Indian Constitution is conceived as an instrument of social change and 'social revolution'. The Fundamental Rights and Directive Principles are believed to be the 'soul' and 'conscience' of the Constitution. These rights and principles are like a 'humanitarian' or 'socialist' manifesto, which aims at the development of human personality and to reorganise the economy and society on the values of democracy and social justice. However, the experience of Constitutional operation and its function belies the aspirations and expectations of the people and raises doubts as to the very nature and character of the Constitution and its potential and efficacy in bringing social transformation.

A liberal conception and an instrumental view of the Constitution does not provide a clue to the real function and effect of the Constitution on the society, the economy and the polity. The traditional approach reinforces the notion that Constitutions are primarily legal instruments establishing procedures and creating obligations. Constitutions are supreme law, govern the conduct of
governmental bodies regulate political and electoral processes. It creates the impression that Courts, umpiring the Constitutional system, are dispassionate, engaged upon the objective search, through the examination of rules, for the right legal answer to disputes presented to it. The disputes giving rise to controversy or litigation are abstracted out of the world politics and the matter is discussed in the cold light of the rules of interpretation and precedent. Adherence to this view establishes the illusion that Constitution is autonomous, divorced from politics and economics and capable of resolving all controversies within its own terms. This approach, of course, serve some important needs of the legal profession, both in promoting the ideology of legalism and in systematizing and clarifying doctrine. This latter function is important in the day today administration of legal system. But it overlooks certain important dimensions of Constitution.

Constitutions are concerned with the source and regulation of State (Public) power. But they are not the only source of power in society. To get an adequate understanding of it, therefore, one has to see the Constitution on the overall framework of the society. Constitutions are at one level legal instruments and necessary to master their doctrines. But Constitutional law, so intimately connected with political and social theories, also afford us a window to society, a chance to understand the dynamics of public and private power.

As Justice Holmes had told us long ago, a Constitution is not intended to embody a particular economic theory, whether of paternalism and organic relation of citizen to the state or of laissez faire. On contrary, Justice Mathew said that "Indian Constitution
embodies certain broad values, like Democracy, Socialism and Secularism. At every step on the interpretation of the Constitution these values will have or must have a radiating influence, because Constitutional law is for the most part political theory expressed in lawyers language, the justices of the court in reaching their decisions manipulate juristic theories of politics.

The Constitutions that many Third World countries adopted on independence are based on the ideas and concepts of Constitutionalism that developed in the West, and reached a culmination in the nineteenth century. The underlying premise was that public power had to be divided and regulated and that the right of the state to intervene in society and particularly in the economy had to be strictly circumscribed. A number of institutions developed to give effect to this principle - most importantly Parliament and Judiciary. However, the assumption of nineteenth century - a functioning competitive laissez faire market, individualism, poorly organised working class are no longer operative, but the Constitutional framework they gave rise to has not only endured in the West but has been translated to the developing countries. The formal constitutional provisions no longer provide a clue to the actual repository of power or to the manner of its exercise.

The growth of the system of political parties, the aggregation of power in corporate groups, the enormously increasing power

of the State and its massive intervention in the economy (designed to
resolve the contradictions and crisis of market economies) have
fundamentally altered the nature of modern political systems. Some
key centres of power are no longer captured by the Constitutions, and
tend to undermine Constitutional norms. Traditional approach fails
to uncover these extra Constitutional forces and to reveal the ways
in which state institutions really operate.

The development of the state in the Third World has followed
a different historical trajectory. Closely associated with colonialism,
the state forms were instrumental in establishing the economy and
shaping society. On independence, especially the political power
passed into the hands of those groups which did not enjoy a superior
economic position, the state and the resources it deployed are regulated
become crucial for these groups in establishing an economic base for
themselves. For a variety of reasons, the relation between the state
and economy has, to some extent, become reversed. The centrality
of the state is also emphasised by the tasks forced on it in developing
countries - consolidation of independence, national integration and
economic development, as well as mediation with external economic and
political forces. The importance and the relatively autonomous nature
of political power means that it cannot be easily controlled by
Constitutional and legal methods. The distinction between the west
and the postcolonial Constitutions with market and planned economies
is explained very lucidly by Robert Seidman:³

³. Robert B, Seidman. (1978). The State, Law and Development Croom-
Constitutions purport to solve the problems of their authors perceive. The early bourgeoisie Constitutions freed bourgeoisie private enterprise from the tyrannies of feudalism and merchantalism. They, therefore, mainly limited governmental power. The Constitutions of the new socialist states, by contrast, assumed the state's primarily obligation to organise the economy. The bourgeois Constitutions resonated in contract, the socialist in plan.

Whether one agree or not with Seidman liberal legal conception does not provide a clue to the real function and effect of the Constitution on the society, the economy and the polity. It blurs our view to grasp the dialectical relation between the Constitution and the social relations of production. For proper appreciation of the Constitution and its relation to economic development, one must necessarily look at the Constitution in its historical context, continuity and the stage of development, the forces, external and internal, that influenced the Constitution making, the framework and path of development designed, the nature and character of the state envisaged and, its response to the problems of poverty.

Historical Context and Continuity

The Indian Constitution born in the mid twentieth century, but of an anti-imperialist struggle influenced by Constitutional instruments, events and revolutions elsewhere in search of a better world and wedded to the ideas of freedom, liberty, equality and justice - economic, social and political. The values and rights that are recognised and institutionalised in the Indian Constitution represent three
historical traditions: bourgeois democratic revolutions in the west; socialist revolutions particularly in Russia; and the freedom movement in India. Thus Indian Constitution reflects a mixture of ideologies. There is, however, a continuity of democratic values and ideals though severely restricted in the name of 'social control' social reform, public interest, 'public order' . 'national unity' and 'Integrity' and 'national security.' It is important, here, to recognise that the rights and Constitutions are not the gifts of the rulers. These are the products of people's struggle and sacrifice. No where in the world, the suffering people won the rights without struggle. While rulers accepting and recognising the rights, they used to constrain them in the process of Constitution making with all limitations and exception clauses. The origin of the development of the ideas of fundamental rights can be traced to the days of Magna Carta'. Its Constitutional formulation with the requisite sanction began only with the adoption of the French and American Constitutions. The advent of these Constitutions marked the victory of the bourgeoisie over the feudal autocracy and tyranny and the beginning of the recognition and acknowledgement of the inherent rights of human being. At the end of the 19th century all the European countries had emulated the American and French Constitutions. With the dawn of 20th century, the ideas of guarantee of basic rights became a normal features of the Constitutions.

The Russian revolution in 1917 gave a new content and meaning to the concept of rights by adding new element of the concept of social justice and freedom from exploitation. Capitalism defends freedom and equality in the process of circulation (exchange) but

4. Magna Carta (1215) is one of the four great Charters of liberty from which liberties of the British citizens derive their protection.
exploit the labour in the process of production. The worker is relatively free as long as he do not prefer to sell his labour. But hunger leaves no option save to do or die. Therefore, working class has to wage a war against the merciless exploitation of the industrialists and won certain rights essential for subsistence and life with dignity. The history of the working class struggles clearly explains the forces and sources behind the expansion of the idea of rights and the value of socialism.

