". The French Declaration of Rights of Man (1789) also emphasises "Men are born, and always continue, free and equal in respect of their rights".

The Charter of United Nations also recognizes equality in international sphere when it says: "The organization is based on the principles of sovereign equality of all its members". Equality means that all men are equal and should be entitled equal, opportunity and treatment. It was the growth of individualism that is responsible for the fresh interest in the issue of equality. In the beginning, the focus of attention was equality by birth i.e. natural equality and equality before law i.e. legal equality. In the 18th century, liberalism that leads to socio-legal equality and in the 19th century economic and political equality, gained momentum.

Absolute equality is an impracticable and unachievable principle. All men cannot be made identical and be moulded into a single model. The natural inequalities that exist in human society are the inescapable facts and therefore equality actually refers mainly to the absence of privileges and discriminations on any ground and the process of rendering equal and appropriate opportunities to fulfil one's personality.

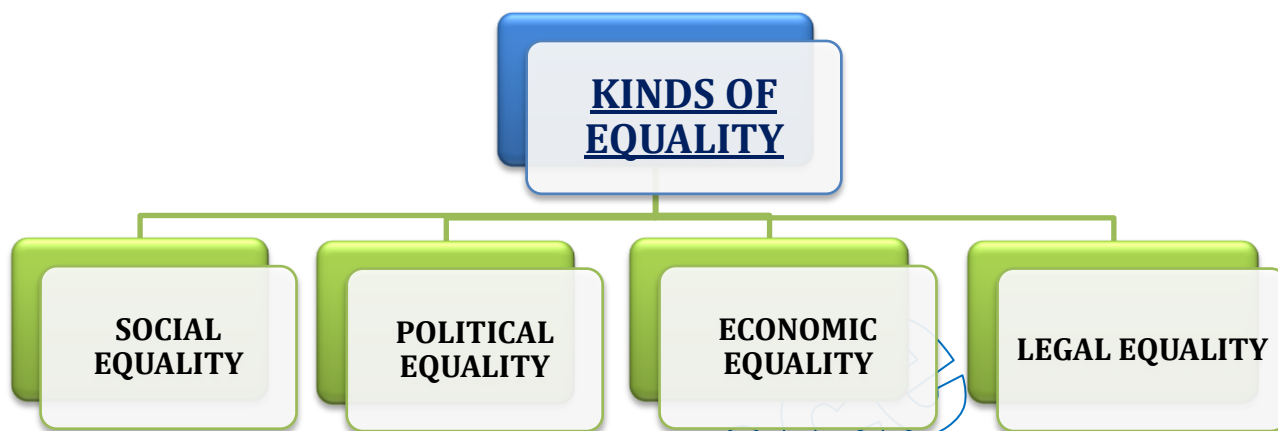
DEFINITIONS OF EQUALITY

LASKI

"Equality does not mean the identity of treatment or the sameness of reward . If a brick - layer gets the same reward as a mathematician or a scientist, the purpose of society will be defeated. Equality, therefore, means first of all absence of social privileges. In the second place it means that adequate opportunities are laid open to all"

BARKER

"Equality is derived from the supreme value of the development of in each like and equally , but each along its own different time and its own separate motion".



1. Social equality: Social equality means that all citizens are entitled to enjoy equal status in society and no one is entitled to special privileges. There may be rational distinction in the society with regard to occupation and professions, but the feeling of inferiority and superiority should not be attached to these. It stands for all should be treated equally in the eyes of law, no discrimination on grounds of colour, caste, creed, sex, religion etc., as also removal of social stigmas like untouchability. On 10th December, 1948, UNO declared the charter of Human Rights which laid stress on social equality.

2. Political Equality: It implies that everyone has equal access to the avenues of power. All citizens whatever may be their differences in status, education and wealth should have an equal voice in the management of public affairs and in holding public offices. Universal adult franchise is the expression of political equality. All democratic countries are based on the principle of “one man, one vote, one value” is faithfully adopted. Equality of opportunity is getting elected and in holding public offices, freedom of expression and association and rights to seek redressal of public grievances are the important pillars of political equality.

3. Economic equality: Economic equality involves a certain level of income and removal of gross inequalities of wealth. Economic equality is the pre-requisite for the existence and enjoyment of political, social and legal equality. It does not mean equal distribution of wealth, which is not practical, but prevent the concentration of wealth in a few hands. Economic condition of an individual essentially influences his political condition.

4. Legal Equality: Legal equality or equality before law is fundamental to legal justice. Legal equality implies that all are alike in the eye of law and that are entitled to its equal protection. The rich and poor, the high and low should all be treated alike. No distinction should be made between man and man on the ground of social status, religious faith or political opinion. In short, legal equality or equality before law implies absence of discrimination. The Rule of Law is practiced in the Great Britain and many other countries of the world.

CONDITIONS NECESSARY FOR REALISING EQUALITY

Equality is attained when accidental advantages of birth and wealth are eliminated and success or failure is made upon ability and character of individuals. It is realised when the law removes all discrimination based on caste, class, community, religion, race or sex. Equality is achieved when equal claims for adequate opportunities are recognised and no one person, or class or community is sacrificed for the sake of another.

Lastly, equality is attained when the claims all to a minimum standard of education, housing, food are recognised and there is guarantee against economic insecurity.

JUSTICE

The term 'justice' is derived from the Latin word 'jus' or "justicia" which means 'to bind' or 'to contract'. The concept of justice has been analysed and defined differently by philosophers, political thinkers, economists, sociologists and religious leaders. It has been changing from time to time, depending upon the conditions and circumstances prevailing in each age. It has to coordinate and draw a harmonious balance between rights and duties of the people living in the society. It is connected with the moral, social, economic, political, and legal relations of an individual with others.

According to John Rawls, "Our scheme of the social justice depends eventually on how fundamental rights and duties are assigned and the economic opportunities and social conditions in the various sections of society". Thus, the theory of justice has two meaning, broader meaning and a narrower meaning.

In the broader meaning, there are two views-

- (a) Justice is an eternal or absolute concept and
- (b) Relative concept - differs from society to society.

The narrow meaning of justice is associated with a legal system and legal process in a society. In this sense, it is related to the settlement of disputes through judicial bodies.

DEFINITIONS OF JUSTICE

**CHARLS
MARRIAM**

"Justice consists of a system of understanding and procedures through which each in accorded what is agreed upon as fair"

BARKER

"Justice is the reconciler and the synthesis of political values; it is their union in an adjusted and integrated whole"

**JOHN
RAWLS**

"All social primary goods - liberty and opportunities, income and wealth and the basis of self respect- are to be distributed equally unless an unequal distribution of any or all of these goods is to be advantage of least favoured"

RIGHTS

Rights are essential for the development of human personality. When the freedom is recognised by state, it becomes 'rights'. This however does not mean that rights originates from the state. They do emerge in the society; the state merely grants recognition to them.

DEFINITION OF RIGHTS

DR.BENIPRASAD

- “Rights are nothing more and nothing less than those social conditions which are necessary or favourable to the development of personality”

T.H. GREEN

- “Right is a power claimed and recognised as contributory to common good”

PROF. LASKI

- “Rights are those condition of social life without which no man can seek to be himself at his best self”

PROF. BARKER

- “Rights as the external conditions necessary for the greatest possible development of the capacities of the personality”

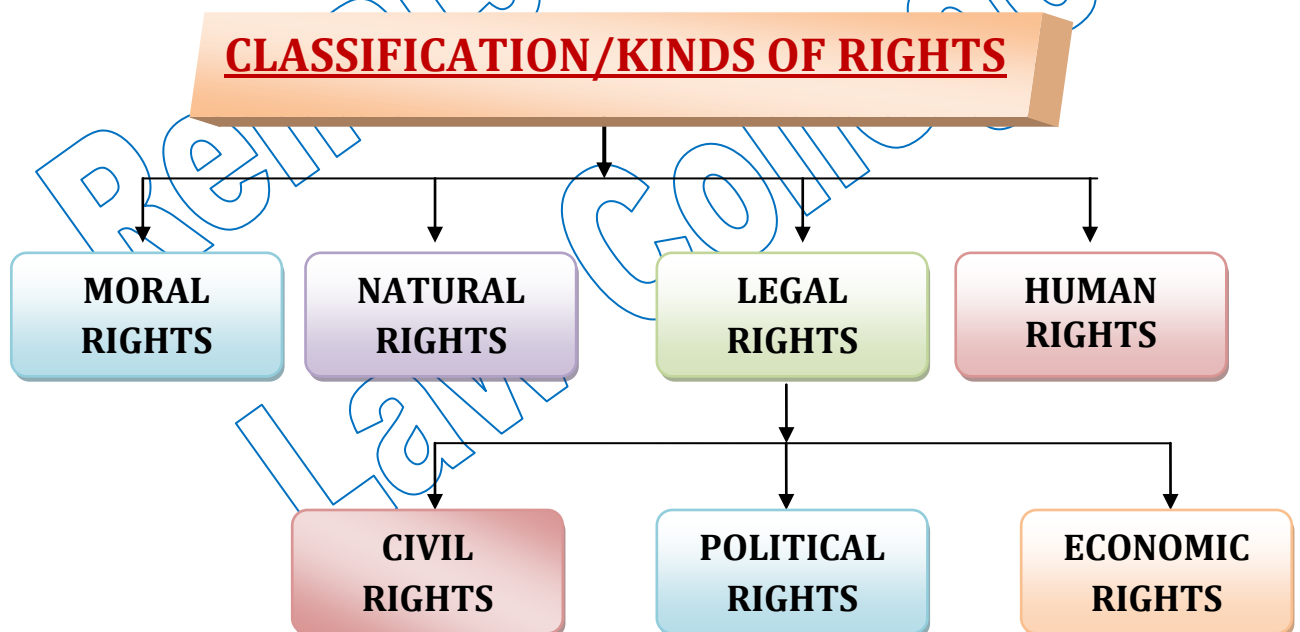
IHERING

- Rights are "legally protected interests."

CHARACTERISTICS OF RIGHTS

- **Rights are social in their application**: Only by living in a society, a man can satisfy his needs and realised what is best in him. The question of rights therefore arises only in a society. A lonely man in a lonely island has no rights because there is no one to attack him or to encroach upon his individuality.
- **Rights are related to human needs**: they are those condition or opportunities without which we cannot develop our power or latent opportunities.

- **Rights are not absolute**: if circumstances demand certain restriction can be put on the enjoyment of rights with a view to secure the larger interest of society.
- **Rights are not permanent**: The content of rights is changing according to the changing needs and aspirations of a society. For example before the invention of printing press freedom of expression was not considered necessary.
- **Rights are general in character**: Rights are general in sense that opportunities for self developments should be equally available to all. There cannot be any discrimination as far as the application of rights.
- **Rights imply duties as well**: Every right has a corresponding duty. If I have a right, the enjoyment of my rights implies a duty on part of others. Rights are real only to extent to which they have been accepted by others as an obligation.
- **Rights are relative with functions**: The number of rights possessed by an individual must correspond to the contribution makes to society. The president of a country enjoys more rights than his peon because his contribution is definitely greater than the peon.



1. MORAL RIGHTS: Moral rights are based on our morality, justice, or conscience and they are not guaranteed by any legal authority. Moral rights are largely based on religious belief and the moral conceptions of the people in any society. Therefore, they differ from society to society. They arise out of man's moral sense.

2. NATURAL RIGHTS: By natural rights we mean those rights which are enjoyed by the people even before the origin of state. According to writers like Hobbes and Locke, natural rights were those rights which are enjoyed by the individuals in the state of nature. According to Rousseau natural rights were those ideal rights which are enjoyed by the individuals before the origin of the state. The old view with regard to

natural rights is not accepted today. The only sense in which the theory of natural rights is accepted is that these rights are considered to be natural and essential for the individual whether they are actually recognised or not.

3. LEGAL RIGHTS: Legal rights are those rights which are secured by the state and guaranteed through its laws. Legal rights may be defined as the claims recognised by the state. These rights are enforced by the state through its police and courts. Legal rights are embodied in the constitution. Legal rights are further divided into three categories, namely civil rights, political rights and economic rights.

