Chapter-IV

Democracy and Civil Society: The Indian Experience
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DEMOCRACY AND CIVIL SOCIETY: THE INDIAN EXPERIENCE

The concept of ‘Democracy’ and ‘Civil Society’ are not new for India, because these institutions existed in ancient India though not in the form and degree of present day. Democracy in India is a continuous march from the remote past to the more active present day. The existence of democratic institutions in India can be traced back as early as Vedic age. According to Subhash Kashyap “democracy and representative institutions were, however, by no means entirely new to India. Existence of some deliberative bodies and democratic self-governing institutions could be traced back to as early as the Vedic age (Circa 3000-1000 BC). The institutions- Sabha and Samiti-mentioned in Rig-Veda, may be said to have contained rudiments of a modern parliament.”1 These two institutions were differentiated from each other in their status and functions. The Samiti was the general assembly or house of the people, and the Sabha, a smaller and select body of elders, broadly corresponding to the Upper House in modern legislatures. There are enough indications in Vedic text to suggest that the two bodies were closely associated with the affairs of the State and exercised considerable authority, influence and prestige. Some of the salient features in the functioning of modern parliamentary democracies free discussion and decision by the vote of the majority are known to have existed. The decision by the majority was regarded as inviolable, not to be overridden. “Vedic political theory recognized Dharma as the true sovereign. And Dharma was not religion but corresponded most closely to the modern concept of the Rule of Law. Dharma or the Rule of Law was upheld and enforced by the king. Ideally, the powers of the monarch were limited by the will of the people and the customs, usages and injunctions of Dharmasastra.”2 The King was required to take an oath of loyalty to the law and the constitution of the realm and to hold in trust the State for achieving the welfare of his people, both material and moral. Though the ancient Indian polity was predominantly monarchical, there were many instances of elective kingship and in any case, certain democratic institutions and practices were often in-built in the monarchical system.

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2 Ibid.
There is ample historical evidence contained in the Aitareya Brahaman, Panini’s Ashtadhyayi, Kautilya’s Arthashastra, the Mahabharat, inscriptions of Ashoka’s pillars, writings of contemporary Greek historians and the Buddhist and Jain scholars, and the Manusmriti, of the existence of a number of functioning republics during the post-Vedic period of history. In Sanskrit the word ‘Janans’ means people. The Vedic king was Janaaya i.e. Protector of people. Along with that the self-governing institution of ancient India ran parallel in the villages and those were the back bone of Indian democracy.

Kautilya in his book ‘Arthashastra’ prescribes certain training to the king regarding the principles and policies for the good governance of a state. He says that “the happiness of the subjects is the happiness of the king” and the king should listen to his citizen’s problems. He should also take the advice of his council of ministers in the matter of administration. Thus Kautilya’s head of the state resembles modern head of the state who is all powerful provided that he does his duty. Vishnoo Bhagwan underlines that according to Kautilya the king deserves the exalted position only if he observes raj dharma. An arbitrary and incompetent king, negligent of his duties forfeits the right to rule and is replaceable by the peoples. So, the authority of the king was subject to certain limitations.

The archeological discoveries in the states of Cholas, Cheras and Pandeyas in South India have revealed that in South India democracy was practiced. The existing monarchy system was either a kind of a ‘public trust’ or a ‘constitutional monarchy’. Voting or the process of election was known to the people of South India. Grass-roots democracy found its expression in the existence and functioning of Regional Councils (Janapadas), City Councils (Paura Sabhas) and village Assemblies (Grama Sabhas). These bodies administered local affairs with almost complete freedom of local initiative and self-governance. Arthashastra, Mahabharata and Manusmriti contain numerous references to the existence of Grama Sanghas. Elective local bodies like the

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4 Ibid.

5 Vishnoo, Bhagwan, *Indian Political Thinkers*, (Delhi: Atma Ram and Sons, 1999), pp. 39-40.
Grama Sabhas, Grama Sanghas or Panchayats, were common features of Indian polity in those days. While the democratic institutions like Sabha and Samiti and the republican states later disappeared, at the village level, Grama Sangha, Grama Sabhas or Panchayats survived and continued to function and flourish as effective institutions right through the rule of many dynasties and till the advent of the British rule or even thereafter in one form or the other.

To a large extent the institution of civil society and democracy in ancient India was closer to modern institution of aristocracy. The dominant caste, groups, class groups, clans etc., influenced the power politics during that day. As majority of people were illiterate, apathetic to politics, and they were not involved in the day to day affairs of the government. The Brahmins were the only important educated elite who could advise the kings in the administration of the state. Besides these, there were also certain limitations on the illiterate low caste groups, low occupational groups and low income groups. Education, birth, property qualification were certain limitation on the functioning of popular democracy in those times.

During the medieval period the institutions of civil society remained largely dormant. The society during that period was marked by feudalism and landed aristocracy. People were forced to obey the orders of the Nawab and the Kings. There was also absence of any centralized uniform laws to govern the country. There was no scope for emergence of the civil and political institutions. The people largely remained indifferent to the day to day administration.

The modern concept of democracy in India greatly owes its existence to the British rule. With the arrival of the British in India, the concept of democracy got widened with the gradual passing of various important Acts like the Charter Act, 1833.' charter Act, 1853.' Indian Councils Act, 1861.' Indian Councils Act, 1892.' Indian Councils Act, 1909.' Government of India Act, 1919.' the Government of India Act, 1935 and finally, India Independence Act, 1947.

With the achievement of independent statehood on 15th August 1947, the momentum of diversified civil associations increased enormously in India. The legacy of civil society got more reinforced when the constitution of free India came into force on 25th January 1950. The constitution of India became the largest constitution of the world incorporating diversified
provisions to cater the needs of multifarious problems of multi-cultural, multi-lingual, multi-ethnic and multi-regional population of India.

The constitution of India, in the word of it’s preamble, speaks of “We the people of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic… give ourselves this constitution.” It clarifies that sovereignty under the Indian political system vests in the people. The constitution of India unequivocally focuses on individual rights and guarantees liberties, equality, fraternity and justice.

The size, complexities and diversities of the Indian situation necessitated several special, temporary, transitional and miscellaneous provisions for certain regions or classes of people in the country. These provisions have made the constitution unique in the world. In fact, there is enough scope for blooming of democracy and civil society in India. Over the years India has developed into the largest functioning democracy in the world. The existence of diversity in terms of religion, language, caste, creed, ethnicity and region over time is a pointer to the successful functioning of democracy. In this context, the extent of civil society in the sphere of politics, social movements etc also make it unique phenomena in the community of nations. A.B. Vajpayee, the Former Prime Minister of India, opines that “when I look back at free India’s journey through the past five decades, I am filled with pride, because we have been successful in preserving two ideals that are most precious to all of us: one, the unity of India; and two, our democratic system. This is not a mean achievement given the track record of many newly independent countries including some in our own neighbourhood”.

Few countries in the world, facing the kinds of challenges of development and governance that India, does have so steadfastly continued on the democratic path. Similarly, few multi-religious, multi-lingual and multi-ethnic societies in the world have presented such an exemplary demonstration of unity in diversity as India has done. On the developmental front too, India has many proud achievements to her credit. All the governments of the past, belonging to different parties and coalitions, have contributed in their own way to India’s self-reliant progress on several fronts. Many developing countries look up to India as an example for building

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indigenous policies and programmes for socio-economic development. In the words of a former prime minister, “We should never belittle India’s achievements, as some people do. Such belittlement only serves to spread cynicism, apathy and inaction, qualities we must shun.”7 Our first task is to strengthen the awareness that “we are one people-sister and brothers who are children of the Great Mother India. Ours is a vast and varied country. Some times, however we get so involved in our own narrow concerns and so obsessed with our own specific identities, that we lend to ignore the chief source of our national pride and strength namely, Indian diversity and her essential unity. Some of our citizens focus too much on one or the other aspects of our diversity ignoring the common national bonds that unite us. Others ignore our diversity and instead, tent to over-emphasis only certain aspects of our national unity. In my view, both approaches are wrong. Diversity does not permit divisiveness or exclusiveness. Similarly, unity can not be achieved through uniformity, he further adds.”8

The diversities of Indian culture, geography, region etc. have been recognized by many eminent Indians. But India has tremendous potential to hold together the diversity. Diversity has ultimately strengthened democracy and civil society in India. According to Jawaharlal Nehru, “India is a geographical and economic entity, a cultural unity amidst diversity; a bundle of contradictions held together by strong but invisible threads.” 9 Along with its diversity the uniqueness of the Indian civil institutions have been strengthened by some important provisions of the constitution, which are especially meant for political democracy. These institutions are periodical election of political parties, etc.