In Indian Constitution the rights now called fundamental have a long history. As early as 1895 the Home Rule Bill envisaged for India a Constitution guaranteeing to everyone of its citizens freedom of expression, inviolability of one's house, right to public office and right to personal liberty. Following the publication of Mantagu Chelmsford report in August 1918, the Indian National Congress demanded the 1919 Act should include a declaration of the rights of the people of India as British citizens. There was an outright demand for declaration of rights by Motilal Nehru. In his Presidential address at Amritsar in 1919 in the background of Jalianwala bagh incident in which number of people died and injured in police firing. He said:

No Constitution can meet our needs unless it is accompanied with a guarantee and clear declaration of our elementary rights which have been so ruthlessly violated in the Punjab. No Indian can be blind to the fact that the protection of our Fundamental Civil Liberties is a matter of the most urgent consequence. No statesman can

5. Among several Reports on Rights are: Constitution of India Bill 1895; Mrs. Beasant's Common Wealth of India Bill, 1925; and Motilal Nehru's Bill, 1929.
shut his eyes to the supreme moral necessity of the faith of the Indian people in the inviolability of their rights.

The Nehru Committee appointed by the all parties Conference in its report laid down that 'our first care should be to have our Fundamental Rights guaranteed in a manner that will not permit their withdrawal under any circumstances.' The right to keep and bear arms was also included in the rights enumerated in the report. These declarations were made in the context of continuing repression by the British Government on freedom movement.

It was only the Lahore Congress 1929, that the claim for complete independence was made in as it was felt that achievement of national independence was precondition for the effective enjoyment of the basic human rights. The leaders of the freedom struggle also realised that in order to make the basic rights meaningful to the common man, it was essential to bring about socio-economic regeneration to ensure social justice. The Karachi resolution, further, enumerated the civil and political, social and economic rights and emphasised the need for state protection. Commenting on the historical antecedents of the Fundamental Rights and Directive Principles, Austin observes: 6

That the Constitution would contain positive rights as well as negative safeguards was nearly as certain as the appearance of the written rights themselves. For the inclusion of negative rights was primarily a product of national revolution and of the minorities situation, the impetus for the

inclusion of positive obligations came largely from the social revolution and reflected the social revolution and reflected the social consciousness that had increasingly characterised the 20th Century both in India and abroad.

It is obvious that, the Indian Constitution reflects the historical legacy of the struggle for rights in the west, that is, bourgeoisie and socialist revolutions. Given the Indian social structure and institutions, the right to equality is a radical one. Some of the provisions dealing with the issue of equality reflects movements like caste and women reforms, rationalists and the struggles of the peasants and tribals. Although these movements were not under the leadership of the Congress and part of 'mainstream' of freedom struggle, there was an element of democratic aspiration and urge for equality and freedom. Thus the ideas like democracy and rights should be seen first in the context of their historical origin and evolution and their role in the contemporary time period, traced in comparative perspective so that emphasis on their different constituent elements could be understood along with their possible use and abuse by interested parties. In different contexts, there is not only difference in emphasis, there is also different pattern of shedding of blood, sweat and tears.7

During the freedom struggle while demanding Constitution and rights, the ideas of development through planning, was a powerful ideology to question the colonial domination and exploitation. It is

therefore, necessary to know how did the National leaders respond to the British policies and consequences upon the Indian economy.

British colonialism has had a crucial impact on India's economy. The close integration of India into the colonial system impeded the process of evolution from the pre-Industrial economy to an industrial economy, and subordinated the agrarian structure to the requirements of British Industry. The predominantly agrarian society was transformed into supplier of raw materials and valuable market for the British. The introduction of commercial crops and inflow of foreign goods devastated the supply of food grains and destroyed the handcrafts. The British developed infrastructure in the form of railways, irrigation and electricity with a view to promote foreign trade and exploit the country resources. Direct British investments were made in consumer goods industry like tea, coffee and rubber plantations. The exploitation of plantation labour was similar to that of slavery. British made little efforts to develop basic and heavy industries. The process of industrialisation did not adequate to absorb the rural and urban unemployed. It has been argued that colonial policy, law and order, administration during the British regime contributed to mass impoverishment.6

6. This conclusion appears undisturbed, despite many a lively debates concerning British intentions and impact, it is beyond doubt that at the time of independence. India was still largely non-industrial and one of the World's poorest areas. See. Dharam Kumar (1982): Cambridge Economic History, Vol. II; A.R. Desai (1970), Social Background to Indian Nationalism; Popular Prakasan, Bombay; Sarkar, Sumit, 'Modern India' 1875-1947. Dutt, R.P., India Today; R.C. Dutt. Economic History. Government of India Publication.
The British economists have always upheld that backwardness of Indian economy and its failure was due to the value system, that is spiritualism, caste and religion etc. They argued that India's capital lacked the basic quality of adventure which is an essential condition for dynamic entrepreneurship. The standard imperialist defence, however, was that England receives nothing from India, except in return for services rendered or English capital expended. This argument clearly refers to the alleged benefits of good government, law and order etc., brought in by British. Remittance of profits on British capital invested in railways, plantations, mines and mills has sought to be defended on the ground that such things after all were developing or 'modernising' India. According to Seidman many definitions of 'development' or 'modernisation' stated, there is a prized state of affairs, increased per capita income or that pulus a distribution function or both plus increased employment for western observers, frequently, 'development' meant to be 'like us.' British rule in the name of development how ruthlessly impoverished the Indian population has been documented by many economists as well as social historians. Although benefits of development during the British rule were only incidental, people were suffering in many ways and sinking in poverty due to unemployment, frequent droughts and famines. The Bengal famine in which three million people died, brought forth the stark reality of poverty and exploitation under the British rule.

Historically, in the post colonial countries development may be understood as the exploitation of the less developed countries by the development countries. Philosophically, the protagonists of

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10. Supra. n. 3. p. 378. 11. Supra. n. 8.
development are utilitarians and hence they believe in the end-means approach to social change. Politically, they vary from rank reaction to democratic liberalism, and culturally they advocate a worldwide criticism with a fake slogan of cultural cosmopolitanism. All these factors gave rise to a myth called 'development.' As a result the colonies are forced to come to a stage where they find that there is no choice except to suffer and stagnate. This leads to a condition which can no longer be described as human. It ruthlessly destroys the creativity and freedom of man. Man in this world no longer exist, but subsist. Paul Baran has given a vivid description of the world on account of imperialism, referring India as an example:

The people who come into the orbit of Western capitalist expansion found themselves in the twilight of feudalism and capitalism enduring the worst features of both worlds and the entire impact of imperialist subjugation to loot.... Their exploitation was multiplied yet its fruits were not to increase their productive wealth, they went abroad served to support a parasitic bourgeoisie at home. They lived in abysmal misery, yet they had no prospects of a better tomorrow. They existed under capitalism, yet there was no accumulation of capital. They lost their time - honoured means of livelihood, their arts and crafts, yet there was no modern industry to provide new ones in their place. They were thrust into extensive contract with the advanced science of the west, yet remained in the state of the darkest backwardness.

