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CHAPTER III
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INTRODUCTION:

Our writers revolve round the same type of state, viz., monarchy; only a few of them passingly refer to the Sangha (republican) state. For a long time the state was tribal. Apart from the frequent references to vispatis and janspatis the Rigveda (c. 2500 B.C.) frequently refers to specific tribes like the Yadus, the Purus, the Anus, the Survasas, etc. Visvamitra’s prayers are said to have protected the Bharata people; in the Rajasuya sacrifice, the king is announced as the ruler of the Bharatas or the Kuru-Panchalas and not as the sovereign of a particular province or kingdom. The notion of a rashtra or a territorial state, however, was being gradually evolved in the later Vedic period; we find it clearly referred to in the Atharvaveda. The Taittiriya Samhita refers to a ritual, a partial performance of which could secure a king the over-lordship over his tribe but not over the country (rashtra).

Whatever may be the state of affairs in the mythical past, Hindu thinkers held that state was an indispensible institution for the orderly existence and progress of society in the imperfect world as known to us in historic times; a country without government cannot even exist. The idea of a primeval Golden Age is accepted only in some sections of the Mahabharata and Buddhist literature. Writers on
Folly only toy with it for some time and hasten to point out that it was soon succeeded by a social chaos, which was terminated only when God gave a king to society. They thus regarded the State as a divine institution, implying thereby that it is as old as society and owed its origin to that socio-political instinct which is twin-born with man.

Our lawgivers have also taken care that the rules laid down by them may not be unreasonable and detrimental to the interest of the community at large. Law exists for the benefit of the people, it is a manifestation of the eternal Reason, that rules this universe, and it justifies itself by being conducive to the welfare of the people who are governed by it. The king cannot over-ride it; the judges cannot dispute its authority; and the people are bound to obey it not merely because it has the support of temporal authority, but because it draws its inspiration from the fountain of supreme wisdom.

(a) Greek Democracy

The people all over the world are being governed by the laws set upon the principles laid down by Greeks and Romans. The Greeks made the word democracy—from demos, meaning the people, and kratein, to rule—and their respect for it made them aware of the shortcomings which existed in Athens by the sixth century B.C. Solon established laws which treated wealthy and poor alike, abolished those laws which permitted loans made on security of the borrower's person. Solon's name
nowadays is used to mean 'Law giver,' set up courts of justice, or Heiaea, in which jury was chosen by lot from all citizens. More Athenians were granted representation in the Ecclesia, or popular assembly, and more men had the right to hold office. Summing up his reforms, he said, I have given the common people sufficient power to assure them of dignity."

It was under Pericles (495-429 B.C.) leadership that the Athenian democracy reached its height. Believing that all citizens should be equal politically, he tried to make Athens truly self-governing. He encouraged more citizens to seek positions in government by paying them for their services. His one well-known statement was: Remember that prosperity can be only for the free, and that freedom is the sure possession of those alone who have courage to defend it.

Idea of democratic government was born in Athens. Although Athenian democracy had glaring weaknesses by present democratic standards—slavery, for instance, and limited citizenship—it nevertheless made important contribution to modern governmental concepts. An outstanding example of this is rule by assembly. Describing Athenian democracy, Pericles said that the administration is in the hands of many and not of the few.

A group of jurists in Rome under Justinian's direction consolidated the laws, which they called the Digest, was a compact record of legal thought which contained all the wisdom of previous centuries concerning justice and the
protection of men's rights. Justinian's work became the basis of civil justice in the Western world. Plato and Socrates defended the right of men to criticise their government. According to Aristotle, government should not rest upon the consent of the many. Kautilya makes a mention of the Council of Ministers and mantişparishads (cabinet) whose numerical strength depended upon the requirements of the kingdom. Kautilya distinguishes between the amatyas (secretaries) and mañtries (ministers) and calls the latter superior. This is inferred from the statement that the king having divided the spheres of their powers and having definitely taken into consideration the place and time where and when they have to work, such persons shall be employed, not as councillors (mantrişas), but ministerial officers. The need of ministers was felt since the government should be conducted, not by the will of a solitary person, as in the case of a Greek and Persian autocrat but with the aid of councillors whose advice was to be respected by the sovereign. This was adhered to by both Manusmriti and Kautiliya. There was a Prime Minister who ranked equal with the teacher and family priest of the king. During the age of Ashoka the Brahmanism which was one of the most important periods in the social and mental development, declined giving place to Buddhism. His rule was based on Dharma.

