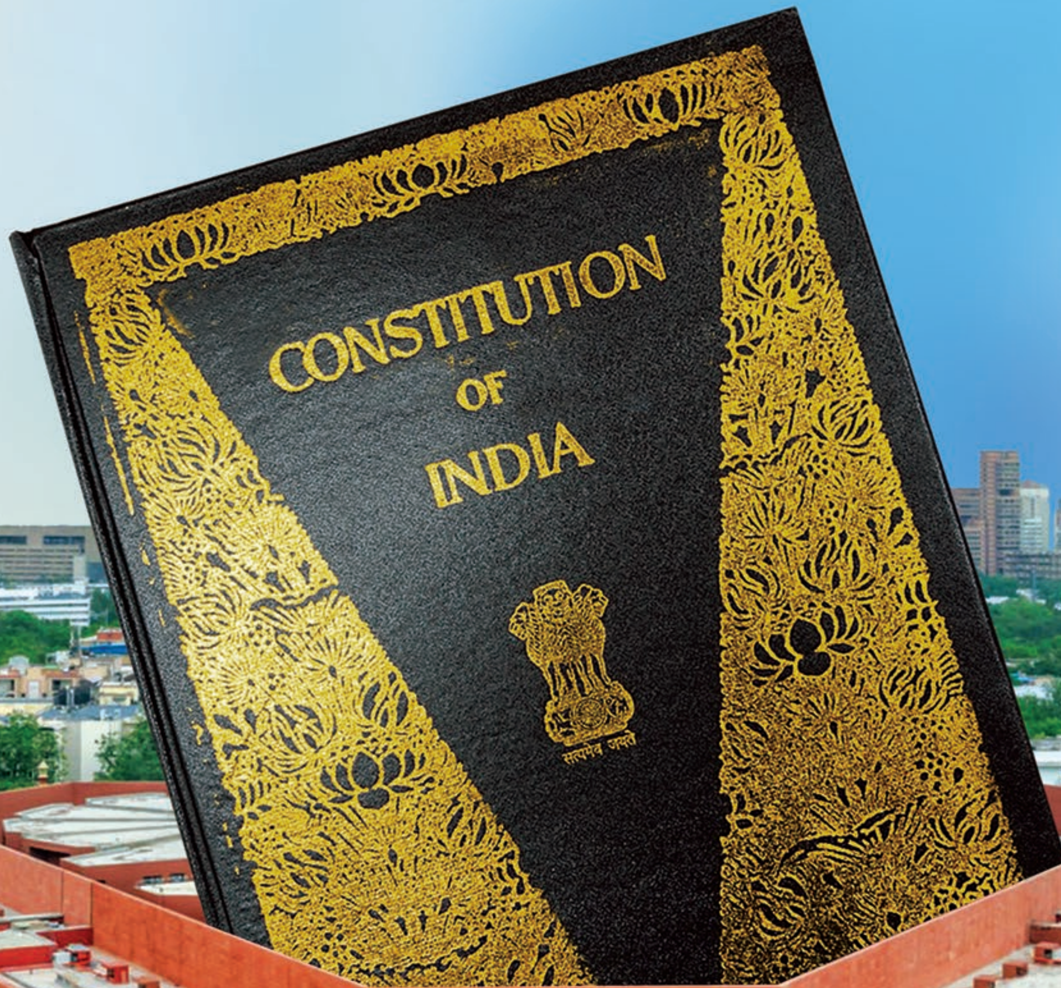
Year: 45, Issue: 1
Jan-Mar. 2024

Rs. 200/-
ISSN 2582-449X

# Manthan

Journal of Social & Academic Activism

A UGC Care Listed and Peer-Reviewed Journal




# Legislation Special

75 आज़ादी का अमृत महोत्सव

# एक ही लक्ष्य-एक ही सपना सर्वश्रेष्ठ बने उत्तराखण्ड अपना

**पुष्कर सिंह धामी**
मुख्यमंत्री, उत्तराखण्ड

**नरेन्द्र मोदी**
प्रधानमंत्री

## आगे बढ़ता उत्तराखण्ड

- मुख्यमंत्री सीमान्त क्षेत्र विकास योजना (एमबीएडीपी)- उत्तराखण्ड राज्य के अन्तर्राष्ट्रीय सीमा से सटे पांच जनपदों क्रमशः चम्पावत, पिथौरागढ़, चमोली, उत्तरकाशी एवं उ०सि०नगर के 09 सीमान्त विकासखण्डों में आवासित परिवारों को सामुदायिक / समग्र विकास आधारित आजीविका सृजन, स्वरोजगार हेतु कौशल विकास कार्यक्रमों का क्रियान्वयन तथा मूल्य संवंधन, विपणन आदि आवश्यक सतत् आजीविका के संसाधन एवं सुविधायें ससमय उपलब्ध कराना है ताकि सीमान्त क्षेत्रों में पलायन को भी रोका जा सके। वित्तीय वर्ष 2022-23 में कुल ₹ 2000.00 लाख की धनराशि सीमान्त जनपदों हेतु स्वीकृत की गई. जिसके सापेक्ष रु0 शत प्रतिशत धनराशि जनपदों को अवमुक्त की जा चुकी है।

- मुख्यमंत्री पलायन रोकथाम योजना का मुख्य उद्देश्य पलायन तथा ग्राम्य विकास निवारण आयोग द्वारा चिन्हित गांवों में आवासित परिवारों / बेरोजगार युवाओं / रिवर्स माइग्रेन्ट्स आदि को स्वरोजगार को उपलब्ध कराने हेतु वर्तमान में कियान्वित विभिन्न विभागीय योजनाओं तथा गैप फिलिंग के रूप में इस योजना के तहत आवश्यक वित्तीय सहायता के माध्यम पलायन रोकना तथा रिवर्स पलायन को बढ़ावा देना है। वित्तीय वर्ष 2022-23 में कुल ₹ 2500 लाख की धनराशि स्वीकृत की गई, जिसके सापेक्ष शत प्रतिशत धनराशि जनपदों को अवमुक्त की जा चुकी है।

- वीर चन्द्र सिंह गढ़वाली पर्यटन स्वरोजगार योजना में वित्तीय वर्ष 2022-23 में 285, वित्तीय वर्ष 2023-24 में सितम्बर, 2023 तक 95 योजना प्रारम्भ (वर्ष 2002) से आतिथि तक 7257 लाभार्थियों को लाभान्वित किया गया।

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RNI No. 32485/78

ISSN 2582-449X

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132, Patparganj Industrial Area,
Delhi-110092

# Manthan

*Journal of Social and Academic Activism*

Year: 45, Issue: 1 Jan-Mar 2024

# Legislation Special

Editor

**Dr. Mahesh Chandra Sharma**

## A UGC Care Listed and Peer-Reviewed Journal

**Manthan is a multidisciplinary, peer-reviewed, academic and theme oriented** journal dedicated to the social and academic activism, published quarterly from Delhi. It is always oriented on a particular theme. It welcomes original research articles from authors doing research in different genres of Humanities.