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Besides apathy and indifference of the British Government what shocked the national leaders was the argument that Indians were responsible for their poverty, famine and misery. The advocates of 'Indian theory' and the 'nationalist' opinion held that the plunder and exploitation of material and human resources of the country was responsible for India's poverty. The national critique directly related the abysmal and growing poverty in India to certain deliberate policies, more particularly the drain of wealth through an artificial export surplus, destruction of handicrafts followed by hindrances to modern industries and excessive land revenue.\textsuperscript{13} Nehru said that 'British rule began with outright plunder and a land revenue system, which extracted uttermost farthing not only from the living but also from the dead cultivators. It was pure loot of India.'\textsuperscript{14} In regard to famines and poverty, the nationalists argued that the famine was not the caprice of nature or failure of crops did not cause 'poverty, it was poverty which transformed scarcity into famines. The National leaders successfully exposed the problems of India and rallied the people into the fold of freedom struggle. It is, however, said that deliberate policy making with state help for economic development was part of the early economic nationalism of such thinkers as R.C. Dutt, G.V. Joshi, Dadabai Nauroji, Ranade, Gokhale.\textsuperscript{15} From 1920's onwards, problems of poverty

\begin{enumerate}
\item R.C. Dutt. Economic History of India; 1901-1903; Quoted in Sumit Sarkar, Modern India, 1875-1947. p. 86.
\item Nehru, Jawaharlal. (1956) Discovery of India, Meridian Books, p. 513.
\item Supra. n. 13.
\end{enumerate}
and the ideology of 'development' occupied the centre state of Indian politics. The National leaders had seized the opportunity to incorporate their ideas, and of the peoples demands and aspirations at the time of Constitution making. After Independence, the Government adopted a strategy of planned development to eliminate poverty and inequality by initiating structural changes in the economy.

The Ideology of the Constitution

The leading lights of the Constituent Assembly were not only the heroes of freedom struggle but also assumed power with the primary task of 'nationbuilding.' It is quite natural that their social philosophy and understanding of the problems did find a place in the Constitution. The social outlook of the Indian leaders is partly a product of the result of the National Movement and partly the result of capitalist political economy. During the freedom struggle the national leaders while exposing the economic problems, they used to describe the future task of free India and the vision of future India. At the dawn of independence, Mahatma Gandhi stated:

> The Congress has own freedom, but it has yet to win economic freedom, social and moral freedom. These freedoms are harder than the political if only because they are constructive, less exiting and not spectacular.

In saying this Gandhi was only reiterating a view which he and other leaders of the Indian freedom movement had long held, namely that

political independence or parliamentary democracy was only a means to social transformation.

Thus, in 1931 session held at Karachi, the Indian National Congress had declared that India's freedom struggle was aimed at securing not only political independence from British rule but also an 'end to the exploitation of masses ... and real economic freedom for the starving millions.' A few years later Jawaharlal Nehru wrote that 'political freedom would be only a means to an end, that end being the rising of the people to higher levels and hence the general advancement of humanity.' In the Constituent Assembly Sarvepalli Radhakrishnan spoke of Political Independence and democracy as the beginning of process of 'socio-economic revolution' or, in other words, fundamental change in the structure of Indian society.' In this discourse of our freedom movement and Constitution making the national democratic state was thought of as necessary, quasi autonomous instrument of social transformation.

The Election Manifesto of 1945-46 of the Congress Party declared that the most vital and urgent of India's problem is how to remove the curse of poverty. In his reply to the debate on the objective resolution, which was in the nature of a pledge, Nehru told the Constitution Makers in the same vein:

At present the greatest and the most important question in India is how to solve the problems of the poor and the starving ... the first task of this Assembly is to free India through a new

17. Nehru, Jawaharlal (1938) 'The Unity of India,' Lindsay Drumound London, p. 11.
Constitution, to feed the starving people and cloth the 'naked masses' .... If we cannot solve the problem soon, our paper Constitutions will become useless and purposeless.

While Nehru made it clear that the Constitution of India should be purposive and functional in nature, Ambedkar highlighted the authoritative and inequalitarian characteristics of Indian social structure:

He said: 20

... democracy is only a top dressing on the Indian soil which is essentially undemocratic ... on the social plane we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane we have a society which there are some who have immense wealth as against many live in objective poverty.

In Ambedkar's view democracy is meaningless in the absence of social and economic equality. He had a clear perception of the caste and its role in perpetuation of poverty and inequality. He had clearly and eloquently expressed his view, on economic democracy to the members of the Assembly: 21

"...Our Constitution lays down what is called Parliamentary democracy. By Parliamentary democracy we mean "one man one vote" ... While we have established political democracy, it is also the desire that we should lay down as our

21. Ibid., p. 979.
ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the government. That ideal is economic democracy, whereby so far as I am concerned, I understand to mean one man one vote. The question is, have got any fixed idea as to how we should bring about economic democracy. There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy; there are those who believe in having a socialist state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

It is quite obvious that the Constituent Assembly members thought of political democracy as a necessary condition for achieving economic democracy. Indian Constitution while reflecting all the features of modern Constitution, it had to address some specific problems such as social discrimination on the basis of caste, practice of untouchability, system of bonded or forced labour, minority rights, lack of uniform civil code etc. Another important aspect of the Constitution is that linking Directive Principles to the working of Planning Commission and State's responsibility to implement them by passing appropriate laws.

An excellent examination of the liberal democratic road to 'social revolution' taken by the Indian Constitution is contained in Austin. Among the liberal democratic features of the Constitution

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which Austin singles out are universal adult franchise, constitutionally guaranteed Fundamental Rights, a directly elected Lok Sabha and an Independent Judiciary. In his view, these features make the Constitution different from the Gandhian model of a decentralized, village based system of governance. Austin notes the following reasons for the choice of Westminster model of liberal democracy:

(a) The modern western educated Indian leaders were favourably disposed towards liberal democracy;

(b) India had a long period of experience with modern parliamentary institutions under the colonial government;

(c) The victory of the allied powers over the axis powers in the Second World War created a favourable atmosphere for liberal democracy;

(d) The problems created by the Pakistani invasion of Kashmir, the Telengana rebellion, Hindu Muslim riots, the imperative of planned economic change and industrialisation are called for a centralised parliamentary democracy rather than the Gandhian decentralised, village based system of government.

