CHAPTER II

STATE & ITS NATURE & SCOPE IN ANCIENT INDIA.
CHAPTER - II

THE STATE ITS NATURE AND SCOPE IN ANCIENT INDIA

1. THE STATE AND ITS STRUCTURE

The entire Vedic literature does not contain any definite concept of definition of the state. Similarly the early law books, the Dharmasūtras, do not make any reference or allusion to the constituent elements of the state. It is commonly accepted that Kautilya was the first writer on polity who, for the first time, gives a concrete definition of the state describing it as an organism consisting of seven elements: svamī, amātya, japapāda, durga, danda and mitra.¹

These seven constituents or elements are frequently mentioned in later literary texts throwing light on political, social and legal institutions in ancient India.² The ancient Indian social scientists and political thinkers regard the state as an organic whole. The seven constituents of the state are termed as limbs (aṅgas) of the body politics. Despite the

relative superiority of some of the elements like the king and the minister, each limb has been considered indispensable for the systematic constitution of the state.  

According to Kāmandaka Nītisāra the seven elements, mutually integrated and co-operating with each other, are indispensable for the systematic existence and proper functioning of the state. Manu holds that the body politic can not stand if one of these limbs is missing, just as three sticks poised properly against one another will collapse if one of them is taken away.

Sukra in his famous treatise "Sukranītisāra" states:

"The kingdom is an organism of seven limbs, viz., the Sovereign, the Minister, the Friend, the Treasure, the State (territory), the Fort and the Army". Through a fine analogy the author has compared the state with the living organism:

"Of these seven constituent elements of the kingdom the king or the sovereign is the head, the

3. Manu, IX, 297.
4. Kāmandaka Nītisāra, IV. I.; Arthasastra, VI. I.
5. Manu, IX, 296.
minister is the eye, the friend is the ear, the treasure is the mouth, the army is the mind, the fort is the arms and the territory is the legs."

A further analogy is given to underline this concept:

"The king is the root of the state, the councillors are the trunks, the commanders are the branches, the troops are the leaves and flowers, the subjects are the fruits, and the lands are the seeds."

Kautsilya and other political and social scientists assign a predominant position to the sovereign among the seven elements. Sukra also considers him as very vital to the existence of other elements of the state: "Just as the branches etc. of a tree wither away when its roots decay, so also without the king, the commanders, etc. grow powerless immediately or in the course of some time." He further observes that if the king does not follow the niti, the kingdom is weakened, the army becomes

7. SNS., IV. 57-58.
8. Arthasastra, VIII. 2.; Arthasastra, VIII. 1;
9. SNS., IV. 56-57.
inefficient, and the civil service is disorganised; other elements of the state get topsy turvy.  

Sukra describes the exalted position of the king (svāmi) as one of the constituent elements of the state. In his view, the ruler is the principal source of the prosperity of this world and a perfect guide of his subjects.  

If he begins to act at his sweet will, it leads to calamities, to loss of ministers and of the kingdom. 

Manu, like Sukra says, "the creator created the king for the protection of all this world when everything ran through fear hither and thither, as there was then no ruler in the world". He further elaborates that the creator proceeded to create danda for the sake of the king and that if the king does not carefully employ danda for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike, or as in water bigger fish devours weaker fishes.

10. Ibid., I. 37-38.
11. Ibid., 127-30.
14. Śukranītisāra, 1. 171.
15. Manu, VII. 14, 20.
Several works point out that in the absence of the king or when there is no fear of punishment, the condition of matsuṣyanyayā follows.¹⁶ Numerous works contain eulogies of dānda calling the king as dāndadhāra.¹⁷ Gautama says that the word dānda has been derived by the wise from the root dāma (to control), that he (the king) should control by means of dānda those who do not observe restraint.¹⁸ Sukra also gives similar definition of this term identifying the king himself with dānda.¹⁹

Sukra tries to throw light, at some length, on the necessary qualities requisite for the head of the state. In his view discipline is the most important fact to guide the king. This comes through the dictates or precepts of Śāstras. This gives strength over the senses, and one who has conquered the senses, acquires the Śāstras.²⁰

AMATYA

Sukra has laid enough emphasis on the importance

¹⁷. Santi Parva 67. 16; Kamandaka I. 1.
¹⁹. ŚN., I. 56.
²⁰. Ibid., 181-82.
of the second element i.e. the amśātys (ministers and
the officers). He remarks that even the king, who is
proficient in all the sciences and is a past-master in
state craft, should never by himself study political
interests without reference to the ministers. The wise
ruler should always abide by the well-thought-out deci-
sions of the able Councillors, office bearers and
others. 21 Sukra’s view corresponds to the thinking of
the earlier writers on polity. Kautilya says, "kingship
is possible only with the aid of assistants, as a single
wheel cannot work (a chariot); therefore the king should
appoint ministers and listen to their opinion." 22

Manu observes, "It is difficult for one person
alone to accomplish even an easy task; how can govern-
ment, particularly, which has great good as its aim, be
accomplished without helpers?" 23

ALLIES

In Sukra’s list suhṛta or an ally is the third
constituent element of the state; but most of the early

21. Ibid., II, 3-6.
23. Manu, VII. 55; SNS II. 1.
writers mention the ally as the seventh element. According to Kautilya the ally should be hereditary, not artificial, one with whom, there is no possibility of any mistrust or rupture and one who is ready to come to help when occasion demands it. The Mahabharata maintains: "no one is the friend or enemy of anyone else; friends or enemies are made by wealth (or objects) persuaded by a person." Kamandaka holds the same view.

Like the Mahabharata and the Kamandaka-Itisara, Sukran-Itisara expresses a very realistic view regarding the ally:

"In case of a brave, energetic, strong and energetic king, all others, though outwardly friendly, secretly cherish enmity to him and only wait for the proper time to strike. There is no wonder in this. Are they not themselves greedy of conquering territories? A king has no friend and he is the friend of none."

KUSA

Next comes the treasure or the Kosha. Sukra

27. gNS., IV. I. 8-10.
defines treasure as a collection of wealth and says that the king should collect funds by hook or by crook and thereby maintain the nation (rāstra), the army as well as sacrifices. 28

In his view the rich collection of treasure is necessary for the maintenance of the army and the subjects and for the performance of religious sacrifices. This leads to king's happiness in this life and the life hereafter; but the collection that is made for wife and children as well as for self enjoyment leads to hell and does not give happiness hereafter. The treasure that which is earned wrongfully is the cause of sins. 29

Like Sukra several other political thinkers and writers attach great importance to kosa. The Sāntiparva calls upon the king to guard his finances with great care and efforts since kings depend upon kosa, which tends to prosperity (of the kingdom). 30 Kamandaka states that it is on the lips of all that the king is dependent upon kosa. 31 According to another text kosa

28. Ibid., 2. 3-4.
29. Ibid., IV, 2. 5-9.
30. Mahābhārata, Sāntiparva, 119.16.
31. Kamandaka, XII. 33.
is the root of the tree of state.\textsuperscript{32} Manu observes that kṣa and the government of realm depend on the king.

They should be the personal concerns of the king.\textsuperscript{33} Yājñavalkya recommends that the king should personally look into the income and expenditure every day and keep it in his treasury buildings whatever is brought by those who are appointed for the purpose.\textsuperscript{34}

\textbf{JANAPADA}

The constituent element called 'janapada' in Kautilya's \textit{Arthasastra} is mentioned as rastra in Manu\textsuperscript{35} Smṛiti and Viṣṇu Smṛiti.\textsuperscript{36} Kamandaka also sometimes uses the term rastra. This term is invariably used in the \textit{SukranItisāra}, according to which both immovable and movable things are indicated by the term rastra.\textsuperscript{37}

\textbf{DURG}

An independent section in the \textit{SukranItisāra} devoted to Fortress and other various kinds of forts.

\textsuperscript{32} Vishudharmottara, II. 61.17.
\textsuperscript{33} Manu, VII. 65.
\textsuperscript{34} Yāj., I. 327-28.
\textsuperscript{35} Manu Smṛiti, IX. 294.
\textsuperscript{36} Viṣṇusmṛiti, II. 33.
\textsuperscript{37} SNS., IV. 3. 1-2.
The parikhā fort is that which is surrounded on all sides by deep ditches. The parikhā is protected by the walls of bricks, stone and mud. The vana or forest fort is encircled by huge thorns and cluster of trees. The dhanva durga is known to be that round about which there is no water. The jala-durga or water fort is that which is surrounded by areas full of water. The giri-durga or hill fort is situated on high level and supplied with plenty of water. The saínya durga or troop fort is defended by heroes well up in Ayudhas or military tactics and hence it is impregnable. The saínya durga or help fort belongs to the valorous and friendly kinsfolk. In view of Sukra, the fortress with soldiers is the best of all. Others are mere auxiliaries to this. The King should, therefore, always keep this fort. 38

Kautilya speaks only of four kinds of forts. They are:audaka (water protected), which is on an island surrounded by water or it is built on ground (surrounded by low ground), parvata (mountain one) such as rocky hill or a cave, dhanva (desert fort, on a waterless tract full of thickets or waste land), and a forest fort. 39

38. Ibid., 6. 15-16.
The Vāyuapurāṇa also refers to four kinds of forts. Several other texts speak of six kinds of forts. Manosollāsa mentions nine kinds of durgas. The Parasurāma prataḥpa, like the Śukranītisāra, enumerates eight kinds of forts.

THE ARMY

The army (bala) has been defined by Śukra as a group of men, animals etc. equipped with arms, missiles. Without the army there is neither kingdom nor wealth for prowess. The army is the chief means of over-powering the enemy. So the king should carefully maintain a formidable standing army. Śukra dwells at length on the composition of the army.

Kauṭilya and some other authors use the term danda for this constituent element. Kāmandaṇa states that the king possessed of a sound financial position

40. Vāyu., 8. 108.
41. Manu., VII.70, Santi 56.35 and 86. 4-5; Viśnu-
dharmāśūtra III. 6, Matsya 217. 6-7, Agni Purāṇa, 222. 4-5, visnuhdarmottara, II.26. 6-9, III.323,16-21.
42. Manosollāsa., II. 5, p.78.
44. SNS., IV, 7.2; 7-8, 15-16.
45. Kauṭilya, Arthāśāstra, 111.17.
increases his depleted army; supports his own subjects and is respected upon even by his enemies. An enhancement of the wealth, of one's friend, and of the king's territories, prompt attainments of objects that seemed distant, protection of what is already secured, destruction of the armies of the enemy are directly and indirectly associated with the powerful armed forces.

2. **THE OBJECTIVES AND THE IDEALS OF THE STATE**

In the preceding chapter I have tried to emphasise that the duties of the king did not differ from the functions of the State. But before I take up to consider the functions of the State, I deem it appropriate to take up the aims and ideals of the State in ancient India.

According to the modern western political thinkers and social scientists the state was created for the benefit of the people. Plato states that the end of the State was good life for its citizens. Aristotle also expressed an identical view by saying that the State existed for the sake of good life and not for the sake of life only....

46. Kamandaka, XII, 34-37.
Political society exists for the sake of noble actions and not of mere companionship. ¹ Bluntschli opines that the end of the State consisted 'in the development of the national capacities, the perfecting of national life, and finally its completion,' provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity. ² Burgess considered liberty as primary end, secondly perfection of nationality or the development of popular genius and finally perfection of the humanity and the civilization of the world. Von Holtzendorff offers three-fold ends of the State. First was Power, by which the state might preserve its existence and position against other state. Secondly, Individual liberty or sphere of freedom for individuals who constitute the State, and thirdly, General Welfare which the state must secure by maintaining peace and order in the state and by aiding and educating its people. Bentham held that the state existed "for the greatest good of the greatest number", whereas Idealists regarded state as the embodiment of pure reason and the voice of the people as the voice of God. According to them the fullest development of human

1. Aristotle, Politics, Bk. III, Ch.9.
2. Bluntschli, Theory of the State, Bk. V, Ch.IV, p.300.
personality, human reason and civilization was the primary ideal of the state. The Socialists or Collectivists considered state as a classless community of which the supreme aim is to secure complete equality of all and equal benefits of life to all. To the Greeks the state was an end in itself; there was no distinction between state and society and no existence of individuals. Gilchrist opines: "The state was the supreme fact of life and the efforts and actions of individuals had to flow into it just as a river flows into the sea."

