Chapter -3

Present Status of Jan Lok Pal Bill and Other Issues

The idea or effort which was behind bringing the Jan Lok Pal Bill was to draw a mechanism for curbing the corruption and make an effective public grievance system. In Indian situation when the corruption is so deep rooted in the system it is very difficult to achieve such types of goal. The another problem which is coming in the fight against the corruption is the protection of the persons who raise their voices for bringing the good practices in the governance system. The RTI activists who were initially very active against the system were killed brutally by the persons involved in criminal activities. It is a Bill of first kind in Independent India likewise Indian Penal Code which was the best criminal legislation made by the Britishers.

Lokpal bill is meant in order to ease the life of the common people who because of defective system and corrupt practices are not able to get their rights and resources which they deserve by virtue they should get as the citizens of India. Administration problem or red tapeism is the common problem in India. Lok Pal in literal means a parallel judicial system provided under this Act. It has been devised to address such issues like mal-administration, misconduct, corruption issue, vigilance issue and also which covers from top to bottom like from prime minister to a babu everyone under this Act. There is a system of Lok Pal in this Act in which there will be one chairman and 10 other members. To safeguard the appointment of the Lok Pal there is a rider that he should not served in parliament in any capacity even as a member of parliament or in any business of profit making, and while working as Lok Pal he has to stop his present practice or profession. The tenure of the Lok Pal also fixed for 5 years in order to ensure that even Lok Pal is not handling office well or involved in corruption later on then he can also be terminated. To run the office of the Lok Pal the government has to establish a Lok Pal Fund. There is a bar for the chairperson too for holding any office in government and also for fighting elections after his tenure a lok pal. Age for the chairperson also fixed more than 40 years and a high level selection committee will select the Chairperson under this Act. The public opinion on the shortlisted candidates will also be invited. There should be a perfect transparent system of selection with video recording of the process which has to be made public too. The termination clause for the Lok Pal and other members are almost same which is applicable to other judges also. The Lok Pal will have enormous powers and all
modes of complaints of any public authority will be open for initiating the case against any public official. He will have also the power for the search and seizure. And issue of warrants etc. The Lokpal will also prepare an annual report and present it to the President. There is a provision of fine on the public officials on non execution of the orders passed by the Lok Pal. The policy level decisions will be collectively taken by the whole bench. There is no formal complaint procedure and even a complaint can be lodged on plain paper to Lok Pal. If the matter is pending anywhere else then those cases will not be entertained by the Lok Pal. The Lok Pal have the power to stop a public official to hold his office if found guilty. In cases of corruption the losses caused to the government will be recovered from the guilty.

The protection of the person who fight for the common people or public cause is always in question and this is one of the reason witness protection is a major issue and in India it is a least serious issue for the government and as a result the criminals are fearless. In this Act the protection of such person raising their voices for the public also ensured. In cases where already a person been assaulted then Lok Pal can frame the criminal charges against the accused and also ensure the safety of such person. Compliance of Citizen’s Charter for the public authorities is mandatory under this Act. Vigilance mechanism in every public office is necessary. Internal vigilance system in India totally failed and most of the time the persons responsible for vigilance involve in corruption and start using their power as license for corruption. Proper arrangement of office and staff support will be provided. The central vigilance commission Act will be repealed when it will come in force. The complaints against the Lok Pal office will be dealt separately. An investigation wing will take up such cases. Enquiry period will be one month. Provisions of delegation of powers to other members by the Lok Pal is also there. The false complaint used as the tools by opposition and there is a provision of fine in false complaints. Lok Pal should study the functioning of public offices. The overriding powers on other Acts makes it so special in character. Many differences can be seen in the approach of the government and other civil society. The government intends that it should be complaint based while citizen view that Lok Pal should have the power to take suo motto action too. Likewise on the issues of police powers, length of sentence in corruption cases and the most important conflict point is that government only wants to make the Lok Pal institution on the advisory role.
Points of Conflicts

1. Judicial accountability
2. Inclusion of Prime Minister in the Bill
3. issues related Political Leaders
4. Merger of CBI in Lok Pal
5. Removal of Lok Pal
6. Investigating Powers

Once the methods adopted by Mahatma Gandhi while in the national movements for freedom were also became the key to the supporters of the Jan Lok Pal Bill. Many other problems like independence, selection, removal, jurisdiction and public assess to the documents of Jan Lok Pal.

Emergence

Since its start from 1968 this bill is suffering from the common consent of both the houses of parliament. But the movement for this Bill never been taken up in such scale as it has been taken up by Anna Hazare and his team. The whole country stood behind it and the conflict between the government and the movement participants were easily be seen. Both were adamant on their point of view and the procedure was so complicated that could not reach to any conclusion. Right from the issue of selection of Lokpal, general and other complaints, complaints against the lok pal office, fixing of time limit, dismissal of the culprits, vigilance process, making of citizen's charter and review mechanism of the functioning of the system were laid down in this Bill. Somewhere it seems that this Office of Lokpal will act independently but looking deep into the process and procedures it cannot be said confidently that independence to this office can be assured because of the various factors involved. It’s a common tendency too that if any office has to act as in the sensitive issues the persons involved in the criminal activities always try to stop those efforts through false allegations and other means.

<table>
<thead>
<tr>
<th>Stay on the Criminal Charges</th>
<th>Formulation of Criminal Charges is very different and difficult procedure. But there was a consent on the framing</th>
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<tr>
<td><strong>Taking Powers back of the Investigating Officer</strong></td>
<td><strong>In order to ensure the proper use of power this clause has its own importance.</strong></td>
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<tr>
<td><strong>Cases against the persons involve in destruction of records</strong></td>
<td><strong>This has been seen in past that the persons involved in such cases destroy the files. This should be dealt strongly.</strong></td>
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<tr>
<td><strong>Charges against any minister</strong></td>
<td><strong>Ministers are also the public servant and they are supposed to work for the welfare of the public. In such cases where ministers are involved in corruption strong action is needed.</strong></td>
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<tr>
<td><strong>Delegation of Powers of Lokpal</strong></td>
<td><strong>The post itself carries an strong position which has enormous powers with all accountability and work load. There must be some downline to support the functioning of the Lokpal.</strong></td>
</tr>
<tr>
<td><strong>Protection Issue</strong></td>
<td><strong>The complainant who always raise the voice against the system are on the task of criminal and threat to life to them is always a big question rather. Till this time we have already lost the credibility of protection of witnesses and the whistle blowers.</strong></td>
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**Cultural Changes and Social Restructuration**

Communalism is a particularly powerful social disvalue which ha continually been active in the Indian process of social and cultural modernization. Its historical roots go far back to British colonialism which gave birth to this ideology in order to divide and rule over the Indian people. Their geopolitical interests later led them to strengthen communalism in India and divide the country on religious lines before departing from the subcontinent. Indian leadership never accepted the ideology of two-nation theory based on religion and its surrogate ideology of communalism. It
was historically refuted when Bangladesh came into existence. Communalism, however, once implanted in the mind of the people has continued to torment and thwart the process of cultural modernization in the society. It has during the past four decades taken a complex social and ideological from. In the first instance, it gets mixed up ideologically with the process of social restructuration in society. In this form, it serves as a disguise for class and interest group ideology. The new middle classes of various religious communities exploit the communal identities of the poorer sections of their co-religionists. The deprivations of these communities in social and economic fields are attributed to religious minority status in contravention of the objective situations. In this sense communalism does often function as false consciousness. In other situations, communalism is simply engineered by opportunistic political and economic interests of contending groups and factions within a political party or by political parties. Communalism emerges in India as most important threat to cultural modernization. It is a complex process but its causes generally subsist in the contradictions generated by the forces of social restructuration. The uneven pace of social mobility and a sense of deprivation by groups and communities which perceive the chances of their status mobility blocked is probably an important contingent factor which fuels communal in prejudices and makes it possible for opportunistic elements in society to exploit it. This coincides with new assertiveness of socially mobile sections from among the minority communities which contend for higher social and economic position and treat communalism as a tool for social mobilization. This breeds communal strife, sometimes communal violence.

Another form of communalism which is of recent origin is that of religious fundamentalism. It has both national and international dimensions. It comprises propagation of a worldview of religion to which according to its belief all other aspects of life must be subordinated, be they political, economic, social or cultural. It is in complete contradiction to the scientific rational worldview of secularism, a cultural policy, to which India is committed. In India, since the past few decades there has been a rise in fundamentalist movements, but these too have links with political and economic issues. Whether it is Sikh fundamentalism in Punjab or Muslim fundamentalism in parts of the country, these movements have arisen only after the communities concerned have gone through a certain level of social mobility, economic development and rise in aspirations. This process, therefore, indirectly
confirms the view that like other forms of communalism religious fundamentalism too has its roots in the social and economic restructuration of the contemporary Indian society. The measures to overcome this too will have to be linked with policies of economic and social development in furtherance of a secular cultural policy.

**Civil Society and Governance**

Society intervention; Outcome of the intervention and; implication of the intervention for governance.

— Under which approached civil society address the issues of the disadvantaged sections?

— How does the state create and environment, as well as conditions for the initiatives of civil society?

— How does the nature of interface of civil society with governance vary at various levels of the state and at various layers of the state institutions?

— How does the state respond to civil society and how the response of the state affects civil society?

— What kind of strategies, approaches and leadership in civil society combine to bring about an impact on governance?

— What kind of alliance and partnership develop between civil society and other players during the intervention and how that influences and enhances the quality of governance?

— What kind of human, institutional, material, and information resources needed?

— What are the immediate and long term results of this intervention and what implications do they have for governance?
How do conflicts and fragmentation within civil society affect the governance?

To achieve the goal of good governance promotion of regular election, promotion of human rights and rule of law are conditional.

Elements in this current conceptualisation of governance which we find questionable:

In all these conceptualisations governance is equated with government. The current conceptualisations equate good governance with administrative efficiency of the state—thus it is assumed that once the elections are held, corruption is checked, transparency in the dealing of the state is maintained, human right is promoted and good governance will ensue. It does not take into account the social sphere where inequalities of various kinds exist and effect not only the functioning of the state but also influence the chances of groups placed in the low socio-economic hierarchy such as low castes, tribals, woman to benefit from the state policy and programmes. In our conceptualisation of good governance, therefore, not only democratisation of the state but democratisation of the social sphere also assumes significance.

Historical overview of civil society and governance in India was carried out in first instance. This helped identify considerations for developing focus and specify types of civil society players and nature of issues of governance to be explored in Indian context.

- Civil society structure of associations in India was evolved. It helped to categories various types of civil society organisations, based on which a set of civil society initiatives were selected.
- A series of conceptual papers were commissioned from some of the best thinkers and practitioners of civil society discourse in India. These helped to sharpen objectives.

A number of conclusions can be drawn about the interface between civil society and governance in promoting good governance.

1. Contexts of Interface
The contexts in which civil society interventions take place are both immediate as well as historical. The immediate actions of the state—a policy decision, violation of rights in a specific instance, denial of decision making to local people. However, the current actions of the state are not isolated events. All the cases point out towards the immediate and historic contexts in which civil society interventions take place.

The failure of the state to bring the pavement dwellers and the informal workers into its policy network, the inadequate implementation of the policies expected to benefit poor sections, and the policies which benefit one section at the cost of other, unequal distribution in resource to the poor, non-involvement of people in the decision-making regarding their natural resources, non-recognition of traditional rights of people over their natural resources, non-accountability of state regulatory institution to people—all point towards the skewed relationship between the state and its populace in the post-independence period. Civil society interventions in such situations reflect people’s long standing resentment against the state.

Civil society actors primarily mobilise two types of resources human and information, sometimes they combine the two. In the instances of struggle by workers in Chhattisgarh, Kol tribals in Chitrakoot, fishermen in Kerala, people facing displacement in Subarnarekha, women protesting against violence, dalit protest in Sergarhi, protest in Kadadra. Civil society actors mobilised people on a large scale. The budget analysis by Disha, CSE’s campaign against pollution, CIVIC intervention in the local governance on the other hand utilized information, research, expert opinion as the chief resources in their campaign against the state. There are also instances such as pavement dwellers struggle in Mumbai, fishermen’s struggle in Chilika where both human as well as information were used together to put greater pressure on the state.

During their interface with the state civil society players build alliances with other sympathetic allies in the state structure, political parties, other civil society organisation. As described above the state has many facets and many layers. While the overall state structure may ignore the cause taken up by civil society or may be outright hostile to it, there are, as we have encountered in many cases, individuals in the government structures/institutions who are sympathetic to civil society. SPARAC, ABSSS, Chilika movement, VMV could find allies within the government. This limited, but significant alliance helps civil society actors in many ways. It opens a
space for them in the state institutions thus making it easy to share their views with
government agencies. Secondly, if the local administration is hostile, but the
provincial or national government is supportive the pressure emanating from above
make the local state pay attention to people’s voice. Thirdly, this alliance with the
government officials helps in reducing the overtly conflictual relationship with the
state and a more balanced relationship between civil society and state is forged.

Civil society interventions have in many instances found the political parties
to be their allies. This alliance in some cases, as in the case of Subarnarekha dam
displacement, is guided by ideological consideration. VMV therefore, could find the
Janta Dal and ally because ideologically both were part of Chahtra Yuva Sangharsh
Vahini and associates of Sampoorna Kranti called by Jayprakash Narayan, or RSM
finding an ally in BSP on the ground of later’s closeness to the cause of dalits. In
many instances, however, as in the case the Chilka movement, the parties in
opposition show solidarity with civil society in its crusade against the state. What
happens when the party sympathetic to civil society comes into the mainstream
politics will be discussed later.

As the case of Pratham shows civil society also finds an ally in private sector.
This alliance is beneficial solely from the point of view of meeting the material
resources of civil society.

Civil society players use a variety of strategies-large scale mobilisation in the
form of dharna, strika, demonstration to put pressure on the state and industry, legal
measures to seek justice in the event of violation of their rights, build public opinion
through campaign and highlighting the issue in the media, research, documentation,
analysis of information and expert opinion to influence decisions taken by the state. In
its own sphere the Civil society actors also take measures such as create awareness
among people about the situation, engage them in constructive pursuits for their
livelihood, health, education and shelter, enhance their agency and their ability to
improve their situation. The case of SPARC, ABSSS, CMM illustrate this aspect of
civil society engagement with governance. At another level civil society actors also
sensitize and educate the state agencies in situations where the state ignores the
progressive ideas coming from civil society. This is best illustrated in the case of
campaign against rape.

It is obvious that in almost all examples of civil society engagement on governance
issues, a broad spectrum of coalition has operated. Typically, coalitions comprise
intermediary civil society organisations of the ‘modern’ kind and community based associations of the poor and the marginalised, nascent social movements and representative associations of the excluded. This broad spectrum coalition helps to perform diverse types of interventions necessary in engaging with governance in India. Thus civil society coalitions are simultaneously able to use methods of protest and public demonstration with carefully conducted research and policy documentation.

The democratic state through the provisions of rights to equality and freedom for expression and forming associations have created conditions for people to come together, form associations and express their resentment against the state. The state by adhering to the principles of socio-economic transformation of weaker sections, ideas of equality, and elaborate policy provisions has set expectations in the event of whose non-fulfillment people can take the state to task. Unlike in an authoritative state where the absence of rights, laws, and freedom makes civil society virtually operate behind the preying eyes of the state as was evident in the former communist regimes of East-Central Europe and military regimes of Philippines and Latin American counties such as Chile, the democratic state through constitutional rights and freedom legitimizes the efforts of civil society. In all the instances of civil society interface with governance already discussed people has a direct confrontation and dialogue with the state.

As was evident in the instances of civil society interventions, it is often capable leadership, which has been at the root of success. The ability of the leaders to articulate the issues, choose appropriate strategy, organise people and mobilise them, build public opinion, negotiate with the state through pressure or expert opinion which contributed towards civil society its goal. The is best illustrated in CMM, Chilika movement, the struggle by ABSSS and KSSM.

The alliances civil society builds with the state and the political parties help in opening up a space for it in the state institutions where its voice can be heard. This on the one hand helps in reducing the wrath of the state and on the other hand a collaborative relationship with the state is forged within the overall conflictual relationship. Media also, is evident in the case of struggle of the Kol tribals for legal title to the land and CSE campaign against air pollution, acts as powerful ally in building public opinion on the issues by highlighting it in the print and on television. Thus, a regional issue becomes national the moment it is brought out in the media.
Since the cases selected for this work are instances of positive impact, it is obvious that they largely succeeded in their goal. However, this success has many hidden nuances, which need to be explored for an assessment of the impact of civil society interventions.

There are cases where immediate success in part of the process and larger goal and civil society players continue to work because the overall goal has not been achieved. The interventions by SPARC, ABSSS, KSSM, CMM, VMV, DISHA, KSMTU, Pratham, CIVIC exemplify this.

The recognition in planning is a step towards bringing them into the entitlement network of the state, but SPARC continues to work towards actualisation of the benefits given to the pavement dwellers. Similarly CMM could succeed in making the management provide work to the contract workers. But it continues to work towards seeking a better future for the workers which is at par with the regularised workers, to end the exploitation of workers by the contractors and liquor barons, to end child labour and alcoholism among workers, to provide them education and health benefits which the state and industry has failed to provided. ABSSS succeeded in helping Kols acquire legal title to their land, yet it continues to work towards a future in which Kols will own their share of land and their exploitation by the feudal elements will end; ABSSS also engages Kols in constructive work such as soil conservation and social forestry so that they can find adequate means of livelihood and live with dignity. KSSM succeeded in securing compensation for workers suffering from byssinosis, securing dependent benefit for the widows of workers who died of byssinosis, and an occupational health centre was opened for diagnosis and treatment of the workers. But KSSM keeps a constant vigil the process continues. Pratham succeeded in increased enrollment of children in municipal schools and better performance by children. It however, continues to work to meet its ultimate goal of bringing all the children into primary education. KSMTU was instrumental in passing of the Kerala State Marine Fishery Act 1980, and securing welfare measures to fishermen. The movement nevertheless, continues to raise issues concerning fishermen because larger issue of mechanised fishing still continues affecting the poor fishermen in many ways. As result of VMV’s effort the construction work of the Subarnarekha dam stopped and the Government of Bihar formulated a revised R&R policy. However, the goal is partially achieved until people
receive the new compensation package. This makes VMV to continue its work. DISHA also has a long term mandate of influencing the budgetary planning of the government. Similarly CIVIC after its initial success of influencing the provincial legislature for decentralisation of urban governance continues to work to translate the provisions contained in the legislation. Likewise women’s groups also continue to fight to make the laws sensitive to women’s needs.

There are instances where after the immediate goal is achieved action in the sphere of civil society came to an end. In Chilika after the project was withdrawn the struggle ended, but the larger issue of exploitation of the fisherman by the non-fishermen still persist. In Kadadra also the struggle ended with the shifting of the locations of the industry to another village. But main issue still remained unresolved because the industry merely shifted its location. CSE also ended after assurance of Delhi Government for preparing the action plan to combat air pollution. Yet the vigilance required to monitor the performance of the government machinery is still lacking. RSM also disintegrated due to its internal conflicts soon after it succeeded in getting justice for the dalits who became victims of Sargarhi incident, but the larger issue of atrocities against the dalits still persist.

Based on the findings enumerated in the previous chapters certain implications of civil society interventions for governance can be discerned. These implications can be put in two categories: conceptual and practical. That is some of these have merit to broaden and define the conceptual understanding of the intervention and some throw light on practical considerations these interventions imply.

In different periods of history of independent India, different provincial/national ruling elites have attempted to restrict and limit the role of civil society largely to service delivery and local self-help. Civil society as a check to the state agencies and officials have been and continue to be resisted and in many cases undermined by the state agencies and officials. The enactment of Foreign Contribution Regulation Act in 1976 (at the height of emergency) and its implementation by Ministry of Home Affairs under the guise of internal security has been a potent instrument of control of civil society actions aimed at questioning the role of state in assuring civil and political rights of its citizens.

Conditions for good governance are created when a strong state and strong civil society exist together. All the instances of collective action discussed in the
earlier pages point out towards the need for a strong and responsive state as well as a vibrant civil society. Thus while the neo-liberal agenda which has given a fillip to governance is based on the assumption that the state has become weak and needs to withdraw giving to private capital and civil society, for the disadvantaged it is still which is the prime provider of services and entitlement and on whom they can make demands. Hence despite their disillusionment with the state, the state must realise its socio-economic transformation ideals. In instances where civil society organisation are making alternative infrastructure arrangements for people like SPARC, CMM, ABSSS are doing, the motive is to empower people to deal with their day to day necessities so as to take control of their lives. It is through challenging the state that the state is reformed.

The instances of civil society intervention point out to the fact that even a democratic state needs to be kept under constant surveillance because it can curtail people’s freedom, can turn to be a safeguard for poor and that an active and vibrant civil society can act as a check against the transgression of the boundaries by the state which the state itself demarcates. This does not mean that civil society is all virtuous. As we have discussed earlier are fragmentations, inequalities, and conflicts within society. In its effort towards good governance civil society thus has to keep vigilance on its own role as much as it keeps vigilance on the state.

As has been pointed our earlier, governance needs to be differentiated from government. Governance includes the institutions of government but goes beyond that to include institutions of civil society and in the changing context of economic liberalisation, it also includes market institutions, both national and international. Civil society attention to this challenge is a broader challenge of deepening democracy in the Indian society and good governance of all public and private institutions. Engagement on good governance agenda, therefore, can only be strengthened when it is seen to be incorporating these different aspects of good governance in the complex and diversified scenario of institutional landscape in public domain in India.

The defining agenda of governance is also a matter of concern in a country like India. Given the context of entrenched inequalities of Indian society where people are often invisible and lack voice, mere articulation and amplifying the concern is also a step towards affecting governance, even if no visible impact is discerned.
The role of civil society in governance has been primarily that of intermediation. Civil society actions have mobilised, and empowered the poor and the marginalised. By accessing authentic information nationally and internationally, civil society has contributed to the empowerment of the local communities. Intermediation has also created opportunity for the voices of the poor and the oppressed to be articulated in the language that the state agencies and officials can understand. The middle class participation in civil society associations of professional and intermediate types in support of the interests of the marginalised and the oppressed has been an interesting and potentially important phenomenon civil society interface with governance in India.

We have seen that coalitions of various kinds among civil society associations are formed when they begin focussing on governance issue. This coalitions in civil society are seen as desirable to the extent the they complement each other in their approach, strategies and resources. However, these coalitions approach to influencing governance in India also highlights internal disagreements and conflicts within such coalitions. The inevitable nature of such disagreements poses the challenge of sustaining such coalitions for the explicit purpose of influencing governance without compromising the autonomy, diversity and distinctiveness of each partner in the coalition. What has been under acknowledged in the Indian context is the role of intermediary associations which have acted as an unchor to many such coalitions by providing institutional resources, linkages with different tiers of government, partnerships with academia and media as well as access to international fora. The role of such intermediary associations in contributing towards the effectiveness of civil society coalitions in engaging with governance agenda needs to be appreciated in the Indian context than has been made out so far.

The durability of civil society interventions in engaging on governance agenda is the crucial issue that arises from above. Spontaneous action and nascent coalitions of civil society have asserted themselves to give voice to the excluded and the marginalised; but to sustain that voice, to bring about effective changes in policies, legislations and agencies of implementation of the same requires long-tem commitment of effort and resources. In the absence of such capabilities and partnerships within civil society, many civil society interventions on governance
remain sporadic and not able to engage with the governance issues in durable and long-term manner.

The institutional and financial bases of civil society, therefore, become important dimensions of attention if such durability of interventions on governance agenda has to be promoted. Bulk of the civil society actors are under-organised. Most of them are constituted around specific temporary issues. Even formally organised civil society initiatives lack institutional capabilities and financial resources at a scale needed to address the complex governance agendas as they emerge in the coming period.

The material base of many intermediary associations in the Indian context comprises of public resources drawn from various agencies, departments and programmers of the government as well as resources accessed from the community and international sources. This material base needs to be strengthened and rooted more widely in the Indian society. Interests created by material base in international funding, on the one hand, and that derived from the government agencies, on the other, restrict the ability of civil society organisations to engage effectively an a long-term basis.

The challenges civil society actors faces in influencing governance are many. These challenges demand the broadening of sphere to include different types of formations in civil society. Particular challenges are faced in terms of linkages with religiously inspired civil society associations as well as with the traditional associational types, where there is convergence of purpose around a specific governance issue.

**Theory, Concepts and Method**

The structural-functional approach, for which role is the basic unit of analysis views change in terms of three basic processes-structural differentiation reintegration and adaptation. According to this sequential model of change, a movement may appear in any one of the stages depending upon certain system conditions. Thus, emergence of specialized and autonomous units, elaboration of division of labour and intensification of role specialization may release considerable stresses and strains in the system, rendering one or another social category socially deprived, which in turn may inspire movements. But these movements are viewed as temporary aberrations, essentially
pathological, indeed indicative of transient anomalies. Movements are thus incapable of effecting long-term and on-going processes of change because specialization permits maximum control over the environment by assuming more effective roles and creating more efficient units. In this tradition, then, movements are viewed as necessary accompaniments of the tension released by structural differentiation and movement manipulation as a tension-management mechanism by specialized role incumbents. Since differentiation renders prevalent roles and norms obsolete, it is necessary to develop new mechanisms of reintegration, which follows a three-phase model. Due to dissatisfaction, men no longer perform roles adequately this is followed by protests by deprived who organize movements, and finally, new mechanisms of regulations and created to mobilize resources and commitments. A more flexible and specialized system inevitably emerges. Thus, movements are viewed essentially as adaptive mechanisms in a period of rapid social change. With adaptation change is institutionalized.

The basic flaws of this approach, it seems to me, are three: it does not specify the source of deprivation; it considers human beings as mere creatures of societal determinism, sapping them of their creative vitality, and its unit of analysis is not appropriate for analyzing movements. One can locate a variety of sources of deprivation in all systems but ultimately what disturbs men is their distance from the centre of the system. Insofar as they occupy positions on the periphery of a system, they may be deprived in terms of wealth, power or privilege or all of them. Movements are conditioned by social-structural factors, it implies voluntaristic action. Movements are perhaps the chief mechanism through which the deprived categories demonstrate their power. United by an ideology, they create organizational devices to fight the evils and redress grievances. Once a social category develops commitment to a movement's ideology and organization, their mobilization may be relatively easy. Therefore, its crucial aspects are mobilization and institutionalization. It seems then, that in order to analyze movements adequately, the researcher has to focus on these aspects and not on roles.