As noted by Austin, several members of the Constituent Assembly affirmed optimistically that the values and institutions of liberal democracy would transform India's tradition-bound social structure. Sarvepalli Radhakrishnan said that modern parliamentary democracy would bring about a socio-economic revolution or in other-words a 'fundamental change in the structure of Indian society.'

23. Ibid, p. 27

Another member of the Constituent Assembly, K. Santanam, wrote that the New Constitution was meant to help India to get out of 'the medivalism based on birth, religion, custom, and community and reconstruct her social structure on modern foundations of law, individual merit, and secular education.' He went on to state that the liberal - democratic Constitution would help India to make a 'transition from primitive rural economy to scientific and planned agriculture and industry. K.M. Panikar who too was a member of the Constituent Assembly, wrote in his book, Hindu society at Cross Roads, that parliamentary democracy based on universal adult franchise presented the masses 'with dynamite for the destruction of social institutions based on privilege or on heriditary inequality.'

Thus, Indian Constitution provides a liberal democratic framework of goverance and development. A.H. Somiee says "on an essentially traditional and heirarchical society the founding fathers superimposed a democratic political system which had its own norms, goals and assumptions concerning social equality and political participation. Through these, they hoped Indians would be able to transform their society into one that would be just and free." 'Indian Constitution upholds the bourgeoisie norms of social life. Constitution is almost an essay on liberal ideology.'

24. Ibid., p. 63-64.
The nature of development, Nehru envisaged is the socialistic pattern of society. Gandhi had also expressed his views on socialism but with less state intervention. He wrote:

Indian economic independence means to me the economic uplift of every individual male and female by his or her own conscious effort. Under that system, all men and women will have enough clothing ... and enough food, including milk and butter which are today denied to millions.

This brings me to socialism. Real socialism has been handed down to us by our ancestors who taught: 'All land belongs to Gopal, where then is the boundary line. Gopal literally means shephard; It also means God. In modern language it means the State, i.e. the people.

In his Autobiography Nehru speaks about his own ideology and differences with Gandhi and other Congress leaders:

I have long been drawn to socialism and communism, and Russia had appealed to me ... (The) Communist philosophy of life gave me confort and hope. (But in the Congress party) a clear and definite ideology was lacking. Nationalism was still the dominant thought ... (Being) socialistically inclined I was not considered a very safe person to advise on economic and social matters.

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29. Infra, n. 53.
Further, he said that if the party was asked to adopt radical policies 'The result was bound to be to split it into two or more parties or at least to drive away large sections of it. He said 'Congress at present meant Gandhiji, ideologically, he was amazingly backward...'

Nehru has himself given some explanations of the distinctiveness and relevance of his approach to modernisation through the political framework of parliamentary democracy and the economic model of mixed economy. These together constituted his democratic socialist model of modernisation, which he believed to be a third way which takes the best from all existing systems - the Russian, the Americans and others and seeks to create something suited to one's own history and philosophy. Nehru saw modern imperialism to be 'an outgrowth of Capitalism' whose remedy, he said, lies in the 'socialist structure of society'.

It has been argued that, given the composition of the Indian National Movement, in which the nationalist capitalist class was a dominant force, Nehru felt compelled to take a strategic postponement of the pursuit of socialist policies until the more pressing tasks of national independence and unity were attended to on a priority basis. Unless political independence was attended to as 'our immediate object,' he said, 'we will have neither socialism nor independence.' He, however, entertained the hope that 'the logic of events' in the setting up of an independent and democratic state in India will lead to

30. Ibid.
31. Supra. n. 18, pp. 28-29.
socialisms, for that seems to me the only remedy for India's ills.
Nehru believed that 'to break away from the National congress and
Gandhi's leadership would be counter productive for socialist and radical
goals' and that the left had gradually to transform the congress in a
socialist direction.

The distinctiveness and basic soundness of Nehru's mixed
model has been endorsed by V.K.R.V. Rao and P.C. Joshi. They
differentiate the Nehruvien model from the classical / soviet strategy
of socialist transformation and credit the former with considerable
success in giving measure of autonomy and growth to the Indian economy
and society. They however maintain that in its actual operation, the
mixed economy has moved in the direction of capitalism rather than
socialism. According to them, the framework of mixed economy and
parliamentary democracy is a necessary but not a sufficient condition
for socialist transformation. Socialist ideology of the ruling elite
was only to win the mass support but using levels of power to facilitate
a type of capitalist development in the interests of a narrow section
of the Indian society.

Nehru's political ideology is etatist wedded to capitalism.
Nehru simply crowned the passive capitalist revolution of India with
a sovereign nationalist state. He legitimized 'by a specifically
nationalist marriage between the ideas of the progress and social
justice. Indian bourgeoisie, blocked by imperialism and the colonial
state was unable to carry out any full scale bourgeois revolution
against the old, pre-capitalist dominant classes. What is particularly

32. Chandra, Bipen. 'The Communist, Congress and the Anti-Colonial Move-

33. See. Rao, V.K.R.V. & Joshi, P.C. 'Some Fundamental Aspects of
Socialist Transformation in India.' in Man and Development.Vol.
IV(2) June, 1982.

34. Ibid. p. 12.
noteworthy is that the political independence that is brought about 'does not attempt to breakup or transform in any radical way the institutional structures of 'rational' authority set up in the period of colonial rule, whether in the domain of administration and law or in the realm of economic institutions or in the structure of education, scientific research and cultural organisation. Those 'institutional structures of rational authority are subservient to capitalist imperialism.  

Dr. Ambedkar, the Chairman of the Drafting Committee and leader of the dalits his views on Constitution and its function in an inequalitarian society provides a rational understanding. His life and beliefs, perhaps, made him to disagree with Gandhi and other national leaders and distanced him from freedom struggle. However, his intelligence and straight forwardness brought him to the constituent Assembly. His views on rights, democracy and the state appears to be more radical than Nehru and others.

Ambedkar believed that the thrust of the strategy for India's economic development should be eradication of poverty elimination of inequalities and an ending of exploitation of masses. In other words, he sought active involvement of the state in economic development. Ambedkar advocated stateownership of agricultural land with a democratic collectivised method of cultivation and limited control of industries (i.e. heavy industries and large public utilities). His concept of 'State socialism is based on three basic tenets; (1) State ownership of agricultural land and key industries to meet

the demands of the poorer strata of society; (2) maintenance of
productive resources by the state; and (3) a just distribution of the
common produce among the different people without any distinction
of caste and creed. His conception of state socialism is different from
the Marxian concept of socialism and he believes in state's capacity
to bring about economic development. For him, road to social transforma-
tion is possible within the framework of Parliamentary democracy.

He believed in a casteless society but not in a stateless society. In
his conception of 'State Socialism', the state has a key role to play
in the economy. State has to plan the economic life of the people on
line which would lead to the highest point of productivity without
closing, every avenue to private enterprise, and also provide equitable
distribution of wealth. He did not favour imposition of arbitrary
restraint on the economic process.

