CHAPTER V

JAPANESE POLITICS AND SOCIETY AFTER THE OCCUPATION: AN ASSESSMENT OF THE INTERNATIONALLY-INDUCED DOMESTIC REFORMS
The domestic set-up of Japan which emerged after World War II, under the aegis of U.S. occupation, was no doubt a departure from that of the pre-war Japan. Its foundations were carefully laid on the pattern of western parliamentary democracy, with the aim of eliminating the possibility of a resurgence of an absolutist state, the kind of which had brought disaster to the world in the early forties. This overall transformation which ripped through all the spheres of the Japanese society did not emerge solely from within Japan. It was imposed from above under the dictates of the Supreme Commander, General MacArthur. However, to make this attempt successful the role of the local support was not less significant. The indigenous support to the occupation reform measures was the result of the Japanese peoples' experience with parliamentary democracy during the Taisho period (1912 - 1926). A similar movement for popular rule and civil rights had also emerged in the early Meiji period which managed to establish for the first time in the Japanese history of long military rule, a constitutional system of administration of the state, and a parliamentary set-up. Although these two indigenous attempts to democratize Japan were foiled by the overwhelming influence of the military rulers who were operating from behind the legitimizing facade of the Emperor, they had certainly "contributed to the cultivation of democratic consciousness among not a few
Hence, the popular urge to democratize Japan in the pre-war era was subdued if not stifled, by the use of force and controlled system of learning. It is in this context, that the role of the occupation in clearing the way for peace and democracy in Japan assumed importance. The changes in the domestic set-up of Japan and its comparison with that of the post-occupation period, will help in assessing not only the extent of the reforms introduced, but also their continuity and endurance.

CONSTITUTIONAL SET-UP OF THE POST-WAR JAPANESE POLITICAL SYSTEM

Post-war Japanese political system was based on the new constitution. Technically, the new constitution was an extension of the pre-war constitutional set-up. But in actual terms it was almost a new draft prepared by the Government Section in the GHQ, SCAP. This draft was adopted by the Diet in November 1946 with minor alterations. "Needless to say, the appearance of the draft", says Maki, "created a sensation." He further adds, "(n)ot only was it clearly of occupation origin,


but it was thoroughly democratic and completely out of tune with the existing constitution."

The Constitution of 1947 was a major break-through in the building-up of democratic institutions and values in post-war Japan. The Emperor System was thoroughly altered by abolishing all extra parliamentary institutions which by virtue of their political proximity to the Emperor tended to eclipse the powers of the Imperial Diet. Before the end of the World War-II, Japanese Political system had developed all the institutional characteristics of a modern state. These included the Meiji Constitution, bicameral legislature, central bureaucracy and other such organizations as political parties and interest groups. But these institutions' failed to reflect the democratic political process. They were little more than window dressing. "None of them was truly democratic in conception or operation."

The real motive behind their adoption was to catch up with the West. The new constitution was an attempt to weed out the autocratic and authoritarian elements from these institutions and to establish a truly democratic political system. It stripped the emperor of


5 Maki, n. 3, pp. 74-75.

any semblance of political authority and reduced him from what it was in pre-war Japan, 'the ultimate virtuous' to a simple symbol of the state and of unity of the people. People were made the ultimate source of sovereignty, the basic cardinal principle of democracy, who exercised it through their directly elected representatives in the popular bicameral legislature. Like any other democratic political system people were guaranteed the basic civil rights and liberties which were duly enshrined in chapter-III of the new constitution, running into thirty one Articles out of a total of 103. To ensure peace and democracy, the new constitution had a distinct provision under Article-9 (the prototype of which is difficult to be located in any other democratic constitution). Article-9 stipulated complete pacifism and denied the right of belligerency to the state. With the withdrawal of Allied forces from Japan, the ruling conservatives of the post-war Japan made repeated attempts to revise the new constitution of Japan in general and Article-9 of the constitution in particular to their own advantage at the cost of peoples' freedom and rights. Moreover, the ruling LDP found support from its American patrons, for a revision of the Article-9, which was considered controversial and an obstacle in the way of Japan to respond positively in terms of defence measures to the U.S. interests in the Far East as well as world over. But the failure of all such attempts showed the sincere

7 Quigley and Turner, n. 2, Appendix I, pp. 408-10.
8 Ibid, p. 408.
commitment of the Japanese people towards democratic values and human rights as desired by the framers of the post-war constitution of democratic and peace loving Japan.

SOURCES OF SOVEREIGNTY

In the Meiji constitution, sovereignty was vested in the Emperor who ruled over Japan by the virtue of being the direct descendent of Sun goddess, Amaterasu. He derived his authority from his heavenly ancestors instead of the people. This undemocratic principle found its clear expression in the preamble of the old constitution. No place was assigned to the role of popular will in the governance of the state. What the U.S. led occupation wanted to abolish during less than a decade of its crucial tenure in Japan was this undemocratic spirit of the Meiji constitution which precluded the cultivation of democratic values in the pre-war Japanese society.

The new constitution which was drafted, promulgated and enforced under the supervision of U.S. occupation is a document of cardinal importance in the process of building-up a democratic set-up in post-war Japan. It signified the transfer of sovereignty from the Emperor to the people. The preamble of the new constitution reads,

We, the Japanese people ... do proclaim that sovereign power resides with the people ... Government is a sacred trust of the people the authority for which is derived from the people ... and the benefits of which are enjoyed by the people."

The Emperor now no longer inherits authority from his divine ancestors but from the will of the people with whom resides sovereignty (Article-1). Now, people are the real repository of the ultimate authority, who exercised it through the legal processes of government established by the constitution and the laws enacted there under. The new constitution makes it clear that the imperial institution is no longer a source of sovereignty and wields no power. The Emperor is like any other ordinary human being surrounded by no mystic and charismatic features. He is divested of his divinity and sacredness and is not inviolable. Imperial palace is like any other government institution open to the public. Seclusion of the Emperor from active public life which helped to maintain the image of a superhuman being was brought down to the earth. For the first time in the history of Japan the citizens were guaranteed democratic rights and the government was made responsible to them. Their rights and sovereign power were properly guarded and carefully enshrined in the constitution. No change in the constitution could be made except with the concurring vote of two thirds or more of all the representatives of the people in each house of the national legislature which in turn required to be ratified directly by the people. In the old constitution, the people had no such right. The constitution was considered to be "a gift of

10 Ibid.

the Emperor to his people." The emperor alone had the power to amend it. In the new constitution this undemocratic principle found no place and was replaced by a democratic procedure for the amendment of the constitution. The Imperial House Law of 1889 which was provided with superior status than that of ordinary law was also replaced by the new Imperial House Law to make the shift from divine to popular sovereignty.

These legal democratic provisions were introduced in the new constitution with the forcible backing of the SCAP in the face of opposition by the local elites who wanted status quo. In the post-occupation Japan, these rights and liberties were not reversed by the rulers.

FUNDAMENTAL RIGHTS

In the pre-war Japan, the vast majority of common people were kept oblivious of their civil rights through various undemocratic social practices which made them politically dependent and socially ignorant. Such practices were closely followed throughout the long history of the


14 For text see *Political Reorientation*, n.4, vol. 2, pp. 590-93.


military rule in Japan. Even during the Meiji period, which was considered as freedom from the Yoke of military rule, the status of the ordinary citizens remained more or less the same as it was in the past. The common man was not encouraged to take part in the political affairs of the state and systematic efforts were made to keep him unaware of his rights and individuality.

Although some basic civil rights were enshrined in the Meiji Constitution (just to gain a status of modern state in the eyes of the western world), such rights were bracketed within undemocratic procedures of 'to be implemented according to law', and other similar phrases.