One of the vexing issues in movement analysis is how men come to develop commitment to a specified set of goals, to an ideology. It needs to be emphasized here that while structural similarity may be a necessary condition it may not be a sufficient one for the development of similar consciousness. At any rate, given the multidimensionality of structural positioning of individuals and groups, those with a
similar position in one dimension may not share the same position in regard to other dimensions. Therefore, we need to recognize the importance of the divergence in structural positions of men and groups, the efforts needed to arouse their consciousness, the inevitability of conflict, in the process of their mobilization, and the desirability of institutionalization of collective efforts to provide them with purpose, while analyzing social movements. Mobilization of people into collective actions implies the existence of a certain uniformity among participants based on their interests rooted in socio-economic background and ideas emanating from their political orientations and ideological commitments. Much of the problem is movement analysis stems from the presumed relationship or degree of correlation between these dimensions. While it is largely true that ‘consciousness of kind’ will not automatically follow the occupancy of similar structural positions, it seems to me that occupying structural positions facilitates the crystallization of consciousness relatively easily. Thus, membership in ascriptive groups invariably facilitates the development of primordial collectivism due to the heavy weight of tradition inculcated through the socialization process, the ascriptive and, therefore, the relatively fixed character of the position, the style of life associated with primordial collectivities, etc. In contrast, membership in civil collectivities (the assumption here is that mobility is possible and that it does occur) may not easily facilitate the development of consciousness among the members of these social categories unless individuals and groups are made aware of their structural similarity. That is, civil collectivism is the resultant of not only objective conditions but also subjective perceptions. The point to be emphasized here is that mobilization of men into collective actions is easier if certain of their structural attributes are invoked. Which of these attributes are of strategic significance in the mobilization process is at least partly determined by the principle of social organization existing in that society, that is, its historicity.

The point here is: system characteristics of a society affect the ethos and style of social movements in that society. A ‘primitive’ or ‘pre-political’ society may mainly express its values in a religious vocabulary, its mobilizational efforts may be based on communal or primordial attachments. But with the emergence of ‘nation-state’ this vocabulary may be redefined to suit new conditions; it may be transformed into ‘secular’. Similarly, mobilizational efforts may be increasingly anchored around civil collectivities.
It is widely acknowledged that there are different routes to change and collective action is but one of them. While recognizing this, it is necessary to ask answer the question, why does a collectivity resort to this particular route to change, that is, what are the factors which facilitate the emergence of social movements? One can certainly list a multiplicity of structural determinants which facilitate or block the emergence of social movements, but it seems to me that the most critical factor is the political values of a system as enshrined in its Constitution and reflected in the route in pursues to socio-economic development (including social policies) and the competing ideologies. This value package broadly projects the future vision of a society.

I must hasten to add that the interlocking of the past-present-future implies that social movements reflect the confluence between the persistent, changing and evolving elements of a system. Further, the framework also suggests that an analysis of social movements in India, a nation-state, can be our legitimate concern. At a deeper level the framework implies that men make history and constantly learn from their historicity. Movements are neither mere accidents nor entirely the resultants of manipulations by leaders and demagogues, but the consequence of conscious efforts of men to change system in the light of their past experiences, avoiding pitfalls. Finally, the continuous occurrence of movements implies that man is not imprisoned by present structures and no moratorium on his creativity can be imposed.

In order to explicate the potentiality of our framework it is necessary to elaborate upon each of the dimensions involved. Each of these elements in the historicity of Indian society influenced the nature and types of social movements which originated and spread in India. First, most of the movements were prepolitical and religious in orientation, variously described as millenerian, chilastic, revivalistic, revitalization, nativist, messianic, etc. Even when the objectives of these movements were political or economic, mobilization of participants was mainly achieved by invoking their primordial similarity and employing religious symbols. Given the severity of the caste system and deeply entrenched social inequality, these movements were mainly directed against the evils that emanated from the caste system. Since there existed a rough correlation between the caste hierarchy and the possession of wealth and power, the movement participants were specific primordial categories even when their deprivation was economically rooted. Because of the tremendous importance of the collectivity over individuals, often movements which aimed to bring about mobility
had to mobilize members of status groups into collective actions. Finally, political fragmentation and regional-linguistic insulation invariably blocked the development of all-India movements. All those affected the ‘scale’ of social movements, the pattern of their mobilization, and the ‘level’ at which they operated. It was only with the emergence of nationalism as an ideology that the divergent social movements of autonomous origin have been gradually welded together into an overarching Indian National Liberation Movement. Even those ostensibly non-political movements came to have a political (national) colouration during the freedom struggle.

Independent India is characterized by rapid urbanization and industrialization, planned economic development, a series of social legislations undermining several traditional values and extending protection to ‘weaker sections’, commitment to ‘socialism’, secularism and democracy, political pluralism as reflected in a multiparty parliamentary democracy. Each of these elements again influences the origin, the nature, the types, and the spread of social movements.

The process of economic development inaugurated through national planning had accepted the nation of balanced regional development. Although a region is not a political but an economic unit, as the benefits of development. Although a region is not political but an economic unit, as the benefits of development are to be shared by a population characterized by considerable disparity, understandable anxiety arose as to the basis of distribution of the extremely limited developmental inputs. Notwithstanding the fact that the Communist Party of India championed the cause of linguistically based states (nationalities) even before independence, the CPI itself was somewhat ambivalent about its policy in this context and it cannot be said categorically that there was consensus with regard to this principle even within the party. However, regional disparities and the fear of exploitation by other linguistic groups gave birth to the emergence of a series of sub-national movements.

A country with enormous linguistic variations, India provides contexts for endemic demands for state formation based on language. Further, one language is accepted as the criterion for state formation or even distribution of state resources, those contexts in which language and other factors coexist, also provide the womb for movements. The identification, although wrongly, of Punjab language with Sikhs and Urdu with Muslims are cases in point. The former case led to the crystallization of a movement mainly led by Punjabi-speaking Sikhs, eventuating in the formation of a communally-oriented political party, the Akali Dal, presumably championing the
cause of those who speak Punjabi but actually catering to the aspirations of Sikhs as a religious group, further culminating in the division of Punjab into two states. Additionally, once language is accepted as the basis of state formation, other primordial ties may be used to articulate demands in this context. The re-invigoration of the demand for a separate Jharkhand state uniting the tribal groups belonging to the border districts common to Bihar, Orissa and West Bengal illustrates this tendency. The tendency in such contexts will often be to rediscover traditional identities which lie frozen at the moment or even to create new identities when none exist. Finally, once the linguistic states are formed, movements demanding state formation within these states or at least for the recognition of special ‘regional status’ will emerge. The specific manifestation of these movements is found in the proliferation of ‘senas’ in India cities espousing the demands for protecting the rights of the sons of soil. The ideology which asserts the rights of sons of soil is the resultant of inter-regional migration, an inevitable accompaniment of industrial urbanization. The outsiders, that is the migrants from other linguistic regions, are not viewed so much as exploiters but as intruders, intruding into another cultural region. This modality of perception is based on the principles of state formation prevalent in Indian. What I am suggesting is this: intrusion and exploitation are perceptual categories conditioned by the principles of socio-political organization based on cultural and structural factors, respectively. The acceptance of a specific socio-political measure would invariably lead to the redefinition of the structure of aspirations of people and it facilitates their mobilizations into collective actions to realize their aspirations.

Another social policy measure which facilitates the emergence of new movements or the re-invigoration of earlier movements is the fight against discrimination. Given such a policy thrust it is inevitable that the mobilization of these categories takes place either for the demand of new rights and privileges or for the speedy implementation of those rights and privileges guaranteed to them through legislation.

The emergence of India as a nation-state is coterminous with the formation of another sovereign Muslim state, Pakistan, which provides a continuous basis for the mobilization of Indian Muslims. The history of the Muslim regime in medieval India, their substantial number and the commitment to secularism as a value in independent India, the prevalence of poverty and illiteracy among Indian Muslims and the widespread feeling of discrimination among them are factors which the leaders of this
most numerous religious minority constantly invoke to mobilize them into collective actions of various types. This is facilitated by the fact that secularism in the Indian context meant, in practice, fostering the coexistence of different religious communities. Coupled with this, the adoption of democracy permitted the formation of religion-based interest groups in the political arena articulating communal demands. Thus, Muslims, Sikhs, Christians, etc. often invoke their constitutionally defined minority status to appropriate material benefits and for this their leaders consider it to be politically expedient to demonstrate to the power-that-be their communal solidarity by mobilizing them into collective actions.

The policy of protective discrimination initiated by the British to safeguard the interests of the depressed classes is vigorously pursued in independent India. A multiplicity of movements for the betterment of these categories emerged over the years. Notwithstanding the regional variations depending upon their existential conditions and level of politicization, the movements involving the categories and found all over India. Broadly speaking, these movements demonstrate three strains, each of which is anchored in the specific types of deprivation they experience. Thus, movements leading to conversion to other religions, particularly Christianity and Buddhism, were perceived as capable of emancipating them from the ritual degradations they experienced through the atrocities of the caste system. But with the advent of planned socio-economic development, the anchorage of their mobilization widened so as to include movements to secure material benefits, leading to a large number of castes claiming inferior ritual status, which became a new resource for claiming state patronage. However, they soon realized that economic benefits extended by the state were being pocketed mainly by the dominant individuals and groups among them and the poorer among them began rallying around political parties. Although the legislative measures such as political representation have partly castrated them of their vitality for mobilization through the process of co-option, it is being increasingly realized by the poorer among the depressed classes that political mobilization is one the most effective channels for improving their material conditions. Yet, even the most articulate among them do not view the problem as one of mere material deprivation (that is, their positioning in the class system), but essentially one of status deprivation. The emergence of the Dalit Panther movement, mainly located in urban Maharashtra, is symptomatic of this. The commitment to democracy necessitated the bottom root approach. In India this is achieved mainly
through two channels: mobilization by political parties and mobilization through official agencies. Mobilization through both these channels is different from the collective actions initiated by social movements. Yet we cannot ignore these channels of mobilization while analyzing social movements. While political parties are organized groups with a formal structure competing for formal power, operating within the boundaries of nation-states, social movements consist of unbounded and open-ended social collectivities. More specifically, the relationship between party and movements can be formulated as follows:

1. A party may be part of a broader social movement or might have emerged out of a movement.
2. A party may be independent of any particular social movement and embody in its membership all or parts of several social movements.
3. The same social movement may be represented in several political parties.
4. A social movement may reject affiliation with any political party. Admittedly, then, social movements are more amorphous social collectivities as compared with political parties and pressure groups.

Political parties in India mobilize two types of categories into collective actions through the associations and unions they sponsor. These social categories can be grouped into (a) occupational/class categories (e.g., industrial workers, students, farmers) and (b) biological categories (e.g., youth, woman). These associations and unions are intended to function more as movements than as mere organizations. In India these associations/movements operate more as appendages or tributaries of political parties than as autonomous entities. Consequently, as new political parties are formed or as existing ones split, new associations are formed or old ones split. This has two immediate consequences: (i) the division of mobilized categories resulting in the reduction of their bargaining capacity consequent upon the rivalry that develops among the competing factions or groups, and (ii) an increase in the absolute number of persons mobilized as each political party vies with the other for clientele.

The point of interest for us here is to note that an adequate analysis of social movements in India should take into account the tactics and strategies of mobilization of political parties, which in turn are dependent upon their ideologies and organizations because most of the ‘all-India’ movements are political mobilizations of political through their front-organization. Typical examples of these are industrial and agricultural workers’ movements, students’ movements, women’s movements, etc. It
is important to keep in mind here that all these movements envelope within themselves a series of associations or unions functioning under the auspices of different political parties. When we refer to specific movements, we have in mind the conjoint activities of all the union/associations of that social category. In this sense, a movement can be defined as a stream of associations in interaction and/or in confrontation.

**TRUTH AND JUSTICE**

‘Sat’ means existence; when it is present in social, moral and jural life, this is called satya (truth). The pond of truth brings individual together, joins them on the basis of love. In this sense, when truth operates upon the acts and propositions of law for practical purposes, it become justice in action.

In judicial idealism, truth is engrained in India and the ancient Indian law can be interpreted or rediscovered on the premise of the theory of the truth. Thought and action are convertible aspects of men’s. The difference between Satya and Dharma is that Satya is the speaking of Truth while Dharma is the observance of Truth in action. Dharma observance of Truth is conduct of life”.

Dharma is the wider expression and executes the truth perceived by men in action. Thus in Indian concept, ‘Dharma’ and ‘truth’ are interchangeable and denotes the aspirations of man, which is the pursuit of, thought. Word and deed. Men’s idea of justice or injustice is based upon the certain definite facts and opinions which may change with the change of the attitude. This dynamism of Indian concept has helped to do away certain evils of ‘karmakanda’, ‘formalism’, superstitions, mechanical trial ordeals etc are not based on the truth which can transcend through ages.

**REASON (VIVEK): AS A BASE OF JUSTICE**

Truth as perceived by Indian minds is not static, it is like a flowing river and includes changing events of human life. For dealing with justice, truth is to be considered as living truth and not as a lifeless thought. For example, a lie to a dying person to save his life, and political lies to keep morale of fighting soldiers highj are qualified to be called justice on the above basis. The deriving force here is the good of individual and society served through falsehood. In the same way, legal fictions and presumptions, are allowed in the interest of workability of any legal system. But at the same time their shall be a limit to which theses may be allowed.

Reason reduces the intensity of the rigour of truth. It was only because of reason, that Mimansakas, in ancient India made workable the legal system based on the Vedas
and the Smritis. This helped them to keep alive the spirit of justice by rejecting the obsolete customs and concepts and adopting the new ones. Reason is means to achieve justice. Any Theory which formulates law to regulate the conduct of society as a whole has to undergo a severe test of rationality. It has to be redefined and scrutinized by way of reasons to avoid any kind of injustice. Reason, as a broader concept, embraces the whole field of enquiry and provides grounds for our opinions. The relevant facts are weighed and conclusion justified by the yardstick of reason only. This way, reason becomes an instrument of dharma or justice.

The standard of rationality is applied without being partial to seek the solution of any problem. It is the reason with which all the consciousness of the limitations of human capacities and capabilities are taken care of. Vivek or reason helped the ancient jurists to choose properly between Dharma and Artha. It was on the basis that women were given equal rights. The vedes prescribed practice of niyoga and widows were permitted to remarry. Due to change of attitude, the women lost her status and she was regarded as inferior to man; this was also facilitated by reason only. If the means were good. Man was considered as spirit and integral whole with reason as part of his capacity. “when Dharma is not knowable through other sources; when it is not possible what is justice and injustice; the only alternative is to leave it to one’s judgement and experience. To this extent, it is submitted dharma or justice is a dynamic concept.”

JUSTICE THROUGH COURTS: NYAYA

Courts are the dispensers of justice. According to Sukra, justice consists of two elements: discrimination of the good from the bad and utilitarian basis. The king was the fountain head of justice. According to Manu, the highest Dharma of the king was to protect the subjects from the internal as well as external aggression. Hindu mythology says that king was authorized to useforce to administer justice but that use of force must not be arbitrary. Manu opines that a king who punishes those who are innocent incures great oblique and goes to hell. Thus the justice, as per this aspect, is enforcement of law laid down or directed by dharmastra. Courts are its dispensers with impartiality, farsightedness and wisdom as its elements.

JUSTICE AS PERFORMANCE OF ONE’S DUTY

In society, nobody is self sufficient, he has to direct his functions in relation to society as a whole individuals functions to contribute to the upkeep of the society as a ground of complete development. Justice is not only impartiality and rationality but
also a duty and obligation. Men’s fulfillment lies in following one’s own nature. The Gita says that ‘devoted each to his own duty, man attains perfection’.

Sreyan svadharma vigunah
Pardharmat svanusthitat.

Thus justice is a duty to follow and function according to verna-system, which was based upon one’s own aptitudes and nature. This concept of justice is also supported by plato,”in reply to the question, what then is justice and where is the place of its habitation?” it is answered that the will to fulfill the duties of one’s station and not to meddle with duties of another’s station is justice.

**KARMA: THE BASIS OF NATURAL JUSTICE**

Justice has its origin in the law of karma(action). The theory is based on the concept that where the order of the society is disturbed by any action of its constituents, there arises the need of justice. In such scenario, the function of justice is to re-establish order of the society and to punish the wrong doer whose action has violated the set norms. This also compensates those who have suffered in such a disturbance. This way, justice becomes theory of punishment(dandniti).

The theory provides a link between the wrong done and the corresponding punishment based upon the logical or rational justification. Under this theory, reality, which is both order and existence has its own utility.

As per the doctrine of karma, future is to be depend upon present action and conduct. The law of Karma governs the life of individual as well as that of society. The classification of society on the basis of the doctrine of karma is not absolute. Man can reverse the course of regression by knowledge and right conduct. As a law of practical reason, it can bring about moral regeneration.

The doctrine of karma has been developed out of the Vedic concept of rta which meant cosmic order or law of nature. In hindu mythology, it is said that man is reborn in superior or inferior womb on the basis of good and evil karmas. Thus a man’s present status in life is the result of previous birth and his karma. It is said that after death, the God of justice or Dharma, Yama judges men’s action when brought to his court by his messengers and accordingly their re-birth is determined. Karma done under ignorance brings about bondage while same done in the light of true knowledge delivers a man from rebirth and consequent suffering.

According to the Gita, two views about karma are possible. First, in wider sense, it is the creative force which brings into existence and the whole existing world is the
karma of the absolute. Secondly, karmas are the actions of individual soul according to their ‘prakriti’ or nature. The Gita by its concept of ‘daiva’ advocates the theory of divine justice. This means that in anything and everything which comes into existence, there is one common element, i.e. Daiva. Dr. S. Radhakrishnan says,”Daiva or super personal fate is the general cosmic necessity, the resultant of all that has happened in the past……… it works in the individuals or its own incalculable purpose.”

These karmas are bind the man so that he does not fall prey to any bad desire. Lokmanya Tilak interpreted the Doctrine of karma as a principle of collective justice.

**ARTHAND JUSTICE**

Ancient Indian mind studies human life as a single units of various elements. Although the life was divided into various aspects yet the division was not water-tight. Activities of one aspect were to affect the result of other parts.

There were four ends of life-Dharma, Artha, Kama and Moksh. The first and fourth were related to spiritual benefits whereas the second and third related to that of the existing world. Artha includes all the economic and material conditions of life. Artha in law is concerned with action, plaint and petition; in politics, it served the interest of the state; and in life, it represented utility. Artha, as an end of individual’s life, has an indispensable influence on the concept of justice. Kautilya considered wealth as a source of the whole world and the root cause of all evils. He said that among wealth, virtue and enjoyment, it is better to secure that which is mentioned first than which is subsequently mentioned in order of enumeration. Mahabharta declares that the one who robs another of wealth robs him of his dharma and poverty befalls on such a person.

But one salient aspect of Indian mind is that although artha was accorded due importance yet it was not allowed to violate the ‘Dharma’. Manu said that the”wealth should be acquired for livelihood. If in pursuit of artha, one causes harm or loss to others then it is not right.” Indian concept of justice was not to treat the man in a exclusive, compartmentalized stream of life, i.e. man only as social animal, man as an economic unit, etc. rather man was taken as a whole single unit of life composed of spiritual, political, economic and social aspects. Justice in different fields did not mean different things, rather it was such a wide decision based on truth, reason, actions and performance of one’s duty along with social responsibility. On the one
hand, it regulates the conduct of individual vis-à-vis society and on the other hand, it was to take perfect care of the highest ideal of life-moksha. Once a person who had caused murder was brought to Yudhisthira and Duryodhana to suggest to inflict punishment on him. Duryodhana advocated that his head should be chopped off without considering anything else. But Yudhisthira said that first off all it should be ascertained as to be status of that person in the society as per the society’s hierarchy and then the circumstances should be found out in which he had to resort to such an act and then only after due consideration of all the facts coupled with his previous conduct, the present reaction would determine appropriate justice to be done to him.

Such was the view in consonance with indian concept of justice.

The purpose of verifying status, previous conduct and present reaction seems to be to know the duties of that individual towards the society. The individual was punished to the extent he had failed to comply with the duties enjoined upon him. Law as a means to attain justice was to be suited to the needs of the people whose social relation it had to adjust and regulate. Although the ancient Indian society was familiar with specific rights such as father’s right over the son’s person and property, girl’s right to choose her husband, etc. yet the ancient scriptures are replete with one’s duties rather than rights. The starts from individual rights, in the west, led to clashes and conflicts of interests tending to disintegration of the family, disharmony and fanning of antagonism in society by multiplying group conflicts, functional antipathies and resulting in disharmony and mal-functioning. The embodying values of universal validity such as righteousness, wealth, desire and solvation was expounded in ancient India. It aimed to provide anyone and everyone a complete freedom with himself within the parameters of overall development of body, mind and spirit. It is in the Indian concept where religion and morality have always been the sheet-anchor of polity, economy and administration. At no time in India could the ruler be a dictator or despot, unmindful of traditions, dharmastra and majority public opinion. Natural law and ethics as means to attain justice in true spirits have always occupied the central place.

Law, as a means to attain justice, not only aimed at correcting the wrong done but also tried to change the attitude if the wrong doer. Justice has not been a process but a culminating result of the fair and truthful enquiry. It was not that justice was done only at the end of the enquiry rather than the true and fair process of inquiry stressed at every movement-vibrating the inner self of the disputants resulting into
either of them or both of them helping the process of which they were one of the sources.

**KINDS OF JUSTICE**

Modern concept of justice is a transition from the relative to the absolute justice. The transition has come about through various stages in conception of justice which successively succeeded one another, in the wake of developing civilization. This realization has been depicted through the medium of laws and rules framed accordingly. Law is prognosis of the infringement of any right, and justice, according to law is a system to ascertain the nature of the things to be done in such circumstances. Law has changed the concept of justice from rudimentary stage to sophisticated regular stage. As the law is brought about and derived by human agency on the basis of common intentions to achieve a desired goal, it becomes invented and not natural. Individuals are more concerned with their rights and status in the society which has now been determined and regulated by the legislative process.

Justice is mainly of two kinds-natural or moral justice and legal justice. Natural justice is the justice in itself, in its absolute and perfect sense to which legal justice endeavours to approximate. It undertakes to strike a balance between the reality and the appearance of justice.

In primitive times, natural justice among men was only an attribute of the state of nature. An equal recompense in any form was the basic criteria of justice. Manu, the Mahabharata and Kautilya, all were alluded with the state of matsya-nyaya where the stronger thrived upon the lives of the weaker. This is nothing but the state of nature. Natural justice is the set of those principles which constitute the minimum requirement of justice in any situation. All the laws of man aim to secure justice. While enacting any law, the law makers, based on their own conceptions and public opinion, express their thoughts and ideas about the ways to secure the end of law, i.e. justice but no human expression has been able to express human thoughts adequately and his lacuna of communication sometime result in not only confusion but also injustice.

Natural justice is a fiction of law which tries to fill the gaps of human expression to fulfill its desired end. The term natural justice is not defined anywhere, it is just given a meaning by implication. It is said that nature of man is infused into his heart, so it is the man’s heart where we can find a correct expression for natural justice. In recent year ‘natural justice’ has gained an increasing importance.
The basic principles of natural justice can be summarized as:

(a) Nobody shall act as a judge in his own case.
(b) Nobody shall be condemned un-heard.
(c) The accused person should know about the nature of accusation made against him.
(d) Justice should not only be done but should also appear to have been done.
(e) The dispenser of justice should be a detached person free from any bias.
(f) The quintessence of natural justice is not extra legal but extra legislative.
(g) Principles of natural justice are unwritten.

Law, in modern times, has become the medium though which the general behavior of a thing, an individual or a community of person is regulated. It has its utility because it works in specified circumstances and seldom departed from. Enforceability of such law requires a definite procedure as pre-requisite. It is the procedural part through which justice appear to have been done. The rights and responsibilities may be of any kind but procedure is public and uniform.

In its positive sense, law means the rules which are capable of being enforced by an individual against another or against society as a whole. The utility of law lies in its enforceability with political sanctions of the state. A law which is unenforceable rule is redundant.

When any statute prescribes a certain procedure to be adopted, conformity to it is nothing but necessity and justice reflected in this conformity is legal justice. Whatever is formulated in law becomes legal justice and the rest is natural justice. Whenever the provisions of any statute are eloquent as regard to procedure and approach to be taken, their compliance provide legal justice but non-compliance with such procedure and approach is not a breach of natural justice rather it is the breach of the legal principles.

Legal justice is the authoritative formulation of natural justice by the organized government. But the two concepts are not water tight classification. But aim to secure justice and when one fails the other help to achieve it. Natural justice is the super structure and legal justice is the part of it. When in the opinion of the state some portions of natural justice are too important to be left to the options of observance, “it formulates them in the form of legal rules which are obligatory on the part of the subjects.” These formulated legal rules are called legal justice as the subjects having them as their rights can have them enforced through the court of law.
General principles of legal justice may be formulated as:
(a) These are authoritative formulation of natural justice.
(b) These have political sanction of the state.
(c) These are part of natural justice and not separate from it.
(d) Whatever is formulated in law is to be dispensed through courts and become legal justice.
(e) These are in written form.

Legal justice may be categorized further into social, political and economic justice depending upon the way – how the social conduct, rights and duties of the constituent of any organized society and things of material nature are to be distributed. Civil and criminal are also the two more aspects of legal justice.

Although it might be tempting to try to unpack the concept of legal justice into social, political and economic justice yet this would become a sterile exercise in definition, compounded by obvious interdependence of different attributes. That distribution in one sphere influences the distribution in another and vice-versa. According to Arthur and Shaw, “justice in general and social justice in particular involves the distribution of benefits of benefits and burdens but distributive justice has come to be synonymous with economic justice that is, with the distribution of economic benefits and burdens. Social justice includes but is not identical to economic justice, although both are concerned in part with how to distribute things that people care about. Political powers and liberties may be distributed unjustly, yet this is not the problem of economic justice as such unless, perhaps the political injustice in question result from a particular economic distribution.”

GANDHI’S APPROACH TO JUSTICE

Jurists are studied properly without undue reference to their personalities. Biographies of Austin, Salmond, Kant, Roscoe Pound and others may all provide some help to understand their theories but those do not affect one’s appraisal of them. It is true that sometime it is useful to analyze the declared purposes or practical intentions behind the abstract theories. But while studying Gandhi’s approach to justice, it is absolutely impossible to ignore his personalities and activities.

For proper appreciation of Gandhi’s approach on any subject relating to justice, one has to keep two things in mind; first, although Gandhi was a barrister and an insider to the profession of law, he was not a man of academics. He did not pen down his ideas in any consistent form and at one place. For this, we have to go
through innumerable passages contained in articles, statements, speeches and correspondence to answer the raised questions. J.B. Kripalani rightly remarked about him as, “If ever there was a planner without elaborate blue print, Gandhi was one.” It is also true that circumstances did not allow to him to be rigid in his approach or to spin his theories in the cloistered of his study. Rather the responsibility put on his shoulders by his fellow countrymen in an alien land gave him an opportunity to grow and evolve in the crucible of experience. The solution he offered for the alleviation of the pathetic conditions of his brethren in their fight for justice was not derived out of any set principles. His solutions were premised on the necessity and to the situation warranted by the circumstances. If at one time, to show his solidarity with the British empire, he raised an Ambulance corps during Zulu rebellion, on the other occasion, after Rowlett Bills, he dumped the empire for its being satanic.