Many members of the Constituent Assembly were intellectuals
and emotionally committed to some form of 'socialism.' According to
Austin, they ranged from Marxists through Gandhian socialists to
conservative capitalists each with his own definition of 'socialism.'

Nearly every one in the Assembly was Fabian and Laski-ite enough,
to believe that socialism is everyday politics. "For social regeneration
and that democratic Constitutions .... inseperably associated with the
drive towards economic equality." Probably, the success of Russian
revolution had a great impact on India. But the major responsibility

36. See Ambedkar, States and Minorities, Section II Clauses 4.
Vol. XXVI, p. 982.
38 Supra, n. 6.
for making the present Constitution lies with the Congress. Since there was no difference between the Constituent Assembly and the Congress Party, the former worked under the commands and directions of the latter. Nehru's supremacy on the party, and his statesmanship had enormous influence on some of the provisions of the Constitution. As mentioned at the beginning that except Gandhi, both Nehru and Ambedkar preferred a strong state for the sake of development. It is submitted that the conception of the Constituent Assembly members except few was basically liberal democracy and their belief was that Parliamentary democracy is a rational means for achieving social and economic development.

Adoption of Constitution always represents the balance of forces at a historical point in society. At the time of Independence the character of the Congress embodied the rise of industrial bourgeoisie on the one hand and a vast mass base encompassing cities and villages on the other. Congress was committed to the abolition of Zamindari system and to that extent to fighting against feudalism. But the chain of leadership in the Congress organisation had numerous landlords at every level. Thus the social character of the Congress indicated that the business class and the landlords working through the Congress would try to carry the masses with them. This ideological paradox was evident. The Indian Constitution reflected this social character and the ideological paradox. To understand this paradox one should unveil the political economy of the Constitution.
Political Economy of the Constitution

The neo-classical economists from Adam Smith onwards argued that the capitalist free market system maximised utility for all, and everybody got his or her due as market tended towards an equilibrium. Latter, the English political economist Keynes showed that theoretically equilibrium could be reached at any level of unemployment and that utility was not automatically maximised or equalised. The state, he argued, had to intervene to correct the disequilibrium which was the natural tendency of capitalism. Clearly the reality has changed, free competition was already a history and Keynes was writing in a period when pricing in the World market was no longer set by competition but by the few monopolies who financed and controlled commodity production and marketing.

Bourgeois democracy reached its highest theoretical peak with social democracy. The free market, this theory admits, will not equalise utility for all. There will always be those who are disadvantaged by the system and therefore, the state must intervene to provide them 'welfare' a chance to 'equalise' access to material (and social) goods. The Scandinavian countries are today regarded as models of social 'democracy'. Now, however, there are increasing complaints that the system encourages parasitism - the lazy and the socially marginalised feeding on an increasingly small sections of the active working population. During Margaret Thacher's period Britain reverted to privatisation of the social services, away, that is from the hitherto respected tenents of social democracy. Social Democracy has its own limitations, but above all - a fact of considerable significance for
the Third World. Western social democracy, let us be clear about this, thrives on the backs of the severely exploited people of the Third World. Social democracy in otherwords, is no less imperialist than its more 'honest' liberal democratic variant. Both these variants of bourgeoisie democracy i.e., liberal democracy and social democracy are paraded in the west and parachuted to the Third World. Social democracy was a changed version of the ideology of the capitalist state and its form and function may be different in different countries. Post independent Indian State is not an exception to this historical development of capitalism.

It has been argued that 'Nehru's economic thinking was superior to that of economic theory and thought in the world of political economy in the 1930's and 40s. Kenneth Boulding and other western economists looked upon economic inequality as a precondition for economic growth. They said that equality would condemn a society to stagnation and any attempt to secure social justice would retard economic growth. The other economists, however, viewed this economic theory as a product of the history of the developed western countries which had experienced rising inequalities in the early stages of industrialisation when the exploitation of the poor was assumed to have given momentum to the industrial revolution. They rejected the basic premise of "the sycophants of economic inequality" that production goes before distribution and pointed out that production and distribution are independent within the macro system. They maintained

that the benefits of economic growth would not automatically trickle down to the poor who had an unequal access to the opportunities in producing or in obtaining income from the Gross National Product. These economists, therefore, rejected the trickle down growth model and said that greater equality in underdeveloped countries was a precondition for rapid growth. While Nehru went beyond current economic thinking in accepting equality as an essential condition for growth, the congress leaders were not far removal from the 'sycophants of inequality.'

According to radical perspective development process is a dialectical one. It means that development produces not only equilibrium but its opposite disequilibrium, not only continuities but discontinuities, both social harmonies and social conflicts, balances and imbalances, growth and stagnation and so on. In this view of economic development, growth contains with its antigrowth forces, which will lead to the inevitable breaking up of the existing state of things to the transitory of all things. So the development process cannot be gradual steady, harmonious movement towards equilibium, as seen by many advocates of neo-classical doctrines. These radical economists view capitalist accumulation process produces both wealth and poverty. Enrichment at one end was inextricably linked to impoverishment at the other. But the impoverishment and the brutality that accompanied as a part of some historical process in which destruction contained

40(a) Supra. n. 39.
construction with it. Marx and Engles believed in which bourgeoisie world create progress and wealth at one pole and at the same time drag masses of the people through blood and dirt, through misery and degradation."

Paul Baran argued that 'the British while enriching themselves "systematically destroyed all the fibers and foundations of Indian society." He justified the statement that British rule and policy were responsible for latter "tragic poverty of the people." Paul Sweezy asserted that 'capitalist development at one pole and underdevelopment at another.' A proposition he emphasised that applies not only to the relations between the advanced capitalists countries and the colonial and semi-colonial countries but also within both of these parts.

In any society production and distribution largely depends on the mode of production prevailing in a given historical stage of development. It is, therefore, necessary to understand how the Constitution encodes the mode of production and social relations of production, or in other words the crucial question should be, which economic theory does the Indian Constitution embody or endorse and what kind of development it envisages?

Some argued that plain reading of the Constitutional provisions and particularly Fundamental Rights and Directive Principles,

that the former is concerned with individual autonomy and where as the latter deals with group, community or class. The framework of political economy emerges from the Constitution of India presupposes the existence of individualism, political democracy and private ownership of property as the means of all social development, and socialism as the end of this development. Indian Constitution seeks to realise the goal of socialism in terms of growth with social justice. The state is assumed to play a catalytic role to harmonise antagonistic relations between the means and the end. Thus the Constitutional framework of post independent India, basically drawn on the premise of capitalism for securing socialism by the state is, in fact, a product of historical realities of the class based ideological forces of the National Movement. Hence, it is hardly "surprising that the framework of the political economy of India is Constitutionally established to maintain and generate by the state an aggregate of socio-economic relations in material production for bringing about 'socialism' through the development of capitalism.