These western views lack the desired and ideal precision as there is no agreement on the destiny of humanity and the concept of nation and national life. The basic difference lies in basic human values and ideals. According to ancient Indian view of life the ultimate end or goal of most of our philosophical thoughts was 'moksa' or salvation or liberation from the bondage of ever recurring cycle of birth and death and from the miseries and sufferings of life. The same was the ultimate goal of 'Rājadharmā'. But the goal of the state in ancienity India was to create such conducive conditions and social environment that would enable all people to live in harmony, peace and happiness in order
to pursue their vocations; to follow their own customs and usages and their 'svadharma'; to enjoy, without any kind of interference, the fruits of their labour and the property acquired by them. The king was the divinely empowered agent or an instrument to create the conditions of peace, order and happiness.3

Altekar rightly opines that the king epitomized that peace, order, security and justice in himself and regarded these aspects as the fundamental aims of the state. The king or the head of the state in ancient Indian society was to be like god Varuna, the upholder of the law and order (dhrtavrata); he was to punish the wicked and help the virtuous. Religion was to be promoted; morality was to be encouraged and education was to be patronised.

The State in ancient India, however, was to secure not only the moral but also the material well being of its citizens. Multidimensional welfare of the people was clearly regarded as the chief aim of the state during the vedic and Upanisadic periods.4 These high and lofty ideals were considered indispensable for an ideal state.

We come across the graphic descriptions of such a state at several places in ancient Indian literature. The Atharva Veda narrates that the great kingdom of Pariksita flowed with milk and honey. The Rāmāyana has the vivid pictures of an ideal state. The earliest reference is a brief narration given by Narada to Vēlamāki stating that in the kingdom of Rāma people were healthy and content, well-versed in religion, immune from all kinds of diseases and famine. The son did not die during the lifetime of his father; there were no widows and every wife was loyal to her husband. There was no fear of fire, animals and reptiles, storm, fever, starvation and thieves. Cities and villages were full of wealth and grains. Everywhere pleasure ruled supreme as if it was 'kṛtayuga'. The sacrifices were regularly performed and charities of gold coins and cows were given to learned people with benediction; unlimited wealth was given to brahmaṇas. This way Rāghava increased the merits of the royal dynasty hundred times and all the four 'varṇas' were engaged in their respective Dharma.

5. Atharva Veda XX. 127.

Later on, in the same work we find the lengthy description of the kingdom of Daśaratha. It may be summarised that in that state none was sexually immoral, coward, cruel, illiterate or an atheist. All men and women were religious and self-restrained, gay and humble like a saint in purity. None was non-vegetarian, miser or a robber. No home was without sacrificial fire and no one was mean or a thief or bastard. The restrained humble Brahmaṇas were engaged in their vocations of teaching and accepted limited remuneration. Atheists did not exist there and none was a back biter, incapable or illiterate, poor, lunatic, sorrowful or without glamour. None was seen with no loyalty in the sovereign; all the four Varnaś worshipped the gods on auspicious days. All were dutiful, valourous and full of vigour, having long lives, adhered to Dharma and the truth in the company of their Kiths and Kins. Kṣatriyas followed the injunctions of the Brāhmaṇas and Vaiṣyas walked in the footsteps of the Kṣatriyas. Sudras were engaged in serving all the three Varnaś mentioned above. 7 we again come across a description of 'Rāma-Rājya', the ideal state cherished, time and again, in the minds of Indians. It tells that

when Rāma was ruling the earth there was no lamenting widow, no fear of demons or pestilence; the country was free from dacoits and evils did not even touch anyone. The elders did not require to cremate the youngsters as there were no untimely or immature deaths. All the people were glad and devoted to religion and any kind of assaults were not there. All enjoyed long lives without diseases or sighs. The trees were always green having flowers and fruits. 8

The rains fell at desired times and the winds were pleasing. People were content with their belongings and were devoted to religion and were engaged in their vocations. None was untruthful; all were rich and were following the principles of Dharma. Men and women were joyful; the whole land was well cultivated; the land was full of cattle and free from injury. Crops did not depend upon rains alone. The land was endowed with mines; free from wicked men and the whole country enjoyed prosperity and happiness. 9

The Mahābhārata also conceives an ideal state

8. Rāmāyana VI., 128. 97-104.
9. Ibid., II. 100. 43-46.
as a well-governed and prosperous country, full of public wells, gardens and meeting halls (sabha). The Chhandogyanpanissad contains a statement by some ruler who tells, "In my kingdom there is no thief, no coward, no drunkard, no men without the sacrificial fire set up in the house, no one was uneducated; there was no adulterer, much less an adulteress." An identical description is found in the Junagadha Rock Inscription of Skanda-gupta. In the Matsyapurana, Bali is described as telling to Sukra that in his kingdom none was in distress, poor or cunning. All were happily and content. The Raghuvamsa tells that in the reign of king Dilipa not even the wind could shake the garment of a woman in slumber even on road side, what to say of anyone extending his hand to her. The Malavikagnimitra states that an object of wish on the part of the subjects, such as the removal of public calamities, there was none that could not be accomplished while Agnimitra was their protector.

10. Mahabharata Adiparva., Ch.109.
11. Chhandogyanpanissad., V. 11.5.
14. Raghuvamsa., VI. 75.
Thus we see that in an ideal state a consummation of various constructive faculties of the man and his virtues was required. This called for a high degree of magnificence on the part of the state and its ruler. To meet this end the divine element was conceived to be present in the king or the sovereign. This concept is traceable as early as the period of the Rigveda where king Trasadasyu tells that he is Indra and Varuna, the wide and the deep heaven and earth, the son of Aditi.\textsuperscript{16} The Atharvaveda contains a narration where the king is desired to stand firm like Indra.\textsuperscript{17} In the same work at one place king Pariksīta is said to be a god among men\textsuperscript{18} whereas at another place, several gods like Agni, Mitra, Varuna, Visvadeva, Maruta, Vasudeva, Śiva and Indra have been invoked to bless the king.\textsuperscript{19} The Satapatha Brāhmaṇa considers the king as the manifestation of Prajāpati.\textsuperscript{20} At another place in the same work the sacrificer in the Rājasūya is identified with Indra.\textsuperscript{21} The gods Agni and Brhaspati were believed to enter the person of the king, when he was being announced at the

\begin{enumerate}
\item \textsuperscript{16} Rigveda. IV., 42. 8-9.
\item \textsuperscript{17} Atharvaveda., VI. 87. 1-2.
\item \textsuperscript{18} Atharvaveda., XX. 127-7.
\item \textsuperscript{19} Ibid., III. 4. 1-7.
\item \textsuperscript{20} Sat. Br. V. 1.5.14.
\item \textsuperscript{21} Ibid., V.4. 34.
\end{enumerate}
Coronation ceremony. The coronation ablution itself was being given at the command of the god Śavitră with the hands of god Puṣān and arms of god Āśvin. Some of the sacrifices performed by the king, like Āśvamedha and Vajapeya were destined to enable him to obtain parity with gods.

The Māhabhārata states that the god Visṇu himself entered into the body of the first king. Manu says, "the Creator created the king with the essential parts taken from Indra, Hāruta, Yama, the Sun, Agni, Varuṇa, the Moon and Kubera the lord of wealth." He further advises that one should not disrespect a king even if he is a boy for he is a great deity in human form. The Mahābhārata also supports this view. The Matsya Purāṇa states that the king was created by Brahmā.

24. Mahābhārata Santiparva Ch. 59. 128.
25. Manu, VII., 4-5 Cf., Ibid. V. 96.
27. Mahābhārata Santiparva, Ch. 68. 40.
by taking elements of various of gods. The Agni Purāṇa states that the king is the form of the Sun, the Moon, vāyu, Yama, Varuṇa, Agni, Kubera and the Earth. The Mārkandeya Purāṇa tells that the king performs the functions of Agni, Indra, Soma, Yama and Kubera. The Vāyu purāṇa holds that in all past and future manavantaras universal emperors are born on the earth with parts of Viṣṇu. Such references which throw light on divine character of the state abound so much that in dealing all of them the context will be exceptionally long drawn and it may be summed up by saying that the divinity in State has been confirmed by Manu (6-17). The Mahabharata (Sāntiparva, 63.24–30; 67.4.68.40, Sabhāparva 5), Gautama (11.32), Sukra (1. 71–79, I.2.11), Matsya Purāṇa (226. 1–12), Bhāgavata Purāṇa (1V.14.26.27), Padma Purāṇa (Ch. 20), Naraśa (VIII.26 and Prakīrṇaka section, verses 20–31 and 52), Ramayana (Mālakāṇḍa Ch.I.18.1, Ayodhyakāṇḍa

31. Vāyu Purāṇa, 57.72.
Ch. II. 30 and Ch. 67,35), Kāmandaka (I.9-11, III.1), Raghuvīma (II.75, III.2.14) 15, XVII. 78,81), Abhijñāna Sakuntala (Act V.4.5), Nītivākyamrta (Vvavahāra Samuddesa), Rājanīti Prakāśa (pp. 17-31) and a number of epigraphs of ancient Indian history. Some of these sources refer to the king as the God himself, whereas some of them declare him as one created from the elements or parts of many gods, while some others compare him and his functions with gods.

The idea of divine elements in the king gained so much ground that Sanskrit dramatists frequently used the word 'deva' and various other synonyms of gods in addressing the king. Asoka styled himself as 'devānāmpriya' (beloved of the gods). Kuśānas called themselves 'devaputra' (son of god). Many kings in their eloquent eulogies in their epigraphic records have been called as incarnations of gods.

The purpose of conceiving divine elements in the king appears to have been the expectation of efficiency like the gods in performing various functions resembling with those of gods. Manu points out that the king should pour the desired objects on the subject as Indra pours the rains; he should collect the texes as the Sun soaks
water; like the wind he should enter into all beings through his spies; like Yama he should punish the culprits; like Moon he should be pleasing; like Agni he should destroy the sinful and like Earth he should maintain the living beings. The idea of conceiving Viṣṇu, in the king also seems to consider the king as a protector of the people. The Mahābhārata and Śukra also clarify divine element in the king by mentioning their functions almost in the same manner as in Manu, adding the function of Kubera as bestower of fortune and wealth.

The idea of divine elements was conducive to attain the fullest realisation of an ideal State. For such a State, the perfection in the functions was prerequisite and the perfection is Godly. With the divine elements in him, the king aimed at achieving the well being of his subjects, which was the highest ideal for the monarchy and State in ancient India.

32. Manu, IX 304–311.
33. Mahābhārata, Santiparva, 68. 41–46.
34. Śukra, I. 71–74.
According to Kautilya the highest ideal for the ruler was that in the happiness of his subjects lies his happiness and in their welfare is vested his welfare.