- a) **CIVIL RIGHTS:** They are those rights without which no civilised life is possible. Civilised life is impossible under the fear of being hurt, attacked, killed or our property confiscated. Civil rights are considered to be primary and more vital than the other two. The important civil rights are protection of life and property, right to education, right to family, right to freedom of speech and expression.
- b) **POLITICAL RIGHTS:** They are those rights which enable the people to have a share in the administration of the country. By exercising the political rights the individual participates in the affairs relating to the administration of the country. The important political rights given to the citizens are right to vote, the right to stand as candidate for the elections, the right to hold government office and the right to criticise the government.
- c) **ECONOMIC RIGHTS:** Political and civil rights are meaningless unless some economic rights are guaranteed. Economic rights are the right to work, the right to adequate wages and right to reasonable hours of work. These economic conditions are very essential for the economic and political progress of man.

4. HUMAN RIGHTS: Human rights are rights inherent to all human beings without any discrimination on the ground of nationality, region, language, origin etc. These rights are often expressed and guaranteed by law, which is in the form of treaties, customary international law and such other general principles. The Universal Declaration of Human Rights (UDHR- December 10, 1948) constitutes for the most significant effort in the direction of protection, preservation and promotion of human rights in the international sphere. The UHRD has been termed "as a historic event of the profound significance and one of the greatest achievements of the United Nations".

There is one more classification of rights which is as follows-

- **Moral Rights or Natural Rights**
- **Legal Rights**
 - Primary (principal) and Secondary (sanctioned) rights
 - Public and Private Rights
- **Ordinary and Fundamental Rights**
- **Proprietary and Personal rights**
- **Civil, Political and Economic Rights**

NATURAL RIGHTS VERSUS LEGAL RIGHTS

- Natural rights are rights which are "natural" in the sense of "not artificial, not man-made", as in rights deriving from deontic logic, from human nature, or from the edicts of a god. They are universal; that is, they apply to all people, and do not derive from the laws of any specific society. They exist necessarily, inherent in every individual, and can't be taken away. For example, it has been argued that humans have a natural right to life. These are sometimes called moral rights or inalienable rights.

- Legal rights, in contrast, are based on a society's customs, laws, statutes or actions by legislatures. An example of a legal right is the right to vote of citizens. Citizenship, itself, is often considered as the basis for having legal rights, and has been defined as the "right to have rights". Legal rights are sometimes called civil rights or statutory rights and are culturally and politically relative since they depend on a specific societal context to have meaning.

THEORIES OF RIGHTS

- **The Historical Theory of Rights**
- **The Theory of Natural Rights**
- **The Legal Theory of Rights**
- **The Idealistic Theory of Rights**
- **Social Welfare Theory of Rights**

HISTORICAL THEORY OF RIGHTS

Edmund Burke is the chief exponent of this theory. According to this theory, rights are the result of historical evolution. He holds that rights are systematization of customs. A custom which people go on following generations after generations becomes customary right and this provides a basis for law. This theory was criticized as being defective as all laws are not the products of history. Certain rights are created by law and they do not have history as source of their origin.

THEORY OF NATURAL RIGHTS

This is the oldest theory of rights. The exponents of this theory are John Locke and Thomas Paine and also it was advocated by the authors of social contract Hobbes and Rousseau. According to this theory, rights come from nature and are not created by any human agency. Rights are built on the law of nature, which is universally accepted.

This theory was criticised on the following grounds-

1. This theory is very vague as it is difficult to give a precise meaning to the term 'natural'. Also, it is not practicable to make a list of all natural rights on which all political thinkers agree.
2. This is not a justifiable concept that rights are independent of society as there is no possibility for rights to exist without society.
3. This theory ignores the importance of State as a source of rights.
4. Natural rights are in conflict with each other. For instance- Liberty and equality oppose each other although both are natural rights.
5. Rights are not static. They keep on changing with changing social needs.
6. It is believed that the natural rights are absolute in nature but in actual practice, no right can be absolute. Each right has a corresponding duty.

LEGAL THEORY OF RIGHTS

This theory was propounded by Hobbs, developed by Bentham, Austin & Holland and supported by Ritchie and Salmond. Legal theory of rights says that the State is the source of all rights. According to this theory, rights are not the gift of nature. Rights are the creation of the State, whose membership brings rights to man. They emerge from the State and are maintained by the State.

Criticism:

1. All rights are not derived from law. Law only protects the rights which are based on religion, customs and justice.
2. State is not the creator of rights rather it just recognizes the existence of rights.
3. It leaves the individual at the mercy of the State.
4. Individual liberty can be curtailed in the name of public welfare.

THE IDEALIST THEORY OF RIGHTS

The idealist thinkers such as Kant and Green say “rights arise from certain claims which originate in the consciousness of man.” It says that the State recognizes only those rights which are moral and which promote the social welfare. Rights are based not on laws but on morals.

SOCIAL WELFARE THEORY OF RIGHTS

This theory was popularized by the utilitarians, namely, Bentham and Mill. According to this theory, rights are conditions of social welfare. They are the creation of the society. Conditions which make the individual and the society happy are rights and they should have precedence over customs, ways, traditions and natural rights. The exponents of the social welfare theory of rights set up the principle of the greatest happiness of the greatest number as the criteria by which to judge what ought to be.

Points of criticism-

1. The main idea is the greatest happiness of the greatest number. But, the greatest defect is that the exponents have not provided any measuring rod to measure greatest happiness of the greatest number.
2. It may encroach upon the rights of an individual and may sacrifice the needs and claims of his personality to social good. A theory which does not establish guarantee of rights for all cannot be accepted.
3. Confining the term ‘social welfare’ and ‘maximum good’ is not an easy task. Moreover, the meaning of ‘welfare of the people’ may not be uniform in all ages and for all societies.

RIGHTS vs. DUTIES

It is worth examining that the common conception in the Anglo-American tradition is that rights are solely a form of personal entitlement. Many in Asia and the former Soviet Union, for example, argue that rights are equally an entitlement and a duty. Individuals have a reciprocal obligation to respect the rights of others if they expect to have their own rights respected in turn.

Take, for example, the right to religious expression. This right ensures that members of religious minorities are protected from interference in the exercise of their religious freedom; at the same time, it means that they must display the same tolerance when it comes to other religious practices that may differ from their own. In taking advantage of one's own freedoms, one accepts an obligation to respect the freedoms of others. Only in this way can the rights of all be protected and a measure of social harmony is achieved.

Systems of social organization that give equal priority to both the community and the individual tend to emphasize the dual nature of rights as both freedoms and duties. Society as a whole can only thrive when everyone fulfills his or her obligations to their fellow citizens. Under this view, the ability to exercise rights must first be earned by respecting them in others (Henkin, 1998). This principle is enshrined in

Article 29 of the Universal Declaration, which states, in its first clause, that “Everyone has duties to the community in which alone the free and full development of his personality is possible.”

The doctrine of logical correlativity- that rights and duties are correlative- is dominant among philosophers. This view conceptualizes rights and duties as flip sides of the same coin; one person’s right exists by exerting a duty upon others. For example, the right of free speech is understood in terms of the recognition that an individual’s interest in self-expression is a sufficient ground for holding other individuals and agencies to be under duties of various sorts rather than in terms of the detail of the duties themselves”.

Logical correlativity affords a measure of flexibility to the formulation of international human rights standards. Correlativity is crucial because it means that the framing of moral claims in terms other than rights is not necessarily problematic. The recognition of an obligation may well signify the presence of an implicit right; thus a moral theory couched in the language of duty can be a legitimate vehicle for the advancement of rights.

RIGHTS OF CITIZENS IN A MODERN STATE

These are rights by virtue of which the citizens take directly or indirectly take part in the administration of the state. Political rights are an essential complement of civil rights. In the absence of political rights civil rights become meaningless.

Political rights provide ways and means by which citizens can check the arbitrary use of authority and encroachment upon their rights. Political rights are enjoyed by the citizens alone and not by aliens. These are not extended to aliens because they owe allegiance to their own states. Some of the political rights may be described as follows:

1. Right to Vote: According to this right, citizens in a state elect their representatives who are to constitute the government. Previously this right was given on the basis of some qualifications of property, education or the like. But now this right has been extended to all adults irrespective of any qualification. The right to vote places sovereign power in the hands of the people in the ultimate sense. Citizens can make or unmake the government through the exercise of this power.

2. Right to be elected: This is a valuable right of a citizen in a democratic state. It implies that every citizen should have the right to seek election to legislative bodies or other representative organs. People in a democracy have equal opportunities to be elected for any representative body. Nobody should be debarred from contesting elections to any office on account of his birth, class or creed if he is mentally and physically fit.

3. Right to Hold Public Offices: The right to hold public offices is allied to the right to be elected. This means that all are equally eligible for appointment to all state offices, provided they are qualified by virtue of education, experience, ability and character.

4. Right to Petition: It means that every citizen have the right to send petitions to the government or the legislature for the redress of his grievances.

5. Right to Permanent Residence: The citizens have the right to permanent residence in the state of their birth. They cannot be deported for any crime.

6. Right to Resist: This is a controversial right. Some believe that citizens should be given the right to resist an unjust government while others assert that government will become a plaything in the hands of the people if this right is freely exercised. According to Mahatma Gandhi, however, people should be given the right to resist a bad government.

UNIT IV
SYSTEM OF GOVERNANCE

1. Democracy-Meaning and kinds,
2. Theories of Representation,
3. Development and Welfare state,
4. Legislative, Executive and Judiciary,
5. Theory of separation of power.

Democracy is a form of government in which all eligible citizens are meant to participate equally – either directly or, through elected representatives, indirectly – in the proposal, development and establishment of the laws by which their society is run. The term originates from the Greek word “**dēmokratía**” which means rule of the people.

The political system of Classical Athens, for example, granted democratic citizenship to an elite class of free men and excluded slaves and women from political participation. In virtually all democratic governments throughout ancient and modern history, democratic citizenship consisted of an elite class until full enfranchisement was won for all adult citizens in most modern democracies through the suffrage movements of the 19th and 20th centuries. The English word dates to the 16th century, from the older Middle French and Middle Latin equivalents.

Democracy contrasts with forms of government where power is either held by an individual, as in an absolute monarchy, or where power is held by a small number of individuals, as in an oligarchy. Nevertheless, these oppositions, inherited from Greek philosophy, are now ambiguous because contemporary governments have mixed democratic, oligarchic, and monarchic elements. Popper defined democracy in contrast to dictatorship or tyranny, thus focusing on opportunities for the people to control their leaders and to oust them without the need for a revolution.

Several variants of democracy exist, but there are two basic forms, both of which concern how the whole body of all eligible citizens executes its will. One form of democracy is **direct democracy**, in which all eligible citizens have direct and active participation in the political decision making. In most modern democracies, the whole body of eligible citizens remains the sovereign power but political power is exercised indirectly through elected representatives; this is called a **representative democracy or democratic republic**.

CHARACTERISTIC FEATURES OF DEMOCRACY

1. **Popular Sovereignty**: Democracy is based on sovereignty. People can exercise their power in democracy. They elect their representatives. The government remains responsible to the common mass for its every omission and commission.
2. **Political Equality**: Democracy is based on political equality. It means all citizens irrespective of caste, creed, religion, race or sex are considered to be equal before law and enjoy equal political rights. Political equality gives the right to vote to every citizen.

3. **Majority Rules**: In a democratic set-up actual government is carried out with the help of the party which obtains the majority of votes. Support of majority is accepted by all.
4. **Federal**: It is another feature of Indian democracy. The Article 1 of Indian Constitution describes India as a union of states. According to our Constitution, the states are autonomous. They have full freedom in certain matters, and in some other matters they are dependent on centre.
5. **Collective Responsibility**: In the Indian democracy, the Council of Ministers both in states and centre are collectively responsible to their respective legislatures. No minister is alone responsible for any act of the government. The entire council of ministers are responsible for all the activities.
6. **Formation of Opinion**: Democratic government must provide institutions through which public opinion on various matters can be formed. Legislature provides the most important platform to estimate and express the public opinion.
7. **Respect for Opinion of Minority**: In a democratic set up majority rules but opinions of minorities are also given respect. They are encouraged to give their opinion. Democracy being a government by free discussion and criticism encourages both the positive and negative aspects of any proposal. The majority must tolerate the opinion of the minority otherwise democracy will degenerate into authoritarianism.
8. **Provision for Rights**: Democracy provides the individual dignity by giving various rights to the individual. For example, the right to freedom of speech and expression, right to form association or union, educational and cultural rights.
9. **Rule of Laws**: In democracy there is rule of law. It means supremacy of law over all. Under any circumstance law cannot be compromised.
10. **Rule by Consent**: Democracy is based on consent in general but not on force or coercion. By collecting consent from majority through dialogue, debate and discussion the problems can be solved.
11. **Implies open Society**: Democracy implies free and open society. Every activity of the government is based on the public opinion. Different associations, unions, organisations are formed to discuss the problems openly and to find out solution for the problems.
12. **Government by Compromise**: Democracy is a government by adjustment and compromise. Different opinions are to be considered within the ruling party and outside of the party. There is plurality of ideas to which the government has to take into consideration.
13. **It is a welfare Government**: Most of the democratic countries have welfare government. Democracy is a powerful weapon through which all round welfare is possible. As a welfare government it retains individual's freedom, liberty, dignity etc.
14. **Independent Judiciary**: Democracy is characterised by independent judiciary. The judiciary does not depend on executive or legislature. No government organ can influence judiciary.