The Manusmriti gives the need of ministers thus 'even an understanding individual (in itself) is sometimes hard to be a king, especially (if he has) no assistant (to govern) a kingdom which yields greater revenue.' The institution of mantişparishad is used in Political sense.
by Pannini. Kautilya mentions 25 functions and the Rock Edicts of Ashoka confirms its existence and functions. The most important functions as Kautilya mentions is that in case of an emergent matter, the king shall summon both his ministers and tell them at once of the same.

The ideas which flourished in Greece influenced not only the Romans but also Christians. From the stoics, a group of Greek philosophers about 300 B.C., Roman law derived a new theory. The stoics held that since all men are sons of God, they are all brothers. There is a natural, or moral law, which gives certain minimum rights to all men, without which they can have no dignity. To fulfill this natural law, justice demands that governments and the laws of the communities recognize such rights and protect man's enjoyment of them.

The Roman orator Cicero in his 'Republic', stated that there will be one law eternal and unchangeable, binding at all times upon all people, and there will be, as it were, one common master and ruler of men, namely God, who is the author of this law, its interpreter and sponsor. No state except one in which the people have supreme power provides a habitation for liberty. The transfer of the absolute powers of the king to the people had begun. One of these moves towards representative government had been the establishment of the Witan, an eleventh century group of prelates and officials who acted as an administrative body. After the Norman Conquest in the latter part of the eleventh century, the Anglo Saxon Witan was replaced by a great Council. Another body, the small
council, absorbed more and more of the actual administration of the central government. 9

(b) MAGNA CARTA

We think of Middle Ages, as Dark ages, yet one of the great documents of history emerged from the latter part of this period. On 15 June, 1215 in England a group of determined nobles gathered to secure a measure of justice from their king, named John whose demands were unreasonable. They presented the king with a choice, either he would sign the document they prepared or they would fight for justice. 9 King affixed his seal and the historic Magna Carta came into existence. This "Great Charter" established two far reaching precedents, first, that the power of a ruler is limited, and second, that human rights are more important than the sovereignty of kings. It states that no freeman shall be taken or imprisoned or dispossessed or outlawed, or exiled, or in any way destroyed except by the legal judgement of his peers or by the law of the land.

The Magna Carta forbade excessive fines for crimes, on the grounds that they would seriously impede a man's ability to provide for his family. Merchants were permitted to travel freely in order to sell their goods, & it was agreed that no farmer's crops could be taken from him without compensation. Magna Carta was not the only ray of light in this world of darkness. Six centuries earlier, St
Augustine had stated his belief that the only just law was God's law. There was St Thomas, who held that laws could be made only by the will of the people, or by a king who reflected that will. St. Ambrose went further calling upon priests to denounce kings who violated God's law of justice.  

Carlyle states that the first and most fundamental aspect of political thought in the Middle Ages was the principle that all political authority was the expression of justice—a principle derived immediately from the Roman law. The second great principle was that there could be only one immediate source of political authority and this was the community itself. A passionate champion of individual liberty, Salisbury, maintained that every ruler owed a responsibility to his people. Long before the American or French Revolutions, he suggested that men have a right to revolt against injustice. When a ruler violates his trust with God, men no longer owe that ruler their obedience. Salisbury described divine laws as Law is the gift of God, the model of equity, a standard of justice, a likeness of the divine will, the guardian of well being.

Monarchy was held to be a divinely ordained ordained institution in Europe and kings, therefore, held themselves accountable to God. They were expected, nevertheless, to respect certain rules and traditions in accordance with assumed 'natural laws' binding alike on ruler and ruled. The Church as the spiritual ruler had the right to lay down the general principles that ought to govern the Christian
monarch's exercise of power. There were conflicts between spiritual and temporal powers regarding the boundaries of their respective spheres of sovereignty. By the seventeenth century, territorial monarchs were in most cases strong enough to defy the spiritual power or at least to negotiate acceptable agreements.

The authority of the English Parliament by the end of 17th century was binding upon the monarch in a number of fields. In France, the early representative body, the States-General had never become the recognised spokesman for the nation as a whole, and had been unable for a number of reasons to exert the kind of pressure on the king that British Parliaments came to exercise in the seventeenth century, and so an absolute monarchy was able to persist throughout the seventeenth and most of the eighteenth century while England was developing a settled system of representative parliamentary government.