The good of the king does not consist of what is pleasing to himself, but what is pleasing to the subjects, constitutes his good. 35 This ideal is voiced in several works. The Visnudharmasutra tells that happiness of the king is in happiness of his subjects and sorrow of the subjects is the sorrow of the king. The king who follows this ideal attains fame in this world and heaven after death. 36 The Panchatantra says that the king should engage himself to the well-being of his subjects because the decline and fall of the people is undoubtedly the decline and fall of the king. 37 The Padma Purâna states that the king, desirous of welfare, should look after the well-being of his kingdom with four eyes. 38 The Mahâbhârata quotes two verses of Angiras (Bhraspati) to emphasise the point. One of them

36. Visnu Samhita. 3.70 & also Visnudharmasutra. III. 98.
37. Panchatantra., 248.
38. Padma Purâna. Ch. 20 vide Sabdakalpadruma, part IV., p. 120.
says that 'tapa' or sacrifice of a king is meaningless who does not care for the welfare of his subjects. He should make it that the people are well-protected. 39

Suggesting the similar ways to achieve this ideal, Kautilya says: "Of a king, the religious vow is his readiness to action; satisfactory discharge of royal duties is his performance of sacrifice; equal attention to all is the offer of fees and ablution towards consecration." 40 Here the great law giver likened the promptitude of action on the part of the king to the latter's religious vow, satisfactory discharge of his duties towards the people to the ruler's religious sacrifice, and impartial and prompt attention to all, irrespective of any distinction, to the king's offering of fees and to his performing ablution during his coronation. 41

The Mahābhārata 42 and Nitiprakāśika 43 hold the similar views and suggest that a king should not do what is pleasing to himself, but he should do what would conduce

40. Kautilya., Bk. I. Ch. XIX.
42. Mahābhārata, Santiparva., 56. 44,46.
43. Nitiprakāśika. VIII. 2.
to the good of the people like a pregnant woman, who
does what is pleasing to the child in her womb, not for
herself. The Agni Purāṇa also held the similar view. 44
The Mahābhārata praises a king who confesses that the
wealth he possessed was for the benefit of the urban and
rural population and not for his own enjoyment. The
king who, at his sweet will, takes what is not his share
and belongs to others, does not get the spiritual merit
and fame. 45 Markandeya Purāṇa records an episode in
which the king Maruta is being instructed by his grand-
mother that even the king's own body is not meant for
his pleasures but for undergoing great sufferings in
protecting the earth and performing his royal duties. 46
Śukra tells that a king should be sorry at the sorrows
of his subject. 47 An elaborate exposition of this dic-
tum is recorded in Aśoka's edict. It reads, "Thus I have
ordered, I am never complacent in regard to my exertions
or the despatch of people's business by me. I consider
it my only duty to promote the welfare of all men. But

44. Agni Purāṇa Ch. 23. 7-8.
45. Mahābhārata, Udyogaparva. 118. 13-14.
46. Markandeya Purāṇa. 130. 33-34.
47. Śukra, IV. 523.
Exertion and prompt despatch of business lie at the root of that. There is rarely no duty which is more important to me than promoting the welfare of all men. And, whatever efforts I make is made in order that I may discharge the debt which I owe to all living beings." Nasika Cave Inscription of Gautami Balashri also incorporates the identical idea in telling that king Satakarni was always with the people in their happiness and sorrows. 49

Another great ideal of the king in ancient India was to treat the subject like his own children. Kālidāsa's Raghuvamsa records in that paternal affection of the king provides that by sincere enforcement of discipline and by granting protection to his people he is the father of his subjects whereas parents were merely instrumental for their births. 50 The Rāmāyana holds that it would be a great adharma on the part of the king, who takes a sixth part of the produce as his share and does not protect his people like his children. 51 Yājnavalkya

49. Ibid., p.10.
51. Rāmāyana. III. 6.11.
also requires a king to be like a father and a servant of the subject in consideration of one-sixth of produce that he was getting from the people. The view that king is like the father of the people has received favour from several other ancient Indian writers. They include The Rāmāyana (II.1.19, 2.4, 28-47, 67.34, IV.4.7 and V. 35. 9-14), the Mahābhārata (Śabhāparva 5.45-46, 113,124; Śāntiparva 57. 787), Gautama Dharmasūtra (10.48-49), Man Smriti (VII.80), Medhātithi on Manu (VIII 27-28), Padma Purāṇa (vide Sabdarakpadrums, Part IV, p.119), Agni Purāṇa (Ch. 222, p. 430), Sukranītisāra (4.1193), Śām- khalikōta (quoted in Vivādāratnākara, 598), Panchatantra (227), Raghuvamsa (I.24,II.48, XVII 2,9), Abhijnāna Sakuntala (V.5, VI.23) and others. Kauṭilya advises the king to extend favour, like a father, to those also who are exempted from the royal taxes. Various epigraphs of ancient India also throw light on this aspect. Aśoka records in his Separate Kalinga Rock Edict, "all men are my children."  

The king was also considered as a brother of the

52. Yajnavalkya. I. 334.
53. Kauṭilya, Bk. II Ch. 1.
people. In Mandasor inscription of the time of Kumāragupta, the ruler Bundhuvarman has been called as a brother of the people. This concept of fraternity echoes in various works among which the Mahābhārata (Śabhaparva 5.124), Medhātithi on Manu (VIII.27) and Panchatantra (227) may be mentioned.

Similarly we find that another ideal in ancient Indian polity was to consider king as a servant of the people. Baudhāyana observes that the king is really a servant who gets the one-sixth part of the produce being his wages. This notion is responsible for the epithet of the king as 'Śadbhāgabhrta (servant getting one-sixth part of the produce). According to the Mahābhārata one-sixth part of the produce and fines imposed on the people are the sources of king's revenue. They have been called king's salary for the services he renders to the people. Nārada regards the taxes as the king's pay. Kautilya compares the king with the soldier, saying that both receive their wages and both are entitled to share the assets of the nation. 

57. Mahābhārata, Śantiparva, 71.10.
58. Kautilya, Bk. X. Ch. 3.
the king who appears as master in form but from the point of view of the duties he is the servant of the people, getting his wages in forms of taxes for the purpose of continuous protection and growth of the people. 59

At another place he says that the ruler has been made by Brahmā as a servant of the people getting his revenue as remuneration and his sovereignty is only for the protection of the people. 60 Yajnavalkya also subscribes to the identical view that the king is the servant of the people getting one-sixth part of the produce for maintaining the people. 61 Aparārka, commenting on Yajnavalkya, says that no one ever makes a payment without anticipating a return and the taxes, therefore, are paid only as a return for the protection expected from the king. 62 The Raghuvamša also mentions that the king receives his pay for the protection of the people. 63 The views of Dr. K.P. Jayaswal are quite

60. Ibid. I. 375 & IV 2.130.
63. Raghuvamša. XVII. 66.
noteworthy when he writes: "Even partial failure of protection was deemed to entitle the subject to claim refund of wages in proportion to the loss. And those claims, as we have seen, had to be allowed either in the shape of concession or actual payment. The subjects thought that the servant king who did not serve them was not fulfilling his obligation." 64

2. THE STATE AND ITS SCOPE

We should note with all precautions and dispassionate outlook that while dealing with the state structure, law and legal institutions of the ancient Indian people we are faced with the problem of modern concepts held by some political thinkers who try to intrude into ancient concepts and theories. As a result they are we inclined to justify the latter in the context of the former. A suitable methodology of approach in this comparative study is the one adopted by several Indian scholars on ancient Indian polity.

It appears that they are inclined to see many modern political concepts, ideas thoughts and institutions in the ancient concepts, ideas thoughts and

institutions. It appears justifiable that, some of the aspects of the ancient theories regarding the State, government, law and legal institutions might appear to be of interest to us in the modern times, but the appropriate way of studying and judging these ancient theories is to study them and appreciate their concepts against the background of our ancient history. We observe that the allurement of looking at modern ideas and institutions and their planting on the ancient soil of our country is so great that we find that the most serious attempts have been made by eminent Indian scholars to explain the ancient Indian political and legal theories in terms of modern trends of western political thoughts and ideas.

The modern western concepts of the State and government have cast such a deep spell on Indian scholars that some of them emphatically and elaborately maintain that the idea of the state and government as it is now understood in the west, existed in ancient India on solid foundations. As a dispassionate researches I may humbly submit that it is not exactly the same.

The concept of the State and government in the west is of recent modern origin whereas our ideals, thoughts and institutions are of the remote past. Some
of our institutions can be compared to those of ancient Greece, Persia and Rome but there are several characteristic peculiarities and there is little scope to find identical similarities in these ideals, thoughts and institutions of the ancient east as compared to modern west. Even in case of city states of ancient Greece we find remote resemblance with our ancient republics during the pre-mauryan times. The views of Socrates, Plato and Aristotle have little to be compared with those of Bhīṣma, Manu, Yajnavalkya, Kautilya and others. Even Machiavelli, who flourished after several centuries, has not much in common with the views of Kautilya who compiled his famous Arthasastra some two thousand years earlier than this Roman thinker. The ideas of Hobbes, Locke and Rousseau cannot be said exactly identical with those of our ancient social and political scientists who also refer to contractual theories in ancient India.

It is well known to any ordinary student of modern political science that the term "State" means an assemblage of people generally occupying a certain geographical territory, independent of any kind of external control or subjugation and possessing an organized machinery of the government to which the larger body of citizens owe their
allegiance and extend full obedience.¹

Thus the main factors that are necessary to constitute a modern State are certain territorial jurisdiction, some population, unity of its people, and a defined State machinery or organisation. These three constituents are also found in the State set-up of an ancient Indian State. But they did not include the government in a way we find it in the modern political set-up.

In its modern concept the 'government' means the unit or organization that exercises or may exercise the sovereign powers of the State; and it should include the person or group of persons, in whose hands the organization or reigns of the State are placed for the function of constitutional political control. In the latter sense we can conclusively say that the government is the organized machinery of the State which includes, within it, all the persons who express or administer the will of the State. Thus we can conclude that the idea of the State is conceptually theoretical whereas that of government is practical.²

2. Garfield Raymond, Introduction to Political Sciences, pp. 38-42.
In the terms of sovereign political power, the state is the ultimate sovereign which incorporates the agreement of the total and general will of all the people whereas the government is the set-up or machinery which, during a given period, assigned to it by the real sovereign state, codifies the laws to run the machinery within its own territorial jurisdiction, and possesses the accepted legal rights to exercise force, if necessary, in the maintenance of those codified laws and to maintain its own order and authority. "Any body which exercises those rights constitutes a government." The government, therefore, is the legal constituent of the ultimate sovereign, which cannot assign to itself the real substance of the latter. As the history of several modern countries has shown, the governments may fall without disturbing, in the slightest degree, either the political strength or the dignity of the State in any manner whatsoever.

Thus the above defined concept of the ultimate sovereign, called the State, and of the legal sovereign, called the government, is the essence of the theories of modern western political scientists, who have not only

distinguished between these two concepts, mentioned above, but they have also introduced a third view which is inseparably connected with them. This third view is the concept of the general will of the people which, as is well-known, was first enunciated by the most distinguished French thinker Rousseau in the age of the French Revolution. It is the most important basis of the modern democratic state throughout the world.

It may be said that when we talk of the general will of the people, we refer to the supreme will of those people who constitute the State, and to their general participation in the affairs of the government, even if they might not approve of it or be convinced of its righteousness. Thus general will is real in the sense that it is the fundamental basis of the State. It is the will of the whole community which upholds the unity of the State.

The synthetic position of these three fundamental concepts— the general will, the State, and the government can be summed up that the general will sustains the State, the latter, on its part, guarantees the codification of laws and the use of coercive power, if necessary, for
promulgation and implementing these laws. 4

We cannot exactly say that the ancient Indians
ever made such a clear distinction between these three
main constituents of the state, the government, and the
general will; but we are in a position to say that they
undoubtedly were aware of these concepts of the state,
government, and to a very great extent, of even the
general will of the people. Here we must be cautious in
making such a conclusion.

The Indians did not define the concept of the
general will of the people in the sense Rousseau defined
it; but our ancient political thinkers went much further
and vested the real power in the people and empowered
the people to overthrow the wicked rulers. This kind of
political power was never vested in the people any where
in the world. In supporting this powerful political right
of the people they cited the examples of the kings like
Benu and Nahusa. In the Mahabharata there is another
eample of the will of the people. When Dhritarasas, who
was the eldest son and was thus entitled to the throne,

was not crowned, the people gathered in front of the royal palace and asked for an explanation. They dispersed only when they were satisfied by the explanation given to them. Now hence forth I shall use the term the State in the sense as defined above, and also in that of an organized government expressing the will of the sovereign ruler.