MERITS OF DEMOCRACY

- Democracy contains the spirit of compromise and agreement.
- It is in democracy that the importance of each individual is fully recognized.
- Since democracy is based on the principle of debate and consent, there is a little scope for violence.
- Democracy is an essential and efficient form of government. Any arbitrary exercise of authority by the elected representatives will not be tolerated by the people.
- Democracy is based on the concept of equality. All the people are equal before law. Democracy provides equal rights and liberties to all citizens alike.
- Democracy provides political education and promotes patriotism among the people.
- It trains the people in the art of self-government.
- Democracy promotes a better and higher form of national character than any other system of government.
- Democracy respects the dignity of the human personality.
- Democracy provides peaceful changes in government and there is no place for rebellion and revolution in democracy.
- Under democracy the rulers are not only responsible to the people for their actions but also responsive to their needs and wishes.
- It is only in democracy that a common and ordinary man also can become a ruler.
- People are vested with sovereign authority in democracy.

DEMERITS OF DEMOCRACY

- Democracy is the rule of ignorant, incompetent and illiterate persons.
- Democracy is very expensive and costlier form of government.
- Democracy through its party system harms the interests of the nation by lowering moral standards and encouraging hollowness and insincerity.
- Democracy is an irrational and impossible ideal as it wrongly assumed that all men are equal.
- Democracy is a painfully slow moving process. In a democratic government, power is in the hands of the majority party which can afford to tyrannize the people.
- It is an unstable form of government. The success of no confidence motion against ruling party government, often leads to mid-term elections.
- In a democracy, excessive power of political parties leads to unrest in society.

FORMS AND TYPES OF DEMOCRACY

- **Direct or Pure Democracy**
- **Indirect or Representative Democracy**
- **Unitary and Federal Governments**
- **Parliamentary Government**
- **Presidential Government**

DIRECT OR PURE DEMOCRACY is one in which the will of the State is formulated or expressed directly or immediately through the people in mass meetings or primary assembly, rather than through the medium of delegates or representatives chosen to act for them. Thus, direct democracy is a form of government in which the will of the State is directly or immediately expressed through the people.

Advantages-

- Citizens are highly devoted to the State and they take pride in participating directly in the affairs of the State.
- Every citizen sometime now or later gets a chance to serve the State in some capacity.
- It ensures true freedom.

Disadvantages-

- In a direct democracy political privileges may be restricted to an elite group of people.
- It may therefore result in possible inequalities among the people.
- It may decline into tyranny for a lack of popular enthusiasm and respect for pure democracy.
- It cannot exist in any but small societies, usually isolated.

INDIRECT OR REPRESENTATIVE DEMOCRACY- It is that form of government in which the will of the State is formulated and expressed through the agency of relatively small and selected body of persons chosen by the people to act as their representatives. It is based on the idea that while the people cannot actually be present in person at the seat of the government they are considered to be present by proxy. It is a form of indirect rule by the majority of the electorate.

Characteristics of indirect democracy:

- In an indirect democracy elections are held regularly once in four or five years for the purpose of electing the representatives by the qualified voters.
- After the event of elections, the party commanding the majority in Parliament or assembly forms the government. It conducts the administration while respecting the rights and wishes of the majority.
- Popular support for the government policies and programs is the crucial test of representative government.
- Representative democracy implies the existence of more than one political party.
- Right to vote is given to all adult citizens in free elections.
- In an indirect democracy, people must have the right to resist the Government, if its tyranny or inefficiency are great and unendurable.
- In an indirect democracy, most government leaders realize that to govern effectively they must know what the people want and must be responsive to these needs and demands.

Advantages of indirect democracy-

- It assures everyone a measure of personal freedom and equality in rights.
- It makes government responsible to the people for its actions and for its use of powers.
- It is likely to be more stable than other forms of government.
- It is possible to arrive at decision by majority.

Shortcomings of indirect democracy-

- It is majority tyranny
- It gives importance not to quality but to quantity. Most of the representatives elected by the masses are ignorant, amateur, incompetent and inexperienced.
- It leads to mass culture and mobocracy.
- It is an expensive form of Government.
- It does not establish a stable government.
- It divides the nation into hostile groups.

UNITARY OR FEDERAL GOVERNMENTS- Governments are classified into unitary or federal on the basis of relation between the Centre and States and on the basis of the geographical allocation of powers between the national and local governments and the nature of the relationship between them.

A unitary government is one in which all the powers of government are conferred by the Constitution upon a single Central organ or organ from which the local government derives whatever authority and autonomy, they may possess.

Characteristics of unitary government-

- Existence of single government as also absence of provisional government with autonomy
- Constitution may be written or unwritten
- Flexible constitution
- Single citizenship, single legislature
- No need for an independent judiciary
- Absence of division of powers
- Only national police force

Merits of Unitary Government-

1. Unitary Government provides a strong government as all powers are concentrated with the Central Government which can deal with the internal as well as external problems effectively
2. Unitary Government possesses greater flexibility and can adopt and adjust itself according to changing condition easily and quickly.
3. It is less expensive because there is only one set of government at the Centre and it is more economical.
4. Since all the powers are concentrated, there is no possibility of conflicts of jurisdiction between the Centre and the Units. As a result, administration is smooth and efficient.
5. It promotes uniformity in the fields of law, policy and administration and promotes national unity.

Demerits of Unitary Government-

1. There is an absence of strong provincial and local government.
2. The danger lies when the central authorities, remote from people, determine policies that are of concern only to particular localities and regions.
3. The unitary government results in greater red tapism and bureaucratic administration.
4. The decisions of unitary government are often made out of ignorance of local conditions.
5. Power has a tendency to corrupt and absolute power corrupts absolutely. As all the powers are concentrated at the Centre, there is a greater chance for autocratic and authoritarian rule.
6. People have very limited opportunities for participation in the governmental functioning due to the presence of a single set of government at the Centre.
7. The unitary government is not suitable to those countries which are very big in size and population and have racial and linguistic diversity.
8. The unitary government may easily collapse under stress from within and outside.
9. The unitary government is over-burdened with the workload of administration.

A federal government is a dual government. Word 'federal' is derived from Latin word '**Foedus**' which means treaty or agreement. Federal government may be defined as a system of Central and local Government combined under a common sovereignty, both the Central and local organizations being supreme within definite spheres, marked out for them by the general constitution or by the act of Parliament, which creates the system.

Characteristics of federal government-

- Supremacy of the Constitution
- Written and rigid Constitution
- Two types of government
- Division of powers
- Independent judiciary
- Existence of Bi-cameral legislature
- Dual citizenship

Merits of federation-

- A federation prevents rise of single despotism.
- Federation protects the political liberty of the citizens.
- Division of powers relieves the Central Government of many burdensome functions.
- Federal Government safeguards the interests of weak States.
- In federal government unity in diversity can be achieved.
- Federal government provides for pooling of all the resources and achieves rapid economic development.

Demerits of federation-

- Federal government is weak in the conduct of internal and external affairs.
- In a federation, Centre and State Governments blame each other when anything goes wrong as the distribution of powers leads to division of responsibility.
- In federation, conflicts are bound to arise between the Centre and the State while the States follow diverse policies with a view to promote their local interests, the Central Government adopts policies which are in the national interest.
- Federal government is more expensive because it demands two sets of government.
- Under federal system, unnecessary delay is caused in solving problems, since both the Centre as well as the federating units have to be consulted.
- Generally federal system provides for enhanced powers to the Central Government, the State Governments have to depend on it for everything.

THEORIES OF REPRESENTATIONS

Political representations-

1. **Some party that is representing** (the representative, an organization, movement, state agency, etc.);
2. **Some party that is being represented** (the constituents, the clients, etc.);
3. **Something that is being represented** (opinions, perspectives, interests, discourses, etc.); and
4. **A setting within which the activity of representation is taking place** (the political context).

THEORY OF SUFFRAGE/FRANCHISE: One important role player in democracy is the electorate. Electorate consists of the voting public. This voting right is also referred to as suffrage or franchise. Voting is a political right given to any eligible citizen. There are several theories on the voting right.

The most important theories on suffrage are-

1. **The Natural Right Theory**
2. **The Legal Theory**
3. **The Ethical Theory**
4. **The Tribal Theory and**
5. **The Feudal Theory**

THE NATURAL RIGHT THEORY: This theory claims that the right to vote is a natural and inherited right to every citizen. The state was created by the people deliberately and hence all the people have a natural right to take part in the affairs of the government.

THE LEGAL THEORY: According to this theory, suffrage is not a natural right, but a political right granted by the law of the state. Voting is a public function.

THE ETHICAL THEORY: The Ethical Theory considers the right to vote as a means of self expression of the individual in political affairs. Suffrage provides for the development of the human personality.

THE TRIBAL THEORY: In early Greek and Roman States, suffrage was extended only to the citizen class. Only people who were accorded citizenship status could vote. Now a day's citizenship is essential for voting. This practice is based on the Tribal Theory.

THE FEUDAL THEORY: The feudal theory claims that the right to vote depends on a particular social status. The simplest form of social status was ownership of land. Even now in some states emphasis is on property qualification. This is a legacy of the feudal theory.

"Of the above mentioned theories, the feudal theory and the legal theory limit the right to vote by imposing some restrictions. However, the modern government today tends to give widest possible extension of suffrage.

However many political thinkers consider suffrage as an office or function which is conferred by the state upon only such persons as are believed to be most capable of exercising it for the public good, and not a natural right which belongs without distinction to all citizens of the state"- Garner. If voting is considered as a right or privilege the individual voter has an option either to exercise his right or not. In countries, like Belgium, Rumania, Argentina, voting is made compulsory. That is, all eligible citizens must exercise their vote. But this kind of compulsion is very much against democracy.

EVOLUTION OF SUFFRAGE

The history of suffrage is quite long, and is full of revolution and sacrifices. Garner points out, "The most remarkable phenomenon in the history of democracy in the past century has been the steady evolution of the suffrage from a narrow, frequently, unequal, and indirect system to one which is now virtually universal, direct and equal".

Several restrictions were imposed on the right to vote, on the basis of sex, property and education which have all disappeared with time.

➤ **Property or tax-paying as a qualification:**

In the nineteenth century the main qualification for franchise was the possession of property or the payment of taxes. The justification for this qualification was that possession of property was a trustworthy indication that its possessor was educated and therefore was competent to take part in public affairs. In Japan until 1925, only a tax payee was given this franchise. A large portion of the population was denied the right to vote.

➤ **Educational qualification:**

- **J.S. Mill** advocated educational qualification for voting right. It is argued that people who cannot read or write cannot and should not participate in public affairs.
- In some countries like Brazil, and Chile, illiterates are excluded from voting. But, whether political intelligence and education go together is a question, which cannot be answered.
 - It is not logical to believe that ignorant masses will not be able to know what to vote for. Again, literacy cannot be equated with education.

➤ **Sex qualification:**

- As per this qualification, only male members of the society are eligible to vote. Some societies strongly believe that politics is only a man's business and women have no role in that.
- Hence even now in some states, women are denied this right to vote. However this attitude is fast changing and most of the countries now offer voting right to women also.

➤ **Nationality Qualification:**

- Modern states grant this right to vote only to their nationals i.e. those who are citizens of

that state.