**Periodical Elections**

Periodical elections are essential features of parliamentary democracy. The Constitution of India provides certain principles for the electoral procedure. The constitution stipulates in Article 325. a single electoral roll for every territorial constituency. There is no provision for communal or separate or special representation. The election is based on adult suffrage, i.e.

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7 Ibid.
8 Ibid.
every person who is a citizen of India and who is not less than 18 years of age is entitled to vote at the election provided he is not disqualified by provisions of the constitution or law made by the appropriate legislature.

For the conduct of fair and impartial elections, the Constitution provides for an independent body in the form of Election Commission (Article 324). The Election Commission consists of the Chief Election Commissioner and such other Commissioners as the President may from time to time determine. The Constitution does not specify the strength of the members of the Election Commission and leaves the same to be determined by the president. The strength of the Election Commission was increased by adding two Deputy Election Commissioners in 1989. The subsequent National Front Government, however, abolished the posts and reverted to the old position. In 1993, the Commission was made a three-member body by an Act of parliament.

The term of the Election Commissioner and other members of the Election Commission are not fixed by the Constitution. Generally they hold office for a term of five years. This term can be extended by one year at a time. But no person can continue in office beyond the age of 60 years. The Chief Election Commissioner cannot be removed from office except in the manner and on the grounds that a judge of the Supreme Court can be removed from office. Any other Election Commissioner or a regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner D.D. Basu says that "the provisions for the removal of the election commissioners make them independent of executive control and ensure an election free from the control of the party in power for the time being." According to the Constitution, in a multi-member Election Commission, the Chief Election Commissioner will act as the chairman of the Commission.

The Election Commission of India performs the following functions.

(i) It prepares electoral rolls for the elections to parliament as well as the State Legislatures and revises the electoral rolls.

(ii) It supervises, directs and controls elections of the President, Vice-President, Parliament and State Legislatures.

(iii) It lays down general rules for elections and issues notification of dates and schedules of
election and ensures security of nomination papers.
(iv) It determines the code of conduct to be observed by the parties and the candidates at the
time of the elections.
(v) It allots symbols and accords recognition to political parties.
(vi) It tenders advice to the President and Governs on questions relating to disqualification of
members of parliament and State Legislatures.
(vii) It postpones or countermands elections for specific reasons.
(viii) It appoints election officers for inquiring into the disputes arising out of or in connection
with the election arrangements.
(ix) It prepares the roster for central broadcasts and telecasts and allocates days and time to
different political parties.
(x) It grants exemptions to persons from disqualifications imposed by judicial decisions.

In recent years the Election Commission (EC) has forced the candidates to take the Model Code
of Conduct as a set of guidelines for all political parties. The EC has strengthened its
supervisory machinery while at the same time ensuring the purity and sanctity of electoral rolls
for holding free and fair elections. The EC has made photo identity cards compulsory for all
voters in order to prevent electoral frauds. For the first time it used Electronic Voting Machines
(EVMs) in the Fourteenth General Elections held in five phases from 20 April to 10 May, 2004.
The commission’s efforts to prevent criminalization of politics have earned the encouragement
of Supreme Court with the later holding that a candidate at the time to filling his nomination
should furnish information about his criminal antecedents, if any, his assets and liabilities and
educational qualifications. The commission has made it mandatory for the candidates to file
their expenditure statement within 45 days of the completion of the election process.

As the commission has power of supervision, control and discipline over the polling staff,
including police personnel, under section 28 of the representation of the people Act, it can
evolve a strategy for effective deployment of the forces in sensitive pockets. Some of the
important provision of the Model Code of Conduct for the guidance of political parties and
candidates are given below.
i) Parties and their candidates should not indulge in caste, communal, sectarian and regional hatredness.

ii) Politicians may criticize their opposition political parties and the same should be confined to their work. They shall refrain from all aspects of private life.

iii) There shall be no appeal to caste or communal feelings for securing votes.

iv) All parties and candidates are prohibited from corrupt practices in the election.

v) Their meetings, processions should not violate peace, order and public morality.

To strengthen the Election Commission for smooth, free and fair election many committees have been established earlier. The Tarakunde committee Report (1975), The Go swami Committee Report (1990), the Election Commission’s recommendation 1998, the National Commission to Review the working of the Constitution recommendation (NCRWC) 2000, and some of the landmark verdicts of Supreme Court and High Courts have brought enormous positive changes in the electoral process of the country. Since the first General Election in 1951 till the Fourteenth General Election in 2004, the Election Commission’s has displayed independence and impartiality, inspite of many challenges. The Fourteenth General Election required an exercise involving an electorate of over 675 million people and over 7,00,000 polling stations. This is clearly a mammoth exercise and can be termed as the world’s largest organized operation.

The role of Election Commission’s in India has been recognized all over the world for the conduct of it is free fair and impartial elections. It became more vibrant when T.N.Seshan became the Chief Election Commission of India in 1991. He curbed the illegal manipulation of India’s electoral system. His strong determination and thoughtful action for enforcement of the electoral laws put many political goons and mafia into trouble. During the time of M.S.Gill and J.M. Lyngdoh it has maintained the same vitality and vigor. Presently, the Election Commission is also seen with high esteem. For their exemplary roles in conducting free, fair and impartial election in India, T.N.Seshan and J.M.Lyngdoh have been awarded Magassasy Awards from the Philippines government.
As many as fourteen general elections held in India till 2003 have not only been free but also fair. K.K. Khullar observes that the "Transfer of power to the successive governments has been very smooth. We have the largest numbers of voters in the world, the voting age is now 18. Electoral rolls are regularly updated."  

**Political Parties**

Political Parties have become an indispensable part of the electoral process. In India there is a multi-party system and a large number of parties are participating in the electoral processes of the country. However, the country has witnessed dominance of a single party for many decades of her independence despite the presence of a multi-party system.

Registrations of political parties are done under Section 29A of the representation of peoples Act, 1951, which provides for registration of political parties by Election Commission. A party registered with the Election Commission may be granted recognition as a national or state party on the fulfillment of certain criteria based on its poll performance. If a political party fulfills the criteria for recognition under the Election Symbols (Reservation and Allotment) Order, 1968 in four or more states, it is deemed to be a national party. A political party recognized in less than four states is a state party in the state or states in which it is recognized as such. An exclusive symbol is reserved for a national party throughout India. In the case of a state party a symbol is reserved for it in the state or states in which it is recognized. Such reserved symbols are allotted only to the candidates of the parties for which they are so reserved. At the time of 1999 general elections, there were 6 National Parties and 48 State Parties, recognized by the Commission.

According to B.L. Fadia "India has a large number of political parties without a well-developed party system. The culture of populism has taken precedence over party based programmes and individuals have become the pivot of parties. Almost all the parties are faction-ridden and have lost their credibility. The party system in India is in the process of making."  

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On the contrary some are of the opinion that the party system in India is a well developed one. But in the social, cultural and political atmospheres in which they are working is subject to intra-factionalism and populism. Such phenomena are also seen in many democratic countries in the world. Among the national parties in India, the Congress Party has remained in power for a long time. The congress system emerged after the country had attained independence. From 1947 to 1967 and from 1971 to 1977 as well as from 1980 to 1989, this system was at the centre of Indian politics, spanning three distinct stages in its post-independence development; according to Fadia The first phase (1947-1967), was the period of the congress system; the second phase (1967-1977) was characterized by the decline and disintegration of the Congress system and the consolidation of power by small oligarchy; and the third phase (from 1977-1989) witnessed the development of a new system, which because of it is domination by Indira Gandhi become known as the Indira Congress or Congress (I). Until it’s rout in 1967, 1977, 1989, and 1996 elections, the Congress party exercised a monopoly of power at the center and with a few exceptions, was in control in most of the states.

Rajani Kothari prefers to call the Indian party system as ‘One party Dominance System’ or ‘the Congress System’. He asserts that the Congress party, based upon a broad consensus, accommodates diverse interests and factors within it’s fold. The creative role of Congress Party in the integration of society is highly remarkable. Kothari says “the Congress Party and it’s national elite were largely responsible for crystallizing such a focus which has since continued despite major changes in the party system. The Congress, when it came to power, assigned a positive and overwhelming role to government and politics in the development of society.”

There are many other important national parties in India like the Bharatya Janta Party. The Communist Party of India, The Samaj Wadi Party, The Bahujan Samaj Party etc. The above mentioned parties are not so much dominant as the Congress Party had been earlier. But the

13 Ibid.

existence of multi-party system gives representation to various groups and their multifarious demands.

There are also many more regional political parties based on regions, castes and independent movements like the Dravida Munnetra Kazhagam (D.M.K.), All India Dravida Munnetra Khzhagam (AIDMK), Telgu Desam, Asam Gana Parisad, Samajwadi Party, Rastrya Janata Dal (R.J.D.), Tamil Manila Congress (T.M.C.) and National Conference etc. In their own localities, these parties have scored impressive victories. According to Paul R. Brass “the diversities and social fragmentation of Indian society have produced a proliferation of regional and other political parties which often give to each state in the Indian Union a unique party system.”