On the subject of the State and the government, as well as, on other topics there was complete agreement among the ancient authors, particularly on the concepts like the need of the State the types of the State, the justification of the State, the functions of the State, and the elements of the State. In order to understand these concepts as well as the fundamental concepts of the State and government, it is desirable to understand how and when they were originated.

3. THE ORIGIN AND ANTIQUITY OF THE STATE IN ANCIENT INDIA

In order to make an attempt to find the origin and trace the antiquity of the State in ancient India, one has to realize that we are referring to a very distant

5. KVR Aiyangar, Some Aspects of Ancient Indian Polity, pp. 69-70.
past when the Aryans were shaping their society according to their ideals of the social, political and legal set-up. It was an earlier phase when their people began their migration from their original home in Āryāvarta.

The main source of information about the earliest socio-political and socio-legal organizations and institutions of the Aryans are the Vedas which enable us to understand a fairly comprehensive structure of their socio-religious and politico-legal institutions. We have references to several technical terms like chakra-vartin, Samrata, Ekrata etc. in the Vedic period but we do not possess any evidence of any kind of existence of an empire of all India character or any centralised political power till we come to the period of Magadhan empire founded under Bimbisāra and Ajatashastu and later under the age of Nandas and Mauryas.

Similarly there is no evidence of any territorial expansion, nor of any large scale geo-political entity which we find in the sixth and fifth centuries B.C. But we certainly find a concept of the State in the Vedic age though it was quite vague both in their meaning and content. The entire social atmosphere during the Rigvedic period, was one of righteous and religious living
standard and some of the concepts and ideas, which at later period gained profound political and administrative significance, were merely concepts enshrined in a socio-religious edifice. This was the basic social system in ancient India.

Similarly we notice almost identical system in ancient Egypt, Greece and Rome where religion mattered before the State. It was an age of religio-social and religio-political society when the power and authority of the priest was equal to that of the king, and sometimes the power of the former was greater than that of the latter. This was because the priest was the universally accepted and recognised as an undisputed interpreter of the unknown forces of nature whereas the king could occupy a relatively inferior and subordinate position in society. It was after many centuries that we come across the system where we find the separation of the religion from the political and legal institutions. But even then the religion was supreme. The authority of the king was enhanced but he was never above Dharma. As a matter of fact he was an upholder of Dharma and Varnā-śramavyavasthā.

As already written the ancient Indians in the periods before the rise of Magadhan empire had not built empires of an all India character ruled with definite concepts of the political and legal institutions but they had definite concepts of ideas and institutions. During those early days of the Vedas, the Vedāngas, the Samhitas and the Brahmanas, they were aware of important concepts relating to their socio-political and politico-legal institutions. This is amply proved by the existence of such technical terms like rājya, sva rājya, sām rājya, bhāujya, vairājya, mahārājya, ādhipatyā and Chakravartin which are found especially in several ancient texts like the Atharva Veda, the Taittiriya Samhitā, the Aitareya Brāhmaṇa and the Jaiminiya Upaniṣada. These terms are referred to mean the "sovereign power", which were used along with another term 'āśandi' (the throne) do indicate the characteristics of the sām rājya or an empire ruled over by a monarch within the framework of the politico-legal concepts and ideals.

The references in ancient Samskrit texts, quoted above, help us to arrive at certain definite conclusions. We find therein that as early as the age of the Satapatha

7. Atharva Veda, III. 4.2; IV.8.1; XI.6.15; XVII.4.31; Taittariya Samhita, II. 1.3.4.
Brāhmaṇa, the Brāhmaṇa or the priest was not entitled to exercise sovereign authority as implied in the term rājya. This text categorically provides: "To the king (rājan) doubtless belongs the rajasūya. Thereby it implies that by offering the rajasūya he becomes king and by performing the vājapeya (he becomes) an emperor (samrāj)." Thus in status the office of the king is lower, and that of the emperor is higher to him. Thus, that (king) who, by performing the vājapeya becomes an emperor, possesses himself of everything here."

In the basis of the above verse it becomes quite clear that in order to attain the position of a king, a Kshatriya had to perform a rajasūya sacrifice; whereas to become an emperor a vājapeya sacrifice was to be performed. Thus we can infer that the sovereign power was associated with the term rājya and that kingship was unsuited to the priest or the Brāhmaṇa.

In view of the above cited references we can conclude that when the Satapatha Brāhmaṇa was compiled, the concept of the sovereignty, as well as of overlord-

ship, was already in the minds of those contemporary ancient Indians. We can also conclude that the emphasis was laid on its socio-religious and socio-political aspects. Another evidence of this concept is available in the same text which, while dealing with the concept of political power (kṣātra), enshrines in itself the evidence with reference to the ceremony of dīkṣā. 10

In a later passage in the same Brāhmaṇa, we not only find reference to mahārāja Janaka of Videha but we also find an elaborate account of another sacrifice which during the later period was exclusively associated with the universal dominion of kings.

This was the asvamedha yajna or the horse sacrifice. The Satapatha Brāhmaṇa gives a very detailed and graphic account of this sacrifice. But in spite of the fact that the performance of the horse sacrifice was "a great function in which the religious and the sacrificial element is closely and in separately interwoven with a variety of other programme of secular ceremonies", and that it involved "an assertion of the regal power and a bold display of political authority such as that only a monarch of undisputed political authority could have ven-

10. Satapatha Brāhmaṇa, XIII. 9.4.1.
tured upon it without courting humiliation." Yet the fact remains that, as it is proved by the Taittiriya Brahmana, and the Apastamba Sutra, the performance of that sacrifice was not necessarily associated to the actual wielding of imperial power. In the Ramayana we find that Rama did perform this sacrifice but we know that he ruled over only a small principality extending only over a small part of Uttara Pradesh. The kingdom was so insignificant that Maharaja Janaka had not extended any formal invitation to Dasaratha to send his sons to the Svayamvara where the two princes Rama and Lakshmana had reached incidentally and the former could succeed in marrying Sita by breaking the bow.

The Taittiriya Brahmana provides that even a weak king can also perform the horse sacrifice whereas the Apastamba Sutra does not agree to it and provides that the horse sacrifice could be performed by that king who might be ruling the whole aland (saryabhauma) as well as by a king who did not rule the whole land.12

On the basis of the strength of the Satapatha Brahmana as quoted above, it might be substantiated

---

that no exact imperial authority or status was singularly or exclusively associated with the performance of the horse sacrifice. Thus the concept of the āsvamedha seems to have remained almost unchanged till we reach the age of the Rāmāyāna.

These references and illustrations suggest that the performance of the āsvamedha sacrifice was not always linked with the existence of large empires ruled by universal monarchs in the early ages. Thus it would be more reasonable to conclude that during the age of Satpatha Brāhmaṇa, the performance of the āsvamedha sacrifice was not yet allowed to do free from the rituals in which it had originated in the earlier periods.

As told earlier it continued to be so till we reach the age of the Rāmāyāna, where we find the reference to king Rāma's performance of the horse sacrifice in order to establish his political supremacy. We also know that king Dāsharatha called himself a sovereign of the East, West, North and South; but it is not based on facts. There were several other contemporary powerful rulers of

Mithilā, Kaikeya, Kāśi, Sindhu, Sauvīra, Saurāstra and several other important states which were ruled by sovereign independent rulers and they never owed any kind of allegiance to king Dasharatha of Ayodhya.\(^1^5\)

Thus, on the basis of references and discussion made above, it might be reasonably concluded that, while the concepts of the gems of sovereign power are seen in the age of the Satapatha Brāhmaṇa, there is hardly any evidence to indicate that the concept of sovereignty, especially as it was understood in later times, had taken a definite concrete political shape during the age of Brāhmaṇas.

There were examples of several kings in those time whose political power was not in conformity with The high sounding royal titles they assumed. Even during the Vedic period we come across several names of kings, but none of these kings can be considered as exercising the actual sovereign power of an imperial monarch in real sense of the term.\(^1^6\)

Perhaps of all the ancient Sanskrit texts, it is

---


the Satapatha Brāhmaṇa alone, that provides us the material evidence to understand the gradually growing importance of the sovereign power in ancient India. The term or the title of rājādhirāja in the Taittiriya Brāhmaṇa, as a divine epithet 17 only confirms our conclusion made above that some of the important socio-political concepts, which, during the later ages gained gradual political significance, were attached to them and they were, in the earlier times, invested with a non-secular regal nomenclature.

Thus we may conclude that whereas there is evidence of the concept of sovereign power and of the existence of kings in the Vedic and post-Vedic periods, there is nothing to suggest that in those ancient times, there prevailed the idea of a strong, unified, and centralized state that wielded power over a large territory. It cannot be made out how long it took the ancient Indians to evolve such a State but it appears that many centuries must have elapsed before it was brought into definite concrete political shape.

17. Taittiriya Brāhmaṇa, 1031-6.
4. NEED OF THE STATE

It seems quite probable that here in India, as we find elsewhere in the world, the state emerged within the society and that the social ties of kinship, society religion and economic considerations were primarily responsible for the gradual evolution or formation of the state. Besides these social and political factors there might have been natural human tendency to subordinates ordinary individuals to an authority which looked to the multi-dimensional interests of the larger group of the people in the society and which in turn tried to unite all the groups within its fold. 18

Almost all the political thinkers and social scientists agree to a conclusion that the primary aim or justification of the state was the protection of an individual from internal disorder or external danger, as a member of the society, and provide him opportunities of decent individual and social life. This has been the opinion of almost all the thinkers from both the East and the West. The first sanskrit text to express such views

is Manusmriti. It records:

"When these creatures, created by Prajāpati, being without a king through fear, dispersed in all directions, the Lord created a king for the protection of this whole creation."\textsuperscript{19}

On their part the people also allowed themselves to this arrangement. In a later context the Manusmriti further states:

"Through fear of him (the king), all created beings both the immovable and the movable, allowed themselves to be enjoyed and swerve not from their duties."\textsuperscript{20}

This kind of contractual arrangement was provided in the Manusmriti in such a way that people were willing to be ruled by the monarch for their own protection and safety. It further records:

"If the king did not inflict punishment on those worthy to be punished, the stronger would roast the weaker, like a bigger fish eating a smaller fish; the crow would eat the sacrificial cake and the dog would not remain with any one, the lower ones would usurp the

\textsuperscript{19} Manusmriti, VII.3.216.

\textsuperscript{20} Manusmriti, VII.7.15.
power and authority the higher ones."\textsuperscript{21}

On the basis of the citations, quoted above, we are in a position to draw certain conclusions regarding the necessity of the State as it was felt in ancient India.

Firstly, there existed a society prior to the formation of the State; Secondly, the members of that society were afraid of the strong coercing the weak; and Thirdly, in order to protect the people, the king, whose punitive power had a divine sanctity about it, inflicted punishment against the evil-doers and thereby compelling the stronger and powerful members of society to remain within norms and acknowledge his authority.

Thus there was, therefore, the supreme and natural necessity of a State. The example of the stronger and bigger fish eating the smaller and weaker fish, as given in the Manusmṛiti, can be traced to the similar example in the Satapatha Brāhmaṇa. The latter states:

"---wherever there is drought, then the stronger seizes upon the weaker."\textsuperscript{22}

\textsuperscript{21} Ibid., VI, 20-21.