Second, his genius was more spiritual and moral than intellectual. His life was cast in the spiritual mould, of which truth and non-violence is the fundamental tenets. His approach to justice one has to understand the language used by him being an insider to the profession and a votary of truth and non-violence. To understand Gandhi’s approach to justice, one has to step along with Gandhi in his practice of law and the struggle he went through in South Africa.

Gandhi, a trained barrister in England (1888-91), did not choose the profession willingly rather it was his attitude of escapism when he could not cope up with studies at Samaldas College. He went for England to study law, kept his terms at the inner temple and took all his subjects in one examination after nine months intensive study. At an early stage Gandhi found that being called to the bar was one thing and practicing law was another. The legal maxims that he had read with great interest where difficult to be applied in practical problems. Moreover, he locked knowledge of Hindu and Mohammedan laws.

Initially, this frustrated him but what inspired inspite of a lack of understanding, training for legal practice and a lack of self-confidence where the two qualities-honestly and industry. But destiny had its own account in store for him. Gandhi’s stay of two years in India could not fetch him even living out of the profession what to talk of his being successful barrister. He was neither having sufficient knowledge of the Indian legal system nor was he ready to adopt the prevalent system of tout, etc.
It was at this time of predicament that an offer from a Muslim Indian firm namely Dada Abdullah and co., which was having a claim case for about 40,000 pounds in South African courts, come up to turn the course of his life. Gandhi jumped at it as it was the humiliating atmosphere of working in the petty Indian courts. In regard to the background of the south African situation, it is relevant to mention here that the Dutch preferred their colonies to be exclusively white, with the Africans confined to a specified area allotted to them. They also wanted all Asiatic labor to be brought for a stipulated period and repatriated immediately after the contract come to an end. The local Britishers were also not different and talking Indians as formidable rivals in agriculture as well as trade, feared that they might be swamped by the Indians if their entrance was not checked was not checked. As a result there of, a number of restrictions in the form of new rules and regulations were coming in the way of the Indians entering into the colonies under the indenture contract. The earliest was Law 3 of 1885 in Transvaal in a flagrant contradiction of Art. 14 of London convention on 1884 restraining the rights of the Asiatics from acquiring Dutch citizenship. It required that, for sanitary purposes. Indians should reside in locations specially set apart for them, that they should not own fixed property except in such locations and that such of them as entered for purpose of trade should be registered for a fee and should obtain a license.

In these circumstances, right from his step in South Africa, Gandhi bore the colour discrimination but somehow or the other, he completed his job. As the case was concluded, he had no other purpose.

**DISENERCHISE BILL**

The growing number and prosperity of Indian settlers in South Africa created insecurity in the minds of the whites. The whites wanted to deport Indians from South Africa. Though the number of Indians registered as voters was only a little over two hundred but Gandhi rightly summarized the disenfranchisement bill as part of a calculated move to ensure white supremacy in Natal.

This was the bill in which racial discrimination was made legal Indians. The Bill aimed at:

(a) removing the Indians from the voters list;
(b) to deprive them of any political power.
A meeting of the Indians was held the very next day and decision was taken to oppose the bill, which was already in the third stage, by submitting a petition to the Assembly.

Drafting of the petition was not an easy task and it quietly tested the legal skills of Gandhi. But the petition was submitted well in time and was followed by letters to the editors, memorial to the Natal Premier and a petition to the governor as well. In the petition, first of all Gandhi tried to justify the claims of the Indians. He made full use of the research of European Indologists and Western admirers, like Mill, Burke, Bright, Henry, Maine, Hunter, Maxmuller, etc. of democracy and liberty to support the cause.

Here, Gandhi mainly stressed upon:
(a) treatment meted out to the Indians in South Africa earlier and in pursuance to the bills;
(b) the concept was against the British sense of justice and the bills were to be engine of oppression;
(c) contribution of Indian to the economy and welfare of the colony (Natal);
(d) ability of Indians to exercise their right to vote judiciously; and
(e) postponement of the bills until the Indians were heard and no unwarranted interference with the rights of one section be allowed.

As the Bill was already at the third stage, memorial submitted to the Natal Legislative Assembly started the Assembly but the Bill was passed as it is. Then, a memorial bearing signatures of 10,000 Indians was submitted to Lord Ripon and he disallowed to agree to colour bar in legislation.

A regular organization in the form of Natal Indian Congress was founded in Augusts 1894 with Abdullah Hajji Adam as its elected chairman whereas. Gandhi was at the place of political party with an aim to capture political power. Rather it was an organization with a distinct working structure and objectives. It was working continuously throughout the year in order to raise the social, political and economic status of the Indian over there. The association was more analogous to the Irish Association of Natal, it being an immigrant organization struggling for minority rights. During this struggle for rights, the organization was sometimes helped, sometime opposed by other immigrant groups such as the Irish and the Jews. For this, Gandhi was to stay in South Africa for considerably long time.
Gandhi succeeded in obtaining admission because of the Chief Justice’s ruling that that law did not make any distinction between the Whites and the Coloured people. This was in fact his first victory but at the same time, his pragmatic approach to justice is magnificent, significantly when he being an advocate of the Natal Court submitted to its prevalent practice and agreed to remove his turban. As a first step in the fight for justice, Gandhi tries to find out the basic problem and came to the conclusion that the Indians were demoralized, and were devoid of self respect, human dignity, awareness of their cultural heritage, self-reliance and courage. Secondly, there was lack of unity being hailing from different parts of India, of different religious, of different status and profession. Moreover, the European trades were scared of the competition with Indian traders because of their enterprising spirit. But most of them lacked sense to hygiene and personal cleanliness.

Gandhi’s approach to justice here involved to be responsible enough and deserving the rights he intended to was taken up and Gandhi took following steps to ameliorate the conditions of the Indians.

(a) made efforts to awaken a sense to their duties and rights as well;
(b) to bring about unity in programmers concerning issues of common interest;
(c) founded Natal Educational Association to educate them.

For claiming equal status for Indians in South Africa (British Colony, it was imperative and rational for Gandhi to demonstrate that Indians in Natal were no less loyal to the British Empire than the Whites. For this, he left no opportunity to sing of the blessings of munificent British Rule. Gandhi took it as a matter of pride that Britishers viewed India as the brightest jewel in their Empire. As matter of concern on the eighty-first birthday of the Queen, he sent a massage of congratulation to her on behalf of Indians and similarly of her death, Indians were advised to close their business premises as a mark of personal grief. Gandhi looked forward to the development of the sentiments of Imperial Brotherhood in South Africa and planned to distribute a souvenir with a photograph of Queen Victoria with proclamation of 1858 to the people of India at the top and six dates in her life regarding Indian in 1901, among all the Indian children in schools in Natal. In 1899, at the time of Boer War between the British and the Boers, he organized the Indian Ambulance Corps to remove the impression of the Britishers that Indians lacked courage. In fact, Gandhi has asked Indians to enlist as soldiers but that could not be possible in the absence of
any formal training in holding arms. The British General appreciated these activities and Gandhi along with thirty-seven other Indian volunteers, was awarded war-medals. These moves were planned by a shrewd lawyer who has realized that at first instance, he can get justice only as British subject as his own country was a part of the British Empire. At that time, there was no international body like the League of Nations or the U.N. to whom appeal could be made for the violation of human rights in a foreign country. The British Empire was the one and only substitute of a world organization. When, after a short break in India, Gandhi was called again to South Africa to represent the Indian case to Chamberlain, secretary of state, who was on visit, situation over there shocked him. The real face of imperialism was slowly and gradually unveiling itself as after the Boer War, condition of Indians in South Africa became more pathetic. The old laws of the License Act, the Immigration Act, Restrictions on Indians in getting admissions to Government Schools, etc. The British Indians.

(a) could not own landed property except in Locations;
(b) were bound to get their names entered in separate register within 8 days of their arrival and pay the sum of 3 stg;
(c) could trade and reside only in locations;
(d) could not be out after 9 P.M. except on special occasions;
(e) could not travel on the railways except third class;
(f) could not walk on footpaths in Johannesburg and Pretoria;
(g) could not drive a hired vehicle in Johannesburg and Pretoria;
(h) could not own native gold or take out digger’s licenses.

Gandhi led the deputation to Chamberlain at Durban but he was in a mood to listen to the problems of the Indians as he was on a mission to get a gift of thirty-five million pounds from South Africa to repay to the British Treasury for the cost of war. The young Gandhi followed the secretary of state to Pretoria after procuring a permit to enter Transvaal. But the Chief of Asiatic Department refused to accept the permit as valid on frivolous grounds, it being the only way to exclude the young lawyer to represent the Indian case. As a net result, the deputation ended in future. But this situation also could not rights of his countrymen. He decided to settle in Transvaal, applied for admission as an attorney in the Supreme Court, which was easily granted this time. Gandhi founded the British Indian Association of fight for the rights of the
Indians in Transvaal. Here, in the thick of the fight, the struggle against anti-Indian legislation has become more intense than what he has expected.

Indian traders were denied licenses as a result of which they had to close their stores despite large stocks. The Asiatic Office was inventing new methods for harassing Indians every second day. Indians were ordered to get out of footpath and were compelled to trade in demarcated locations called ‘Bazaars’. As usual, Gandhi first tried to win the confidence of authorities by offer of co-operation and his willingness to compromise, and confined himself;

(a) in case of bazaars, to co-operate for the success of the system provided it was made applicable to new entrants and these business centers were allowed in the central business sections of any town and the Indians were allowed to purchase property subject to building and sanitation regulations;

(b) protection of the rights of those already settled there.

He aimed at the above to remove apprehensions of the Whites that the Indians were aiming at swamping the colony with Indian immigrants. But unfortunately all these efforts failed and Gandhi has to resort to his earlier strategy of writing letters to the press about the problem in order to exery pressure on the Indian Government to intervene through its leaders. Gandhi found support in Lord Curzon who acted on the sides of the Indians and Supreme Court Natal, which declared in its judgment that His Majesty’s Government was a trustee of imperial interests including those to Indian subject of the crown. This decision put restrictions on the administration in Transvaal as it now could not freely put restrictions on the Indians.

But even such decisions could not raise the status of the Indians in Transvaal because of two reasons; first, although after the war, Transvaal administration came under the control the British yet they were not keen to restrain the erstwhile Boer administration with regard to their policy towards Indians, especially when in their own crown colony, a similar policy was pursued by the Whites; secondly, there were hardly 1200 Indians as against one lac Europeans in Johannesburg, and in them also most of them (Indians) were illiterate.

In such circumstances, Gandhi wanted to educate the Indians first and also wanted to create an understanding with those of Europeans. For this, he started a weekly, Indian Opinion’ in June 1903 (in his Autobiography Gandhi says in 1904) to educate Indians as well as Europeans, to create a support for the cause and to serve as an interpreter between the Indians and the Europeans to bridge the gulf between them.
In the very first issue, Gandhi set forth the vexatious laws and disabilities under which Indians were suffering in different colonies of South Africa. At this moment, he realized that his presence would be required in South Africa for a considerably modification of the laws to the disadvantages of the Indians.

Accordingly, his life was taking course with a new vision, purpose with priorities and values. The ideas of ‘aparigraha’ (non-possession) and samabhav (equality) fascinated him. In Gandhi’s life, thought and action go together, so problem before him was how to act according to these ideals? The young lawyer found all his answers in Snell’s equity and found religion in jurisprudence. He observed that if all these were treated as a trust, then and only then one could lose all attachments to these worldly things.

In 1906, at the time of Zulu Rebellion, Gandhi again tried to prove his solidarity with the British Empire as a reliable citizen. At his suggestions, Natal Indian Congress made an offer to raise Indian Ambulance Corps. Gandhi himself encouraged the Indians to enlist themselves in the Army if any such offer was made to them. His ambulance corps with 24 volunteers consisting of 19 ex-indentured, one Pathan and four Gujaratis attended to the wounded Zulus who had been mercilessly beaten by the White soldiers.

Faith in the British Empire prevented him from examining the rationality of the act of the Natal Government against the Zulus in a right perspective. He found that Nulu rebellion infact was merely a no-tax campaign and not more than that. As no White nurse was ready to attend to the wounds of the Zulus attacked by the White soldiers, he developed sympathies with the Zulus. The harsh laws and regulations of the Dutch Government in Transvaal were being extended to all Asiatics including the British Indians in Transvaal. On August 22, 1906, the Transvaal Gazette Extraordinary published a new ordinance applicable to Indian settlers. This required every Indian ‘coolie’, Arab and Turk eight years or above to reside to register.

Gandhi translated the draft ordinance in Gujarati to make Indians aware of the gravity of situation and published it in ‘Indian Opinion’. On behalf of the British Indian association, in reply assured that its suggestion would be considered by the government. but nothing constructive was taken into account in the Assembly on 4th September 1906.

In response to this, a meeting of Indians presided over by Abdul Gani, was called to oppose in Jewish Theatre in Johannesburg. It was attended by approximately 3000 delegates from different parts of Transvaal. The most important resolution passed was
the fourth resolution by which Indians present there solemnly decided not to submit to the ordinance, if it became law, and to suffer all the penalties to such non-submission which meant that, in times to come, the movement was going to take a peculiar form by means of self-sufferings.

But before taking any step beyond the modalities of the Law of the land, Gandhi’s approach was that all existing constitutional remedies be exhausted. Transvaal, being a crown colony, and the Imperial Government being responsible for its legislation and administration, it was the right course to send a delegation to England to persuade the British Government to withhold its assent to any discriminatory legislation passed by the Transvaal Legislative Assembly. Gandhi and H.O. Ali formed the delegation.

His strategy was to seek the support of all parties in England, whether in opposition or in power, to approach the Editors of all the important newspapers, both Conservatives and Liberals, to the cause of the Indians in South Africa. The propaganda of the delegation caught the British Government in an embarrassing position by invoking the principles with which the Britishers had tried for decades to give a pleasing face to their imperialism. While attacking the discriminatory laws being passed by the Transvaal Government, the famous organ of public opinion in England, The Times, in one of its eloquent moments remarked, “As a nation, we have little reason to be proud of the treatment being meted out to our fellow subjects in the Transvaal.”

Gandhi, a lawyer, tactfully presented the case of the Indians. His approach was not negative. Besides the interest of the Indians, he appreciated the fear of the Whites in Transvaal and suggested measures to mitigate them. Gandhi proposed the appointment of a Commission to investigate whether a fresh legislation was in fact required to safeguard the interest of both the Whites and the Indians.

On return of the Delegation to Johannesburg, the hopes of redress of their grievances were dashed to the ground when Gandhi discovered that the colonial secretary in fact, assured the Transvaal Government that the Black Act would not be disallowed when it was passed by the Transvaal Legislative Assembly after 1st January, 1907, i.e. after grant of responsible government. Thus the original ordinance was rushed through all its stages at a single sitting on March 21st, 1907 in the new legislature. The Act was proclaimed to take effect from July 1, 1907 and the Indians were called upon to apply for registration under it by July 31, 1907.

The number of Indians in Transvaal was not very large. At that time, when Gandhi started his movement, the population of Indians in Transvaal was not more than
13,000 against the Whites population of 2,80,000. Most of the Indians were living in Johannesburg and Pretoria as traders and hawkers. Majority of them has the working knowledge of several Indian languages and could communicate with Indians speaking different languages. Gandhi, in such a situation, was to meet the challenge of a powerful White Government. In these circumstances, truth and non-violence became the mainstay of his struggle and approach. The success of his struggle was to depend upon the dedicated and committed volunteers, the pressure of public opinion and sympathies of the liberal Whites.

Thus when it was decided that Indians must refuse to register themselves according to the new law, volunteers were posted near Register’s office to dissuade them from going in for registration by apprising them to be conscious of the harms done to the community by the new Act. Force was not at all to be used to prevent registration. Volunteers were also instructed not to be rude to any person taking out a permit rather announcements were made that if any one desirous of taking out a permit was afraid of the pickets, he could ask the workers to detail a volunteer to escort him to the permit office and back as well.

The Government was left with to choice but to start arresting the leaders of the movement to suppress it. Gandhi was sentenced to two months simple imprisonment though he has asked for three months with hard labour as given to other compatriots in the movements. This was his first experience of jail life. But Gandhi, like a law-abiding citizen, advised all the volunteers all the regulations strictly so long as they were not inconsistent with their self respect or religious convictions. But destiny did not want all of them in jail for long time as a settlement was arrived at between Gandhi and General Smuts thorough the good offices of Albert Cartwright, editor of Transvaal Leader who was known to Gandhi as well Result thereof was that all the satyagrah were released as Gandhi was assured that the Black Act would be repealed if Indians agreed to register themselves voluntarily. Earlier also, before implementation of the New Act, Indians had offered voluntary registration on 29 March 1907 and this was not anything unusual on the part of Gandhi to agree this was not anything unusual on the part Gandhi to agree to it.

Inspite of the small numbers of the Indians in transvaal, their leader’s character, spirit of self-sacrifice and intelligent move put the colonial government on defensive and the struggle attracted the attention of the entire British Empire. Practically almost all the Indians got themselves registered in terms of the agreement. General Smut
admitted that out of the persons who applied for registration and that only 70 had refused to allow their finger prints to be recorded. Gandhi claimed that even the rest would have got registered themselves if the government had not halted the procedure on May 9, 1908.

The compromise was considered as a gain for the Indian Community. Daily Mail commented on February, 1, 1908, “it is certain that the compromise now agreed upon differ in on material respect from that suggested by the Indians themselves in May last and is just as certain for this reason that every Indian regards the compromise as complete victory over the government inspite of the very generous and exemplary attitude adopted.”

But the present dream did not last long. The Transvaal Government was in no mood to repeal the settlement as interpreted by Gandhi. The Government was busy in passing discriminatory and oppressive laws against the Indians though Gandhi and his associates were busy in honouring the agreement. Further Acts in 1908 prohibited.

**INDIANS**

(a) from dealing in precious metals;
(b) from holding or subletting property on proclaimed ground;
(c) from residing on proclaimed ground.

Another Shop Hours Act of 1908 was a disguised form of attack on Indian merchants. General Smuts started laying down new conditions for the repeal of the Act. General wanted the consent of the Indians in Transvaal who had been residing there before the Boer War as well as those Indians who cleared the education test. Gandhi regarded this as clear violation of the principle of equality of all subjects of the British Empire. In the struggle for the immigration rights of the educated Indians, traders in Transvaal were advised to carry on trade without license. Prominent Indians like Sorabji, Essop Mia, and Chairman of British Indian Association of Transvaal, Gandhi’s Hamida Islamic Society and Naidoo offered themselves for arrest in these moves. The struggle reached its climax when it was decided that registration certificate taken out voluntarily be burnt as neither the government was ready to repeal the Act nor the withdrawal of their applications for voluntary registration done. Prior notice of this programme was given to General Smuts. A large three-legged pot was filled with registration certificates, about 1000 in all, and about 500 trading licenses outside the Hamida Mosque in Johannesburg. Paraffin was poured in and it was set on fire.
Gandhi considered it as a yojana’ and hence “we invoked the blessings of the almighty and appealed to all to trust God in their fight for their rights.”

General Botha and General Smuts were ready for some concessions but the Indian leadership was not prepared anything less than repeal of the Asiatic Amendment Act and Immigration Act. What Gandhi in fact was contemplating, was, rights of the Indians to immigrate on the basis of equality with Europeans and nothing more nothing less than that. On September 29, 1908, Gandhi was arrested for non-production of his certificate, which had been consigned to flames. He was sentenced to pay a fine of 25 pounds or to go to jail for two months with labour. Gandhi, like his other compatriots, preferred jail. On his return to Transvaal, Gandhi was re-arrested twice for not producing the registration certificate. Gandhi considered arrest and imprisonment as the height of good fortune in the interest and good name of his country. In jail, he utilized his time in reading works of Mazzini, Ruskin, Tolstoy, Emerson, Thoreau, Carlyle besides Hindu religious works Manusmriti. Patanjalis Yoga Darshian, the Upanishads and the Gita.

Prospective Union of the colonies, on the insistence of the Europeans in South Africa, provided Gandhi an opportunity to sent deputation to England to press on the British Government to settle Indian question in South Africa before conceding to the demand of the Europeans for the Union of all the colonies. But the delegation ended in failure as the British administration was in no mood to press South Africa to consider sympathetically the fundamental demand of the Indians, this was made clear to the delegation by Lord Ampthill. Only gain of the delegation was that the struggle got attention of the nationalist India.

The struggle became more vexatious and prolonged on coming into existence of the Union of South Africa after merging of all the colonies into one political union in 1910. After this, Gokhale visited South Africa in October 1912 on an invitation of Gandhi to examine the situation there. At the end of the tour, Gokhale has a conference with the ministers of the union Government and Gandhi was told that their demands would be mostly conceded. But Gandhi had his own apprehensions, as he knew the types of politicians and statesman in South Africa. His fear turned out to be true. The repeal of three-pound tax was not honoured. Nor was any vacation taken to lighten the disabilities of the Indians under any other laws. Moreover, a decision of the Supreme Court (by Mr. Justice Searle of Cape Supreme Court on 14.3.1913) about the legal validity of Indian Marriages made the whole situation grim. As per the facts,
a Muslim resident of Port Elizabeth namely, Hassan Esop, had married in India to Bai Mariam in 1908. He returned in 1909 without her. He again came to India in 1912 and returned with his wife. But the immigration officer refused her immigration and ordered that she be sent back to India. The application of the husband retraining the government from deporting his wife was refused by the Supreme Court on March, 14, 193.

While describing the nature of society, it is necessary to keep in mind the differences between ‘society’ and ‘a society’. Unlike ‘a society’ which is specific, concrete, demarcated by geographical limits, indicative of group of human beings, ‘society’ is abstract. Without these psychic elements, whether bad or good, the relation between two people can never be conceived. Thus, is nut-shell, society is an abstract organisation, pattern or system, not a group of people but a structure of their interactions and mutual relationships containing a psychic element in them.

Among the most important models of society presented by the sociologists are: informal, Descriptive-Explanatory, Ideological-Scientific, Intuitive-Objective, Inductive-Deductive Microscopic-Macroscopic, Structure-Functional and Naturalistic-Social. For the purpose the present discussion, we shall discuss the evolutionary organismic, structural-functional, social psychological models in general and equilibrium-conflict model in particular. The origin of the evolutionary-organismic theory may be traced back to the positivistic era under certain important nineteenth century conditions which witnessed the political revolution and social breakdown in Europe. Such a condition prevailed for some time, accentuating the perceived need to rebuild the political and social order. Accelerated industrial development highlighting the importance of society’s economic as well as political needs, the resultant emphasis on societal, political and economic needs as well as philosophical orientations towards the problems of social breakdown and industrial development representing a synthesis of eighteenth century enlightenment philosophy and nineteenth century positivism. These philosophical orientations emphasised naturalism, rationalism, social evolution, the conformity to society’s general will as conservatism and application of the positivistic methods to achieve these ends.

These philosophical orientations also reflected the views of intellectual elites of upper class origins who maintained the systematic and conservative views. Hence, organic theory may be construed as a positivistic, rational, social philosophy, representing a synthesis of philosophical ideas of the day and reaction to society’s
perceived economic and political needs. The manner in which sociological theory represents the application of previous idea to later societal needs is highlighted by the evidence of the continuity of the foregoing systems of thoughts and this particular paradigm. Evolutionary-Organismic Models of Society have been advanced by several sociologists who represent different type of theories, the most prominent among them being, the naturalistic type of organic theory of Comte and Spencer and the systematic type of organic theory of Durkheim and Tonnies. Auguste Comte is a major example of the theorist of mechanistic type of organic theory. Like the world of nature, human society with all its complexities is subject to certain basic laws of social order and social progress or in Comtean items-social statics and social dynamics. Comte’s ideas about sociology are clearly pragmatic. New social discipline will formulate such guiding theories to study the laws governing social phenomena; the laws of “invariable relations of succession and resemblance”. And sociology, is the science of society which attempts to gain knowledge of the social laws; the “laws of social and natural development” though “reasoning and observation”. Throughout his writings, Comte insisted that with respect to society nothing is absolute but relative… “the study of the laws of phenomena must be relative…. the relative character of scientific conceptions is inseparable from the true idea of natural laws”. It in only by utilising the methods of (i) observation, (ii) experimentation and (iii) comparison and by combining “reasoning with observation” that we can gain empirical and positivistic knowledge and understanding about social phenomena. Comte was emphatic and observation “does not mean unguided quest for miscellaneous facts”. Rather, it is meant that guidance of a preparatory theory” to connect different social facts meaningfully and scientifically. But direct experimentation social phenomena is not possible. Observation, experimentation and comparison are the conventional scientific methods used in sociology. To these, Comte added a fourth method, viz., historical, which is to be used in combination with all these, whenever needed. He stressed that “historical comparison in context of evolution is the core of sociological investigation”. The method itself is so important that Comte called it the “substratum” of the science of sociology and “the chief scientific of the new political philosophy” and positivism in the realm of society.
It is said that the mind of Comte was “enormously creative”. He was the “creator of the first major sociological synthesis”, as well as, being a “morally intoxicated man”, he was the chief among the founding fathers of sociology.

One finds much resemblance between the sociological approaches of Comte and Spencer, for according to some Spencer has been a continuer of Comte’s organic and evolutionary approach. But in his autobiography, Spencer refuted it. The first is subjective, the other is objective”. Spencer said that because there is “order”, in society, it becomes the subject matter of the science of sociology. The knowledge about this order can be gained through deduction. Therefore, sociology is a theoretical science. It is the science that explains the state of society from the view point of evolutionism or evolutionary theory. This explains Spencer’s preoccupation with the evolutionary and organic theory of society. It needs to be pointed out that neither in his ‘The Study of Sociology’ nor in ‘Principle of Sociology’, Spencer ever defined sociology in a formal way. What we conclude by review of these two treatises is that in his view sociology is the “science of superorganic phenomena” or of “superorganic evolution”. He asserted that sociology can retain its scientific status. It appears that Spencer’s sociology alternates between “evolutionism” and “functionalism”. This actually reveals his insistence on the comparative method, as well as his allusion to all those techniques of investigation which are utilised by field ethnologist. With regard to the question of the significance of Spencer today, Talcott Parsons has remarked: “Who reads Spencer now?” He probably implies that nobody does, or as Crane Brinton writers: “We have evolved beyond Spencer’. Nevertheless, Duncan Mitchell acknowledges that “he was a great figure in the history of the subject and there are many insights into the nature of modern society in his writings”.

In contrast to the more mechanical-naturalistic kind of organic theorists, Durkheim and Tonnies emphasised a more normative or social-psychological dimension in the conceptualization of society as a social system. While not radically different from those of Comte and Spencer, their ideas move us always from those of Comte and Spencer, their ideas move us always from the strictly mechanical towards the more sociological kind of explanation. While retrospecting the ideas of Comte, Durkheim argued that his approach was not quite scientific empirically. And about Durkheim it can be said that he was the forerunner of the drift towards empiricism in sociology. In applying it to human society, he proposed five specific steps.
The first step involves two separate tasks; first, to define the scope of the study, and second, to identify the type to “thing” which is to be found within it. Durkheim asserted that social facts like natural facts should be treated as “things”. Durkheim insisted that “things” are actually ‘societies’. Hence, we should not try to study ‘humanity’ as Comte has done. Rather, we should study societies. In his opinion, “social institutions” and “collective representations” are the most important elements in human societies. Therefore, he defined sociology as the “science of collective representations and social institutions”.