Now some changing trends in political parties are seen in India, because of some changes in the Indian society. The structural transformation in our civil society is primarily responsible for these changes. There is a remarkable shift in the way individuals and groups perceive their roles as the constituent elements of a political community. The policy of economic liberalization has acted as a catalyst to these changes in perceptions. Two features of economic liberalization are important for an understanding of the emerging political culture and its influence on formations like political parties. One is openness of the economy and therefore exposure to the process of globalization; another is a gradual withdrawal of the state from the development programmes and thus forcing the civil society to confront the market forces.

While the economy is getting globalised, politics and political parties are getting localized, conforming to the saying that “think globally and act locally”. New technologies of transportations and communication have tried to unify the space; but they have also produced many small worlds. For parties which have to play an electoral game, these ‘imagined worlds’ are important parameters of their success. Most of the elector ally salient issues in India are poverty, health, environment etc., which are comprehensible primarily at the local, not global level. Therefore, the political parties at the regional level tend to sensitize the population to the

meaning of their own local space and it's social, physical and cultural attributes. If one examines the party system in India one would find certain characteristics in different periods of time since independence till today. These various phases can be summarized as follows:

(i) One Party Dominance phase
(ii) Trends towards two party system
(iii) Hegemonic Domination and
(iv) Multi-Party system and Coalition Era.

Since independence, from the time of first general election there were a large number of political parties. However, up to 1977 Indian National Congress was the dominant party. It was the ruling party both at the Centre and almost in all the states. The reasons for Congress domination included it’s existence since 1885 and the role played by it as a vanguard of the national movement for freedom. It has many stalwart leaders like Mahatma Gandhi, Nehru, Patel and others and it’s wide organizational network spread all over India. It was much more a movement than a party. Gradually with the elimination of these factors and with spread of other parties, particularly at state level, the Congress domination began to decline.

1977 elections provided a major step towards party institutionalization and possibilities of emergence of a two-party system. There was significant increase in the number of straight contests. Out of the total votes cast, 75.8 percent were cast in favour of only two parties namely the Congress and the Janata. For the first time the Janata Party being a non-Congress party formed government at the centre. Many political analysts visualized that Parliamentary democracy in India had matured and a two party system was in the process. However the hope was short lived because the Janata Party could not remain together even for three years. The 1980 elections gave India a hegemonic dominance of the Congress party which was now identified with the name of the leader i.e. Smt. Indira Gandhi (Congress (I)), who had become undisputed leader of the party. The Congress (I) became leadership centric than the organization. It became intolerant towards the opposition parties. The organizational structure of the party was ignored and party became dependent on the personality of the leader.
The parliamentary elections held in December 1989 clearly consolidated a multi-party system at the centre. Since then, till now, the trend of multiparty coalition in India is clearly visible. The outcome of the 1991, 1996, 1998, 1999 and 2004 elections have shown the emergence of multiparty system and a coalition phase. The new system has thrown up a dynamism in which major parties or party like formations (the Congress and it’s allies, the B.J.P. and it’s allies) seem to be almost equally poised for leading the country. Some political observers see it as dangerous for the future of parliamentary democracy in India as it causes instability. But in fact it is nothing unusual. In a country so vast, with so much of diversity, both the multiparty system and coalition governments are natural. Coalition governments are also seen even in developed Western democratic countries like France, Germany and Italy etc. In a way coalition governments tend to be more accountable due to continuous threat to their existence. Vandana Mishra underlines that “Be it the anti-Congress vote of 1977, the pro-Congress vote of 1979, the emotional wave in 1984, the anti-corruption vote in 1996, the pro-BJP vote in 1998 or a pro-NDA verdict in 1999 according a final nod to an era of coalition politics, the Indian electorate has always touched the pulsating nerve of the nation. Political parties, on varied occasions, have tried to offer a feast of half-truths, promises, rationalizations and catchy slogans but the voter has, almost invariably, opted for development, leadership, national interest and change.”

The 2004 Lok Sabha election result strengthened the coalition politics by giving representation to many political parties. Table No.6 shows the relative strength of various political parties in the fourteenth Lok Sabha.

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Table 6: Party Position in the 14TH Lok Sabha.

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<tr>
<th>1</th>
<th>CONGRESS AND ALLIES</th>
<th>Mizo National Front</th>
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<tr>
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<td>Congress</td>
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<td></td>
<td>Rashtriya Janata Dal</td>
<td>Sikkim Democratic Front</td>
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<td>Dravida Munnetra Kazhagam</td>
<td>Independent (BJP)</td>
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<td>Nationalist Congress Party</td>
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<td></td>
<td>Pattali Makkal Katchi</td>
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<td>Communist Party of India</td>
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<td>Revolutionary Socialist Party</td>
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<td>Mulim League</td>
<td>Samajwadi Party</td>
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<td>Independent (INC)</td>
<td>Bahujan Samaj Party</td>
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<td>BJP &amp; ALLIES</td>
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<td>Nagaland People's Front</td>
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(Source: News Panorama of India and World, Delhi, July 2004, Vol.16, No. 9, p.4).

The above table shows two types of major political groupings. On the one hand the Congress and its allies altogether have secured 221 seats and the BJP and its allies got total seats of 189. The left parties altogether secured 61 seats and the others secured total 71 seats. The party position in the 14th Lok Sabha gives a clear nod to the coalition era of politics in India.

Nudging past the magic figure of 272, Congress Chief Mrs. Sonia Gandhi, her allies and left parties swept the BJB-led National Democratic Alliance, (NDA) out of office as voters across the country rejected the “India Shinning” and “Feel Good” claims of the ruling coalition and voted for a change at the Centre.\(^\text{17}\)

\(^{17}\) News Panorama of India and World, (Delhi, Vol.16, No. 9, July 2004), p. 5.
Now Prime Minister Monmohan Singh is heading the United Progressive Alliance (UPA) government which is a coalition of many political parties. The National Democratic Alliance-led by B.J.P is sitting in Parliament as opposition party. L.K.Advani is the opposition leader in the present Lok Sabha. The multi-party system in India has given enough space for the growth of strong opposition which reflects the ideology and interests of parties other than the ruling party. K.K.Khullar says "The multi party system has contributed significantly to the growth of opposition which is not only the backbone but also the bed-rock of real democracy. The Parliamentary Committee System has ensured the accountability of the government."18

The political parties in India are also facing lot of problems like defections, finances, criminal and mafia nexus, absence of inner-party democracy etc. The anti-defection law was passed in 1985 which tried a ban on political defections. The Fifty Second Amendment Act was made for this purpose, which amended Articles 101, 102, 190, 191, and added the Tenth Scheduled to stop defection in the party. Likewise, many committees have recommended for eradication of financial problems, prohibiting criminals to take part in politics and strengthening inner-party democracy.

In the ultimate analysis, the party system in India has prospered as a multi party system that has taken deep root in India. It has provided enough space and opportunities to the opposition parties to express their constructive suggestions for the well governance of the country. Political parties in India have played indispensable part in the nation building and political process of the country. Since the time of independence there has been smooth transfer of power from one party to another party without any disruption, while in the neighboring countries like Pakistan and Bangladesh the opposite has happened. Thus, it is not only an example for the third world but also for the entire world.

Mass Media and Press

Free press and mass media are recognized as essential attributes of parliamentary democracy, and are considered as the ‘fourth estate’ of the realm. It can be said that the press and mass media are primarily medium of mass communication. Therefore, obviously their true function is to inform the people, and the measure of freedom they enjoy depends upon the way they discharge that function. The people have a right to be informed freely and fully, and for that the press is supposed to be accountable neither to the state, nor to the proprietor, but to the people.

In a democracy the news papers play a very important role. They keep the people informed about the programme and policies of government. Similarly they keep the government informed of the desires, wishes and grievances of the people. By doing so they bridge the gap between the government and the people. The mass media can play a constructive role in a democratic civil society. By dissemination of information and correct reporting it can greatly help in the formation of a public opinion among the people.

Freedom of speech and expression is a sine qua non of the functioning of a democratic polity. According to Subhash C. Kashyap, “Democracy means a government by persuasion and unless there is freedom for discussion of political as well as other matters, the polity could not be termed democracy. And, as a natural corollary, the term includes freedom of the press as well.”

In India, there is no specific constitutional provision for the freedom of press. It is implied under art 19(1) (a) of the Indian Constitution. According to D.D.Basu “There is no specific provision in our constitution guaranteeing the freedom of the press because freedom of the press is included in the wider freedom of ‘expression’ which is guaranteed by Art 19(1)(a). Freedom of expression means the freedom to express not only one’s own views but also the views of others and by any means including printing.”