\textsuperscript{22} Satapatha Brahmana, XI.1.6.24.
This kind of socio-political necessity to protect the weaker people in the society was the greatest justification for the creation of the state in ancient India. The similar conclusion is also evident from the graphic description of a kingless state, as given in the Rāmāyāna. Kauṭilya, who was the champion of a well-governed state and strong centralised administration, writes that when the law of punishment is kept in abeyance, it gives rise to such disorder as is implied in the proverb of fishes, for in the absence of of a magistrate, the strong will swallow the weak, but under his protection, the weak will resist the strong. 23

Thus in view of the references and examples, cited above, we are in a definite position to conclude that the authors of the Satapatha irāhmana, Manuśriti, and Arthaśāstra had little or no faith in the ultimate righteousness of human nature and that they had believed that the ordinary common men were temperamentally so made that there was hardly any chance for getting them proper protection of the natural justice and the rule of law. These social, moral and legal protections were only possible by the fear of punishment.

23. Kauṭilya, Arthaśāstra. 1.9.16-17.
Manusmriti unambiguously states:

"The whole race of men is kept in order by punishment, for a guiltless man is hard to find: through fear of punishment, indeed, this universe is called to enjoy its blessings." 24

This want of faith in man's natural conduct or character of righteousness is echoed in the later works like the Mahābhārata, and of Yajnavalkyasmiti, and Kāmandaka Nītisāra and in the Śukranīti Sūtra. 25

Thus the necessity of inflicting the provisions of punishment was an accepted principle with the ancient Indian social thinkers and political philosophers for their justification for the creation of the State in ancient India.

The concept of giving a guarantee of necessary protection to weaker section of the society is of very ancient origin. Macdonell and Keith have tried to show that in the Vedic literature, it was referred to by such term as 'nātha'. According to them this was a word of rare occurrence in early Vedic literature. But in the

25. Mahābhārata, Shantiparva, 15.34-35; Yajnavalkya Smriti, 1.1.361.
post-vedic literature, it was used in the masculine sense, meaning "protection." 26

This elucidation, as made above, is of immense interest to us. It enables us to construct the convincing theory that in the very early ages of the Vedas, perhaps the Aryan society was small and compact and it did not have any rigid and complex social problems that required any promulgation of the code of punishment. But the idea of protection, even in those early periods, was certainly there in the minds of men.

In the Aitreya Brāhmaṇa, the king, while performing the rites of the rājasūya sacrifice, the ceremony of the royal consecration, is given, among other regal titles, the epithet of rāja-pitri. Macdonell and Keith have maintained that it indicates the hereditary character of the monarchy 27 but it also represents the idea of the king being the protector of his people. A king is thereby called "Father of the people", or, as Hopkins suggested, "having a king as a Father", was of definite meaning and it is more appropriate and reasonable to interpret that the king was considered

27. Ibid., Vol.II, p.218.
a father and as such it was the father who alone could
make efforts to protect his people as his children and
dependants.

The Vedic literature does not contain any clear
evidence that may enable us to understand fully the
nature and problems of protection; but there are references
which enable us to infer that in some of the attributes of
Varuna he is known as the "Punisher of the Wicked." In
this evidence we see the germs of the later idea regarding
the protection of the people.  

When we reach the age of Manu, we find the concept
of protection enshrined in this Smriti. We find the
following evidence in the Manusmriti:

"The king has been created (to be) the protector
of the system of the four classes (varna) and four orders
(ashramas) who, all according to their social status and
rank, discharge their several social duties."  

Later in the same chapter, it is categorically
stated that the king should behave like a father towards
all men.  

30. Manusmriti, VII.1.35.
31. Ibid., VII.1.80.
That the state should protect the weak against the strong and prevent social confusion is clear from the injunction in the same work. It provides:

"By taking his due, by preventing the confusion of the four classes (Varna), and by protecting the weak, the power of the king grows, and he prospers in this (world) and after death."32

It is categorically provided that only if the king protected his subjects he was entitled to receive the sixtieth part of their spiritual merit.33

This concept of king's fatherly obligation was further elaborated during the subsequent periods. When we reach the age of Kautilya, we find an elaborate and more detailed account of the duties of the ancient Indian king, who, in accordance with the views of Manu, represented the state. Some of these duties of the state are described in the Arthasastra. We find therein that the state was not only to provide to protection to the weak from being devoured by the strong but it had also to protect all people against the eight kinds of providential

32. Ibid. VII.1.172.
33. Ibid. VII.1.304.
calamities like accidental fire, floods, pestilences, diseases, famines, rats, tigers, serpents and demons.

Similarly the State was to afford necessary protection to all sections of the people against artisans, merchants, and all kinds of unnecessary exploitation or harassment by governmental departments. The object of this multidimensional protection is thus given by Kautilya:

"This people (loka) consisting of four varnas and four Ashramas of religious life, when governed by the king with his sceptre, will keep to their respective paths, ever devotedly adhering to their respective duties and occupations."

In the above cited verdict we find that therein the earlier injunctions of the Manusmriti and the other dharmastra.

Thus we are in a position to conclude that the duty of protection of the people was one of the foremost functions of the king. This alone justified the necessary

35. Ibid., Bk I, Chap.IV.9.
36. Manusmriti, VII.35-41.
existence of the State. This is also proved by the later political thinkers like Somadeva Sūri. He wrote this in his famous work entitled Nilivākyāmṛita:

"How can he be a king who does not protect his subjects?"

According to evidences available Somadeva Sūri flourished in the tenth century A.D. and, therefore, we can conclude that even as late as the tenth century A.D. the political thinkers enshrined in their writings that the greatest importance was attached to the duty of protection. It is further recorded by the same Jain scholar that "the protection of the subjects is the king's sacrifice" and that "when the king protects his people in just ways, the skies pour forth all desires."37

On the basis of the above account we are in a position to conclude that there was complete unanimity amongst the ancient political scientist and thinkers in regard to the supreme and paramount importance of the duty of protection on the part of the king and the State, and that they were not only righteously directed to strengthen the society which comprised the Varnāśrama Dharma but

37. Somadevasuri, Nilivākyāmṛita, pp. 77, 66, 105-6.
they also protected the people. It also covered those who were outside the framework of the Aryan society.

Here it may also be concluded that the ancient Indian concept of punishment, with a view to afford protection, is of great relevance and interest to us in the modern times.

Firstly, we can understand it in terms of necessary force as a primary basis of the origin of the State;

Second, it was an incidental factor which led to the origin of the State; and Third, it had a justification for the maintenance of social good and order in the society.

In order to elaborate the first factor relating to the importance of force as the ultimate basis of the State we observe that the ancient Indian ideas of this aspect of the nature presupposes an inherent mental tendency of man to encroach upon the rights and privileges of his weaker neighbour. He was prone to commit several acts of disorder and aggression. We also find in the treatises of modern western political thinkers who point out the universal application of the truth enunciated by the ancient Indian thinkers. Hobbes was the first western thinker who observed that the man in primitive society was barbarous, selfish, and violent creature who always encroached upon the
rights and privileges of others. Salmond in his well-known work on Jurisprudence writes that "men is by nature a fighting animal, and the force is the ultimate basis not only of all kings alone but of the entire mankind." 38

Another distinguished western writer Jeremy Taylor, writes that "a herd of wolves is quieter and more at one than so many men unless they all had one reason in them or have one power over them." 39 The similar opinion about the barbarous and selfish nature of man is reiterated by Machiavelli, who writes in his discourses:

"Those who have discussed the problems of civic life demonstrate -- -- and history is full of examples to confirm the fact -- -- that whoever organises a state and arranges laws for the government of it, must presuppose that all men are wicked, and that they will not fail to show their natural depravity whenever they have a clear opportunity, though possibly it may be concealed for a while." 40

38. Salmond, Jurisprudence, p. 65.
39. Ibid., p. 65.
40. Machiavelli, Discourses, I.3.
On the basis above generalisations it seems that the assessment of human nature by the ancient Indian thinkers was not fantastic but reasonable and that their concept of force as being the primary basis of the origin of the State is justifiable even from the point of view of modern western political thinkers.

But Maciver does not fully agree with them. He observes:

"The emergence of the State was not due to force, although in the process of expansion force undoubtedly played a part."\(^41\)

In this statement we find a tacit admission that in the gradual evolution of the State force was not a basic factor but it was a contributory factor. We should note here that in ancient India and everywhere in the world society had existed prior to the birth of the State. This has been corroborated by the statements of Manu. It has been further amplified by the description of the origin of the State as given in the Mahābhārata.\(^42\)

\(^{42}\) Mahābhārata, Shantiparva, Chap. 58.3-27.
According to other ancient Indian texts, the \textit{nitisastras}, which lay much emphasis on force, it originated from the \textit{dharmastra}s, which emphasized the social aspect of the State. It is quite probable to see how the ancient Indian concept of the origin of the State is intelligible even from the modern standpoint that confines force to only its contributory nature.

Coming to the third aspect of the matter, it may be observed that, according to the modified view of the theory of force, as propounded by modern western political thinkers, it is possible to appreciate the ancient Indian idea of force in relation to protection and social order.

It is well-known to students of political science that the theory of force as the basis of the origin of the State has been considered as one of the fallacious theories along with the theories of Divine Right, utilitarian and Social Contract.

According to some modern thinkers and political scientists coercion does not appear to be the basis of the origin of the State. They feel that coercion is not the basis nor the criterion of the origin of the State.\footnote{\textit{R. Maciver, Modern State, pp. 19-20, 223-4.}}
But these people forget that the incontrovertible fact that the State alone is the most powerful of all the social and political institutions within the society and to it alone belongs the exclusive right of force. This power is over the life and property of all the other associations and persons within the State and the State alone settles, if necessary, by force, all disputes, including political and legal, between the members and associations which comprise society within that State.

The visible powerful limbs and embodiments of the force in the State are the armed forces, the police, the legislative, executive and judicial authorities, and various other coercive methods under its sole command. The State uses its all these limbs and similar other methods of force for the maintenance of the law and order and for social good of the people through various corresponding social, political and legal institutions within the comprehensive framework of the society. 44

This affords a corresponding and connecting link between the modern concept of force with the ancient Indian one that the sceptre of danda was to be used by

44. Ibid., pp. 14-15.
the king as the symbol of the sovereignty of the state. But this was not for his personal convenience but for the establishment of the social order and for the good of all sections of the society. This covered the wide spectrum of the society the people — that of the four varnas and four āśramas, and even the tribals, foreigners, and offsprings of several mixed races. Appreciating the multidimensional importance of Danda Kautilya convincingly maintains:

"That the sceptre on which the well-being and progress of the sciences of Ānyātsākī (which comprised the philosophy of Sāmkhya, Yoga, and Lokāyata), the triple Vedas, and Vārtā (agriculture, cattle-breeding and trade) depend, is known as danda, and more particularly that upon danda "the course of the progress of the world depends."^45

5. NATURE OF THE STATE

Some of the western thinkers, namely Sir Henry Maine and T.H. Green have tried to maintain the unattainable theory that the State in ancient India was

---

45. Kautilya, Book I, Ch.I, 9-11.
nothing but an irresponsible tax-collecting machinery. Green has further elaborated these observations of Maine and he has written in his classical treatise on 'The Principles of Political Obligation':

"The great empires of the East were the main tax-collecting institutions. They exercised force on their subjects of the most violent kind, for certain purposes, and at certain times, but they do not impose laws as distinct from particular and occasional commands. Nor do they judicially administer and enforce customary law. In a certain sense the subjects render them habitual obedience, that is, they habitually submit when the agents of the empire descend on them for taxes and recruits, but the general tenor of their lives, their action, and forbearances are regulated by authorities with which the empire never interferes, with which it probably could not interfere without destroying itself. These authorities can scarcely be said to reside in any determinate person or persons, but so far as they do, they reside mixedly in priests as exponents of customary religion, in heads of families acting within the family, and in some village councils acting beyond the limits of the family." 46

I do not need any further explanation or elaboration regarding the truth of the above observations relating to the conditions prevailing in ancient kingdoms of Persia and Mesopotamia which have been described by Maine in his work entitled 'Early Laws and Customs'; but I am in a position to conclude that they are erroneous so far as the state in ancient India is concerned. The late Rangaswami Aiyangar has thoroughly rejected these statements of Green. There are obvious inconsistencies in these observations which do not need serious refutation.