Members of Parliament in Britain were elected, upto the nineteenth century by only a small fraction of the population, M.P.'s were not really responsible to their electors. The democratisation of the Parliamentary system came slowly. From the seventeenth century onwards, ideas of equality and accountability cropped up from time to time in the writings of political thinkers or in a few political movements.

The place of the individual in the state was seen by many political thinkers in the seventeenth and eighteenth centuries within the framework of social-contract theories of
government, according to which an understanding between ruler and ruled was assumed to be inherent in the nature of civilised society. This so-called contract implied the willingness of citizens of a country to give up some of their natural rights in return for a system of government and law that safeguarded fundamental rights, such as life liberty and property.

Thomas Hobbes, in his 'Leviathan', in 1651 held that individuals have an equal right to choose their ruler. But once chosen, the ruler, whether monarch or assembly, must alone have the right to think and act for the community in matters of public concern. He believed that this was necessary because of the nature of man. Without a sovereign with the authority to govern on their behalf, men would never agree and would, therefore, end by destroying society. John Locke, believed, on the contrary, that men were naturally peaceable and sociable and that the exercise of power by rulers ought to be limited by conditions imposed by those who delegated the power. Certain of these conditions seemed to him to be laid down in 'the laws of God and of nature,' as for instance, acceptance by the ruler of the principle of equality before the law, of the obligation to protect property and also to obtain consent to taxation. Since all power was in the nature of a trust granted for the purpose of obtaining a specific end, it followed that, whenever that end is manifestly neglected or opposed, the trust must necessarily be forfeited, and the power devolve into the hands of those that gave it, who may place it anew where they shall think best for their safety and
security. In 1689, the Convention declaring the English throne vacant accused James II of 'breaking the original contract between King and people.'

(c) HABEAS CORPUS ACT AND BILL OF RIGHTS

The seeds of democracy planted in antiquity, began to bear fruit in Europe in the seventeenth century. England's Act of Habeas Corpus, which provided that an accused man must be brought before a court or judge, put an end to an unfair imprisonment. Ten years afterwards a Bill of Rights was passed, to protect man's personal liberties. The principles embodied in this great statement of Man's rights served as a model for the United States, & Philippines. The quest for freedom and justice gained ground through the centuries, men built upon the ideals erected by their forebears. They in turn, passed these ideals on to their children to broaden the meanings as they could.

Socrates' pleas for the 'examined' life were part of the search for an existence where men could pursue truth without hindrance. Galileo, the Italian astronomer who died in 1642, advanced the theory that the earth revolved around a stationary sun; although he was forced to retract his belief. John Milton, in 1664 in 'Areopagitica' in defense of freedom of expression writes—Give me liberty to know, to utter and to argue, freely according to conscience, above all liberties. Peter Zenger, won his fight for freedom of the press in 1735. He wrote an article criticising the governor, he was arrested and charged with criminal libel, under the
laws of that time, the fact that statements were true made no difference.

Democracy became a reality only when a good many individuals began talking and working together as a group. The ideas, which form the heart of the democratic tradition, took centuries to evolve. At the core of the democratic movement were its ideals and goals. What confronted democracy with its greatest problem were the changes in society itself. How could the ideas be retained intact within a system flexible enough to adapt to the needs of a constantly changing world?

Sometimes democracy appeared after centuries of evolution, while at times it came in the violent flash of revolution, when ideas and emotions long in ferment finally crystallized in the will to fight for liberty. Regardless of the manner in which achieved, it always managed to retain the principles which gave it strength. And somehow, the flexibility which was so important a requirement was there, continued to adapt itself, through changing times, to fit the will and the needs of people.

Even in those countries in which a democratic form of government has never appeared, the ideals of democracy are present, below the surface, waiting for the right moment; the right combination of circumstances, or the right leadership. Democracy has always offered hope to such lands and people. It has been a continuing tradition for those who have obtained a democratic way of life to assist those to find it who have never known it.
(d) **Glorious Revolution of 1688**

Two countries that reached democracy through centuries of gradual development are Switzerland & England. When William and Mary came to England from Holland to reorganise the government in 1688, the British called this action 'the Bloodless Revolution' or "The Glorious Revolution". It was a turning point in the history of England's gradual growth towards democratic government. The Glorious Revolution was only one milestone in the movement of the English people towards democratic living.