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Freedom of the press is the heart of social and political intercourse. It is the primary duty of the courts to uphold the freedom of the press and invalidate all laws or administrative actions which interfere with it contrary to the constitutional mandate. In the context of Indian constitution freedom means every citizen is free to express his view, beliefs and convictions freely and without inhibitions by word of mouth, through writing, printing, pasteurizing or in any other manner. Hence, so far as India is concerned imposition of censorship of press and media or prohibiting them from publishing or transmitting the news and views would constitute a violation of the right to freedom of speech and expression.

In India, mass communication “plays a vital role in creating people’s awareness about national policies and programmes by providing information and education, besides healthy entertainment. It helps people to be active partners in the nation building endeavour.”21 The Ministry of information and Broadcasting is responsible for development and regulation of information’s, broadcasting and film sections in the country. The broadcasting sector is regulated by Prasar Bharati formed through an Act of 1997 by subsuming government owned T.V. and Radio-Doordarsan and All India Radio. In addition, the broadcasting sector has about hundred private channels and cable networks all over the country. The information sector includes the print media which is regulated by the Press Council of India. As per the provisions of Press and Registration of Books (PRB) Act 1867 and Rules under it, the Registrar of Newspapers for India (RNI), commonly known as Press Registrar, is required to submit an annual report to the government every year. According to the report submitted by the Press Registrar for the Year 2001, “the total number of newspapers and periodicals being published in India was 51,960 in 2001 as compared to 49,145 in 2000.”22

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22 Ibid., P. 291.
Number of news papers published in the year 2001 is shown in the Table 7 below.

Table 7: Number of Newspapers in 2001.

(Language and Periodicity-Wise)

<table>
<thead>
<tr>
<th>Languages</th>
<th>Dailies</th>
<th>Tri/Bi-weeklies</th>
<th>Weeklies</th>
<th>Fortnightlies</th>
<th>Monthlylies</th>
<th>Quartelylies</th>
<th>Bi-monthlies/ Half-Yearlies, etc.</th>
<th>Annuals</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>English</td>
<td>407</td>
<td>34</td>
<td>1,010</td>
<td>745</td>
<td>3,052</td>
<td>1,308</td>
<td>854</td>
<td>186</td>
<td>7,596</td>
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<td>125</td>
<td>10,243</td>
<td>3,122</td>
<td>3,633</td>
<td>693</td>
<td>228</td>
<td>38</td>
<td>20,589</td>
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<tr>
<td>Assamese</td>
<td>18</td>
<td>3</td>
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<td>65</td>
<td>13</td>
<td>10</td>
<td>1</td>
<td>226</td>
</tr>
<tr>
<td>Bengali</td>
<td>103</td>
<td>15</td>
<td>633</td>
<td>560</td>
<td>726</td>
<td>492</td>
<td>190</td>
<td>22</td>
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<tr>
<td>Gujarati</td>
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<td>13</td>
<td>1,086</td>
<td>228</td>
<td>597</td>
<td>65</td>
<td>52</td>
<td>4</td>
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<tr>
<td>Kannada</td>
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<td>6</td>
<td>397</td>
<td>269</td>
<td>700</td>
<td>52</td>
<td>24</td>
<td>4</td>
<td>1,816</td>
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<tr>
<td>Kashmiri</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Konkani</td>
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<td>3</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>11</td>
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<tr>
<td>Malayalam</td>
<td>225</td>
<td>6</td>
<td>184</td>
<td>165</td>
<td>816</td>
<td>63</td>
<td>37</td>
<td>9</td>
<td>1,505</td>
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<tr>
<td>Manipuri</td>
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<td>0</td>
<td>6</td>
<td>5</td>
<td>10</td>
<td>7</td>
<td>4</td>
<td>0</td>
<td>47</td>
</tr>
<tr>
<td>Marathi</td>
<td>395</td>
<td>21</td>
<td>1,410</td>
<td>226</td>
<td>594</td>
<td>123</td>
<td>49</td>
<td>125</td>
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<td>Nepali</td>
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<td>2</td>
<td>26</td>
<td>6</td>
<td>12</td>
<td>17</td>
<td>7</td>
<td>0</td>
<td>73</td>
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<tr>
<td>Oriya</td>
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<td>2</td>
<td>167</td>
<td>93</td>
<td>292</td>
<td>91</td>
<td>23</td>
<td>4</td>
<td>752</td>
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<tr>
<td>Punjabi</td>
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<td>369</td>
<td>99</td>
<td>268</td>
<td>33</td>
<td>19</td>
<td>1</td>
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<tr>
<td>Sanskrit</td>
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<td>0</td>
<td>9</td>
<td>4</td>
<td>17</td>
<td>16</td>
<td>6</td>
<td>0</td>
<td>56</td>
</tr>
<tr>
<td>Sindhi</td>
<td>13</td>
<td>0</td>
<td>38</td>
<td>11</td>
<td>37</td>
<td>9</td>
<td>2</td>
<td>0</td>
<td>110</td>
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<tr>
<td>Tamil</td>
<td>366</td>
<td>43</td>
<td>411</td>
<td>241</td>
<td>987</td>
<td>37</td>
<td>26</td>
<td>8</td>
<td>2,119</td>
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<tr>
<td>Telugu</td>
<td>180</td>
<td>3</td>
<td>267</td>
<td>217</td>
<td>574</td>
<td>31</td>
<td>15</td>
<td>2</td>
<td>1,289</td>
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<tr>
<td>Urdu</td>
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<td>21</td>
<td>1,348</td>
<td>377</td>
<td>533</td>
<td>72</td>
<td>18</td>
<td>3</td>
<td>2,906</td>
</tr>
<tr>
<td>Bilingual</td>
<td>82</td>
<td>20</td>
<td>692</td>
<td>373</td>
<td>1,334</td>
<td>389</td>
<td>161</td>
<td>37</td>
<td>3,088</td>
</tr>
<tr>
<td>Multilingual</td>
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<td>4</td>
<td>120</td>
<td>69</td>
<td>255</td>
<td>71</td>
<td>36</td>
<td>13</td>
<td>586</td>
</tr>
<tr>
<td>Others</td>
<td>57</td>
<td>15</td>
<td>85</td>
<td>31</td>
<td>128</td>
<td>50</td>
<td>13</td>
<td>1</td>
<td>380</td>
</tr>
<tr>
<td>Total</td>
<td>5,638</td>
<td>348</td>
<td>18,582</td>
<td>6,881</td>
<td>14,634</td>
<td>3,634</td>
<td>1,774</td>
<td>469</td>
<td>51,96</td>
</tr>
</tbody>
</table>


The above table shows the increasing trend of circulation of newspapers in India every year. Out of total 51,960 newspapers and periodicals published in 2001, there were 5,638 dailies, 348
tri/biweeklies, 18,582 weeklies, 6,881 fortnightlies, 14,634 monthlies, 3,634 quarterlies, 469 Annuals and 1,774 of other periodicities. The largest number of newspapers (20,589) was published in Hindi followed by English (7,596) and Marathi (2,943). Daily newspapers were brought in all the principal languages. Every year the number of the newspapers and periodicals are not only growing in the urban and semi-urban areas but are also reaching towards the remote areas of the country.

The Press Information Bureau (PIB) is the nodal agency of the Government of India to disseminate information to the print and electronic media on government policies, programmes, initiatives and achievements. It functions as an interface between the Government and the media, the PIB also provides feedback to the Government with people’s reaction as reflected in the media.\textsuperscript{23}

The Press Council of India is an autonomous quasi-judicial body. It administers ethics and inculcates principles of self-regulation among the press. It has been established for the purpose of preserving the freedom of the press and of maintaining and improving the standards of newspapers and news agencies in India.

There is a Directorate of Field Publicity (DFP) which is the largest rural oriented interpersonal communication medium in the country. It acts as information dissemination and feedback agency as well as a bridge between the people and the government. Over the years it’s aims and objectives and areas of operation have been diversified. These in brief are (a) to educate the people about the fundamental national principles of secularism, democracy and socialism (b) to generate public opinion for implementation of development programmes and mobilize popular participation in the process of nation building and (e) to keep the government informed of the people’s needs and their aspirations, thereby facilitating corrective measures as and when required. The DFP resorts very largely to inter personal communication like group discussions, public meetings, seminars, symposia etc. to convey its messages to the people.\textsuperscript{24}

\textsuperscript{23} Ibid., P. 292.
\textsuperscript{24} Ibid., P. 305.
Recently the Prasar Bharati has introduced the Direct to Home (DTH) for mass quality television access throughout the country. With its DTH service Prasar Bharati has switched on a new and refreshingly different option for the television viewer. By keeping the offering force of monthly charges, D.D.Direct plus inaugurated by Prime Ministry Monmohan Singh satisfies the remit of a public broadcaster to make quality television accessible to a broad-based rather than a niche audience. Doordarshan Channels now reach the whole country except the Andamans. Freedom from financial and partisan political considerations combined with professional management has put Doordarshan on a sound path. Doordarshan estimates that about 45 million television homes in the country do not have cable and DD Direct will be able to serve many of them; and that among the 40 million television homes with cable a good proportion can be attracted to DTH.