The above judgement, regarding the oriental governments in general, and the Indian State and government in particular, was partly the result of his incomplete, superficial, and biased study of the ancient texts on polity and partly of the confused social political and legal institutions in the seventeenth and eighteenth centuries in India. During this period the exigencies of the times threatened to degenerate the ancient Indian ideals and institutions of government in some parts of the country. Critics like Henery Maine and others were obviously inclined to look at the ancient Indian politi-

47. Sir Henry Maine, Law and Custom, pp. 41-47.
cal and legal institutions from the standpoint of the period which they flourished.

But there is no concrete evidence of any kind whatsoever either in the writings of the ancient Indian social and political thinkers or in the available ancient Indian historical records of the State and governments in ancient India which allegedly lived a life of perpetual extortion fully unmindful of their own duties and obligations to their subjects. But even in the confused social and political conditions prevailing in the seventeenth and eighteenth centuries, it should be kept in view that, in spite of the new ideas, the Indian State, on the whole continued to observe and maintain some of the noble ideals of the ancient Hindu monarchy. 49

The above quoted estimate of the ancient Indian state and governments as given by Henry Maine and as generalized by Green, may be summarily rejected as being biased, unwarranted and totally unfounded, with contemptuous indifference it deserves.

6. THE SACROSANCT NATURE OF THE STATE IN ANCIENT INDIA

This theory maintains that the ancient State was entirely under the infallible and unimpeachable influence of the priests, and the governments were administered in accordance with the frame-work of their codes of conduct elaborated in their works relating to the ideals of the State and governments in ancient India. It is also noteworthy that we have to give due credence to this theory. As a matter of fact, religion in India, as elsewhere in the contemporary world, played a very important role in the lives of men and women of ancient India and, therefore, the priestly class as the codifier custodian of learning and as the interpreter of those codes popularly known as the dharmastras, consequently wielded supreme influence over the rulers whose duty was to enforce those codes in their territories. These people also enjoyed special social status and several privileges. One of these privileges was the total social immunity. It is elaborated in the Manusmriti.50

But some critics observe that the sacerdotal theory of the nature of the ancient Indian State is, to some

50. Manusmriti, I. 93-101; II. 135; IX. 235; XI. 31-35.
estant, one-sided and cannot be considered sound on historical ground. They have tried to maintain that the priests undoubtedly played an important role in society but they were not the only people whose role was considered as being supreme and totally indispensable for establishing the order in the society.

They try to emphasise that the priests did occupy important place in early society but it cannot be ignored that the Ksatriyas and the Vaisayyas also enjoyed respectable position in the society. There are ample evidence in the Manusmriti itself which prove their social importance. They concede that it is true that the priests were the custodians and interpreters of the dharmaśastras; but they were not the promulgators of the laws.

It may also be noted that the Brāhmaṇas did not enjoy complete immunity from punishment. The several immunities, which they enjoyed did not spare them from the purview of the law of the land. Manu provides banishment for a Brāhmaṇa if he gave false evidence. He was also subjected to heavy fines, if the Brāhmaṇa defamed

51. Ibid., VII.2, 144; III. 11-7.

52. KVR Aiyangar, Some Aspects of Ancient Indian Polity, pp. 69-70.
a Kṣatriya, he was fined fifty panas and if he committed certain specified immoral acts, he was fined five hundred to one thousand panas. But all earlier Śruti writers do not provide capital punishment to Brāhmaṇas under any circumstance.

Kautilya was the first Brāhmaṇa who had pronounced more punishments to the Brāhmaṇas. He has specifically laid it down that if the Brāhmaṇas sold or mortgaged their Brahmadeva lands which they had received as free gifts, they should be liable to be punished with a fine ranging from forty-eight panas to ninety-six panas. If a Brāhmaṇa disobeyed an order "of any person attempting to do a work beneficial to all" in a village of which he was a resident, he was to be punished with a fine of twelve panas. If a Brāhmaṇa did not take part in the combined performance of any sacrifice of his village, and thereby violated the State laws and regulations relating to the performance of agreements by joint effort, he was not be punished, but was to be persuaded to pay his share.

Kautilya's impartial and independent attitude

53. Manusmṛiti, VIII. 133.
55. Ibid., X-172.
towards the Brāhmaṇa is seen in his pronouncement that "persons well-versed in the Vedas", who could, as a principle, only have belonged to the priestly class, were declared to be legally unfit to carry on transactions, and were prohibited from being cited as witnesses in cases of transactions in one's own community. With regard to certain miscellaneous offences, which have been described in detail by Kautilya, the transactions involving the Brāhmaṇas were to be settled by the judges themselves.

This unambiguously demonstrates that even in judicial matters, which involved the interpretation of the dharmasāstras, the Brāhmaṇas could claim no immunity, being subject, like all the other citizens, to the law of the land.

In the case of remarriage of the widows, no special distinction was made by Kautilya between the wives of the Śūdras, the Vaiśyas, the Kṣatriyas and the Brāhmaṇas. The same rule which required a wife to wait for a specified period ranging from ten to twelve years before remarriage was applicable to them.

56. Ibid., Book II, Chap. XI, 176.
57. Ibid., Book II, Chap. XX, 201.
58. Arthaśāstra, Book III, Chap. IV, 159.
Kautilya would not exempt a Brāhmaṇa from a fine of twelve paṇas if, under the pretext of being a member of the priestly class, he evaded the payment of the dues while passing military stations, or crossing rivers, or invited others to fight against his neighbours. He clearly stated that "whatever may be the nature of the crime, no Brāhmaṇa offender shall be tortured", but at the same time he ordered that the face of a Brāhmaṇa convict was to be branded with the sign of the social crime committed by him and after being publicly proclaimed, he was to be banished by the king.

Kautilya was the first Brāhmaṇa to order capital punishment to Brāhmaṇas. All the earlier writers of the Smṛitis and Dharmasāstras exempted Brāhmaṇas from the capital punishment under any circumstances whatsoever. Even for treason the Brāhmaṇas could not be punished. If a Brāhmaṇa committed an act of treason he was to be requested by the king to leave his kingdom and was allowed to carry as much luggage and wealth as he desired. But Kautilya, who himself was a very learned pundit, was ruthless in order to maintain the sanctity of the State and its

59. Ibid., Chap. XX, 198.
60. Ibid., Chap. VII, 222.
security and solidarity. He maintained in the Arthaśāstra that if a Brahmāna committed an act of treason, he was to be drowned in water till death. But there too he appears to have a soft corner for Brāhmaṇas. For other crimes such as causing deliberate fire etc. he prescribed that such persons should be burnt to death. But for Brāhmaṇas the mode of punishment was not so brutal or severe as it was for others.

These administrative injunctions of Kautilya, described so elaborately, enable us to arrive at two important definite conclusions. Firstly, we notice that the members of the Brahmanical order were by no means immune from the purview of the ordinary law of the land. But in the case of one or two offences they were exempted from severe torture and corporal punishment. Second, they along with the king, were subjected to the injunctions of the dharmaśāstras which were considered higher than the king himself.

In the realm of ancient Indian political thought four expositions of the Divine Right theory have been expounded by Indian historians. It is desirable for the researcher to see how far they are in correspondence with the Divine Right Theory as it is mainly expounded by
western political escientists and thinkers.

Firstly, it is an exposition explained by N.C. Bandopadhyaya. He refers to the existence of age-old traditions in Vedic Literature relating to Manu and Prithu. He invites our attention to the recognition as the earliest kings and as the greatest benefactors and their evolution from the position of military chieftains to that of kings. 61

This theory does not appear sound because the earlier Vedas do not contain references to Manu or Prithu as the first kings; but some passages in the Yajus Samhita and the early Brahmanas certainly refer to Manu as "the first consecrated king." But there is no other literary evidence to substantiate the other statement relating to the evolution of the institution of monarchy from a successful military chieftain. 62

The second exposition regarding the Divine Theory is advocated by Dr. Radha Kumud Mookerjee, who makes distinction between the Dharma, which he interprets as The State and the Danda as the king. He expounds the

idea that "Hindu thought counts Dharma as the true
Sovereign of the State as the Rule of the Law. The king
is the executive called the Danda to uphold and enforce
the decrees of the Dharma as the spiritual sovereign. In this way democracy descends to the villages and the
lowest strata of the social structure and operated as the
most potent agency of uplifting the masses. Thus the
ancient Hindu monarchy was a limited monarchy under the
very constitution of the State."63

It appears that Dr. Mookerjee is keen to compare
ancient Indian thoughts and ideals with the modern con-
cepts of political thoughts and institutions. This is
the basic mistake with the views of Dr. Mookerjee.
There may be similarities in concepts and ideals but
their application in public behaviour of ancient times
cannot be compared with the public behaviour of modern
times.

It is true that the Dharma reigned supreme in the
public behaviour and private life of the ancient Indians
but there is hardly any logic to equate it with the Rule
of Law, a concept of modern times. Even today we talk

63. Radha Kumud Mookherjee, Chandragupta Maurya and His Times, pp. 79-84.
of equality, justice and fundamental rights but in practice we hardly find the rule of law as the basic principle of our public behaviour. The Rule of the Law, which refers to the common rights and common duties of the citizens, is best understood from its supremacy in the British constitution.

Its evolution and growth means that no man is punished, or can be punished lawfully to suffer physically or materially, except for a definite breach of the law of the land. It emphatically maintains that no citizen is above that law of the land. It makes it essential that every person, whatever his rank of social status, is subjected to the ordinary realm of the law and is governed by the jurisdiction of the ordinary tribunals. It also determines that the basic general principles of the constitution, fundamental rights and the right to personal liberty or the right to public behavior are fully guaranteed. We can sum up in the words of Dicey that "where the security (such as it is) given to the rights of individuals results or appears to result from the general principles of the constitution." 64

There are several examples of public behavior in the Rāmāyana and the Mahābhārata where we find the voice of the people did not go unheard but the application of the rule of law in public life was not seen in the public behavior. And it is very doubtful to conclude that the principles, as cited above, could be found in any ancient Indian text on polity or political institutions relating to the rights of the individuals originating from the basic general principles of the constitution.

But people did enjoy some rights in the society. The monarchy was not dictatorial and tyrannical. People had a right to question the decisions of the monarch if it was not in accordance with the customs, practices and traditions. When Dhṛtarāṣṭra was not crowned as the crown prince the people assembled before the royal palace and demanded an explanation. They dispersed only when they were told that he was not crowned because he was blind and could not perform public functions.

There were also several checks and balances which prevented the monarch from acting tyrannically and autocratically. People, on their part, were alert and they did not tolerate a ruler who did not perform his functions in accordance with the tenets of the Dharma and the
Rajadharma. Manu and Kautilya maintain that the people could depose and even kill a ruler, who had deliberately and persistently violated the injunctions of the Rajadharma dharmaśāstra, and who continued his rule tyrannically over his people. But this can be termed as a rare practice or an understanding among the people. It cannot be termed as a right because the people could resort to its application as a last resort and only in cases of extreme provocation.

Kautilya explicitly refers to peoples' civil, economic and legal rights with protected the citizens even against the tyranny and despotism of the state itself. But this can not equally correspond to the proper application of the Rule of Law as understood in modern times. It also cannot be said that they enjoyed political rights, or even the economic, legal and civil rights of the people resulting from the general application of the principles of the constitution. We also cannot conclude that they formed the basis of judicial decisions.

These ideas and ideals of constitutional provisions of the law and of constitutional principles forming the basis of judicial decisions are modern concepts. These ideas and institutions did not exist in ancient India some
two thousand and four hundred years ago. There may be better atmosphere but we cannot term it as the principle of Rule of Law.