Durkheim’s methodological approach is well explained in his famous work “The Rules of the Sociological Method.” His continued insistence on the study of social facts by means of social explanations is known as “sociologism”. All types of social facts, mentioned by Durkheim, such as division of labour, suicide, religion, education or morality possess four characteristics. These are (i) exteriority, (ii) constraint, (iii) diffuseness, and (iv) generality.

The particular topics which Durkheim discussed within the scope of his empirical sociology were: (i) the division of labour in society, (ii) mechanical and organic solidarity (iii) suicide, its causes and consequences, (iv) the elementary forms of religious life, with particular reference to the concepts of “sacred” and “profane”, and “totemism”, (v) collective conscience and collective representations, and (vi) the nature of social facts.

Besides, all these, his contribution to the sociology of knowledge as related and to the concepts of time, period, cycle, etc. are universally acknowledged. Durkheim’s overall approach has been that of functionalism. Durkheim belonged to the same species of men, whom Ralph Waldo Emerson described as “the conscience of the society to which they belong”. Among his students, Marcel Mauss became better known to perpetuate his tradition. Otherwise, the impact of Durkheim is quite apparent on Claude Levi-Strauss. Talcott Parsons and Robert K. Merton; not to mention many other belonging to various other social sciences.

Ferdinand Tonnies who is well known for his dichotomous typology of the couple of major forms of social reality, gemeinschaft-that he developed, parallels Comte’s three stages, Spencer’s militaristic-industrial dichotomy and Durkheim’s two forms of social solidarity. The former represents a traditional, communal society based on close family relationship; the norms of love, understanding and protection, and the social bond of kinship, locality and common language (i.e. the ‘natural’
society). On the contrary, Gesellschaft typified in modern industrial society, is
classified by economic, impersonal and artificial relationships; norms of economic
value, labour and consumption; and the bonds of social class and economic contract
exchange. Tonnies's contribution is significant in the sense that in contrast to the
more external and mechanical paradigms of earlier thinkers, society is viewed as a
particular kind of mental state.

Structural-Functional model of Society views society as a systemic, inter-
related, inter-dependent, evolving, equilibrium-oriented whole, representing
underlying system needs or functions. In this manner, structure of the social system
represents functions, or particular underlying system needs. An attempt is thus made
to develop a general theory of society based on the assumption that society exists and
possesses and independent reality or existence as a social system, with characteristics
similar to other systems in the universe (i.e. natural and physical systems). The main
focus of sociology, accordingly, is to examine and discover the major characteristics
of this social system and the mode of its evolution so that orderly social
transformation can be maximized. The parallels in forms between this kind of theory
and the organic paradigm are obvious in its system, evolutionary and naturalistic
characteristics. Not all structure-functionalists, however, hold identical views of what
constitutes society's underlying functions. While, on the one hand, there are some
who view, society as having characteristics in common with organic systems, in
particular the principle of homeostasis or equilibrium, other visualise society as a
normative system existing within rather than outsider the individual. However, in
organic theory, we are presented with two major types; the naturalistic type of theory,
on the one hand, and the normative or systematic, on the other. Both, however, view
society as a macroscopic, evolving, homeostatic system based on certain underlying
functions. Nevertheless, both are differentiated on the basis of their functions rather
than in the type of form of theory involved. In brief, it can be stated that the structure-
functionalism, the earliest type of American sociological theory, evolved in response
to political, economic and social needs within American society. It was developed by
an establishment oriented intellectual community. Applying earlier European
sociological thought within the context of non-idealistic pragmatic culture and
establishment oriented community developed it further. As a sequel to the factors, a
type of naturalistic systematic and conservative theory originated, which varied
according to whether the particular theorist is more or less naturalistic or systemic. A
couple of trends of structural-functionalism may be perceived in terms of the naturalistic type as found in the theories of Talcott Parsons and Walter Buckley, and the systematic type as found in the theories of Amitai and Etzioni and Edward Tiryakial.

Talcott Parsons concerned himself almost whole-heartedly with sociological theory in the itself that by doing so he could provide sociology with a coherent method of progressing as a science, presenting both general theory of society and as a result the conceptualization of distinctively sociological subject matter. Parsons visualised society as an independent system with characteristics in common with other living systems. Accordingly, its structure represents homeostatic and evolves in an adaptive fashion, providing a paradigm as an important example of the organic approach updated and further elaborated to deal the Western society’s more recent historical development. In many a way, however, it represents a mechanical application of the biological model to social system. Reacting to the systematic needs of his day in the tradition of biology, anthropological functionalism, and Weberian sociology Parsons developed a particular paradigm of society and social evolution; a biologically based structure-functionalism which is systematic, homeostatic and evolutionary in content, utilising the methods of historical and logical deduction, and applied to the evolution of modern western society. Parson’s theory represents the non-idealistic elaboration of the earlier organic paradigm and lays foundation of American sociology.

Representing a cybernetic type of structural-functionalism, Buckley applied the systems theory to sociology and visualised society as a set of psychological and socio-cultural sub-systems founded on the process of information feedback. These sub-systems consist of structure and process, equilibrium and evolution, morphostasis and morphogenesis and represent dynamic, emergent communication systems. They are adaptive and attempt to reach an optimum level of stability and flexibility, obviously paralleling with the work of Parsons. Such a paradigm emphasizes the biological individual goal attainment, communication, adaptation, stability, institutions, socialization mechanisms and system maintenance as well as evolution. Nevertheless, a line of demarcation may be drawn between the two. The difference lies in the underlying functions being cybernetic rather that biological, while social organisation is viewed as temporary and dynamic rather than static and stable. Thus, in general terms the naturalistic type of structure-functionalism is macroscopic system
and evolutionary, and represents the endeavour for developing a general theory of society in reference to underlying system needs.

**The Emergence of Conflict Theory**

The rise of the conflict theory may be traced back to the demise of the structural-functional theory. To the functionalists, the social structures of the underdeveloped societies seemed to be traditional, resistant to social change. Pointing out to the fault with social structures of the underdeveloped countries’ social systems, they suggest that the social structures of the underdeveloped countries must undergo the process of transformation, replacement, replication, and modefication so that they would be able to resemble those of the developed countries. Drawing upon the positivistic organism of classical sociology, whose foundation is said to have failed to account for the facts of inter-human conflict, the functionalist view has been widely utilized. Scholars like Comte, Spencer, Tonnies and Durkheim appeared to be avoiding the question of social conflict whereas Auguste Comte, the founding father of sociology was scared of social conflict, Herbert Spencer, the British sociologist, visualised social conflict in the militaristic societies and saw no place for war in the industrial type of society. Ferdinand Tonnies located the major forms of conflict in the Gesselschaft. To Durkheim, it appeared to be a form of social sickness. However, the voluntaristic type of organicism was the only exception. Sigmond Freud’s concept of tension as the prime determinant of personality and Vilfredo Pareto’s approval of the tactics of lions to retain their power may be taken as the example of voluntaristic type of positivistic organicism. Being considered “a set of idea defending a social position or promoting a programme of social action”, it was partially rejected. Therefore, the appearance of a movement in general sociological theory resulted in the emergence of conflict theory as a realistic protest against a multiplicity of superficialities in organismic theories. Although the conflict theorist kept positivism in tact and even intensified it, they rejected the organismic conception of society and replaced it by social reality, conceived as a process of conflict of individuals and of groups over scarce values. Contemporary functionalism, in spite of being a return to the modified form of founding father’s organicism contrued as an updated positivism, has not been free from frequent criticism, simply on the ground that it lacks in the efficacy of explanation and prediction of change. Talcott Parsons, the most notable among the
profound scholars of functionalism was attacked by various conflict theories like Ralf Dahrendorf, John Rex and D. Lockweed for his sociological theory. Their argument was that the structural-functionalists failed to visualise the rise of social conflict in general and the form of social disruptive conflict in particular in effecting fundamental social transformation, functional to the social system. Parsonian theory has also been challenged on the ground of being inherently conservative in approach, holding the empirical existence of order and stability in the emergence of structural functional analysis. Moore, Foss and Mills maintain such a stand. However, some others feel that the writings of the structural-functionalists are devoid of such other feel that the writings of the structural-functionalists are devoid of such elements and hence the criticism is misleading. Parsonian theory has also been criticised on the ground that it provides and inadequate explanation of the material basis, it is unable to generate testable hypothesis and that it rotates around mystificatory scholasticism. The critics also say that the conceptual scheme of the functionalists, the disturbance-adaptation-reintegration process, for examining social change can hardly explain social change. Refuting Parson’s view that equilibrium in the system is attainable even if particular phenomenon is present, Taylor maintains that such analysis “fails to provide us with any basis for explaining the necessity of a particular phenomenon. John Rex held that “the whole functionalists effort is devoted to showing why things are as they are…. because they are demanded by the needs of the social structure”. The social structure is conceived of being something devoid of problems. Hence, no question of its transformation arises. Thus, the social institutions are evinced in static form by the functionalists. Even some analysts like Lewis Coser hesitated not to mention that the results of conflict are also productive and conflict always permits to ventilate the cause of difference between hostile groups and also modifies their strained relationship’. The functionalist approach, therefore, loses sight of the contribution that conflict makes in abolishing or destructing the existing system. This failure of the functionalists to visualise the function of social conflict and thereby their negligence to the study of social conflict made room for the prominence of conflict theory.

Although the conflict theory in the domain of sociology is of recent origin, the analysis of social system from the view point of its typical conflict is neither new nor confined to any one society. Rather, the foundations of conflict theory were laid by ancient philosophers and statesmen. Different societies have attempted on different
types of intellectual interpretation of social conflict, whereas from Heraclitus to sophists in classical Greece identified conflict as the primary social fact, Han Fei Tiu, in ancient China, argued that the essence of society is power. Kautilya’s Arthashastra’ in Maurya India, apart from dealing with the art of governing, also contained civil law and the science of warfare. The mode of analysis of the thinkers assumes that conflicts needs be cognized only with reference to the entire social system. These thinkers also believed that there are certain conditions for the social order in every society and the maintenance of the social solidarity necessitates the development of a system to contain the conflict.

The social conflict has been the primary theme of sociology and is reflected in early as well as contemporary sociological work. This tradition is evinced from Comte and Marx to Simmel and Sorel. Although social conflict, especially revolution, has been somewhat neglected, nevertheless, it has drawn the attention of many early Anglo-Saxon sociologists like Webbs and Summer in England and United States respectively. Don Martindale is of the opinion that “conflict theory tends to be only a step away from ideology, which may be defined as the organisation of ideas for the promotion of social movements or for defence of social institutions. Summarizing the basic assumptions of conflict theory, Martindale hold that no society can survive without individuals who face up conflict. “In all societies can survive without individuals who face up conflict. “In all societies some strata face conflict more than others …. that conflict and its resolutions is a central fact of society…. Every society requires a minimum realism about its conflict to survive…

Notwithstanding the prevalence of varieties of social conflict, a couple of distinct traditions of conflict theory can be discerned. The first tradition maintained by Machiavelli, Bodin, Hobbes, Mosca and others is known as the relations tradition of political philosophy. On the other hand, the tradition of competitive struggle in classical economics is maintained by Adam Smith, Malthus and others. However, sociological conflict theory, which primarily focusses on unequal distribution of rewards in society, is largely a synthesis of these two traditions.

At the backdrop of these early foundation, a couple of dominant ideologies, such as the social Darwinism and the Marxism, could be evinced in the nineteenth century. The practical politico-economic reformers as well as professional sociologists were instrumental in developing such conflict ideologies of the nineteenth century.
As regards, social Darwinism as a conflict ideology, its proponents visualised social change in pessimistic terms and conceived social change as implicit in conflict ideology. The social Darwinists presupposed conflict in the form of biological struggle for existence rather than the class struggle. The proponents of social Darwinism can be grouped in two categories each professing a distinct form. Darwin, Spencer, Summer and Malthus are the main proponents of first form of social Darwinism. Darwin believed that through natural selection the fittest will survive. The operation of natural selection on individual resulted in producing a superior animal and the human society is a product of the struggle for existence and survival of the fittest. It was maintained by Spencer, Summer and other that the captains of modern industry represented the fittest members of society. General competition for survival was made the pivot in the population theory advanced by Mathus. Taking a conservative stance, these ideologist vindicated a defence of staus quo against all types of reform and presupposed that the potential of the race were destroyed by the social welfare programmes meant for aiding the socially underprivileged. Thus the social Darwinists condemned the biological inferiority of their fate and bestowed merit to the rich. Hence, the social Darwinists’ propagation of the conflict ideology was quite in tune with the main stream sociological development.

On the contrary, the adherants of the second form of social Darwinism visualised that the entire destiny of people is explainable by the inequality of races, so much so that civilization is created by races. They maintained that nature prevails over nurture. Just as individuals are different from each other, so does races. As such, no amount of education can have prolonged influence on the temperature and character of people. Thus biological factors remained dominant in the evolution of mankind” in the belief of the proponents of this form of social Darwinism. As Pearson maintained the biological factors “can throw light on the rise and fall of nations, on racial progress and national degeneracy. The adherants of this second form of social Darwinism gave suggestions for race building, multiplication of superiors and race-cleansing i.e., elimination of inferiors. Nazi Germany, outlined by Adolf Hitler in ‘Mein Kampf’- in the Nazi programme of 1920 made the practical application of such proposals. Effecting the race-building, Nazi Germany meant citizenship and public office for the German blood and as regarded race-cleansing, the alien blood were to be deported or eliminated through mass murders, gas chambers and the concentration camps. Advocating certain ultimate limits set for the social system in the nature of biological
materials, this form of social Darwinism thus contributed towards the development of some sort of positive programme of its own in terms of an active eugenic policy of race improvement, mass sterilization, and rooting out of the socialism in the pretext of genetic effect.

As regarded the tenability of the inevitability of progress and the requirement for the suitability of human participation in the process, the proponents of progress may be categorised into a couple of groups. The first group of scholars are identified as “social Darwinists” because of their adherence to eighteenth century laissez faire doctrine. On the contrary, those who realised the need for human intervention, argued that evolution involved a conscious preposing and choosing by the mankind. Ward, the main scholar of this camp, held that evolution became telic at the level of human society.

**Development, Planning and Social Theory**

Sociologists are often dubbed by policy planners and administrator as those dealing with the “obvious.” This type of reaction has cast a doubt on the position of sociology in official circles. One prime reason for this state of affairs is that sociologists often agree to participate in the solution of problems which lack precise and clearcut definitions. Further, some sociologists subscribe to rhetorical ideology, and do not give in easily to pre-existing solutions conceived by the planners. This position of sociology (and sociologists) warrants a looks close at conceptual and methodological issues related to development and the relevance of social theory to planning. The present attempt is usually is an effort in this direction.

On the contrary some scholars believe that planning as such is inimical to development and a need for planning occurs only at the crisis management. But experience with development planning has shown that intuitive, adhoc decisions are not profitable and that development plans have to be conceived or designed on a well-informed basis. This highlights, further, the significance of a need for a new conceptualization of development. Development means different things to different people.

Thus the social indicators should also be considered along with the economic indicators of development. That is why, of late, it has been stated that development is not to be measured in terms of growth only but it is explicitly expressed as “Social
Change” plus “Growth.” The element of change has brought along with it the process structural differentiation, integration and social disturbances in the institutional set-ups for a new social order. Thus the qualitative changes occur concurrently along with the quantitative changes.

The urgency of development is ubiquitous. It lies in the poverty of the masses of the Third World nations as well as that of others whose basic human needs like food, shelter, health, and education are not met. It also lies, in a large part of the world, in the alienation of the masses both in misery and in affluence who are deprived of the means to understand and master their social and political environment. It is also said that there is a growing feeling of frustration that is disturbing the industrialized societies. But the solution to these crises has to be an endogeneous one. Self reliance is the key to development especially for the countries of the Third World. The developed nations should nevertheless shoulder a major responsibility and fulfill a moral obligation to help the developing world with technical and financial resources for bettering their environments for further expansion of their indigenous resources.

The root meaning of progress is “to forward” but when considered as a quality of social change or evolution, progress can hardly be defined. At best, it can only be described denoted change for the better whether cultural elements considered are material or non-material. Progress is also purely subjective and exists only in the mind of the observer.

According to him, advancement towards a classless society proceeds through “dialectical” conflicts, in each of which one subordinate class overthrows its ruling class in order to establish a new order in the society. Major theories of evolutionary or neo-evolutionary schools or that of conflict school of thought, have highlighted different aspects of the phenomenon of social change but we have yet to find a satisfactory explanation.

He further contends that “since there is to singular theory of social structure in more than differential sense, there is no reason to expect a singular theory of change, since different types of social organizations set different variables for analysing changes in patterns of actions. In the context of the planned programmes. This concept of social change is close to that of social development.
It is observed that commitment to development is a commitment to the future. Progress does not happen itself but it can be make to happen. This necessitates building a kind of attitude that should view future as a possibility through the control and manipulation of the environment. Efficiency is an estimate of those in power to affect or bring about a desired future state. Planning has been considered as an organized intelligent attempt to select the best possible alternative to achieve specific goals. Nehru, for example, state that planning is an exercise of intelligence to deal with facts and situations as they are and find a way to solve problems.

The goal of development planning is growth plus change. Accelerated economic growth and structural change are the two main aims of planning. Development planning may be defined as an organized action by the state to raise the rate of socio economic growth in order to provide better living conditions for its citizens. The plans also seek to alter institutional arrangements which are considered to be hurdles in the accomplishment of these goals. Thus a plan may include a number of programmes with detailed determination of specific objectives to be achieved within each sector and region in accordance with specified time schedule.

In developed countries, economic analysis needs to concern itself explicitly with economic manifestations, already embodying the outcome of the operations of complex social, political, psychological and other non-economic factors. On the other hand, economic analysis in the underdeveloped countries do not incorporate non-economic factors in their models of development because such factors do not conform to the conventional western theories. The models of development should, therefore, include the statement of clear objectives within the constraints of operative ideology, the availability of resources and planned techniques of their mobilization.

The main components of development planning are (i) objectives, goals and targets, (2) resources (3) selection of means to mobilize resources (4) formulation of specific programme and (5) provision of its implementation. Operationally speaking, planning consists of two processes, from the “top-down” and from the “bottom-up”. While the planning authorities are engaged mostly in the “Top down process,” they should also attempt to follow the “bottom-up” procedure in the development process. A number of data on population, labour, production, production of gas and electricity, agriculture, forestry, fishing, mining manufacturing construction, whole sale, retail and related service trades, transportation education, health and other welfare services, external trade, money and banking, finance and general prices, government and
personal incomes and condition of living is required for development, planning. In addition, there are social and cultural barriers to economic progress inherent in the traditional structure, value system and absence of creativity that offer difficulties in the implementation of plans in these countries.

There is a linkage suggested between ideology and development planning. It is stated that “no action at all is possible without ideological underpinning and we cannot adequately chose between alternative actions without an understanding of the nature of beliefs that make them.” Merton has suggested that the intention in the usage to this term (ideology) is to ascribe motive to particular people and groups of people which do not stem from desire for some independent cognitive truth but derive form interest. This intellectual interest is reflected in seeing the world that conforms to a pre-existing idea held about it, an idea of which one has become convinced of independently of the evidence. Bailey suggests that this may appear to be contradicting rather than contrasting to the scientific approach in the whole problem of planning but “the supposed antagonisms between ideology and science is a false one. “He contends that” if we idealize everything, than science has to provide the criterion of truthful knowledge. As such, science is an ideology and the scientific ideology would involve one in applying a method both applicable to the physical and to the social world. Thus the planning process has to take into account the belief system, the subjects like social classes, planners, political parties, etc., and the objects like housing transport welfare, efficiency, etc. on a well-informed basis, and this scientific approach has to make a critical use of the sociology of knowledge. Further, it may be emphasized that the application of social theory to the development planning will have to be considered in the context of political stability or instability of a nation. Political instability may be reckoned with as a factor significant enough to retard the development process in the countries of the Third World. There is a high degree of correlation between the degree of political competitiveness and the degree of economic development. In certain situations economic growth itself is a cause of political instability. In socialist countries, drastic institutional arrangements were altered to remove political, economic and social conditions influencing their backwardness in order to achieve a high level of growth in production and income. In countries with precedence over economic progress.

All economic phenomena are social phenomenon and together these make a social reality. In the developing countries, attention must be given equally to both the
urban and the rural sectors which already differ in relation to employment, information, education and voting.

Two paradigms of economic development have been suggested by the development planners. The basic paradigm of traditional economics, based on the concept of the “economic man.” Stresses the goal of the maximum consumption of goods and services with minimum efforts. It is assumed that as development proceeds, the capitalist will reinvest and will employ more persons and this will help in the redistribution of income among a large segment of the population. But this “grow now” and “trickle later” approach has failed to tackle the problems of unemployment, inequality in income, regional disparities and the dilemma of poverty, malnutrition and the illiteracy fully in the developing nation of the Third World. Currently, they advocate the working for a standard of living for the developing nations in consistency with their own resources and with their own values. It is being stressed that basic human needs should be given priority over demand items of luxury. Planning for production and distribution should be done simultaneously and the poor should be provided with means so that they can satisfy their needs. A greater stress on labour rather than on capital intensive projects is being made to tackle the problem of unemployment. The other paradigm of economic development is historical and holistic and is advocated by political economists. Their goal of development is based on the liberation of a nation within as well as liberation from the rich developed nations. Social ownership, centralized planning to allocate the factors of production, land, labour and capital and directing social surplus into the productive investments in order to meet people’s basic needs, are the measures suggested for development purposes; social revolution is considered to be a pre-requisite for development.

Whatever be the strategy or model of development, one thing is certain that one cannot ignore the significance of social, cultural and political factors for the development of the poor nations. In these nations, economic liberation and an integrated social life should be the two main objectives of development. The methods of development should be designed in consonance with the need structure and value pattern of the people in these countries. A vast majority of the population in these nations live in rural area and is below the absolute poverty line, as such, their development would lie only in raising the income level of these people to a certain
level of living, through the careful design of inputs. This economic emancipation shall help them to enhance their social status or prestige in the community’s evaluation of them and they will become more self-reliant of self-sustaining. Land is a limiting factor with most of these nations and there is a need to bring in the non-agricultural or industrial sector as close as possible to the rural areas. This will help to diversify occupation and thereby break up the social solidarities like caste or kinship ties impeding the development process. With the political ideals of democracy it would not be possible to make land available to all, even with the best of land tenure laws and land ceiling; as such industrial development must supplement the agricultural development. Even the bringing of the non-agricultural sector closer to the rural population would usher in infrastructure facilities and social amenities which have for long been the privilege of urban people; it would check migrations from rural to urban centres and build up more integrated living patterns. Appropriate technology should reduce the regional social and economic disparities. Further participation of people in the development process is essential and this should be accelerated through the local political, economic and social institutions. If denied, this would liquidate democracy and its ideals could get replaced by the non-democratic forces in due course of time. This will then call forth a different strategy of development. replaced by the non-democratic forces in due course of time. This will then call forth a different strategy of development.

As regards the indicators of development, although it may be possible to develop hard indicators for economic development, yet the indicator for social development are likely to be descriptive-cum-analytical because of the softness of data in most cases. There are different indicators to be employed at societal, community and individual levels. Some of the broad indicators of development at the social level could be economic growth industrialization, urbanization, literacy rate, employment status, agricultural development, health status, improved means of communication, technological advancement, the development of communication, technological advancement, the development of art and culture, the scientific and rational outlook of people, stable political institutions and the legitimization of social action appropriate to the need structure of the people. At the community level the development could be visualized in terms of the mobility of individuals or groups in the social hierarchy, the standard of living of people, the involvement at participation of leadership and organization in community decision making, increased employed
opportunities, the provision of infrastructure like health centre, market welfare centre, school, office and telephone, improved roads and paths, the mechanization of farms, the development of basic industries, a decline in crime rates and collective and rational efforts to solve the problems of the community. The possession of material objects by the individual families, the construction of new houses, public lavatories, bus shelters, play grounds, improved means of communications, migrations and the politicization of social and economic groups may be other indicators of development at the community level. The development at the individual level is reflected by a more rational or scientific outlook, attitudes, values and norms conducive to modernization of groups or communities.

In regard to the relevance of social theory in development planning, critiques of different perspectives in sociology have been made by scholars to highlight the relevance of one perspective over other. It is argues that the absolutist scientific approach advocated by system theorists, based on “value consensus” perspective is deterministic and present only a monolithic social structure for society. Further, interpretive sociologists of the symbolic interactionists’ school, phenomenologist’s and ethnomethodologists are critical of the system theory because (a) structural theories can only explain very broadly, described categories of behaviour and (b) structural theory denies intentionality, choice freedom in any important way that should mark it off from positivism, According to them, society is composed of social relationships which are made, rather than structures which just exist and grow and men are seen to interpret the world rather than to react to it. But it has been seen that people are to a large extent also influenced by the structures of which they are the part. The limitation of explaining all social phenomena especially behaviour and attitude by the character of social institutional structure and concomitant institutional values of functionalism and systems theory and ignoring the fact that people are influenced by the structures, by the ethnomethodologists, has led to a renewed interest in the conflict perspective. It is mainly concerned with analysing power as the structural property and showing a concern for action and social change. This perspective views man as a potentially free actor whose freedom has been repressed by the manipulative social institutions but this condition is “historical” rather than “natural” and therefore, can be changed. In this background, Bailey suggests that there are two kinds of phenomena, man as a meaning-creating being, and society as a structure of rival power groups, that the interpretive and conflict social theories
become appropriate for planning. But empirical evidence does suggest that some of the other sociological perspectives also provide an understanding of the development process. The typologists among sociologists have done much to improve our understanding of the whole process or urbanization. In addition, such an approach to community has shown that one of the chief barriers to rapid economic, political or health change is the traditionalism in the values found in the folk, peasant or rural communities. System theory and functionalism have shown that every society and community consists of interlocking and inter-related institutions, organizations or groupings and change in one will affect changes in other spheres. This has been significant since this has helped the planners to advocate an integrated rather than segmented approach in development projects.

To sum up, one say that social theory is not so exact as to match with the scientific criteria of the physical sciences but efforts are towards building a reasonable approximation and better understanding of social events or actions on the basis of analytical frames through a diagnostic approach. Social theory can become a useful analytical tool for diagnosing problems, but so far as social engineering is concerned it shall have to be supplemented by other social and management sciences. Human action or behaviour is complex and is at variance with different situations; as such, all social and psychological perspectives having any bearing on it will have relevance for planned development of the Third World nations. The development planners cannot and should not ignore these along with economic factors.

Social-Structural Constraints on Development

The concept of development has been elucidated in some of the other papers at this seminar, which are more specifically aimed at this purpose. But it is necessary here to call attention to some of the features of this concept, which are relevant for a discussion on the social-structural aspects of development.