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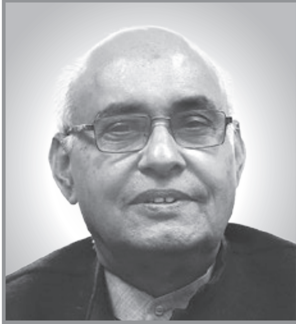
# *Editorial*



**Dr. Mahesh Chandra Sharma**

Who makes law(s)? Who is the lawmaker? The answer to this question is not an easy one. Because no specific person can be pointed out in this context. The reason for this lies in the fact that no specific individual can be indicated in this regard. Can any specific group therefore, be pointed out? No, this too cannot be done. Actually, the answer to this lies in a particular process. We must know what that is.

India is an ancient, cultured and civilized country, but its current legislative process has been adopted from the Act of 1935 introduced by the imperialist British. Our Constitution was adopted, enacted and rendered unto us on 26 November 1949 (date Margashirsha Shukla Saptami, Samvat 2006 Vikrami). Chapter Two of this Constitution describes the process of formation of the Legislature (Parliament) and the process of legislation from Articles 107 to 117. Its legality can be known by a reading of the same. However, the question before us is: does this legal process ensure public participation in lawmaking? Does lawmaking through parliamentary processes provide information to the public? Is there any public dialogue on this?

Legally, no citizen has the right to say that he was not aware of this law, and hence violated it. The law assumes that every citizen is knowledgeable regarding the law. In any case, the presupposition of parliamentary democracy is that the people themselves make laws through their representatives. How therefore, can one who himself makes the law be ignorant of it? If today we test these presuppositions on to the criteria of our practical realities, the situation that becomes manifest before us would be contrary to these presuppositions. Leave aside the common citizen, even well-educated people cannot know the relevant law on their own without the help of a lawyer. It takes years for the courts themselves, despite the assistance of learned lawyers, to decide whether an act is in accordance with the law or against it.

Democracy is considered to be the rule of law or the rule in accordance with law. Members of Parliament or legislatures are considered lawmakers. Are our MPs and MLAs truly law makers? Does any candidate for the Legislative Assemblies or Parliament ask for votes for 'lawmaking' at the time of elections? Does any voter vote for lawmaking? Do the

people of any constituency obtain information from their MP or MLA about the law made by them? Alternatively, do these legislators supply any information in this regard to anyone? All MPs and MLAs publish their progress reports in their constituencies. They generally describe development functions (executive), not legislative functions. The social image of our MPs or MLAs is not that of law makers but no one has any complaint about this negative image. What should we call this situation, from a democratic point of view? God alone knows.

What is the role of legislators in legislative work? Do legislators themselves introduce bills? Generally, legislators do not so themselves; if they ever do, those are called private bills, which are usually not passed. The bills that are passed are introduced through the Cabinet. MLAs or MPs are not free to express their opinion on these bills. They have to adhere to the whip of the party. If the MPs or MLA are from the ruling party, they will have to support the bill(s) presented by the government. If they are in the opposition, they would generally oppose those bills. The MLAs or MPs have no freedom of their own and are bound by the whip of their respective parties. That is why generally, no one is interested in the debate on bills. Very important bills—even budgets—are sometimes passed without debate.

So, are political parties lawmakers? No; parties too, are not law makers; they are run by their executive committees. There too there is never any discussion of a legislative nature. Some popular laws are indeed discussed by the ruling parties in their general meetings while some other unpopular ones are talked about by opposition parties in the general meetings they conduct. Day-to-day legislation is a non-subject matter for all of them.

Only those bills that are introduced by the government through the whip of the ruling party are ultimately passed. Therefore, let us assume that the government is the lawmaker. Running or governing the government is constitutionally the function of the executive. In a parliamentary system, does the executive also perform the work of the legislature? If so, is the legislature under the control of the executive? Does it not have any independent function of its own?

If we look at the language of our laws, it is not the language of public

representative executives (ministers). Our laws, which are complex and made up of long sentences, could not have been made by ministers or legislators. So, are legal experts and bureaucrats our lawmakers? Our judiciary is also a part of the lawmaking process; each of its decisions becomes a law. Judicial decisions are decisive in the interpretation of law. Even after assessing all these facts, we are not able to come face-to-face with our law maker.

In a parliamentary democracy, governments make laws to govern themselves, but these laws also are tools of the police and bureaucrats. Such laws are certainly necessary to control anarchy, but they also encourage civil oppression and economic malpractice. No one has control over these rules and byelaws. This system is contrary to the concept of a self-governing society. In this, the rule of law in turn becomes the rule of the police and bureaucracy. Such an administration is the mother of malpractice, corruption, favoritism and discrimination. Even MPs and MLAs, who are generally considered lawmakers, feel helpless against this.

We have discussed these visible factors of the domain of lawmaking. There are some factors that remain in the background, which are called ‘pressure groups’ in the terminology of politics. The first ‘pressure group’ is vested interests. Regulations and amendments keep taking place to suit the vested interests of industrialists (capitalists). In a democracy, the election process is a decisive one and is becoming expensive. It is easier for political parties to obtain large sums of money from centralized industries. Elections are no longer fought with small donations from common citizens. Political parties help these above-mentioned vested interest groups through laws and hence, instead of serving the interests of the people, legislation is carried out to suit the interests of the moneyed.

The second big pressure group is of cheap populism. The vote bank holds great importance in the India’s election process. The biggest vote bank in India is that of the poor. It is for these people that populist schemes are made. Similarly, caste is a big pressure group, and caste-based legislation is its result. These pressure groups are the behind-the-scenes factors in our legislation.

The major issue of legislation is present before us. We are not an anarchist society. Even before the enactment and implementation of the present Constitution, we have been a civilized society for centuries. Even today, our rural society adheres to traditions and disciplines that are not dictated by legal provisions but directed by folk traditions.

India's institutions of householder life, marriage and caste are nourished not by law, but by values. However, there is no need to underestimate the importance of law in this context. There is a need to find a way of legislation consistent with society and values.

This issue of *Manthan* has carried out some enquiries, which introduce us to the status of legislation in ancient India, medieval and modern legislation. The important issue is that legislation should become the basis of our public discourse. Pt. Deendayal Upadhyaya talked about "Lokmat Parishkar" (refining public opinion) in this context. His famous series of articles is titled "Aapka Mat" (*Complete Works of Deendayal Upadhyaya*, Volume Ten, nine articles). We should read and acquaint ourselves with the same.

The 73rd Amendment is an important milestone in India's constitutional journey. This amendment envisages the Gram Sabha, in which every voter is a legislator. This is an auspicious resolve of direct democracy, but it has not yet been implemented in practice. Common citizens do not know anything about it. All political parties are silent in this regard. Perhaps everyone has a vested interest in the continuance of centralized state power, and do not desire the decentralization of power. In this issue of *Manthan*, the article by Dr. Chandrashekhar 'Pran' is especially worth reading.