Now I propose to examine here Dr. Mookerjee's theory relating to the king's position who wielded the Danda in order to enforce the tenets and principles of the Dharma. It is an established fact that the king wielded the danda and in this respect he was the supreme executive head of the State. But simultaneously he was also the supreme head of the judiciary and as such he was also the upholder of the Sacred law of the State. This is amply corroborated by the Satpatha Brāhmaṇa. The latter maintains that "the king is indeed the upholder of the Sacred Law." But on this basis it cannot be held that the monarch in ancient India was both temporal and spiritual head of the State.

Here we have to consider that the statement that Hindu monarchy was limited "under the very constitution of the State" is to be understood carefully. The limitation and checks and balances on the monarch were not

65. Satpatha Brāhmaṇa, V. 4.9.5.
imposed by any kind of constitutional provisions but they were ordained or decreed by the dharmasastras which cannot have the legal or constitutional authority.

Similarly the Dharma cannot be considered as the spiritual sovereign. It covers within it not only the sacred laws transmitted by the sages through the ages but also several immemorial customs, traditions, and usage which certainly had no spiritual touch about them.\(^66\)

Now as a researcher of propose to examine the views expressed by Dr. Kashi Prasad Jayaswal. According to him the vedic theory upheld that the ancient Indian kingship originated under the stress of war and that the idea of kingship was borrowed by the Ṛyans from the Dravidians. He also maintained that it was contractual in theory and it adopted the republican theory of mutual contract. According to him the theory, as given in the Manusmṛti, which was the nearest to Hindu view of the Divine Right Theory of kingship, cannot be corroborated by the views obtained in early Sanskrit literature.

He further opined that the kingship in ancient India was never synthesised or adopted by a single ancient

\(^66\). Dr. U.N. Ghoshal, Political Institutions in Ancient India, pp. 104-14.
lawbook and that the ancient Indian king was a servant of the state and thereby virtually a constitutional head, who held his office as a trustee. Concluding his views Dr. Jayaswal writes that "Hindu kingship was a trust."67

To conclude I may humbly submit that Dr. Jayaswal was a pioneer in the field of the study of ancient Indian political thought but it appears that he had an obvious tendency for discovering modern theories and ideas in the ancient thoughts and institutions and he looked at the Indian Polity in terms of modern political thoughts and institutions.

Dr. U.N. Ghoshal has rejected the above theory of Dr. Jayaswal. He opines that while it is true that there is a theory of kingship but not of election in the Vedic literature. He further maintains that the assumption that the Aryans borrowed the institution of kingship from the Dravidians "may be treated as too original to deserve any serious notice."

Dr. Ghoshal further concludes that Jayaswal's ingenious theory of the Arajaka as being a no-ruler State

which was made by that distinguished historian to be the basis of his social contract theory, must be dismissed as unproven. In his opinion the theories of kingship as referred to in the Manusmriti, Mahābhārata and Arthasastra, if interpreted in the sense of being the contractual origin of kingship, would give us an "altogether one-sided and, therefore, imperfect view" of its true nature. In his opinion the theory of kingship, as given in the Mānavadharmaśāstra, had no direct support from earlier literature and it cannot be approved by the reference to the story of the creation of India's sovereignty by Prajāpati as given in Taittirīya Brāhmaṇa. The final conclusion of Jayaswal's theory that the king held his office as the trustee therefore, has to be abandoned as being untenable.68

Dr. Jayaswal was one of the pioneers in the field of political ideals and institutions in ancient India and it is not appropriate on the part of Dr. Ghoshal to dismiss him so summarily. He should have challenged him in a scholarly manner.

On the other hand Dr. Ghoshal initiates his own fanciful theory which may be summarized as follows:

68. Dr. U.N. Ghoshal, Political Institutions in Ancient India, pp. 104-114.
"The origin of kingship was due to the will of the Supreme Deity, as it is substantiated by a passage "from an unknown amnava by visvarupa, the author of the earliest commentary on the Yajnavalkya Smriti."

The Gods and men failed to bring the people under their control through benevolence. Then the Gods disappeared. When Prajapati inquired as to who should protect the people, the Gods replied: "We shall arrange for a king in human form by taking from the Moon, the Sun, Indra, Visnu, Vaisravana (Kubera), the Yams respectively, majesty, brilliance, valour, victoriousness, liberality, and control."

The King, thus created, would protect the people. The Gods then made dharma his friend.69

Whereas the commentator on the Yajnavalkya Smriti certainly enables us to understand the divine theory tough that may be given to the origin of kingship in ancient India, Visvarupa's explanation, at the same time, does not attribute the creation of kingship to the will of the Supreme Deity. The Gods did not enjoy the same status as the Supreme Being. I also feel the Visvarupa's explanation is not in agreement with the ideals and views given in the Manusmriti.

69. Ibid., pp. 104-105.
The latter elaborately relates:

"For, when these creatures, being without a king, through fear dispersed in all directions, the Lord Created a king for the protection of this whole (creation)." 70

To conclude I feel that Dr. Ghoshal's theory does not help us to understand the problem. The late P. V. Kane had made a pathological study of Ghoshal's views. While rejecting Ghoshal's fanciful theory, he also refers to the same passage attributed to Viśvarūpa and affirms that "the passages in the Brahmanas should not be relied upon in support of the theory of the divine right of kings" as done by Dr. U. N. Ghoshal in "Hindu Political Theories", since every participant (whether a Brahmana or a Kṣatriya) in such solemn sacrifices as the Agnistoma and Vaijayetaya was supposed to possess a celestial body after dikṣa and pravargya and was often spoken of as identified with Indra and other Gods.

Kane further cites the same passage from Viśvarūpa's commentary, and in this connection he identifies dharma with danda. 71 It may be mentioned here that the theory,

70. Manusmriti, VII. 3.11.
71. Manusmriti, VII. 3-11-14.
as propounded by Dr. U.N. Ghoshal, fails to establish the central point in the problem, "the divine creation of the ruler so as to invest him with divine attributes or even with divinity itself." 72

Now it is necessary to see what modern western scholars feel about this theory. I find the versions of the divine right theory as pronounced and advocated by Indian scholars are how far valid as compared with the theory that has been conceived and formulated by modern Western political scientists. It may be described as being composed of four aspects which have been given by Figgis. These are:

1. Monarchy was divinely ordained institution.

2. The hereditary rights of kings could not be forfeited through any act of usurpation or by any incapacity of the heirs or by an act of deposition.

3. Kings enjoyed absolute power and were accountable to God alone. There was nothing like a limited monarchy.

4. Any kind of challenge or resistance to the authority of the king was a sin. Obedience was to be rendered to

72 Dr. U.N. Ghoshal, Political Institutions in Ancient India, pp. 28-29.
him even when he issued decrees and laws contrary to God's laws. 73

These views deserve careful, dispassionate and unbiased analysis and critical examination. I find that the above theory cannot be maintained in terms of ancient Indian political thoughts and institutions. It appears that there might be bitruth in the statement that the State in ancient India was the ultimate result of the Divine Creation. As I have referred to it elsewhere that the Manusmriti states that the supreme Lord created the King for the protection of the whole world. It further informs us that "He (Svyambhu, i.e. the self-Existent) having composed these Institutes of the Sacred Law, himself taught them, according to the rule, to me (Manu) alone in the beginning-- and then Manu taught them to Marichi and other sages. 74

But the evidence of the Manusmriti is not in agreement with that of the Mahābhārata. At one place it records that Manu was the first king whereas at another occasion it refers to Vainya as the first king. It is further recorded that it was the latter who was called upon by the Gods and sages to

73. J. N. Figgis, The Divine Rights of Kings, pp. 5-6.
74. Manusmriti, i. 58-61.
take an oath that he would protect the world. Assuming that this type of divergence in the mythological account is of no material significances it is desirable to try to understand the theory of kingship as given in the Manusmriti.

Assuming that the institution of kingship was the result of the divine creation as well as the social laws and even the social divisions of the society with their respective social duties and obligations as given in the same work, there is nothing to prove that Svayambhu himself took an active part in the field of State public affairs in the ancient Indian State.

This simply indicates that social laws and legal institutions as found in the Dharmasūtras and smritis guided the people and the State in ancient India. They observed their decrees faithfully and it was the duty of the king to maintain that code of conduct with meticulous care. He was the upholder of the Dharma and the Danda.

But assuming further that there existed a divine element in the composition of the dharmasūtras, as

75. Mahābhārata, Shantiparva, Chap. 67. 11-17.
76. Manusmriti, 1.58.
taught to Manu, the lawgiver, it cannot be affirmed that
the State in ancient India and its laws were purely theo-
cratic in nature. Manu himself discarded the divine origin
of the ancient Indian laws when he stated that "primeval
laws of the countries, of castes (jāti), of families, and
the rules concerning the heretics and companies of traders
and the like including all that Manu has declared these as
institutions." 77

Of these laws we can assume that the laws of the
castes or the varnasramavavyavastha might have some social
sanction with some divine origin. But, the same authority
or divine basis cannot be accorded to other laws relating
to countries, families, traders and heretics etc. The
social laws relating to them have undergone evolutionary
changes. The same can also apply to the varnasramavavyavas-
tha to some extent. There have been slight modifications
in the social structure through the ages.

The varnasramavavyavastha was originated in the early
Vedic age and owes it origin to the supreme being, as
found in the Purusasuktta of the Rigveda, and it can thus
be said to have divine origin but it gradually underwent

77. Ibid., 1.118.
slight, slow and steady modifications through the ages. It appears that Manu, who was the first law-giver, had admitted the non-divine origin of the laws which had been associated with his celebrated name.

Manu attaches very great importance to the well-established order of the four varnas and the mixed castes created by the anuloma and the pratiloma forms of marriages. This prevalent social order did not come within the secular nature of the origin of the ancient Indian social laws and institutions. While describing the Brahmacretas, the country spread between the rivers Saraswati and the Drsadvati, Manu states:

"The custom handed down in regular succession since time immemorial among the four chief social order of varnas and the mixed races of that country, is called the conduct of virtuous men."

The great lawgiver was thus obviously referring here to the approved and prevalent social usage which might be called the unwritten code of conduct or the common social law of the land. Since it formed the basic and essential part of the dharmastra, it is clear

78. Manusmriti, II. 18.
that even Manu himself did not consider all the laws to be of divine origin and outside the scope of secular influence in the society. Even if these social institutions and laws possessed some degree of divine character, in the remotest periods of antiquity, it was fully eroded in the age of Kautilya who flourished in the fourth century B.C. He states that the edicts of the king (rājasāsana) were superior to the other three legs of law.

These above mentioned references are quite sufficient to show that the sense of divinity, which might have been prevalent in the earliest concept of the State and its laws, had gradually eroded in course of time and it was practically disappeared when we reach the age of Kautilya.

Now coming to the next proposition relating to the concept of hereditary social and legal rights of the rulers which could not be taken away or forefeited through an act of dethronement or deposition, it might be said that Manu, the lawgiver himself, advocated the dethronement or deposition and removal of all unworthy kings.

Several other smritis and works on polity and political institution also provide such provisions to remove wicked and tyrant kings who failed to uphold the position of a benevolent ruler and as an upholder of the
Dharma and the Danda. This was not merely a provision in the Smritis and other works on political institutions but there are references to such rulers who were actually dethroned and removed by the people. Nahusa and Benu are two well-known examples of such tyrant kings who were removed from their royal positions.

Thus it was the second criterion, on which the theory of divine right rests, cannot be made applicable to political ideas and institutions in ancient India. This provision of right to dethrone the rulers had been socially provided to the people from the age of the Brāhmaṇas. The people had enjoyed this "right" to dethrone and kill a wicked king who failed in his social, moral and legal obligations and duties towards his people. These duties were multifarious in their sphere and they mainly included the duty of maintaining the social and moral laws and customs of all sections of the society.