➤ **Age Qualification:**

- Age is definitely one factor, which brings in maturity of thinking among an individual. So in no country, are children given the right to vote. However, the minimum age required for franchise varied between 18 and 21. In India, originally 21 years of age was prescribed for franchise. But later, in 1980, it was reduced to 18.

UNIVERSAL SUFFRAGE

There are different theories and opinion as to who should have the right to vote and who should be denied the right to vote. As democracy implies people's participation, to the wider extent possible, universal adult suffrage is advocated. In modern times, most of the countries around the world have opted for universal adult franchise.

ARGUMENTS IN FAVOUR OF ADULT SUFFRAGE:

- a) Democracy implies popular sovereignty. Suffrage must be universal. Every individual has the right to take part in constituting and conditioning the government. It is popular sovereignty.
- b) The laws of the state affect invariably every one in the state, therefore it is natural that every body expects to have a say in the politics and laws of the government. "What touches all must be decided by all".
- c) If the suffrage is restricted to a particular class, the government thus constituted with their representatives would tend to protect only their interest, at the expense of the unrepresented sections.
- d) Universal suffrage is essential for the development of the individual. Deprivation of the right to vote to one section of the society may make that group, as inferior, and the section, which has voting right, may feel superior. Right to vote enhances the opportunity for self-expression in public affairs.

TYPES OF VOTE

ONE MAN ONE VOTE: Under this provision every other is entitled for one and only one vote. The voter can cast his vote in favour of any candidate.

SINGLE TRANSFERABLE VOTE: In this system, which is designed for multimember constituency, the voter possesses only one vote. But he can make his priority like 1, 2, 3, etc, according to his requirement.

If a candidate fails to secure a majority, the votes polled for him will be reallocated according to the second choice, and then third choice, until a clear majority is obtained by a candidate. In India, election of the president, and members of Rajya Sabha are held on the single transferable vote method.

PLURAL VOTING: According to this system, several qualifications are prescribed for the right to vote such as payment of property tax and education. A person who owns property or is a tax payer or is educated is eligible to vote, because he possesses all of these qualifications. At the same time, a person who is educated, possess property and is a tax payer, is entitled for three votes. A voter is entitled for one vote for every qualification he possesses. In Belgium, this method was used earlier.

OPEN BALLOT: Under this system, the voters raise their hands to support a candidate. **Montesquieu** advocated this system because, seeing intelligent people raise their hands for a right candidates, the uneducated man would also support him.

However this method is not practical, considering the vast size of electorates. In the legislative assemblies and the parliament, when motions and bills are introduced the speaker puts it for voting. Members who support raise their hands on that basis, the speaker declares the bill passed or defeated.

SECRET BALLOT: In this system the voter casts his vote in favour of a candidate, without the knowledge of another person. A voter can exercise his franchise without fear. In polling station, an enclosure is provided for him to mark his vote and put the ballot in the ballot box. The ballots are mixed and no body can identify the exact vote polled by any voter. This method is adopted in most of the countries in the election to their legislature. In India also, only secret ballot method is used for elections to the state legislative assemblies and parliament.

CITIZENSHIP

The state is a political organization with the established government for the welfare of the people or the citizens. The word citizen has two different meanings-

1. One narrow meaning of the term is a citizen, a resident of a city.
2. The broader meaning of the term citizen is, 'a person who resides within the territorial limits of the state. In Political science parlance, a citizen means, a person who belongs to and is a member of the state and who enjoys social and political rights.

Citizenship is of two types-

- ***One is called naturalized citizenship and***
- ***Acquired citizenship.***

FUNCTIONAL REPRESENTATIVE: This is another method of representation. Advocate of functional representation argue that in the legislature, it is not the territorial communities that is to be represented but only various interests in the society that are to be represented.

The representation should be occupational or for economic interests. Generally, an urban constituency consists of various economic interests, like tradesman, employees, labourers etc., a rural constituency consists of agriculturists, farm laborers, and small time tradesman. If the interests of these people are to be represented in the assembly, it should be based on functional or occupational feature.

MERITS OF FUNCTIONAL REPRESENTATION

Under this system, the legislature would be composed of the representatives of organized interests and not of the people residing in a particular geographical area. Cole, an eminent political theorist, argues that, a real democracy must contain as many specially elected groups of representatives as there are distinct and essential groups of functions.

The guild socialists of British had developed the principles of occupational representation in great details. Interestingly, dictators like Mussolini and non-democrats had experimented with his type. Mussolini developed a corporative chamber, with representatives of various economic groups.

DEMERITS OF FUNCTIONAL REPRESENTATION

This system of representation is also criticized for the following reasons-

- ***Firstly***, occupational or functional representatives, will be interested only in protecting functional interest and will be more familiar with professional problems. But they are not trained in dealing with problems of general nature. The interests are divided and there is no unified national interest. The representatives do not represent the nation but only the occupation.

- **Secondly**, like proportional representative, functional representation also leads to multi parties. As the number of functions or occupation increases multiple parties will also emerge, each representing one occupation.
- **Thirdly**, two opposing functional groups may paralyze the government; for instance agriculturists and industrialists. If any project of the government is going to affect one occupational group, to the advantage of another occupational group, there will be a deadlock as no occupational group would be willing to sacrifice its interests. Thus conflicting interest would only end up in deadlock.
- **Fourthly**, the types of occupation in a society are too numerous that is practically impossible to find representative for each and every occupation.

MINORITY REPRESENTATION

The word minority is used in more than one sense. In the legislature, the majority becomes the ruling party and the minority party becomes opposition. Apart from this political minority, there are several other minorities like, linguistic, racial and communal. Thus, in India, Hindus are in majority and Christians, Anglo-Indians and Muslims are in minority. This is religious or communal minority. In Tamilnadu, Tamils are in majority and Telugu people are in minority. This is linguistic minority. The political minority should be represented in the national legislature. They along with the majority should participate in the law making process.

One way of securing representation for minorities is adopting proportional representation. Another method is communal representation. Under this system special arrangements are made for minority representation. There may be separate electorates for separate communities. Such a provision was made during the British rule in India. It provided for representation for each community. The Hindu voted for Hindu and the Muslim voted for Muslim candidates. This was popularly known as communal representation. Another method of communal representation is to provide for reservation of seats. Even though, this communal reservation was not followed in the independent India, the Indian constitution does provide for reservation of seats for scheduled castes and scheduled tribes in the legislatures. Tamil Nadu Panchayat Act, also provide for reservation of seats for SC's and ST's in the local bodies.

It is true, in a democracy, wider participation should be allowed. No section of the society should go without representation. However, as provided and in dealing with proportional representation, reservation of any kind will only promote division among the society. Any system of minority representation only divides people into hostile camps. It also develops hatred among minority and majority against each other. Consequently, democracy, which implies the existence of common will suffer most under a system of minority representation. Minority representation does not provide the answer to the basic problem of democracy. The problem is that how can every group be given an opportunity to participate or influence the process of legislation. The answer lies in creating avenues for the minority to express themselves.

DEVELOPMENT AND WELFARE

A welfare state is a concept of government where the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term may cover a variety of forms of economic and social organization.

There are two main interpretations of the idea of a welfare state:

1. A model in which the state assumes primary responsibility for the welfare of its citizens. This responsibility in theory ought to be comprehensive, because all aspects of welfare are considered and universally applied to citizens as a "right".
2. Welfare state can also mean the creation of a "**social safety net**" of minimum standards of varying forms of welfare.

In the strictest sense, a welfare state is a government that provides for the welfare, or the well-being, of its citizens completely. Such a government is involved in citizens' lives at every level. It provides for physical, material, and social needs rather than the people providing for their own. The purpose of the welfare state is to create economic equality or to assure equitable standards of living for all. The welfare state provides education, housing, sustenance, healthcare, pensions, unemployment insurance, sick leave or time off due to injury, supplemental income in some cases, and equal wages through price and wage controls. It also provides for public transportation, child-care, social amenities such as public parks and libraries, as well as many other goods and services. Some of these items are paid for via government insurance programs while others are paid for by taxes.

TWO FORMS OF THE WELFARE STATE

There are two ways of organizing a welfare state:

- According to the first model the state is primarily concerned with directing the resources to "the people most in need". This requires a tight bureaucratic control over the people concerned, with a maximum of interference in their lives to establish who are "in need" and minimize cheating. The unintended result is that there is a sharp divide between the receivers and the producers of social welfare, between "us" and "them", the producers tending to dismiss the whole idea of social welfare because they will not receive anything of it. This model is dominant in the US.
- According to the second model the state distributes welfare with as little bureaucratic interference as possible, to all people who fulfill easily established criteria (e.g. having children, receiving medical treatment, etc). This requires high taxing, of which almost everything is channeled back to the taxpayers with minimum expenses for bureaucratic personnel. The intended and also largely achieved result is that there will be a broad support for the system since most people will receive atleast something. This model was constructed by the Scandinavian ministers Karl Kristian Steincke and Gustav Möller in the 30's and is dominant in Scandinavia.

THEORY OF WELFARE STATE

The genesis and development of the concept of the welfare state lay in the interaction of ideas, mainly, conservatism, liberalism and socialism, in the unique British historical setting of a qualitative change from administrative to ameliorative legislation. The formative period of the concept involved an interesting application of empiricism and ideology to the problem of poverty. The welfare state, conceived within the liberal framework, involved a social consensus on a wide spectrum of socio-economic policies. Two sociological factors largely contributed to the growth of the concept: first, increasing prosperity that produced a revolution of rising expectations; and second, the hope and the fear generated by the newly acquired manhood franchise.

State help and self-help, in this context, became the two focal points of the 'principled' discussion on the subject of the welfare state. Herbert Spencer's liberalism, an apotheosis of self help, as a deductive

system, had deeper implications for welfare state activity. The notion that Spencer was opposed to welfare state is a false one. His doctrine of non-intervention and positivistic connotation, prima facie inconsistent with laissez- faire, but consistent with the view of state help was complimentary to self- help.

In economics, **laissez-faire** describes an environment in which transactions between private parties are free from state intervention, including restrictive regulations, taxes, tariffs and enforced monopolies. The phrase is French and literally means "**let do**", but it broadly implies "**let it be**", or "**leave it alone**."

The problem of the period was to search some criteria for judging the compatibility, or otherwise, of the various schemes of state welfare, vis-a-vis the idea of self help. The process of laying the foundations of the concept of the welfare state, the British political system acquired a remarkable capacity of preserving its liberal identity against the alien ideas of French and German socialism and Bismarckian model of the welfare state. British resistance to utopian ideals and adaptation to new challenges and responsibility was phenomenal. Political leaders of all hues and complexions were falling prey to democratic compulsions and were redefining their ideals. In relation to matters affecting the labour and the poor, they were abandoning their pitched positions in response to pragmatism. Transport, banking, agriculture, industry, trade; in a way, a large segment of economy, were subject to regulation.

Although there never was at any time a laissez-faire state, as the existence of Elizabeth Poor Law and factory legislation indicate, it is true that the era of "collectivism"- a mistaken term for regulatory capitalism- started in the 1870's whose first lasting effect could be seen in an increased legislative activity at the national level in the last decade of the last century. By the time Great War intervened, the statutes had covered many areas of social reform and the pattern of change had set in, more spectacularly, by the 'people's budget', a landmark in the march towards the welfare state.

The seeds of the concept lay in the problem of poverty. Its incidence and range assumed the form of the recurring Condition of England Question, which called for empirical investigation and verification. The basic element in the growth of the concept of the welfare state, however, was the two-fold realization of, one, the inadequacy of private charity, philanthropy and the poor law to meet the pressing demands of the poor who had acquired the new voting power; and two, the increasing capacity of the public exchequer to bear welfares burdens. The state helped, to the extent it was practicable, both in the formulation and solution of the felt and publicized problems of want, disease, ignorance, squalor and misery, in the backdrop of the widespread fear of an impending revolution, which added urgency to efforts for solving these problems.

The interaction of empiricism and ideology- conservative, liberal and socialist, predicated the concept of the welfare state, embodying a consensus on a wide spectrum of socio-economic policies. The development had been distinctive in several ways. It occurred in a free society where men projected their interests and ideas into the arena of conflict and where governments tended to take decisions by discussions and empirical investigation of problems. The welfare state evolved in response to the peculiar conditions of a maturing economy, laissez- faire attitude and traditions of enlightened self- interest.