The society that has legislative sovereignty is the bearer of clear concepts. Ram Bahadur Rai's article is a milestone in this context and should be read with interest. There is an entire series of articles on Indianness. Scholars have written on current legislation. We have obtained Prof. Sunil Chaudhary as the guest editor of this issue. His guidance became a factor in enriching this issue. I accord my gratitude-filled greetings to him.

We also await our next issue of April-June 2024, which will be a special issue on the Executive. As with the Legislature, *Manthan* shall closely examine the Executive too. All of you are invited to be part of this.

With sincere regards

mahesh.chandra.sharma@live.com

# *Guest Editorial*

**Prof. Sunil K Choudhary**

Reflection of views, articulation of reviews and transformation of news into a new academic discourse constitute the essence of *Manthan*. The long and arduous journey of past six months in deciding the theme, seeking articles, finalizing by editing the issue with honesty, regularity and sincerity happened to be the core plank of the Editorial Board. The current issue of Vidhayan [Legislation] marks the beginning of *Manthan* in the new year, 2024 that would further lay the ground of execution and adjudication as part of governmental trinity in its following issues.

Getting the honour of co-editorship of *Manthan* could have been a cherished dream for any young academician who would find new avenues of research while working with the team of senior and superior scholars premised on their experienced and exceptional scholarship. Right from the conceptualisation of *Manthan*'s theme to the culmination of articulation and execution of articles by the eminent authors unfolded broader platform of deep interaction and engagement. Coalescing the ideas of the writers by mainstreaming them into a conceptualised theme with a reflection on their write-ups was not less a daunting task, particularly in terms of providing suggestions or making observations.

The current issue of *Manthan* with a focus on Legislation could be seen as the foundation stone of a three-tier system of parliamentary democracy covering law making, law executing and law adjudicating on the one hand and national, state and local institutional framework of working on the other. Comprising three distinct phases from ancient to medieval to modern India, the twelve articles selected for publication to the current theme are written by eminent scholars of great repute. All these articles seem to present a linkage between ancient legacy of legislation built on Smritis, Samhitas and Dharmasashtras to the medieval and modern system of administrative invasion, leading to the contemporary notion of legislation under post-independence India thereby culminating in New India of the 21st century India.

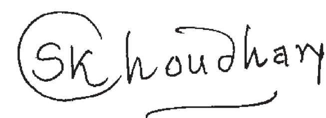
Conceptualising terms like Swaraj, Swarajya and Suraaj along with a sharp distinction between nation-state dichotomy, the current issue highlights changing narratives of legislative processes and procedures to be grounded into the principle of Dharma and the ethos of Spirituality.

The discourse on India and Legislation is taken to the ancient roots of depicting the binary as Bharatiya Vidhi and Vidhayan to be studied from the twin lenses of democratisation and welfarism. Western and Orientalism have been categorically defined and differentiated by the writers with the urgency of rooting legislation into Oriental paradigm on the one hand and spiritual framework on the other. The Islamic invasion not only brought Sanatan vs Sharia duel but also a duality between Hinduism and Islam that sought to define the nature of legislation throughout the medieval era.

The modern era begins with formalisation of legislation under colonial period. The Legislative Council Acts and the Government of India Acts imparted new training and turning to an emergent class of Indians as legislators. The Vedas, Upandishads, Arthasashtras, Jatakas and various ancient texts became the basis for the founding fathers in both designing and defining the nature of legislation as part of the system of parliamentary democracy. The role of regional business chambers also had a bearing on the evolving notion of India's federation and legislation process. Built on the British Westminster System, the legislative competence of Indian Parliament premised on legislative-executive fusion of power with an independent judiciary exercising power of judicial review strengthened as well as weakened the process of legislation since the 1950s as stated by one of the writers.

The Grassroots Governance marked a new legislative beginning through 73rd and 74th constitutional amendments during the 1990s but they too have highlighted changes and challenges to New India to be addressed with new techniques and technology, felt the writers.

Written from the new perspectives and paradigm, the twelve pioneering articles of the eminent scholars in the current issue of *Manthan* unfold new horizons of innovation and research in the realm of legislation and governance.



Prof. Sunil K Choudhary

Ram Bahadur Rai

# Swaraj, Swarajya & Suraj

Three important words that emerged during India's freedom struggle were 'Swaraj' (self-determination), 'Swarajya' (self-rule) and 'Suraj' (good governance). Here is a fundamental analysis of their respective definitions and the role they played during the independence movement

"Today, we will discuss 'Swaraj' or self-determination in politics. Dominance of man over man is felt the most clearly in the political sphere whereas in the realm of thoughts, one culture indirectly establishes its dominance over another. The consequences of such dominance are more serious because it is generally not felt."[1] This is how famous Indian philosopher Krishna Chandra Bhattacharya began his conversation with his students one day. The year was 1928 when he deliberated upon 'Vicharon Ka Swaraj' (self-determination in thoughts) during that conversation. Did he get the inspiration to think on this subject from the rise of the Swaraj Party? There is no proof of this. But it can be said that at that time, serious thinking on 'Swaraj' was going on not only in the political circles but also in the intellectual sphere. The immediate reason for this may also have been that in 1922, Moti Lal Nehru and Chittaranjan Das had formed the Swaraj Party which was, however, a political platform.

Prof. Krishna Chandra Bhattacharya has described Swaraj to be synonymous with self-determination in its political sense. But when he used to talk about self-determination in thoughts, he explained Swaraj in the cultural context. Vicharon Ka Swaraj has a remarkable history. First of all, Prof. Bhattacharya spoke to his students about it and then some debate took place on it. Three years later, Sir Ashutosh Mukherjee delivered a memorial lecture which was transcribed into an article by his students. It was first published in 'Vishwa Bharati' magazine in 1954. It has been published in various languages. Now, Vicharon Ka Swaraj has become the fundamental article on every aspect of the concept of Swaraj. Prof. Krishna Chandra Bhattacharya has summed it up in these words, "We have to return to the cultural level of the real Indian people and together with them, we have to develop a culture that suits our times and native talent. 'Swarajya' (self-rule) will have to be achieved in these thoughts."[2] This part of the article is relevant even today. The limit of time cannot bind it. It is timeless. It contains a philosophical framework for the notion of Swaraj. Therefore, Swaraj is like a guiding light.

It is true that the context of Swaraj today is not the same as it was in the first decade of the twentieth century.

