CHAPTER 2.

HISTORICAL RETROSPECT.

People write and adopt a constitution because they want to make a fresh start in their system of governance. The Constitution represents the break from the past, yet it is influenced from the past in what it accepts and what it rejects. The Constitution of India is no exception in that regard. People had a system of governance before the Constitution was written and adopted. The system has very much influenced its contents. Its contents can be appreciated and understood in the light of that system.

All Constitutions are the heirs of the past as well as the testator of the future. The very fact that the Constitution of the Indian Republic is a product not of a political revolution but of the research and deliberation of a body of eminent representatives of the people who sought to improve upon the existing systems of administrations, makes a retrospect of the constitutional development indispensable for a proper understanding of this Constitution.¹ No one will deny the truth of the above statement that if any one seeks to study the law, constitutional or other, of a country, a knowledge of the historical process which led to the present form is indispensable for correct insight and understanding of the subject.

But how far we should go into the background of the system? Perhaps as far as the origin and history of the people themselves. That would of course be a useful exercise to understand the relationship of the people to their laws and the Constitution. But that is an enormously difficult, almost impossible exercise in India because of its long history associated with foreign invasions and rules of which all links are not even available.

¹ D.D. Basu-“Introduction to the Constitution of India”, p.3 (3rd ed. 1946)
2.1. CONCEPT OF RIGHTS IN ANCIENT INDIA.

Religion has played a very important role in the human civilization. The Upanishads teach us that India has sought in religion not an absolute or finished dogma to believe in, but a method and means to pierce the veil that hides every present meaning and mystery of existence. "The earnestness of the search for truth is one of the delightful and commendable features of the Upanishads".²

Our earliest literary source is the Rig Veda, part of which were originally composed prior to 1000 BC. The remaining Vedic Literature, The Sama Veda, The Yajur Veda and The Atharva Veda is of later date. The historical reconstruction of Arian Life and institution is based on this literature. The two epics, The Ramayana and The Mahabharata are concerned with events which took place between 1000 and 700 BC.

During the earlier Vedic period instructions remained entirely orally. However the method of memorizing was highly systematic. There were no regular legal institution at this stage. Custom was law and the arbiters were the kings and the chief priest, perhaps advised by certain elders of the community. Variety of theft, particularly cattle-stealing, was the commonest offences. Punishment for homisidewas based on wergild, and the usual payment for killing a man was a hundred cows. Capital punishment was a latter idea. Trial by ordeal was practiced, the culprit having to prove his innocence by placing his tounge on a heated axe-head. In later Vedic sources there are reference to problems relating to land dispute and inheritance. A tendency towards primogeniture can be noticed, but it did not survive. It was also at this stage that caste consideration entered into legal practice, the higher caste became more lightly punished.³

² Robert Ernest Hume "The Thirteen Principal Upanishads" at  p.30
The concept that an entitlement to rights comes from proper performance of duties towards the society was at the centrality of ancient Indian jurisprudence. If everyone performs his duty, everybody’s rights would be automatically protected.

“The source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o’-the-wisp, the more we pursue them, the farther they will fly”\textsuperscript{4}

As specifically declared in Ishopanishad, “Desire to live for hundred years, doing selfless work to wipe other’s tears. There is no better way to gain freedom”. The shastrik charter of equality was accommodating welfare rights and policies. Rig Veda entailed, “No one is superior or inferior. All are brothers. All should progress collectively”. “Let us protect each other; let us dine together; let us do illustrious needs together”\textsuperscript{5}

In Mahabharatha, it is stated, “The king should look after the welfare of the helpless, the aged, the blind, the lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women, by giving them food, lodging, clothing and medicine according to their needs”. Vasishta has prescribed that the soldiers’ wives who have no other means of livelihood, shall be given subsistence. Not only the State but the individuals were also addressed with the duty to do good to others and eschew harms to them.

Saraswati Vilasa ordains that the king shall take cognizance of only those offences classified as aparadhas. According to Narada, arrest of any person should be under an express or implied authority of the ruler. Unauthorized arrests could be broken without penalty. Kautilya permitted arrest of persons on reasonable

\textsuperscript{4} Subhash C. Kashyap, “Blueprint of Political Reforms”, Shipra Publications, Delhi, p. 80.

suspicion of high crimes. Immunity against self-incrimination was the general principle. The above-mentioned text corresponds explicitly to present days Fundamental Right provided under Article 20 of the Constitution.

Rama Jois opines that after careful examination of the ancient legal and constitutional system, it is evident that India has established a duty based society.\(^6\)

Religion was an all-pervasive phenomenon in ancient India. It was believed that multitudes of religion were like the beads adorning the necklace of God; all were equally important because God existed in every spirit and force of human welfare.\(^7\)

An attitude of objectivity, logic and humanity and an approach of understanding, co-existence and tolerance permeated the secular spirit of ancient Indian thoughts.\(^8\)

Professional lawyers exist at least from the time of Manusmriti and perhaps even earlier according to Jayswal. He says “Manu, VIII, 169” shows that professional lawyers were already in time of Manava Code. The verse says that the person who suffers for the sake of others are witnesses, sureties and the judges, but those who are benefited by the legislation are the kings (who get court fees) the creditor (who gets the decree), the merchant (the speculator who supplies money for defense to the defendant and acquire his property in return) and the Brahmin. This Brahmin is the Brahmin who advised each party on law.

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\(^6\) M. Rama Jois, ‘Seeds of Modern Public Law in Ancient Indian Jurisprudence’, p-1


There seems to be a controversy as to whether there were lawyer in Ancient India. According to Rocher, There can be no doubt that parties to a law suit in ancient Hindu law had a right to be represented by other party.\(^9\)

This definition of Vidya-Dharna with its history going back to the Dharma Sutras, pre supposes the existence of the profession much earlier.\(^10\)

All these sources are clear evidence of the fact that since times immemorial, the concept of equality and prohibition of any kind of discrimination existed in India which has now been granted as the status of Rights under various provisions respectively, under the Indian Constitution. This chapter is an effort to peek into the past period and to assert the rights prevailing at that period and the process in which they were guaranteed.

2.1.1. DHARMA.

The word `Dharma' or `Hindu Dharma' denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfillment of these objects is Dharma, it is Hindu Dharma and ultimately `Sarva Dharma Sambhava'.

In contra distinction, Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the

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core religion which the Constitution accords protection. Dharma, according to the old concept, is a purely secular institution. Dharma is that which sustains the society.

V.D. Mahajan\textsuperscript{11}, in Chapter on "Secularism, its impact on law and life in India" it is stated that presonal law is a secular institution and has to be based on rational and secular considerations. This position is consistent with the real, ancient, pristine view of Hindu law. Dharma, according to the old concept, is a purely secular institution. Dharma is that which sustains the society. Dharma is that by which people at large are held together.

It is this stress on the identification of Dharma with Truth and social well being, Duty and Service that impelled Yudhisthira to express his own ambition, as Dharmaraja, in the words: “I seek no kingdoms nor heavenly pleasure nor personal salvation, since to relieve humanity from its manifold pains and distresses is the supreme objective of mankind”.

The Brhadaranyakopanisad identified Dharma with Truth, and declared its Supreme status: "There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-does) with the help of the King. So what is called Dharma is really Truth. Therefore, people say about a man who declares the truth that he is declaring dharma and about one who declares dharma they say he speaks the truth. These two (dharma and truth) are this”.

A similar thought is expressed in the Ayodhya-kanda of the Valmiki Ramayana, in verse-10. “From the ancient times the constitutional system depends on the foundation of Truth and social sympathy. Truth is the fundamental basis of the State, indeed the whole universe rests on Truth”.

The Rig Veda states that the Law and Truth are eternal - born of sacrifice and sublimation: “The Sruti, the Smriti, the approved usages, that which is

\textsuperscript{11} "Chief Justice Gajendragadkar" - his life, ideas, papers and addresses” by V.D. Mahajan
agreeable to one's in most self or good conscience, and has sprung from due deliberation, are ordained as the foundation of Dharma”.

Taittiriya Samhita states: “Dharma constitutes the foundation of all affairs in the world. People respect one who adheres to Dharma. Dharma insulates (man) against sinful thoughts and actions. Everything in this world is founded on Dharma”. Dharma, therefore, is considered supreme.

Jaimini states: Dharma is that which is indicated by the vedas as conducive to the highest good.

In the Vana Parva of the Mahabharata, Dharma is for the stability of society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfillment of these object is Dharma, that is definite.

Therefore, Dharma embraces every type of righteous conduct covering every aspect of life essential for the sustenance and welfare of the individual and the society and includes those rules which guide and enable those who believe in God and heaven to attain moksha (eternal bliss). Rules of Dharma are meant to regulate the individual conduct, in such a way as to restrict the rights, liberty, interest and desires of an individual as regards all matters to the extent necessary in the interest of other individuals, i.e., the society and at the same time making it obligatory for the society to safeguard and protect the individual in all respects through its social and political institutions. Shortly put, Dharma regulates the mutual obligations of individual and the society. Therefore, it was stressed that protection of Dharma was in the interest of both the individual and the society. A `State of Dharma' was required to be always maintained for peaceful co-existence and prosperity of all. Though Dharma is a word of wide meaning as to cover the rules concerning all matters such as spiritual, moral and personal as also civil, criminal and constitutional law, it gives the precise meaning depending upon the context in which it is used. When Dharma is used in the context of duties of the individual and powers of the King (the State), it means constitutional law [Rajadharma]. Likewise when it is said that Dharmarajya is necessary for the peace
and prosperity of the people and for establishing an egalitarian society, the word Dharma in the context of the word Rajya only means law, and Dharmarajya means Rule of Law and not rule of religion or a theocratic State. Dharma in the context of legal and constitutional history only means Vyavahara-dharma and Rajadharma evolved by the society though the ages which is binding both on the king [the ruler] and the people [the ruled].

The concept of `dharma’ has been explained by Justice M. Rama Jois in his book as: "Mahabharata contains a discussion of this topic. On being questioned by Yudhistira about the meaning and scope of Dharma, Bhishma stated: It is most difficult to define Dharma. Dharma has been explained to be that which helps the upliftment of living beings. Therefore that which ensures welfare (of living beings) is surely Dharma. The learned rishis have declared that which sustains is Dharma.

Prof. Om Prakash has stated that the concept of dharma aims to maintain orderly society regarding every human being as the creation of God and treating him on a footing of equality. The last rhymne of the Rig Veda throws light on the Rig Veda concept of dharma laying down "that all human beings should move together, speak together and their minds be of one accord". Samgachhdhwam Sambaddwam Sambo Manasi Sanatnam Deva Bhagan Yathaturbe Sanjanananam Upasate - Rv.X, 191, 2.] At page 5, he states that the concept of dharma was not static. Its content changes with the changing contexts of time, place and social environment. Dharma is that which holds together all living beings in a harmonious order. Virtuous conduct contribute to social welfare and vice is its bane. In the Sutra literature both these aspects of dharma are discussed under four sections which he elaborated in his book. At page 8, the author states that "the above discussion makes it clear that dharma in India does not force men into virtue but trains them for it. It is not a fixed Code of mechanical rules but a living spirit which grows and moves in response to the development of the society. Even the

12 The Concept of “Dharma” as quoted by the Supreme Court in Shri A.S. Narayana Deekshitulu v. State Of Andhra Pradesh, AIR 1996 SC 1765,

13 Justice M. Rama Jois, “Legal and Constitutional History of India”, Vol. I, at pages 1 to 4

14 Prof. Om Prakash, "Religion and Society in Ancient India”, 1985 Edition
State in India is a swervant of dharma. It was not above morality. Its function is not to alter or annul dharma but only to administer it. Dharma is essential because it promotes individual security and happiness as well as the stability of the social order”.

Dr. Shankar Dayal Sharma, in his Centenary Speech of Swami Vivekananda in the Parliament of Religions, he emphasised "time-honoured philosophy of oneness and harmony within pluralism, the recognition of, respect for, and acceptance of different paths of logical and intuitive access to Absolute Truth". He reiterated what Swami Vivekananda had said one century ago at Chicago: "We believe not only in universal toleration, but we accept all religions as true" and concluded that "if India is to grow to her full potential as a strong, united, prosperous nation, a nation attuned to the highest moral and ethical values, true to the genius of her cultural and spiritual heritage, we shall all have to strive each day to build harmony, justice and creative endeavour. Indeed, in a very real way, it is our duty so to strive". He exhorted the youth of the country to be the vanguard of that mission.

The word `Dharma` or `Hindu Dharma` denotes upholding, supporting, nourishing that which upholds, nourishes or supports the stability of the society, maintaining social order and general well-being and progress of mankind; whatever conduces to the fulfillment of these objects is Dharma, it is Hindu Dharma and ultimately `Sarva Dharma Sambhava`.

In contra distinction, Dharma is that which approves oneself or good consciousness or springs from due deliberation for one's own happiness and also for welfare of all beings free from fear, desire, disease, cherishing good feelings and sense of brotherhood, unity and friendship for integration of Bharat. This is the core religion which the Constitution accords protection.

15 “Dharma - a Legal Discipline” - Select Speeches and Writings of Dr. Shankar Dayal Sharma, the present President of India [Indian Bar Review Vol.XX (3&4) 1993 Special Issue] in his Centenary Speech of Swami Vivekananda in the Parliament of Religions,
In a concurring judgment\textsuperscript{16} Justice Hansaria aptly pointed out difference between 'religion' and 'dharma' and observed thus: “Our dharma is said to be 'Sanatana' i.e. one which has eternal values, one which is neither time-bound nor space-bound. It is because of this that Rig Veda has referred to the existence "Sanatan Dharmani". The concept of 'dharma', therefore, has been with us for time immemorial.”

The word is derived from the root 'Dh.r' which denotes: 'upholding', 'supporting', 'nourishing' and 'sustaining'. It is because of this that in Karna Parva of the Mahabharata, Verse 58 in Chapter 69 says: "Dharma is for the stability of the society, the maintenance of social order and the general well-being and progress of humankind. Whatever conduces to the fulfilment of these objects is Dharma; that is definite." In Verse 9 of Chapter 5 in the Ashrama Vasika Parva of the Mahabharata, Dhritrashtra states to Yudhisthira: "The State can only be preserved by dharma under the rule of law."