An editorial policy based on the core values of free and independent journalism upholding the public interest has given DD an edge over private channels. DD Direct which incorporates the newly launched live parliament coverage opens up for Prasar Bharati the possibility of expanding through dedicated channels into critical areas such as health, education, agriculture, gender equality, nutrition and science and technology.

President Abdul Kalam called upon the media to launch a “movement to realize the dream of a developed India” by 2020 and to implement successfully the “providing urban amenities in rural areas (PURA) programme.” He again said that the media ought to spread the achievements of good and successful individual and teams. The President wanted the media to celebrate “every aspect of the success of the nation, help evolve a corruption of free India by 2010, promote an enlightened society, honour womanhood.”

Mass media and press in India not only provide information about the politics, economy, culture, religion etc., in normal times, but by focusing wider attention come to the rescue of the country during the national crises. Starting from the division of Indian into India and Pakistan in

\[26\] Ibid.
\[28\] Ibid.
1947, during the periods of wars with Pakistan and China, during the emergency period in 1975, during the Babri Masjid Demolition in 1991, Mumbai Riots and in the recently occurred Godhra Communal Carnage in 2002, the media disseminated wider information on the plights of the victims in these difficult times. According to Sevanti Ninan, media critic, By and large the media did an honest and courageous job of reporting events in Gujarat. Mridula Mukherjee commenting on Gujarat riots maintains that “It is because of the brave reporting, at grave personal risk; by the electronic media the country was able to know the intensity of the violence.” Geeta Hariharan says that the national media has been exemplary, the print as well as the electronic media “maintained the balance between presenting accurate information and not inciting further violence.

The role played by mass media and press in India during both the normal period and times of misfortune of the nation is highly exemplary and admirable. It is also highly indicative that because of the liberal democratic polity and vibrant civil society all these have been possible in India. According to H.D Dwarakanath, “After independence mass media came to the support of the community development programme and several other centrally sponsored schemes of development. Mass Media is being extensively used for spreading messages about the significance of agriculture, land reforms, self employment, literacy and family welfare programmes. In rural India the major problems are illiteracy and population explosion which are related to each other. Since both the problems are of the poor, especially of the deprived and in most cases of the rural lower caste and poor, much depends on media’s role in bringing about social change among the weaker sections of the society.

Dwarakanath emphasizes that “Now is the time to have a Rural Press in it’s task for rural development with the launching of the grassroots democratic structures followed by vigorous efforts empowering women and the renewed enthusiasm to spread the light of literacy, the

29 The Times of India, 5 May, 2002.
30 Mridula, Mukherjee, The Times of India, 5 May, 2002.
media has to meet the challenges of rural uplift.\textsuperscript{33} Mass media in India is highly committed to the all round development of the country by disseminating public opinion and spreading information, checking the arbitrary power of the executive, combating corruption and criminalization in public life and taking up more challenging tasks for the socio-cultural and economic reconstruction in India.

**Independent and Impartial Judiciary**

Judiciary is considered the soul of democracy, guardian of the constitution and protector of the rights of the individuals. The excellence of any government is based on the efficiency of its judicial system. Without courts, laws are dead letter. It is the courts that expound and define the true meaning and operation of laws. An independent and impartial judiciary is a beacon for every nation. According to V.R. Krishna Iyer "independence of the judiciary is absolutely basic to democracy and it needs no judicial rhetoric to drive home the point. Human rights are but a mirage without a free and fearless justice system. Our founding fathers have made sufficient provision, consistent with pragmatic limitations, to depend the institution against executive, legislative or other interference."\textsuperscript{34}

The judiciary in India has become the custodian and interpreter of the constitution and guarantor of the fundamental rights of the citizens. Its impartiality has been recognized all over the world. Krishna Iyer said that by "reading the constitution-Articles 141, 142 and 144 together with the guaranteed retirement age and contempt power, I have no hesitation to hold that the judiciary is free than any other high crucial organ, including the mighty law lords in the U.K. and robed brethren in the U.S."\textsuperscript{35} The constitution of India establishes an independent judiciary with power of judicial review. The Supreme Court and High Courts form a single integrated judicial structure with jurisdiction over all laws union, state, civil, criminal or constitutional.

\textsuperscript{33} Ibid.

\textsuperscript{34} V.R. Krishna Iyer, *The Hindu*, 30 October, 2002

\textsuperscript{35} Ibid.
Starting from the lowest courts till the (apex court) i.e. the Supreme Court, the judiciary in India is an integral system.

The constitution of India has delineated the powers of the executive and the judiciary. It has created conditions that are conducive to make the judiciary independent. Rigid qualifications are laid down for the appointment of judges and provision has been made for compulsory consultation of the chief justice of India in the appointment of every judge of the Supreme Court and the High Courts. They are given higher salaries, their conditions of service cannot be altered to their disadvantage and their conduct is made a subject beyond the pale of discussion in the legislature. They can be removed from office only for proved misbehavior. For this purpose both the Houses of the Parliament will have to pass resolutions against a judge supported by a two-third majority of those who sit and vote and at least an absolute majority of the total membership of the House. All these conditions are well thought out measures for a healthy judiciary system in India.

The judiciary in India has stepped in many times to safeguard the sanctity of the constitution when Parliament has attempt to amend the constitution in ways that pose danger to it’s very enduring character. When a law is passed by the parliament or the State legislature, the judiciary has the power to review and determine the validity of the law from the point of the basic character of the constitution. This is called judicial review in India. It means that the constitution is the supreme law of the land and any law inconsistent there with is void. The term refers to the power of a court to inquire whether a law, executive order or other official action conflicts with the written constitution and if the court concludes that it does, it can declare it unconstitutional and void. In other word, in Indian context, judicial review is the power exerted by the courts to examine the actions of the legislative executive and administrative arms of the government and to ensure that such actions conform to the provisions of the nation’s constitution.

There are several specific provisions in the Indian Constitution guaranteeing judicial review of legislation such as Article 13, 32, 131-136,143,226, 145, 246, 251, 254, and 372. “Article 372 (1) establish the judicial review of the pre-constitutional legislation similarly, Article 13
specifically declares that any law which contravenes any of the provisions of the part of Fundamental Rights shall be void. Even our Supreme Court has observed, "even without the specific provision in Article 13, the Court would have the power to declare any enactment which transgresses a fundamental right as invalid."  

The constitutional validity of a law can be challenged in India mainly on three grounds.

i) If it is not within the competence of the legislature which has passed it.

ii) If it is repugnant to the provisions of the constitution.

iii) If it infringes one of the fundamental rights.

In the Golaknath Case (1967), the apex court spoke of the non-amendability of the fundamental rights through constitutional amendments. In the Keshvananda Bharati Case (1973), the Supreme Court propounded the “basic features” theory under which it was declared that the fundamental features of the constitution can not be destroyed or emasculated through the exercise of the power of amending. In the Minerva Mills Case (1980), the court, apart from reiterating the ‘basic features’ theory, went on to enumerate certain features of which ‘judicial review’ formed an integral part. The basic features have now become entrenched in the Indian constitutionalism.

According to D.D.Basu “the Indian Constitution wonderfully adopts the via media between the American system of Judicial Supremacy and the English principle of Parliamentary Supremacy, by endowing the judiciary with the power of declaring a law as unconstitutional if it is beyond the competence of the Legislature according to the distribution of powers provided by the Constitution, or if it is in contravention of the fundamental right guaranteed by the constitution or of any other mandatory provision of the constitution.”  

In the recent years, the Supreme Court has become the centre of controversy on account of the sudden outburst in the level of ‘Judicial activism’. It can be defined as an assertion of judicial power in cases wherein the judiciary comes face to face with legislative arbitrariness or executive abuses or interference in due course of legal proceedings. Judicial activism consists of evolving new principles, new concepts, new procedures and new relief’s going beyond and sometimes even alien to the hither...

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36 B.L.Fadia, op.cit., p.415.

to known and evolved jurisprudence and substantive and procedural law. Some times it extends
to laying down priorities, policies and programmes and giving directions to the legislature,
executives and other authorities for their implementations. This is not obligatory.