In other words, the connotation of Swaraj has evolved gradually. We can understand this from the initiative of Lokmanya Bal Gangadhar Tilak. He showed India the path to Swarajya. He wrote ‘Geeta Rahasya’ for this purpose. With his subtle intelligence, he awakened the spirit of duty among the people of the country and prepared Congress to follow the path of resistance. By including Lala Lajpat Rai and Vipin Chandra Pal in his team, he formed the triad of 'Lal-Bal-Pal'. It was an arrow that directly hit the British whose serious wounds, apart from causing severe pain, also served as a warning for them. Similarly, it gave an assurance to the Indians of victory in the 'Mahabharata' (a conclusive battle between the forces of good and evil) of that time. That was the time of national resistance arising out of the partition of Bengal. At the same time, Lokmanya Tilak echoed the four-point message of ‘Swarajya’, ‘Rashtriya Shiksha’ (national education), ‘Swadeshi’ (use of indigenously manufactured goods only) and ‘Videshi Bahiskar’ (boycott of goods imported from abroad). It is also important to remember here that Tilak had made it clear in 1907 itself that by Swarajya, he meant self-rule. He disagreed with Dadabhai Naoroji's argument that the demand for Swarajya cannot be abandoned in the name of ‘Surajya’ (good governance). There must be a good governance but he completely disagreed with the good governance under British rule. He held that people having their own government is Swarajya. That is why he declared that ‘Swarajya is my birth right’. These immortal words inspire us even today. He is the father of the concept of elected and accountable government. He also challenged the British claim that Indians were incapable of ruling themselves. He said that Indians are very much capable of running their governance in a befitting manner. It is clear that in the first decade of the twentieth century, Swaraj used to be accepted rather by the leaders with the intention of self-determination than by the common people. One reason for this was also psychological. It had penetrated into the hearts and minds of the great people at that time that the British Raj was extremely powerful. Therefore, it cannot be challenged but something can be achieved by pleading with it. Such an idea (pleading with the British) was not considered to be in personal interest but rather in the interest of the country. Therefore, the voice of self-determination was considered as the greatest political courage of that time. This concept of self-determination gradually developed into Swarajya. This story is a different one and is irrelevant here.

Now, the question pertains to Swaraj and Swarajya. At present, many scholars believe that Swaraj and Swarajya are synonymous words. Is it like that? Difficulty arises when the difference between the definitions of ‘Hind Swaraj’ and ‘Gram Swarajya’ starts appearing automatically. Both these books were written by Mahatma Gandhi.[3] He first wrote ‘Hind Swaraj’. In this, he has adopted the style of ‘Prashnopanishad’ to reveal the truth of his time. This was in the question and answer mode. He has written a chapter on Swarajya in this small book. Its title is “What is Swarajya?”[4] In this, the reader asks, “What do you think about Swarajya?” The answer of the editor is: “We all are becoming impatient to achieve Swarajya. But we have not yet reached at the right opinion about what it means.”[5] The editor is Mahatma Gandhi himself. At one place in the same book, he has written, “This is not the Swarajya of my imagination.”[6] His statement is in response to another question of the reader. Then he elaborates it a bit and writes, “I find it difficult to understand Swarajya as easy as you find it. Therefore, for the time being, I will only try to explain to you that what you call Swarajya is not really Swarajya.”[7] What is hidden in this statement is that self-determination is not Swarajya. The first condition of Swarajya is freedom. But this dialogue increases the anxiety of the curious. A person in a dilemma would be more confused. Those who want a straight forward answer would wait for it to come by so that they get the gist of it directly without going through the process of a debate. However, the difference between Swaraj and Swarajya is clearly visible in Gandhiji's own statement when he says, “Everyone should get Swarajya for himself -- and everyone should make it his own. The Swarajya

that other people provide is not Swarajya, but a foreign rule."[8] Here, he is the guide of Swaraj. The reader-editor dialogue in 'Hind Swaraj' actually took place on a ship in 1909, but it could not remain limited to the mind alone. It raised such a question which demands continuous discussion all the time.

Mahatma Gandhi was the best politician of the freedom struggle. The three words -- Swaraj, Swarajya and Suraj -- came into use during that struggle. Many scholars consider these as supporting streams of freedom. When these streams emanating from three different directions meet, is it Swaraj, Swarajya or independence? The concepts of freedom are hidden in these words. These have peaks as well as deep moats. It is a fact of history that the national awakening that arose from the partition of Bengal was the full consciousness of Swaraj. Mahatma Gandhi gave it a new meaning. He wrote the meaning he understood the word Swarajya in this way: "By Swarajya, I mean the governance of India as per the common wishes of its people. Public opinion should be decided by the vote of the largest number of adult people of the country, whether they are women or men, whether they are from this country or have come and settled down in this country. These should be such people who have rendered some service to the country through physical labour and who have got their names registered in the voters' list… True Swaraj does not happen when a few people acquire power. It can rather be achieved when people have the right to resist if power is misused. In other words, Swaraj can be achieved by creating awareness among the people that they have the right to take control of power and regulate it."[9] He wrote this in 1925. It was related to the political discussions going on in the country at that time. It was also associated with the dilemma of Swaraj Party over the politics of Congress.

Mahatma Gandhi repeatedly felt the need to express his views on the concept of Swarajya. Therefore, he wrote again, "Swarajya is a sacred word; that is a Vedic word, which means self-governance and self-control. The English word 'independence' often gives the meaning of an unfettered freedom or a freedom free from all kinds of limitations. That meaning does not connote the word Swarajya."[10] He explains this in the voice of Lokmanya Tilak but giving it the colour of his own language, "Just as every country is capable of eating, drinking and breathing, and similarly every nation has full rights to run its own business. No matter how badly they do it."[11]

The English word 'liberty' means freedom. An encyclopedia[12] has defined 'liberty' in this way, "If the Indian tradition has the closest word for freedom, it is 'Mukti'. But the meaning of this liberation is 'Moksha' (salvation), that is the liberation from the cycle of birth and death on the transcendental plane."[13] In the same sequence, it is also mentioned that "But in the modern and temporal context, the meaning of liberation which is being discussed here is that freedom from social and political constraints. In India, this modern idea of freedom is accepted mainly in two meanings: political freedom and social independence."[14] "Despite being simultaneously touched by the consciousness of these two forms of freedom, at most India can say that it has achieved political freedom and many positive steps have been taken on the path of gaining social independence, but the struggle to reach this destination is still going on."[15] "The idea of independence arrived in India through three different routes. First, the legal arrangements made by the colonial rule contained a hidden understanding of the rights and freedoms of the individual. Second, the institutional spread of the Western education system. Third, the influence of Western social thinking."[16]

In the mire of legislations, Swaraj, Swarajya and Suraj are considered the same as if there is no difference in their meaning at all, except that their spelling and pronunciation are different. It is based on time. In fact, those who legislate certainly consider these words to be the same. But is it so? They look similar, but they are never the same. The consciousness of Swaraj has not yet reached the closed doors and windows of the people engaged in legislation. The desire and effort to achieve this has always been there in the political leadership, but it seems that success is far

away. The world of the people engaged in legislation is different while the expectations of the society are different. They might be the same at a few places but they are separate at most of the places. The world is different, so their world views are also different and the formulae of life vision are also different.