The perennial truths, rules, and laws that help maintain peace and harmony in one's individual and in the community life constitute dharma. It applies for all times and in all places. Social laws and even national constitutions devoid of such a dharma will lead a society towards an inevitable decline. In the practice of dharma, one is advised to shed the veil of ignorance and practise truthfulness in one's thoughts, speech, and actions. How can dharma be secret, having revelation as its source? Withholding nothing, all the great sages in the world shared their knowledge with humanity. In the Bhagavad Gita, the Bible, Koran, and Dhammapada knowledge, like the sun, shines for all.

It is because of the above that if one were to ask "What are the signs and symptoms of dharma?", the answer is: that which has no room for narrow-mindedness, sectarianism, blind faith, and dogma. The purity of dharma, therefore, cannot be compromised with sectarianism. A sectarian religion is open to a limited

group of people whereas dharma embraces all and excludes none. This is the core of our dharma, our psyche.”

Justice M. Rama Jois in his book noticed the Ancient Indian Texts in the following words:

SAMANI PRAPA SAHA VONNBHAGA
SAMANE YOKTRAY SAHA WO YUNISM
ARAHA NABHIMIV ABHITE:

"All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulder of all. All should live together with harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and the hub. (Atharvanaveda-Samjnana Sukta)

Thus, the right to equality of all human beings has been declared in the Vedas, which are regarded as inviolable. In order to emphasize the dignity of the individual, it was said that all are brothers as all are the children of God. No one is inferior or superior. Similarly the Atharvanaveda stressed that all have equal right over natural resources and all were equally important like spokes in a wheel. Both the Rigveda and Atharvanaveda declared that co-operation between individuals in necessary for happiness and progress. It is also of utmost importance to note that right to equality and made a part of "Dharma" long before the State came to be established.

This declaration is similar to the declaration of equality made in the Rigveda.

After the establishment of the State, the obligation to protect the right to equality was cast on the Rulers. It was made a part of the Rules of Raja Dharma, the Constitution Law.

\[17\] ibid

\[18\] Human Rights and Indian Values' Justice M. Rama Jois
Our Constitution-makers, who included some of the most eminent jurists in the country, could not have been ignorant of the teachings of our own ancient jurists, Manu and Parashara, who had pointed out that the laws of each age are different. In support of this view, the late Dr. Ganga Nath Jha, in his treatise on Hindu Law, has cited the original passages from Manu and Parashara, the English translation run as follows: "The fundamental laws (imposing fundamental duties or conferring fundamental rights) differ from age to age; they are different in the age known as krita from those in the dvaapara age, the fundamental, laws of the kali age are different from all previous ages, the laws of each age conform to the distinctive character of the age (yuga roopa nusaara tah)".

In other words, even our ancient jurists recognised the principle that one generation has no right to down future generations to its own views or laws even on fundamentals. The fundamentals may be different not merely as between one society and another but also as between one generation and another of the same society or nation.  

The theory of a legally sovereign unquestionable authority of the King, based on physical might and victory in battle, appears to have been developed in ancient India as well, by Kautaliya, although the concept of a Dharma, based on the authority of the assemblies of those who were learned in the dharmashastras, also competed for control over exercise of royal secular power. High philosophy and religion, however, often seem to have influenced and affected the actual exercise of sovereign power and such slight Jaw-making as the King may have attempted.

The ideal King, in ancient India, was conceived of primarily as a Judge deciding cases or giving orders to meet specific situations in accordance with the Dharma Shastras. It also appears that the actual exercise of the power to administer justice was often delegated by the King to his judges in ancient India. Indeed,

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19 ibid

according to some, the theory of separation of powers appears to have been carried so far that the King could only execute the legal sentence passed by the Judge.\(^2\)

Semitic prophets, as messengers of God, also became rulers wielding both spiritual and political temporal power and authority although to Jesus Christ, who never sought temporal power, is ascribed the saying: "render unto Caesar the things that are Caesar's and to God things that are God's". According to the theory embodied in this saying, spiritual and temporal powers and authorities had to operate in different orbits of power altogether. Another theory, however, was that the messenger of God had been given the sovereign will of God Almighty which governed all matters and this could not be departed from by any human authority or ruler. In the practical administration of justice, we are informed, Muslim caliphs acknowledged and upheld the jurisdiction of their Kazis to give judgment against them personally. There is an account of how the Caliph Omar, being a defendant in a claim brought by a jew for some money borrowed by him for purposes of State, appeared in person in the Court of his own Kazi to answer the claim. The Kazi rose from his seat out of respect for the Caliph who was so displeased with this unbecoming conduct that he dismissed him from office.\(^2\)

2.1.2. VEDAS OR SHRUTIS.

According to Yajnavalkya, the sources of Hindu Dharma are those enumerated in the following text:- *Shruti smritih sadacharah swasya cha priyamatmanah samyakasankalpajah kamo dharmmoolmidang smrittam*. The sources of Dharma are described to be (1) the Vedas, (2) the Smritis, (3) the practices of good men, (4) what is acceptable to one's own soul, and (5) the desire produced by a virtuous resolves.

\(^2\)K.P. Jayaswal in "Manu and Yajnavalkya"-A Basic History of Hindu Law, 1930 Edn. p. 82

\(^2\)Sir A. Rahim's "Muhammadan Jurisprudence" 1958 p. 21
While interpreting the Smritis one difficulty which has to be encountered is the uncertainty about their chronology. Another difficulty felt by many jurists while interpreting them is the existence of conflicting texts, sometimes in the same Smriti. This appears to be on account of the successive changes in the views of society, which may have taken place over several centuries. Very often the prevailing practices and customs at a given point of time might be quite different from those obtaining some centuries before that time. Maxims which have long ceased to correspond with actual life are reproduced in subsequent treatises, either without comment or with a non-natural interpretation. "Extinct usages are detailed without a suggestion that they have become extinct from an idea that it is sacrilegious to omit anything that has once found a place in the Holy Writ. Another inference is also legitimate that while some Smritis modified their rules to provide for later usages and altered conditions of society, other Smritis repeated the previous rules which had become obsolete, side by side with the later rules. 23

While interpreting the ancient texts of Smritis and Commentaries on Hindu Dharmasastra, we should bear in mind the dynamic role played by learned commentators who were like Roman Juris Consults. The commentators tried to interpret the texts so as to bring them in conformity with the prevailing conditions in the contemporary society.

" From the high spiritual flights of the Vedanta philosophy, of which the latest discoveries of science seem like echoes, to the low ideas of idolatry with its multiflavour, mythology, the agnosticism of the Buddhists and the atheism of the Jains, each and all have a place in the Hindu's religion. Here it may be said that these laws as laws may be without end, by they must have had a beginning. The Vedas teach us that creation is without beginning or end, Science is said to have

proved that the sum total of cosmic energy is always the same. Then, if there was a
time when nothing existed where was all these manifested energy.”

The Rig Veda states that the Law and Truth are eternal - born of sacrifice and
sublimation: The Sruti, the Smriti, the approved usages, that which is agreeable to one's in most self or good conscience, and has sprung from due
deliberation, are ordained as the foundation of Dharma.

The last rehyme of the Rig Veda throws light on the Rig Veda concept of
dharma laying down "that all human beings should move together, speak together
and their minds be of one accord”.

The Rig Veda enjoins : "Behave with others as you would with yourself. Look upon all the living beings as your friends, for in all of them there resides one
soul. All are but a part of that universal soul. A person who believes that all are his soulmates and loves them all alike never feels lonely. Divine qualities of such a
person such as forgiveness, compassion and service, will make him lovable in the
eyes of his associates. He will experience intense joy throughout his life".

The basis of Hindu Dharma is two-fold. The first is the Vedas and the
second are the Agamas. Vedas, in turn, consist of four texts, namely, Samhitas,
Bramhanas, Aranyakas and Upnishads.

Samhitas are the collections of mantras. Bramhanas explain the practical
aspects of the rituals as well as their meanings. They explain the application of the
mantras and the deeper meanings of the rituals. Aaranyakas go deeper into the
mystic meanings of the rituals, and Upnishads present the philosophy of the Vedas.

From the point of view of content, they are viewed as Karma Kanda (sacrificial portion) and Jnana Kanda which explain the philosophical portion. The
major portion of the Vedic literature enunciates the vedic sacrifices or the rituals

24 Swami Vivekananda, “Parliament of Religion, Chicago”, on 19th September, 1893

25 Prof. Om Prakash ,"Religion and Society in Ancient India” 1985 Edition
which inevitably cultivate in the philosophy of the Upanishads. That is why the
Upanishads are called Vedantha or culmination of the Vedas.

The essence of the Vedic religion lies in Vedic sacrifices which not only
purify the mind and the heart of those who participate in the sacrifices but also
reveal the true and unfragmented nature of the Karman (Action). Erroneously,
Western scholars explained the Vedic sacrifices in terms of either sympathetic
magic or an act of offering the fire to Gods emulating the mundane act of offering
gifts. Thus, for them Vedic religion is a primitive religion and Vedic Gods are
simply representing insentient departments of Nature; but it is not so. On the
contrary, the term used for Vedic Gods is "Deva" which literally means "the
shining ones". The adorable ones - bestowing grace on the worshippers. The root
`Div' also means that Devas are the embodiment of unfragmented consciousness,
which is ultimately one and non dual. Likewise, the Vedic sacrifice is an act of re-
enactment of the cosmic creation; in our mundane life, our life of action is simply a
life of fragmented act. This is because of Raga Dvesha whereby the perception is
limited. The fragmented acts emanate from our deep rooted attraction and
hatefulness. The Vedic sacrifice moves towards "Poorna", i.e., plenitude and thus
overcoming the problem of fragmented action in our lives. Onwards, the seeker
moves towards the knowledge of self or the Brahmaan. So many Upasanas are
taught in the Vedas but not elaborated. The Agamas have elaborated these
Upasanas such as Madhu Vidya and Dahra Vidya.

Upanishads speak of Para Vidya and Apara Vidya. Apara Vidya deals with
Jnana through various methods. Agamas explain these Para Vidyas. The Agamic
texts contain four parts, namely, Vidya Pada, Kriya Pada, Charya Pada and Yoga
Pada.

Each text of the Agamas has the first portion, called `Samhita’ which
contains the four parts namely the Vidya Pada, Driya Pada, Charya Pada and Yoga
Pada. Vidya Psada offers an elaborate enunciation of the philosophy, whereas
Kriya Pada deals elaborately with the act of worship. Worship is viewed as
Samurta Archana. In other words, the Gods are endowed with form the this form of
worship culminates into Amurta or Nishkala Archana by which one worships and realizes the formless. These are the steps to be treated upon one after another.

The Markadeya Purana expresses the purpose of Dharma as “that all persons may be happy, may express each other’s happiness, that there may be welfare of all, all being free from fear and disease; cherish good feelings and sense of brotherhood, unity and friendship”.

The Agamas, thus, are a stream of traditions which have grown along with the tradition of the Vedas. Many earlier works of Agama literature are fairly ancient in times. They are not anti-Vedic but the worship of God in the form of Idol. In the Vedic tradition, a very limited number of Brahmins were conversant with the ritualistic lore but under Agama they performed rituals visualizing the Deity whom they invoked by Mantras. Vedas deprived others including women and Sudras of the opportunity to participate in the rituals. But Agamas provide opportunity to all to perform worship of the God. Purity, good conduct, devotion and dedication is insisted upon.26

However Justice B.K. Mukherjea27 observed: "The popular Hindu religion of modern times is not the same as a religion of the Vedas though the latter are still held to be the ultimate source and authority of all those held sacred by Hindus. In course of its development, the Hindu religion did undergo several changes, which reacted on the social system and introduced corresponding changes in the social and religious institution. But whatever changes were brought about by time it cannot be disputed that they were sometimes of a revolutionary character – the fundamental, moral and religious ideas of the Hindu which lie at the route of their religion and charitable institution remained substantially the same and the system that we see around us can be said to be a evolutionary product of the spirit and genus of the belief passing through different ways of their cultural development”.

26 As quoted by the Supreme Court in Shri A.S. Narayana Deekshitulu v. State Of Andhra Pradesh, AIR 1996 SC 1765.

Manu in his Smriti, Chapter III Verses 55 to 57 stated that where women are honoured and adorned there Gods are pleased, but where women are not honoured no sacred fire yields rewards. What is the status held by women in the Hindu society is a matter of history reflected from Vedic culture, Smritis, the Shastric law.

In Vedic society woman enjoyed equal status economically, socially and culturally with men. He stated that initiation to education upanayanam was performed in Vedic period to the girls as well as boys. Women studied the Vedas, even composed Vedic rhymes. They participated in public life freely. Vishvavara, Apala, Lopamudra and Shashayasi are only few examples in the initial Vedic period. Thereafter Ghosha, Maitrai and Gargi occupied price of place for equality in intellectual excellence and equal status with men. Selfishness and male chauvanism made woman to gradually degrade and were given no voice even in the settlement of their marriages or so on. She was denied participation in public affairs.

Though Yajnavalkya was a proponent to her economic status but ultimately Manu Smriti took firm hold and in Chapter IX Verse 18, Manu stated that woman had no right to study the Vedas. Thereby, denied the right to education, fundamental human right to acquire knowledge and cultural and intellectual excellence. In Chapter IX Verse 149, he stated that woman must not seek separation from father, husband or son and bondaged her for ever. In Chapter IX Verse 45, the husband was declared to be one with the wife that the wife can seek no divorce but allowed immunity to a male to discard an unwanted wife. All through the ages till Hindu Marriage Act was made a male was allowed polyandry. In Chapter IX Verse 4 16, he stated that a wife, a son and a slave are declared to have no property and if they happened to acquire it would belong to male under whom she is in protection. Thus she was denuded or her right to property or incentive to decent and independent living and made her a dependent only to rare children and bear the burdens. When she becomes a widow, she was declared to have only maintenance and if in possession of her husband's property or coparcenery, to be a widow's estate with reversionery right to the heirs of last male holder. Fidality was a condition precedent to receive maintenance. In Chapter IX
Verse 299, he prescribed corporeal punishment to a wife who commits faults, should be beaten with a rope or a split bamboo. If she was murdered it was declared to be an Upapattaka that is a minor offence vide Chapter XI Verse 67.  