In contrast to this practice under the new constitution, the dignity of the individual is firmly established in true democratic norms. He was guaranteed all the civil and political rights enjoyed by a citizen under any democratic political system. The new constitution contained a list of detailed provisions regarding civil rights and freedoms enshrined in Chapter-Ill entitled "Rights and Duties of the People." This chapter is the longest one and "represents the most

17 For a detailed account of such practices, see H. Mitchell, Thought Control in Pre War Japan (Ithaca and London : Cornell University Press, 1976).


19 Political Reorientation, n. 4, vol. 1, p. 84; and Yanaga, n. 11, p. 121.
radical departure." The old constitution of the Empire of Japan as said earlier also contained a full chapter (Chapter-11) on the "Rights and Duties of Subjects." But what made the new constitution a departure from the pre-war Japanese political process was the absence of various limitations and qualifications tagged to the civil and political rights.

The new constitution proclaimed that all people would be respected as individuals and their right to life, liberty, and the pursuit of happiness must be of utmost consideration in legislation and in the administration of governmental affairs (Article-13). These fundamental human rights are declared as eternal and inviolable (Article-11). To avail these rights all the people are declared equal under the law and any form of discrimination in political, economic or social relations because of race, creed, sex, social status or family origin is forbidden (Article-14). Redressal is provided against the state for wrongs committed, and detailed provisions are made concerning individual position vis-a-vis the legal and judicial system. Such provisions run into ten Articles of a total of forty one of third chapter to ensure the citizens against the excesses of the state the brunt of which they had borne during the pre-war Japan.

20 Yanaga, n. 11, p. 352.

21 See Articles 31 to 40, Quigley and Turner, n. 2, Appendix I, p. 410.
The people are vested with the powers to choose and dismiss public officials. In the new constitution all public officials are made accountable to the people. In the Meiji constitution public officials were the servants of the Emperor. The new constitution also guaranteed the right to maintain the minimum standards of wholesome and cultured living (Article-25). Any type of bondage and involuntary servitude is prohibited (Article-18). It has been further emphasized that people have the right to receive equal education (Article-26), the right to work (Article-27), and the right to own and hold property (Article-29). The right of the workers to organize, bargain and act collectively is also recognized under Article-28. As against strict thought control and a totally guarded life of the subjects during the authoritarian rule in Japan before the end of the World War II, the new constitution endowed the people with freedom normally granted to citizens in democracy. Along with the long list of rights and freedom, the new constitution required certain duties to be followed by the citizens in the wider interest of public welfare. However, for the advancement of democratic values and to counter the influence of vestiges of traditional values and undemocratic practices, civil rights and liberties were emphasized over and above the duties of the citizens.²²

²² Yanaga, n. 11, pp. 351-52.
PACIFISM

The political system of Japan before the implementation of the occupational reforms was absolutist and autocratic, and its foreign policy was militaristic. The armed forces enjoyed predominant position in the government and politics of Japan. In the interest of World peace and security it was considered highly desirable to dismantle and replace such a state of affairs with a democratic and peace oriented set-up in Japan so that the armed forces "could no longer be a factor in politics." After the successful implementation of the programme of demilitarization and demobilization of armed forces, and the 'purge' of militarist elements from different departments of government and industry, a provision was made in the new constitution under Article-9 which ensures that Japan under no circumstances will resort to "force as means of setting international disputes" and "forever renounce war as a sovereign right of the nation ... ." In order to accomplish this noble task, it was further stated in the same Article that "land, sea, and air forces, as well as war potential will never be maintained. The right of belligerency of the state will not be recognized."

The vast majority of common people including women and youth imbued with these post-war peace and democratic values posed a serious challenge to the U.S.

23 Maki, n. 3, p. 20.

strategic designs and to the local right-wing conservative rulers who intended to establish an independent "basic self defense posture" for Japan.

This gave rise to two conflicting political streams, what Prof. Drifte called the 'system of peace constitution' and the 'comprehensive Japanese-US alliance system'. The former favoured pacifist Japan and opposed the 'comprehensive Japanese-US alliance system' which sought to push Japan on to a strong military footing. He further stated that "each system seems to exclude the other, yet the former would not have existed without the comfort of knowing that the United States would care for Japan's external security." In other words Article-9 has also been used by the government as a plot to strengthen the economy of Japan while shifting the burden of security on the shoulders of United States. But what made Article-9 the most dramatic symbol of the new constitution was its emotional appeal to the people. The recent furore in Japan over the issue of sending personnel of Self Defence


Forces to the Gulf war as a part of U.N. peace-keeping measures is a case in point. This issue, arising out of Middle East crisis and Japan's response to that, has been clubbed with the revision of Article-9 as well as that of the entire constitution and perceived as a threat to the peace and democratic values of the people. In a poll conducted by Kyodo News Service, eighty three percent of the respondents said no to dispatching SDF personnel to support the U.N. peace-keeping efforts in the Persian Gulf.

Thus constrained by the spirit and letter of Article-9 and the popular support for pacifist and peaceful Japan, the ruling conservatives encouraged by the United States could not succeed in establishing a strong military system in post-war Japan. In parliament the conservatives were faced with stiff opposition from the left and right wings of the socialists who succeeded in securing one third strength of both the Houses of the Diet in the early 1950s and blocked the much desired 'reverse course' of the conservatives.

The 1989 upper House election and 1990 Lower House elections, in which the socialists under the leadership of Takako Doi have improved their position, further


30 Quoted in Newsweek, n. 29, p. 21.

supported the cause of peaceful forces in Japan. Even if the conservative succeeded to muster the required strength in the parliament to revise Article-9, the chances of its getting through the next stage of public referendum would be bleak, given the popular hostility against rearmament of Japan.

Since the onset of the cold war, the more conservative section of the ruling conservatives have been trying to set-up a strong military system in Japan in the guise of Self Defence Forces. But they could not succeed in converting pacified Japan into a military power by revising Article-9 of the new constitution. Thus, be it a 'National Police Reserve', 'National Safety Force', or the present 'Self Defence Forces', "the government has never gone beyond the boundary of an 'exclusively defensive defence'" that is keeping defence capabilities within the minimum necessary limit of Article-9. According to the "Basic Policy for National Defence" approved by the cabinet in May 1957, the objectives of national defence were to defend Japan against direct and indirect aggression and thereby to preserve its independence and peace founded upon democratic principles. But "the self defence capability that Japan is permitted to possess within the constitutional limits must be the minimum necessary for

32 National Police Reserve was created in 1950, it was changed into National Safety Force in 1952, and renamed as Self Defence Forces in 1954.

self defense." In other words Japan can not possess what is referred to as offensive weapons (ICBMs, long range strategic bombers and offensive aircraft carriers) meant for causing destruction across the borders. Similarly sending armed forces overseas for military action run contrary to the spirit of the 'minimum limit necessary for self defense'. To keep the posture of defense system passive and in tune with the spirit of the peace constitution Japan was forbidden to possess, produce and permit the introduction of nuclear weapons popularly known as the three Non-Nuclear Principles. To avoid the resurgence of military dominance of the pre-World War II type, sufficient measures have been adopted under the new constitution to ensure uncompromising civilian control over the Self Defence Forces. The Self Defense Forces are placed under the democratic and political control of the popularly elected national legislature. All important decisions concerning national defence are made in a cabinet comprising of civilians subject to the approval of the Diet and in some cases to be finally ratified by the electorates. Cabinet is assisted by the Security Council of Japan in all important matters regarding national defense and other


36 Ibid, p. 82.

37 Ibid, p. 83.
emergency situations. Earlier this task was performed by National Defense Council. The Prime Minister is empowered to exercise control, command and supervision over the SDF. The Defence Agency is also brought under his control. Moreover, to ensure proper civilian control over national defence, a civilian minister of state is appointed as the Director General of the Defence Agency, who in turn, is to be assisted by Parliamentary and administrative vice ministers in governing and operating the SDF.