Tracing the historical influences on the Indian Constitution making, and the significance of Fundamental Rights and Directive Principles, Justice Chinnappa Reddy, explained the inherent contradictions in the Constitution, He said:

The American and French Revolutions on the one hand and the Russian Revolution on the other represented different stages of class struggle and

the ideologies behind them were necessarily consistent. Inspired as they were by ideologies of different historical sources the Indian Constitution makers produced a document owing allegiance to different ideologies. They were ready enough to fashion a Constitution on the bourgeoisie understanding of the ideals of liberty and equality, but, drawn mostly from the bourgeoisie as they were, they were afraid even to mention the word socialism in the Constitution. But the revolutionaries they were, and pressed as they were by the forces of progress, they were alive to the march of history and the significance of the Russian Revolution and so they accommodated in some measure the principles of socialism in the Constitution.

For some, Patel was accommodated in the Fundamental Rights whereas Nehru in directive principles of the Constitution. This is a very simplistic understanding, because it does not take serious view of the historical evolution and the class nature of the Indian State. If fundamental Rights represents capitalism and the Directive principles 'socialism' then the state will drive the society to the destination of 'socialism'. The logical extension of this argument is that fundamental rights are the means and the Directive Principles are the ends. The dichotomy or difference between the Fundamental Rights and Directive Principles has dominated the discourse on Constitutional Law in the field of social welfare and development. For understanding

more clearly the political economy of the Constitution and the supposed contradiction between Fundamental Rights and Directive Principles and the role of the state in mediating and resolving the conflicts, one need to probe into the social and economic basis of these contradictions. Before doing so one must recognise that means and ends analogy will mask the real contradictions. Part III guarantees and recognises the civil and political rights (collective) and Part IV recognises but not guarantee certain democratic rights but elaborated in terms of principles. The Directive Principles are the basic needs or demands of the people. At the time of framing the Constitution, Indian society was not in a position to accept the rights to food, shelter, work, education and health. The Directive Principles provide legitimacy for the state and its policies as they are concerned with welfare of the common man. Thus Fundamental Rights, and Directive Principles (Democratic Rights) are part of the historical process and evolution. Failure to elevate the Directive Principles to the level of Fundamental Rights is neither an historical nor economic limitation rather it is a change of revolutionary bourgeoisie into a reactionary one for the expansion of capitalism in the form of 'social democracy' or 'socialism.' The fundamental contradiction from the point of view of the Constitution is between the legal equality and social inequality. In otherwords the opposition between the Constitutional ideals and the social reality i.e., the central content of this opposition within liberal democracy is seen between the ideal of social equality and the persistence of structures of hierarchy and dominant institutions such as i.e. State, Property, Caste, Patriarchy and Religions in our Indian society. It is, therefore, rights must be understood in terms of social
relation of production and distribution in a given society. Both Part III and Part IV should be treated as rights understanding the former as means and the latter as ends masks the class contradictions and conflict within the ruling class. Rights are the means or ways to dismantle the structures of domination and hierarchy.

According to Baxi, 'the story of Constitution making is, (thus) the story of the ascending classes .... And naturally members of these classes will appropriate Part III freedoms to facilitate the pursuit of their own heterogenous material interests. The State has to allow the process of accumulation to run their historical capitalist course; the text of the Constitution encoded this development.\textsuperscript{47} Thus the Indian Constitution provides abundant justification for the capitalist maturation of the Indian State and Society, but it is retarded on account of monopoly capital entrenched and collided with indigenous capital.

The political structure spelt out in the Constitution is fundamentally not in departure from the Government of India Act, except the Fundamental Rights and Directive Principles and other provisions dealing with social justice. The 'governing text' provides abundant justification for the emergence of strong State on the pretext of 'social justice text.'\textsuperscript{48} At the same time the Constitution assigned the state with many more responsibilities towards its citizens which its predecessor did not undertake. The objective of building an egalitarian social order


\textsuperscript{48} Ibid., pp. 32-49.
has been enshrined in the preamble of the Constitution. It resolves to secure all its citizens social, economic and political justice, and equality of opportunity. The Constitution lays down several provisions for the welfare of the downtrodden in the Directive Principles. But at the same time, the Constitution does not direct the State for radically changing production relation that it inherited from the British. It was faith of the some leading fathers of the Constitution who professed a liberal ideology that the new State would be able to eliminate exploitation and build a casteless and classless society without disturbing the private ownership of the means of production.

The right to property was granted as a Fundamental Right, and now relegated to the position of legal right. Initially Nehru opposed this but eventually he had to give in. However, his position regarding compensation in the case of expropriation of private property remained ambivalent. Vallabhai Patel scored over Nehru on this issue. The ideological paradox was evident in the Nehru - Patel combination. Nehru wanted to encourage the rising bourgeoise and a middle class to modernise Indian society and economy to build a welfare State for the masses. Patel wanted to develop rural India without necessarily eliminating the feudal order. Even, after Patel's death the ideological paradox persisted in the Congress. There was almost consensus among the leaders that 'to remove all stimulus to private enterprise at that juncture in the country's history was to sign the death warrant of India.' They were primarily concerned to generate surplus and

accumulate capital for economic development. Such development, some of the liberal leaders hoped, would enable the country to overcome the 'backwardness' of society and eliminate poverty. Any radical change in production relations, according to them, would have very high 'social cost.'

The public sector was expected by Nehru and radical scholars to check the growth of private sector and the concentration of wealth in few hands. Manny of the liberal leaders of the Congress Party, bureaucrats in the Government and intellectuals who articulated the State policies and functioned as advisors to the government equate 'Nationalisation' with socialism, understanding the strength of private capital. But many others in Government had different expectations of the public sector. They expected that the public sector would create 'the precondition of private initiative and enterprise and strengthen them by assistance of various sorts.' The State accepted the basic tenants and scheme of the planned development from 'the Bombay Plan - 1945, prepared by a group of representatives of the individual bourgeoisie. The Indian government announced its Industrial Policy Resolution 1946, and 1956 which provided the basic premise of capitalist development. With some modifications in 1980, the Industrial Resolution Policy 1956, continued in operation. Since, 1991's the Indian State has adopted the policy of liberalisation towards free market economy. Thus, Indian Constitution can accommodate even the Structural Adjustment Programme of the World Bank.

Constitution and Planned Development

There are at least three streams of thought led to movement of economic planning from the 1930's onwards. One was basically a conservative nationalist trend which looked upon private enterprise as the major instrument of development which wanted the State to step in wherever private enterprise was inadequate for the job or wherever private enterprise had to be promoted through government subsidies or protection of various kinds. The second was an official or technical stream which regarded economic planning as an essential adjunct to the effort at administering and improving the poverty stricken land that was India. For such advocates of planning, deciding between state and private action was purely a matter of administrative convenience or instrumentally effective. The third standard was represented by the economists and publicists for whom economic planning was an essential part of a strategy to construct socialist society in India. For many of them, indeed economic planning and the expansion of public enterprise became synonymous with an advance towards socialism.