Two stanzas (14 and 18) of Eighth Chapter of Manu Samhita deal with role of witnesses. The English translation read as follows: "Stanza 14: 

Where in the presence of Judges "dharma" is overcome by "adharma" and "truth" by "unfounded falsehood", at that place they (the Judges) are destroyed by sin.

Stanza 18

In the adharma flowing from wrong decision in a Court of law, one fourth each is attributed to the person committing the adharma, witness, the judges and the ruler”.  

Manu states that I have described above the splendid rules of action for the social clases outside times of adversity. Listen now to the rules for them in the proper order for times of adversity.  

The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and Saints of India lived in forests. Their preachings about protecting the environment is contained in Vedas, Upanishadas, Smritis etc. and there have been ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main moto of social life is to live in harmony with nature. It was regarded as a sacred duty of every one to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children

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28 As per Altakar on interpreting Manu,” The Position of Woman in Hindu Civilization “, 1955 Edn. vide p. 335,339 and 409


were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora fauna and every species of life.

2.1.3. MIMAMSA.

The process of interpretation is as old as language, it says that the rules of interpretation were evolved at a very early stage of Hindu civilization and culture and the same were given by 'Jaimini', the author of Mimamsat Sutras; originally meant for shrutis, they were employed for the interpretation of Smritis as well.

It may be mentioned that the Mimansa Rules of Interpretation were our traditional principles of interpretation laid down by Jaimini, whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar, etc. These Mimansa Principles were regularly used by our great jurists like Vijnaneshwara (author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit, etc. whenever they found any conflict between the various Smritis or any ambiguity, incongruity, or casus omissus therein.

The Mimansa principles of interpretation were created for resolving the practical difficulties in performing the yagyas. The rules for performing the various yagyas were given in books called the Brahmanas (all in Sanskrit) e.g. Shatapath Brahmana, Aitareya Brahmana, Taitareya Brahmana, etc. There were many ambiguities, obscurities, conflicts etc. in the Brahmana texts, and hence the Mimansa Principles of Interpretation were created for resolving these difficulties.

Although the Mimansa principles were created for religious purpose, they were so rational and logical that they subsequently began to be used in law, grammar, logic, philosophy, etc. i.e. they became of universal application.\textsuperscript{31}

\textsuperscript{31} Prof. Kishori Lal Sarkar, 'The Mimansa Rules of Interpretation' published in the Tagore Law Lecture Series
In the Mimansa system there are three ways of dealing with conflicts. Where two texts which are apparently conflicting are capable of being reconciled, then by the Principle of Harmonious Construction (which is called the Samanjasya Principle in Mimansa) they should be reconciled. The Samanjasya Principle has been laid down by Jaimini in Chapter II, Sutra 9 which states: "The inconsistencies asserted are not actually found. The conflicts consist in difference of application. The real intention is not affected by application. Therefore, there is consistency."

The Samanjasya axiom is illustrated in the Dayabhag. Jimutvahana found that there were two apparently conflicting texts of Manu and Yajnavalkya. The first stated "a son born after a division shall alone take the paternal wealth". The second text stated "sons, with whom the father has made a partition, should give a share to the son born after the distribution". Jimutvahana, utilizing the Samanjasya principle of Mimansa, reconciled these two texts by holding that the former applies to the case of property which is the self-acquired property of the father, and the latter applies to the property descended from the grand-father.

One of the illustrations of the Samanjasya principle is the maxim of lost horses and burnt chariot (Nashtashvadaghda Ratha Nyaya). This is based on the story of two men traveling in their respective chariots and one of them losing his horses and the other having his chariot burnt through the outbreak of fire in the village in which they were putting up for the night. The horses that were left were harnessed to the remaining chariot and the two men pursued their journey together. Its teaching is union for mutual advantage, which has been quoted in the 16th Vartika to Panini, and is explained by Patanjali. It is referred to in Kumarila Bhatta's Tantra Vartika.

The second situation is a conflict where it is impossible to reconcile the two conflicting texts despite all efforts. In this situation the Vikalpa principle applies, which says that whichever law is more in consonance with reason and justice

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should be preferred. However, conflict should not be readily assumed and every effort should be made to reconcile conflicting texts. It is only when all efforts of reconciliation fail that the Vikalpa principle is to be resorted to.

There is a third situation of a conflict and this is where there are two conflicting irreconciliable texts but one overrides the other because of its greater force. This is called a Badha in the Mimansa system (similar to the doctrine of ultra vires). 33

The great Mimansa scholar Sree Bhatta Sankara in his book 34 has given several illustrations of Badha as follows:

"A Shruti of a doubtful character is barred by a Shruti which is free from doubt. A Linga which is more cogent bars that which is less cogent. Similarly a Shruti bars a Smriti. A Shruti bars Achara (custom) also. An absolute Smriti without reference to any popular reason bars one that is based upon a popular reason. An approved Achara bars an unapproved Achara.

An unobjectionable Achara bars an objectionable Achara. A Smriti of the character of a Vidhi bars one of the character of an Arthavada. A Smriti of a doubtful character is barred by one free from doubts. That which serves a purpose immediately bars that which is of a remote service. That which is multifarious in meaning is barred by that which has a single meaning. The application of a general text is barred by a special text. A rule of procedure is barred by a mandatory rule. A manifest sense bars a sense by context. A primary sense bars a secondary sense. That which has a single indication is preferable to what has many indications. An indication of an inherent nature bars one which is not so. That which indicates an action is to be preferred to what merely indicates a capacity. If you can fill up an ellipse by an expression which occurs in a passage, you cannot go beyond it."

The principle of Badha is discussed by Jaimini in the tenth chapter of his work. Badha primarily means barring a thing owing to inconsistency. Jaimini uses

33 supra

34 Sree Bhatta Sankara `Mimansa Valaparakasha'
the principle of Badha mainly with reference to cases where Angas or sub-ceremonies are to be introduced from the Prakriti Yagya (i.e. a yagya whose rules for performance are given in detail in the Brahmanas) into a Vikriti (i.e. a yagya whose rules of performance are not mentioned anywhere, or are incompletely mentioned). In such a case, though the Angas or the sub-ceremonies are to be borrowed from the Prakriti Yagya, those of the sub-ceremonies which prove themselves to be inconsistent with or out of place in the Vikriti Yagya, are to be omitted.

For example, in the Rajsuya Yagya, certain homas are prescribed, for the proper performance of which one must borrow details from the Darshapurnamasi Yagya. In the Rajsuya Yagya, plain ground is directed to be selected as the Vedi for the homas, while in the case of the Darshapurnamasi, the Vedi should be erected by digging the ground with spade etc. Such an act would be out of place in constructing the Vedi for the homas in the Rajsuya Yagya. Here, there is a Badha (bar) of the particular rule regarding the erection of the Vedi in the Darshapurnamasi Yagya, being extended to the Rajsuya Yagya. This is the case of Badha by reason of express text.35

There are other instances in which the inconsistency arises incidentally. For example, in the Sadyaska there is no need of cutting the peg with which the animal is to be tied. But, in the Agni-Somiya Yagya which is the Prakriti of the Sadyaska Yagya, reciting of certain Mantras is prescribed in connection with the cutting of the peg. This recital being out of place in the former Yagya is barred in carrying the Atidesha process. Numerous other illustrations can be given. For example, in the Satra Yagya the selection of Rittik is out of place and so omitted, though this is done in the Soma Yagya of which the Satra is the Vikriti. The Krishnala Nyaya (black bean maxim) is another instance. In cases where Atidesha is to be made by implication, it is altogether barred, if there is an express text against making the implication.

35 supra
When there is a negative ordinance prohibiting a thing, it is to prevail notwithstanding that there is an Atidesha which by implication enjoins the thing. For instance, there is a rule that all sacrifices partake of the character of Darsha and Paurnamasi Yagyas. The result is that all the rules of Darsha and Paurnamasi Yagyas are applicable to the Pasu Yagya also. But there is a text which says that the Aghara and the Ajyabhaga homas need not be made in the Pasu Yagya. Therefore, these homas need not be made in the Pasu Yagya, though in the absence of the prohibitory text they would have to be made on account of the rule which lays down that all Yagyas must partake of the character of Darsha and paurnamasi.36

One of the Mimansa principles is the Gunapradhan Axiom, and since we are utilizing it in this judgment (apart from the badha and samanjasya principles) we may describe it in some detail.

`Guna' means subordinate or accessory, while `Pradhan' means principal. The Gunapradhan Axiom states :“If a word or sentence purporting to express a subordinate idea clashes with the principal idea, the former must be adjusted to the latter or must be disregarded altogether.”

This principle is also expressed by the popular maxim known as matsya nyaya i.e. 'the bigger fish eats the smaller fish'.

According to Jaimini, acts are of two kind, principal and subordinate
Kumarila Bhatta, in his work Tantravartika37 explains this Sutra as follows : "When the Primary and the Accessory belong to two different Vedas, the Vedic characteristic of the Accessory is determined by the Primary, as the Accessory is subservient to the purpose of the primary." It is necessary to explain this Sutra in some detail. The peculiar quality of the Rigveda and Samaveda is that the mantras

36 ibid

belonging to them are read aloud, whereas the mantras in the Yajurveda are read in a low voice. Now the difficulty arose about certain ceremonies, e.g. Agnyadhana, which belong to the Yajurveda but in which verses of the Samveda are to be recited. Are these Samaveda verses to be recited in a low voice or loud voice? The answer, as given in the above Sutra, is that they are to be recited in low voice, for although they are Samavedi verses, yet since they are being recited in a Yajurveda ceremony their attribute must be altered to make it in accordance with the Yajurveda.

Kumarila Bhatta says: "The Siddhanta (principle) laid down by this Sutra is that in a case where there is one qualification pertaining to the Accessory by itself and another pertaining to it through the Primary, the former qualification is always to be taken as set aside by the latter. This is because the proper fulfillment of the Primary is the business of the Accessory also as the latter operates solely for the sake of the former. Consequently if, in consideration of its own qualification it were to deprive the Primary of its natural accomplishment then there would be a disruption of that action (the Primary) for the sake of which it was meant to operate. Though in such a case the proper fulfillment of the Primary with all its accompaniments would mean the deprival of the Accessory of its own natural accompaniment, yet, as the fact of the Accessory being equipped with all its accompaniments is not so very necessary (as that of the primary), there would be nothing incongruous in the said deprival". 38

Jaimini in Sutra states: "When there is a conflict between the purpose and the material, the purpose is to prevail, because in the absence of the prescribed material a substitute can be used, for the material is subordinate to the purpose".

To explain this it may be mentioned that the Brahmanas state that the prescribed Yupa (sacrificial post for tying the sacrificial animal) must be made of Khadir Wood. However, Khadir wood is weak while the animal tied may be restive. Hence, the Mimansa principle (stated above) permits that the Yupa can be made of Khadar wood which is strong. Now this substitution is being made despite

38 supra
the fact that the prescribed wood is Khadir, but this prescription is only subordinate
or accessory to the performance of the yagya, which is the main object. Hence, if it
comes in the way of the yagya being performed, it can be modified or substituted.

In this connection we may also refer to the Wooden Sword Maxim (Sphadi
Nyaya), which is a well known Maxim in the Mimansa system. This Maxim states
"what is prescribed as a means to an action, is to be taken in a sense suited to the
performance of the action". The word 'Spha' in Sanskrit means a sword, which is
normally a metallic object for cutting. However, 'Spha' in connection with a Yagya
has to be interpreted as a wooden sword, because in a Yagya a small wooden
sword called 'Spha' is used which is a pushing instrument (as a Yagya requires no
cutting instrument, but only a pushing instrument). Thus, 'Sphadi Nyaya' implies
that we have to see the object of the text to correctly interpret it.39

In the Mimansa system, the literal rule of interpretation is called the Shruti
(or Abhida) principle, and ordinarily it is this principle which is to be applied when
interpreting a text. However, there are exceptional situations when we have to
depart from the literal rule and then certain other principles have to be resorted to
e.g. (1) the Linga (also called Lakshana) principle or the suggestive power of
words or expressions, (2) the Vakya principle or syntactical arrangement, (3) the
Prakarana principle, which permits construction by referring to other texts in order
to make the meaning clear, (4) the Sthana (position) principle which means the
relative position of one text with reference to another, (5) the Samakhya (name)
principle which means the connection between different passages by the indication
accorded by the derivative words of a compound name.40

The principle of Linga is illustrated by Jaimini in numerous Sutras and
Adhikarnas. Thus the Pranabhrit Adhikarana which is based on Jaimini's Sutra 28,
Chapter IV, Book 1 shows how words acquired a wider meaning by the Linga or
Lakshana process.

40 supra
Now what is the meaning of Pranabhrit in the one case and of Ajyani in the other? The words Pranabhrit and Ajyani are respectively the names of two Mantras or verses which begin with those words. These verses are used in consecrating bricks required for a certain purpose in a yagya. From this fact the bricks consecrated by the Pranabhrit Mantra acquired the name of Pranabhrit. Similarly the bricks consecrated by the Ajyani Mantra acquired the name of Ajyani. But in course of time the whole heap of bricks of a particular kind came to be called Pranabhrit, because one or two bricks of that heap were consecrated as Pranabhrit bricks. Thus the instance of Pranabhrit becomes a maxim for extending the scope of a name in the above manner. In fact, the meaning of the words Pranabhrit and Ajyani in these cases is determined by the peculiar association of the words and by the context of the passages in which they are used. Such a use is called Lingasamabaya (embodiment of the Linga).

Nanda Pandit, in his work 'Dattaka Mimansa', refers to the Pranabhrit maxim to show that although the word 'substitute' was at first applied in express term only to six descriptions of sons, later the word by general use became applicable to all the twelve descriptions.

"The peculiar feature of one leading object belonging to a class may give name to the whole class."

Pranabhrit literally means filling with life or inspiring life; but the expression forms the commencement of a Mantra which is used in consecrating certain bricks. Hence the word has come to mean a kind of bricks. This is the way in which the word Ajyani also has come to mean another class of bricks.