Through these measures the Self Defence Forces are placed under a tight civil control and are precluded from interfering in the task of national policy formation that had characterized the pre-war system in Japan. Thus post-war Japan has maintained its low profile in defence matters which is entirely the reverse of what it was in the pre-World War II era. To sum up with Barry If anything, Japanese society is notable for the deeply held pacifism of majority feeling, as indicated by the wide spread public support for the non-nuclear principles and the peace clause (Article-9) of the Japanese constitution.


POLITICAL INSTITUTIONAL SET-UP

THE DIET

The defeat of Japan in the pacific war and its subsequent social transformation from above under the control of General MacArthur led to the birth of a new era in its post-war parliamentary politics. Emperor centered structure of the old constitution gave way to a democratic rule under the new constitution. The system of universal Adult Suffrage was introduced against the pre-war system of universal male suffrage under which women were excluded from the political process as a whole. All the restriction on free expression, assembly and to form political associations were removed. Various measure were adopted to help people to indulge in active participation in the body politic of Japan. The peace preservation act of 1925 was repealed. All the pre-war constitutional and extra constitutional bodies which had overwhelming powers over the legislature were abolished. The privy council, senior statesmen (Genro) military boards, imperial Household Ministry and the Imperial Conference which were governing from behind the Imperial shield and had become the "invisible government" in the pre-war Japan were done away with. In pursuance of the principles of popular sovereignty the post-war constitution designated the Diet as "the highest organ of State

Power", having "the sole law making authority of the state". (Article-41)\(^2\) This clearly placed the Diet in a superior position to the other organs of the government in the sense that it executes the sovereign will of the people through their popularly elected representatives. Like its predecessor in the pre-war Japan, the post-war Diet is bicameral. But in contrast to the pre-war non-elective nature of the Upper House and the partial representative character of the Lower House limited only to male members of the society both the houses of the post-war legislature were made popularly elected bodies (Articles-42 & 43)\(^3\). The House of Representatives consisted of 512 members elected for a maximum term of four years from 130 multimember districts save Amami district which elects only a single representative. It is also subject to dissolution before the expiry of four years. The House of Councillors (Upper House) is a permanent body with 252 members elected for terms of six years half of them being elected every three years. Councillors are elected in two types of constituencies: single national constituency (100 members) and multimember prefectural constituencies (152 members). "The purpose of this arrangement", says Ori, "is to assure some continuity in the House of Councillors, as is

\(^2\) Quigley and Turner, n. 2, Appendix I, p. 410.

\(^3\) Ibid.
the case in the U.S." \(^{44}\) It is provided in Article-54 of Chapter IV of the new constitution that when the House of Representatives is dissolved, the House of Councillors is closed at the same time. However, the cabinet may in time of national emergency convocate the House of Councillors in emergency session.\(^{45}\)

In accordance with the universal phenomenon in the development of parliamentary democracy, the superiority of Lower House over the more conservative Upper House is also maintained in Japan. If the Upper House disapproved of a bill passed by the Lower House or failed to take final decision within sixty days after its receipt, the bill might still become law if it is passed by the Lower House for a second time by a majority of two thirds or more of the members present (Article-59)\(^{46}\). However, to reduce a stalemate between the two Houses on legislative differences a provision has been made in the constitution for an inter-house conference committee. Moreover, in case of the budget, which is submitted first to the House of representatives, if the decision of the Upper House differs from that of the Lower House and if the reconciliation efforts at the joint committee of both the Houses failed or if the Upper House failed to take decision within 30 days after the receipt of the budget passed by the lower House (the period of recesses excluded) the decision of the Lower House would be


\(^{45}\) Quigley and Turner, n. 2, p. 411.
considered as the decision of the Diet (Article-60). Similarly in the selection of the Prime Minister and the ratification of treaties the will of the Lower House prevailed.

Thus the former predominance of the House of Peers over the House of Representatives is not reflected in present national Diet, where the Lower House occupies a definitely superior position.

The new constitution does not recognize any other institution having independent structure of political power beyond the control of legislature like that of privy council, military boards, imperial household ministry in the pre-war Japan. Unlike the pre-war cabinet which was responsible to the Emperor individually, in the post-war Japan it was made collectively responsible to the Diet. The Prime Minister is not appointed by the Emperor but selected by the Diet "from among the members of the Diet" who further appoints the ministers of state. The majority of the ministers, it is provided in the constitution, must be chosen from among the members of the Diet (Article-68). If the House of Representatives passes a no confidence resolution or rejected a confidence resolution, the cabinet is required to resign en masse unless the House is dissolved within ten days (Article-69). In addition, each house is empowered to

49 Political Reorientation, n. 4, vol. 1, p. 184.
50 Quigley and Turner, n. 2, Appendix I, p. 412.
51 Ibid.
"conduct investigations in relation to government" and for that purpose "may demand the presence and testimony of witnesses, and the production of (Article-62) records."\textsuperscript{52} The Diet is also endowed with the power to set-up an impeachment court from among the members of both Houses for the purpose of trying those judges against whom removal proceedings have been instituted (Article-64).\textsuperscript{53}

Apart from the constitutional provisions which established the supremacy of the legislature as a true representative body of the people, significant measures have also been taken under the new Diet Law (Law No.79) to enhance the prestige and power of this body. The salaries of the legislators were raised to put it at par with that of the highest ranking bureaucrats. They were also provided with publicly financed private secretarial services and franking privileges. A well equipped Diet library and legislative reference service in each of the two Houses were established to help the legislators in their work. In contrast to the imperial Diet each House is empowered to elect its presiding officer. The budget for the Diet was put under its control rather than that of Finance Ministry as the case was in pre-war Japan.\textsuperscript{54}

The above discussion clearly shows the constitutional supremacy of the post-war national

\textsuperscript{52} Ibid.

\textsuperscript{53} Ibid.

legislature and distinguishes it from its pre-war counterpart. In other words the new constitution transferred the power of governance from a group of oligarchs to the people who exercised it through their democratically elected representatives. Thus the ultimate authority lies with the people and all the organs of the government are made subservient to them instead of any transcendental authority.

But in actual practice it is contended that the real power of legislation is located somewhere else away from the premises of the national legislature.55 And the national Diet is just as much of a rubber stamp as the pre-war imperial Diet. It functions simply as a safety valve.56 Almost all the important legislative bills originate outside the national Diet and are introduced by the cabinet as the governmental bills. "Some originate with the cabinet and some are initiated by the policy research committees of the political parties, which often work in collaboration with civil servants experienced in the field concerned."57 The national bureaucracy plays a predominant role in the legislative sphere.58 To assist the national Diet each House is provided with various subject based standing committees buttressed by staff


57 Ward, n. 48, p. 153; and also Kyogoku, n. 41, p. 117.

58 Ori, n. 44, p. 16.
specialists and researchers. Even in "these committees very few substantive debates take place." Since the specialist staff come from the concerned ministries on temporary loan and a majority of the chairpersons of these committees had served the ministers as high ranking bureaucrats, a thorough probe into the proposed piece of legislation hardly ever takes place. Thus in the plenary sessions of the Diet only ceremonial endorsement is festooned on the bills which were formulated somewhere else.

However, the control of the bureaucracy on the formulation of legislative bills and the inefficiency of the national Diet and its standing committees in looking into the technicalities and the complex nature of various bills can not be stretched far enough to say that the post-war Diet also failed in its expected role of establishing a democratic legislative process. Because this is the general trend in all democratic countries where the legislative is by and large under the eclipse.

To quote Robert E. Ward,

The concerns and needs of a political system today have grown too vast, too complex, and too specialized for anybody of elected popular representatives to provide effective control over anything but the broadest outlines of policy. We live in the day of the administrative state and this is as true in Japan as it is in England, the Soviet Union, and the United States.