The connotation given to the concept of development has undergone a radical change over the years and its present meaning is important for bringing out the relationship of development to social structure. When the concept first came into general acceptance it referred mainly to economic growth. Even though the idea of solving some of the pressing social problems such as inequalities and poverty was present, it was implied that such problems would resolve themselves with the growth
in the economy. It was understood that the growth would first take place in some regions and among some sections of the population, but the gradually it would trickle down to all regions and to all sections of the society. It was also assumed that the growth of the economy would ultimately lead to a transformation of a traditional society into a modern one. In other words, economic growth was assumed to be an independent variable and the various other problems of under development were dependent upon it.

As a result of the above assumptions, in development, planning attention was first focused on those factors which were directly related to economic change. The major consideration was to stimulate growth in the different sectors of the economy and to rectify the lags among them. However early in the planning process, it was recognized that economic growth in one region did not automatically induce growth in the other to be paid to the question of the inter-regional equity in economic growth. Thus development planning has hitherto concerned itself with the sectoral and the regional aspects of economic growth.

The experience gained through planned development has made it abundantly clear that just as economic growth in one region does not automatically induce growth in other regions the economic advancement of a class of people does not trickle down to the entire population. On the contrary when economic development is attempted under the conditions of *laissez-faire*, it has resulted in a widening of the conditions of laissez-faire, it has resulted in a widening of the economic gap between the rich and the poor. Moreover the attainment of high levels of economic growth by some the developed countries have not led to a solution of some of their serious social problems; their societies have not been transformed into desirable patterns.

It is therefore now realised that if the ultimate aim of development is the improvement of the quality of life of the common man, it cannot be accomplished as an indirect consequence of economic growth and capital accumulation. In the ultimate analysis, development should stand for the enabling of a person to live to be rather than to live to have. A developed individual is one who is self-reliant, creative and sociable. The development of such a personality is also contingent upon the building up of an appropriate social structure which also cannot be expected to evolve as a result of economic change. Thus economic growth may be necessary but it is not a sufficient condition of true development.
One of the major obstacles the spread of the benefits of economic development, which is at the same time responsible for yielding enormous profits to some at the expense of other, is the peculiar kind of social structure which serves as a mechanism of exploitation. Some people succeed in amassing huge fortunes not necessarily because they are more capable than the others but because they occupy pivotal positions in the structures of exploitation. Economic development of the *laissez-faire* variety is channeled through the existing exploitative social structure which instead of being altered gets itself reinforced as a result. Therefore for the attainment of the ultimate goals of development, direct efforts must be made aimed at the transformation of the social structure.

It is, however, not suggested that the endeavour of economic development should be given up. But for real development, just as the sectoral and the regional dimensions are attended to in development planning, the social-structural dimension also should be incorporated as an essential element in the planning model. So long as the social structure was regarded as an epiphenomenon dependent upon the economic variable and was expected growth, it was not necessary to undertake its analysis for the purposes of development. If, on the other hand, it is assumed that the social structure has a reality of its own and so needs a separate attention for bringing about its restructuring, then an appropriate analysis of this phenomenon is necessary for its planned transformation. The analysis should be done in a manner so as to reveal its constraints on development.

The organization of the traditional society in India is broadly governed by the principles of religion, ethnicity, caste and kinship. Among this principle the caste system is especially relevant in the context of development, for it represents one of the most exploitative structures ever devised reliant, creative and sociable, the caste system stands for features which are the very opposites of the goals of development. In the caste system, social inequalities are channeled through ethnic groups in which membership is hereditary. Members within each caste group are socio-economically homogeneous. The different groups are at different socio-economic levels which determine their relative social status in the caste hierarchy. By virtue of their status and ethnic differences, the various groups are mutually ‘exclusive for purposes of intimate social relationships and the behaviour of the individual is group-oriented.

Thus in the caste system, the individual lacks the freedom to choose the occupation of his liking, to develop skills according to his capacity, and to mix freely
with people according to his desire. In other words the caste system militates against the developmental goals of fostering self-reliance, creativity and sociability among the members of the society. Since inequalities in the caste system are channeled through hereditary cultural groups, the higher tend to exploit the groups lower down in the hierarchy, without qualms of conscience, and the in egalitarian system tends to perpetuate itself. The caste system has its ramification in all aspects of the socio-economic life such as occupational specialization, ownership of property, residential pattern, friendship networks, and the school system. Economic development, no doubt, affects all these aspects. But the net result of such changes, by and large, tends to reinforce the existing system and to widen the socio-economic gaps between the different caste groups. Economic development which is not specifically aimed at bridging the gaps between the different castes, actually results in widening them. These trends are at the bottom of some of the bizarre consequences of economic development in India.

One of the prominent but unjust consequences of economic development is the widening gap between the rich and the poor. In the rapidly developing states in India, such as the Punjab, this trend is very much in evidence; what is worse, the more economically developed a region within the state, the greater is this disparity. In the rural areas of the Punjab, the fruits of agricultural development have mainly gone to the people who own agricultural land and there are extreme differences between the members of some of the castes who own almost all the agricultural land and those of some of the other who are able to supply only their labour. It may be true that some part of the prosperity of the farmers has trickled down to the labourers, but not enough to reduce the gap; and it is so disproportionate to the overall gain of the cultivators that the economic gap between the cultivators and the labourers have actually widened.

Just as the gains the from agricultural development have gone disproportionately to the people who own agricultural land, the advantage from economic entrepreneurship which development has brought about has been derived by people who possess capital as well as connections with financiers and industrialists. And just as agricultural resources are concentrated in certain castes, the entrepreneurial resources too are disproportionately possessed by members of some other castes and ethnic groups. Consequently the gains from business and industry also have gone disproportionately to some of the castes who are traditionally endowed with facilitating resources.
Much of the growth in agriculture, trade and commerce so far has taken place in the unorganized sector of the economy and the gains have gone disproportionately to the castes which are traditionally endowed with the necessary resources. However economic development is also resulting in the rise of formal organizations. More and more social, political and economic activities are coming under the purview of large-scale organizations. Such complex organizations are generating multifarious new occupations which different degrees of prestige. Whereas it is true that members of all castes tend to enter the formal organizations, the higher prestige occupations are arrogated by the members of the higher castes and the occupations with lower prestige are filled by those belonging to the lower castes in a manner which upholds the existing status distinctions among the various castes.

Another important concomitant of economic development is the sectoral transformation of the economy so that the industrial, commercial and trading sectors become increasingly predominant at the expense of the agricultural sector. Because the occupations in different sectors are followed, by and large, by members of different castes, the sectoral transformation of the economy also brings about a change in the relative predominance of the different castes. For instance, when a predominantly agricultural village yields place to the predominance of trade, it is the trading caste which takes precedence over the agricultural caste.

The intersectoral transformation of the economy accelerates the process of urbanization which grows mainly as a result of rural to urban migration. Since the urban occupations are very much different from the rural ones and since different castes, by and large, follow different kinds of occupations, the castes of people who migrate from the rural areas to the urban ones are on the whole different from those of the persons who stay behind. Consequently the caste composition of the rural and the urban population more and more dissimilar. So also the dominant castes in the rural and the urban areas tend to be different from each other.

The above trend in the Punjab State has led to a religious polarization between the rural and the urban areas. Since the Hindu castes mostly follow the non-agricultural occupations, the Hindu tend to migrate to the urban areas relatively much more than the Sikhs. Consequently, the representation of the two major religious communities of the State in the rural and the urban areas are vastly different from each other.

According to the 1971 Census, whereas the Hindus and the Sikhs constituted 37.54 and 60.21 per cent respectively of the total population, their respective percentages
were 28.56 and 69.37 in the rural areas, and 66.39 and 30.79 in the urban areas. Thus the representation of the Hindus in the rural and the urban areas relative to their total population is 0.76 and 1.77 respectively and that of the Sikhs is 1.15 and 0.51 respectively. Polarization of this kind leads to a clash of economic interests which inevitably culminates in religious and political conflicts.

Another aspect of urbanization is that the urban economy provides relatively higher proportions of the higher prestige occupations and consequently provides better rural to urban mobility opportunities for persons belonging to the higher castes. It is for this reason that we find the castes are overrepresented in the urban areas and the lower castes are underrepresented; the Scheduled Castes which are on the lowest rungs of the socio-economic ladder are the least represented. At the same time the higher castes are concentrated in the higher prestige occupations and the lower castes in the lower prestige occupations. Such a peculiar redistribution of the population ensures the continuation of the same trend in the future.

Thus the various processes set into motion by economic development, such as agricultural development, the sectoral transformation of the economy, the rise of formal organization, industrialization and urbanization, bypass the lower castes who continue to remain at the bottom of the economic ladder and swell the ranks of the people living below the poverty line. Viewed from this perspective, it can be easily seen that poverty is a social-structural phenomenon rather than a condition brought about by the deficiencies of the individuals concerned. It is the same groups of people who were poor for generations and even for centuries, who continue to be so. And everywhere the poor belongs to the castes or cultures which are different from those of the people who belong to the richer and dominant sections of the communities in which they live. The underprivileged position of these people can be attributed to their socio-cultural marginality in their societies. Therefore a real solution of the problem has to come through a structural transformative of the society.

The growing enormity of the problem of poverty in India has drawn the special attention of the governments and the planning agencies. The planning Commission, Government of India, which has been dealing mainly with the sectoral and the regional dimensions of economic growth, has now begun to deal with the problem of poverty in a more or less direct fashion. A number of schemes such as the Minimum Needs Programme, the Integrated Rural Development Programme and the National Rural Employment Programme have been launched with the avowed objective of
removing poverty. But none of these schemes is linked with the objective of the transformation of the society. At least these provisions might help the poor people in keeping their body and soul together. The main outcome of these schemes resulting in infrastructural facilities would benefit the richer sections more than the poorer ones. However instances the schemes aimed at both helping the underprivileged and bringing about a transformation of the society, are not wanting in our country. One such major experiments of social structural change in the series of measures adopted by the central and the state governments of the amelioration of the lot of the Scheduled Castes. The results of this experiment are quite instructive. The success of the various measures of protective discrimination in favour of the Scheduled Caste has so far been only a partial one. The modest success which the measures have been able to achieve lies in the fact that the socio-economic gap between the Scheduled Castes on the one hand and the rest of the population on the other has been reduced or at least has no become worse. But the failure of these measures is reflected in the fact that whereas the overall socio-economic conditions of the scheduled Castes have slightly improved, the inequalities among the various Scheduled Castes themselves have actually widened.

The anomaly in the results of the measures of protective discrimination in favour of the Scheduled Castes is due to a failure on the part of the authorities concerned to recognise the two major structural dimensions in the problem of the Scheduled Castes, in the formulation and the implementation of the relevant policies. The two major structural dimensions involved are first, the distinction between the Scheduled Castes, on the one hand, and the rest of the population on the other, and second, the structural differentiation and hierarchy among the Scheduled Castes themselves. Whereas the policies so far devised have been directed towards the first dimension, the second dimension has been neglected for the most part. Hence, the above anomaly.

Even the present policies aimed at the development of the poor and the Scheduled Castes have suffered greatly at the level of their implementation. Such a state of affairs only shows that when the aim is to bring about a transformation in the social structure, not only the usual techniques of planning are inadequate but so also are the usual practices of policy implementation. The change ultimately has to be brought about by the people themselves specially those belonging to the under privileged sections.
The above brief analysis of social-structural constraints on development is only a suggestive one. It is neither exhaustive nor have the limited number of facets included in it received adequate treatment. However, the major thrust of this paper is to indicate that development, has it is understood today, calls for a transformation of the society in a given direction. Economic growth by itself does not bring about such a transformation. The existing social structure has a certain degree of rigidity as well as resiliency which enable it to channel the changes according to its own pattern. Therefore a direct attack is necessary in development planning to bring a transformation of the society. The usual techniques of policy formulation and implementation have been found unavailing. An analysis of the social-structural constraints on development would provide clues for devising new procedures.

**CONCEPT OF JUSTICE**

Justice is a dynamic concept beyond any general meaning applicable for all times. The wealth of terminology, exuberance of examination and re-examination suggest that there is hardly any aspect of human life where the notion of justice does not enter; in all our dealing, in every kind of conduct regulated by law or social morality, in private economics and in our innermost conscious, one cannot escape this mentor. Although it is said that man is the only subject and object of justice yet its prompting can be found even in relation to the brute animals that perish.

The essence of justice is giving each individual or group his or its due. This dispensation further depends upon need, merit and capacity of the individual as well as that of the group. Justice in itself is the end to be achieved through various instruments like law, social morality (codes), conventions, customs and precedents. James Madison considered justice as the end of government and that of civil society. He opines that it will be pursued until obtained or liberty is lost in that pursuit.

Justice has passed through a number of stages before coming to the present refined notion of equal treatment of equal person in equal or essentially similar circumstances. In the primitive society when any wrong was done against any individual, he has to resort to because retaliation has been the craving of nature in men who found justice in recovering like value to compensate for the like loss. It might tantamount to taking of an eye for an eye or rupee for a rupee. For instance when a child grabs a pencil or breaks a toy of another child or slaps another child on the face, the (contra party) child by sheer instinctive pull tries to reply in the same
coin by setting for an exact replacement of his own article or with matching stroke a blow on the assailant. Justice has thus been the natural spring of the instinct of revenge in human beings.

Formulation of the doctrine of justice in the context of a philosophy of life and of socio-political existence of men is a brain work of western thinkers. The debate about still going on in the West without coming to any generally acceptable definition with finality. It seems that writers agree to disagree on the respect.

Infact, the concept of justice is mainly a combination of ethical, social political and psychological aspects of human life. Any definition, theory or method which tries to define justice ignoring even one out of these is bound to be insufficient or incomplete in its attempt.

The idea of justice in the Holy Christian scriptures is a transcendental one. It is not known through reason rather regarded as a mystery of a faith. As per both the Old Testament and the New Testament justice has two opposing elements-redistribution and love. Christ and his disciples also differ in their approach. Christ’s doctrine of justice denies recognition to the authority of positive law and state whereas St. Paul recognizes such authority. According to Paul, “There is relative human justice which is identical with the positive law and an absolute divine justice which is in secret of faith. In the Greek philosophy, operation of the forces of nature, securing balance and harmony among all the constituents. For idea of justice less obscure than this, philosophy has to go a long way till Pythagoreans. Punishment of bad action matching its degree of badness.

Mathematicians’ mystique further distorted this and claimed that justice is like a square number giving back the same for the same and so is the same multiplied by the same. In Greek philosophy, it was Plato who brought the notion of justice into ethical principles involving human conduct. Plato identifies justice with retribution, it being an instrument for attainment of good. But for practical purpose, according to Plato, justice is proper performance of one’s functions. In his doctrine, justice derives the whole of its value from the idea of good. However, to know how the good is to be determined, Plato does not come to any help rather resort to myth.

Aristotle takes justice as righteousness. Happiness is the starting point of his ethics and supreme good. He opines that there are two aspects of justice-lawfulness and equality. Lawfulness is a broader concept whereas equality is a narrower concept. Every unlawful act may not be unequal act but every unequal act is unlawful. So
justice includes whole of lawfulness-perfect virtue. Lawfulness means conformity to positive law, asserts Aristotle and anyone who breaks the law is unjust whereas law abiding is just.

According to Aristotle, justice requires that the things of the world be equitably distributed among all the members of the community or state and this distribution shall be maintained by law as against any violation. Aristotle’s concept of justice has two fold function, i.e. distribution and corrective. Distributive justice demands that, rights, offices, honours and goods should be distributed among members of the community equitably rather than equally. Corrective function of justice is called corrective justice. The main function of the courts is to apply justice in a corrective sense. In a just system of law, on the one hand, there are rules to bring about equitable distribution and on the other hand, there are specific rules to the application of corrective justice by courts.

Aristotle distinguishes between the two kinds of justice; one is general justice and the other is particular justice. Particular justice may further be divided into distributive and corrective justice. Aristotle supports proportional equality and hence the state, while distributing honours, officers, etc., look to the differences in the individuals; treating unequals as unequal is just and not unjust. In his book ‘Nichomachien Ethics’ the standard set out of distributive justice is merit. Corrective due to violation of law and applies to voluntary transactions like selling, lending, etc.

In cases of offences against the state, Aristotle calls for principle of general justice and application of arithmetic proportion. He claims that the law looks only to the differences created by the injury, the parties themselves being treated as equal.

Aristotle also brings out a third kind of justice called commutative justice. It governs the exchange of commodities and considers the skills of the parties and the corresponding value of their product. Turning to dictionary is a common reaction for seeking the definition or meaning of any word. In the present case also, it is quite helpful in revealing words, which, in the English language, evokes the general concept of justice. The Concise Oxford Dictionary declared the adjective just to mean ‘equitable’ with respect to person or conduct, ‘fair’ and deserved treatment, and adds reference to well-grounded’, ‘right’ and ‘proper’. The word as an adverb has connotations of exactness, getting things ‘just right’. The noun justice, in the sense of conduct, refers to ‘fairness’ or the exercise of authority in maintenance of ‘right’. To do justice is to treat fairly, to show due appreciation of somebody or something. To
justify means to show the justice or rightness of something. Thus justice, in simple words or rightness of something. Thus justice in simple words involves treating people right or fairly, in a calculated way.

Going by the etymology of the word, in justice, we find a notion of joining of binding or fitting or trying together. It not only ties together the men but not in further contention, it is joining of the principles. It joins and knits together the claims of the principle of liberty with those of principles of equality and both with that of the principles of fraternity or cooperation; it adjusts them to one another in a right order of their relations. Justice has been called as a term of synthesis as it reconciles conflicts and joins together not only different principle but also the conflicts arising within the area of a principle due to interpretations.

The Cambridge Dictionary of Philosophy defines justice as “each getting what he or she is due.” So, if the act of justice is to give anyone his due, then the act of justice is preceded by a number of other acts whereby something becomes due. For example, A does a job for B, say, he does same labour work. By doing this act, something due to him (A) has come into which the other man (B) must give him (to A). This act of giving is the act of Justice.

An Encyclopaedic Dictionary of Philosophy describes justice as “the quality of being right and fair. It is the principle which allocated and distributed the social benefits and burdens in such a way as to make the position of the least well-off as good as it can be. A common basis is that person should be treated equally unless reasons of inequality exist.”

Sidwick, another distinguished authority on the subject opines that the main idea of justice is “that society is rightly arranged the greatest net belonging to it.”

John Rawls defines justice as equivalent to fairness. Rawls divides justice into three categories-perfect procedural justice, imperfect procedural justice and pure procedural justice. Perfect procedural justice requires the existence of-in division of goods or anything else- independent criterion of a fair distribution and a procedure certain to result in fair outcome. Imperfect procedural justice exists where there is independent criterion of a fair outcome but there is no method which can certainly produce that outcome. Cicero defines justice as that sentiments which assign to each his own and maintains with generosity and equity human solidarity and alliance.

Thus justice being a complex concept is difficult to pen down its comprehensive definition. It is the widest vision conceptualized by human beings in
the process of their evolution. But to call something just means to approve that thing in that particular way. In the one hand, it is concerned with the order of the society as a whole whereas on the other hand, it is the expression of the rights of individuals. According to D.D. Raphael it can be divided into three mutually exclusive or contradictory groups:

(a) Justice of law and of social morality;
(b) Order of the society as a whole and expression of rights of individuals;
(c) Conservative and reformative principle.

Law denotes the general behaviour of a thing, person or a group of persons. It has its utility because it normally gets conformity and occasionally departed from by its followers. The fallibility of law has similar utility and its fixity. “A process which knows no lapse and in which there inheres the impossibility of deviation, cannot be law, since in the impossibility of its being escaped, there can never be an occasion for its enforcement”.

In law justice the whole field of principles and procedures to be followed. It is because of this aspect that the system of law is sometimes called system of justice. Here justice does not concern with the moral duties of generosity rather it protects the rights of individuals and enforces duties corresponding to their rights. But it is not possible to say that anything and everything going on in the courts (through which justice is dispensed) has to be called just. Sometimes, it can be criticized from a moral as well as legal point of view or for failing to meet moral ideas of justice prevalent in the society or for failing to rise to the standards required by the procedure of legal system.

Justice, as considered in law also, does not cover the whole field of principles and actions considered to be right. Although it is the foundation of morality yet certainly it is not the whole of social morality. It is opposite to generosity which goes beyond mere justice. Justice, both in legal and sense, is concerned with general ordering of society. A breach of that order is breach of justice and penalties are imposed for that. Sometimes conflict may arise between rights of individuals and that of general social order. In such cases, justice protects rights of individuals against general social order and individuals’ rights are represented under the concept of justice. For instance, a person innocent of breaking any law, may not be justly subjected to punishment although, in a few circumstances, this might be conducive to the general interest and maintenance of public order.
Utility, also, sometimes overrides justice. For example, a person guilty of committing a crime, which is becoming widespread, is imposed exemplary punishment though the individual does not deserve that much heavy punishment. In plain terms this is injustice, and individuals’ right are violated but here utility prevails over justice and hence it is accepted as a form of justice. Justice by various names, of nature and humanity, science and conscience and morals, political economy, politics, history, literature, arts, etc., governs the world. But whatever name is given it to signify, it is the most primitive in the human soul, most basic in the structure of the society and the most revered among ideas. It is the fountain-head of religion, sum total of rationale, secret object of faith and that of knowledge as well. Nothing is more universal, more strong and more complete than justice. It is based on the premise, what the majority of impartial people consider as fair. Justice, in its true spirit, is opposed to the idea that everybody is to count for one, nobody more than one, because ‘what is due to anyone’ cannot be ascertained by absolute standards. Rather it depends upon the time, place, needs, merit and capacity of the individual as that of that group.

Justice does not mean only just distribution rather it relates with the reasonable requirements of the body, mind and spirit. It involves both the means and the end, the process as well as the product. It tries to attain justice by just means. Unjust means may satisfy some but more often result into injustice to other and further lead to a chain reaction of unjust consequences. Further, justice is to all and not to a favoured class. It does not introduce class conflict but seeks to improve the society with a view to avoid imbalances. It constitutes a central value in all the normative disciplines which directly or indirectly govern actions with respect to other. It is sometimes taken to be synonymous with or equivalent to law, sometime to be distinct from law and superior to it. In one aspect, it is held to consist in conformity with law but it is also asserted that law must confirm to justice.

The main theories of justice are:

(i) Positive Law Theory of Justice
(ii) Social Good Theory of Justice
(iii) The Contractual Theory of Justice
(iv) Marxian Theory of Justice

**POSITIVE LAW THEORY OF JUSTICE**
The Positive Law Theory of Justice propounded mainly by Austin, Hegel, Hobbes, Holmes and Salmond consists of two parts: one, on account of justice in terms of positive law, and second, a theory of meaning that explains other normative uses of the term as indeterminate and subjective. The heart of the theory in the claim that positive law can explain all the important uses of the term ‘justice’.

According to this theory, it is basic norm of the society that determines justice and injustice. Existence of a society is a condition precedent as these justice and injustice depend upon law and are the work of civil society; more particularly in the state of nature, the question of either justice or injustice does not arise. In such a situation where no law exists, there would be no common power, no organised society capable of issuing commands and subsequently enforcing them, men would oppose each other only as individuals seeking their own advantage, gain, safety and reputation. But individuals being almost equal in power will not enjoy any advantage, safety or security.

There is no mine and thine, no property, which in Hobbes’s opinion means, “the rules whereby everyman has no property, there is no injustice. Therefore, where there is no commonwealth, there is nothing unjust.

According to this theory, no positive law is legally unjust, for positive law is the measure or test of legal justice and injustice. The Positive Law Theory requires that justice be objective and determinate to provide a precise criterion for testing whether an action is just or not. Law also provides this determining factor as positive law only is determinate and objective. The theory holds that justice cannot be said to be a standard or ideal for the legislators. With regard to law, justice can provide a standard only in relation to its execution and application, not for its making as such. Kelsen writes. “Justice, in the sense of legality, is a quality which relates not only to the contents of positive order, but also to its application… and means the maintenance of a positive order by conscientious application of it.”

Hence state cannot be or unjust anymore than laws can, because state is the law making power and itself is the fountain head of justice. The Positive Law Theory holds that justice consists in conformity to law. Austin, in this regard, writes that law is itself the standard of justice. Whenever it is uttered with a determinate law which the speaker assumes as a standard of comparison.

In advocating justice with conformity to law, the theory denies that adequacy of the ancient and common definition of justice as rendering to each his own. The
theory admits that an action may be legal without its being approved as it is normal for people to disapprove of those who take advantage of the law for their personal gain and comfort. This action may be bad but it is certainly legal. Thus on the basis of Positive Law Theory, which bases justice on law, to say that A is just is to say not only that A is legal but also approving A in that specific way.

Since justice is identified with legality, so, it not only enjoys all the might of law but also the sanction of personal approval. To the question what kind of right is involved in justice, under Positive Law Theory the answer is two fold; first a punitive ought and second an approbative ought. Punitive ought is founded on the physical sanction of the law. So, A ought to do X, because if A does not, he will be punished. Under approbative ought: A ought to do X because it is something approved of by A.

Therefore, there are seven identifying propositions of this theory:

(a) Existence of society is a condition precedent for justice;
(b) Justice and injustice are dependent on positive law;
(c) Law itself is independent of justice;
(d) Justice consists in conformity to positive law;
(e) Justice apart from legality is merely a subjective norm;
(f) Justice is obligatory ultimately only because of legal sanctions;
(g) The virtue of justice is identical with obedience.

SOCIAL GOOD THEORY OF JUSTICE

The Social Good Theory of Justice propounded by Bentham, Blanchard, Hume, Rosco Pound, Mill, Sidwick and other is a dialectical construction. A writer is counted as a proponent of his theory if his theory of justice approaches it as a limit or as an ideal. The inclusion of writes-Bentham, Mill and Sidwick-in proponents list shows that it may closely resemble with that theory held by the classical utilitarian philosophers. But it cannot be named as such because of inclusion of writers like Blanchard who deny that social good is contained in the greatest good of the greatest number.

The central theme of the theory is that all questions of justice must ultimately be decided in terms of social utility as justice is a social norm applicable to men in their relation with each other. The theory goes one step further and asserts that in the good of society lies the origin and basis of justice. The concept of justice arises in the course of men striving to work out a common life in co-operation. Had it been possible for men to live apart from society, there would have been no justice and no
morality. Hence, justice under this theory is evolved by the society in its efforts to meet the demands of its constituents.

The theory emphasizes upon the social situation of man and his needs as social animal. An individual is in no way naturally just rather he is made so by and in society. According to this theory, there is no natural right as such underlying justice and its duties. The need for justice arises only from the special situation in which man finds himself. “The rules equity or justice, Hume, depend entirely on the particular condition in which men are placed”.