DEVELOPMENT STATE

Developmental state, or hard state, is a term used by international political economy scholars to refer to the phenomenon of state-led macroeconomic planning in East Asia in the late twentieth century. In this model of capitalism (sometimes referred to as state development capitalism), the state has more independent, or autonomous, political power, as well as more control over the economy. A developmental state is characterized by having strong state intervention, as well as extensive regulation and planning. The term has subsequently been used to describe countries outside East Asia which satisfy the criteria of a developmental state. Botswana, for example, has warranted the label since the early 1970's. The developmental state is sometimes contrasted with a predatory state or weak state.

The first person to seriously conceptualize the developmental state was **Chalmers Johnson**. Johnson defined the developmental state as a state that is focused on economic development and takes necessary policy measures to accomplish that objective. He argued that Japan's economic development had much to do with far-sighted intervention by bureaucrats, particularly those in the Ministry of International Trade and Industry (MITI). He wrote in his book "MITI and the Japanese Miracle": In states that were late to industrialize, the state itself led the industrialization drive, that is, it took on developmental functions. These two differing orientations toward private economic activities, the regulatory orientation and the developmental orientation, produced two different kinds of business-government relationships. The United States is a good example of a state in which the regulatory orientation predominates, whereas Japan is a good example of a state in which the developmental orientation predominates.

A regulatory state governs the economy mainly through regulatory agencies that are empowered to enforce a variety of standards of behavior to protect the public against market failures of various sorts, including monopolistic pricing, predation, and other abuses of market power, and by providing collective goods (such as national defense or public education) that otherwise would be undersupplied by the market. In contrast, a developmental state intervenes more directly in the economy through a variety of means to promote the growth of new industries and to reduce the dislocations caused by shifts in investment and profits from old to new industries. In other words, developmental states can pursue industrial policies, while regulatory states generally can not.

As in the case of Japan, there is little government ownership of industry, but the private sector is rigidly guided and restricted by bureaucratic government elites. These bureaucratic government elites are not elected officials and are thus less subject to influence by either the corporate-class or working-class through the political process. The argument from this perspective is that a government ministry can have the freedom to plan the economy and look to long-term national interests without having their economic policies disrupted by either corporate-class or working-class short-term or narrow interests.

Characteristics of development state:

- Emphasis on market share over profit
- Economic nationalism
- Protection of fledgling domestic industries
- Focus on foreign technology transfer
- Large government bureaucracy
- Rationality, meritocracy, and professionalism bureaucracy (Weberian)
- Improved infrastructure for business by state
- Institutional encouragement for saving and strategic credit
- Export oriented policy
- Alliance between the state, labour and industry called corporatism
- Skepticism of neoliberalism and the Washington Consensus
- Prioritization of economic growth over political reform
- Legitimacy and Performance
- Emphasis on technical education

SEPERATION OF POWERS

The term "**trias politica**" or "**separation of powers**" was coined by **Charles-Louis de Secondat, baron de La Brède et de Montesquieu**, an 18th century French social and political philosopher. Separation of powers is a political doctrine originating in the writings of Montesquieu in *The Spirit of the Laws* where he urged for a constitutional government with three separate branches of government. Each of the three branches would have defined abilities to check the powers of the other branches.

His publication, *Spirit of the Laws*, is considered one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States. Under his model, the political authority of the state is divided into legislative, executive and judicial powers. He asserted that, to most effectively promote liberty, these three powers must be separate and acting independently.

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances.

The traditional characterizations of the powers of the branches of American government are:

- The **legislative branch** is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
- The **executive branch** is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
- The **judicial branch** is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

While separation of powers is key to the workings of American government, no democratic system exists with an absolute separation of powers or an absolute lack of separation of powers. Governmental powers and responsibilities intentionally overlap; they are too complex and interrelated to be neatly compartmentalized. As a result, there is an inherent measure of competition and conflict among the branches of government. Throughout American history, there also has been an ebb and flow of pre-eminence among the governmental branches. Such experiences suggest that where power resides is part of an evolutionary process.

LEGISLATIVE (CONGRESS)	EXECUTIVE (PRESIDENT)	JUDICIAL (SUPREME COURT)
<p>Passes bills; has broad taxing and spending power; regulates inter-state commerce; controls the federal budget; has power to borrow money on the credit of the United States (may be vetoed by President, but vetoes may be overridden with a two-thirds vote of both houses)</p> <p>Has sole power to declare war, as well as to raise, support, and regulate the military. Oversees, investigates, and makes the rules for the government and its officers.</p> <p>Defines by law the jurisdiction of the federal judiciary in cases not specified by the Constitution.</p> <p>Ratification of treaties signed by the President and gives advice and consent to presidential appointments to the federal judiciary, federal & executive departments, and other posts (Senate only).</p> <p>Has sole power of impeachment (House of Representatives) and trial of impeachments (Senate); can remove federal executive and judicial officers from office for high crimes & misdemeanors.</p>	<p>Is the commander-in-chief of the armed forces. Executes the instructions of Congress.</p> <p>May veto bills passed by Congress (but the veto may be overridden by a two-thirds majority of both houses).</p> <p>Executes the spending authorized by Congress.</p> <p>Declares states of emergency and publishes regulations and executive orders. Makes executive agreements (does not require ratification) and signs treaties (ratification requiring approval by two-thirds of the Senate) Makes appointments to the federal judiciary, federal executive departments, and other posts with the advice and consent of the Senate.</p> <p>Has power to make temporary appointment during the recess of the Senate.</p> <p>Has the power to grant "reprieves and pardons for offenses against the United States, except in cases of impeachment."</p>	<p>Determines which laws Congress intended to apply to any given case.</p> <p>Exercises judicial review, reviewing the constitutionality of laws. Determines how Congress meant the law to apply to disputes. Determines how a law acts to determine the disposition of prisoners.</p> <p>Determines how a law acts to compel testimony and the production of evidence.</p> <p>Determines how laws should be interpreted to assure uniform policies in a top-down fashion via the appeals process, but gives discretion in individual cases to low-level judges.</p> <p>The amount of discretion depends upon the standard of review, determined by the type of case in question.</p>

TRIPARTITE AND BIPARTITE SYSTEM AND ITS DIFFERENCES

Constitutions with a high degree of separation of powers are found worldwide. The UK system is distinguished by a particular entwining of powers. In Italy the powers are completely separated, even if Council of Ministers need the vote of confidence from both chambers of Parliament, that's however formed by a wide number of members (almost 1,000). A number of Latin American countries have electoral branches of government.

Countries with little separation of power include New Zealand and Canada. Canada makes limited use of separation of powers in practice, although in theory it distinguishes between branches of government.

New Zealand's constitution is based on the principle of separation of powers through a series of constitutional safeguards, many of which are tacit. The Executive's ability to carry out decisions often depends on the Legislature, which is elected under the Mixed Member Proportional system. This means the government is rarely a single party but a coalition of parties. The Judiciary is also free of government interference. If a series of judicial decisions result in an interpretation of the law which the Executive considers does not reflect the intention of the policy, the Executive can initiate changes to the legislation in question through the Legislature. The Executive cannot direct or request a judicial officer to revise or reconsider a decision; decisions are final. Should there be a dispute between the Executive and Judiciary, the Executive has no authority to direct the Judiciary, or its individual members and vice versa.

Complete separation of powers systems are almost always presidential, although theoretically this need not be the case. There are a few historical exceptions, such as the Directoire system of revolutionary France. Switzerland offers an example of non-Presidential separation of powers today: It is run by a seven-member executive branch, the Federal Council. However, some might argue that Switzerland does not have a strong separation of powers system, as the Federal Council is appointed by parliament (but not dependent on parliament) and although the judiciary has no power of review, the judiciary is still separate from the other branches.

UNIT 5: CONSTITUTION & KINDS OF GOVERNMENT

1. Constitution-Meaning and Kinds.
2. Kinds of Government- Dictatorship, Parliamentary & Presidential,
3. Unitary and Federal,
4. Party System,
5. Pressure Groups and Women's Groups.
6. Constitutionalism

CONSTITUTION

The term Constitution is derived from Latin word 'Constitute' which means 'to establish'. The Constitution is the basic document of a State. A constitution is a set of fundamental principles or established precedents according to which a state or other organization is governed. These rules together make up, i.e. constitute, what the entity is. When these principles are written down into a single document or set of legal documents, those documents may be said to embody a written constitution; if they are written down in a single comprehensive document, it is said to embody a codified constitution.

Constitutions concern different levels of organizations, from sovereign states to companies and unincorporated associations. A treaty which establishes an international organization is also its constitution, in that it would define how that organization is constituted. Within states, a constitution defines the principles upon which the state is based, the procedure in which laws are made and by whom. Some constitutions, especially codified constitutions, also act as limiters of state power, by establishing lines which a state's rulers cannot cross, such as fundamental rights.

The Constitution of India is the longest written constitution of any sovereign country in the world, containing 444 articles in 22 parts, 12 schedules, while the United States Constitution is the shortest written constitution, at 7 articles and 27 amendments.

FEATURES: Generally, every modern written constitution confers specific powers to an organization or institutional entity, established upon the primary condition that it abides by the said constitution's limitations. The Latin term *ultra vires* describes activities of officials within an organization or polity that fall outside the constitutional or statutory authority of those officials. An example from the constitutional law of sovereign states would be a provincial government in a federal state trying to legislate in an area exclusively enumerated to the federal government in the constitution, such as ratifying a treaty.

Ultra vires gives a legal justification for the forced cessation of such action, which might be enforced by the people with the support of a decision of the judiciary, in a case of judicial review. A violation of rights by an official would be *ultra vires* because a (constitutional) right is a restriction on the powers of government, and therefore that official would be exercising powers he doesn't have.

In most but not all modern states the constitution has supremacy over ordinary; in such states when an official act is unconstitutional, i.e. it is not a power granted to the government by the constitution, that act is null and void, and the nullification is *ab initio*, that is, from inception, not from the date of the finding. It was never "law", even though, if it had been a statute or statutory provision, it might have been adopted according to the procedures for adopting legislation. Sometimes the problem is not that a statute is

unconstitutional, but the application of it is, on a particular occasion, and a court may decide that while there are ways it could be applied that are constitutional, that instance was not allowed or legitimate. In such a case, only the application may be ruled unconstitutional. Historically, the remedy for such violations has been petitions for common law writs, such as quo warranto.

Essentials of a good Constitution-

- Clarity and definiteness
- Simplicity in language
- Brevity
- Comprehensiveness
- It should neither be very tough nor very flexible.
- Provision of independent and strong judiciary.

CLASSIFICATION

TYPE	FORM	EXAMPLE
CODIFIED	in single act (document)	Most of the world constitutions.
UNCODIFIED	fully written (in few documents)	San Marino, Saudi Arabia
UNCODIFIED	partially unwritten (constitutional convention)	Canada, Israel, NZ, UK

WRITTEN VERSUS UNWRITTEN / CODIFIED VERSUS UNCODIFIED

Some constitutions are largely, but not wholly, codified. For example, in the Constitution of Australia, most of its fundamental political principles and regulations concerning the relationship between branches of government, and concerning the government and the individual are codified in a single document, the Constitution of the Commonwealth of Australia. However, the presence of statutes with constitutional significance, namely the Statute, as adopted by the Commonwealth in the Statute of Westminster Adoption Act 1942, and the Australia Act 1986 means that Australia's constitution is not contained in a single constitutional document. It means the Constitution of Australia is uncoded, it also contain constitutional conventions, thus is partially unwritten.

The Constitution of Canada, which evolved from the British North America Acts until severed from nominal British control by the Canada Act 1982 (analogous to the Australia Act 1986), is a similar example. Canada's constitution consists of almost 30 different statutes.

The terms written constitution and codified constitution are often used interchangeably, as are unwritten constitution and uncoded constitution, although this usage is technically inaccurate. A codified constitution is a written constitution contained in a single document, states that do not have such a document have uncoded constitutions but not entirely unwritten constitutions since much of an uncoded constitution is usually written in laws, such as the Basic Laws of Israel or the Parliament Acts of the United Kingdom.

ENTRENCHMENT (OR CODIFIED)

The presence or lack of entrenchment is a fundamental feature of constitutions. An entrenched constitution cannot be altered in any way by a legislature as part of its normal business concerning ordinary statutory laws, but can only be amended by a different and more onerous procedure. There may be a requirement for a special body to be set up, or the proportion of favourable votes of members of

existing legislative bodies may be required to be higher to pass a constitutional amendment than for statutes. The entrenched clauses of a constitution can create different degrees of entrenchment, ranging from simply excluding constitutional amendment from the normal business of a legislature, to making certain amendments either more difficult than normal modifications, or forbidden under any circumstances.