59 Ibid.

60 Baerwald, n. 56, p. 136; and Ori, n. 44, p. 18.


The national Diet like other major legislative bodies of western democracies does criticize, publicize, revise and eventually reject and inact many of the legislative measures introduced by the government. Moreover, since the late 1970's the position of the opposition in the Diet has improved if not continuously, to an extent where it challenges the monopoly of the ruling Liberal Democratic Party. Opposition plays an important role in maintaining the prestige and democratic character of the legislative process. The most important aspect of democratic process in the post-war Japan is the sensitivity of the Diet towards the people who are the repository of sovereign political power. If the Diet, under the bureaucratic control, ignored the popular interest and offended the interest of the majority of the people then the chances of the ruling party to come back to power were reduced to the minimum. The failure of the Liberal Democratic Party (LDP) to win majority in the July, 1989 Upper House elections due to its three percent consumer tax, liberalization of agricultural policy, opening doors to foreign products, Recruit-for-favors scandal and sex scandals is a case in point. What helped the LDP to sustain its position in the February, 1990 elections to the Lower House was its assurance among others to farmers not to allow "even one grain of rice" to enter from beyond the borders.  

THE JUDICIAL SET-UP

To safeguard the basic human rights, to debar the legislature from going ahead with draconian laws, and to inhibit the executive from meddling in adjudication, an independent judiciary is the first and foremost requirement of a democratic political system. Under the Meiji constitution, the judicial power along with others, was vested in the Emperor. The institutional set-up under the Meiji constitution precluded the development of an independent judiciary. To rectify these weaknesses and to allow the judiciary to assume an independent posture, the principle of separation of power was incorporated in the new constitution. The hold of the ministry of justice over the administration of courts was abolished and an independent separate organization of judicial hierarchy was established, headed by the Supreme Court. "The relation of the courts to rest of the government was altered to ensure the rule of law and the independence of the judicial branch." 64 A Supreme Court and four categories of junior courts - high courts, district courts, family courts, and summary courts - comprised the judicial hierarchy. Each court in the hierarchy has a "judicial assembly" comprising of all judges which is entrusted with deliberation upon judicial administration.

"The Supreme Court has supervision in matters of administration over the inferior courts; each high court, district court, family court, and summary court supervises courts inferior to it within its jurisdictional area." But these supervisory powers of higher courts over the juniors in the judiciary hierarchy concerned only with the administrative functions, whereas in judicial functions each court is independent of its higher body's control. To help the judges in the performance of the functions, "judicial research officials" are attached to the Supreme Court and to the high courts. In addition to this, under the jurisdiction of the Supreme Court two training institutions are established to train the personnel for judicial chambers and other clerical functions. To become a judge, public prosecutor or a lawyer one has to be a graduate of the institute or in a few cases, must have undergone a course of in service training there. This ensured the entry of only suitable qualified persons into the judicial system.

In the post-war Japan, the constitution is declared as "the Supreme Law of the nation" (Article-98). And the Supreme Court of Japan, the highest court of the land, "is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act" (Article-81). Thus the power of judicial

65 Quigley and Turner, n. 2, p. 364.
66 Ibid.
67 Maki, n. 3, p. 105.
review is granted to the Supreme Court. The Supreme Court is vested with the rule making power through which it regulate the judicial administrative system (Article-77). It is provided that the "Supreme Court may delegate the power to make rules for inferior courts to such courts" (Article-77). Adhering to the concept of exclusiveness of the judicial function, the court organization law provided that all legal disputes are to be decided by the courts. "The old, separate bureaucratic and atrophied" court of administrative litigation which differentiated officials from ordinary citizen was abolished. "It will be of special interest", says Quigley and Turner, "to observe Japanese officials brought to book in the same courts which try the man from the shop and from the farm." To ensure the independence of judiciary, the courts are authorized to appropriate expenditures independently in the national budget and provisions are made for a reserve fund among these expenditures.

Under the present constitution the judicial powers are vested in Supreme Court and in such inferior courts as are established by law. No other extraordinary

68 McNelly, n. 64, p. 149.

69 For details see: Court Organization Law (Law No. 59, April 16, 1947), in Political Reorientation, n.4, vol. 2, pp. 825-93.


71 Quigley and Turner, n. 2, p. 371.
tribunal, nor any organ or agency of the executive is recognized as the final judicial authority. "There is no state organ whose position was enhanced more under the new order than the judiciary." Complete freedom is provided for the judges to function independently from any outwardly executive control, and they are bound only by the constitution and the laws (Article-76). The tenure of judges is fully protected. All the judicial posts are appointive. The method of appointment is specified in Article-79 of the new constitution. It is provided that the chief justice of the Supreme Court is to be appointed by the Emperor upon designation by the cabinet, and the rest fourteen associate judges are appointed by the cabinet where the chief justice has no constitutional power to influence the selection. The judges of inferior courts are also appointed by the cabinet, but from a list of candidates nominated by the Supreme Court. In case of appointments of judges of the Supreme Court the principle of popular sovereignty is being applied. The appointments of judges have to be put to public review at the coming first general election of members of the House of Representatives and the same pattern is followed after every ten years (Article-79).

All these arrangements were made with a view to strengthen the independence of the judiciary to help the smooth running of democratic political process instituted in Japan after the end of the World War-II and to

safeguard it against the resurgence of autocratic forces. However, given the completely foreign character of the legal system in post-war Japan and its own unique cultural and social set up the channels of independent and impartial judiciary have not been effectively and properly used so far." Nevertheless the very existence of an independent judiciary and its position of eminence ensured the protection of the individual rights and liberties and fulfilled its function as a watchdog of the constitution. In a nutshell, such judicial reforms among others resulted in setting up of a trend in favour of democratic political process in post-war Japan which marked "a striking change from the days of the Meiji constitution." 74

LOCAL GOVERNMENT

Before and during the World War II the structure and functions of local government in Japan were devoid of local self rule. "(t)he concept of local autonomy was purely abstract; even the local bodies themselves did not clearly see its raison d'etre." 75 The terms such as "local autonomy" or "local authorities" existed only in


74 Maki, n. 3, p. 107.

It was a case of highly centralized rule where all powers were vested in the national government and the administrative units of the prefectural and grassroots level were not autonomous. Instead they were the local agents of the national government. The structure of the political system during that period was meant to discourage popular political participation and initiative in the local government system. 77

For the occupation authorities, the replacement of the pre-war system of centralized local administration with a decentralized set-up was a necessary task as a part of the broader goal of democratization. 78 General Douglas MacArthur favoured the establishment of autonomous local self rule as "a school house for democracy." 79 It was "felt that democratic institutions and practices flourish in direct proportion to their closeness to the people." 80

To create an environment conducive for the establishment of democratic political system the occupation authorities took it seriously to see the

76 Muneyuki Shindo, "Relations between National and Local Government", in Tsuji, ed., n. 75, p. 110.


80 Ward, n. 48, p. 167.
inclusion of special provisions in the new constitution to promote self rule at the grassroots level. The principle of local autonomy was enshrined in chapter-viii of the new constitution (Articles 92 through 95). It is provided in Article-92 that any regulation, concerning organizations and operations of local public entities (prefectures, cities, Towns and villages) had to be in accordance with the principle of local autonomy.\textsuperscript{81} Chief executive officials of all local public entities - prefectural and municipal - and their respective assemblies as deliberative organs were made elective by direct public vote (Article-93).\textsuperscript{82} The local assemblies were authorized to enact their own regulations and to manage their own property (Article-94).\textsuperscript{83} It also provided that the national government was obliged to obtain the consent of the majority of the voters living within the boundaries of a locality in order to enact a special law applicable only to it (Article-95).\textsuperscript{84} These provisions, says Steiner Kurt, "opened up new possibilities for political competition at all subnational levels."\textsuperscript{85} The enactment of the local Autonomy law on April 17, 1947 (frequently revised there

\textsuperscript{81} Quigley and Turner, n. 2, p. 414.