(e) **Declaration of Independence 1776**

The decisive events heralding the change from views such as these to the attitudes characteristic of modern representative democracy were the American War of Independence and the French Revolution which led to the first written constitutions providing for a system of government based on the acknowledged principle of the sovereignty of the people. The Declaration of Independence of 1776 states—That all men are created equal; that they are endowed by their Creator with certain inalienable rights— that to secure these rights, governments are instituted among men, drawing their just powers from the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute a new government, laying its foundations on such principles and organising its powers in such form, as to them shall seem most likely to
effect their safety and happiness.

They were ideas which had been generated during the long, slow struggle for freedom by all preceding generations. And in America, these ideas were coupled with emotions which hardened into the will to fight against oppression. In 1775, a year before the outbreak of the fighting, Patrick Henry cried out—Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? By 1776, when the majority of his countrymen were willing to take that course Thomas Jefferson wrote the Declaration of Independence—one of the greatest documents of freedom produced by mankind. 16

Jefferson succeeded in capturing the great flowering of democratic ideas, the burning desire for freedom. Believing that all men are endowed by God with the rights of 'Life, liberty and the pursuit of Happiness'. That all governments rest on the 'Consent of the Governed'. Prudence will dictate that Governments long established should not be changed for light and transient causes, ——But, when a long train of abuses and usurpations evinces a design to reduce mankind under absolute despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

American Constitution included a fundamental Bill of Rights which named the liberties to be safeguarded by law. The power of government, divided among executive, legislative and judicial branches, rested on the elective will of the voters.
Americas revolution stirred people all over the world and its success spurred the determination of men in other lands to throw off oppression. It was wedded to the principles of democracy.

Some of the leaders fought not just for the liberation of one country, but of a whole new world. Bolivar and San Martin carried out one of the most important struggles for freedom ever recorded in history. They brought freedom from Spanish rule to Colombia, Venezuela, Ecuador, Peru, Bolivia and Chile. It was Bolivar's belief that the authority of the people must be the only power that exists on the earth. And even the name of tyranny must be blotted out and forgotten in the language of nations.

The evolution of representative government in the United States was more rapid in some States than in others. The American Constitution came into force in 1789. Power was divided between the Federal Government and the 13 constituent States, but qualifications for voting were among the matters originally left to the States. The Senate, for instance, was chosen indirectly by State legislatures, until the Seventeenth Amendment introduced election by the people in 1913. The President, too, was to be indirectly elected. The voters merely chose an electoral college, whose function was to elect the President, the intention being that wisdom and reflection rather than popular passion should inspire their choice. In practice, these electors soon ceased to have any real say, except to ratify the popular choice of each state. The house of Representatives was from the start
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popularly elected, but at first electors were required to have property qualifications, though these could vary from one State to another. By the middle of the nineteenth century, adult male suffrage had become the general rule, and in 1870, the Fifteenth Amendment to the constitution extended voting rights to Negroes. Indeed, the amendment went further and forbade any restriction of voting rights on account of race, colour or previous condition of servitude.

Since the constituent States remained responsible for the legislation applying these principles, it was possible for a number of them to disfranchise Negroes in practice by making registration difficult for them or by imposing electoral qualifications such as educational or tax-paying requirements, ostensibly applying to everybody, but unlikely to be possessed by the bulk of the Negro populations, particularly in the Southern States. There were also disparities between the States regarding women's suffrage. Wyoming, for instance, allowed women to vote in 1869, but it was not until 1919 that the Nineteenth Amendment compelled States to introduce votes for women on the same terms as men. And hindrances to the exercise of the Negro vote remained common practice right up to modern times.

Even when all citizens have the right to elect representatives to legislative assemblies, this is not enough in itself to ensure that representative government is also democratic. The member must also recognise his obligations to his constituents. Throughout the Seventeenth and eighteenth centuries, British Members of Parliament not only continued to be
elected by restricted and largely unrepresentative electorates, but also to be subservient to the interests of a patron who had secured their election, rather than to those of their constituents. They were inevitably torn between their obligation to represent the local interests of their constituency and the general interests of the nation.

Practices of democratic living are deeply ingrained in the British, and in many countries once under her influence, England has left behind a deep respect for individual rights and an understanding of the practical mechanics of democratic law and government. During the long period of alternating authoritarian regimes and brief democratic or Socialist revolutions, however, a revolutionary tradition had been built up. It was expressed by the inclusion of the principles of the 1789 Declaration of the Rights of Man and the Citizen, either in the preamble or the text of a number of the democratic and republican constitutions. Among these principles there is the recognition of "resistance to oppression" as a "natural and intransgressible right". The Jacobin constitution of 1793 went even farther and claimed that 'when the Government violates the rights of the people', insurrection is the most sacred right and the most indispensable duty.