Though there was difference of opinion among the national leaders in regard to development through planning more influential section was under the leadership of Nehru. He was of the opinion that the post-independent reorganisation of the country must be along with socialist lines. Nehru did not share Gandhi's belief that the

Zamindari talukdars and Industrialists could by a change of heart become the trustees of the people. Nehru wrote in his Autobiography: 54

Inevitably we are led to the only possible solution the establishment of socialist orders ... with a controlled production and distribution of wealth for public good. How this is to be brought about is another matter, but it is clear that the good of nation or of mankind must not be held up because some people who profit by the existing order object to the change. If political or social institutions stand in the way of such a change, they have to be removed. The compromise with them at the cost of that desirable and practical ideas would be a gross betrayal.

The National Planning Commission was established in 1938 under the Chairmanship of Nehru. He was of the opinion that planned development must bring about structural as well as cultural changes in the society. The Commission defined the process of planning in India as: "planning under a democratic system may be defined by disinterested experts of consumption, production, investment, trade and income distribution in accordance with social objectives set by bodies representative of the nation. Such planning is not only to be considered from the point of view of economics and the rising standards of living, but must include cultural and spiritual values and the human side of life." The enthusiasm for planning spread to other parties and groups, besides the Congress Party.

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54(a) Government of India, Second Five Year Plan, p. 11.
Indian businessman prepared a plan in 1944, popularly called as Bombay plan, but what is more important is that they had no objection to the central role of the state in the process of industrialisation. The plan categorically stated that the state should evolve and expand public sector as an important instrument for building the economy that had been smothered by the British rulers and for leading it to prosperity along a path of capitalist development. The plan not only proposed that government should provide an umbrella under which the Indian capitalist class could undertake development but urged, since the capitalist class did not have the means to undertake certain vital economic activities itself, government should undertake these and also provide the infrastructure necessary for industrial development and for overcoming bottlenecks created by imperialism to discourage industrialization and retarded economic development. In fact, Bombay plan known as Tata-Birla plan provided precise guidelines for the public sector in India.55

The opinion that state should positively intervene in economic activities, had gained ground not only among the capitalist of colonial countries but also among those of the advanced countries. This happened for a variety of reasons. The imperialist countries used the State in the economic conditioning of the colonies. However, after the experience of the world economic crisis of 1929-33, and the exigencies of the Second World War, the spokesmen of the world capitalist system stressed the need for the active intervention of the

State in economic matters. In India, whatever might be the meanings and intentions behind the words and statements of the national leaders and parties, the masses were attracted towards National Movement for solution to their problem. The emergence of mass politics and the Constitutional reforms broadening the electorate signified a more democratic and progressive posture. The Montagu Chelmsford reforms, the civil disobedience movement and the 1935 Act do not explain adequately the Constitutional changes during this period. It is basically, economic exploitation has more attractive. The First World War, 1930's depression and the Second World War all brought about significant changes in the structure of colonial exploitation for combining new grievances and Constitutional demands with growing strength of businessmen and labour.56

The election manifesto of 1945-46 of the Congress party declared that the most vital and urgent of India's problem is how to remove the course of poverty. The national vision was articulated further in a resolution passed by the All India Congress Committee. The resolution spoke of the 'establishment of real democracy in the country and society based on social justice and equality' emphasising, in particular, equality of opportunity and freedom to work. It went on to say.57

Our aim should be to evolve a political system which will combine efficiency of administration

56. Sumit Sarkar, Supra. n. 12. p. 64.
with individual liberty and an economic structure which will yield maximum production without the operation of private monopolies and concentration of wealth and which will create a proper balance between urban and rural economics. Such a social structure can provide an alternative to acquisitive society of private capitalism and the regimentation of totalitarian State.

There was, however, a stiff opposition for Nehru in establishing a Planning Commission, especially by Patel group. On January 25, 1950 the Working Committee of the Congress Party, after 'acrimonious debate' agreed to a resolution calling for the creation of a Planning Commission. Sardar Patel, however, prevailed in deleting a passage from the original draft that would have been defined the purpose of planning as 'the progressive elimination of a social, political and economic exploitation and inequality, the motive of private gain in economic activity or organisation of society and the anti-social concentration of wealth and means of production.' The conservatives within the Congress, not prepared even to accept socialist ideals, even for appearance sake. All that Nehru could manage was a statement linking the work of Planning Commission to the directive principles of State policy contained in the Constitution.

The process of nation building is not only subject to the Constitutional structuring of the Indian polity but also to the process

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whereby systematic and consistent planned efforts are made for bringing about progress in all parts of the economy and prosperity for everybody in the society. The Constitution of India came into force on January 26, 1950 and the Planning Commission was set up on March 15, 1950. It is, therefore, logical that these two events occurred at about the same time while the former lays down the economic, social and cultural objectives of the Indian Society, the latter provides the mechanism for achieving the objectives of planning. The final draft of the Cabinet Resolution that established the Planning Commission on March 15 singled out three principles as special terms of reference in the preparation of plan:

(i) that the citizens, men and women equally have the right to an adequate means of livelihood (Art. 41).

(ii) that the ownership and control of the material resources of the country are so distributed as best to subserve the common good; and (Art. 39(b).

(iii) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. (Art. 39(c).

Indian plans taken as statements of intent of the planners, are very comprehensive document. If one reads any particular documents carefully enough, one will find almost all desirable objectives set down almost all accorded priority.60 There are three major objectives in the Five Year Plans:

(i) self sustained economic growth;

(ii) a reduction in inequality; and

(iii) a socialistic pattern of society.

Growth is expressed both in terms of output and employment. The desire to reduce inequality which is sometimes explicitly associated with the need to abolish poverty, leads in turn a concern with a reduction in concentration of economic power and land reforms. The decision to pursue a 'socialistic pattern,' of development was an explicit political decision adopted at the Avadi Congress in 1954. Assault on poverty has always been one of the objectives of Five Year Plans.

Jawaharlal Nehru used to claim that the Indian experiment in planning is unique for its 'democratically planned collectivism.' In the Indian plan literature the terms socialist pattern and mixed economy' have often been used to describe its distinctive features. What the planners intended by the use of such terms was to indicate that India was attempting to achieve economic progress and social justice through a series of Five Year Plans, such plans, according to them, would increase the control and ownership of the State in the industrial economy and social infrastructure without abolishing private property, and with the continuation of the market mechanism for the economy as whole.