Hume’s concept of justice is bound up with that of property which is taken of be natural instinct of extension of one’s personality. It may be defined as the rule of justice are conventions whereby material goods are ascribed to particular individuals; and the justice of virtue consists in respecting this ascription, by refraining from appropriating the goods of others and ensuring that wrongly appropriated goods are returned to their owners. This goes very close to what Hume says when read between the lines but according to Hume’s account, the two concepts-justice and property-are entirely interdependent. In the absence of any rule of justice, there is no property but only possession. Individuals have no rights to object but have them because of their power. In his opinion, human conventions are the sole origin of justice, rights and property.

Hume sees men as mixture of self-love and benevolence. Had they been entirely benevolent, there would have been no need of justice and each would have been willing to give his neighbor what he needed. He rests foundation of justice on self-love an says that even every individual person finds himself a gainer on balancing the account.

According to Mill, there are two essential ingredients of justice; first, the desire to punish a person who has done harm and secondly, the knowledge or belief that there is some definite individual or individuals to whom his harm has been done. The desire to punish is a spontaneous result of two sentiments-the impulse of self defense and feeling of sympathy. Mill holds that it is natural to resent, and to repel or repudiate my harm done or attempted against ourselves or against those with whom we sympathies. He attributes to sympathy the function of socializing because otherwise it could be self-regarding feeling of self-defense and retaliation.

Roscoe Pound asserts that justice is not an individual virtue nor an ideal relation among men. The assertion that justice originates and depends entirely upon
the society implies that there is no such thing as a natural right having its basis in man as man. Thus the theory denies that nature provides as basis for justice.

The Social Good Theory does not mean by justice as mere conformity to law. This is based on three reasons; firstly, failure to conform to law does not always make on unjust; secondly, our notion of justice furnishes as standard with which we compare the actual laws and call them just or unjust; and thirdly, there is part of just conduct outside the ambit of law. For example, a mother may be just or unjust to her children in matters where the law leaves her free. These reasons; according to Social Good Theory, are suffice to show that justice is a wider notion than law and transcends it.

For Hume, society and justice precede government, and state of society without government is not only conceivable but ‘it is also one of the most natural state of man. In such a state, contrary to Hobbes, Social Good Theory says that justice is absolutely necessary. Hume writes that though it be possible for men to maintain a small uncultivated society without governments, it is impossible that they should maintain a society of any kind without justice.

Under Social Good Theory, justice is to serve and promote social good. This means that good of society comes first to both law and right, in the basic meaning of justice. The theory advocates that law itself is just or unjust depending upon whether it serves or fails to serve the good of society.

Sidwick claims that both Mill and Hume overemphasize the place of sentiments in their analysis. The theory does not accept the traditional Roman definition of justice which says that justice is rendering to each what is his own, his right or his due. This definition is wrong, writes Hume, because it suppose rights and property independent of justice. He asserts that property, right and obligations are all dependent upon justice and not the other way round, while justice itself depends on utility.

Importance of equality is not denied by this theory in the analysis of justice but in certainly denies it to be basic. Mill claims that equality of treatment and impartiality can be looked upon as corollary from other principles of justice in as-much as they are in part instrumental, being a necessary condition of the fulfillment of the other obligation of justice.

Justice, according to Social Good Theory, imposes serious and distinct obligations. What is just, ought to be done and merely because of failure to do that
will qualify for the sanctions of law and of society, resting on their responsibility in
the interest of social good. Thus the basic postulates of the theory may be summarized
as:
(a) Justice is a wider notion than law;
(b) Justice is absolutely natural state of man;
(c) Good of society comes first to both law and right in the basic meaning of
justice;
(d) Property, rights and obligations are all dependent upon justice; and
(e) Equality of treatment and impartiality are corollary of justice.

THE CONTRACTUAL THEORY OF JUSTICE

The proponent of this theory is John Rawls. This is what the utilitarian theory
cannot accommodate. From this situation, he derives to basic principles of justice:
(a) Each person participating in the political and social system.
(b) Inequalities
Rawl’s use of social contract makes justice subordinate to society in such a way that
all its principles are made ultimately dependent upon the society; this brings him
under the ambit of Social Good Theory. He maintains that was must view each
person as an individual sovereign, engaged in deciding with orders how they are to
lead a life together.
Justice under this theory is considered as the virtue of social institutions. The theory
does not deal with justice as a virtue of particular actions or of persons rather justice is
taken in its customary sense. This is not to be confused with an inclusive vision of
good society but it is only a part of such conception. Therefore, Rawls supports that
goods should be distributed in whatever way they create the most beneficial situation
for the least advantaged member of the society and further that ability and skill will
determine the positions and offices to be assigned.
Rawls opines that the two principles would be chosen by any rational actor in a
situation who is placed in such situation and did certain things about himself, because
these two principles are in consonance with common-sense notion.
(a) Perfect procedural justice;
(b) Imperfect procedural justice; and
(c) Pure procedural justice.
This division is based on the existence of two principles: first, method of an
independent criterion of fair outcome; and secondly, a method which makes that
outcome certain. In perfect procedural justice, both the methods are there; in imperfect procedural justice there is no method which can make the outcome certain; whereas in the third category, a criterion for fair methods and procedure is there. The theory allows inequalities provided they result into advantage of every party engaged in it. The contract theory assumes that the rational individuals, being members of society, must choose together, in one joint act, what is to be just and unjust among them. They are the sole unit to decide about their opinions and arguments.

Thus basic postulates of contractual theory may be summarized as:

(a) Principles of justice are consonant with common sense notion.
(b) There are certain rights of individuals which even the social good cannot override.
(c) Rational individuals are the sole units to decide about their opinions and arguments.
(d) Justice as virtue

**MARXIAN THEORY OF JUSTICE**

Although Marx did not develop a specific theory of justice yet he implicitly approaches it. Marx’s discussion asserts that justice of transactions, institutions and structures is to be determined primarily from the mode of production. Each mode of production has its peculiar characteristics; what may be considered just in one mode may not be so in another, Marx rejects the abstract, universal generalization about justice and insists that ideas about justice are to be framed from a close and continual examination of the modes of production. The famous slogan ‘from each according to his ability, to each according to his need’ can be considered as the fountainhead of the Marx Theory of Justice but one thing to be kept in mind is that this maxim is of distributive justice which can only be realized in a true communist society of Marx’s dream. It has no place in communist society which is in its first phase. Moreover, the slogan expresses the vision of a perfect society which will also be a just society.

In Marxist interpretation, essence of justice lies in the field of economics. The doctrine being impregnated with materialistic view, considers the positive law of the state as imposed on its members by authority, capitalist class imposed on its members by authority, capitalist class controlling almost all the means of production. The wishes of proletariat will be reflected only after revolution takes place, according to this interpretation. Marx has in fact no place for justice. For him, it was a mask of
capitalist exploitation and not more than that. This exploitation, in turn, was the outcome of capitalist system of production and its end was not possible without destroying the capitalist mode of production. Proudhan asserts that economic exchange should be based on strict demand of justice. But Marx sees otherwise and observes that exchange arises from necessity of economic relations and not from anything else. As it is not possible for commodities to go to market and strike out their own exchange, this results into economic necessities of exchange.

In capital society, Marx denied the talk of social justice and criticized the socialists like Proudhan, who preached social justice, as misguided and dangerous. Misguided because he failed to realize the irrelevance of the idea in relation to social problems and dangerous because this ‘approach will lead to a no-win policy in class struggle. Marx perceived the danger that dominant notion of justice of capitalist mode in the name of just and fair distribution may become diction, preventing the very question of capitalist exploitation.

He insists that these class interests are irreconcilable. The concept of distributive justice in Capitalist society is irrelevant if not dangerous. He is more concerned with mode of production as it determines the relation of production. Law and political institutions are founded on this super structure. So justice has meaning and relevance only for those who own the means of production. Justice, in any form, in such society, becomes class is possible only when means of production are collectivized and the exploiters are expropriated.

**INDIAN CONCEPT OF JUSTICE**

It is true that the formulation of the doctrine of justice in the currently practiced sense is a result of the western thinking but the western mind could not see justice as a whole rather they particularized it in different streams. This, perhaps, may be because they tried to unravel the mystery only through reason and could not realize that reason alone is not sufficient to know the concept in its full dimension, which is ingrained in the sum total of human life.

Indian concept of Dharma is more capable of defining the term justice in wider way, taking the whole human life as unit. Basically, ‘Nayaya’ or the so-called justice is neither the root not the fruit of Indian thoughts and culture but a consistent enquiry about truth or knowledge. The world has no theological and metaphysical basis in Vedic literature. Yama, who is considered as good of justice is called Dharmaraj and not Nayaya-raj. Thus the word, Dharma, or law of Indian concept, was
inclusive of justice. Dharama in all the three senses-justice, law and duty-is the fundamental basis on which rests a well ordered state.

The highest reality to Indian mind is ‘Brahman’, the unchanging, indefinable and undying reality. When described in its aspects, it becomes Sachidanand, i.e. existence, consciousness and bliss. So, in Indian thought, feeling and will are considered with a total view of reality. “Truth, reason, impartiality, duty, Order, harmony, security, punishment and prosperity are important as well as happiness, freedom and welfare are also important. Justice, in ancient Indian concept, was dharma and so justice in deed as well as in truth, to be so, must confirm to the reality of human life. Kautilaya saw justice as basis of law and an instrument of maintaining social harmony and social order. He asserted that Justice is the discrimination of good from bad, right from wrong. It demands that offenders of deviators from the path of righteousness must be punished. The ruler promotes the common good and punishment has a regulative value for the people for the society. It helps men keep to their respective duties and occupations, makes them work for the production of wealth, enjoyment and devote them to righteousness as well. As a preventive aspect, punishment deters man from committing act of sin and vice.

Justice, in Indian concept, was to be studied from its three elements: Knowledge (Gyana), action or power (Shakti and Karma) and Bliss (Annanda). Justice as knowledge lies in truth (Sat), reason (Viveka) and in impartial performance of One’s own duty (Dharma). As a theory of action, justice becomes power (Shakti), with action (Karma) and positive justice (dandniti) as its two elements. Justice, as per Indian concept, was also considered as bliss, the highest end of law.

Patterns of Contemporary Social Change
It is in this context that the role of class formation can be examined in the analysis of social change in the contemporary India. There is massive data and theoretical material on class structure and the process of social change in India. The rural, corporate and professional sectors of Indian society have been studied using the class model for the analysis of social change. Obviously, the significance of class as a structural concept for understanding the continuity and change in society increases more when it is viewed as a process, a reality in a state of flux and formation rather than as a finished product. The notions modes of production offer advantages for the analysis of processes of social change to the extent that the conceptual packages and operational tools employed in this model view social reality in a state of becoming
rather that being, a feature from which only a few studies using this model do not suffer. It is more complex, and at each stage of social existence one may witness more than a single mode of production. A ‘feudal’ model of production might inhere ‘capitalist’ elements. The ‘ancient’ mode of production such as bondage and collectivism on the principle of kinship or biradari might coexist with capitalist mode of rational allocation of technological resources for production. For similar reasons, some social scientists have even ventured to speak of jati or caste mode of production. Conceptually, therefore, in the analysis of contemporary processes of social change in India what is important is to fully grasp the process of continuity and change in society. The more social scientists are faithful to this task the better models of understanding social transformation they may be able to evolve. Analysis of social transformation they may be able to evolve. Analysis of social change through mode of production can be treated only as the first step towards greater challenges that might be encountered in its operationalisation.

The Indian pursuit for social development and social change is orientated to socialist transformation within the framework of a parliamentary democracy. This itself puts limits on the politics and strategies for social change. These policies consciously inhere elements which are both capitalistic and socialistic in pursuits. In many sectors of social life and economy such as agriculture, the policy of peasant proprietorship on capitalist lines was followed by land reforms such as ceiling on land holdings in pursuit of socialist goals. This has strengthened middle class capitalism as also created dominant caste and kingroups akin to feudalistic social formations. The concepts of feudalism and capitalism are, therefore, in the Indian context of social change more sensitising than definitive or explanatory in character.

**Social Transformation of the Indian Society**

As Max Weber rightly said: “Almost all sciences owe something to dilettantes, often very valuable viewpoints. But dilettantism as a leading principle would be the end of science.” Some specific expressions of the fallacy of dilettantism in India are the communal, sectarian and primordial biases in the interpretations of social change. Not facts but prejudices, not reason but antipathy, not history but biography are the guides for dilettante’s ‘generalisations’ on social change and its directions.
Yet another fallacy in the explanation of social change is that of ideological mystification. Indeed, dilettante also mystifies but he has no ideology. The ideological mystification has its origin in the professions and the traditions of learning in social sciences. Its biases have their roots in epistemic, methodological and operational foundations of social sciences which are socially and politically conditioned. Myriad example of such theorising on the issues of development and social changes can be found in the literature of social science. Ideologies are normative constructs and introduce culturological fallacies in the interpretation of social processes.

Another fallacy in the analysis of social change is that of the ‘structuralist mode of thinking’. This belongs to the sociological tradition of not looking at social reality as ‘processes’ or in their states of ‘becoming’, but as structures of abstract sets of relationships. Under its conceptual premise social change is studied by formulating sets of structural typologies rather than analysis of the social processes going on in society. Emphasis is on abstract structures rather than on social formations. It leads to several erroneous views on the study of social change. First is a questioning attitude towards the study of social change as a worthwhile task for sociologists as such, a position taken by a few sociologists having structuralist theoretical orientation. Their interest is in discovery of the ‘principles’ of social order rather than ‘processes’ of social change, which they think are rooted in ideologies. To them, comparison is tantamount to the study of change. Secondly, the structuralist analysis of change attempts to comprehend change by postulating types of ‘system-states’, such as ‘tradition’ and ‘modernity’ or ‘feudalism’ and ‘capitalism’, etc. The extent to which these system-state are postulated as rational ‘types’ or as ideological constructs without the sense of historicity they serve to obfuscate rather than reveal the processes of social change.

These fallacies about the understanding of social change perform different functions in the Indian society. Dilettantism is the product of an ideology of change that is indifferent to the goals of social justice and equality as postulated in the Constitution. Its champions are the new rich and the new middle classes. The fallacy of ideological mystification results from the partisan character of social sciences and social conditioning of the theory of change. This may range from the ideological differentiation of social scientists to their differentiation based on their social origin. At the international level, the biases in the explanation of social change may also result from either misplaced transplantations of alien models of study or through it in
the projection of an ideology. The fallacy of the ‘structuralist mode of thinking’ however, has as its limitation mode of explanation of social change which is devoid of historicity and neglects the concrete social processes leading to academic formalism and consequently, empty generalisations.

**The Initial Conditions of Social Change**

This elitist or segmentary nature of social change had its positive features. It helped galvanise social energies of the people to fight against foreign rule without maximising internal schisms. The British policy of divide and rule only partially succeeded. The evolution of a constitutional and democratic strategy of social transformation has been possible also due to this social feature. It kept pace of transformation within the tolerance limit of the culture and society.

**Independence and the Strategy of Social Transformation**

It meant also the abolition of the age-old principles of inter-structural autonomy in the Indian society. The principles of inequality based on caste, birth, religion and sex were in normative sense, derecognised if not successfully abolished. The new institutions which sought to replace them implied changes in society which had very revolutionary implications.

The Constitution of India broadly lays down these objectives. All these coincided with an expanding role of communication and media participation. The electoral politics, apart from its liberating psychological effects on the minds of people released new social energy in society.

The domination of the traditional castes and classes continued despite social and economic reforms. The electoral challenges from the lower castes, the extenantry, working classes and the weaker sections did not alter the traditional power structure. More significant changes in the power structure of the rural society took place in the southern states than in the northern ones, because of the differences in the caste demography. In this region too, spectacular patterns of changes emerged later as the investment made during the 1950’s and 1960’s matured in the 1970’s and 1980’s. The poorer sections of peasantry, agricultural workers and Harijans did feel the liberating
impact of the new reforms psychologically, and in some measure culturally, but its overall impact on their status, power and income remained marginal.

It meant city-ward migration of population without its occupational integration in urban industrial work force. It led to urban degradation, exploitation and impoverishment. The opportunities of education, especially in science, technology, medicine and professions continued to be the preserve of the privileged groups. Some opening were, however, found by the agricultural labourers, peasants, scheduled castes and tribes to send their children to the primary and secondary schools and a very small proportion of them went to colleges or institutions of higher education. Few among the could survive upto university level of education. Sociologically, however, even the school and college drop-outs served important function later as catalysers of social, economic and cultural change in their society.

It had assumed a truly structural dimension engulfing the whole of the society. This, with rising population, preponderance of the young in society, greater political participation, exposure to media, such as radio, newspapers, magazines and public meetings led to a new social and political awareness. The welfare policies of reservations for the scheduled castes and tribes, land reforms and developmental planning led to the emergence of a category of people from among the lower strata who were self-conscious of their deprivation, could assume leadership role of their community and mobilise them for organisation and protest. The release of these social forces also coincided with major investment in science and technology, in agriculture, industry and health. The cumulative result of these have shown results during the 1970’s and 1980’s. In many rural regions there had been a ‘green revolution’ and the rise of new peasant middle classes. However, in the realm of culture and the national ideology, the values of secularism, social justice, consensus and participation have increasingly come under strain. These spell out serious consequences for the political culture and its future in India. We have to understand these forces, redefine our strategies and plan for the future.

**Rural Social Transformation**

Today, the changes in rural Indian, which constitutes the dominant sector of our society, are bringing about a process of rapid social restructuration. It has generated new contradictions in the rural society. This could not be handled with facility by the older generation of peasants. This role is increasingly being performed
by the younger generation which is college or school educated or even a drop-out from these institutions. This change is also reflected in the Panchayat elections and the rural electoral politics in general. The peasantry have had a tradition of Bhakti movements or other reform movements in various parts of the country; their subculture has always had a strong ethic of workmanship, industry, frugality and conservative utilitarianism. These values combined with the social processes of upward mobility and social political and economic dominance have given birth to a cultural milieu which is more self-centred and antipathic to values of accommodation and social justice. It has already achieved a degree of shift of authority in favour of the younger people; it reinforces the resilience of the social system for selective absorption of technology, leading to high productivity and growth in agriculture. These changes have contributed to the upward mobility of the middle castes on the one hand, and on the other sharpened the self-awareness of the lower castes and poorer classes. They have resorted to large scale migration to towns, cities and other regions of India in search of employment and better opportunities. It also results in negative perceptions of the work, status and role of women. Its cultural outcome is that of revival of masculinism, increase in dowry system and cultural conservatism.

**Mercantile and Industrial Entrepreneurship**

The massive investment in industry and technology which took place during the first two decades after independence has resulted into significant development in industrial activities and rise of entrepreneurial classes in the urban areas. The size of the urban middle classes has more than doubled. The number of entrepreneurs of small and medium size as also those having broader social background have grown in substantial measure. This has come with the rise in commercial and industrial activities. Compared to the traditional business classes who largely has their social origin in the trading casts or communities, the new merchant class come from a divers and broader social background. It has contributed to the weakening of the segmentary social base of the commercial and industrial capitalism in India, a process similar in the size of the services, professions and administrative or developmental bureaucracy reflects the social dynamism and mobility in the urban industrial sector of society. Slowly the process of mercantile capitalism growing and maturing into industrial
capitalism is taking place in India. Today it is happening on a much larger scale than it did during the British rule of the initial decades after independence.

This process should be analysed together with those of the demographic transition and urbanisation. As the census figures reveal, a proliferation of townships with growth in economic activities and rise in transport and market facilities has taken place. The medium size cities have grown into cities of million population or into urban metropolises. The rise is urban population, mostly of an unplanned nature, has put severe pressure on urban facilities, services, housing, sanitation, health and ecology. It has led to the proliferation of slums, over-urbanisation, increase in crime and other problems. The sheer weight of unplanned growth in urban population puts the civic values and amenities into jeopardy. Speculative and clandestine commercial activities get linked up with exploitation of the urban poor. It breeds cultural anomie, promotes sectarianism, communalism and regionalism.

These negative aspects of urbanisation and industrialisation go together with positive growth in entrepreneurship and industry. An urban middle class has also emerged with the rise of mercantile and industrial capitalism. The social base of the middle classes has thus broadened both in the urban and rural society. The cultural background and ethos of this middle class has not, however, been studied fully but it is obvious that it sets the trend for the contemporary process of modernization. What is its ideology? This question assumes significance for analysis of the existing patterns and future directions of social change in India. The cultural values of the emergent rural middle classes show sharper contradictions between their ideology and ‘national’ goals of social transformation. Is the cultural ethos of the urban middle classes much different in nature? This is an important question, and calls for serious investigation by social scientists.

The historical context of the urban-industrial transformation today is different. The entrepreneurs and capitalist classes that have arisen during the past three decades have a different value system. The traditional business classes had interacted closely with national movement and its political and economic ideology. The new business classes despite being a product of the national economic and social policies have a value structure that is more inwardly directed. It is often governed by short-run business interests rather than long-term national economic and social goals commensurate with national policies. The new capitalist class has grown under the protection of nation’s economic policies and has enjoyed political support, but its
commitment to the cosmopolitan values of national development, social justice, welfare, liberalism and rationality has yet to be established. The evidence often suggests its negative or indifferent commitment to these values. Industrial capitalism has not successfully grown in any society without a strong rational ethical tradition and discipline in personal and public conduct. The ethical base of the emerging rural and urban capitalism has a complex character. While in some areas such as motivation or commitment, discipline of work and its technical efficiency it matches standards of high quality, its functioning in the social context deviates from such norms to a significant degree. It has yet to evolve a rational-ethical worldview in harmony with the values and ideologies of the nation state. This is especially so in regard to values of distributive justice, social responsibility and non-sectarianism.

A process of social restructuration is taking place in the urban and industrial sector of our life. It symbolises social dynamism, mobility and growth and yet, it serves as a harbinger of increasing cultural disvalues and anomie. The increase in the social and ideological chasm between the urban rich and middle classes and the urban poor and the weaker sections indicates it. It is compounded by the high degree of communication exposure, mass media participation and political activism. The professional and intellectual classes who could normally perform integrative role as catalysts to modernization and positive social values have a fractured moral existence. Studies of the professions of medicine, law, science and technology, humanities and social sciences reveal a schismatic character of its ideology. It has been observed that: “In terms of technical expertise, skill and organisation process of professionalization does contribute to modernization. Some professions do so more than others. In the former category are the professions of management, science and technology. The medical, legal and other professions come next. In terms of ideology and social structure the nature of modernization that professions have promoted in India is highly class-oriented, is segmentary in character and contributes to a structure of social, economic and political domination which reinforces social and economic inequalities. It also creates a subculture of modernity with a high degree of dependency. Coming from a narrow class base, the professions in India, with few exceptions, are insensitive to the needs of a majority of the poor people in rural and urban areas.” (Singh, Yogendra: 1986)

**Cultural and Ideological Transformation**
This paradox has its basis probably in the worldview of science itself. The pedagogy of science has its limits. It does not claim to offer no does it have the capacity to offer, explanation of ultimate riddles of human condition rooted in the fundamental values. It offers tentative though successful solutions to issues related to the instrumental values in human life. That is why science reaches its peak of success in the realm of technology without, however, offering equally credible sets of fundamental or categorical values. The values that derive legitimacy from religion or tradition are of a fundamental nature. Science can offer neither confirmation nor disconfirmation of such values. In the social framework, therefore, technological values derived from science tend to coexist with religious practices and traditions. Science does, however, seriously challenge those religious or cultural practices which are based on erroneous instrumental values in life. Societies shed such values increasingly in the process of modernisation, but the basic core of the fundamental values of religion go unaffected, both existentially and epistemologically. Moreover, as religious values remain outside the scope of scientific proof or disproof they are subject to diverse forms of mystification.

The disvalues of religion or its narrow fundamentalist, communal and sectarian manifestations have their origin in the process of mystification. Mystification is rampant in the contemporary historical context of religion. We define mystification as a process by which values which belong to the instrumental domains, such as, political, racial or communication, etc. are lifted from their relevant contexts and transfigurated into categorical values by an interpretive fiat or demogogy. Thus, issues which normally belong to the instrumental or rational realm, and could be sorted out as such are withdrawn from this domain and passed on the domain of unreason. This defines and character of fundamentalist ideology. One has to investigate the social conditions under which this transfiguration takes place to strike at the root of fundamentalism and its problems in modern society. Its origin lies in exploitation of people’s anxieties and frustrations on account of their human condition, existential, social and spiritual. A major part of these anxieties arises from social inequalities and exploitation, and the powerful vested interests who feel threatened by social mobility and freedom.

The segmentary nature of traditional social structure with its inter-structural autonomy had the advantage of encapsulating the impact of changes at the selective levels of social structure. That is how the first stages of modernisation could proceed in India
without major upheavals in society. At the present stage of modernization the very principles of inter-structural autonomy are breaking down. In fact, this is how it should be, in order to establish a democratic, free and just social order. But this process is releasing such social, cultural and emotional forces in society that render the rise in expectations so fast and intense that the process of social re-structurization cannot keep pace with this transition. It thus retards the growth of organic social and cultural consciousness. This is evident from the rise of communalism, casteism, tribalism and fundamentalism in our society. Here, the role of modern communication technology both of the print and electronic media becomes immense.

Not only are the institutional alternatives to be innovated to continue the process of creative cultural evolution but also our cultural identity and heritage needs to be maintained through the autonomy of the media software. This would particularly apply to the radio and television in India, particularly the latter which has a great potential as a catalyser of integrative cultural consciousness.

### Contemporary Social ‘Crisis’ and Its Dimensions

Is there indeed a social crisis in India today? Most people would answer it in the affirmative. In substantive terms, crisis could be segmentary or all-encompassing; it could also be of shorter or longer duration. The segmentary and short-term social crisis could be resolved without major social structural transformation in society. It could also be contained by drawing upon the internal resources of the society. But the all-encompassing crisis of longer duration calls for major structural changes in society. It involves intricate nature of mobilisation both of internal and external resources. A compounding issue in the contemporary social and cultural crisis in India is that here we encounter crises of both segmentry short-term dimensions as well as all-encompassing ones of longer duration.

One may draw some historical lessons from such experiences or even some parallels, but the historicity of the Indian situation calls for caution in theoretic formulation of the issues concerned. For instance, the structural shift from feudalism to capitalism through industrial revolution, the cultural linkages or continuities between rennaissance rationalism and the Calvinistic reformation, the rise of the middle classes with its moulds of rightwing authoritarianism on the hand and the liberal democratic tradition on the other in Europe, are some historical tendencies
which on a surface level might seem to have a parallel with parts of the contemporary social situation in India. Once can also postulate a broader relationship between the historical processes of social transformation in society, its class character and the ascendance of the specific types of ideologies.

Historicity of the India situation, however, makes it imperative for us to search for specific causes for social and cultural crisis much beyond the factors that may have a universal comparative character. It is obvious that contemporary crisis in our society does not conform to a single pattern. It emanates itself through people’s perception of institutional decadence in society, from the increasing disenchantment from the notions of nationalism and national ideology of development. There is growing marginality on this issue among the intellectuals and the elite. Different competing ideologies of development and political culture have emerged. The nature of these ideologies remains, however, fuzzy.