The Pranabhrit maxim is often used in the interpretation of a text by treating it as illustrative and not exhaustive. The illustrative rule of interpretation is a departure from the literal rule which normally has to be adopted while construing a text. However, sometimes departures from the literal rule are permissible, and one of such departures is the illustrative rule. To give an example, in Sanskrit there is an oft-quoted statement "Kakebhyo Dadhi Rakshitam" which means "protect the curd from the crows". Now in this sentence the word 'crow' is merely illustrative and not exhaustive. The statement does not mean that one should protect the curd.
only from crows but allow it to be eaten up by cats, dogs or to get damaged by dirt or filth etc. It really means that one should protect the curd from all dangers. Hence the word 'crow' in the above statement is only illustrative and not exhaustive.41

Whenever there was any conflict between two Smritis, e.g., Manusmriti and Yajnavalkya Smriti, or ambiguity or absurdity in any Smriti these principles were utilized. Thus, the Mimansa Principles were our traditional system of interpretation of legal texts. Although originally they were created for interpreting religious texts pertaining to the Yagya (sacrifice), gradually they came to be utilized for interpreting legal texts also and also for interpreting texts on philosophy, grammar, etc. i.e. they became of universal application. Thus, Shankaracharya has used the Mimansa adhikarana in his bhashya on the Vedanta sutras.42

To give an example the Mimansakas examine the subject of negative Vidhis (negative injunctions such as the one in the proviso to Section 6) very searchingly and exhaustively. First of all, they distinguish between what may be called prohibitions against the whole world, and those against particular persons only. This distinction resembles that between judgments or rights in rem and judgments or rights in personam. The former prohibitions are called Pratishedha and the latter Paryudasa. For example, the prohibitory clause ‘Do not eat fermented (stale) food (na kalanjam bhakshayet) is a Pratishedha; while the prohibition ‘those who have taken the Prajapati vow must not see the rising sun' is a Paryudasa. In the second place, Pratishedhas are divided practically into two sub-clauses viz. those which prohibit a thing without any reference to the manner in which it may be used, and those which prohibit it only as regards a particular mode of using. For instance, ‘Do not eat fermented food' prohibits the use of it under all

41 As explained by the Supreme Court in Surjit Singh v. Mahanagar Telephone Nigam Limited, JT 2008 (5) SC 325

42 P.V. Kane’s ‘History of the Dharmashastra’, Vol. V, Pt. II, Ch. XXIX and Ch.XXX, pp. 1282-1351
circumstances, while `Do not use the Sorasi vessel at dead of night' forbids the use
of the vessel only at the dead of night.

Then Paryudasa is also of two kinds. In one case, it relates to a person
performing some special act which is not enjoined by a Vidhi, as in the case of the
Prajapati vow. In the other, it relates to a person engaged in performing a Vidhi; as
for instance, when one is to do Shradh during the full moon by virtue of a Vidhi
but not in the night of the full moon. In this case, the prohibition of doing Shradh
in the night is a Paryudasa, which is the same as an exception or proviso as we
understand these terms. For, the clause `not in the night' is an exception to the rule
`Perform the Shradh during the full moon'. These are the four classes of negative
clauses. The first class, of which the Kalanja (fermented food) clause is an
example, may well be called a condemnatory prohibition. The second class
consists also of absolute prohibitions of things under certain circumstances, as in
the case of the Sorasi vessel. The third class consists of prohibitions in relation to
persons in a given situation, as in the case of the Prajapati vow. The fourth class
restricts the scope of action of persons engaged in fulfilling an injunction, as
regards the time, place or manner of carrying out the substantive element of the
injunction.\footnote{ibid}

Thus we see that in the Mimansa system as regards negative injunctions
(such as the one contained in the proviso to Section 6 of Land Acquisition Act)
there is a much deeper discussion on the subject than that done by Western Jurists.
The Western writers on the subject of interpretation (like Maxwell, Craies, etc.)
only say that ordinarily negative words are mandatory, but there is no deeper
discussion on the subject, no classification of the kinds of negative injunctions and
their effects.

In the Mimansa system illustrations of many principles of interpretation are
given in the form of maxims (nyayas). The negative injunction is illustrated by the
Kalanja nyaya or Kalanja maxim. The Kalanja maxim (na kalanjam bhakshayet)
states that `a general condemnatory text is to be understood not only as prohibiting

\footnote{ibid}
an act, but also the tendency, including the intention and attempt to do it.’ It is thus mandatory.

A plain reading of the proviso to Section 6 of the Land Acquisition Act shows that it is a general prohibition against the whole world and not against a particular person. Hence the Kalanja maxim of the Mimansa system will in our opinion apply to the proviso to Section 6.

Laughakshi Bhaskara, one of the great Mimansa writers, taking the prohibitory text 'one is not to eat Kalanja or fermented/stale food' (na kalanjam bhakshayet), explains the idiomatic force of the phrase (na bhakshayet). He explains that the suffix 'yat' means 'shall', and that the negative particle 'not' is to be taken as attached to the suffix 'yat' (shall), and not to the idea of Kalanja eating. For if it be taken as attached to the latter idea, then the sentence might mean 'you shall eat but not Kalanja'. In this case strictly there would be no prohibition. So he labours to demonstrate that the gist of the sentence is 'shall not' and therefore the object of it is to turn off from eating Kalanja (fermented/stale food). This may appear to be making a hair splitting distinction, but it is of great importance from the Mimansa point of view because it indicates the mandatory nature of the negative injunction (nishedha). The explanation of a Nishedha Vidhi appears more clearly from Jaimini's Sutras on the Kalanja maxim.

The objector says: In a case of prohibition, mentally you entertain the idea of the action prohibited; for you have to discriminate between the prohibited act and the negation of that act. The objector means to say 'what is the good of a prohibition when it invites the imagination to gloat on the action prohibited'. The author answers: 'When an act is enjoined by the Shastra, it is for the purpose of the good of a person; if the good object be divorced from the meaning of the Shastra, then it becomes a case of transgressing it.'

The meaning of this is: 'In a case of prohibition you must take it that not only is the particular external act prohibited, but the very intention of it is also prohibited.'
Roughly speaking, the principle laid down is this: 'In a case of prohibition one should abstain from the very idea of the act prohibited, and there ought to be no evasion of the Vidhi in any way.' Thus, this class of Nishedha Vidhis is to be interpreted most comprehensively and as mandatory.

It may be mentioned that the Mimansa Rules of Interpretation were our traditional principles of interpretation used for over two and a half thousand years, around 6th Century B.C. laid down by Jaimini whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar, etc. These Mimansa Principles were regularly used by our great jurists like Vijnaneshwara (Author of Mitakshara), Jimutvahana (author of Dayabhaga), Nanda Pandit, etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein.

We can also utilize the Mimansa Rules of Interpretation in interpreting Rule. There is no reason why we cannot use these principles on appropriate occasions. However, it is a matter of deep regret that these principles have rarely been used in our law Courts. It is nowhere mentioned in our Constitution or any other law that only Maxwell's Principles of Interpretation can be used by the Court. We can use any system of interpretation which helps us solve a difficulty. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. It is deeply regrettable that in our Courts of law, lawyers quote Maxwell and Craies but nobody refers to the Mimansa Principles of Interpretation. Today many of our educated people are largely unaware about the great intellectual achievements of our ancestors and the intellectual treasury they have bequeathed us. The Mimansa Principles of Interpretation is part of that intellectual treasury.

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44 As explained by the Supreme Court in *Vijay Narayan Thatte v. State Of Maharashtra*, (2009) 9 SCC 92

45 As quoted by the Supreme Court in *Gujarat Urja Vikash Nigam Ltd v. Essar Power Ltd*, (2008) 4 SCC 755
2.2 MEDIEVAL PERIOD.

Medieval era was the most influencing era in the Indian History. Its contents can be appreciated and understood in the light of that system. But how far could we go into the background of the system? Perhaps as far as the origin and history of the people themselves. That would of course be useful exercise to understand the relationship of the people and the laws prevailing then. But that is an enormous difficult, almost difficult exercise in India, because of its long history associated with foreign invasions and unavailability of data, particularly when the most important link of historical studies being burnt at Nalanda. In that case the easier and safer alternative for this work is to have brief study of the Hindu and the Mogul rulers period.

2.2.1. HINDU RULERS PERIOD.

The span began with the Cholas in the power. The Chola kingdom lay on the Coromandel Coast with its capital at Kanjeevaram. The Chola kings had good navy. The administrative machinery was highly organized. The self- government was the most remarkable feature of their administration. The Cholas retained their independence till Malik Kafur defeated the last Chola ruler in 1310. The Chola administration was as efficient as it was integrated. From the inscription of Parantaka I the details about the Chola administration can be found. Under the Chola kingdom the king had a council of ministers. The kingdom was divided into a number of provinces known as mandalams, The mandalams in turn were divided into valanadu and nadus. The basis of administration was the village. A large village or a group of villages formed Kurram.

Every village had arrangement of self- government or the autonomous administration. Panchayat was the in charge of the administration of the village. A few large villages or Kurrams would constitute a district, that is Nadu, and a few nadus would form a division or Kottam. The Chola kings developed a powerful navy for the purpose of developing a maritime empire and seaborne trade. Each village had a village assembly known as the ur or the sabha. The members of the
sabha were elected by lot, known as kudavolai system. There was a committee to look after the specified departments, such as justice, law and order, irrigation etc., which were called as variyams.⁴⁶

Justice was mostly a local matter in the Chola Empire, where minor disputes were settled at the village level. The punishments or minor crimes were in the form of fines or a direction for the offender to donate to some charitable endowment. Even crimes such as manslaughter or murder were punished by fines.⁴⁷

Crimes of the state such as treason were heard and decided by the king himself and the typical punishment in such cases was either execution or confiscation of property.

Village assemblies exercised large powers in deciding local disputes. Small committees called Nyayattar heard matters that did not come under the jurisdiction of the voluntary village committees. The punishments in most cases were in the form of donations to the temples or other endowments. The convicted person would remit their fines at a place called Darmaasana. There was no distinction between civil and criminal offences. Sometimes civil disputes were allowed to drag on until time offered the solution. Crimes such as theft, adultery and forgery were considered serious offences. In most cases the punishment was in the order of the offender having to maintain a perpetual lamp at a temple. Even murder was punished with a fine.⁴⁸

In one instance a man had stabbed an army commander. Rajendra Chola II ordered the culprit to endow 96 sheep for a lamp at a neighbouring temple. Capital punishment was uncommon even in the cases of first-degree murder. Only one solitary instance of capital punishment is found in all the records available so far.


Mauryan Emperor, Ashoka, was also known to be a great proponent of the rule of law. It is in this context that the phrase Dharm Vijayah ‘Victory of Dharma’ could be understood, as employed by the Mauryan Emperor, Ashoka, in his rock edict at Kalsi which proclaimed his achievement in terms of moral and ethical imperatives of Dharma, and exemplified the ancient dictum Yato Dharma Jayah (where there is Law, there is Victory).

Madhavacharya, the Minister to Hakka and Bukka, founder kings of Vijayanager Empire, in his commentary on Parashara Smriti, has briefly and precisely explained the meaning of Dharma as follows: Dharma is that which sustains and ensures progress and welfare of all in this world and eternal bliss in the other world. The Dharma is promulgated in the form of commands.

The Mauryan Emperor Ashoka, a Buddhist convert, took a very active step for spread of Buddhism without forcible conversion or persecution. The Satvahanas, Kushanas and the Gupta rulers paid equal patronage to all religions. The emphasis on dhyana in Hindu religion during Gupta period brought Hinduism, Jainism and Buddhism closer. In the South, the Chalukyas, Rastrakutas, Cholas and Hoysala rulers liberally patronised all the religions without discrimination.49

The concept of a declaration of policy in regard to social and economic obligation of State cannot be said to be foreign to the genius of India. In the 4th Century B.C, we find in Kautaliya’s Arthasastra a specific injunction to that effect that “the King shall provide the orphan, the dying the infirm, the afflicted and the helpless with maintenance, he shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to. 50

2.2.2. MUGHAL RULERS PERIOD.

Medieval India witnessed emergence of new politico-legal system under various Muslim rulers professing allegiance to Islamic law. Akbar experimented in

50 B. Shiva Rao, ‘The Framing of Indian Constitution- A Study’, p-320
synthesis and tolerance of all religions. The dominant note of this awakening was love and liberalism - love that united man to God and therefore to his brethren, and liberalism born of this love that levelled down the barriers of caste, and built on the bedrock of human existence and brotherhood.\(^{51}\)

The Mughal ruling class were liberal-minded Muslims, although most of the subjects of the Empire were Hindu. Although Babur founded the Empire, the dynasty remained unstable (and was even exiled) until the reign of Akbar, who was not only of liberal disposition but also intimately acquainted, since birth, with the mores and traditions of India. Under Akbar's rule, the court abolished the jizya (the poll-tax on non-Muslims) and abandoned use of the lunar Muslim calendar in favor of a solar calendar more useful for agriculture. One of Akbar's most unusual ideas regarding religion was Din-i-Ilahi ("Faith-of-God" in English), which was an eclectic mix of Hinduism, panthiestic versions of Sufi Islam, Zoroastrianism and Christianity. It was proclaimed the state religion until his death. These actions however met with stiff opposition from the Muslim clergy. However, the orthodoxy regained influence only three generations later, with Aurangzeb, known for upholding doctrines of orthodox Islam; this last of the Great Mughals retracted nearly all the liberal policies of his forbears.

In Medieval India the Sultan, being head of the State, was the supreme authority to administer justice in his kingdom. The administration of justice was one of the important functions of the Sultan which was actually done in his name in three capacities: As arbitrator in the disputes of his subjects he dispensed justice through the *Diwan-i-Qaza*, as head of bureaucracy justice through the *Diwan-i-Mazalim* as the Commander-in-Chief of Forces through his military commanders who constituted *Diwan-i-Siyasat* to try the rebels and those charged with high treason. It was the Sultan’s sole prerogative to order the execution of a criminal and the courts were required to seek his prior approval before awarding the capital punishment.

\(^{51}\) Din-e-Ilahi was the product of such synthesis.
The Judicial system under the Sultans was organized on the basis of administrative divisions of the kingdom. A systematic classification and gradation of the courts existed at the seat of the capital, in Provinces, Districts, Parganahs and Villages.52

The powers and jurisdiction of each court was clearly defined. i) Central Capital – Six courts which were established at Delhi, Capital of the Sultanate, may be stated as follows:- The King’s court, Diwan-e-Mazalim, Diwan-e-Risalat, Sadre Jehan’s court, Chief Justice’s Court and Diwan-e-Siyasat.