In my understanding, the horizon of Swaraj is cultural. It is cultural in character in which the whole life is contained. The system of governance is just a part of it. But there is political meaning hidden in Swarajya, the implication of which lies in Suraj. Swaraj was a major objective of India's independence from British rule. That was a dream which became a nightmare because the political circumstances in the last phase of the freedom struggle led to decisive interventions. Due to this, India could gain only political independence. That is Swarajya. British rule left behind a colonial structure in its legacy. The dream of Swaraj cannot be fulfilled without putting it into its own mould. Swaraj can build its grand edifice on the ruins left after the destruction of colonialism. The irony is that independent India itself considered the colonial bondage as a necklace. Some people can be seen even calling it a situational compulsion. But this is just a clarification and nothing more than that. If there is such a bondage in freedom, then it is a sign of mental subjugation. Even if we don't call it slavery, then what will we call it if not an illusion of considering our shackles as ‘ghunghroo’ (anklet bells)? Meera too had tied a ghungroo, but a devout Meera created the immortal sound of salvation.

The biggest obstacle in Swaraj's action plan at the level of thought is the ideological conflict between modernity, colonialism and social democracy. In this regard, efforts have been made to think in accordance with the Indian philosophy and synthesise it whenever necessary. Yet, this issue is as complex today as it was before independence. The biggest challenge is the definition of these words. There are difficulties at every step in keeping pace with the times through intellectual discussion and dialogue. Eminent historian Dharampal is one of those wise people who once again awakened the consciousness among a large community that “It has happened many times in history when many other civilisations of the world have felt that India has an important message to solve their problems. In his own time, just 50-60 years ago, when Mahatma Gandhi was leading this country in a direction of his own, many people of the world started feeling that India would show a new path to the entire humanity. That situation may come again. And in that situation, when the world will start seeing something of importance in Indianness, then a solution will certainly be found out to build permanent and healthy relations of equality with the world. The time has already come now to make the intellectual, mental and physical efforts required to reach that state.”[17] He had said this in 1991. Has there been any progress in that direction? The answer remains to be found.

There can be many answers to this. Do not indulge in guessing about what could be the answers, rather try to see what the reality is today. To understand this, we should remember the incident of 1991 in its entirety. That time was similar to that of 1905 to 1908. On the one hand, a new consciousness of nationality was emerging while on the other hand, the concept of economic liberalisation of the then Central government was being propagated under the shadow of globalisation. It was being impressed upon that this was such a concept of the 21st century that it was mandatory for both the North and South of the globe. The spirit of Swadeshi was challenging it, but it became the “Maharana Pratap of Haldighati” (vanquished but immortalised). However, the ground reality has changed at the global level today. Globalisation and economic liberalisation are becoming a thing of the past. India has crossed one-fifth of the 21st century. One has to know the meaning of two words to understand the last decade of this period -- India's ‘Amritkaal’ (renaissance period) and ‘atmanirbhar’ (self-reliant) India. Both the words hit the bull’s eye.

At such a time, determining the relationship between modernity and Swaraj is also a problem which has to be solved. There is an understanding that “It was Gandhian philosophy where both these streams of freedom (modernity and social democracy)

found expression together at one place. Gandhi used the word ‘Swaraj’ for independence, which is made up of ‘swa’ (self) and ‘raj’ (rule). This could be understood in two ways -- having our own rule or one ruling over himself. In this way, one meaning of Swaraj was understood as constitutional and political independence while the other meaning was considered as freedom at the social and collective level. Gandhi also gave a new dimension to social independence which meant not only freedom from the clutches of (redundant) traditions but also freedom from the cultural dominance of the West. In his famous work ‘Hind Swaraj’, Gandhi presented an understanding of Swaraj which meant the achievement of self-respect, the understanding of one's responsibility and the development of the capacity for self-liberation, for freedom from dehumanising institutions. To achieve this Swaraj, it was necessary to realise one's true identity and deeply realise one's relationship with the community and the society. Gandhi's goal was that in accordance with this understanding of Swaraj, there should be a continuous effort to develop such institutions, structures and processes which are in accordance with the diverse cultures and traditions of India and also live up to the principles of the natural world. Gandhi believed that such a development would not only liberate the individual but would also liberate the collective capabilities, whose foundation would be laid on the principle of justice.”[18]

Another true challenge to Swaraj is colonialism. Ambika Dutt Sharma says - “In the process of colonisation and post-colonial influence, India has divided itself for at least three times. The first self-division was the disconnection of India's present from its glorious past by Orientalist scholars. The result was that we suffered from an inferiority complex towards our own culture and civilisation and thus psychologically forcing present India to ape the modern Europe. The second self-division has occurred due to the increasing separation between politics and culture in the post-Independence era. Due to this, India, which was once a “cultural nation of unitary nature”, got transformed into a “political nation-state devoid of culture” despite being freed from the colonial clutches. The third self-division of India took place on linguistic basis. In this country, English assumed the status of the language of ‘nationism’ while the Indian native languages were relegated to the position of being the languages of multiple sub-nationalities. In this way, ‘nationality’ got extinct from India which is now divided into nationalities and sub-nationalities. The role of civilisational campaign of modernity has been behind all these self-divisive cracks, just like Kaikeyi was stigmatised, Ram was exiled, King Dasharath died and what else didn't happen but Manthara (modernity) succeeded in doing all this secretly.”[19] Which Indian would not want to come out of this self-division! This might be the desire but how to turn it into a resolution is the moot question.

It is concerned with the constitution, culture and corresponding legislation. If we make these the criteria, then the question will arise: Whether these ideas have found a place in the Constitution of India? The second question would be: Whether changes were made in the structure of the system of governance on the basis of these values and principles? There are many opinions on both these questions. However, though gradually, this idea is becoming universally accepted that “In fact, the entire intellectual class can be held responsible for the ideological suicide in the post-Independence period but among them all, most of the share goes to Pandit Jawaharlal Nehru.”[20] This statement is part of a longer description. But this fact should also not be lost sight of that a definition of the right and principle of freedom has been given there in the Constitution. At a level, it is related to the citizens while at another level, it is related to the society. These can be found in the chapters -- Fundamental Rights and Directive Principles -- of the Constitution.

When the same word is used everywhere, there is no difficulty in understanding its meaning. But jumbling up of Swaraj and Swarajya creates difficulties for a person. I think there is a difference between Swaraj and Swarajya. Gandhiji used the same word in different contexts. The correct meaning can be derived from the correct context.