Some of the latest manifestations of judicial activism are enhanced payment for women
widowed in November 1984 anti-Sikh riots, ensuring the safety of working women during their
duty period; invalidation of arbitrary decisions in allotting government accommodation, shops,
petrol pumps and gas agencies and asking the errant minister to recompense the government by
paying heavy sum from their personal accounts, issuing of instructions to the CBI as to how it
should go about investigating various scams like Jain hawala scam, Fooder scam, Tehelka scam
and Judeb Scam etc. The Supreme Court has also directed for the proper investigation into the
matter of Godhra riots. In the field of preventing the abuse of child labour and environmental
hazards, the Supreme Court has shown commendable activism. All this has been necessitated
following legislative tardiness and executive discretion.

The judiciary’s hyper-activism has been evident from its judgments on PIL. Making a direct
appeal to the judiciary, the public Interest Litigation (PIL) has been used to provide various
types of relief’s to the under trial prisoners, to ameliorate the conditions in protective homes for
women, to prohibit traffic king in women, to check custodial deaths and violence, for the release
of bonded labour, for the enforcement of labour laws etc. Thus, the Indian judiciary through PIL
has conveyed the message to all the instrumentalities of government that he former can not stand
idly by, particularly when there is abuse of power and misgovernance. In recent years, the Supreme
Court itself has become more sensitive to social issues, from the rights of women workers and
minorities to ecology, human rights, social justice and equity and social discrimination. An example
of its social activism has been the introduction of public interest litigation under which even a
postcard dropped by a victimized citizen to the Chief Justice is treated as writ petition. 38

Some political observers see judicial activism as a product of inaction or over action shown by the
legislature, executive and other authorities in India. According to B.L. Fadia, the concept of judicial

38 Bipan, Chandra, Mridula Mukherjee and Aditya Mukherjee, India After Independence 1947-2000, (New Delhi:
activism can be seen to be reflected from the following trends namely “expansion of rights of hearing in the administrative process, excessive delegation without limitations, expansion of judicial control over discretionary powers; expansion of judicial review over the administration, promotion of open government, indiscriminate exercise of contempt of power exercise of jurisdiction when non-exist; over extending the standard rules of interpretation in it’s search to achieve economic, social and educational objectives and passing of orders which are per se unworkable.”

On examination of the role of judiciary in India it can be said that in the initial stages (in the 1950s), it laid more emphasis on Fundamental Rights than on Directive Principles of State Policy (D.P.S.P.). But, later, the courts tried to give effect to the principle of ‘harmonious construction’ which is based on the doctrine of ‘reconciliation’ and ‘integrated scheme’ which harmonise the D.P.S.P. with the Fundamental Rights. Thus the ‘individualism’ of the Fundamental Rights and the ‘democratic socialism’ of the DPSP have been living parts of the constitution with equal practical value. V.R.Krihsna Iyer says that “only a judicial culture which has social justice, human dignity and egalite woven it can make the judicature in a Third World Country, based on a socialistic democratic order, functional and professional. A dynamic jurisprudence invigorated by developmentally driven judicial process is the challenge of our time.”

**Political, Civil, Economic and Cultural Rights of the Citizens**

Rights are essential for the development of individual’s personality. Only a democratic state provides enough scope and opportunity for the realization of individual rights as well as individual’s freedom in political, social, economic and religious spheres. Hence, for the all round development of the individual some sort of political, civil, economic rights are fundamental needs. These fundamental requirements are called fundamental rights. In a democratic country the constitution guarantees all these rights. India being the largest functioning democracy in the world has been a guarantor of individual’s rights by making various provisions in its constitution. According to Subhash. C. Kashyap, “coming closely on

39 B.L. Fadia, op. cit. p. 422.

the heels of the Universal Declaration of Human Rights, inclusion of a bill of rights in the constitution of India accorded with the contemporary democratic and humanitarian temper and constitutional practice in other nations of the world. It reflected in no small measure the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration. Also, incorporation of Fundamental Rights in our Constitution became necessary in view of the special problem of the minorities and the need to assure them of the fullest protection of their rights.  

Indian Constitution incorporates a set of Fundamental Rights guaranteed to all citizens of India which are divided into six categories. The Right to property had ceased to be a fundamental right since 1978. The six fundamental rights as enjoyed by the citizens of India at present are given below:

i) Right to Equality (Art. 14-18):- This implies equality of all citizens before law. Moreover, it debar discrimination on the ground of ethnic, religious, caste, creed and colour etc.

ii) Right to Freedom (Art. 19-22):- Articles 19 to 22 cover the right to freedom. Of these Articles, Article 19 is the most significant. Because this articles guarantees six fundamental freedoms like;

a) Freedom of speech and expression;

b) Freedom to assemble peacefully and without arms;

c) Freedom to form association or unions’

d) Freedom to move freely throughout the territory of India.

e) Freedom to reside and settle in any part of India; and

f) Freedom to practice any profession or to carry on any occupation, trade or business.

Article 20 guarantees protection against arbitrary punishment. Article 21 says that “No person shall be deprived of his life or personal liberty except according to procedure established by

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41 Subhash, C. Kashyap, op.cit., p.87.
Article 22 deals with the provision of preventive detention and the safeguards against such detention.

iii) Right against Exploitation (Art. 23-24):- In every society some sort of exploitation exists. But if it continues persistently always it will hinder the development of personality of human beings. It weakens the social, cultural, religious, psychological entity of human being. Therefore, every democratic country of the modern world prohibits the arbitrary exploitation of one human being by another. India being the largest functioning democracy in the world prohibits some worst forms of exploitation prevalent in the society. Article 24 prohibits traffic in human beings, beggar and other similar forms of forced labour. Articles 24 provides that no child below the age of 14 years shall be made to work in any factory or mine or engaged in any other hazardous employment.

iv) Right to freedom of Religion (Art. 25-28):- India is a multi-religious country and is a secular state. Thus, all citizens are equally free to profess or propagate any religion they like. The state does not patronize any particular religion. Every one has the right to establish and maintain his or her it's own religious institutions.

v) Cultural and Education Rights (Art. 29-30):- This right is meant for securing the cultural and educational rights of all citizens especially the minorities. The language, script and culture of different groups are protected. This right is meant to preserve the diversified cultures of our country and strengthen the democratic foundation of our land.

vi) Right to Constitutional Remedies (Art. 32):- The Constitution of India not only provides for the fundamental rights but also makes provisions for their enforcement through High Courts and the Supreme Court. Whenever fundamental right of a citizen of India is violated, he or she can appeal to the courts, which may issue writs like Mandamus, Quo warranto, Certiorari, Habeas Corpus and Prohibition to enforce these rights. Dr. B.R. Ambedkar the chairman of the Drafting Committee said that this is “the most important article without which the constitution would be a nullity. It is the very soul of the Constitution and the very heart of it.”

Fundamental Rights granted in India are not absolute. As there are reasonable restrictions for maintaining decency, morality, peace etc., they may be suspended during an emergency.

However, it can be said that exceptions provided in the constitution in the exercise of fundamental rights are essential. Because rights if not exercised without proper reasonable restriction would become license for everybody. Hence, certain duties are required to be rendered by the citizens towards the country. For this end, the constitution of India has incorporated fundamental duties through the 42nd Constitutional Amendment Act, 1976. Article 51-A deals with these duties.

Besides, the provision of Fundamental Rights, the Constitution lays down certain Directive Principles of the State Policy (DPSP) which though not justiciable, are ‘fundamental in governance of the country’ and it is the duty of the state to apply these principles in making laws. As India is a welfare democratic state, these D.P.S.Ps lay down that the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political- shall reach all institutions of national life. The state shall direct it’s policy in such manner as to secure the right of all men and women to an adequate means of livelihood, equal pay for equal work, and ,within limits of it’s economic capacity and development, to make effective provision for securing the right to work, education and to public assistance in the event of unemployment, old age, sickness and disablement or other cases of undeserved want. The state shall also endeavor to secure to workers a living wage, human conditions of work, a decent standard of life and full involvement of workers in management of industries.

In economic sphere, the state is to direct it’s policy in such a manner as to secure distribution of ownership and control of material resources of community to subserve the common good and to ensure that operation of economic system does not result in concentration of wealth and means of production to common detriment.

Some of the other important directives relate to provision of opportunities and facilities for children to develop in a healthy manner, free and compulsory education for all children up to the age of 14; promotion of education and economic interests of scheduled castes, scheduled tribes and other weaker sections; organization of village panchayat, separation of judiciary from
executive, promulgation of a uniform civil code for whole country, promotion of justice on a basis of equal opportunity and provision of free légal aid etc.

A close scrutiny of the D.P.S.P. reveals that they contain Socialist, Gandhian and Liberal ideals. These are in the nature of a set of instruction issued to government for implementation. Thus, the underlying idea behind these directives is that the party that holds the power of administration should implement these constitutional ideals.