Crisis of Failures

As we mentioned above, positive developments have taken place in India since independence. Yet, forty percent of the population is still below the poverty line, and a substantial part of it suffers from destitution. The poor come largely from the scheduled castes and tribes and are concentrated in villages. Due to the policy of reservation in education, government offices and in political representation, etc., a minor section from among these people has risen up to middle class economic status but remains a victim of social and cultural discrimination. The pace of development has created both a psychological and social hiatus between these caste groups and the upper castes in the rural society.

In large measures (with few exceptions) the conflict between the caste and classes as also the demand for separation or autonomy are related to structural changes in society caused by the social and economic changes since independence. The rise of a new middle class among these groups seems to hold the key to such processes: Is is in turn related to the character of the social development in society in which the state has played an instrumental role through planning. Some change have been in the anticipated direction but a large part of these changes could not have been anticipated.

In the rural areas, the planned effort for development contributed to green revolution. It was led by traditional peasant castes throughout the country who rose to
power both political and economic. In comparison with the upper castes who used to be their landlords before independence they still feel culturally and educationally deprived. Hence their movement for reservation for the socially and educationally backward classes in the central services. They already enjoy reservation in most state government jobs and have reservations in educational institutions in the States. This ascendant rural middle class has today a relationship of competitive rivalry with the upper castes. With the dalits it maintains a relationship of exploitative domination. With the rising *dalit* self-awareness there is rising incidence of violence in many part of the country between these two groups. As the dalits and other poorer sections of the rural society feel more insecure there is rising incidence of migration to cities in search of jobs. This on the one hand, contributes to imbalanced urbanization (increasing ghettoisation of cities, particularly the metropolises) and on the other, increases the rural class-caste conflict. The conflict results from rebound effect of urbanisation of the rural poor. The pattern or urban migration today is such that linkages of the migrants with the rural economy and society are (unlike in Latin America) not broken. Caste and kinship linkages play a very crucial role in migrants’ settlement in urban slums; not only they earn better wages working in cities, particularly with the unorganised sector but they also undergo a great deal of exposure to political education, habituation to urban style consumerism and leisure and enhanced aspiration to move upward in life. It is not uncommon in many cases where these migrant groups accumulate their savings to raise assets in their rural homeland by building houses or purchasing land. The sale of land (particularly in Northern India) is done by upper caste pauperised families who have not been able to adjust with new economic and social changes or it is resorted to by such urban migrants who want to sever their links with the village.

What we wish to highlight through this analysis is the emerging new context of relationships among castes and classes in rural India. Traditional feudal style patronage and exploitation relationships of the past is increasingly being replaced by relationships of conflict and competition. The crisis is that villages have not been able to evolve a new institutional framework through which the changing relationships could be integrated. The villages in India have ceased to be social communities that they once were. They have been transformed into political community, but without an institutional set-up whose legitimacy all groups could recognise.
There is widespread and deeper sense of delegitimation about the state-sponsored institutions. It reinforces the feeling of alienation of people with the state. It portends a deeper crisis which is structurally induced but is often used by some sections as ideologies of separatism, terrorism and violence. It contributes to disenchantment among a section of society not only from the institutional structures but also from the ideology of nation-state and the model of development of society. Why is it so? Which processes of change have brought is about?

The changing perception of the state on the one hand and on the other new structural and ideological changes in society might seem to have induced these contradictions. Both the Constitution and the planning ideology of the state have rested on the principles of social justice, egalitarianism or socialistic pattern of society. Universalisation of primary level education and removal of illiteracy were given a place of prominence in the ‘directive principles of state policy’ in the Constitution. Efforts in these directions of change have at the most been half hearted and halting. Even today about half of the population remains illiterate; among the womenfolk in some states illiteracy is upto ninety percent. Only in Kerala and a few districts in some states and union territories has the total literacy been achieved. It is discovered that the benefits of the egalitarian policies of the state reach the target groups more effectively and bring more potent results if such groups have education. The education of the girl even upto the seventh standard renders acceptance of the small family norm most effective as is evident in Kerala. It improves health and hygiene, contributes to decline in school dropout rate of children (endemic among the poor) and the more effective uses of the benefits of state resources. It also contributed to enhancement of the entrepreneurial ability of the family as a whole.

But removal of illiteracy has been one major area where we witness monumental failure. Non-accomplishment in tackling the problem of illiteracy and universalisation of education bear organic relationship with failures in the domains of population and health policies. Control of population holds key to most problems that have reached issues of distributive justice, unemployment, pressure on infrastructures and other related development goals. The figures of 1991 census do not indicate optimism on this count. The rate of population growth is lower is states where standards of education and organised voluntary efforts in implementing state programmes are higher, but this rate (of population growth) is much higher is the less state like Uttar Pradesh, Madhya Pradesh, Rajasthan and Bihar which together
account for the bulk of the country’s population. Interestingly, these are also the states which rate poorly on most indicators of development having high degree of poverty, lower productivity in agriculture, high rate of illiteracy, poor indigenous mobilisation of voluntary bodies for development and endemic problems of social unrest and violence. This pattern of what Gunnar Myrdal called ‘cumulative causation’ in the process of under development has to be re-orientated through planned investment in crucial sectors, such as the economy, education and infrastructures.

The higher rate of population growth with numerous implications to the gathering crisis in our society and economy bears closer relationship with inter class-caste tensions. With the rise of middle (caste) peasantry to power in villages, the conflict between them and the dalits on the one hand and between the dalits and the upper caste-class groups on the other has intensified, generally in the self same states such a Bihar, U.P. and parts of Madhya Pradesh etc. where the incidence of poverty and population growth is higher. Similar process could also be observed in other parts of India having similar structural conditions. The push from rural areas due to these structural conditions further generates the urban crisis.

The incidence of farmers accumulating capital and investing their surpluses into business or industry are rare in our country. It has not happened in Punjab where country’s first green revolution took place. It has very partially happened in Maharashtra and Gujarat. Some evidence of such transition (from agriculture to business industry) could be found in parts of Andhra Pradesh where rich farmers, particularly the Kammas and Reddys of the Krishna-Godawari valleys due many to cash crop cultivation have slowly move out towards industrial production graduating through commercial and real estate enterprises. Such mobility is, however, rare. Avenues of employment outside agriculture specially in agro-industries, services, industrial production and professions, etc. are imperative for a healthy development of the agrarian economy and society, even though green revolution might offer us a succour for awhile. Already in our villages, especially among the youth there is total disenchantment from the rural life. Its community life is broken due to over politicisation and caste-class tensions, and its economy is burdened by over-population and structural precariousness. To overcome this problem an integrated plan of rural-urban and agro-industrial development would be required. In its absence, even our green revolution (its shine is already withering due to capital and technology
lag) may offer us a momentary relief from the impending future social structural crisis.

The cleavages between the class-caste groups is rural society have their parallels in the urban-industrial sector as well. We have already drawn attention to urban ward migration from villages which has serious consequences. The estimates of the National Commission on Urbanization are disquieting indeed. By the second quarter of the twenty-first century India’s population is likely to cross one billion mark (out-stripping that of China) and its pressure on the urban centres, (metropolitan one particularly) would be unbearable. Our rural crisis is most likely to be compounded with a large urban crisis already in the making.

**Cultural Crisis in the Process of Change**

We have so far discussed some dimensions of crisis arising out of the process of social structural mobility and change. The cultural consequences of these changes too are not system-integrative. The new rural middle classes and urban professionals and entrepreneurial groups have shown capacity for initiative and innovation. It has, however, been accompanied by a sharp decline in the values of social responsibility, social welfarism and personal asceticism (values which inspired our freedom movement led by Gandhiji). Unlike in Europe the new entrepreneurial and professional classes are not inspired by values of puritan ethic or by consumer-nationalism as in Japan.

The uses of connections, of family and kinship, of regions and language and of political leaders and bureaucracy have been central to the Indian entrepreneurs’ success in business and industry. Structurally it has often foreclosed the entry of new entrepreneurs to business but it has also maintained a continuity of tradition in the process of economic modernisation of society. Its most vitiating consequence, however, has been the misuse of the “political” connections which under a controlled economy regime did build up a large number of business families but at the same time delegitimised ethical norms. The state being the sponsor of most such opportunities, helped in creation of cultural ethos which is, on the one hand alienative in respect of state public relationship, and on the other breeds a strong dependency syndrome. This process of cultural dis-orientation has bred an unprincipled go-getter utilitarianism which today pervades through business, profession, politics and education and
governs the value system of the new rural and urban middle classes. Corruption in public life and cynicism in ideology are its logical result.

It has deeply affected the work ethic in our society. The state which was rightly brought into the role of establishing welfare through its active economic and social interventions has been mis-perceived as an institution that rewards manipulators, is permissive and offers enormous scope for quick upward mobility through corrupt appropriation of public resources and wealth. It has reinforced “jobism” and not a work ethic. The demand for government jobs as distinct from ‘opportunity to work’ is a result of this process. Reservation of jobs for the socially and economically deprived sections of our society has been a right policy intended to repair the balance of forces that handicapped them since centuries. But is has now been, or is now most likely to be converted into a hereditary privilege.

Such developments have brought into being an ideological chaos in India without the end of ideology. Ideologies still survive and are competing for domination. Mention may be made of two crucial ideologies which also reflect the crisis that India today. These are ideologies of nationalism and communalism. Both have a long historical past in our freedom movement. The ideology of nationalism got flawed by the trauma of partition but it survived. But communalism poses a serious threat to this ideology. Communalism in its narrow sense of conflict and intolerance among religious groups, particularly the Hindu and the Muslims is often orchestrated by social forces and groups (new rural-urban middle classes) whose rise in society we have examined. Communal violence erupts recurrently as apotheosis of ethically rootless economism here or a political opportunism there. It is anchored not in commitment to religious values, which have maintained a tradition of pluralism and tolerance in India through ages, a spirit which has not yet fully declined. Communalism thrives on the exploitation of deprivation anxiety. As such, it could possibly be contained through judicious administration of policies of egalitarianism and social welfare is favour of the deprived groups among the religious minorities.

Communalism poses threat to India in yet a vital sense where it counterposes itself against nationalism. Being a plural society with its divisions based on caste, religion, language, ethnicity and region, etc., bonds of unity in India have always been provided by diffuse and flexible sharing of certain common values, occupational skills, technologies, artifacts and market relationships despite differences of religion, language or region. This we could characterise as ‘civilizational’ unity of India as
different from a nation state. That is why through millenia India remained a land where people of all faiths, of cultural and linguistic diversities could live together in harmony. The rules of India coming from different religious background respected and fostered this tradition. It provided for enormous regional autonomy with varying degrees of central control. Some historical and anthropological evidence suggests that degree of centralisation increased with the coming of the Mughal rule and went on increasing during the British regime. The British colonial regime and its institutional innovations has an effect that spurred the ideology of a nation-state deriving substantial inspiration from the west. Despite this, the Constitution of India is a unique document, tilting more towards centralisation though with enough flexibility for decentralisation of power.

The normative structure of nationalism that the Constitution projects is of a state that is secular, socialist, democratic and protective of all basic human rights irrespective of birth, religion and gender. The character of social economic development since independence has been such that a consensus on its operational strategies and premises has today declined. The processes of social mobility have sharpened the conflicts but the cleavages are not yet crystallised on class lines. These cut across divisions on the basis of caste, class and religion.

Under this milieu the growth of middle classes in both the Hindu and the Muslims communities has created an articulate support base for propagation of communal ideology. In recent time this development has given fillip to political parties and caucuses openly legitimising communalism. The erosion in the influence of the Congress party, the rising wave of Islamic fundamentalism in the muslim countries, interpreted by Hindu and Muslim communalists out the context, sharpens communal prejudices. This fact of communalism has, structurally speaking, more enduring and fearsome implications. It is not based on short run passions which erupt into communal violence orchestrated by vested interests it has deeper and wider implications. It poses a threat to the notion of civilisation which Indian tradition fostered since millenia-one of pluralism and heteronomy, that is tolerance for all religious faiths and styles of living. Partly, religious fundamentalism manifests oriental disillusionment with the western model of modernisation.

The religious orientation takes a communal form when it is politicised and starts setting down rules for nationalism and economic and social development. Without offering clarity on how such ideology would cope up with issues of a modern
secular-democratic state, its response in only hazy. Communalism of this variety could be most threatening for India which is still in the process of making itself into a nation-state. A nation is not a state of being like a finished architecture, but a process of becoming. Religious fundamentalism in its communal manifestation can be disruptive for this process of becoming a secular nation-state.

Social Crisis and Paths of Development

One may be tempted to attribute much of this crisis to our chosen path of development since independence. To us this appears to be flawed if not fallacious. Development is not a linear but a retroactive process, and considering our options and limitations of social structure and its historicity, the planning model with state initiative has been the best choice. Sustainability is an issue which emerged historically; it is so in the west, and we should look at it with a sense of history. Some lessons from the history of planning are already evident, such as relevance of decentralisation, of involvement of the people and the voluntary groups in the development process, crucial role of education in development (specially education of women and removal of illiteracy), the need for integrated rural-urban planning, the improvement of infrastructures and eco-friendly industrialisation. The need to create job opportunities in villages and small towns and the urgency to improve their quality of life is now widely recognised too. But most these innovations are organic to the planning process as envisaged. The new challenge to its basic direction and philosophy, however, have come from recent policy changes towards market-friendly approach.

In a survey *The Economist* (May 4th 1991) has characterised the Indian state controlled economy and its goal of self-sufficiency as the main hurdle to its growth. On most economic indicators such as real agricultural output, average annual increase in the volume of industrial output, average annual reduction in poverty and under-five(years) mortality rate, and even on goals of self reliance assessed in terms of export-import performance, the Indian economy has lagged behind almost all other Asian countries. Because of the statist policies according to this survey the fuller blossoming of the Indian economic potential has not been realised. India is like a tiger in a cage. In an earlier survey (The Economist, November 16th 1991) the process of economic growth at a very rapid rate in the economies of the East and South-East Asian countries has been attributed to their marker-friendly open economies.
Summing up the fundamental lessons of these economies the survey states: “the priority of state action should be economic development, defined not by the government’s ability to hand out welfare payments to the less privileged, but rather by growth in output, productivity and above all, international competitiveness; rapid growth is impossible without a commitment to markets and private property. Markets do not have to be completely free and relatively equal distribution of incomes and relatively low taxes motivate workers” (*The Economist*, November 16th 1991).

This analytical reasoning coinciding with changes in the global situation has created a massive, often unthinking support for an open, capitalist, market-friendly economic policy coinciding with a democratic polity throughout the world. India has recently undertaken a cautious shift in many of its economic policies in this direction. It has correctly been realised that the extension of state in the sphere of economic activities as trade and industry beyond a point breeds inefficiency and corruption. State sector of production becomes non-competitive and a protected capitalism thrives at the cost of the people. Therefore, economic liberalisation and its global market linkages are necessary not only for more efficiency but also for technological advancement for higher volume and quality of production. Lagging behind such support even our green revolution is now faced with stagnation. But there are limits to this policy.

The developing countries like India must take into account their own historicity on such issues in accordance with the limits that our social structure, values and political order impose upon such policies. Even in the developed Europe there is a rethinking among some intellectuals. Pierre Bourdieu, a leading European sociologist, has this to say about the prevailing dominance of market economic rationality and individualism in France: “Blinkered as they are by narrow, short-sighted IMF-inspired economic theory—which is wreaking havoc in North-South relations and will continue to do so–these half baked economists naturally forget to take into account the actual short-term, and above all long-term, cost of the financial and moral misery that is the only certain outcome of economically legitimised realpolitik: delinquency, criminality, alcoholism, road accidents and so on” (interview in *Le Monde*, translated and reproduced in *Guardian Weekly*, February 2, 1992).

Bourdieu addresses himself to the European context. In our own context the policy of economic liberalisation would have to be evolved to suit our social and political conditions. Democracy itself brings constraints to reform processes even
when desirable, and its foreplay would have to be orchestrated with social responsibility and human conscience. This would mean emphasis on equality and distributive justice for the weaker sections of society. The protective wings of social welfarism with suitable incentives to individual initiative and capacity for production would have to be maintained in the economic reform policy of the coming several years in India. It does not involve obsolescence of Gandhi-Nehru model of social and economic development but only its innovative exegesis in the changing social and economic environment of the world.

**Law and Social Change**

A sociology of law would have to deal with all the above levels of interaction, between law and society. In our analysis, however, we shall focus on the relationship between law and social change and modernization in the context of the Indian Society. Using a sociological perspective, we shall treat law in its institutional and historical contexts and analyze its dialectics with society in its broader social structural setting.

**The Dialectic of Law and Society**

The dialectic of law and society in India has been determined by historical experiences during the passage from colonialism to nationalism. In the course of this passage, the paradigms both of the social and legal systems have evolved. This process bears an acute imprint of historicity; yet, in the light of our observations of similar interactions western countries, some convergence of experiences at a universalistic level cannot be denied. The processes of law and social change in India, while in large measure unique, do share some commonalities with industrially advanced nations particularly the crisis and contradiction of the paradigms of law and society.

The primary components of legal systems and the paradigms of modernization of the industrially advanced countries are based on the ideology of rational utilitarianism. Their *Gesellschaft* mode of society implies movement from the status of contract; from community to individual, from participation to administration, from guild to state, and from empathy to selectivity. It was the product of the *laissez-faire* ethos of a market-oriented, non-personalized legal system. Bentham, Weber and Schumpeter, the mentors of this “rational legal order” created bridges between the
legal system and the social structure. The crisis of the late 1960’s early 1970’s in the industrial societies gave impetus to the awakening of interest in the Frankfurt School of sociology, of neo-Marxism and phenomenological existentialism. These new interests tended to shift the pendulum, in ideological if not structural terms, towards the search for alternative models of both modernization and the legal system. This development is largely a product of the structural contradictions of the post-industrial society; it surpasses the ideological confines of the capitalist and socialist states. Kamenko and they have written:

In the communist world, the tension is between revolutionary transformation and the desire for social stability, between mass campaigns and the provision of social and psychological security for individuals, social spheres and activities, between utopian spontaneity and technical-administrative realism. In the west, the crisis is a crisis in the individualistic view of society, in a legal model attuned to the need of the individual house or property holder, the entrepreneur, the settled citizen living on terms of equality with those around him, secure and confident as an individual in his bearing vis-à-vis the state and the rest of society. Against this, the new demands elevate the interests of “requirements” of the comparatively poor or underprivileged as contrasted with those who are “at home” with law: they pit the interest of “society” or of “humanity” against “excessive” respect for individual rights and powers, especially proprietarial rights and powers; they tend to see men as social products and not as free moral agents, as people to be cured or helped rather than judged. The new demands are suspicious of lawyers as a profession in the common law world because they see them as a privileged caste with guild traditions and powers; in Continental Europe they see them as characterless servants of state. (Eugene Kamenka and Alice Erh-Soon Tay, 1978:50-1)

This new perception of the legal system and its paradigm obviously inheres the contradictions of an industrial society: its increasing unidimensionality, its failure in the liberation of human personality, and its de-humanizing abstractness resulting in the alienation of man. This process represents a legal order which, in the course of the structural and normative changes that it brought about, also introduced seeds of disenchantment and mystification. This challenge necessarily brings sociological jurisprudence into full play as the social dialectic tends to deeply influence the legal system. It spurs the shift from
Private law, concerned with the security of the individual, to public law, concerned with welfare and social utility. Even in the heart of the private law, in the law of tort or torts, and in contract, they have discerned similar developments. In torts there is the movement from the legal-individualistic principle of fault liability to the social, actuarial cost-benefit analysis that leads to the principle of loss distribution; in contract, the concept of a bargain struck between ideally equal and freely contracting parties is increasingly infringed upon by the court’s recognition of social and economic inequalities and of the one-sided restriction of the power to bargain by the existence of standard contract.” (Kamendo and Tay, 1978:48-9).

In addition to the above, new areas of law in the fields of industry, environment, consumer protection and social services have come into being. These fields are beyond the nineteenth century conception of the common law and its judicial processes. The deeper implications of the changes in the industrial society are responsible for these legal innovations as the response to the demand for basic alterations of the paradigm of industrial society. Thus, the crisis of the legal system is also simultaneously a crisis of the industrial society. The transition from an industrial to a post-industrial stage of development ushers in social demands on the other. These structural changes especially in the society’s modes of production and patterns of leisure time, necessitate redefinition of the legal order of society at the inter-personal, inter-group, and inter-societal or international levels. New meanings of “responsibility,” “freedom,” civic culture,” and rationality” emerge. The structural changes which occur at the post-industrial stage of development tend to contribute to not only formal “differentiation” in roles and relationships, but also their “de-differentiation”, “personalization,” and possible revitalization of the principle of “status” in “contract”. These changes may be made possible by the giant leaps in both technology and culture; they are already evident in the current electronic and computer revolutions.

The dialectic of the legal system in India, with its entrenched “multiplex of social structures” on the one hand, and its multiplicity of indigenous, colonial, and developmental traditions on the other, is tremendously complex. The significant element in the interaction between law and society in India rests on the heavy burden of these multiple traditions and the social concerns and orientations of each. The convergence between the dialectic of legal system in the industrialized nations and the legal system in India points to the development phase of legal system in India
following independence. The contradictions inherent in the administration of justice, exemplified by the conflict between abstract individual property rights, the pursuit of profit, and the protection of the weaker and more vulnerable groups, represents a crisis in the paradigms of both society in general and the legal system in particular in India. The situation in the West is similar, but probably less complex.

**Law and Society in India.**

The relationship between law and society in India could generally be studied in three phases: the traditional or indigenous, the colonial, and the developmental. The indigenous legal system in India did not have a homogeneous character. It reflected the basic features of the Indian social organisation; it was based on the principle of “inter-structural autonomy” (Singh Y: 1973). The three basic components of the social system in India, the policy, the system of stratification, and the cultural norms, were relatively autonomous and unique. Under this system, the king or his administrative and judicial authorities constituted the top of the hierarchy; they were centers of redressal or appeal and they intervened in few cases. The custom prohibited the king from intervening in disputes related to local customs, norms and practices of castes, subcastes, or tribes. These groups had their own judicial processes through *panchayats*, community leadership of elders, or the intervention of the chief of the dominant local caste. The normative structures of the legal system were not totally integrated in the *Dharmashastras*, the often quoted sources of the Hindu legal traditions. The system represented at best the principle of interpretation at times of dispute. Depending upon the exigency of circumstances, local priests and community leaders always has the right to new interpretation of the legal codes. And yet, there was a system in this judicial administration. The system was based upon the hierarchical order of authorities from the local caste, community and tribal *panchayat*, to the council of the dominant or ruling clans, to the court of the king. This linkage of judicial administration was also in consonance with the economic and cultural organization of the traditional society. The three territorial units—the village, the small town and the capital cities—were the focal points of social and cultural mobility on the one hand, and of nodes of commerce, administration, and political intercourse on the other.

In the studies of many scholars who have commented upon the indigenous legal system in India (see Cohn, B.S.: 1961 and 1965, Gallanter, M.: 1972, 1968, and
Kane, P.N: 1950), one finds the focus on the diversity, and not the integrative principle, of the system. It may well be, as Bernard S. Cohn suggests, that in the eighteenth century, Indian social relations operated in a “multiplex” manner, “a relationship in which a person tends to occupy the same position relative to the same set of the other persons in all networks of purposive ties-economics, political, procreative, religious, and educational.” (Cohn: 1961:617). If however, one considers the unit of interaction as caste or subcaste, the fluctuations of fortunes within each the matrix of multiplex relationships. This is the phenomenon which still remains valid in India. The important feature in the indigenous legal system was, therefore, its sub-systemic autonomy. Despite the ups and downs in the polity in traditional India, the highly enduring and innovative sub-systemic autonomy persisted.

The main attributes of this legal system and its “judicial processes” were: large-scale participation, paternalism, flexibility, and innovative emphasis on compromise and hierarchy. Because community living in the Biradari or kinship groups was the essential social matrix within which justice was sought, the resultant legal process was oriented more to “adjustment” than “judgement”. This judicial process was as informal as it was inexpensive. It acted in harmony with the cultural ethos of hierarchy, continuity, and community ties. The role of dominant castes, families and kinship groups did occasionally vitiate the process of justice; this, however, occurred more frequently in the settlement of property and heredity disputes. Greater catholicity in the commitment to norms observed in the larger towns where the mahajana supervised the justice of contractual obligations, trade and commerce.

The British who introduced the colonial legal system could never have a fuller appreciation of the traditional India legal system and its judicial process. It could not be understood in dissonance with the traditional Indian polity, economy and social structure. Their colonial interests were basically at overemphasized the elements of discontinuity and normative multiplicity because these elements worked well with the objectives of colonial appropriation and profit. The interests of both the British government and the East India Company coincided in these objectives. The need for “order”, nevertheless led to the imposition of a new legal system. The only legal system which the British administrators could consider viable was an improvisation of the Benthamite utilitarian tradition. There was, for a while, a debate between the
modes presented by Cornwallis and Munro. Cornwallis opted for an embodiment of the commands of the government in formal legislative acts. He advocated administration by independent judicial administration in order to both secure private property and control the abuse of executive power. Munro, on the other hand, based his model on “paternalistic ideology” and assumed the role of personal authority to reign supreme in the Indian culture. Hence, his emphasis was on the evolution of judicial system anchored in village panchayats, local customary tribunals of elders, and native judges. There was to be no complete separation between the judicial and executive functions. Though this debate continued for some time, and though Munro experimented with some elements of his system in Madera, the Cornwallis model of legal system and judicial administration patterned after the British constitution and common law eventually triumphed (see Stokes, E.: 1959).

The judicial administration which Cornwallis imparted to India had come to stay. Its main features include: the establishment of a British-controlled court in every district to administer law and order, the administration of personal law in accordance with the customs of each religious groups, and the settlement of revenue matters according to the principles of the pre-existing Muslim law of usage. In addition, judicial procedure was to be modeled after the British practice, judges of the district court were to be either British or British-covenanted civil servants (Indians could be recruited at lower levels), and the district courts were to be assisted in personal matters by Hindu and Muslim priests. A legal profession was to be established; land revenue was to be permanently fixed; individuals or corporate groups were to be recognized as owners of land for revenue payment; revenue and judicial functions of the administration were to be separated; and ownership were to be settle in district, civil, and appeals courts (see Cohn, S.: 1961:614).

Codification accompanied this structure of legal administration. Mecauley, president of the first Law Commission set up in 1834, produced the draft of the Indian Penal Code which became law in 1860. Between 1953 and 1870, the Law Commission contributed to the civil and criminal Codes of Procedure which were enacted in 1859 and 1861, respectively. At about the same time, India was given a uniform judicial structure as a same time, India was given a uniform judicial structure as a result of the unification of the Supreme and Sadar courts into High Courts. The Law Commission’s efforts also led to the enactment of the Succession Act (1856), the
Limitations Act (1871), the Evidence Act (1882) and the Contract Act (1882). Under the direction of the government of India, there came a Specific Relief Act (1877), the Negotiable Instruments Act (1881), the Trust Act (1882), the Transfer of Property Act (1882), and the Easement Act (1882) (see Singh, Y.: 1973:98).