Indeed, the Directive Principles of State Policy were accepted as the guide to the economic and social pattern to be attained through planning. But the planners warned in an immediate caveat that 'a hasty implementation of measures intended to bring about economic equality, may, in the short run, effect savings and the level of production adversely. Although the Draft outline endorsed goals of social and institutional transformation, virtually all programmes included in the plan were justified by reference to a single yardstick: the economic
goal of increasing production. The result was an approach to planning that limited the government's role to the creation of social capital and financial incentives for the expansion of private enterprise. In practice, institutional reform was assigned secondary importance in the programme for increasing agricultural production. The planners ruled out nationalisation of land for collective cultivation on the grounds of 'a tradition of free peasant ownership.' In the Indian Plan models of the Nehru Mohalanobis era the role of the State was visualised as more direct and crucial in the industrial sector. In this sector the dominance of the public sector in the sphere of heavy and basic industries was clearly indicated. But in the case of the agriculture sector, it was visualized that the state would rely mainly on policy intervention rather than direct control. The existence of wide chasm between statements of principles and programme of action continued in during every plan period, since the planning process has to operate through the legal and Constitutional limitations.

First, Planning Commission is neither created by the Constitution nor by the Parliament but by a Cabinet resolution. Secondly, Planning Commission is only an advisory authority (no power of enforcement) because of the Constitutional provisions. i.e. State Government alone can implement planning policies with regard to State subjects (Art. 246 and List II in Seventh Schedule - 66 items). That is why Mr. Palkhivala, an eminent Constitutional expert has castigated the Planning Commission as Extra Constitutional authority. Thirdly, India has a parliamentary democracy governed by the Constitution and therefore, Planning has to be democratic, answerable to Parliament.

61. Ibid., p. 87.
Fourthly, it is not a comprehensive planning because of two constitutional reasons (1) that economic freedoms are guaranteed in the Constitution and bulk of the economic activity is still with private people. Therefore, any regulation of private economic activities will infringe Fundamental Rights entrenched in the Constitution, and (2) Under the Constitution, economic sectors are allotted to Centre and States (even though some are in Concurrent List i.e., Economic and social Planning. India is primarily an agricultural country and agriculture is a State subject. So is primary education, therefore, Centre cannot plan for the State subjects without the concurrence of the States. Fifthly, Planning is centralised and also decentralised. Planning is done by the States on their subjects and Planning Commission only coordinates the State plans and secondly the Centre controls the Private Sectors through incentives and other regulatory measures. However, decisions regarding production and distribution are taken by the Private Sectors only. Another important problem is with regard to the allocation of financial resources between the Centre and the States are based on political decisions rather than constitutional scheme of financial relations.

Though Nehru was an ardent supporter of 'socialism' and linked the function of Planning Commission with the Constitutional goals, he did not even succeed to insert the word 'socialism' in the Preamble of the Constitution. But in 1954, Parliament adopted the objective of socialist pattern of society. The Second Five Year Plan has explained this concept as: "essentially this means that the basic criteria for determining the lines of advance must not be private profit, but social gain and that the pattern of development and the structure of
socio-economic relations should be planned that they result not only in appreciable increase in national income and wealth ... the benefits of economic development must accrue more and more to the relatively less privileged class of society ... the accent of the socialist pattern of society is on the attainment of positive goals, the rising of living standards, the enlargement of opportunities for all, the promotion of enterprise among the disadvantaged classes and the creation of sense of partnership among all sections of the community." All these changes require a fundamental break in the structure of economy and society. It needs fierce struggle. It is argued that after independence Nehru abandoned socialism, and that instead of pursuing equality 'by means of politics, through violent struggle between the classes' he resorted to the rational realistic management of the government by the technicians of power. Nehru's socialism 'was a political success in the electoral arena but historical failure against such impersonal or 'structural problems' of capitalist, as poverty inequality and exploitation, etc. Nehru was a political success and the same time a historical failure. If the planning and strategy of development is supposed to bring about structural changes, it has passed through within a social framework of political and historical conditions and a regime of institutions. In fact it is political practice which gives life and

64. See Kaviraj, Sudipta (1980). 'Apparent Paradoxes of Jawaharlal Nehru, 'Mainstream, 15,22 and 29 November and 6 and 13, December.
meaning to the Constitution. It has been observed that "The declaration of Five Year Plans to implement Nehru's socialism had ideological, instrumental, suspicious and pathological dimensions. 65

At the ideological level it was a powerful statement of the new kind of ideological framework which would lead India towards modernisation, industrialisation, securalism. Some of the ideology was articulated in the Constitution itself. The State has been given powers to restrict Fundamental Rights ostensibly to achieve these stated aims. Federal government at the Centre were given increased powers to implement other goals, New Instrumentalities were created to plan, review, and monitor programmes for the disadvantaged - and especially certain castes and tribes. Part IV of the Constitution called the Directive Principles of State Policy, which has been variously presented both as the 'soul' of the Constitution as well as 'variable dustbin of sentiment' listed certain priorities, the national ownership of resources, a uniform civil code to replace existing personal laws, the creation of new but indigenous based form of dispute settlement and a new economic policy for a living wage for low income earners. All this was really at the level of ideological declarations. The parallel political declarations creating a mixed economy with state socialist and capitalist components sets the stage for adjustments, compromises, entropy and corruption. At the level of instrumentalities new laws had to be designed which had to be fitted into the legal framework of the Constitution and guided by a socio-political understanding of

the uses and abuses which any such programme would both endanger and encounter. At the level of suspicion, there was some concern about what the new ideology was, whom it was intended to benefit and to what end.

Many Indian lawyers and judges tried to develop broad legal approaches to match the ideological demands of Nehru's State socialism. Nehru's thinking was inspired by the Soviet experiment with palanning rather than Roosevelt's New Deal. However, Indian Planning had to be located within the political economy structured by India's new Constitution. While, Nehru was confident that the Constitutional structure would assist the process of planning, he soon learnt that legal and Constitutional intricacies intertwined with Planning in a much more complex way than he had imagined. Baxi, has pointed out several antimonies and contradictions in the Indian Legal System (ILS). He says that 'all legal systems embody and manifest antimonies and contradictions in their normative institutional and cultural dimensions. These arises not just from the opposition between legal rationality and substantive justice, a feature which is fairly universal to law. Rather, the legal systems of post colonial societies manifest certain distinctive antimonies and contradictions. He, further, says that "these antimonies and contradictions are inevitably built into the 'original' position of Constitution makers in an ex-colonial context. They have to choose between historical continuity and revolutionary break with the past. Problems arise when clear choices are avoided in favour of constitutional electicism. Further, 'a discourse of planning and upliftment of the poor were part of the process of legitimation for a strong


67. Ibid.
and authoritative State. Indian Constitution provides ample justifica-
tion by assigning the State with the task of reconstruction of Indian
society on the principles of democracy and social justice. If the
planning and strategy of development is supposed to bring about
structural change, it has pass through within a social framework of
political and historical conditions and a regime of institutions. In fact,
it is political practice which gives life and meaning to the Constitution.
How, then, the Supreme Court being part of the state responds and
resolve the contradictions that arise in the process of implementation
of programmes of planned development?