The King’s Court, presided over the sultan, exercised both appellate jurisdiction on all kinds of cases. It was the highest court of Appeal in the realm.53 The Sultan was assisted by two reputed Muftis highly qualified in law.

During the Mughal period, the Emperor was considered the “Fountain of Justice”. The Emperor created a separate department of Justice (Mahakma-e-Adalat) to regulate and see that the justice was administered properly. On the basis of the administrative divisions, at the official headquarters in each Province, District, Parganah and Village, separate courts were established to decide civil, criminal and revenue cases.54

During the Muslim period Islamic law or Shara was followed by all Sultans and Mughal Emperors. The Shara is based on the principles enunciated by Quran. Under the Muslim criminal law, which was mostly based on their religion, any violation of public rights was an offence against the State.

52 M.B. Ahmad, “The Administration of Justice in Medieval India”, pp 104-125.


54 M.B. Ahmad, “The Administration of Justice in Medieval India”, pp 104-125.
**Hadd** provided a fixed punishment as laid down in *Shara*, the Islamic law, for crimes like theft, robbery, whoredom (*Zina*), Apostasy (*Irtidad*), defamation (*Itteham-e-Zina*) and drunkenness (*Shurb*). It was equally applicable to Muslims and Non-Muslims.

*Tazir* was another form of punishment which meant prohibition and it was applicable to all the crimes which were not classified under “Hadd”. It included crimes like counterfeiting coins, gambling, minor theft etc.

*Qisas*” or blood-fine was imposed in cases relating to homicide. It was a sort of blood-money paid by the man killed another man if the murderer was convicted but not sentenced to death for his offence. Muslim jurists supported *Qisas* on the basis that “the right of God’s creatures should prevail” and only when the aggrieved party has expressed his desire, the state should intervene. *Qisas* may be compared to the *Weregild* of the contemporary English period.

The Muslim Law considered “Treason” (*Ghadr*) as a crime against God and religion and, therefore, against the State. Persons held responsible for treason by the court were mostly punished with death.55

At Delhi, the Imperial capital of India, highest courts of the Empire empowered with original and appellate jurisdictions were established.

The architect of modern India was the great Mughal Emperor Akbar who gave equal respect to people of all communities and appointed them to the highest offices on their merits irrespective of their religion, caste, etc.

The Emperor Akbar held discussions with scholars of all religions and gave respect not only to Muslim scholars, but also to Hindus, Christians, Parsis, Sikhs, etc. Those who came to his court were given respect and the Emperor heard their views, sometimes alone, and sometimes in the Ibadatkhana (Hall of Worship), where people of all religions assembled and discussed their views in a tolerant

55 M.B. Ahmad, “The Administration of Justice in Medieval India”, pp 225.
spirit. The Emperor declared his policy of Suleh-e-Kul, which means universal tolerance of all religions and communities. He abolished Jeziya in 1564 and the pilgrim tax in 1563 on Hindus and permitted his Hindu wife to continue to practise her own religion even after their marriage. This is evident from the Jodha Bai Palace in Fatehpur Sikri which is built on Hindu architectural pattern.

Akbar's empire supported vibrant intellectual and cultural life. The large imperial library included books in Hindi, Persian, Greek, Kashmiri, English, and Arabic, such as the Shahnameh, Bhagavata Purana and the Bible. Akbar regularly sponsored debates and dialogues among religious and intellectual figures with differing views, and he welcomed Jesuit missionaries from Goa to his court. Akbar directed the creation of the Hamzanama, an artistic masterpiece that included 1400 large paintings.

In 1578, the Parsi theologian Dastur Mahyarji Rana was invited to the Emperors court and he had detailed discussions with Emperor Akbar and acquainted him about the Parsi religion. Similarly, the Jesuit Priests Father Antonio Monserrate, Father Rodolfo Acquaviva and Father Francisco Enriquezs etc. also came to the Emperors court on his request and acquainted him about the Christian religion. The Emperor also became acquainted with Sikhism and came into contact with Guru Amar Das and Guru Ram Das.56

As stated in the Cambridge History of India57 Emperor Akbar conceived the idea of becoming the father of all his subjects, rather than the leader of only the Muslims, and he was far ahead of his times. As mentioned by Pt. Jawahar Lal Nehru,58 Akbar’s success is astonishing, for he created a sense of oneness among the diverse elements of India.

In 1582, the Emperor invited and received a Jain delegation consisting of Hiravijaya Suri, Bhanuchandra Upadhyaya and Vijayasena Suri. Jainism, with its

56 R.C. Majumdar, ‘The Mughal Empire’,
57 Cambridge History of India “The Mughal Period”, Vol. IV
58 Pt. Jawahar Lal Nehru, “The Discovery of India”,

60
doctrine of non-violence, made a profound impression on him and influenced his personal life. He curtailed his food and drink and ultimately abstained from flesh diet altogether for several months in the year. He renounced hunting which was his favourite pastime, restricted the practice of fishing and released prisoners and caged birds. Slaughter of animals was prohibited on certain days and ultimately in 1587 for about half the days in the year.

Akbar’s contact with Jains began as early as 1568, when Padma Sunder who belonged to the Nagpuri Tapagaccha was honoured by him.

As mentioned in Dr. Ishwari Prasad’s ‘The Mughal Empire, the Jains had a great influence on the Emperor. A disputation was held in Akbar’s court between the Jain monks Buddhisagar of Tagaccha and Suddha Kirti of Khartargaccha on the subject of Jain religious ceremony called Pansadha in which the winner was given the title Jagatguru by Akbar. Having heard of the virtues and learning of Hir Vijaya Suri in 1582 the Emperor sent an invitation to him through the Mughal Viceroy at Ahmedabad. He accepted it in the interests of his religion. He was offered money by the Viceroy to defray the expenses of the journey but he refused. The delegation consisting of Hir Vijaya Suri, Bhanu Chandra Upadhyaya and Vijaya Sen Suri started on their journey and walked on foot to Fatehpur Sikri and were received with great honour befitting imperial guests. Hir Vijaya Suri had discussion with Abul Fazl. He propounded the doctrine of Karma and an impersonal God. When he was introduced to the Emperor he defended true religion and told him that the foundation of faith should be daya (compassion) and that God is one though he is differently named by different faiths.

The Emperor received instruction in Dharma from Suri who explained the Jain doctrines to him. He discussed the existence of God and the qualities of a true Guru and recommended non-killing (Ahinsa). The Emperor was persuaded to forbid the slaughter of animals for six months in Gujarat and to abolish the confiscation of the property of deceased persons, the Sujija Tax (Jeziya) and a Sulka (possibly a tax on pilgrims) and to free caged birds and prisoners. He stayed for four years at Akbar’s court and left for Gujarat in 1586. He imparted a knowledge of Jainism to Akbar and obtained various concessions to his religion.
The Emperor is said to have taken a vow to refrain from hunting and expressed a desire to leave off meat-eating for ever as it had become repulsive. The Emperor presented to him Padma Sundar scriptures which were preserved in his palace. He offered them to Suri as a gift and he was pressed by the Emperor to accept them. The killing of animals was forbidden for certain days.

Emperor Akbar was a propagator of Suleh-i-Kul (universal toleration) at a time when Europeans were indulging in religious massacres e.g. the St. Bartholomew Day massacre in 1572 of Protestants, (called Huguenots) in France by the Catholics, the burning at the stake of Protestants by Queen Mary of England, the massacre by the Duke of Alva of millions of people for their resistance to Rome and the burning at the stake of Jews during the Spanish Inquisition. We may also mention the subsequent massacre of the Catholics in Ireland by Cromwell, and the mutual massacre of Catholics and Protestants in Germany during the thirty year war from 1618 to 1648 in which the population of Germany was reduced from 18 million to 12 million. Thus, Emperor Akbar was far ahead of even the Europeans of his times.

Emperor Akbar himself abstained from eating meat on Fridays and Sundays and on some other days, as has been mentioned in the Ain-I-Akbari by Abul Fazl. It was because of the wise policy of toleration of the Great Emperor Akbar that the Mughal empire lasted for so long, and hence the same wise policy of toleration alone can keep our country together despite so much diversity.59

We may give another historical illustration of tolerance in our country. In the reign of Nawab Wajid Ali Shah of Avadh, in a certain year Holi and Muharrum coincidentally fell on the same day. Holi is a festival of joy, whereas Muharrum is an occasion for mourning. The Hindus of Lucknow decided that they would not celebrate Holi that year out of respect for the sentiments for their Muslim brethren. On that day, the Nawab joined the Muharrum procession and after burial of the Tazia at Karbala he enquired why Holi is not being celebrated. He was told that it was not being celebrated because the Hindus out of respect for the sentiments of

59 As quoted by the Supreme Court in *Hinsa Virodhak Sangh vs Mirzapur Moti Kuresh Jamat*, AIR 2008 SC 1892
their Muslim brethren had decided not to play Holi that year because it was a day of mourning for the Muslims. On hearing this, Nawab Wajid Ali Shah declared that since Hindus have respected the sentiments of their Muslim brothers, it is also the duty of the Muslims to respect the sentiments of their Hindu brethren. Hence, he announced that Holi would be celebrated the same day and he himself was the first who started playing Holi on that day and thereafter everyone in Lucknow, including the Muslims, played Holi, although it was Muharrum day also. It is this kind of sentiment of tolerance which alone can keep our country united.60

Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and respect for all communities and sects.
2.3 COLONIAL PERIOD.

The colonial period started with the arrival of British in India with whom our present constitutional system is directly associated. The seeds of the British arrival in India were sown in 1600 which grew into a tree until it perished in 1947 and led to the adoption of our present Constitution. Let us have a brief overview of the period.

2.3.1. THE EAST INDIA COMPANY.

Indian trade links with Europe started in through sea route only after the arrival of Vasco da Gama in Calicut, India on May 20, 1498. The Portuguese had traded in Goa as early as 1510, and later founded three other colonies on the west coast in Diu, Bassein, and Mangalore. In 1601 the East India Company was chartered, and the English began their first inroads into the Indian Ocean. At first they were little interested in India, but rather, like the Portuguese and Dutch before them, with the Spice Islands. But the English were unable to dislodge the Dutch from Spice Islands. In 1610, the British chased away a Portuguese naval squadron, and the East India Company created its own outpost at Surat. This small outpost marked the beginning of a remarkable presence that would last over 300 years and eventually dominate the entire subcontinent. In 1612 British established a trading post in Gujarat.

The British authority in India was established through the agency of a trading corporation. The East India Company, formed in England in 1600 under a Charter of Queen Elizabeth I which gave it the exclusive right of trading in all parts of Asia, Africa and America, beyond the Cape of Good Hope, eastward to the Straits of Magellan. The Company established its trading centers or factories at several places in the country and in the course of time the factories at Bombay, Madras and Calcutta became the chief settlements or presidencies, and exercised supervision and control over subordinate depots and palaces in their vicinities.61

During that period except in the case of Bombay which had been ceded with full sovereignty to the British Crown whenever the Britishers settled they did so with the consent of the Indian rulers. The natural consequence of their position would have been their submission to the law of the place.

The first legislative power to have bestowed upon the East India Company by the British Crown seems to be the Charter of 1601 which granted to the Governor and the company the power to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances for the good governance of the company. The legislative power of the company was very limited in its scope and character.

Similar powers were affirmed by the Charters granted by James I and Charles II in 1609 and 1661 respectively. These laws were required to be published, but of them now not a trace remains. Probably they were concerned with the company’s monopoly of trade and the repression of interference. The Charter granted by William III in 1698 makes no mention of legislative powers. It may be held that they were withdrawn.\(^2\)

On June 23rd, 1757 at Plassey, between Calcutta and Murshidabad, the forces of the East India Company under Robert Clive met the army of Siraj-ud-Doula, the Nawab of Bengal. The betrayal by aspirant to the Nawab’s throne, Mir Jafar, induced to throw in his lot with Clive, and by far the greater number of the Nawab’s soldiers were bribed to throw away their weapons, surrender prematurely, and even turn their arms against their own army. Siraj-ud-Doula was defeated. Battle of Plassey marked the first major military success for British East India Company. This victory laid the foundation stone of the British Empire in India. The company later was granted the Diwani, i.e., the responsibility of collection of revenue to the company which automatically involved the administration of civil justice.\(^3\)

\(^{2}\) ibid

\(^{3}\) Illbert, “Government of India”, Ed. 1915
2.3.2. REGULATING ACT, 1773.

The Regulation Act 1973 is of great constitutional importance because it asserted for the first time the right of Parliament to regulate the affairs of the East India Company. It was the first Parliamentary Act, passed after the company had acquired de facto sovereignty over the vast territory in the north east of India, for establishing certain regulations for the best management of the affairs of the East India Company. Under the Act The Governor of Bengal was made the Governor General. The first man to be appointed to this post was Warren Hastings. For the assistance of the Governor General an executive Council of four members was created. A Supreme Court was set up at Calcutta, with a Chief Justice and three assistant judges. The number of the Directors of the Company was fixed at 24. The Regulating Act initiated the process of centralization in India. The object of the Act was good but the system that it established was imperfect. It did not define clearly the relationship of the Governor General and his Council and the Supreme Court with each other. It did not make clear as to what law the Supreme Court was to administer. It placed the Governor General at the mercy of his Council.64

The Act subjected the legislative authority of the Governor-General and Councils to certain conditions. Firstly, the rules and regulation made by them were not to be repugnant to the laws of England. Secondly, they required, as a conditions to their validity, registration by the Supreme Court. The registration was not intended to be only a method of the promulgation of laws but the Supreme Court had the power to veto the laws submitted to it for registration. Thirdly, an appeal from regulations so registered and approved lay to the King-in Council in England, but the pendency of such an appeal was not allowed to hinder the coming into immediate operation of the laws. Fourthly, the Governor General and Council were under the duty to forward all such regulations to England and the power was reserved to the King-in Council to disapprove them at any time within two years.65


2.3.3. THE ACT OF SETTLEMENT, 1781.

To remove the defects of the Regulating Act of 1773, Parliament passed the Act of Settlement of 1781. The Act of Settlement of 1781 made changes in the Regulating Act. It exempted the actions of the public servants of the company done in official capacity from the jurisdiction of the Supreme Court. It tried to settle the question of jurisdiction of the Court over servants of the company and native inhabitants. It made clear as to what law is to applied by the Supreme Court. The Act recognized and confirmed the appellate jurisdiction of the Governor-General-in Council in cases decided by the Mufassil Courts. It empowered the Governor-General-in Council to frame regulations for the Provincial Courts and Councils also.  