\textsuperscript{82} Ibid.

\textsuperscript{83} Ibid.

\textsuperscript{84} Ibid.

after) has further contributed in laying down the legal basis of local self rule in post-war Japan. All matters relating to local public entities and their primary functions were to be determined by the provisions of this special law.

Alongwith these legal provisions, various other measures were taken to dismantle the pre-war structure of centralized administration and to establish local autonomy in its place. The Home Ministry which was notorious for its over-vigilance, anti-people and anti-democratic activities was dismantled on December 27, 1947. In its place the Local Autonomy Agency (Later the Ministry of Home Affairs) was established which lacked the breadth of legal powers of its pre-war counterpart and in comparison was small and weak. The community councils and neighbourhood associations were abolished. The centralized police force and educational system, which were employed to indoctrinate the masses in pre-war Japan in the "ethic of an Emperor-centered State" and to suppress the "subversive and unpatriotic activities", were reorganized along decentralized and locally autonomous patterns.

However, for several reasons these reforms could not succeed in establishing the desired autonomous local

86 Maki, n. 3, p. 108; and Tsuneishi, n. 73, p. 194.
administrative system independent of the control of central government. The dependence of the local governments on the centre for finances and the lack of unambiguous division of administrative functions among the different levels of government stood as a hurdle in the way of autonomous local self rule.90 Another factor which provided leverage to the central government to exercise control over the local governments was a unique system of "Agency delegated functions" (Kikan Inin Jimu). Under it much of the national work previously assigned to the appointed governors was directly transferred to the post-war popularly elected governors who carry them out in toto as local agents of national government.90

These factors along with the need for rehabilitation of economy and administrative efficiency, prevalence of strong skepticism among the Japanese about the efficiency local administration and of the legal process as a means of solving problems of inter governmental relations helped the reemergence of strong central administration in post occupation Japan. Changes brought under the occupation reform measures in the police forces and educational system got a set back.91 Much of the local legislations is based on the model legislations as

89 Ministry of Home Affairs, "Local Administration and Finance", in Tsuji, n. 75, p. 93.

90 Shindo, n. 76, p. 194.

suggested by national government. But despite the various efforts to reorient local administration towards centralization of power, the local self rule introduced by the occupation reforms could not be fully ended. Various 'resident movements', resulting from the early 1960's industrial policy of expanding new industrial complexes in a variety of urban areas throughout the Japan have provided a new impetus in the direction of local self rule. Another positive development in favour of local politics was the spurt in the success of the opposition political parties at the local level which quite recently remained the stronghold of the ruling conservatives. The establishment of local planning departments since 1960's further provided a new opportunity to local governments to function according to local priorities and political processes. The need of a strong centre for the attainment of industrialization, urbanization and modernization was no longer the need of present day Japan where all such requirements were successfully fulfilled. The flavour of local self rule induced by the occupation endeavours received positive response from the people when questioned on their political interests, ... Japanese tend to find local

92 Ibid; Reischauer, n. 87, p. 256.


94 Ward, n. 48, p. 170.

95 Shindo, n. 76, p. 120.
(especially municipal) government and politics more relevant and responsive than national politics."

THE INDIVIDUAL AND THE SOCIAL GROUP

PLACE OF THE INDIVIDUAL IN JAPANESE SOCIETY

The structure of Japanese political system in the pre-World War II era was based on the principle of group consciousness as against individual identity. The social environment surrounding the individual was such that he or she was prompted to yield to what the particular social order required of them. No importance was assigned to personal or private life. Instead, self interest was considered as equivalent to an evil. Those who wished to pursue their own self interest were condemned as anti-social and a threat to the state. Individual interest was considered to be included in the public interest of the collectivities i.e. family, village, firm and state. Individuals belonged to the collectivity but the "collectivity does not pertain to their individual, personal and private lives." Private opinions, individual desires and emotions were considered to be assigned to personal or private life. Instead, self interest was considered as equivalent to an evil. Those who wished to pursue their own self interest were condemned as anti-social and a threat to the state. Individual interest was considered to be included in the public interest of the collectivities i.e. family, village, firm and state. Individuals belonged to the collectivity but the "collectivity does not pertain to their individual, personal and private lives." Private opinions, individual desires and emotions were considered to be

96 Kodansha, n. 79, p. 69.


98 Kyogoku, n. 41, p. 41.

"related to a particular transient reality with no universal validity." On the contrary, the public interest or collective interest was regarded as virtuous. This in turn has provided a significant support to the undemocratic and autocratic system of state administration in the pre World War II Japan. (This point has been discussed in detail in Chapter 2.)

To remove the cult of groupism and to set the individual free as a pre condition for the establishment of democratic set-up in Japan, various steps were taken by the SCAP. The first and foremost among them was to demystify the semi-god image of the Emperor. The practice of reading Imperial Edict on national education in schools was abolished, the pictures of the Emperor and Empress were removed from the premises of the schools, and highly exalted references to Emperor in the history books were omitted. The image of the post-war Emperor was thoroughly humanized. Hirohito, the then Emperor of Japan, now called Showa, himself publicly admitted that the idea of divinity of the Emperor was predicated on a false conception of divinity and he was like any other human being.

101 Ibid.
In the post occupation period in Japan, the mythical hiatus between the person of the Emperor and the common people was removed. The frequent public appearance of the Emperor and more details about his personal life and daily routines brought him closer to the ordinary Japanese who in the pre-war era was even forbidden to look at him and talk about him.\(^{103}\) The present Emperor Akihito's marriage with a commoner now Empress Michiko "provided a measure of the new role of the imperial institution under democracy."\(^{104}\) Following in the footsteps of his father, Prince Akishino too married a commoner Kiko Kawashima. The wedding ceremony of Prince Akishino was televised from dawn to dusk, provided a closer glimpse of the ceremony in the Imperial family. More interestingly a very informal and touching picture of the new princess "gently fixing the hair of her husband"\(^{105}\) was published by many newspapers which could have been unbelievable in the pre-war Japan. The enthronement ceremony of Emperor Akihito who has the honour of being the first Emperor to be enthroned under the new constitution, marked a significant shift from the strict traditional court practices. Prime Minister Toshiki Kaifu's participation in the ceremony wearing a formal dress instead of the traditional court costume

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104 Maki, n. 3, p. 68.

105 Asian Week, n. 103, p. 20.
demonstrated the democratic spirit of the post-war Japan. Emperor Akihito is trying his best to show his closeness to the general public and his "unassuming manner has helped convince the public that he is without divine pretensions." His gestures are more of a friend than a pre-war distant Emperor. This shows that the continuance of the imperial institution after the World War II has grown more like that of imperial institution of Britain and it represented a curious blend of democratic novelty and court traditions. The humanized image of the post-war Emperor has helped the common man to come out of his docility and imposed submissiveness and to regain his self esteem and individuality. The fundamental human rights were granted to the people in the new constitution as eternal and inviolable rights. To quote Sannosuke, "Now, thirty years after World War II, the private individuals who before the war were compelled to sacrifice themselves on the altar of public authority have been liberated" and allowed "the right to pursue their own self-interest and happiness."

106 Newsweek, n. 103, p. 30.
107 Ibid.
108 Ibid.
109 Sannosuke, n. 100, pp 50-1.
THE INDIVIDUAL IN RELATION TO THE FAMILY

Before the end of World War II, Japanese family system was "based on patrilineal descent, patriarchal authority, and patrilocal residence." The patriarch head of the family was to its members what Emperor was to his nation and subjects. Father was the patriarchal head of the family to be succeeded by the eldest son under the primogeniture system. "Inspite of the principle of male dominance", says Koyama, "the second and subsequent sons received lukewarm treatment in their daily round of life as hiyameshi-kui ("cold rice eaters" or dependents who deserve to eat leftover)." The members of a family were trained from the very beginning of their life to be obedient and loyal to the parents, to the elders and seek their interest only in the overall interest of the family. In this way, the individual was socialized to "accept authoritarianism and to cultivate little individual autonomy." This basic training at home was to be followed by similar ones at the educational


institutions where the individual was introduced to the wide social and political domains to behave with restrain and to observe unquestioned obedience to the rulers.