**Ethnic Minority Rights**

India is a land of diversity. The major religious group in India belong to Hinduism. There are Muslims, Christians, Jains, Buddhists, Sikhs, Persians etc in India. These are called religious minority groups. Hence for the maintenance of religious harmony, India had adopted "secularism" as the basic principle in our constitution. By the constitutional Amendment Act, (42\textsuperscript{nd} Amendment Act), 1976, the preamble was amended and the word 'secularism' was added there in. Articles 25-28 of the Indian Constitution deal with freedom of conscience and free profession, practice and propagation of religion. According to D.D Basu "India under the Constitution, is a ‘Secular State’, i.e. state which observes an attitude of neutrality and impartiality towards all religions. A secular state is founded on the idea that state is concerned with relation between man and man and not with relation between man and God which is a matter for individual conscience."\textsuperscript{43}

India is a secular state, because there is no state religion in India. The State will neither establish a religion of it’s own nor confer any special patronage upon any particular religion.

It follows from this that :

i) The state will not compel any citizen to pay taxes for the promotion or maintenance of any particular religion or religious institutions (Art. 27).

ii) No religious instructions shall be provided in any educational institution wholly provided by state funds.

\textsuperscript{43} D.D. Basu, op. cit., p. 114.
iii) Even though religious instruction may be imparted in educational institutions recognized by the state, no person attending such institutions shall be compelled to receive that religious instruction without the consent of himself/herself or of his/her guardian. (in case the pupil is a minor)

iv) Every person is guaranteed the freedom of conscience and the freedom to profess, practice and propagate his/her own religion.

Indian constitution does not only provide protection to the religious minorities but it also provides protection to many cultural, linguistic minority groups. Article 29 talks about the protection of interest of the minorities. Article 29(1) says that “Any section of citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same. (2) No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of the state funds on grounds only of religion, race, caste, language or any of them.”

Though Hindi and English languages are used as the language of the Union for official purposes and transaction of business in Parliament, the Constitution protects other regional languages. Schedule VIII enlists 22 languages in the Constitution: Assamese, Bengali, Hindi, Urdu, Marathi, Gujarati, Punjabi, Sanskrit, Kashmiri, Telugu, Tamil, Malayalam, Kannada, Oriya, Sindhi, Konkani, Nepali, Manipuri, Bodo, Dogri, Maithili and Santali. Sindhi was added by Twenty-First Constitutional Amendment Act, 1967. Konkani, Manipuri and Nepali were added by the Seventy-First Amendment Act, 1992. The Ninety-Second Constitutional Amendment Act, 2003, added, Bodo, Dogri, Maithili and Santali. The constitution provides special directives regarding the regional languages of India so as to protect the interests of the regional linguistic minorities.

The state is directed not to reject any representation on the ground of it not being in Hindi. A petitioner can use any language used in the Union or in the states which is mentioned in Article 350 of the Indian Constitution. Adequate facilities must be provided by states or other local authorities for instruction in mother language at the primary level to children belonging to

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44 P.M. Bakshi, op.cit., p. 66.
linguistic minority groups. The President is to appoint a special offer for linguistic minorities who is to investigate all matters relating to the safeguards provided by the constitution to the linguistic minorities.

Article 30 of the Indian Constitution provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice." 45 D.D. Basu says that the sum total of the above provisions make Indian state more secular than even the U.S.A. 46 It is said that freedom of religion is the foundation of Indian secularism.

In practice, India has followed the path of secular polity. Of the twelve Indian Presidents since the constitution was enforced in January 1950, as many as four were non-Hindus. Three Muslims i.e. Dr. Zakir Hussein, Fakhruddin Ali Ahmed, now the present President Dr. A.P.J. Abdul Kalam and a Sikh-Giani Zail Singh. Three Muslims have been chief Justice of India one of whom, Mr. M Hidayatullah, was also Vice-President for a term. A Muslim was also Air Force Chief, Air Chief Marshal I.H. Lateef. There are many instances of persons from minority groups occupying very important positions in the Indian Legislative, Executive and Judicial spheres.

The minorities are also given equal opportunities in arts and sports etc. In sports whether it is hockey or cricket, football or tennis or any other game, athletics, boxing or horsemanship, Muslims, Christians, Sikhs and the other minorities have given the country some outstanding sports persons.

According to A.B. Vajpayee, "Throughout her long history, India's unity is nurtured by an ethos of secularism that teaches all her people not only to tolerate each other's customs, traditions and beliefs, but also to respect them. Mutual tolerance and understanding lead to goodwill and cooperation, which in turn strengthens the silken bond of our national unity. Secularism is not an alien concept that we imported out of compulsion after Independence. Rather, it is an integral

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45 Ibid.
and natural feature of our national culture and ethos.” The former President of India Dr. K.R.Narayanan sounded a warning against the communal carnage in Gujarat underlining that without tolerance and secularism, the nation may face the danger of disintegration. He stated that “we have always been a tolerant people. We have to remain secular. What we have evolved over the centuries must be preserved. We can be a model for the world to emulate.”

According to former solicitor general Soli Sorabjee, “In a multicultural, multiracial society based on the Rule of law and whose constitution guarantees fundamental rights to minorities, majority rule has limitations. Legislation, even if passed by an overwhelming majority, would be unconstitutional if it infringes the constitutional safeguards of minorities. It is the obligation of the government and the majority community to accept and comply with the judicial verdict.” Stephene Dion, then Canadian minister of intergovernmental affairs, in an interview to Times of India, stared that “the Secular nature of the state has helped India. I have some doubts whether India would be able to stay united, democratic and a federal system without a secular state.”

The present Prime Minister Monmohan Singh also gives importance to secularism. A secular India with strong communal harmony can give India a strong and stable government which ultimately will bring all round prosperity to the nation. He said that “the voters had given the mandate for a ‘secular and stable government’ at the centre to work for the poor.”

Under the Indian constitution the rights of the minorities are well protected whether they are religious or linguistic or cultural or racial minorities. For centuries together India has shown utmost tolerance towards the minorities except on some rare occasions like 1984 Sikh riots, Ayodhya, Bombay and Godhra riots etc. According to Malay Chaudhuri and Arindam Chaudhuri “our nation is known for it’s tolerance towards religious, ethnic and linguistic minorities and their peaceful cohabitation, even if it is in the midst of abject poverty. And we see

50 Stephane. Dion, The Times of India, 6 August 2002.
violence only when the political class sparks it off for pathetic gains." Our Prime Minister Monmohan Singh also says that “Our government is committed to the security and welfare of all minorities.”

In a nutshell, it may be said that secularism is one of the major instruments for nation building process in India. It is one of the fundamental values of our national life. That is why it has been incorporated as a basic feature of the constitution. Two strategies have been generally pursued by the leaders and parties to promote secularization of polity in India’s multi-religious situation. One strategy is to emphasize the unity of all religions based on their moral percepts and humanist teachings. This approach is exemplified in the noble vedantic idea of “equal respect for all religions” (Sarvadharma Sambhava). In the multi-religious society of India such an approach promotes mutual toleration and respect. Secularism according to this approach would entail social and political reconciliation of religious communities. The second strategy to promote secularism is to emphasize the need for a civic-secular national ideology of political culture and state-craft and leave the question of reconciliation of religious and belief-patterns to voluntary social action. On the whole, India’s tolerance towards the ethnic, linguistic and religious minorities is highly noteworthy. The state is committed to the security, welfare, upliftment and all round development of the minorities, and, thus, it has maintained unity in diversity.

Social Welfare

The term ‘Social Welfare’ is related to the concept of welfare state. It is a system of laws and institutions through which a government attempts to protect and promote the economic and social welfare of it’s citizens. It is usually based on various forms of social insurance against unemployment, accident, illness and old age.

India is a welfare state, committed to the welfare and development of its people in general and vulnerable sections in particular. The Preamble, Directive Principles of State Policy and


Fundamental Rights in the constitution of India deal extensively about the measures to be taken for the welfare of the people.

In order to empower the weaker and socially and economically deprived sections of the society, the Ministry of Social Welfare was constituted on 25 September 1985 and was renamed as the Ministry of Social Justice and Empowerment on 25 May 1998. The development and upliftment of the Scheduled Tribes is now being looked after by the Ministry of Tribal Affairs which was created on 13 October 1999.

The Constitution of India has made various provisions for the development of Scheduled Castes, (SC's) Scheduled Tribes (ST's) and Other Backward Castes (OBC's). The SC's and ST's have been guaranteed, social, economic and political equality. Various provisions have been made for the amelioration of atrocities against the SC's, ST's, OBC's and minorities. By virtue of constitution (Sixty-Fifth Amendment) Act 1990, the Special Officer's post under Article 338 of the constitution has been substituted by the National Commission for SC's and ST's.