Although the Regulating Act clearly defined the territorial extent of the legislative powers granted in it, it was for second time interpreted to include even the area under the Diwani grant. In respect of the subject matters, the power of the Supreme Court under the Regulating Act were of wide amplitude. It enabled them to make laws for the good order and civil government of the settlement and all factories and places subordinate thereto. The Act of 1781, on the other hand gave power only to legislate for the provincial courts and councils. Literally interpreted, the power was meant only to make rules prescribing procedure and practice of the Courts. But in fact the Supreme Court had made most of the Bengal Regulations, many of which affected the right of property of the subject, under the power conferred by the latter Act. After several years of exercise of the power, Parliament itself seems to have acquiesced in the extended interpretation put on the Act.

2.3.4. PITTS INDIA ACT, 1784.

This Act introduces many important changes in the Constitutional history of India. The number of members of the Governor General’s Council was reduced
to three and the Commander-in-Chief was to be one of them. A special court was established for better trial of the Company’s officials in England for offences committed by them in India. By this Act, the real power in India passed from the Directors of the Company to the British Parliament.

The Regulating Act of 1773 made a provision that the Charter of the Company would be reviewed every 20 years. Therefore, from time to time, Acts of 1793, 1813, 1833 and 1853 reviewed the Charter Act of the Company and brought about some changes here and there. The first Law Commission was established after the Charter Act of 1833.  

The Rule of the East India Company was terminated when the British Parliament passed the Indian Councils Act of 1858. The power to govern India was transferred from the Company to the Crown and India was to be governed by and in the name of ‘Her Majesty’. Again, the Indian Councils Act of 1861 was passed by the British Parliament. This Act is very important in the Constitutional history of India because it has created decentralization system of administration in India. The members the Governor-General’s Executive Council was increased from the four to five. The work of administration was also distributed among its different members. The Legislative members of the Bombay and Madras Government were restored. The British Parliament passed Indian Councils Act of 1892 and the principle of indirect election was introduced. The elected members could ask questions and seek other information from the Government.

2.3.5. THE GOVERNMENT OF INDIA ACT, 1858.

Many historians called this First War of Independence as a ‘Sepoy Mutiny’ of 1857. For them it was just a bunch of Indian sepoys (soldiers) who had mutinied. They largely failed to recognize the involvement of a vast section of

67 ibid

Indian society that took part in this struggle. Peasants and nobles all were involved. Lack of planning and co-ordination amongst people who took part in this struggle resulted in defeat of Indians. Many innocent people were killed on both sides. The first war of Independence gave a death blow to the company’s rule. As a result of all this, British Parliament passed the Act for the better government, the Government of India Act, 1858. This Act of 1858 transferred Government of India from the company to the British Crown. The Board of Control and the Court of Directors were abolished and their powers were transferred to one of Her Majesty’s Secretary of State.

This Act is very important in the Constitutional history of India because it has created decentralization system of administration in India. The members the Governor-General’s Executive Council was increased from the four to five. The work of administration was also distributed among its different members. The Legislative members of the Bombay and Madras Government were restored. The British Parliament passed Indian Councils Act of 1892 and the principle of indirect election was introduced. The elected members could ask questions and seek other information from the Government. The Act of 1858 constituted the Secretary of State in Council as a body corporate, capable of suing and be sued in India and in England.

The transfer of the company’s government to the British Crown was announced by a ‘Royal Proclamation’ made by the Queen in England. The proclamation had great constitutional value as the passing of the Government of India Act, 1858 closed one great period of history and ushered another great era under the direct rule of the Crown.69

2.3.6. INDIAN COUNCIL ACT, 1861.

The Indian Council Act of 1861 was of basic importance. It brought about the beginning of the representative institution. It provided India with the framework of Government which lasted up to the resent time. Under this Act

69 G.N. Singh, ‘Landmark in Indian Constitutional and National Development’, p.73
Indians were for the first time associated with the work of legislation. The Act enlarged the Council of the Governor-General for the purpose of making law and regulations. The Legislative Council was given the power to frame laws and regulations for all persons.

The Act is important in the Constitutional history of India for two chief reasons. First because it enable the Governor-General to associate the people of the land with the work of legislation and secondly, by vesting legislative power in the Government of Bombay and Madras and making provision for good government, it laid down the foundation of the policy of the legislative devolution, which resulted in the grant of almost complete internal autonomy to the provinces in 1937.

However The Indian Council Act, 1861, suffered from many defects. It gave unlimited power to the Governor General. The non-official members had no right in the Governor General’s Council. They could not ask question and discuss the budget. More over the non-official members were used to be native princes or zamindars. They were not men of intelligence and had absolutely no interest in the legislation for India.

The political situation in India was very explosive. The period period from 1861 to 1892 was the rise of Indian National Movement. The Indian National Congress was formed in 1885 and in its first session passed resolution expressing grave dissatisfaction and the existing system of the Government and demanded reforms and expansion of the legislative councils by admitting a considerable proportion of elected members as well as an increase in their powers. The Viceroy felt that the time had come to accept the demands of the Congress for reforms seriously and the British Crown passed the Indian Council Act, 1892.

The Indian Council Act, 1892 increased the number of members in the Central and Provisional Councils, introduced the election system partially, and enlarged the function of the council. Although the Act of 1892 fell far short of the demand made by the India National Congress, yet it could be said that it was a great advance upon the existing state of things. It certainly paved the way for
future progress by conceding the principals of elections and giving the legislative
council some control over the executive.\textsuperscript{70}

2.3.7. THE INDIAN COUNCIL ACT OF 1909.

The first attempt at introducing a representative and popular element was
made by Morley-Minto Reforms, known by the names of the Secretary of State
Lord Morlay and the Viceroy Lord Minto which was implemented by the Indian
Councils Act, 1909.

The Indian Council Act of 1909 which is mostly known as Morley-Minto
Reforms of 1909 is a significant event in constitutional history of India. The
important provisions of this Act is that it enlarged of the size of the Central and
Provincial Legislative Councils. The number of members was raised to 60 in
central Legislature and the provincial Legislative Councils were to consist of 30 to
50 members, the Powers and functions of the Central and Provincial Councils were
also increased, the provision for the appointment of an Indian member in the
Executive Council of the Governor General and it introduced the system of
Communal representation. The system of Communal representation was draconian
and a ploy to divide and rule.

By the Act of 1909 the Councils were empowered to discuss any matter,
ask questions and supplementary questions. The Council had also the right of
discussing and moving a resolution on the financial statement but they were not
given the power of voting.\textsuperscript{71}

It is to be noticed that the Morley-Minto reforms failed to satisfy the
aspiration of the Indian people as they did not establish Parliamentary system of

\textsuperscript{70} G.N. Singh, ‘Landmark in Indian Constitutional and National Development’, p.108

government in the country. The module of election based on religion was rejected by the people.

2.3.8. GOVERNMENT OF INDIA ACT OF 1919.

The next landmark in the constitutional development was the Montague-Chelmsford Reforms. Indian National Congress became very active during the time of the 1st World War and pressed for reforms. In response to the popular demands the British Government made a declaration that the future policy was that of increasing association of Indians in every branch of the administration and the gradual development of self governing institution with a view to progressive realization of responsible government in British India as a integral part of British Empire.

The British Parliament passed the Government of India Act of 1919 which is also known as Montague-Chelmsford Reforms. The Act made many important changes in the Central and provincial Government. The Act introduced a bicameral legislature at the centre. The two Houses were- Legislative Assembly (Lower House) and Council of States (Upper House). The term of Legislative Assembly and Council of States were five and three years respectively. But the Governor-General could alter this term. The powers and functions of both the Houses were also increased. The number of Indian members in the Executive Council of the Governor General was raised from one to three. The system of direct election was introduced.

The Act made many changes in the provincial Government too. A system of Dyarchy was introduced in the Provinces. The subjects which were dealt with by the Provincial Government were divided into two sets: Transferred and Reserved Subjects. The Governor administered the Reserved Subjects with the help of the Ministers chosen by him from the elected members of the legislature. The Governor General could shift a subject from Transferred to Reserved Part.
The Act created two lists of Subjects (departments) and divided them into Central and Provincial Governments. The Central List included the subjects such as Defence, Currency, Commerce, Communication, Telegraph, Foreign Relations, Customs, Civil and criminal law etc. were given to the Central Government. On the other hand, the Provincial List which were of provincial interest such as Local-Self Government, Education, Public Works, Agriculture, Public Health, Revenue, Irrigation, water Supplies etc. were given to the provincial Government. The Act created a post of a High Commissioner for India. The term of his office was six years. The Act of 1919 was an important landmark in the constitutional development of India which opened a new era of responsible Government. No doubt this was the step which paved the path for Independence of India.  

2.3.9. GOVERNMENT OF INDIA ACT OF 1935.

The British Parliament passed the Government of India Act of 1935 which was so valuable and important that most provisions of this Act were taken by the framers of the Indian Constitution. It is regarded as a milestone on the highway leading to a full responsible Government. The Act was a very lengthy written document. The Act proposed to form an All India Federation. All the provinces were to be members of a federation. The Government of India Act of 1935 provided a bicameral legislature at the Centre consisting of Federal assembly (Lower House) and Council of States (Upper House). The total number of members of the Federal Assembly were 375 (250 were elected by the people of British Provinces and 125 from Indian States). The Council of States consisted of 260 members (150 elected from the British Provinces, 104 nominated by the rulers of the States and 6 were nominated by the Governor-General).

The Act introduced Dyarchy system at the Centre. The Central Subjects were divided into the Reserved and the Transferred subjects. The Act provided Division of powers by creating Federal list; Provincial List, Concurrent List and

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72 ibid
also a provision for Residuary Subjects. 59 subjects were included in Federal List consisting of Defense, Currency and Coinage, post and Telegraphs, Foreign Affairs etc. Provincial List included 54 subjects such as Police, Administration of Justice, Education, Agriculture, Industry, Land revenue etc. There were 36 subjects in Concurrent list. These were Newspaper and Printing Press, Marriage and Divorce, registration, Criminal Procedure Code etc. The subjects which were not included in any of the above lists were residuary subjects. They were looked after by the Governor General.

The Act established a Federal Court at Delhi. Federal Court was to decide inter-state disputes and also heard appeals against the decisions of the High Courts.

The system of Dyarchy was replaced by the Provincial autonomy in the Provinces. The Act introduced a bicameral legislature (viz, Legislative Assembly and Legislative Council) in six out of total eleven provinces. These six provinces were- Bengal, Bihar, Bombay, Uttar Pradesh, Madras and Assam. Rest five Provinces Punjab, Central Provinces, Orissa, and North-West Frontier Provinces (N.W.F.P.) and Sind were to have Legislative Assembly only. The Legislative Council was the Upper Chamber and the Legislative Assembly was the Lower Chamber. The Legislative Council was to be a permanent body and one third of its members were to retire every three years. The members of the Legislative Assembly were elected for five years. Governor was the executive head of the Provinces. The India Council of the Secretary of State for India was replaced by an Advisory Council. A Federal Public Service Commission was established.

The Government of India Act 1935 created an All-Indian Federation based on provincial autonomy. The Congress swept 7 out of 11 of the provinces in July 1937. The Muslim League which claimed to represent Indian Muslims, secured less then a quarter of the seats reserved for Muslims. While, political prisoners were released and civil liberties promoted, the limitations on the Act of 1935 few real achievements were made. The Muslim League fared poorly in the elections. Muhammad Ali Jinnah, the permanent president of the Muslim League, began rumors that the Muslim minority was in danger under the Hindu majority
and promoted a two separate nation plan. In 1940, the Muslim League passed a resolution demanding Pakistan after as a separate country after Independence.

The Government of India Act, 1935, was greatly criticized by almost all the parties of India. In some provinces the Act continued to be governed in accordance with the provision of the Government of India Act, 1919 with minor amendments. In 1939 the 2nd World War broke out in Europe. The British government declared India as a belligerent country at war with Germany. This was done without consulting Indian leaders and the Indian legislatures. Consequently the Congress ministers resigned from office on the issue of participation of India in the War.73

2.3.10. THE CRIPPS MISSION.

In the year 1942 the British Government realized that it was difficult to remain indifferent towards the Indian problem any longer. The Second World War started in 1939 and Great Britain was fully involved in this war. In 1942, the Cripps Mission was sent to India from Great Britain under the leadership of Sir Stafford Cripps to negotiate with Indian leaders and secure their cooperation in the prosecution of war. The Cripps Mission provided some proposals to Indian people for the settlement of the Indian problem. Some of them are:

i) After the Second World War, dominion status would be granted to India.

ii) For framing a Constitution for India, an elected body would be set up in India, after war.

iii) The Indian states would also participate in the Constitution making body.

iv) The British Government was to accept the Constitution so framed. But a Province or a Princely State may or may not accept it. The Provinces were given a right to finalize their Constitution in consultation with the British Government.

v) The Princely States would have the freedom to join Indian Union.

vi) During the World war and until the new constitution was framed, India would remain under the control of Her Majesty’s Government.

But the Cripps proposals were rejected by almost all the Parties and sections in India on different grounds. The Indian leaders found in it the seeds of partition of the country. The main cause for its rejection was inadequacy of the proposal and the insistence of Congress on Cabinet Government. The Indian National Congress, Muslim League, Hindu Mahasabha and Sikhs rejected the Cripps Proposal.