Entrenchment is an inherent feature in most codified constitutions. A codified constitution will incorporate the rules which must be followed for the constitution itself to be changed. The US constitution is an example of an entrenched constitution, and the UK constitution is an example of a constitution that is not entrenched (or codified). In some states the text of the constitution may be changed; in others the original text is not changed, and amendments are passed which add to and may override the original text and earlier amendments.

Procedures for constitutional amendment vary between states. In a nation with a federal system of government the approval of a majority of state or provincial legislatures may be required. Alternatively, a national referendum may be required. Details are to be found in the articles on the constitutions of the various nations and federal states in the world.

In constitutions that are not entrenched, no special procedure is required for modification. Lack of entrenchment is a characteristic of uncoded constitutions; the constitution is not recognised with any higher legal status than ordinary statutes. In the UK, for example laws which modify written or unwritten provisions of the constitution are passed on a simple majority in Parliament. No special constitutional amendment procedure is required.

The principle of parliamentary sovereignty holds that no sovereign parliament may be bound by the acts of its predecessors; and there is no higher authority that can create law which binds Parliament. The sovereign is nominally the head of state with important powers, such as the power to declare war; the uncoded and unwritten constitution removes all these powers in practice.

In practice democratic governments do not use the lack of entrenchment of the constitution to impose the will of the government or abolish all civil rights, as they could in theory do, but the distinction between constitutional and other law is still somewhat arbitrary, usually following historical principles embodied in important past legislation. For example, several British Acts of Parliament such as the Bill of Rights, Human Rights Act and, prior to the creation of Parliament, Magna Carta are regarded as granting fundamental rights and principles which are treated as almost constitutional. Several rights that in another state might be guaranteed by constitution have indeed been abolished or modified by the British parliament in the early 21st century, including the unconditional right to trial by jury, the right to silence without prejudicial inference, permissible detention before a charge is made extended from 24 hours to 42 days, and the right not to be tried twice for the same offence.

DISTRIBUTION OF SOVEREIGNTY

Constitutions also establish where sovereignty is located in the state. There are three basic types of distribution of sovereignty according to the degree of centralisation of power: **unitary, federal, and confederal**. The distinction is not absolute.

In a unitary state, sovereignty resides in the state itself, and the constitution determines this. The territory of the state may be divided into regions, but they are not sovereign and are subordinate to the state. In the UK, the constitutional doctrine of Parliamentary sovereignty dictates that sovereignty is ultimately contained at the centre. Some powers have been devolved to Northern Ireland, Scotland, and Wales (but not England). Some unitary states (Spain is an example) devolve more and more power to sub-national governments until the state functions in practice much like a federal state.

A federal state has a central structure with at most a small amount of territory mainly containing the institutions of the federal government, and several regions (called states, provinces, etc.) which compose the territory of the whole state. Sovereignty is divided between the centre and the constituent regions. The constitutions of Canada and the United States establish federal states, with power divided between the federal government and the provinces or states. Each of the regions may in turn have its own constitution (of unitary nature).

A confederal state comprises again several regions, but the central structure has only limited co-ordinating power, and sovereignty is located in the regions. Confederal constitutions are rare, and there is often dispute to whether so-called "confederal" states are actually federal.

To some extent a group of states which do not constitute a federation as such may by treaties and accords give up parts of their sovereignty to a supranational entity. For example the countries constituting the European Union have agreed to abide by some Union-wide measures which restrict their absolute sovereignty in some ways, e.g., the use of the metric system of measurement instead of national units previously used.

SEPARATION OF POWERS

In presidential and semi-presidential systems of government, department secretaries/ministers are accountable to the president, who has patronage powers to appoint and dismiss ministers. The president is accountable to the people in an election.

In parliamentary systems, Cabinet Ministers are accountable to Parliament, but it is the prime minister who appoints and dismisses them. In the case of the United Kingdom and other countries with a Monarchy, it is the Monarch who appoints and dismisses ministers, on the advice of the Prime Minister. In turn the prime minister will resign if the government loses the confidence of the parliament (or a part of it). Confidence can be lost if the government loses a vote of no confidence or, depending on the country, loses a particularly important vote in parliament such as vote on the budget. When a government loses confidence it stays in office until a new government is formed; something which normally but not necessarily required the holding of a general election.

State of emergency- Many constitutions allow the declaration under exceptional circumstances of some form of state of emergency during which some rights and guarantees are suspended. This deliberate loophole can be and has been abused to allow a government to suppress dissent without regard for human rights.

1. Constitution- It is the supreme law of the land.

- The basic law of a state which sets out how that state will be organized, the powers and authorities of government between different political units, and by stating the basic principles of the society.
- In Black Law Dictionary, "The fundamental and organic law of a nation or state that establishes the institution and system of government defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties."
- Tomas Paine remark that, "Government without a Constitution is a power without a right."

2. Constitutionalism

- The doctrine or system of government in which the governing power is limited by enforceable rule of law and concentration of power is limited by various checks and balances so that the basic rights of individuals and groups are protected.

- “A commitment to limitations on ordinary political power; it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights; it draws on particular cultural and historical contexts from which it emanates; and it resides in public consciousness.”
- Constitutionalism recognizes the need for government with powers but at the same time insists that limitation be placed on those powers. It envisages checks and balances by restraining the powers of governmental organs by not making them uncontrolled and arbitrary.

Descriptions of governments can be based on:

a) ECONOMY- What provides the goods and services that are bought, sold, and used?

CAPITALISM (RUSSIA)	SOCIALISM (NORWAY)	COMMUNISM (CUBA)
In a capitalist or free-market economy, people own their own businesses and property and must buy services for private use, such as healthcare.	Socialist governments own many of the larger industries and provide education, health and welfare services while allowing citizens some economic choices	In a communist country, the government owns all businesses and farms and provides its people's healthcare, education and welfare.

b) POLITICS- How is the government run?

DICTATORSHIP (IRAQ)	TOTALITARIAN (CHINA)	THEOCRACY (IRAN)	MONARCHY (JORDAN)	PARLIAMEN- TARY (ISRAEL)	REPUBLIC (USA, INDIA)	ANARCHY (AFGHANIS- TAN)
Rule by a single leader who has not been elected and may use force to keep control. In a military dictatorship, the army is in control. Usually, there is little or no attention to public opinion or individual rights.	Rule by a single political party. People are forced to do what the govt. tells them and may also be prevented from leaving the country.	A form of government where the rulers claim to be ruling on behalf of a set of religious ideas, or as direct agents of a deity.	A monarchy has a king or queen, who sometimes has absolute power. Power is passed along through the family	A parliamentary system is led by representatives of the people. Each is chosen as a member of a political party and remains in power as long as his/her party does	A republic is led by representatives of the voters. Each is individually chosen for a set period of time.	Anarchy is a situation where there is no government. This can happen after a civil war in a country, when a government has been destroyed and rival groups are fighting to take its place.

c) **AUTHORITY**- Who picks the government?

REVOLUTIONARY (USA, FRANCE, USSR ETC)	TOTALITARIAN (NORTH KOREA)	OLIGARCHY/PLUTOCRACY (PAKISTAN)	DEMOCRACY (INDIA)
The existing structure is overthrown by a completely new group. The new group can be very small - such as the military - or very large - as in a popular revolution. After a period of time, this 'becomes' one of the other type of government (unless there is another coup or uprising).	Rule by a single political party. Votes for alternative candidates and parties are simply not allowed. Citizens are allowed and 'encouraged' to vote, but only for the government's chosen candidates.	A form of government which consists of rule by an elite group who rule in their own interests, especially the accumulation of wealth and privilege. Only certain members of society have a valid voice in the government. This can reflect (but is not limited to) economic interests, a particular religious tradition (theocracy), or familial rule (monarchy).	In a democracy, the government is elected by the people. Everyone who is eligible to vote - which is a majority of the population - has a chance to have their say over who runs the country.

KINDS OF GOVERNMENTS

1. **Democracy**
2. **Republic**
3. **Monarchy**

4. **Aristocracy**
5. **Dictatorship**
6. **Democratic Republic**

Dictatorship is a form of government where political authority is monopolized by a single person or political entity, and exercised through various oppressive mechanisms.

A dictatorship is a type of authoritarianism, in which politicians regulate nearly every aspect of the public and private behavior of normal people. Dictatorships and totalitarianism generally employ political propaganda to suppress proponents of alternative governing systems.

History: In the 19th and 20th centuries, traditional monarchies gradually declined and disappeared. Dictatorship and democracy emerged as the world's two major forms of government. Between the two world wars, four types of dictatorships have been described: **constitutional**, **communist** (nominally championing "dictatorship of the proletariat"), **counter-revolutionary**, and **fascist**, and many have questioned the distinctions among these prototypes. Since World War II a broader range of dictatorships have been recognized including Third World dictatorships, religious dictatorships and family dictatorships.

Merits of dictatorship-

- ⇒ It promotes national unity.
- ⇒ It is an efficient form of government.
- ⇒ It is suitable for emergencies.
- ⇒ It promotes meritocracy.
- ⇒ It is favorable for progress and prosperity

Demerits of dictatorship-

- ⇒ It glorifies violence
- ⇒ It is totalitarian
- ⇒ It is authoritarian
- ⇒ It is aggressive

PRESIDENTIAL SYSTEM

A presidential system is a republican system of government where a head of government is also head of state and leads an executive branch that is separate from the legislative branch. The presidential system of government stands in contrast to the parliamentary system of government. It operates on the principle of separation of powers and the legislature and executive are independent of each other. The executive head of the state enjoys real executive powers. He is neither a member of the legislature nor accountable to it for its actions and policies. The continuance of the executive head in office does not depend on the sweet will of the legislature. He holds office for a fixed period and can be removed from his office before the expiry of his normal term only through the cumbersome process of impeachment. However, such dismissals are seen as so rare as not to contradict a central tenet of presidentialism that in normal circumstances using normal means the legislature cannot dismiss the executive. This system of government operates in the U.S.A., Brazil and certain other states of Southern America.

Presidential systems are numerous and diverse, but the following are generally true:

- ⇒ The executive can veto legislative acts and, in turn, a supermajority of lawmakers may override the veto. The veto is generally derived from the British tradition of royal assent in which an act of parliament can only be enacted with the assent of the monarch.
- ⇒ The president has a fixed term of office. Elections are held at regular times and cannot be triggered by a vote of no confidence or other parliamentary procedures. Although in some countries there is an exception, which provides for the removal/impeachment of a president who is found to have broken a law.
- ⇒ The executive branch is unipersonal. Members of the cabinet serve at the pleasure of the president and must carry out the policies of the executive and legislative branches. Cabinet ministers or executive departmental chiefs are not members of the legislature. However, presidential systems often need legislative approval of executive nominations to the cabinet, judiciary, and various lower governmental posts. A president generally can direct members of the cabinet, military, or any officer or employee of the executive branch, but cannot direct or dismiss judges.
- ⇒ The president can often pardon or commute sentences of convicted criminals.
- ⇒ Countries that feature a presidential system of government are not the exclusive users of the title of President. For example, dictator, who may or may not have been popularly or legitimately elected may be and often is called a president. Likewise, leaders of one are often called presidents. Most parliamentary republics have presidents, but this position is largely ceremonial; notable examples include Germany, India, Ireland, Israel and Italy. The title is also used in parliamentary republics with an executive presidency, and also in semi-presidential systems.
- ⇒ **Direct elections** — in a presidential system, the president is often elected directly by the people. This makes the president's power more legitimate than that of a leader appointed indirectly. However, this is not a necessary feature of a presidential system. Some presidential states have an unelected or indirectly elected head of state.
- ⇒ **Separation of powers** — a presidential system establishes the presidency and the legislature as two parallel structures. This allows each structure to monitor and check the other, preventing abuses of power.

- ⇒ **Speed and decisiveness** — A president with strong powers can usually enact changes quickly. However, the separation of powers can also slow the system down.
- ⇒ **Stability** — a president, by virtue of a fixed term, may provide more stability than a prime minister, who can be dismissed at any time.