This spurt of legislation impelled the emergence of a radically different legal order and impinged directly and deeply upon the normative and cultural system of the Indian society. It was not only a measure of formalization, but also a mode of modernization through westernization.

The significance of the imposition of the colonial legal system in India was marked. It created a new class of professional legal experts, the lawyers, judges, court administrators, and bureaucrats. These are the basic components of a civic society. The introduction of the colonial legal system led to the arousal of aspirations and demands for positive by the deprived classes and communities. In course of time, it led to the growth of educated classes and to the creation of the substructure of a new middle class of capitalists, entrepreneurs, and civil servants. These and other sorts of professionals led the nation’s movement towards independence. It is this movement which shaped the post-independence India Constitution and provided the legal boundaries for social change which exist today. The colonial process of modernization brought forth the sub-structural and sub-cultural character of social change which has remained an important feature of social Indian administration.

The inter-structural autonomy mentioned above enables the new middle classes in the legal professions to emerge from the specific castes, communities and groups which already enjoyed a privileged position in the society. This made it possible to introduce social and cultural innovations without coming into conflict with the core of the structural and cultural foundations of the society-its caste structure and cultural ethos. The new forces of change thus could be absorbed and filtered through the middle classes to the rest of the society in gradual stages. The thirty years of the nationalist movement in India served to forget these forces and aspirations for change into a national ideology. The contradictions now faced by the independent Indian state with regard to its legal framework for social change are anchored in the levels of incongruities between its social and cultural ideology and the structure of its legal profession. A social ideology which is based on secular, civic and egalitarian features naturally comes into conflict with a legal profession which is based on individual
rights and class structure and is, at least in the abstract sense, unconcerned with collective responsibility.

Thus, the colonial legal system introduced now challenges and possibilities for social change in India. It did, however, also create legal institutions which were, in terms of pedagogy and procedure, alien to the general population’s experience and reach. The new system did away with the traditional participant mode of justice which had operated via the court of the panchayats, chiefs, and kings. It introduced systematic codification on laws which were rooted in the alien cultural and philosophical soil. These new codes replaced the traditional customs and conventions of the dharmashastras, koran, and kaidth. It also rendered justice remote and expensive and clouded its functioning in a atmosphere of mystification and suspicion. The result was the emergence of two cultures in the legal profession as it is organized in India today; these cultures are referred to by Marc Gallanter and B.S. Cohn as the “lawyer’s law” and the “local law”. The cultural hiatus that this dualism created in the realm of law and the legal profession is not specific to India alone, but is a general problems which occurs in the modernization of a traditional society which is characterized by a high level of historical and cultural depth. The crisis in cultural terms is a crisis of reconciliation between traditionalization and modernization.

Law and Society After Independence

The national movement in India which culminated the independence of the country failed to create an indigenous legal system. Mahatma Gandhi did voice his suspicion of the British sponsored courts and the lawyers in his many exhortations of the civil disobedience movements, but when India gained her freedom and the framing of the Constitution began, the Gandhian emphasis on an indigenous legal system and judicial administration was not accepted by most members of the Constituent Assembly. The Constitution as it merged contained elements of the Gandhian ideology, including village panchayats and democratic decentralization, in the Directive Principles of the new state policy. As late as the establishment of the Ashok Mehta Committee on panchayati raj in the late 1970’s, the Gandhian ideologues who advocated the complete decentralization and autonomy of the village panchayat system did not find full support. While evaluating the need for indigenization of the legal system, the Law Commission of 1958 did not see any major contradictions between the present legal system and the “genius” of the people
(Government of India: Ministry of Law: 1958). It noted that, “It is true that in the opinion of the Law Commission, the Indian legal system had, in the course of its functioning, undergone modifications adequate to render the imprint of the alien system more suitable to modern Indian conditions. Moreover, they agree that, had the indigenous system been allowed to evolve independent of colonial intervention, it would have grown along a path similar to that of the present legal system. Such ideas lend perspective to the dilemma of the Indian middle class with regard to the challenges of modern nation building on the one hand and the rhetoric of indigenization on the other. Studies have shown that the dualism of the two traditions has been functionally well adapted in the Indian legal system (see Khare, R.S.: 1972 and Gallanter, M: 1972).

One important innovation since independence is the introduction of the panchayat raj system in villages. Together with the community development activities, the panchayat raj also incorporates the system of nyaya panchayats for lowerlevel judicial administration. Two national committees investigated the administrative and functional nature of these systems and decided to accord these panchayats the judicial power relevant to the day-to-day administration of justice. This decision was based primarily on the ideology of the village community, the role of participation, and the relatively informal judicial procedures which occurred without the intervention of lawyers. The introduction of these new system rendered some levels of justice more freely available to the rural folk at a lower cost. They become more free from the legal substructure of the abstract rules and impersonal procedures. Subsequent evaluative studies carried out by state committees and research teams have, however, found that these nyaya panchayats are largely non-functioning and are, for the most part, ridden with factious interests. Due to the system of elections which is used to select panchás or court members, the nyaya panchayats have become highly politicised. The states of Maharashtra and Rajasthan, whose committees reviewed the functioning of these village courts, have received recommendations for disbanding them. This coincides with the Law Commission’s insistence that judicial and electoral processes be kept separate. Findings such as these again processes be kept separate. Findings such as these again enmesh the state and the rural politics together and expose the structural contradictions and the alienation of the masses. As Upendra Baxi rightly suggests, this institution of otherwise great significance has not made an impact. He correctly attributed this to the ambiguity of
ideology and the marginality of the institutional linkages which act as an additional constraint in their functioning (see Baxi, U.: 1982:323-7).

**Law and Social Change in India**

The ideology of social change which has been adopted by India after independence is enshrined in the Constitution. It incorporates the elements of both the liberal democratic values and the Gandhian values of social change. This can be directive principles of the state policy. The former is rational, liberal and individualistic in ethos; the latter asserts the principles of communal welfare, decentralisation of power, amelioration of the condition of the weak, and commitment to the abolition of the “unhealthy” social practices recognised by the Gandhian tradition (i.e. liquor consumption, etc.). Whereas the Constitution recognised the individual as the unit for interaction in matters concerning legal rights, voting, state administration, it also recognised the legitimacy of specific castes and communities for special treatment. Examples of such groups include Scheduled Castes, Scheduled Tribes, religious minorities, and backward classes. The instrument of social change in this model is social legislation. Social justice, equality, secularism, and democracy are its fundamental normative goals.

The Constitution thus brings out two apparently conflicting principles: it presents universalism and particularism in the same ideological package of social change. Is this irrational? Is this a product of ad hocism or a quirk of history or the colonial legacy? Or, is this an eclectic effort to synthesize modern with traditional values in the ideology of change? Sociologically, the answer to these questions lies in the fundamental commitment that the nation has made through the Constitution to introduce changes in a peaceful manner (the Gandhian or later the Congress ideology) so that India could become a modern secular, democratic and socialist state. Egalitarianism and freedom are difficult values to reconcile in the statecraft of a nascent democracy following its liberation from the colonial exploitation. Conditions arise which call for judicious exploitation. Conditions arise which call for judicious and selective use of legislation for bringing about social changes commensurate with the objectives of the Constitution.

With the aid of legislative reforms, the strategy of change implicit in this model relies on the application of the pressure of social change through structural changes in the social, economic, and cultural systems. For this purpose, the
Constitution enjoins upon the executive, legislative, and judiciary special responsibilities. Justice Krishna Iyre has very aptly analyzed this relationship:

Now, this people orientation must be manifest in the operation of the three instrumentalities which I called the Constitutional troika. The executive, when it operates, must function as if it has raised itself to the consciousness of the Constitution. In that event there would be no unimplemented laws which enacted long ago. Likewise our legislature has to pass many laws. Mahatma Gandhi, in publication “The Harijan” has said, “I visualise Independent India to be again engaged only in making legislation after legislation to save the poor”. There is so much to be done to save the poor. And all this must be by legislation because the executive has the authority only when the legislature passes law. So, legislation must be made. Continuous stream of legislation, all welfare-oriented legislation. And then we come to the interpretation of these laws by the judiciary. No country can have a civilisation safe if it does not have a competent and independent judiciary. I emphasise competent judiciary as an important ingredient. An incompetent judiciary, a fraudulent judiciary, an absolutist judiciary, a judiciary given to judicial excesses, can be as dangerous as an executive given to excess. An absolutist executive, and absolutist judiciary and an absolutist parliament cannot be persona grata in a democracy. What we want is a judiciary which is accountable, a judiciary which is responsible, and with these parameters, a judiciary which is absolutely free, fearless and independent. If you seek to pressurise the judiciary, then the poor will suffer. Because who has the ability to pressurise? it is the rich man who has got the ability to pressurise. (Krishna Iyre, V.K. 1982:9-13).

The above interpretation of the intent of the Constitution is the most empathic. This Marxist interpretation, in comparison, treats the Constitution as a bourgeois document intended to perpetuate the capitalist state. The liberal interpretation claims that the Constitution is elitist and charges it with neglect of the egalitarian pursuits that pervade its corpus, from the Preamble through the Directive Principles. The question of interpretation apart, there is a logical principle and strategy behind the Constitution. One jurist has termed it “civic revolution.” This differs from socialist revolution which is based on the open legitimacy of class struggle and its attendant socio-economic and political implications. India has deliberately chosen a path of development and social change which promotes social mobility, opportunity, and well-being of the deprived sections of society in a nation which is no doubt dominated
by the rich and the elite. It does, however, employ a method of legal consensus which is based on a reconciliation model. In such a model, the responsibility of the dominant classes becomes acute because reconciliation implies, almost in a Gandhian style, the voluntary accommodation of the demands of the poor, the weak and the deprived, and the underprivileged. Its logical compulsion in more pragmatic than ethical; the privileged should know that such accommodation is also in their self-interest. In Marxist terminology, it is the tactics of the intelligent national bourgeoisie who, forewarned of revolutionary potential, attempts to contain it. One the contrary, the specificities of the Indian social structure and its historicity would show imperfection both logical and historical in the nature of alternative paths of development and modernization.

Indeed, the contradictions of the relationship between law and social change in India rest not so much in the inadequacy of the models as in the processes of implementation and execution of these models as such. During the three and a half decades of functioning as a democratic nation with planned development, India has succeeded on many frontiers of social change. The landed aristocracy stands abolished as a class; the power structure in the villages has passed almost completely from the traditional rural elites to a new rural middle class. A new class structure has emerged in the village and a peasant middle class, which is aggressively entrepreneurial, has quickly adopted scientific scientific methods and techniques of agriculture and is the leader of the green revolution. The monoploy in higher education, previously a privilege of the upper caste and classes, has now slowly started percolating to the middle classes in the villages. These changes are a result of legislation and other reform measure. The reservations which the Constitution accorded in the legislatures, government services, and schools for the underprivileged have now successfully spawned a new generation of educated youth. New voices have been added to the demands of change and have contributed to the increasing mobilisation in the social structure.

The demonstration effect of these has been so acute that, in some pockets of the country, it has led to retroactive protests. In the field of land reform legislation, the ceiling level on land holdings which was enforced during the 1950’s and 1960’s has been further reduced in most Indian states. This is indicator of the consciousness of reconciliation. The impact of land reforms, though uneven from state to state, has spurred agricultural growth and green revolution in several parts of India. This is turn
has created a new phenomenon of labour migration from poorer states such as Bihar and Eastern Uttar Pradesh to states such as Haryana and Punjab. It had far reaching social consequences in the liberation of the working classes in their home states from the clutches of the dominant classes or castes. It has provided new capital and savings for investment in land, houses, and cattle and it has opened up new possibilities for social mobilization and the independent political functioning of the working classes as a groups. This has been especially true the lower castes such as the Harijans and the Girijans. The recent increase in inter-case tensions in rural areas is indeed a result of the trends of mobility in the rural social arena.

Another important area where “civic revolution” seems to have made a successful impact in India is in the area of electoral behaviour. Electoral awareness has increased throughout the country as the election procedure has spread through the village panchayats, the nyaya panchayats, the assembly, and the selection process. In addition, there are electoral procedures for representation for several bodies of voluntary associations and cooperatives. The system of electoral politics and its concomitant consciousness have created a new sense of power and self-esteem in various segments of the rural and urban population. No doubt it has also activated factional politics and kindled a narrow breed of “casteism” and ethnicity. Sometimes, these identities emerge into communal principles in voting. If, however, we use voter participation as a measure, rural and urban participation in India is significant and comparable to voter participation in many developed democracies. This new electoral politics and participation rate has indirectly reinforced a vital component of the civic culture, the legal consciousness.

Another positive social change which has taken place following independence is in the field if industrialisation and growth of the entrepreneurial classes. The commanding height of economic power continues to vest in public sector industries. However, during the past three decades, a sizable middle of small entrepreneurs, commercial classes, and professional groups has emerged in the urban centres. Together with the rural middle classes, these groups comprise roughly one-fifth of the population. The rise of this middle class is stabilizing and critical element in India’s process of social change today. This class adds stability to the system, contributes to economic growth and mobility, offers employment opportunities, and makes use of public and private resources for development. On the other hand, this class suffers from the cultural gauchery of the new rich and is less scrupulous about conformity to
legal norms and established middle class values. The middle class’s demonstration effect on the social structure is both acute and deviant. Its approach to the weaker sections is more cynical and indifferent rather than cosmopolitan; it has, therefore, increasingly tended to flout the norms of “reconciliation” and “consensus”. This is indicative of what is known as the “underdevelopment of development” process in India.

The positive direction of social changes has also taken place in the fields of science, technology and manpower. The population of scientific manpower in India is said to be the third largest in the world. Managerial skills to be the third largest in the world. Managerial skills and innovation, the credibility in science and scientific ways, has become deeply rooted in India, even down to the level of the remote villages. The traditional thought patterns have not, however, declined. There is a precarious and often dialectical coexistence of the two in the India society. The same holds for the nature of the legal profession. Related studies by sociologists demonstrate the persistence of a large body of traditional and non-rational practices both in the structure and the functioning of the legal professions and its organisation (see Gandhi, J.S.: 1982, Sharma, K.L: 1982, and Oommen, T.K.: 1983). The problem now confronting the legal system is the product of the process of “under development”, of certain sections of our society in the wake of overall development and social change.

**Contradictions of Social Change and the Legal System**

Minimum wages for labourers in the unorganised agriculture sector stands as one piece of evidence of failure and the lack of uniformity in the introduction of small scale enterprises and shops is another. Similarly, effective legal norms with respect to the vulnerable sections of society-the children, the prisoners, the women, the prostitutes, the slum and pavement dwellers-do not exist; or, their existence is rendered feeble by the resourceful, powerful, and influential vested interests in society.

The development aspects of social change in India have given birth to a new awakening among the SC, the ST, the poor, and the working classes. Evaluation studies show that social and economic reform measures undertaken by the state for the benefit of these groups are not successfully reaching them. In area where these groups are sizable or organised, these changes often culminate in protest movements. Although these movement are effective for the redressal of grievances, but they are
isolated and scattered events. Unfortunately, the intervention of social workers in inadequate and rare.

In the wake of increasing social awareness of the asymmetry of the development process—the gaps between the rich and the poor, the agricultural labourers and the rich peasants, the basic contradiction facing the Indian legal system is met in the efforts to make the instruments of legal protection, legal bargaining, and legal redressal available to all. Greater emphasis has been given to this field over the course of the past decade. A movement for “legal aid” for the poor and destitute has begun. A government appointed committee has made a report on the implications and modalities of the legal aid movement. There has, in addition, been a significant response from the bar and from the bench. The Supreme Court has recently allowed third part petitions by voluntary social workers and associations on matters of social concern. It has instituted investigations into several matters on the basis of legal aid and legal right to all citizens. Until a few years ago, this would not have been possible.

Nandita Haksar writes:

Now a public spirited citizen, concerned lawyer or journalist, or a democratic rights organisation can move the court on behalf of an oppressed or exploited person or group of persons. The court will recognise their locus stand (legal standing). This right was first recognised in the famous transfer of judges case and later elaborated in the Asiad case. This was in conformity with the trend in other parts of the world. *(Hindustan Times, New Delhi, May 22, 1983)*

Supreme Court Judgements are binding for all courts of the land; therefore, the initiative of the court with regard to its decision to allow third parties to be represented in matters of social justice and social concern has tended to set in motion a new democratisation process in India. It is reported that hundreds of requests for legal aid are now pouring into the courts. These letters are addressed directly to the judges of the Supreme Court. The case of the bonded workers in Haryana, of the prisoners (undertrials) in Bihar, of the inmates of the women’s rescue home in Delhi, of the children in juvenile institutions, and of the torture of ordinary citizens by the Army in Nagaland, just to name a few, demonstrate the wide spectrum of the new movement for legal aid. A new area of what is called “public interest litigation” has come into being. It is being run by public spirited jurists, social workers, journalists and politicians. Several organisations which are working for the protection of the
democratic rights in India have been established. Considering the vastness of the country and magnitude of the population in need of such legal protection, this new development has touched only the fringe of the problem. The movement has, however, by selectively addressing the most critical issues of legal aid, already made a very significant impact.

The impediments of this movement toward social change may be observed in the indifference, or even hostility, of the executive and the political functionaries. There are many feudal impediments in the Indian political and civil service system which make it necessary that some aspect of the legal aid movement be institutionalised by the government. As we have mentioned, the democratic development in India is bound to create an upsurge among the rural and urban poor, their protest movements are bound to grow (see Desai, A.R.: 1983). The “civic revolution” as a model of social transformation would make it a logical necessity that law as an instrument of social change is held under constant review. More importantly, the judicial processes and legal administration, and the role of the executive in the proper implementation of the legal norms, should be rendered more effective. Finally, the efforts of the Indian government and the efforts of the public organisations and enterprises working to advance the movement of democratic development in India is bound to create an upsurge among the rural and urban poor, and their protest movements are bound to grow (see Desai, A.R.: 1983). The “civic revolution” as a model of social transformation would make it a logical necessity that law as an instrument of social change is held under constant review. More importantly, the judicial processes and legal administration, and the role of the executive in the proper implementation of the legal norms, should be rendered more effective. Finally, the efforts of the Indian government and the efforts of the public organisations and enterprises working to advance the movement of democratic law and social change must be linked.
## Chapter 4

### Table -1

**Number of Respondents**

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Number of Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<tr>
<td>2.</td>
<td>Government Functionaries</td>
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<tr>
<td>3.</td>
<td>Community Members</td>
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Table – 2

Age Group of the Respondents

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<tr>
<th>S.No</th>
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<th>18-25 Years (Years)</th>
<th>26-35 Years (Years)</th>
<th>36-45 Years (Years)</th>
<th>46-55 Years (Years)</th>
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Table – 3

Educational Qualification of the Respondents
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<td>Community Members</td>
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Table - 4

Police can be helpful in the investigation of corruption charges against a public authority

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What Factors are more inclining towards Corruption?

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<td>10</td>
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<td><strong>19</strong></td>
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Lokayukt and Anticorruption agencies do its duty with honesty and accountability

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<th>Type of Respondents</th>
<th>Response</th>
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<th></th>
<th></th>
<th>Total</th>
</tr>
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<td>3</td>
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Table – 6
Lokayukt and Anticorruption agencies do its duty with honesty and accountability
Table – 7
Modus Operandi of Corruption control is old and biased

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<td></td>
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<td>No</td>
<td>Can't Say</td>
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<td>Community Members</td>
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<td>Total</td>
<td>55</td>
<td>13</td>
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</table>
Do you agree on the fact that Jan Lokpal Act, 2013 can serve all the purpose towards its aim of prevention of all sorts of crime?

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Agree</th>
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<th>Partly agree</th>
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<th>Total</th>
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<td>3.</td>
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<td><strong>Total</strong></td>
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<td>53</td>
<td>16</td>
<td>31</td>
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<td>80</td>
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</table>
Do you agree on the fact that the Jan Lokpal must have power of suo-motu action against the complaints received from the public?

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Agree</th>
<th>Disagree</th>
<th>Partly agree</th>
<th>Partly disagree</th>
<th>Total</th>
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<td>1</td>
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<td>8</td>
<td>1</td>
<td>1</td>
<td>10</td>
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<tr>
<td>3.</td>
<td>Community Members</td>
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<td>10</td>
<td>15</td>
<td>5</td>
<td>50</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>22</td>
<td>33</td>
<td>17</td>
<td>8</td>
<td>80</td>
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</table>
Do you agree on the fact that there must be a scrutiny system over the complaints passed through Lokpal?

Table-10

<table>
<thead>
<tr>
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<th>Type of Respondents</th>
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<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
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<td>Experts</td>
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<td>5</td>
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<td>2.</td>
<td>Government Functionaries</td>
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<td>3.</td>
<td>Community Members</td>
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</tr>
<tr>
<td></td>
<td>Total</td>
<td>25</td>
<td>31</td>
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</table>
Table-11
Do you agree on the fact that the anti-corruption wing of CBI should come within the ambit of Lokpal to watch over this wing?

<table>
<thead>
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<th>S.No</th>
<th>Type of Respondents</th>
<th>Response</th>
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</thead>
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<td>Disagree</td>
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<td><strong>12</strong></td>
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Table-12
Do you believe that Lokayukta and other local/state anti-corruption agency should be free from the ambit of Lokpal?

<table>
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<th>S.No</th>
<th>Type of Respondents</th>
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<td>Disagree</td>
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<tr>
<td>1.</td>
<td>Experts</td>
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<td>10</td>
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</tbody>
</table>
Table-13

The anticorruption wing of CBI must be merged into Lokpal?

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Agree</th>
<th>Disagree</th>
<th>Partly agree</th>
<th>Partly disagree</th>
<th>Total</th>
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<tbody>
<tr>
<td>1.</td>
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<td>Government Functionaries</td>
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<td>1</td>
<td>10</td>
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<td>5</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td>16</td>
<td>48</td>
<td>7</td>
<td>9</td>
<td>80</td>
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</tbody>
</table>
The Lokpal must have power of suo motu action towards the complaints made against the Judicial Officials of High Court and Court of Session.

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Response</th>
<th>Total</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Agree</td>
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<tr>
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<td>Experts</td>
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<td>Government Functionaries</td>
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<td>57</td>
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The maximum time limit of imprisonment should be enhanced up to life imprisonment in the charges of corruption serious in nature.

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
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<tr>
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<td>52</td>
<td>7</td>
<td>14</td>
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Table-16
The Lokpal must have power of suo motu action if the complaints are made against MPs and MLAs.

<table>
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<tr>
<th>S.No</th>
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<th>Response</th>
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</table>
NGOs and other private sectors should not come within the scope of Lokpal as they don’t play sufficient role in the system.

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
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<th>Partly agree</th>
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<td>5</td>
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</table>
The Lokpal has increased number of false and frivolous cases against public authorities consequently leading to hurdles among them in discharging their duties.

<table>
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<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Response</th>
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<tr>
<td>2.</td>
<td>Government Functionaries</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>3.</td>
<td>Community Members</td>
<td>36</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>51</td>
<td>17</td>
</tr>
</tbody>
</table>
Table-19

Moral Education to public authorities can sufficiently reduce the problem of corruption

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
<td>1.</td>
<td>Experts</td>
<td>12</td>
<td>5</td>
</tr>
<tr>
<td>2.</td>
<td>Government Functionaries</td>
<td>6</td>
<td>1</td>
</tr>
<tr>
<td>3.</td>
<td>Community Members</td>
<td>26</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>44</td>
<td>18</td>
</tr>
</tbody>
</table>
Stringent Laws against corruption charges can deter the officials in being corrupted

<table>
<thead>
<tr>
<th>S.No</th>
<th>Type of Respondents</th>
<th>Response</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Agree</td>
<td>Disagree</td>
</tr>
<tr>
<td>1.</td>
<td>Experts</td>
<td>15</td>
<td>3</td>
</tr>
<tr>
<td>2.</td>
<td>Government Functionaries</td>
<td>3</td>
<td>5</td>
</tr>
<tr>
<td>3.</td>
<td>Community Members</td>
<td>22</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td>40</td>
<td>32</td>
</tr>
</tbody>
</table>
Analysis of the Data

The representation of all stakeholders has been undertaken in the research work. Although the sample size seems to be small but quality of the information collected has ensured that the purpose of the study must be fulfilled. The community members (62.5%) have given their response and most importantly the most effected population who suffers a lot due to the wrong policies of the government. Table 1 represents the stakeholders contacted for the collection of primary data. The age group wise representation was more in the experts and government official category i.e. 80% in 36-55 age group and 70% in the same age group respectively. While community members were more in 26-35 age group i.e. 28% and 12 in 18-25 age group i.e. 24%.

Out of all stakeholders 46.25% were post graduate and especially the experts were having Ph.D and above qualification. A large population say about 75% of the stakeholders are in the opinion that police can not be helpful in the investigation of corruption charges against a public authority. About corruption the need is not the main reason but the greed is the main contributing factors. Therefore, in the data also
the reflection says that political and other reasons are more than the socio-economic reasons.

It is a difficult situation in the country that even the most reliable agencies like Lokayukt and anti-corruption agencies are not doing their duty with honesty and accountability and in this regard 55% stakeholders expressed their opinion. The large population 68.75% believes that the modus operandi of corruption control is old and biased. People have faith in the Jan Lok Pal Bill that’s why 66.25% said that these provisions are able to prevent all sorts of crime.

The decentralization of power is always advocated in a democratic society. Most of the respondent 41.25% are not in a favour to provide the power of taking suo moto action against the complaint received from the public to the Jan Lok Pal. The 31.25% respondent believes that there must be a scrutiny system over the complaints passed through Lok Pal. The large proportion of the respondents i.e. 48.75% agree to the fact that the anti-corruption wing of CBI should also come within the ambit of Lok Pal to watch the activities of this wing too. The 41.25% respondents said that the lokayukta and other local/state anti-corruption agency should not be free from the ambit of Lok Pal. The 60% respondents disagree on the point that anticorruption wing of CBI must be merged into Lokpal. The public opinion 71.25% said that Lokpal should not have the power of suo motu action towards the complaints made against the Judicial Officials of High Court and Court of Session. The maximum time limit of imprisonment should be enhanced upto life imprisonment in the charges of corruption serious in nature was rejected by the 65% stakeholders as the life imprisonment is awarded in most serious cases and specially in the cases against the person. The Lokpal must have power of suo motu action if the complaints are made against MPs and MLAs was accepted by the 80% respondents. 53.75 % respondent said that NGOs and other private sectors should not come within the scope of Lokpal as they don’t play sufficient role in the system. The Lokpal has increased number of false and frivolous cases against public authorities consequently leading to hurdles among them in discharging their duties. This perception has been accepted by 63.75% of respondents. The 55% respondents agree to the fact that Moral Education to public authorities can sufficiently reduce the problem of corruption and 50% of the respondents agree to the fact that Stringent Laws against corruption charges can deter the officials in being corrupted.