The Labour Party came to power in England. The Labour Government was more sympathetic towards India and wanted to solve the Indian problem. With this end in view a Cabinet Mission was sent to India.74

2.3.11. THE CABINET MISSION PLAN, 1946.

After the Labour Party had come to power in England on February 19, 1946, its announced that a mission of three Cabinet minister would be sent to India to explore the possibilities of an immediate settlement of the Indian problem. On March 15, 1946, Mr. Atlee the Labour Prime Minister, declared in the House of Commons “Is it any wonder that India claims, as a nation of 400 millions that has twice send her sons to die for freedom, that she should herself have freedom to decide her own destiny? What form of government is to replace the present regime is to India to decide, but our desire is to help her to set up forthwith the machinery for making that decision”. Thus there was a definite change of attitude of the British Government. It was an equivocal acceptance of the claim of Indian to freedom.75

The Cabinet Mission came to India on 4th March 1946. The appointment of Cabinet Mission Plan was another important step approved by the British Government in the process of Constitutional development.

The chief proposals of Cabinet Mission Plan were –

74 ibid

i) To form a Union of India consisting of British Provinces and Indian States.
ii) To establish a Constituent Assembly having 389 members.
iii) An interim Government with fourteen representatives of the major Political Parties.

Initially, the proposals were accepted by the Congress but the Muslim League under the leadership of Md. Ali Zinnah rejected the proposals and left the Interim Government. The Muslim League observed ‘Direct Action Day’ on August 16, 1946. On that Hindu Muslim clashes and riots took place in various parts of the Country.

Disagreement and conflict between the Congress and Muslim League continued. At this juncture, Lord Mountbatten proposed a plan to Divide India into two parts - India and Pakistan. The Congress and Muslim League accepted the plan. The proposal of the Cabinet Mission being accepted elections in July 1946 of the Cabinet Assemble took place.

2.3.12. INDIAN INDEPENDENCE ACT, 1947.

On the basis of Mountbatten plan, the British Parliament passed the Indian Independence Act on July 18, 1947 and ultimately, in August 15, 1947 India became an independent State. According to the proposals of cabinet Mission Plan, a Constituent Assembly was framed as a representative body. It was accepted that the constituent Assembly would act as the Dominion Legislature until the Constitution was framed and India was administered according to the provisions of the Government of India Act, 1935 with some necessary modifications.

The provisions of the Indian Independence Act, 1947 were as follows:

1. The Act provided for the creation of two independent Dominions. India and Pakistan from 15th August 1947.
2. Each Dominion was to have a Governor General who was to be appointed by the King.
3. The Constituent Assembly of both dominions was empowered to frame laws for their respective territories till the new Constitution comes in force.
4. After August 15, 1947 the British Government was not to control the Dominions or the provinces.

5. For the time being, till the new Constitution were framed, each of the dominions and the Provinces were to be governed by the Government of India Act, 1935.

6. The post of the Secretary of the State for India was to be abolished and was taken over by Secretary of the Commonwealth of Nations.

7. The Act proclaimed lapse of British paramountcy over Indian States.

The Indian Independence Act, 1947, came into force on August 15, 1947, when the British rule in India came to an end.
2.4. INDIAN AWAKENING: THE FREEDOM MOVEMENT.

Nationalism is a feeling of consciousness about race, language, history, culture, tradition, economics, politics and hopes and aspirations of the people. The conditions created by the British rule and many other factors helped in the growth of national consciousness amongst Indian people. We know that Indian society was suffering from various social and religious ills like, blind faith, caste division, child marriage, sati system, purdah system etc. Many reformers like Raja Ram Mohan Rai, Swami Dayananda Saraswati, Swami Vivekananda, Sir Syed Ahmed Khan, Mrs. Annie Besant etc. deserve a special mention who tried to reform the Indian society. They inspired the people with ideas of self respect and self confidence.

By the middle of nineteenth Century most of India was controlled by the British, either directly by the East India Company or through the system of treaties and alliances with the Princely States. During this period certain measures of constitutional reforms were introduced.

The categorical choice made by colonial India, of the values of social justice, secularism and republicanism, not only laid a foundation for a new epoch of human rights system but also gave specific orientation towards realizing the social purpose underlying human rights values. This was but natural because such a development had its roots in the community’s experience itself. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country.

Thus it is the Constitution of India which is keeping us together despite all our tremendous diversity, because the Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country.

The Independence of India was a product of great struggle of noble men and women who volunteered their life’s for a better tomorrow. A tomorrow which shall be free of all misery, where dignity of men and women shall be paramount. Some important events are needed to be incorporated in this study to remember the men and women who brought liberty and Independence to our country. Swami Vivekananda considers that freedom is meaningless unless it is based on the
edifice of equality; equality is the way to freedom and inequality, the way to bondage. 76

2.4.1. JALIANWALA BAGH MASSACRE.

British responded to the Indian help in World War I by enacting in 1919, The Rowlatt Act. This allowed the government to imprison anyone without a trial or a conviction. There were widespread protests to this law. On April 13, 1919, thousands of people gathered peacefully in protest against this law in Jallianwala Bagh, Amritsar Punjab. British troops marched to the park accompanied by an armored vehicle on which machine guns were mounted. The vehicle was unable to enter the park compound due to the narrow entrance. The troops were under the command of General Reginald Edward Harry Dyer. He ordered his men to open fire on the peaceful gathering. Since there was no other exit but the one already manned by the troops, people desperately tried to exit the park by trying to climb the walls of the park. Some people also jumped into a well to escape the bullets. More than a thousands people including women and children were massacred. The event was condemned worldwide and General Dyer was summoned to London the Hunter Commission in 1920, found him guilty. However, the British Parliament cleared his name and even praised his ruthlessness. Many Britons raised a fund in his honor.

The Jallianwala Bagh Tragedy was condemned by all sections of people. Rabindra Nath Tagore renounced the knighthood conferred by the British Government. started by Maulana brothers brought Hindu-Muslim unity. In 1927, the Simon Commission was appointed by the British Government to inquire into the working of the 1919 Act. One of the important recommendations made by this commission was the development of the Constitution of India in the direction of federalism. But the Congress boycotted it.

In 1928 the Congress at Calcutta Session appointed Nehru Committee with Motilal Nehru as its Chairman to draft the future Constitution of India. The Congress adopted the Nehru Report and declared that if the report was not accepted by the British Government the Congress would fight to achieve independence by civil disobedience. When the British rejected its demand the Congress declared complete Independence as the chief goal under the President ship of Jawaharlal Nehru.\textsuperscript{77}

\textbf{2.4.2. CIVIL DISOBEDIENCE OR NON-COOPERATION MOVEMENT.}

‘Jalianwala Bagh Massacre’ catalyzed the militant movement against British rule and paved the way for Gandhi’s \textit{Non-Cooperation Movement} against the British in 1920 by violating the salt law. After the end of World War I Turkish Khalifa was removed, which led to a worldwide protest by Muslims. Under the leadership of the Ali Brothers, Maulana Muhammad Ali and Maulana Shaukat Ali, the Muslims of South Asia launched the historic Khilafat Movement. Gandhi ji linked the issue of Swaraj with the Khilafat issue to bring Hindus and Muslim together in one movement. The Civil Disobedience or Non-cooperation movement was started. The ensuing movement was the first countrywide popular movement. It began with returning of honorary titles given by the British and then continued to a boycott of the legislatures, elections and government works. Foreign clothes were burned and Khadi (home woven cloth) became a symbol of freedom. By the end of 1921, all of the important leaders, except Gandhi were in jail. In February 1922, at Chaurichaura, Uttar Pradesh, violence erupted.

British adopted a repressive policy of suppressing this movement and also followed a policy of conciliation and called the First Round Table Conference in 1930. But Congress boycotted the Conference. On March 5, 1931 the famous Gandhi-Irwin Pact was signed and the Congress called off the Civil Disobedience Movement and took part in the Second Round Table Conference held in London in 1931. The Conference almost failed and the movement again started when many

\textsuperscript{77} A. C. Banerjee: ‘The Making of Indian Constitution’.
leaders along with Gandhi were arrested. When the British Parliament passed the
Government of India Act, 1935, Mahatma Gandhi called off the Civil
Disobedience Movement.

Gandhiji came to the political scenario with the life message of getting
off the backs of Indians, the burden of foreign rule, exploitation and social
inequality.\textsuperscript{78}

2.4.3. SWARAJ PARTY.

Deshbandhu Chitt Ranjan Das, along with Motilal Nehru, founded the
Swaraj Party in 1923 for maintaining of continued participation in legislative
councils. The party was soon recognized as the parliamentary wing of the
Congress. In Bengal many of the candidates fielded by the Swaraj Party were
elected to office. The Governor invited C.R. Das to form a government but he
declined. The party came to be a powerful opposition in the Bengal Legislative
Council and inflicted defeats on three ministries. The Calcutta Municipal Act of
1923 was a major landmark in the history of local self-government in India. The
Swarajists were elected to the Calcutta Corporation in a majority in 1924.
Deshbandhu was elected mayor and Subash Chandra Bose was appointed Chief
Executive Officer. The leaders of Swaraj Party began to advocate for dominion
status to India. Many of the elected deputies soon forgot about obstruction and
began cooperating with the government (tariff autonomy bill passed, 1923). In
1924 Gandhi was released from prison due to poor health and was elected
President of the Indian National Congress. 1925 saw the first woman becoming the
president of Indian National Congress when Sarojini Naidu was elected President
for the Kanpur session.

The philosophy of Mahatma Gandhi was rooted in our ancient tradition; the
philosophy of Jawaharlal Nehru was influenced by modern progressive thinking.
But the common denominator in their philosophies was humanism. The humanism
of the Western Enlightenment comprehended mere political equality, the humanism
of Mahatama Gandhi and Jawaharlal Nehru was instinct with social and economic

\textsuperscript{78} J. L. Nehru, \textit{The Discovery of India}, p. 358.
equality. The former made man a political citizen, the latter aims to make him a 'perfect' citizen. This new humanist philosophy became the catalyst of the National Movement for Swaraj. In 1929 the All India Congress Committee resolved that the great poverty and misery of the Indian people was due also "to the economic structure of the society." The Karachi Congress resolution, on fundamental rights and economic programme revised in the All India Congress Session of Bombay in 1931 declare that in order to end the exploitation of the masses political freedom must include economic freedom of the starving millions.⁷⁹

**2.4.4. REVOLUTIONARY MOVEMENT IN INDIA DURING 1920 - 1930.**

The study of the struggle for freedom against the british rule would not be complete if we fail to remember the great revolutionaries during the period of 1920 to 1930.

The revolutionaries in northern India organized under the leadership of the old veterans, Ramprasad Bismil, Jogesh Chatterjee, Chandrashekhar Azad and Sachindranath Sanyal whose ‘Bandi Jiwani’ served as a textbook to the revolutionary movement. They met in Kanpur in October 1924 and founded the Hindustan Republican Association (HRA) to organize armed revolution to overthrow colonial rule and establish in its place a Federal Republic of the United States of India.

Gopinath Saha in January 1924 tried to assassinate Charles Tegart, the hated Police Commissioner of Calcutta. By an error, another Englishman named Day was killed. Gopinath Saha was arrested and executed despite large-scale protests. The most important action of the HRA was the Kakori train episode. On 9 August, 1925, ten men up the 8-Down train at Kakori, an obscure village near Lucknow, looted its official railway treasury. The Government reaction was quick

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⁷⁹ 'Indian National Congress Resolutions on Economic Policy, Programme and Allied Matters’, 1924-1969, p. 3.

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and hard. It arrested a large number of young men and tried them in the Kakori case, Ashfaqullah Khan, Ramprasad Bismil, Roshan Singh, Rajendra Lahiri were hanged, four others were sent to the Andaman for life and seventeen others were sentenced to long terms of imprisonment. Chandrashekhar Azad remained at large.

In 1927, the Simon Commission was appointed by the British Government to suggest political reforms in India. Sir John Simon and six other members of the commission were British. At the Congress meeting in Madras in 1927, it was decided to boycott the commission. Formation of Simon Commission led to large-scale protests all over India.

The Kakori case was a major setback to the revolutionaries of northern India. But soon young men such as Bejoy Kumar Sinha, Shiv Varma and Jaidev Kapur in U.P., Bhagat Singh, Bhagwati Charan Vohra and Sukhdev in Punjab set out to reorganize the HRA under the overall leadership of Chandrashekhar Azad. Finally nearly all the major young revolutionaries of northern India met a Ferozeshah Kotla Ground at Delhi on 9 and 10 September 1928, created a new collective leadership adopted socialism as their official goal and changed the name of the party to the Hindustan Socialist Republican Association (HSRA).

Lala Lajpat Rai died, as the result of a brutal lathi-charge when he was leading an anti-Simon Commission demonstration at Lahore on 30 October 1928. The romantic youthful leadership of the HSRA saw the death of this great Punjabi leader, popularly known as Sher-e-Punjab, as a direct challenge.

Bhagat Singh and Batukeshwar Dutt threw a bomb in the Central Legislative Assembly on 8 April 1929 protesting against the passage of the Public Safety Bill and the Trade Disputes Bill that would reduce the civil liberties of citizens. The aim was not to kill, for the bombs were relatively harmless. The leaflet they threw into the Assembly hall said “If the deaf are to hear, the sound has to be very loud’. The objective was to get arrested and to use trial court as a forum for propaganda so that people would become familiar with their movement and ideology. Bhagat Singh and B.K. Dutt were tried in the Assembly Bomb Case.
Bhagat Singh, Sukhdev, Rajguru and many other revolutionaries were tried in a series of conspiracy cases. During the trial they said - “When we dropped the bomb, it was not our intention to kill anybody. We have bombed the British Government. The British must quit India and make her free." Their fearless and defiant attitude in the courts and their slogans 'Inquilab Zindabad,' songs such as 'Sarfaroshi ki tamanna ab hamare dil mein hain' and 'Mera rang de basanti chola' became very popular all over India.

Bhagat Singh, Rajguru & Sukhdev became symbols for Indian struggle against British rule. They became an inspiration for many youths who wanted to see India independent. Sukhdev and Rajguru were executed on 23rd March 1931 and Bhagat Singh on 24th March 1931. Millions of people in India wept and refused to eat food, attend schools, or carry on their daily work, when they heard of their hanging.

Chandrashekhar Azad had escaped from getting arrested and he continued to organize the revolutionary youths. But on 27th February 1931 Azad was betrayed by an informer and was encircled by a huge posse of British troops in the Alfred Park, Allahabad. He was asked to surrender but Azad refused. For several hours he alone fought against hundreds of policemen. He kept on fighting till the last bullet. Finding no other alternative, except surrender, Azad shot himself.