Even physical resistance to the ruler was socially permissible in accordance with the code of conduct in ancient India. As the resistance to the ruling monarch implied disobedience to wicked laws as well, it obviously meant that the third and the fourth propositions of Figgis cannot be applied to the theory of Divine Rights of the kings in ancient Indian political set-up. Thus the theory of Divine Rights of kings, as understood or propounded by
some Indian scholars as part of the ancient Indian political thoughts and institutions, fails to convince an unbiased thinker. 79

Thus it can be argued that the theory of divine rights is based on the assumption that, since the king is compared to a father, especially in the sphere of social protection, it necessarily follows that he was like a family patriarch, who like a loving benevolent head of the family, carefully protected and guided his subjects. The latter, on their part like children, carried out his commands and instructions.

This theory is supposed to have been based on the decrees of the Manusmṛti which declares that the king should behave like a father towards all men, and he should look after their interest carefully. 80 Similarly Kautilya follows this ideal. It is clear from this following statement in the Arthasastra:

"He (the king) shall regard with fatherly kindness those who have passed the period of remission of taxes. 81

80. Ibid., II. 18-20.
This ideal of fatherly affection was very carefully and effectively entertained by Ashok who in his edicts says that all people were like his children and he not only wanted them to be happy in this world but also their happiness in the heaven. Other benevolent rulers also practised the similar way of life and made their people happy. The word rājā means one who pleased his people (ranjate iti rājā).

But Kangaswamy Aiyangar does not share these views and ideas. He has rejected this theory on the following grounds.

Firstly, he says that since individual responsibility, "as signified in Karma, was keynote of ancient Indian religion" and thus the theory is not applicable to political institutions in India.

Secondly, "the recognition of customs and usages of a local, family professional or a corporate kind" does not warrant the assumption that the State treated the subjects like children.

And, thirdly, many regulations concerning the standards of life, restrictions on the liberty of the individual, etc., which are found in Kautilya's Artha-
sāstra "are equally explicable on other grounds." 82

As noted above I would like to suggest that Aiyangar has undoubtedly given forceful arguments against the paternalistic theory, but it may be added that they require further and convincing clarification in order to understand the political significance and nature of the theory. In the first place, he says that "the individual responsibility as signified in Karma" being the keynote of the ancient Indian religion, may be interpreted in the sense that too much stress is laid on the religious side of the problem. This can not be so. It may be admitted that the law of karma was certainly the keynote of social life and action. But it may also be remembered in this connection that Manu himself laid sufficient stress on human endeavour. It is amply proved by the following statement in the Manusmriti:

"All undertakings in this (world) depend both on the ordering of fate and on human exertion; but among these two (the ways of ) fate are unfathomable; in the case of man's work action is possible." 83

83. Manusmriti, VII. 205.
No further evidence is needed to prove that the ancient Indian political theorists and scientists were fully aware of both fate and human exertion and that they relied more on the human efforts than mere fate for furthering State action.

Here I may also like to submit that Kautilya's use of the word 'pitya' was in restricted sense than it was used by Manu. The context clearly shows that the fatherly kindness, which the king was to show to his subjects, was in regard only to general behaviour of kindness. The king as the head of the State and government was considerate enough to grant extension of the time limit for payment of taxes.

In the Manusmriti the provision of injunction concerning the fatherly behaviour of the king towards all people was provided when the annual revenue of the kingdom was collected by trusted people officials. He always tried to obey sincerely the Sacred laws in his multifarious transactions with the people. In both the cases, therefore, there is no indication that the ruler was to behave like a father towards his subjects in all spheres of life. He never interfered in their social and personal affairs. His behaviour was confined to matters
relating to State affairs.

Further, the theory presupposes that the subjects were unable to perform their general duties and urge the ruler to stand by his duties to his subjects. This assumption ignores the well-known fact that, as referred to earlier in this thesis, the people were enjoying the right to drive out their monarchs, when the latter had failed to obey and promote the injunctions of the dharma-sastras.

Finally, the scope and nature of the office of the king in ancient India and the important part played by the council of the ministers as well as by the assembly of the people in their respective capacities, made it virtually difficult for the king to be mere paternal head of his people in perpetuity. It was not the king, who was, in the last resort, powerful but the people in whom lay his strength. It is elaborately described in the Satapatha Brāhmaṇa, which aptly says that the king was "mighty through the people." Hence it follows that outside the will of the monarch was the more powerful and more determined will of his subjects, who agreed to the actions of the ruler, only to the extent,

when he gave expression to them within the framework of the ideals and decrees of dharmaśtras. It is here we should see how the modern political concept of the general will is reflected in the determined will of the people in the ancient times. We therefore, cannot accept the theory in totality as being incompatible with the principles of ancient Indian policy. 85

The scope and nature of the ancient Indian State is best understood when we come to study the organic theory. According to this theory the State is a living organism. Like animals and plants it possesses organs and each of these organs performs a specialized and characteristic function and it is subject to evolution, development and decay. The organs are fully dependent on each other, and on the whole, they are interdependent for their continued existence. This theory can be studied from two points of view. These are the component part of the general society and that of the constituent elements of the State.

Ancient Indian political thinkers and scientists felt that the ancient Indian society had definite organs

85. KVR Aiyangar, Some Aspects of Ancient Indian Polity, pp. 116-117.
or institutions which performed their respective specialized functions and duties, which gradually became more definite and distinct in course of time. They were fully directed to the growth and development of the ends of the State. Each individual felt that he was a member of the society and he was voluntarily willing to subordinate his personal interests to those of the society. He always cared for the interest of a larger section of the society. If this led to any sacrifice or sufferings he was always willing to come forward for it.

The separate sections of the people, like the Brāhmaṇas, the Kṣatriyas, the Vaiśyas and the Śuḍras were each allotted certain specific social duties and obligations which they had to perform. But these social duties and obligations of different sections of the society were interdependent and all sections were working for the common good of the general community. The mutual dependence of the first two Vānras comprising the Brāhmaṇas and the Kṣatriyas is thus clearly stated by Manu in the Manusmṛti:

"The Kṣatriyas prosper not without the Brāhmaṇas

86. Manusmṛti, II. 18.
and the Brāhmaṇas prosper not without Kṣatriyas. The Brahmanas and the Kṣatriyas, being closely united, prosper in this (world) and in the next.” 87 Manu again states that “the Brāhmaṇa is declared to be the root of the Sacred law.” 88 The importance of the third class comprising the Vaiśyas is given in the following injunction of Manu: “For when the Lord of creatures (prajāpati) created cattle, he made them over to the Vaiśyas; to the Brāhmaṇa and to the king he entrusted all the created beings.” 89 The fourth class of the Śudras was unfortunately relegated to a life of servitude and dependence to the three higher classes and especially and particularly to the priestly class. But there was the provision that the priestly class should allot to the Śudras, out of its own family property, a suitable maintenance, after considering the conduct and ability of the Śudras, their industry, and the number of those who were their dependent. This plainly indicates that Manu was quite considerate and sympathetic towards Śudras and did not condemn them to a life of unqualified servitude and despondency. 90

87. Ibid., IX. 322.
88. Ibid., XI. 84.
89. Ibid., IX. 327.
The social status of the Śudras improved gradually and they could take up other vocations in addition to their normal duties. The earlier injunctions of Manu of confining the Śudras in an inferior social position of workers in comparison with the first two higher social classes, namely the Brāhmaṇas and the Kṣatriyas, were later considerably modified by Kautilya. He was quite liberal in his outlook and says that the duty of Śūdra is to serve the twice-born; but they can take-up agriculture, cattle-breeding and trade, various other professions of artisans, and court bards.91

Kautilya generally follows the ancient social injunction for the Śūdras. They should serve the Brāhmaṇas, the Kṣatriyas, and the Vaiśyas. But he was liberal in his outlook and enhanced their social status by permitting them to take up various other professions of the Vaiśyas such as agriculture, cattle-breeding and trade and commerce. These vocations were so far within the monopoly of the Vaiśyas.

Kautilya goes further in allowing the people of the Śūdra class to adopt the duties of the artisans

and of court bards. This might have considerably enhanced their social and economic status. Thus he brought the Śūdras on a social level with the Vaiśyas whose vocations had been elaborately enumerated in the Arthaśāstra. They included the performance of sacrifices, giving gifts, doing agricultural works, cattle-breeding and trade. Two of the above-mentioned duties were common to all the first three dvija varṇas and they invariably performed sacrifices and distributed gifts.

Kautilya had not only enhanced the social status and economic position of the Śūdras but he also did his best to achieve social and emotional integration of all four varṇas. He was not only a lawgiver but also a statesman with far-reaching foresight. He was keen to lay the solid foundation of the great empire where all sections of the society enjoyed social dignity and respectful place in general social set-up. He realised that no society could prosper if there existed water-light social compartments. Unfortunately this could not have been realised by Manu and other early Śruti writers.

Kautilya was quite clear when he considered vārtā

92. Ibid., I. III. 7-8.
that agriculture, cattle-breeding, and trade to be one of the four important sciences. According to him the other three were ānvīksakī, the triple Vedas and the dāndanīti. 94

Thus we can conclusively say that Kautilya was the first champion who had given to the Śūdras their social rights and had enabled them to contribute their rightful share to the welfare of the society. Though Manu was strict in his views regarding the varṇāshrama-vyārasṭhā but at secular level he also tried to achieve social harmony and general welfare. We find that the interdependence of all the four Varnas in society was made further possible by his injunctions in the Manusmṛiti that all of them had to observe the following norms:

"Abstention from injuring (creatures), veracity, abstention from unlawfully appropriating (the goods of others), purity, and control of the organs."

Manu declared these norms and obligations to be the law of the four Varnas. 95 These above-cited six rules of

94. Ibid., II.III. 6–15.

social conduct were meant for the common good of the entire community, and not for the sake of advancing the interests of any one particular class.

Thus we find in the above ordinances, of both Manu and Kautilya the clearest proof of not only the specialised functions of the various Varnas but also of their interdependence as socially indispensable units of a common composite society.

In view of the above I can suggest that no Varna could afford to live by itself without the co-operation and assistance of the other. This alone could lead to social harmony, emotional integration and love in the society.

Coming to the other aspect of the organismic theory we observe that the State had seven elements and each of these limbs was dependent on the other. All these seven elements, that comprised the state, constituted its living and growing organism. This theory has been supported and advocated by Benoy Kumar Sarkar, Rangaswami Aiyangar and D.R.Bhandarkar, K.P.Jayaswal and P.V.Kane.96

when we look at the set-up of the ancient Indian

State from the aspects of the organic theory, we find that it fully satisfies the conditions of that political theory as understood by modern Western thinkers and social scientists. There is another method of analysing and understanding the organic theory of the ancient Indian State. This can be done by comparing the two aspects of the ancient Indian State, as mentioned above, with the description of the organic theory as propounded by Aristotle who flourished in the fourth century B.C. There we may observe that Aristotle had described the organic theory of the State in ancient Greece:

"Government, he said, were composed, not of one, but of many elements. The element was the food producing class, made up of husbandmen; a second class, or mechanics, who practised arts without which a city could not exist; the third class was made up of traders, who were engaged in buying and selling either in commerce or in retail trade; the fourth class was made up of serfs or labourers; the fifth class, of warriors, who were necessary in case of invasions; the sixth class, of those who dispensed with justice; the seventh class, of wealthy people, who ministered to the needs of the State with their property; the eighth class of magistrates, and officers; and, finally,
the last class of statements."

Thus we find that Aristotle had only enlarged the scope by increasing the number of social classes which, according to the ancient Indian concept, were only four in number. As a matter of fact all these nine classes, he has mentioned in his Politics, could be easily reduced to the four classes as given in the Manusmriti. Thus we can compare the organic theory of the ancient Indian state with the ancient Greek stand-point or with that of the State of modern times and we can conclude that it fits in quite suitably with the organic nature of the elements of the State as they have been understood in the ancient and modern times.

and of court wards. This might have considerably enhanced their social and economic status. Thus he brought the Südras on a social level with the Vaiśyas whose vocations had been elaborately enumerated of sac-