The correct reference is in 'Hind Swaraj'. The word Swarajya has appeared countless times in the writings of Mahatma Gandhi. Has he just reiterated Swaraj in different contexts? It's not like that. Only those who recognise the purpose in Mahatma Gandhi's writings can understand this well. It is true that he has repeatedly used the word Swarajya. But the ultimate truth of Swarajya is not in the word, but in the context of the word being used. It is related to the purpose. My understanding is that as the consciousness of Swarajya increased, the purpose of using the word kept changing in the writings of Mahatma Gandhi. In order to increase the understanding of the Swarajists within Congress as well as the society about it, he kept mentioning Swarajya on various occasions. He kept adding new meanings to it in its successive uses. This sequence went on till 1945. His objective was first to transform Swarajya into Swaraj and then its final form was to become Suraj, which can be read in his famous amulet.

The right context has many dimensions. To understand the nature of Swaraj, it is important to look at this word in a slightly different context from that of today's. This word is not made up of just two and a half letters; this is the limitation of the language. This word, in fact, contains the ancient tradition of India. But in this article, Swaraj refers to the consciousness of nationality that is fast emerging in modern India. Therefore, it becomes secondary as to when and who used it first. It rather becomes important to know as to which great men kept this concept in their glossary of words under usage which had an impact on the awakening of consciousness of the Indian society. When we think of this, the first name that comes to our mind is Swami Vivekananda. He did not make politics the vehicle of his ideas. But his message left a deep impression on the society. Swami Vivekananda left his indelible impression on the politicians and social reformers who were engaged in shaking off the shackles of colonial bondage. He made Vedanta the basis of national awakening. He believed that Vedanta included all religions. Under this foundation lies the spirituality of India. Spirituality is the search for such an element within oneself, which cannot be tied or enslaved; it is always free. This is spiritual freedom. If we expand it a little, then we can say that Swami Vivekananda is the father of the idea of Swaraj in modern India. He is like a river. Everyone accepts him.

Swami Vivekananda gave us the concept of Swadeshi Swaraj (native concept of self-determination). It is easy to understand this very accurately through the analogy of a river. Let us assume that Swaraj is a river. Swaraj has a philosophy of its own. There is an ideal way of living life in it. Swarajya is a pitcher. The government is the medium or the person who wants to fill the pot with river water. So, he has to go to the river with the pot to fill it with water. This is the only way to satisfy the thirst of parched people, families and the society at large. Will ever the river go to the pitcher? This does not happen. The person has to take the pitcher to the river and bend a little there. Then only the 'prasad' (offerings to god) in the form of river water can be filled in the pitcher. In today's language, the method of filling water from the tap would also be similar. The problem is the system of self-rule. There is ego involved because of the colonial mindset and the habits formed out of it. For Suraj, it is important that Swarajya reaches the people. For this, humility and such human qualities are required.

Similarly, Swaraj contains culture based politics in it. American author Dennis Dalton's new book explains this very well. The title of the book is 'Indian Ideas of Freedom'. The second

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edition of this book is already out in which only one word has been added to its title. Its first edition came out in 1982. It was a study of the thoughts of four great men -- Swami Vivekananda, Sri Aurobindo, Mahatma Gandhi and Rabindranath Tagore. Now three more names have been added to the list in the second edition -- Bhimrao Ambedkar, M.N. Roy and Jaiprakash Narayan. At present, this book is also in discussion. What is relevant to us in it is that Dennis Dalton has also accepted that the consciousness of freedom in modern India emerged from the statements of Swami Vivekananda. In the 'Foreword' to this book, historian Ramachandra Guha has written, "The key thesis of this book is that Indian ideas of freedom drew deeply on indigenous traditions of thought, especially religious thought. Dalton argues that these thinkers saw the quest for freedom as both individual and political, as a deeply personal search for spiritual liberation that was linked to, and indeed proceeded, the transformation of society as a whole."[21]

Swaraj alone gives expression to such transformation whose roots are found in the religious and spiritual traditions of Indian society. Swaraj gives a modern form to that same tradition. There is Indian thought in Swaraj. This thought created an energy with its magical inspiration. It became a wave whose first representative was Sri Aurobindo. The public anger emanating from the partition of Bengal made him the representative of the concept of nationality. He became the voice of converting Swaraj into 'Purna Swaraj' (complete self-determination). During that period, he met a 'yogi' (ascetic). He was Vishnu Bhaskar, from whom he learnt yoga and went through his first spiritual experience. One day, Sri Aurobindo felt that Swami Vivekananda himself was giving him yogic teachings. His views on Swaraj should be seen in this context, which is famous as Uttarpara Lecture.

The concept of Swaraj has evolved gradually. There was a time when Swaraj meant self-determination. During the period of British rule, self-determination was the first step on which thinkers had put their feet on. At that time, the idea of complete self-rule in Swaraj was considered an audacious leap. Famous philosopher Krishna Chandra Bhattacharya had delivered a much talked about lecture 'Swaraj in Thoughts'. What was it? Read it in his own words: "De-culturisation occurs only when a person's own traditional thoughts and values are uprooted by the thoughts and values of a foreign culture without their comparative evaluation, and that foreign culture takes that person under its grip like a ghost or a phantom. This way, subjugation is slavery of the soul. When a person frees himself from it, he feels as if his eyes have opened up. He experiences a new birth. This is what I call Swaraj of thoughts."[22]

He tells us how at all we have turned away from Indian Swaraj. "Nobody can disagree with the fact that a whole system of thoughts and values of Western culture has been imposed on us. This does not mean that it has been imposed on people unwillingly. We ourselves sought this education, and it is probably fair to assume that in many cases, it has proved to be a boon. My only point is that this teaching was not consciously integrated into our ancient Indian psyche. That Indian psyche has become inactive among most of the educated people and has gone below the level of cultural consciousness. They are still active in the ongoing activities of their family life and in some social and religious activities, but these have no longer any meaning for these educated people."[23] His conclusion is that "We will have to return to the cultural level of the real Indian people and together with them, we will have to develop such a culture which is in tune with our times and indigenous talent. Swaraj will have to be achieved with these thoughts."[24]

It is my conclusion that the common citizen should be at the centre of Swaraj. There hangs a question mark on it. This means that there is freedom, but it is far away from the common citizen. As far as Swaraj is concerned, its journey is very intense as the roads are topsy turvy. That means the journey is full of risks. 'Angulimala' (the dacoit who, before being transformed into sage Valmiki, used to cut the fingers of his victims) is waiting for its prey at every turn. When shall we get a leader who can guide us through such a difficult journey? This question is now

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# डेस्टिनेशन उत्तराखण्ड

## राज्य में निवेशकों के लिए बेहतर आयाम तैयार कर रही प्रदेश सरकार

**पुष्कर सिंह धामी**
मुख्यमंत्री, उत्तराखण्ड

**नरेन्द्र मोदी**
प्रधानमंत्री

**पहाड़ी इलाकों में निजी औद्योगिक क्षेत्रों की स्थापना को बढ़ावा देने के लिए विशेष एकीकृत औद्योगिक प्रोत्साहन नीति की घोषणा की गई। यह नीति औद्योगिक क्षेत्र की निजी भागीदारी को प्रोत्साहित करने के लिए प्रस्तावित की गई थी**