Merits of presidential system of government-

- It is more democratic
- It is more stable form of government.
- It promotes and ensures administrative efficiency.
- It is suitable to deal with emergencies.
- It ensures government by experts.

Demerits of presidential system of government-

- There is a greater chance of the government becoming despotic.
- Since the legislature and the executive are completely independent of each other and there is no co-operation between the two. There is also a possibility that under this system the executive and the legislature may be controlled by two different parties. This greatly increases the chances of dead-locks between the two wings of the government.
- Presidential system is weak in external spheres. The President cannot declare war and this power rests with the legislature. Similarly, the president can conclude treaties with other countries but they are not valid unless ratified by the legislature.
- Another defect of Presidential form of government is that the executive is not responsible. The legislature or the general public hardly exercises any control over the policies of the executive. The members of the legislature can neither address questions to the president or his ministers nor remove the executive from office. In the absence of this accountability the executive tends to be irresponsible.

PARLIAMENTARY SYSTEM

It is a system of democratic governance of a state in which the branch derives its democratic legitimacy from, and is held accountable to, the legislature (parliament); the executive and legislative branches are thus interconnected. In a parliamentary system, the head of state is normally a different person from the head of government. This is in contrast to a presidential system in a democracy, where the head of state often is also the head of government, and most importantly: the executive branch does not derive its democratic legitimacy from the legislature. Also known as the **Cabinet Government**, it is based on close co-operation between the executive and the legislature. The executive is accountable to the legislature and stays in the office only as long as it enjoys the confidence of the legislature.

Thus, under a parliamentary system of government there are two types of executives- **nominal and real**. The real executive is accountable to the legislature and when the latter passes a vote of no confidence against it, it has to render its resignation or seek the dissolution of the legislature. This type of government exists in England, India, Australia, New Zealand etc.

Characteristics of parliamentary government-

- The parliamentary government is characterized by the presence of a nominal head in whose name the entire administration is carried on.
- The parliamentary government operates on the principle of fusion of legislative and executive powers. The Prime Minister and other ministers are members of the legislature and are individually as well as collectively accountable to it.
- Under Parliamentary government the ministers are accountable to the legislature.

- The Parliamentary government implies leadership of Prime Minister. The formation of the Cabinet starts with the appointment of the Prime Minister and all other ministers are appointed on his advice.
- Political homogeneity is another important feature of parliamentary government. All the ministers are taken from the same political party so that they may be able to work as a team.

Merits of Parliamentary system of government-

- The close co-operation between the executive and the legislature enables the ministers to implement the promises made to the people at the time of the elections.
- Parliamentary government is a responsible government. Also it is comparatively a flexible government in terms of being equipped to deal with the emergencies.
- Parliamentary system of government acts as a check on the despotism of the government. The opposition keeps vigilance over the policies of the government and refrain it from exercising powers arbitrarily.
- Under Parliamentary system of government on the fall of one government an alternative government is readily available. If a vote of no confidence is passed against the government, the opposition can be called upon to form the government.

Demerits of Parliamentary system of government-

- It promotes partisan spirit i.e. it intensifies the spirit of party and keeps it always on the boil.
- There is always the apprehension of Cabinet establishing its dictatorship.
- Parliamentary system leads to neglect of administration.
- It leads to increase in the influence of bureaucracy
- The parliamentary government is unstable because the cabinet remains in the office only as long as it enjoys the confidence of the legislature and the latter can oust it any time by passing a vote of no confidence.
- Parliamentary government is also considered unsuitable for dealing with emergency.

POLITICAL PARTY SYSTEM

A **political party system** is a concept in comparative political science concerning the system of government by political parties in a democratic country. No form of government other than an absolute monarchy can work without them. In democracies, a government without political party is unthinkable. The idea is that political parties have basic similarities: they control the government, have a stable base of mass popular support, and create internal mechanisms for controlling funding, information and nominations. The parties aggregate the public opinion and help in the formation of the government.

The concept was originated by European scholars studying the United States, especially James Bryce and Moisey Ostrogorsky, and has been expanded to cover other democracies. Giovanni Sartori devised the most widely used classification method for party systems. He suggested that party systems should be classified by the number of relevant parties and the degree of fragmentation. Party systems can be distinguished by the effective number of parties.

EVOLUTION OF POLITICAL PARTIES

From the dawn of the civilized life, human beings have always organized themselves into groups and large formations, for a variety of collective purposes– social, cultural, economic and political. A party is an organization for collective life. Indeed organized society alone is a party. Political party system is a modern phenomenon. The founding fathers of United States did not believe in the party system. They

thought its influence was bad. Parties and party systems emerged in Europe, North America and Japan around the third decade of nineteenth century. Much later, it came into full force in other countries.

Political parties are indispensable for a democracy. Democracies in the contemporary world are representative in character. In representative form of government political parties educate the public and inculcate interest to take part in active politics.

DEFINITION OF PARTY SYSTEM

A political party has been defined as an organized body of people who stand for certain principles and policies in political life of the country, by whose co-operation they seek to promote the interest of the country as a whole. According to **Edmund Burke**, "A political party is a body of men united for promoting by their joint endeavours the national interest, upon some particular principle in which they all are agreed."

SINGLE PARTY SYSTEM: A single party system is a system in which there will be only one political party in a country. The law of the land will not allow rivals. The Russian Revolution in the beginning of 20th century was the main cause for the emergence of single party system. Best example for this system is communist China.

Merits:

1. The government can be run efficiently without wasting time in discussion and controversies.
2. There is high national discipline.
3. There is no political rivalry.
4. Tremendous all around progress is possible

Demerits:

1. There will no difference between the party and the government.
2. Under this system, legislature may be law-making body with no change of frank discussion and deliberation.
3. The state with a single party rule will lead to authoritarianism and totalitarianism.
4. People are ruthlessly suppressed.
5. There will be no place for dignity of human personality.

BI-PARTY (TWO PARTIES)SYSTEM: Where two parties operate i.e. a system where two major political parties dominate politics within a government.

Ex: 1. England – There are two parties in England the conservative party and Labour party.

2. U.S.A – The Democratic Party and the Republican Party.

Merits:

1. In a parliamentary government, the two party systems provides for stable government.
2. A real representative government is possible only in a two party system.
3. Since parties are well organized, they held to mould public opinion.
4. Voters are well aware of policies and programmes of the parties of which they
5. The opposition party is playing constructive role. It points out the commissions and omissions in the policies and acts of the government.

Demerits of two party:

1. It gives rise to dictatorship of the cabinet and lowers the prestige of legislature.
2. There will be possibility of despotism of ruling party.
3. Representation of various interests and minorities is denied.
4. It gives rise to blind devotion and allegiance to the party and the leaders.

MULTI PARTY SYSTEM: Cleavages in social structures and differences in nationalities and regions in a state cause the emergence of multiparty system. A multiparty system is the one in which there will be more than parties in a state. For example,

Merits:

1. The possibility of cabinet dictatorship is rule out.
2. There is greater individual freedom, and all shades of opinion can be expressed through various political parties.
3. Adequate representation to various interests in a state is accorded in multiparty system.
4. The voter has wider choice in the two party system.

Demerits:

1. There will be no stable government.
2. Multiplicity of political divisions and parties may create chaos.
3. Parties divide people into hostile groups
4. No ministry will be able to do any good work for the people. Coalition ministries will exist precariously for a short time.
5. Fraud in the buying of votes will undermine political morality.

India: Here are two types of political parties in India - National Party and Regional/State party. Every political party must bear a symbol and must be registered with the Election Commission of India. In the current amendment to the Symbols Order, the Commission has infused the following five principles, which, in its view, should govern the polity in the country, situate as it is in its present state:

1. Legislative presence is a must for recognition as a National or State party.
2. For a National party, it must be the legislative presence in the Lok Sabha, and, for a State party, the legislative presence must be reflected in the State Assembly.
3. In any election, a party can set up a candidate only from amongst its own members.
4. A party, that loses its recognition, shall not lose its symbol immediately, but shall be given the facility to use that symbol for some time to try and retrieve its status. [However, the grant of such facility to the party to use its symbol will not mean the extension of other facilities to it, as are available to recognised parties, like, free time on Doordarshan/AIR, free supply of copies of electoral rolls, etc.]
5. Recognition should be given to a party only on the basis of its own performance in elections and not because it is a splinter group of some other recognised party.

Features of political party system in India-

1. One Party Dominance System
2. A Multi-Party System
3. Lack of Strong Opposition
4. Personality Cult
5. Lack of Ideological Commitment
6. Emergence of Regional Parties

In India, several all-India parties have suffered in strength and regional parties have grown in number and influence. Thus, Tamil Nadu has become a stronghold of the DMK followed by the ADMK; Punjab is dominated by the Akali Dal; Assam has been ruled by the AGP; Jammu & Kashmir is governed by the National Conference and Shiv Sena has emerged a powerful force in Maharashtra politics.

Some regional parties such as the DMK, Shiromani Akali Dal and National Conference emerged soon after the country's independence. These parties articulate and seek to defend a regionally-based ethnic or religious-cultural identity.

Factions within the Parties: All political parties tend to be factionalised. In non-communist parties the faction leaders tend to be community, caste or religious leaders who have skillfully built-Patron-client relationship among the members of different castes or communities. Such factional leaders view among themselves for political influence within the party and the government, entering into political alliances with one another in order to keep their political rivals out of power. Most of these factional alliances are non-ideological; they also tend to shift a good deal, thus keeping the parties in a state of flux.

Communalism and Casteism: Communalism is not a phenomenon confined only to India and other countries of Asia but it can be seen in many parts of the world like Germany, Sweden, and Denmark etc. What is peculiar about India is that even the so called secular persons and parties adopt an opportunist attitude towards communalism.

The Use of Extra-Constitutional Means to Power: Although electioneering and campaigning is an effort to capture a maximum number of seats in public offices are said to be the main functions of the parties, very few parties are able to make a respectable showing using only these legitimate methods. As a result political parties of all ideological persuasions frequently try to exploit political or social discontent to their advantage. They do not hesitate to use such non-parliamentary means as civil disobedience, mass demonstrations, strikes and protest rallies to embarrass the party in power and some of these tactics may become violent.

Politics of Defection and Anti-Defection Act: Defection is the term used for opportunistic transfer of loyalties from one political party to another. When a legislator is elected on the ticket of one party, but later joins another party, for selfish reasons, without his voters' consent, it is called defection. The Anti-Defection Act, 1985 sought to stop defections, so that representatives elected on certain principles and an certain party tickets would not be allowed to betray the trust which was reposed in them by the electorate at the time of their elections.

PRESSURE GROUPS

In every society, there are different interests of the various people. The people having their interests and tastes alike, generally form their interests. The interest groups make efforts to protect and promote their interests. When they are in a position to exert their pressure upon the government for the fulfillment of their objects, they become the **pressure groups**.

The pressure groups are voluntary groups which influence the political procedure. The aim of the pressure group is to protect their narrow objects.

Main features of pressure groups-

- ⇒ Limited object
- ⇒ Limited members
- ⇒ Loose organization with less internal discipline
- ⇒ Use of all methods i.e. frequent use of all legal and illegal means.

Means adopted by the pressure groups-

- Publicity and propaganda
- Peaceful movement
- Violence and destructions
- Immoral practices

ECONOMIC PRESSURE GROUPS

This group includes business and trade union groups as well as individual companies which maintain full-time officers and staff.

Trade associations: The numbers of business and trade associations in the capital are more apparent than ever before. One such group is the National Association of Manufacturers (NAM). It represents over 14,000 companies, which are conservative and in recent years have opposed federal legislation connected with environmental protection. The increase in Federal government activity has prompted an increase in business representation in Washington. As new regulatory bodies have been created, many companies have found themselves having to react to the new policies rather than having an input into helping to formulate those policies. Business groups have seen the acquisition of offices in Washington DC as essential if they are to influence the formation of government policy.

Giant private corporations: Many large industrial corporations, such as General Motors, also have permanent representation in Washington DC. Each corporation must ensure that their interests are protected, as large Federal contracts are often at stake. The size and subsequent power of these companies can rival that of the government, and they therefore carry enormous political weight. Business pressure groups have one major advantage over other pressure groups as they have the resources to fund their campaigns, whereas others have to rely on voluntary donations. The huge corporations tend to do better under a Republican government as historically Republicans have favoured big businesses. George W Bush has stated his intention to open up Alaska for oil exploration - was this decision influenced by pressure group involvement from the huge oil corporations? Microsoft faced the potential of being broken up by a decision taken by the Supreme Court under Clinton's presidency but seems likely to face a lesser fate in Bush's presidency after the president expressed his belief that Bill Gates and Microsoft represented an American success story.