Under the U.S. occupation the old family system was discarded. The Meiji civil code was revised to conform to the new constitution. The new civil code of 1948 legally abolished the concept of ie (House) and stipulated the integrity of the individual rather than the family.\textsuperscript{114} It was the individual which constituted the primary unit and not the family as was the practice in pre-war Japan. The system of primogeniture was abolished and in its place equal property rights were introduced for all members of the family including females. The dignity of the individual was ensured in the new constitution under the "Rights and duties of the people." The authoritarian system of patriarchal headship of the family was abolished and the unquestioned parental authority over the family members lessened. Equality of both sexes was recognized and marriage on the mutual consent of both sexes was provided for in Article-24 of the new constitution. As against the old direct-lineage family system, at the time of marriage of a new couple a separate family register was set-up on the basis of nuclear family.\textsuperscript{115}

The freedom of the young to choose their spouse lessened the control of parents on the routine lives of


\textsuperscript{115} Fukutake, n. 113, p. 33.
the siblings and helped to change the traditional role of the family and to improve the status of the individual in it. Although, the practice of primogeniture still prevails in the rural areas as a social custom, it was more due to the exigencies of economic factors and psychological fear of insecurity on the part of aged parents than the social custom of showering special favours on the eldest son. The traditional family system based on parent-child relationship has given way to marital relationship.

Thus in the post-war Japan individual has been liberated to a significant extent from the undemocratic structure of the pre World War II Japanese family system. He has been encouraged to think independently of his own and to take rational course of action in his role in the family as well as in society.

AMELIORATION OF WOMEN

The negation of individuality was further reinforced by the lower status assigned to the woman vis-a-vis man in the pre-war Japanese social system. The status of the woman was very low in comparison to that of the man and her social role was confined only to the boundaries of her family, before as well as after marriage. Her

116 Harumi Befu, "Corporate Emphasis and Patterns of Descent in the Japanese Family", in Smith and Beardsley, eds., n. 110, p. 34; and Fukutake, n. 112, pp. 128-9.

117 Fukutake, n. 112, p. 126.
exclusion from the varied activities outside the family was based on the prejudiced viewpoint rooted in confucianist ideology, that men were naturally endowed with superior qualities, special talents and abilities, and were "superior in most areas of endeavor." 118

In contrast men were "entitled to many rights not shared by women, and by the same token, had certain duties and responsibilities women were thought incapable of assuming." 119 The family bore the name of the patriarchal head who was accountable to society for the household. In the family women were answerable to men. 120

The guiding philosophy of confucianism in the pre-war Japan "not only drew a fine distinction between men and women, but also laid down strict rules of behaviors." 121 The woman was governed throughout her life by strict obedience to her parents in childhood, to husband in a married life and to sons in old age. "She had no independent life of her own, nor a personality which belonged to her." 122 In interaction with "men of there


119 Ibid.

120 Ibid.


own as well as of higher classes, women were taught to behave submissively. 123

In the field of education women were also discriminated. They were taught at separate girls school and only up to the primary level with the intention of preparing them to become "good wives and wise women" 124 rather than enlightened human beings. They were equally discriminated in the domain of economic opportunities. 125 In matters relating to marriage, divorce, claim of children and property rights the family law and the Meiji civil code pushed women to the receiving end. Marriage was not based on the choice of the couple but was arranged by the parents and considered "simply an element in the ongoing le continuum, necessary for its survival but by no means sufficient for its definition." 126 Until the promulgation of the new constitution women were denied of any political rights. Such a submissible and discredited position of women in pre-war Japanese society was designed to squeeze out the sense of individuality from them.

Occupation authorities took special notice of the pre-war degraded status of women in Japan. Various reform measures were adopted which touched almost every aspect of life regarding the status of women. "At one stroke the

123 Pharr, n. 118, p. 39.
124 Murthy, n. 121, p. 125.
125 Ibid, p. 129.
occupation authorities declared". says Prof. Murthy, "that men and women were equal for all purposes and provided legal remedies against discrimination." In the new constitution, centuries old disparity between the sexes was abolished. Equality of both sexes was recognized in political, social and economic spheres (Article-14), and provisions were made for the exercise of free will of both sexes "with regard to choice of spouse, property rights, inheritance, choice of domicile divorce and other matters pertaining to marriage and the family" (Article-24). These legal remedies find further support in the revision of the Meiji civil code which went into effect on January 1, 1948. Such legal and constitutional provisions made a significant contribution in enhancing the status of women which received further impetus from Japan's phenomenal economic development since the latter half of the 1950s.

In post-war Japan, marriages based on the mutual understanding between the marital partners (Renai Kekkon) have been given preference over the arranged marriage (Miai Kakkon). According to surveys by the Ministry of Health and Welfare, the percentage of arranged marriages has come down from 49.8 percent in 1966 to 36.2 percent in 1973. The post-war trend of marriages through mutual understanding found more positive response in

127 Murthy, n. 121, p. 136.
urban areas than in the rural sectors of Japan. For the first time women were guaranteed equal rights to seek divorce. Now in contrast to the old system of pre-war Japan a wife can seek separation from husband for his infidelity. However, the divorce rate is quite low by international comparisons. In 1950 there were 83,689 cases of divorce (a rate of 1.0 per 1000 population), in 1987, there were 1,58,227 divorces (1.30 per 1000) It reached a peak of 1.51 per 1000 in 1983 and has been on the decline ever since. A major breakthrough in the legal provisions concerning divorce occurred on September 2, 1987, when the supreme court approved divorce based on irreconcilable differences in a troubled marriage and revised the courts longtime position. Under the new civil code, the wife is entitled to a share in the distribution of her husband's property. Separate ownership of property by husband and wife is now recognized. A spouse is entitled to one half of all family property with the remainder to be equally distributed among the children. The pre-war system of passing on the entire property of the family to the


133 Facts about Japan, n. 128, p. 4.
eldest son was scrapped in the revised civil code and equal share for all the family members including women was stipulated. In 1980 the section of the civil code dealing with inheritance was amended to enhance and strengthen the legal status of wives.

In the post-war Japan, various efforts were made under the U.S. occupation to restructure the undemocratic and sex prejudiced pre-war and wartime education system into an impartial and democratic one aimed at equal education opportunities and equal development for both sexes. It is provided in the new constitution (Article-26) that "all people shall have the right to receive an equal education corresponding to their ability, as provided by law." Before the promulgation of the new constitution in 1946, the then cabinet also approved "(n)ew Guidelines for Female Education" emphasizing equality of both sexes. The fundamental education law of 1947 ensured equal opportunities in Article-3 and co-education in Article-5 which reflected a new course for women's education after the war. As against the pre-war system of co-education only up to sixth grade, the entire education in the postwar Japan is based on the co-education system. In the aftermath of occupation there was an explosion in the number of both male and female students going for higher studies. The number of female students attending junior colleges and universities and their advancement rate has

134 Matsumoto, n. 110, p. 55.

been on the rise for the past several years and coming closer to the percentage of male students.\textsuperscript{136} The Ministry of Education in December 1987 stressed the need of imparting technical knowledge to both male and female students. Given the changed family and social environment in Japan, it was recommended that home economics programmes should be compulsory for both male and female students in upper secondary schools.\textsuperscript{137}