# औद्योगिक क्षेत्रों की स्थापना पर है धामी सरकार का जोर

विशेष एकीकृत औद्योगिक प्रोत्साहन नीति राज्य में औद्योगिक विकास को बढ़ावा देने से जुड़ी एक प्रमुख पहल है। इसके माध्यम से रोजगार के अवसर सृजित हुए हैं। राज्य के दूरस्थ इलाकों में औद्योगिक विकास के साथ-साथ सुविधाओं को विस्तार मिल सका है। यहां की सड़कों, नालियों, प्रकाश की व्यवस्था जैसी मूलभूत सुविधाओं के व्यय पर 50प्रतिशत की सब्सिडी अधिकतम 50 लाख रुपये का प्रावधान किया गया। केंद्र सरकार द्वारा अनुमोदित विशेष औद्योगिक पैकेज के समाप्त होने और सिडकुल की ओर से विकसित एकीकृत उद्योगों के लिए भूमि की सीमित उपलब्धता को देखते हुए निजी भागीदारी को प्रोत्साहित करने के लिए इस नीति को लागू किया गया। इसके प्रमुख बिंदु ये हैं:

- निजी औद्योगिक एस्टेट की स्थापना के लिए मैदानी भाग में कम से कम 30 एकड़ की जमीन और पहाड़ी इलाकों में कम से कम 02 एकड़ या इससे अधिक की भूमि का होना जरूरी है। यह भी कहा गया है कि एमएमएमई इकाइयों की स्थापना के लिए जमीन देना जरूरी होगा। बड़े औद्योगिक स्थानों के लिए न्यूनतम 10 स्वतंत्र एमएमएमई इकाइयां और पहाड़ी क्षेत्रों के न्यूनतम 05 स्वतंत्र एमएमएमई इकाइयां निर्धारित की गई हैं।
- निजी क्षेत्र में आईटी पार्क/ बायो टैक्नोलाजी पार्क के विकास के लिए सीडा के प्रचलित भवन उपनियमों के अनुसार न्यूनतम 18000 वर्गमीटर निर्मित क्षेत्रफल होना जरूरी है।
- निजी औद्योगिक एस्टेट या क्षेत्र के लिए निवेशक या प्रमोटर अपने संसाधनों से भूमि की व्यवस्था करेंगे।
- औद्योगिक संपदाओं या इन क्षेत्रों के विकास के लिए सीडा/यूनीफाइड बिल्डिंग बॉय लॉज का पालन करना होगा और सीडा नियामक प्राधिकरण के रूप में कार्य करेगा।
- ऐसे औद्योगिक क्षेत्रों में बुनियादी सुविधाओं के रूप में आन्तरिक सड़कों, नालियों, प्रकाश व्यवस्था व अन्य सामान्य सुविधा प्रदान करने की जिम्मेदारी आस्थान के प्रवर्तक की होगी।
- निजी औद्योगिक एस्टेट या क्षेत्रों की स्थापना के लिए सैद्धान्तिक अनुमोदन/ विनियमन की प्रक्रिया दो चरणों की होगी। पहले चरण में औद्योगिक क्षेत्रों की स्थापना के लिए सैद्धान्तिक स्वीकृति दी जायेगी। जबकि दूसरे चरण में भूमि पर सीडा लेआउट पर अनुमोदन और प्रमाण पत्र दिखाने के बाद औपचारिक अधिसूचना जारी की जाएगी।
- बुनियादी ढांचे के विकास के लिए निजी औद्योगिक क्षेत्रों या इसके बाहर के क्षेत्रों के लिए 100 करोड़ रुपये की राशि का कोश बनाया जाएगा। सिडकुल इस फंड को संचालित करेगा। इस निधि से औद्योगिक क्षेत्र में किए गए कुल पूंजी निवेश की तुलना में 2 प्रतिशत की धनराशि खर्च की जाएगी।
- इस नीति के तहत क्षेत्र के भीतर बुनियादी सुविधाओं पर किए गए पूंजी निवेश के सापेक्ष चार चरणों में 10 लाख रुपये प्रति एकड़ की दर से पूंजीगत निवेश किया जाएगा। निजी औद्योगिक प्रतिष्ठानों में सीईटीपी की स्थापना के लिए अचल पूंजी निवेश का 40 प्रतिशत, अधिकतम 01 करोड़ रुपये तक अनुदान दिया जायेगा।
- यह नीति अधिसूचना जारी होने की तिथि से लागू होगी और आगामी 05 वर्ष तक प्रभावी रहेगी।

## उत्तराखण्ड की लॉजिस्टिक नीति-2023 के प्रमुख बिन्दु

### पात्र गतिविधियां

- लॉजिस्टिक पार्क, इनलैंड कन्टेनर डिपो, वेयरहाउस, ट्रक टर्मिनल, लॉजिस्टिक वाहन, कोल्ड स्टोरेज आदि।
- ईको लॉजिस्टिक या ग्रीन लॉजिस्टिक/ टेक्नोलॉजी लॉजिस्टिक सुविधाओं का विकास।

### वित्तीय प्रोत्साहन

- परियोजना लागत पर 10 से 25 प्रतिशत तक वित्तीय प्रोत्साहन।
- 50 करोड़ रुपये तक की परियोजना लागत पर अधिकतम 08 करोड़ रुपये, 50 करोड़ रुपये से 150 करोड़ रुपये तक के परियोजना लागत पर अधिकतम 24 करोड़ रुपये व 150 करोड़ रुपये से अधिक परियोजना लागत पर अधिकतम 32 करोड़ रुपये तक का अनुदान।
- वेयरहाउसिंग सुविधा के लिए पर्वतीय क्षेत्र में न्यूनतम 2.50 करोड़ रुपये निवेश के साथ 5000 वर्गफुट क्षेत्रफल और मैदानी क्षेत्र में न्यूनतम 05 करोड़ रुपये के निवेश के साथ 10000 वर्गफुट क्षेत्रफल की आवश्यकता।
- ट्रक टर्मिनल के लिए न्यूनतम 5 करोड़ रुपये निवेश के साथ 45,000 वर्गफुट भूमि की आवश्यकता।
- कोल्ड स्टोरेज के लिए न्यूनतम क्षेत्रफल 5000 वर्गफुट।

# यही समय है, सही समय है,

# उत्तराखण्ड में निवेश का

DESTINATION UTTARAKHAND
GLOBAL INVESTORS SUMMIT 2023
Peace To Prosperity

"माननीय प्रधानमंत्री जी के मार्गदर्शन में उत्तराखण्ड की आर्थिकी और पर्यटन विकास में वृद्धि हुई है। हमारा राज्य व्यापार के लिए सदैव खुला है, जो निवेशकों को व्यापक अवसर प्रदान करता है । सुव्यवस्थित उद्योग की मंजूरी से लेकर निवेशकों को प्रोत्साहित करने तक हम सदैव प्रतिबद्ध हैं। अपने उद्यमों के लिए एक सम्पन्न पारिस्थितिकी तंत्र का निर्माण हमारी प्राथमिकता है। आइये मिलकर उत्तराखण्ड के भविष्य को नया आकार प्रदान करें!