(P) DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN 1789

The revolutionary tradition has also been responsible for a much greater emphasis in French than in British democracy on the principle of equality. The 1789 Declaration of the Rights
of Man, not only held all men to be equal before the law, but also stated that social distinctions should be determined on the basis of their utility to the community, and that all citizens should be equally eligible for honours, office, and positions in public employment on the sole basis of merit.

The struggle for individual rights and for freedom brought men together. The American Revolution attracted many, like the French Marquis de Lafayette, who fought with the colonists to achieve their independence. More than a century later, when an American army landed in France during the First World War, the story is told of how General Pershing paid his respects before Lafayette’s tomb. A Prussian soldier, Baron Steuben, came to the assistance of the American colonies and helped train farmers into an effective fighting force.

The French Revolution of 1789 was separated from the East Berlin uprising of June 17, 1953 only in time. The ideals for which men fought were the same. The new republics of South America in the nineteenth century and those of Asia in the Twentieth had an important thing in common. The common bond was not one of race or color, or even of time or place. It was a bond of freedom and of justice, a kinship of spirit, a knowledge of that special dignity which God confers and man has grasped.

The French Declaration of the Rights of Man and of the Citizen states that men are born free and equal in rights. Law is the expression of the general will, sovereignty resides
exclusively in the nation. The nation has the imprescriptible right to change its Constitution.

During the following century and a half France was to resort frequently to the last mentioned right and the United States as well as France and Great Britain has still a long way to go before they could justifiably claim that their representative democracies gave full expression to these principles of individual equality. Even the utilitarian reformers, who believed in representative government, were sceptical regarding the consequences of giving everybody the right to vote, and it was only after a prolonged struggle that full universal suffrage was finally attained in 1929, with the granting of the vote to women on the same terms as men. In France, acceptance of the theory of popular sovereignty preceded the establishment of representative institutions needed to put the theories into practice. Though the absolute monarchy was overthrown by revolution and a National Assembly elected in 1789, in no election during the revolutionary period were the representatives chosen by anything like the whole body of citizens. A distinction was made between active and passive citizens. Active citizens were those who were allowed to vote because they paid a certain sum in direct taxes. Passive citizens, though not accorded the right to vote had a right to personal protection, property and liberty. Even active citizens did not choose their political representatives directly. They merely chose a number of electors, whose qualifications were similarly restricted, and these chose the Deputies. Although universal (male) suffrage was included in the Constitution of 1848, various devices were employed in
in elections between 1850 and 1870 to restrict the franchise in practice. The third Republic saw the general acceptance, not merely of votes for all men, but also of the freedom of electors from governmental pressures, but there was little serious support for the extension of the franchise to women who ultimately obtained the vote only in 1945.

(g) INDIA WINS FREEDOM

When China was engulfed by the new colonialism of communism, colonialism was ended in another great nation of Asia. In 1947, when the British withdrew after nearly two centuries of rule, 360 million people in India gained their political freedom in one of the greatest achievements in democratic history. The 584 diverse states of India were welded into twenty eight unified states, and the Dominion of Pakistan was created. A democratic government was created, based on the ideals of human rights. The Constitution of India takes much from the Constitution of United States & other Western nations-guaranteeing freedom of speech and religion as well as the right to vote for all men and women over eighteen years of age.

In 1951-52, in India's first nation-wide election, 106 million citizens cast their ballots. From all over the country they came by cart, bus, truck, or on foot- to choose members of the democratic assemblies. A central government was formed with a House of the people elected by direct vote, and a council of States chosen by indirect vote. Jawahar Lal Nehru, leader of majority party, became Prime Minister. 21
The General Assembly formally adopted the Universal Declaration of Human Rights on Dec. 10, 1948 for the first time in history, forty eight governments representing the greater part of the world's population reached agreement on a broad definition of human rights and fundamental freedoms. The only nations that did not adopt the Declaration were the Soviet Union and its eastern European satellites, where democratic process appears to have set in, in recent years.
Foot Notes


3. Ibid p. 188.


7. Supra note 4 p. 35.

8. Supra note 2 p. 37.


10. Ibid.


12. Ibid p. 44.

13. Ibid p. 46.

14. Supra note 2 p. 32.

15. Ibid p. 35.


17. Ibid p. 49.

18. Supra note 11 p. 76.

19. Supra note 2 p. 34.

20. Supra note 11 p. 47.