What makes the position of woman in post-war Japan different and meaningful in contrast to that of pre-war period was her political role in public life. In the pre-war Japan "(n)ot only were women denied the right to vote and the right to seek election to the Diet, but they were also forbidden to join political parties or even attend meetings of a political nature."\textsuperscript{138} Equal rights to both men and women in the political field were recognized in the revised Lower House election law in December 1945. Further in the new constitution of Japan right to vote was guaranteed to all people over twenty years of age in all elections, national as well as local. As a result in the first general election to the Lower House held in April 1946, 67.0 percent of the enfranchised women


\textsuperscript{137} \textit{Women in Japan Today}, n. 130, p. 4.

returned as many as 39 female legislators to the house of representatives.\textsuperscript{139} Although in the subsequent elections the number of women legislators in the Lower House has tended to dwindle, in July 23, 1989 elections to the Upper House, 22 female candidates the largest number in any house of councillors election to date, were elected out of 146 female candidates. The twenty two newly elected women legislators together with another eleven women councillors whose seats were not put for election represented 33 of a total of 252 (13 percent) Upper House seats. The female members of the House of Representatives have also increased from 7 (1.4 percent) in 1986 to 12 (2.3 percent) in the general election held on February 18, 1990. Together with 33 members in the Upper House women represented 5.9 percent of the total Diet seats.\textsuperscript{140} Since the thirty second Diet election, the percentage of women participation has steadily increased.\textsuperscript{141} In local politics too women in post-war Japan have played an active role. A total of 956 women, the highest number since women suffrage was granted in 1945, were elected in the 11th national unified local elections held on April 12 and 26, 1987. Of all the local assemblies across the country, 52 (2.0 percent) women were elected at the prefectural level; 657 (4.8 percent)

\textsuperscript{139} Facts about Japan, n. 128, p. 6; and Murthy, n. 121, p. 139.

\textsuperscript{140} Japanese Women (Tokyo), No. 63, March 1, 1990, p. 2; and Japanese Women (Tokyo), No. 62, September 1, 1989, p. 2.

\textsuperscript{141} Facts about Japan, n. 128, p. 6.
at city and special ward levels; and 267 (1.3 percent) at town or village level.\textsuperscript{142} The entry of women in the electoral process is not only a matter of great importance in itself, but also a testimony to the flourishing of liberal attitudes in the post-war Japanese society as a whole. Mr Hisao Horinouchi, the Minister for Agriculture, Forestry and Fisheries had to take back his derogatory remarks on the role of women in politics in his speech on July 9, 1989 and render an apology for the same.\textsuperscript{143}

The position of women in the working sectors of the Japanese economy has also improved significantly. "Most of all, women are refusing to stick to their submissive traditional roles. They are driving dump trucks at construction sites, acting as government spokesperson and going to bars after work to unwind with their friends."\textsuperscript{144} The strength of working women has outnumbered housewives since 1984. In 1989 the number of female employees reached 17.5 million, 2.3 million more than that of housewives. It has shattered the "traditional belief that men work and women stay home and do the wash."\textsuperscript{145} In 1989, 49.5 percent of women aged 15 and over worked which comprised of 40 percent of the total Japanese labour force and 37 percent of employed

\textsuperscript{142} Japanese Women (Tokyo), No. 58, September 1, 1987, p. 2.

\textsuperscript{143} Keesing's Record of World Events, vol. 35, No. 7-8, 1989, p. 36800.


In the past women workers quit work after marriage and resume only after a gap of decade. Now more women are returning to their work after shorter breaks and 50 percent of working women do not stop working at all.\textsuperscript{147} The number of female employees with higher education has also been increasing at an unprecedented rate. One in four female employees has at least graduated from a Junior College.\textsuperscript{148} At present women in Japan are no longer only relegated to the status of "Office Ladies". They have been appointed to positions in a variety of new fields which were previously almost exclusively monopolized by men. The posts to which women rose for the first time included Director of a Custom Branch (1987), General Manager of a Construction Office (1988), Director of Weather Information Service Office (1987), Diet Guard (1987), Board member of Directors of a Private Broadcasting Company (1988), President of political party (1986), Chief Examiner of the Budget Bureau (1988), Director of the Tax Office in one ward of Tokyo (1982), priesthood of Tendai Sect (1988), Editorial writer of a national newspaper, Mainichi (1983) and chief judge of a district court (1983).\textsuperscript{149} In teaching - one of the most traditional professions for women - the ratio of female teachers in lower secondary schools and upper

\textsuperscript{146} Ibid.

\textsuperscript{147} Ibid.

\textsuperscript{148} For more details see \textit{Japanese Women Today}, n. 136, p. 5.

\textsuperscript{149} \textit{Japanese Women}, No. 60, September 1, 1988, p. 4; and \textit{Japanese Women}, No. 50, September 1, 1983, p. 4.
secondary schools has been rising continuously since 1970 and rose to 34.3 percent and 18.9 percent respectively, whereas in 1969 it was 26.1 percent in lower secondary school and 16.8 percent in upper secondary schools. More interestingly women have also carved a niche for themselves at the universities. In 1986, 4.4 percent of the total number of professors in Japanese universities were women and 7.2 percent assistant professors.150 Women have also succeeded in making their presence in the highest ladder of administrative services. In 1985 out of the total 36072 applicants in category-1 examination for national public service personnel 1,655 qualified. Among those 1655 successful candidates 105 were women. In addition, on April 15, 1985 eight women were admitted into the Defence Medical Academy, which had hitherto not been opened for women.151 The strength of women serving in the Japanese Self Defence Forces has increased from 2,830 in 1978 to 4,924 in 1990.152

All these major developments regarding the socio, economic and political role of women in the post-war Japanese society referred to as the liberation of female from the pre-war degraded status and their upliftment on an equal footing with men. Although at the managerial level and the decision making circles, the extent of

150 Women in Japan Today (Japan : Prime Minister's Office, Office for Women's Affairs, August 1987), p. 6; and Murthy, n. 121, p. 143.


152 Newsweek, n. 144, p. 12.
women participation remained still low but it is beyond
doubt that there has been a positive change in general
attitude towards the status of women in the society.\footnote{153}

Apart from the reform measures taken by the
government women in post-war Japan have also streamlined
their struggle to achieve an equal status with that of
men. They have organized themselves into a large number
of organizations reflecting upon different aspects
ranging from their immediate concerns to pro-democracy
and peace issues. Japan’s ratification of the U.N.
convention on the Elimination of All forms of
Discrimination Against Women in 1985 and further the
enactment of the new Equal Employment Opportunity Law in
May, 1985 which went into effect in April the following
year could be attributed to the conscious and constant
efforts on the part of women to improve their lot.\footnote{154} In
the new National Plan of Action towards the year 2000,
adopted in May 1987, various steps were taken to
highlight and to improve the status of women and to help
them demonstrate their abilities.\footnote{155}

Thus in post-war Japan, significant improvements
have taken place to uplift the status of women and to
help them behave as independent individual. This in turn
has strengthened the democratic values introduced by the
Occupation authorities.

\footnote{153} Japanese Women, No. 53, March 1, 1985, p. 3.
\footnote{155} Women in Japan Today, n. 130, p. 2.
During the Meiji era, a specific system of education was adopted in order to provide moral and intellectual support to its undemocratic and absolutist character. The entire focus of education was directed to block the growth of the diverse possibilities of individuals and to make them yield to the whims of ultranationalists and militarists.¹

During the Allied occupation this system of education was abolished. In its place a new system of education based on the nourishment of independent thinking, spiritual freedom and private self was established to ensure the healthy growth of democratic values and norms in the post-war Japanese society. To provide a legal status to these new ideals of democratic education they were enshrined in the new constitution of Japan and further stipulated in the fundamental law of Education. The new constitution of Japan guaranteed people the universal right to fully realize their private self independent of state interference. It is provided in Article-26 that every individual is entitled to receive equal education corresponding to his abilities. The pre-war system of dual education, based on different values for higher and lower centres of learning where elites

enjoyed academic freedom and masses were indoctrinated in national ideology and the idea of the divinity of the Emperor, found no place in the post-war educational set up.  