The duty of the commission is to safeguard the rights of the SC's, ST's and to participate and advice on the planning process of the socio-economic development of the SC's and ST's. The practice of untouchability has been prohibited under the constitution (Art. 17) Besides the Indian Penal Code (IPC), the Protection of Civil Rights (P.C.R.) Act of 1955 and SC’s and ST’s (Prevention of Atrocities) Act of 1989, are two major legal instruments which help prevent and control the atrocities against the SC’s. There are Parliamentary committees, to examine in the implementation of the constitutional safeguard for welfare of SC's and ST's.

The Central Government as well as the state governments made various provisions for education of the SC and ST children, starting from the schools to their higher studies. The SC’s and ST’s have been given political representation starting from the Panchayatiraj (grass-root level) institutions to the Parliament. There are also many financial schemes for the economic prosperity of the SC’s and ST’s.
There is also statutory reservation in services (22.5%) under the Central as well state governments for the SC’s and ST’s. Since August 1990 this facilities also has been extended to the Other Backward Classes (OBC’s). There are 27 percent reservation for the OBC’s in the civil posts and services under the Government of India.

India is a home to many minorities. The Government has notified five communities, namely, Muslims, Sikhs, Christians, Buddhist and Zoroastrians as minorities at the national level. The Constitution of India protects the interests of minorities and recognizes their right to conserve their languages, scripts or culture and establish and administer educational institutions of their choice.

To evaluate the working of the various safeguards in the constitution for the protection of religious minorities and to make recommendation to ensure effective implementation and enforcement of all the safeguards and laws, a Minorities’ Commission was set up in January 1978. The commission reviews the implementation of policies of the Union and the state governments towards minorities and submits annual reports to the Government. The National Commission for Minorities Act, 1992 was passed by the Parliament. Under this Act, the National Commission for Minorities was constituted on 17 May 1993 with statutory status replacing the erstwhile Commission.  

In India, care is being taken for the welfare of persons with disabilities. The Ministry of Social Justice and Empowerment is the nodal ministry for policy issues relating to the welfare of persons with disabilities. The ministry is implementing a scheme to promote voluntary action for persons with disabilities. Under this scheme, assistance is “extended to NGOs for undertaking various activities for welfare of persons with disabilities such as schools, vocational training centres, community based rehabilitation programmes etc.”

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55 Ibid., p. 264.
Welfare measures also have been extended to the senior citizens. The Ministry of Social Justice and Employment is also implementing a scheme for the welfare of the aged, namely, “Integrated Programme for Old Persons.” Under this scheme financial assistance up to 90 percent of the project cost is provided to NGOs for establishing and maintaining old age homes, day care centres, mobile Medicare units and to provide non-institutional services to older persons. The scheme has been made flexible so as to meet the diverse needs of older persons on issues including reinforcement and strengthening of family, awareness generation on issues pertaining to older persons, popularization of the concept of life long preparation for old age, facilitating productive ageing, etc. About 843 old age homes, day care centres and mobile Medicare units we are operational under the scheme in 2003.\(^56\)

In India a large number of street children suffer destitution, neglect, abuse and exploitation due to circumstances beyond their control. During 1992-93, a scheme was launched for the welfare of the street children in order to provide integrated community-based non-institutional basic services. The scheme was revised during 1998-99, under the revised programme known as “Integrated Programme for Street Children.” It gives a wide range of initiatives relating to street children including those relating to shelter, nutrition, health care, sanitation and hygiene, safe drinking water, education, recreational facilities and protection against abuse and exploitation.

In India, Central government and state governments are also required to be concerned about the welfare and development of the women and children. The Department of Women and Children Development (DWCD) was set up in 1985 as a part of the Ministry of Human Resource Development to give the required impetus to the development of women and children. Following the adoption of National Policy for Children in 1974, the scheme of Integrated Child Development Services (ICDS) was launched on pilot basis in 33 projects in 1975. The scheme provides a package of services comprising supplementary nutrition, immunization, health check up, referral services, pre-school education and health and nutrition education for the mothers. The target groups are in the age group of 0-6 years and expectant women and nursing mothers.\(^57\)

\(^56\) Ibid., p. 266.

\(^57\) Ibid., p. 269.
The National Commission for Women was constituted as an autonomous statutory body on 31 January 1992 in pursuance of the National Commission for Women Act 1990 to protect and promote the interest and safeguard the right of women. The year 2001 was observed as the year of women’s empowerment in order to create large-scale awareness about women’s rightful place in the mainstream of the nation’s development. The government has launched various policies and projects for the social and economic development of the women. These are Swashakti Project, Balika Samriddhi Yojna, Swadhar, Rashtirya Mahila Kosh (National Credit for Women) and many others.

The Government is also showing concerns about the welfare of the pensioners. The Department of Pension and Pensioner’s Welfare is the nodal agency of Government of India for formulation of a general policy on pension and other retirement benefits and also for redressal of grievances on retirement benefits.

In recent years the government has launched many anti-poverty programmes, for the benefit of the poor class in India. These are Swamajayanti Gram Swarojgar Yojna (SGSY), Sampoorana Grameen Rozgar Yojana (SGRY), Pradhan Mantri Gram Sadak Yojana (PMGSY), Pradhan Mantri Gramodaya Yojana (Gramin Awaas), Indira Awaas Yojana, Annapurna Scheme, Lok Jumbish, National Rural Employment Programme, Integrated Rural Development Programme, Jawahar Rozgar Yojna (JRY), Prime Minister Rozgar Yojna, Swamajayanti Sahari Rozgar Yojna etc. All these programmes are meant for the eradication of poverty by providing the basic needs to the citizens of India. George Fernandes, a former cabinet minister said that “to my mind India’s primary strategic objective is the improvement of socio-economic condition and opportunities within a secular democratic framework for its one billion people.”

India is also trying its best to develop human resources by providing basic education and elementary health care to the citizens. Prof. Amartya Sen said “it was heartening that the Monmohan Singh government had recognized the need for more investments in the social sector.” While he was delivering a lecture on ‘India: Large and Small’, organized by the Planning Commission and the Delhi School of Economics. Describing the Employment Guarantee Bill as an “enormously important instrument” Amartya Sen said, “the programme would deal


with some of the poorest people in the country and give them a reliable source of income through 100 days' employment. 60

According to A.P.J. Abdul Kalam, "in the India of our vision, we would like to see all Indians not only well-fed, well-clothed and with access to affordable health care systems (preventive and curative), but we would also like to see that all of them have durable habitation with good sanitation facilities." 61

In India there are thousands of Non-Governement Organisations (NGOs) which are working for the all round development of the citizens. Now a days they are playing vital roles in the country by catering to the diversified needs of the divergent population in India. Sometimes the action of the state may be arbitrary and some time the Governmental agencies are not adequately equipped to deal with the need of the people. The N.G.Os are there to fill the vaccum. In certain cases the N.G.Os have also taken the shape of ‘new social movements’ (N.G.Os in other words) too have managed to strike roots among a cross-section of the people and also been able to shape the organizational set-up across the country." 62

It has been very difficult for the government alone to fight against poverty, illiteracy and diseases. According to D.K.Ghosh, "there are many areas where it is very difficult for the government sector to intervene effectively. They need collaboration and co-operation from other than governmental institutions. For creating opportunities, facilitating empowerment and providing security to the poor it requires very wide network comprising a number of actors. Here arises the role of non-governmental organization (NGOs) in diverse fields of fight against poverty." 63

60 Ibid.
The introduction of Panchayati Raj Institutions (PRIs) in India by 73rd and 74th Constitutional Amendment in 1992 in rural as well as in urban areas made democracy more grass root and down to earth. The local people got enough opportunity to solve their own problems by participation, discussion, consensus and accommodation. Adequate provision have been made for the weaker sections of the society i.e. SC’s., ST’s. and women by giving reservation to them. Decentralization and people’s participation in the economic, social and political spheres are the main motto behind the introduction of PRIs in India. It has made democracy all pervasive in India. It justifies the saying “democracy is a government by the people, for the people and of the people”.

India still has the problems of communalism, regionalism, caste wars, criminalization, corruption, poverty, illiteracy etc. But, in spite these problems, it has maintained “unity in diversity”. This has been possible because of the democratic set up and tolerant accommodative civic culture. According to A.P.J. Abdul Kalam, “we are qualitatively better, more mature and secular country with greater commitment to the values of democracy and freedom.”

Periodical elections, political parties, independent and impartial judiciary, preservation of rights of ethnic minorities, mass media and guaranteeing social, economic and political rights to the citizens have made India the largest functioning democracy in the world. In short India’s engagement with democracy is remarkably fascinating experiment in a caste-ridden, hierarchical society striving for equality and justice. It proves that despite its many contradictions, India maintains plurality, diversity and the spirit of assimilation and accommodation. Thus, it may be a referential model for Kyrgyzstan which is a newly independent country striving to move along the path to democracy.

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