Trade Unions: The America equivalent to the British Trades Union Congress is the American Federation of Labour- Congress of Industrial Organisations (AFL-CIO). In 1984, the AFL-CIO had about 18 million members, about 20% of the workforce, but its numbers have declined since this peak. The lack of effectiveness of this group was illustrated in 1959 when it failed to prevent a Federal law that outlawed secondary picketing. The trade union movement has been furthered weakened by allegations of racketeering, corruption and infiltration by organized crime. Some trade unions have succeeded in improving the standard of living for its members but this has come about because of collective bargaining as opposed to the threat of strike action. The culture of union membership and strike action is relatively rare in America and as a result, the AFL-CIO as an individual body is relatively weak. This weakness is compounded by the fact that within the AFL-CIO are individual trade unions that have their own autonomy.

Professional Organisations: This group has some very powerful members in it but powerful only in the professions that they represent. In this group would be found the American Medical Association (AMA) and the American Bar Association (ABA). The ABA plays an important role in the selection and nomination of judges and it is an important source of advice and it remains a major interpreter of law within the political system. The AMA has always been involved in politics. Though it was unsuccessful in its campaign not to introduce Medicare, it has used its political clout to stop a major expansion of it. The health reform programme under Clinton was effectively dropped. The AMA remains one of the largest spending pressure groups at election time, providing over \$2 million for candidates who support its conservative political stand-point. Those potential election candidates who want major health reforms (i.e. make health a cheaper prospect for Americans by moving to a British form of National Health) would not receive backing from the AMA.

PUBLIC PRESSURE GROUPS

These are groups that represent a section of the public on a particular issue. The growth in public pressure groups can be partially explained by a change in American attitudes towards the Federal government. People have turned to pressure groups because they are seen to be speaking out on issues that touch the heart of certain individuals. These individuals have the belief that these pressure groups might be successful in changing what they find unacceptable - the most obvious current issue would be environmental issues especially as President George W Bush has refused to ratify the Kyoto Protocol on decreasing global warming and has stated his intention to open up Alaska to oil exploration. Prominent public pressure groups are Common Cause and the Nadar Organisation. Whereas the huge corporations, which have bases in Washington DC, are concerned with their own well-being, these groups represent the interests of the consumer i.e. the public.

Sectional Pressure Groups: These work to defend and promote the interest of specific social groups in American society. In recent years the civil rights movement and the right of equality for women have been brought to the forefront by pressure groups.

INTERGOVERNMENTAL PRESSURE GROUPS

The growth in Federal programmes in the last two decades and the vast sums of money involved has lead to an expanded role in the part played by state and city governments as administrative agents for the Federal government. This has lead to a greater degree of freedom for state and city governments but also given rise to what is known as "intergovernmental lobbying". It is common for states and individual cities to have their own offices in Washington DC to be at the heart of federal decision making so that they can represent their beliefs with speed and effectiveness when the needs arise. As the largest spender by far in America is the Federal government, states and cities wish to be near this source of revenue should they need to put in a bid for extra resources.

CONSTITUTIONALISM

The concept of constitutionalism is that of a polity governed by or under a constitution that ordains essentially limited government and rule of law as opposed to arbitrary authoritarian or totalitarian rule. Constitutional government, therefore, should necessarily be democratic government.

In other words, Constitutionalism is a political philosophy in which the functions of government of a state must be in accordance with the provisions of the constitution meaning thereby the actions of government must reflect constitutionality.

As the constitutionalism is a political spirit or philosophy, so it is not necessary that the states which have a constitution must be embodied with the concept of constitutionalism. According to Douglas Greenberg, Constitutionalism is a commitment to limitations on ordinary political power, it revolves around a political process, one that overlaps with democracy in seeking to balance state power and individual and collective rights, it draws on particular cultural and historical contexts from which it emanates and it resides in public consciousness.

Now to identify that whether constitutionalism is present in India or not, it can be analyzed with the help of various provisions of constitution that are-

- Preamble
- Judicial Review
- Rule of law
- Separation of power
- Checks and balances and so on.

There is no exhaustive list of features by which the validity or existence of constitutionalism can be tested; but the every feature which limits the government and proves helpful to establish a position of sovereignty

under fundamental principles of constitutional jurisprudence may be a considerable point for constitutionalism.

In Indian context, Preamble may be a point to check the presence of constitutionalism. Our constitution enacted on 26th November, 1949, since then, a question has always been a matter of great concern that whether preamble is a part of Indian constitution or not. However, in 1960, In Re Beru Beri case, it was held that preamble is not a part of constitution but after a long time, in case of Keshavanand Bharti v. State of Kerala [AIR 1973 SC 1461], 13 judges bench of Indian constitutional history rejected previous contentions and declared that “Preamble is a part of Indian Constitution”.

Preamble explains the objectives of constitution in two ways, one about the composition of bodies of governance and other about the objectives sought to be achieved in independent India.

Objectives explained in preamble as follows:

- ⇒ To constitute India into Sovereign, Socialist, Secular, Democratic, Republic (words Socialist and Secular inserted by 42nd constitutional Amendment, 1976)

Other provisions of preamble that are-

- ⇒ **Justice** – Social, Economic, and Political;
- ⇒ **Liberty** – of thought, expression, belief, faith and worship;
- ⇒ **Equality** – of status and opportunity;
- ⇒ **Fraternity** assuring the dignity of the individual and the unity and integrity of the nation (word unity inserted by 42nd constitutional Amendment, 1976)

According to Justice Subbarao, Preamble is the soul of the constitution, without which a body in the form of state cannot be survived. The objectives of constitution ensure the dignified conditions for the people of India and provide them all rights and liberties within ambit of fundamental spirit of constitutionalism embodied in entire body of the constitution.

E.g. Dr. Radhakrishnan, former President of India, has explained secularism in this country, as follows-

“When India is said to be a secular state, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the state assumes divine prerogatives.....we hold that not one religion should be given preferential status...This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life.”

In other words, Secularism, which reflects no state religion, means every citizen has a right to profess religion of their own choice, which promotes automatically liberty of faith and worship. In this way, It can be surmised that preamble hold the spirit of constitutionalism.

Second feature is Judicial Review, however, this doctrine is not clearly stated in Indian constitution but its reflection is somewhere found in Article 13(2), Actually, this doctrine was firstly introduced in 1803 by **Justice Marshall** in **Marbury v. Madison** case in USA where he clearly said that ‘It is the duty of judge to annul the law made by the legislature which violated the constitution or is contrary to it.

The similar spirit is found in Article 13(2) of Indian Constitution that the laws “which are inconsistent to part III of constitution shall be declared null and void”, but it is not clearly defined that if any contrary law made, then who will check its validity, then an answer comes into light in reference to Justice Marshall that Judiciary can check such contrary acts of legislature and also can review the laws made by legislature.

And also a concept of “Higher law” emerged from this doctrine, because a judge has to follow the mandates or directions of Higher law while checking the consistency of provision. In written constitution, Higher law depicts constitution as Supreme but where there is no written constitution; there are some principles which can be regarded as Supreme or Higher law principle.

In **A.K. Gopalan v. State of Madras** (1950), it was held that it is difficult to restrict the sovereign legislative power by judicial interference except so far as the express provision of written constitution. It is

only the written provisions of constitution which may restrain legislative power, but where there is no written constitution, then, who restrain legislative power, and then its answer is judiciary by following various principles, precedents, customs, usages, and different statutes can check the consistency. It clearly signifies that in absence of power of judicial review in hands of judiciary, judiciary is only a puppet of legislators.

However, this type of situation has been prevalent in India, till 2007, in different cases, such as Shankari Prasad case, Sajjan Singh case, Golak Nath case, Keshavanand Bharti case, N.Ramchandra case, traced a picture of conflict between legislature and judiciary, no clear cut demarcation of powers under which organs of government can overview the validity of their actions for upholding the true spirit of constitutionalism in a political entity could be realized. But the Raja Ram Pal case and I.R.Coelho v. State of Tamil nadu (2007) have reshaped the whole demarcation and establish superiority of principles such as Basic Structure Theory enhancing the spirit of constitutionalism.

Third provision is “Rule of Law”, on its basis spirit of constitutionalism can be present in a state. This doctrine is given by Dicey (a well known constitutionalist of England) in 1865 wrote a book titled “An Introduction to the law of the constitution” in which the term “Rule of Law” was given a comprehensive amplitude. In reality, it is a doctrine of England where there is no written constitution, so it is placed as a higher law there to check the validity of any law made by legislature. This doctrine shows that whatever law is present in our state, must be ruled over everyone, meaning thereby the law is supreme in all respect and in every sphere. It clarifies that “No one above the law”. Now a question arises, what the law is? The answer of this question resides in two principles that are-

- **Due Process**
- **Procedure established by law.**

Due Process is a doctrine of USA, and its ambit is not defined comprehensively, but its sphere is to be explained by judges as per the facts and circumstances of the case. It represents judicial supremacy and also there is a danger for judicial autocracy because the court if not self restrained may go beyond the limits set by the constitution.

But in India, there is a doctrine namely “Procedure established by law” that prevails, as adopted from Constitution of Japan and clearly enshrined in Article 21 of Indian Constitution. It shows parliamentary sovereignty because in India, law is made by the legislature, it restricts the judicial supremacy and only infers right to do literal interpretation not statutory construction of laws.

There are also some other elements embedded in Rule of law, such as:

- ⇒ Absence of arbitrary power on the part of government, which is undoubtedly present in form of judicial review in which judiciary always look after the actions of other organs of government.
- ⇒ Equality of all persons in the eye of law, which can be justified on the basis of provisions of Article 14-18 with some reasonable restrictions.
- ⇒ Rules of constitutional law are the results of the ordinary law of the land means the laws made by legislature must not be contrary to the provisions of constitution, otherwise it will be declared as null and void.

In England, Rule of Law flourished sovereignty of legislature, being unwritten constitution there is no higher law to circumscribe the plenary powers of the sovereign legislature but in India, there is written constitution and the concept of judicial review also present, so the doctrine of Rule of Law cannot be assigned a paramount place. But to promote the spirit of constitutionalism, the shadow of this doctrine reflects in various provisions of Indian Constitution in the form of fundamental principles of natural justice.

Next provision is Separation of Power among organs of government. In India, under Article 245,246 and Schedule VII there is a clear demarcation of legislative power among union and state government, under Articles 256-263 administrative relations are also clearly defined, and under Article 254 if there is any inconsistency between centre and state laws, then central law prevails, under Article 264-291 fiscal relation between centre and state is given, meaning thereby there is a rare chance of clash between union and states, so that public policies can be properly implemented as per the requirements of

the people. As the powers of centre and state are clearly divided, so there is no space to use arbitrary powers over any subject. Generally, subjects which have national importance vests in Union list and those have regional importance vests in State list and for the establishment of unity and integrity in the nation, Concurrent list is made in which for universalization of laws, central government made law but according to the requirements of a particular region, state legislature may make any amendment in the provision. In this way, this feature also promotes the spirit of constitutionalism.

And other provisions as Fundamental rights defined in Articles 12-35, provide some rights to the citizens and to every person for whose infringement people may approach towards Courts of Justice under Articles 32 and 226 respectively of Indian Constitution, which shows that citizens also have some rights to protect themselves from the arbitrariness of government. And Directive Principles of state policy under Articles 36-51 connotes that these principles should be in consideration of government while framing of its policies, because its trend helps to provide or flourish social, economic equality among people.

As the aim of government cannot touch their destination without the contribution of public at large, that's why the Fundamental duties of citizens also explained in Article-51A which should be obeyed by every citizen of nation. In this way, these provisions shows the checks and balances among the actions of governmental organs and the public.

The Emergency provisions under Articles 352, 356 and 360 also shows the spirit of constitutionalism by restraining the exclusive powers of state organs at the time of external aggression, armed rebellion, failure of constitutional machinery in particular state, financial crisis etc. It signifies the curtailment of powers of state functionaries in favour of public interest and all powers vests in union government to deal with such sort of situations.