As against the pre-war state controlled system of education where the interest of the state was given priority over what suited to the individual, the post-war education was designed to respond to the needs of the individuals. To help individual to develop his personality, grow sound in mind and body, seek truth and justice and to cultivate independent spirit and sense of responsibility for the creation of a peaceful society based on democratic values, the fundamental law of Education made provisions for the independence of education and freedom of educators. Education authority was placed in the hands of people and the range of powers of educational administrators was limited to the "adjustment and establishment of various conditions required for the pursuit of the aim of Education." School administration was formally debarred from encroaching upon the professional autonomy of the teachers and the contents of syllabus to be taught at lower and higher level of education. It is provided that the state has no right to determine what knowledge is necessary for the people and could no longer subjugate

157 Ibid, pp. 98-105; and Osamu, n. 18, pp. 60-7.

the standards of truth and reality to its ideological agenda. In terms of academic freedom no distinction was made between university and school education. Unlike the pre-war dual system of education both lower and higher centres of education were conferred equal freedom.

Education was declared as an inalienable right of the child to grow as a self conscious and responsible member of the society, whereas in the Imperial Japan it was considered as parents’ obligation to see that the child was educated as an ultimate duty to the state. In other words education was not a right but duty towards the state. 159 What makes the post-war educational set-up different from its pre-war counterpart was the due recognition guaranteed to the individual through out the single track co-educational structure of learning partitioned into a six year primary school, three year middle school, three year high school and four years of higher studies in universities. The first nine year of co-education comprising the primary and middle school were made compulsory for all children. Article-8 of the Fundamental Law of Education stressed the importance of training students to become politically conscious citizens of democratic Japan. This was "to make the idea of democracy something more than a merely formal or abstract point of reference." 160 At the same time it guarded against the inculcation of any specific political education or other political activities for or against...

159 Horio, n. 156, pp. 82-84; and 116-7.
any specific political party. To ensure the dignity of individuals and to respect their inner realms of belief, and freedom of thought, the principle of separation between Church and state was firmly established in the post-war educational set-up in Japan. The school established by the state and local public bodies were directed to refrain from propagating any specific religious education and activities in support of a specific religion. On the other hand, the importance of education in promoting the attitudes of religious toleration and the position of religion in social life was valued in this principle of fundamental law of education (Article-3). In short the post-war system of education in Japan was based on the liberation of individuals from the pre-war militaristic values and priorities of the imperial state encapsulated in the imperial rescript of Education, which had indoctrinated them into passive and loyal subjects. It was rededicated to "nourish the development of autonomous individuals and the value of human dignity" for the creation of a democratic and peaceful society. 161

This marked a major shift in the underlying philosophy of education from state based in imperial Japan to individual oriented in post-war Japan. Under the Board of Education Law (1948)162, Educational administration was made responsible to the popular will of the residents of the various localities. Popularity

161 Ibid, p. 123.

162 For text see Duke, n. 158, Appendix 11, pp. 219-220.
elected Boards of Education replaced the prewar educational administrative control exercised by the ministry of Education as an organ of the Imperial State's centralized bureaucracy. The contents of pre-war text books intended to serve the imperial line based on the imperial rescript, were removed and in their place liberal ideas were introduced. 163 Under the school Education Law of 1947, 164 the state run system of text book preparation and publication was abolished to make it a private vocation. School authorities were guaranteed the freedom to choose the text books they considered suitable after consulting with the teachers. 165 These educational reform measures played a crucial role in the development of democratic values and political consciousness among the citizens of post-war Japan. Moreover, it also provided a conducive environment for the flourishment of pre-war liberal and democratic thinking in Japan ruthlessly suppressed by the use of force as well as Education.

After the formal end of the occupation and especially after the coming together of different conservative parties to form a single liberal Democratic


165 Yamazumi Masami, "Educational Democracy versus State", in McCormack and Sugimoto, eds., n. 93, pp. 93-95.
party in the Autumn of 1955, a trend was set to rectify "excesses of democratization" committed under the occupation induced educational reforms. Since then, in the name of patriotic education, national morality, high economic growth, and normalizing education, the ruling conservative had made various attempts to reverse the democratic character of education.  

However, the real motive behind the reverse course was to drive Japan back to the pre-war social set up and thus to ensure an unswerving hold of the conservatives on governance at the exclusion of the people. Another, equally important factor, that lent support to the ruling conservatives in such a design was the trend set by the shift in the U.S. policy towards Japan to transfer her from a pacifist state into a strong U.S. ally. Thus the result was the negation of the importance of "Peace Education."

It was in this context that the democratic spirit among the Japanese people, generated by the impact of post-war democratic educational reforms reflected its maturity. Unlike the loyal subjects of Imperial Japan, the citizen of post-war Japan trained in democratic norms and principles did not remain a mute spectator to the conservatives' assault on his democratic rights. The government had to face intense opposition both inside and outside the national legislature to its move to throttle the democratic ideals of education. The law concerning

166 Ibid, pp. 95-98 and 103-12; and Horio, n. 156.
167 Horio, n. 156, pp. 142-3 & 147-8.
the management of local educational system designed to replace the elected members of educational boards by nominated members, was passed in the national legislature only by a narrow majority. The commitment of the democratic forces to local autonomy of education and its liberal character was so strong that the support of a special Task Force was sought to "maintain order during the tumultuous debates" in the national legislature.166 A strong nationwide Citizens' Education Movement also emerged in the wake of government's move to reverse the evolution of liberal and democratic education.167 The diversity and depth of nationwide Citizens' Education Movement included "the teachers' movement for professional autonomy, the parents' movement for participation in the educational decision making process, city and rural residents' study movements, and a number of workers' self education movements."170 The mere fact that these movements had emerged to defend the new liberal system of education showed the deep rooted strength of democratic values and attitudes among the Japanese people in the post-war Japan. Various law suits filed in the high courts and supreme court of Japan by the concerned individuals and the tremendous support in that respect rendered by the legal scholars further proved the strength of the critical and independent

168 Ibid, pp. 150; and Masami, n. 165, pp. 96-97.


spirit of the Japanese people to struggle and safeguard the democratic values and institutions.\textsuperscript{171}

In conclusion, it can be said that the pre-war authoritarian and undemocratic politics and society of Japan gave way to domestic reforms based on democratic ideals and values of pacifism. These reforms were introduced at the behest of the occupation administration. In other words, this overall structural transformation was effected under the overwhelming influence of the U.S. The political ideals of liberalism were not totally alien to the Japanese people who had during earlier historical periods, launched struggles for their attainment. These ideals had also inspired them in the Taisho era, though for a short while. But still, the large scale transformation of post-war Japan along these values was the result of the pressures from above under the political and administrative leadership of the SCAP whose policies had also coincided with the visions of democratic and peace-loving sections of the Japanese peoples.

But the U.S. could not take the reforms to their full course as the strategic considerations arising from the cold war generated other political objectives in its relation with Japan. In recent years also (after more than four decades) the Japanese political system and society have once again become the target of U.S. policy-makers who have started criticizing Japan for its 'free ride' and lack of responsibility in providing supporting

\textsuperscript{171} Ibid, pp. 171-294.
hand for the maintenance of world order, commensurate with its economic strength. Such an irresponsible behaviour on the part of Japan in the context of global system was attributed to its conservative and closed social set-up, and to the faults in its political system. To overcome such hindrances in the way of Japan to assume a status of an international actor, U.S. government again started pressurizing its to make 'structural adjustments' in its social and political domain.