A large number of revolutionaries were convicted in the Lahore conspiracy Case and other similar cases and sentenced to long terms of imprisonment many of them were sent to the Andamans. The revolutionary under-trials went on hunger strike protesting against the horrible conditions in jails. They demanded that they be treated as political prisoners and not as criminals. On 13th September, after 64 days of an epic hunger strike Jatin Das, the iron willed young man from Bengal died. The entire nation rallied behind the hunger strikers. Thousands came to pay homage at every station passed by the train carrying his body from Lahore to Calcutta. At Calcutta, a two-mile-long procession of more than half a million people carried his coffin to the cremation ground.  

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2.4.5. SATYAGRAHA MOVEMENT OF GANDHI AND RISE OF SARDAR PATEL AND JAWAHARLAL NEHRU.

Vallabhbhai Patel, qualified as a barrister in 1913 and returned to India to a lucrative practice in Ahmedabad. But soon following Gandhi’s footsteps, Vallabhbhai took to spinning the charkha, boycotted foreign goods and clothes and burned his foreign possessions on public bonfires. He even discarded the western dresses he once so coveted. The relationship between Gandhiji and Vallabhbhai was concr etely defined when Gandhiji was elected the President of the Gujarat Sabha and Vallabhbhai the Secretary, in 1917. He participated in the Nagpur flag satyagraha from May to August in 1923 in protest against the stopping of a procession which carried the national flag. In 1928, Vallabhbhai once again came to the rescue of the farmers, this time it was in Bardoli, which was then a part of Surat district. The Government increased the tax on the land. Those who were not able to pay the high taxes, their lands were confiscated. Vallabhbhai urged the farmers not to pay, declaring the hike unjust. He prepared the farmers for satyagraha. The Satyagraha continued for six months. Finally the government agreed to hold an inquiry into the justification of the tax hike, released the satyagrahis and returned all confiscated items back to the farmers. So pleased was Gandhiji with Vallabhbhai’s effort that he gave him the title of "Sardar" or leader.

In 1929 Lord Irwin promises Dominion Status for India. This year also saw the rise of Jawaharlal Nehru, who was destined to become the first prime minister of free India. Jawaharlal Nehru was son of congress leader Motilal Nehru. Jawaharlal was educated in Britain from where he graduated as a barrister. After the Jalianwala Bagh massacre in 1919, he joined the freedom struggle. In the Lahore session of Congress in 1929, under President Jawaharlal Nehru, the resolution of "Poorna Swaraj", Complete Independence, was adopted. On December 21, 1929, the Trianga (tricolor) flag was unfurled. On January 26, 1930, the first Independence Day was celebrated. The Civil disobedience movement was started as well as the movement to no longer submit to British Rule. Nehru spent most of the period from 1930 to 1936 in jail for conducting civil disobedience campaigns.
On March 12, 1930, Gandhi marched from Sabarmati Ashram to Dandi, to protest against ‘state monopoly on salt’ often called the Dandi march. The march was 375 km and took 26 days. As a result of this march, all of India joined the campaign to boycott foreign goods and refused to pay taxes. Sardar Patel left for Dandi to prepare for Gandhiji’s Salt satyagraha. He went to villages to organize for the food and lodging of the marchers. In every village he went, he made stirring speeches, rousing the people to join the march to Dandi. The Government swooped down and arrested him while he was in the village of Ras. This was Sardar Patel's first prison sentence.

Khan Abdul Ghafar Khan started the Khudai Kidmatgar movement in the North West of India. The government imprisoned 90,000 people that were participating in the movement in the first year.

2.4.6. ROUND TABLE CONFERENCES AND GANDHI IRWIN PACT.

First Round Table Conferences was held in November 1930 was attended by eighty-nine delegates from different religious, political groups and princely states. The Indian National Congress, then engaged in civil disobedience, was not represented. Lacking representation from the Congress and preoccupied with problems of federation, the first conference adjourned in January 1931, without having made appreciable progress on the issue of communal representation. Sardar Patel, was released after the Gandhi-Irwin pact of March 1931. Gandhi signed the Pact on behalf of the Congress and by Lord Irwin on behalf of the Government. The terms of the agreement included the immediate release of all political prisoners not convicted for violence, the remission of all fines not yet collected, the return of confiscated lands not yet sold to third parties, and lenient treatment for those government employees who had resigned. British Government also conceded the right to make salt for consumption to villages long the coast, as also the right to peaceful and non-aggressive picketing. That year Sardar Patel presided over the Congress session in Karachi.

The second round table conference opened in London on September 7, 1931. Two committees were formed during the conference - committees on federal
structure and minorities. Gandhi was a member of both and he claimed that he represented all India and dismissed other Indian delegates as non-representative because they did not belong to the Congress. There was serious disagreement on communal representation issue between Congress and other minority groups. Gandhi returned from the conference and continued the civil disobedience movement and was arrested again.

The third round table conference began on November 17, 1932. It was short and unimportant. The Congress, and the Labor opposition in the British Parliament were both absent. Reports of the various committees were scrutinized. The conference ended on December 25, 1932.\textsuperscript{81}

\textbf{2.4.7. CONTINUING REVOLUTIONARY STRUGGLE AND ROLE OF WOMEN REVOLUTIONARIES.}

Most historians write about the dominant role of Gandhi and Congress during the Indian freedom movement of 1930s but only a few mention the revolutionary movement that continued in different parts of India. Some of these revolutionary leaders worked in congress but later got disillusioned by Gandhi’s non-violent satyagraha. Among the new 'Revolutionary Groups', the most active and famous was the Chittagong group led by Surya Sen. He actively participated in the non-cooperation movement and was popularly known as ‘Masterda’. Arrested and imprisoned for two years, from 1926 to 1928, for revolutionary activities, he continued to work in the Congress.

On 18th April 1930, a group of fifty-six revolutionaries under the leadership of Surya Sen, Ganesh Ghosh and Loknath Baul captured two police armories in Chittagong. They hoisted the National Flag among shouts of \textit{Bande Mataram} and \textit{Inquilab Zindabad} and proclaimed Provisional Revolutionary Government. It was on the Jalalabad Hill that over a thousand British government troops surrounded them on the afternoon of 22 April. After a fierce fight, in which

\textsuperscript{81} ibid
over eighty British troops and twelve revolutionaries died, Surya Sen decided to disperse to the neighbouring village there they formed into small groups and conducted raids on Government personnel and property. They continued their fight against British army for over 3 years. Surya Sen was finally arrested on 16 February 1933, tried and hanged on 12th January 1934.

Large-scale participation of young women in freedom struggle under Surya Sen's leadership characterized this phase of revolutionary movement. These women provided shelters, acted as messengers and fought guns in hand. Preetilata Waddekar died while conducting a raid, while Kalpana Dutt was arrested and tried along with Surya Sen and given a life sentence. In December 1931, two schoolgirls of Kummilla in Bengal, Shanti Ghosh and Suneeti Chaudhary, shot dead the district magistrates. In December 1932, Beena Das fired point blank at the Governor while receiving her degree at the convocation. In Nagaland, Rani Gaidilita, a 13-year girl raised a flag against the British and was put into prison for life in 1932.

2.4.8. RISE OF SUBHASH CHANDRA BOSE IN INDIAN FREEDOM MOVEMENT.

Subhash Chandra Bose was born in 1897. He was selected for Indian civil services but resigned from it and returned to India in 1921. He joined Swarjya Party of C.R. Das in Gaya Congress in 1922. In 1930 he was elected Mayor of Calcutta and became a prominent leader of Indian freedom movement. During 1933-36 Subhash Bose met several prominent European leaders and tried to persuade them to help India in its freedom struggle against British colonialism. Many people questioned Gandhi’s leadership. Subhash Chandra Bose and Vithalbhai Patel (brother of Sardar Patel) in a strong statement had said in 1933 that 'Mr. Gandhi as a political leader has failed' and called for 'a radical reorganization of the Congress on a new principle with a new method, for which a new leader is essential.' Subhash returned to India in 1936 and was arrested.
In 1938 he was elected as the President of Indian Congress and made the historic speech in Haripura convention. Subhash brought new ideas to the Congress and wanted a quick move towards launching a freedom struggle. Gandhi and Nehru were in favor of helping British during World War II and against any serious movement that could harm British War efforts. Subhash Bose strongly opposed this idea. Sardar Patel, Rajendra Prasad, J.B. Kripalani, Jawaharlal Nehru and Gandhi supported Pattabhi Sitaramayya as a candidate for the post of Congress president against Subhash in 1939. Subhas Bose was elected on 29th January by 1580 votes against 1377. Gandhi declared that 'Pattabhi's defeat is my defeat'. Not wanting to embarrass these leaders and due to strong policy differences with Gandhi and Nehru, Subhash resigned and formed the new organization Forward Block. Subhash later became President of Indian National Army, which played a crucial role during last part of Indian freedom movement.

2.4.9. BRITISH INVOLVEMENT IN WORLD WAR II AND QUIT INDIA MOVEMENT.

On September 1st., 1939, German troops invaded Poland. Britain and France declared war against Germany on September 3rd 1939. Beginning of World War II hastened the end of British rule in India. During World War II, Congress stated that if it wanted India's cooperation, it must give India the right of self-determination. The British refused and in 1939 Congress led provincial ministries resigned. Role of Gandhi during this period was again controversial. In October 1940, Gandhi called for limited Satyagraha so the movement did not seriously harm the British war effort. Many of his closest colleagues and the rank and file in the Indian National Congress could not bring themselves to accept the feasibility of defending the country against aggression without resort to arms. During the war whenever there was a possibility of a rapprochement between the Congress and the Government for a united war effort, Gandhi stepped aside.

Udham Singh had witnessed his brother being killed in the Jalianwala massacre as a child. Twenty-one years later he took the revenge for that massacre
by killing Sir Michael O'Dwyer on 13th March 1940. Sir Michael O'Dwyer was the governor of Punjab at the time of Jalianwala Bagh massacre and had strongly supported the massacre. Udham Singh was captured and executed on July 31, 1940.

In 1942, Stafford Cripps lead the Cripps Mission, promised Dominion Status with the right of secession but refused to allow immediate transfer of power. The Indian leaders refused to accept promises. Under tremendous pressure from his colleagues in Congress Gandhi agreed for a mass independent movement. The Quit India resolution was passed in 1942, Bombay session of Congress. Gandhi stressed, "We shall either free India or die in the attempt. We shall not live to see the perpetuation of our slavery". This is famously known as "Do or Die". This was declared illegal by British government and all of the prominent leaders were arrested. There were revolts all around India with the slogan of "British Quit India".

2.4.10. ROLE OF INDIAN NATIONAL ARMY (INA).

Mohan Singh, an Indian officer of the British Indian Army who did not join the retreating British army in Malaya first conceived the idea of the Indian National Army and asked for Japanese help. Indian prisoners of war were handed over by the Japanese to Mohan Singh who then tried to recruit them into an Indian National Army. On 1 September 1942, the first division of the INA was formed with 16,300 men. But later due to differences with Japanese Mohan Singh was arrested. Accompanied by Rashbehari Bose, Netaji arrived at Singapore from Tokyo on 27 June. He was given a tumultuous welcome by the resident Indians and was profusely 'garlanded' wherever he went. His speeches kept the listeners spellbound. By now, a legend had grown around him, and its magic infected his audiences. He went to Tokyo and Prime Minister Tojo declared that Japan had no territorial designs on India. The Provisional Government of Free India was formed on 21 October 1943. INA was now known as Azad Hind Fauz (Free India Army) It was reorganized with the creation of a second INA division and even a women’s regiment known as Rani Jhansi regiment was created. Subhash Chandra Bose was popularly called ‘Netaji’ by his followers. His call of ‘Tum mujhe Khun dou mai
tumhe Azadi dunga’ (I promise you freedom, if you are ready to spill your blood) encouraged thousands youths to join the freedom movement.

The Provisional Government of free India formed under ‘Netaji’ declared war on Britain. In March - April 1944 INA set its foot inside India and captured large parts of Manipur. On April 6th 1944 Kohima, a major city was captured. Indian tricolor (flag) was raised inside free India. But soon the balance of power in World War II shifted in favor of British and allied forces. With defeat of Japan and German forces the INA was forced to retreat from Kohima. Thousands of INA soldiers died fighting British and many were captured. Despite the defeat Subhas Chandra Bose and his INA became household names throughout the country as the British prosecuted the returning soldiers. Subhash Chandra Bose escaped to Japan and some reports say he died in an air-crash while others say he survived the air-crash. His ultimate fate remains unknown till date.\(^2\)

On December 9, 1946 the Congress started framing the Indian Constitution. On March 22, 1947, Lord Mountbatten arrived as the last Viceroy. It was announced that power would be transferred from British to Indian hands by June 1948. Lord Mountbatten entered into a series of talks with the Congress and the Muslim League leaders. Jinnah insisted on creation of Pakistan as a separate country for Indian Muslims. Congress also agreed to the partition of India. Gandhi who had previously said that India would be partitioned over my ‘dead body’ now agreed to the partition plan. Mountbatten now prepared for the partition of the Sub-continent and announced it on June 3, 1947. The Congress and the Muslim League agreed that India would become free on August 15, 1947. The country would be partitioned under the guidance of the Red Cliff Mission.

India became an independent country and Pakistan was also formed. Jawaharlal Nehru took oath as the first Prime Minister of Independent India. Massive exodus of population from Islamic Pakistan to India took place. Nearly

\(^2\) [http://www.gatewayforindia.com/history/british_history](http://www.gatewayforindia.com/history/british_history), accessed on 21.03.2012
the whole Hindu population living in Pakistan’s Punjab and Sindh and East Bengal migrated to India. Large numbers of Hindus were killed in the riots in Pakistan and many others were forcibly converted to Islam. Only a few Hindus survived in Islamic republic of Pakistan. Muslims from Independent India also migrated to Pakistan and many Muslims were killed in riots that took place in India. But majority of Muslims preferred to stay in India and were given equal rights in secular India. The Muslim population of Independent India was much bigger than that of Independent Pakistan. Indian independence was scarred by the trauma and bloodshed of partition.