**पुष्कर सिंह धामी,** मुख्यमंत्री, उत्तराखण्ड

"21वीं शताब्दी का ये तीसरा दशक, उत्तराखण्ड का दशक है। उत्तराखण्ड एक ऐसा राज्य है, जहां दिव्यता और विकास एक साथ महसूस होता है। वह दिन दूर नहीं, जब दिल्ली-देहरादून के बीच की दूरी ढाई घंटे की रह जाएगी। देहरादून और पंतनगर हवाई अड्डे के विस्तार से हवाई कनेक्टिविटी मजबूत होगी। प्रदेश में हेली-टैक्सी सेवाओं का विस्तार किया जा रहा है तथा रेल कनेक्टिविटी को सुदृढ़ किया जा रहा है। यह सब कृषि, उद्योग, लॉजिस्टिक्स, भंडारण, पर्यटन और आतिथ्य के लिए नए अवसर पैदा कर रहा है। वहीं, हाउस ऑफ हिमालयाज वोकल फॉर लोकल और लोकल फॉर ग्लोबल की हमारी अवधारणा को और मजबूत करता है।"

**नरेन्द्र मोदी,** प्रधानमंत्री

- उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 सफलतापूर्वक संपन्न
- निवेश के लिए 3.5 लाख करोड़ रुपए से अधिक के एमओयू पर हस्ताक्षर
- 44 हजार करोड़ रुपए के निवेश प्रस्तावों को धरातल पर उतारने का कार्य प्रारंभ
- सफल आयोजन के लिए मुख्यमंत्री धामी और राज्य प्रशासन को मिली बधाई
- 'मेक इन इंडिया' की तर्ज पर 'वेड इन इंडिया' आंदोलन शुरु करने का प्रस्ताव
- ब्रांड हाउस ऑफ हिमालयाज लॉंच
- 30 से अधिक नीतियां लागू करके नीति-संचालित राज्य का सम्मान
- उत्तराखण्ड में भव्य कन्वेंशन सेंटर के निर्माण की योजना

दुनियाभर के निवेशकों की पहली पसंद बनता उत्तराखण्ड आज निवेश की नई ऊंचाइयां छू रहा है। प्रदेश में निवेश की रफ्तार बढ़ाने के उद्देश्य से 8-9 दिसंबर को 'उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023' का सफलतापूर्वक आयोजन किया गया। यह राज्य को नए निवेश गंतव्य के रूप में स्थापित करने की दिशा में कारगर कदम साबित हुआ। इस सम्मेलन में दुनियाभर के हजारों निवेशकों और प्रतिनिधियों ने बड़े उत्साह के साथ प्रतिभाग किया।

इस दो दिवसीय कार्यक्रम में प्रधानमंत्री नरेन्द्र मोदी, केंद्रीय गृह एवं सहकारिता मंत्री अमित शाह, मुख्यमंत्री पुष्कर सिंह धामी, कई अन्य केंद्रीय एवं राज्य मंत्री, दुनियाभर के बड़े-बड़े उद्योगपति, व्यवसाय जगत से जुड़ी सुप्रसिद्ध हस्तियां, विभिन्न देशों के नेता, 15 देशों के राजदूत और 5 हजार से अधिक प्रतिनिधियों ने हिस्सा लिया। 'पीस टू प्रोस्पेरिटी (शांति से समृद्धि)' थीम पर आधारित इस समिट का मुख्य उद्देश्य उत्तराखण्ड को निवेश का गंतव्य प्रदेश बनाना है।

'उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023' की ऐतिहासिक सफलता प्रधानमंत्री नरेन्द्र मोदी के दूरगामी विजन और मुख्यमंत्री पुष्कर सिंह धामी के अथक परिश्रम का परिणाम है। प्रधानमंत्री जब गुजरात के मुख्यमंत्री थे, तब उन्होंने 'वाइब्रेंट गुजरात' नाम से इन्वेस्टर्स समिट का आयोजन शुरू किया था। उसी से प्रेरित होकर राज्य सरकार द्वारा 'डेस्टिनेशन उत्तराखण्ड' की थीम पर इन्वेस्टर्स समिट का आयोजन किया गया।

उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 का दो दिवसीय शिखर सम्मेलन राज्य को नए निवेश गंतव्य के रूप में स्थापित करने की दिशा में कारगर कदम साबित हुआ है। मुख्यमंत्री पुष्कर सिंह धामी के अथक प्रयासों की बदौलत इस कार्यक्रम को उम्मीद से परे सफल बनाया गया है। प्रधानमंत्री नरेन्द्र मोदी ने उत्तराखण्ड की अप्रयुक्त क्षमता पर प्रकाश डालते हुए निवेशकों से इसका अधिकतम लाभ उठाने का आग्रह किया है। राज्य सरकार जहां स्थानीय वास्तविकताओं को ध्यान में रखते हुए काम कर रही है, वहीं भारत सरकार उत्तराखण्ड में अभूतपूर्व निवेश कर रही है।

8 -9 दिसंबर को देहरादून के वन अनुसंधान संस्थान में आयोजित उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 का उद्घाटन प्रधानमंत्री नरेन्द्र मोदी द्वारा किया गया। समिट के उद्घाटन के साथ-साथ उन्होंने 'सशक्त उत्तराखण्ड' पुस्तक और 'ब्रांड-हाउस ऑफ हिमालयाज' को भी लॉन्च किया। वहीं, 9 दिसंबर को उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के समापन समारोह में केंद्रीय गृह एवं सहकारिता मंत्री अमित शाह की गरिमामयी उपस्थिति ने दुनियाभर के निवेशकों का हौसला बढ़ाया। समिट के उद्घाटन सत्र में कई विशिष्ट अतिथि उपस्थित हुए। इसमें भारत सरकार के तीन केंद्रीय मंत्रियों के साथ ही उत्तराखण्ड सरकार के 7 कैबिनेट मंत्री, सभी पूर्व मुख्यमंत्री, सांसद, विधायक आदि उपस्थित रहें। उद्घाटन सत्र में 8 प्रमुख वक्ता के रूप में देश के प्रमुख उद्योगपति शामिल रहें। 15 राजदूत, हेड ऑफ मिशन-स्पेन, स्लोवेनिया, नेपाल, क्यूबा, ग्रीस, ऑस्ट्रिया, जापान, सऊदी अरब आदि शामिल रहें। वहीं, 9 दिसंबर को केंद्रीय गृह एवं सहकारिता मंत्री अमित शाह ने उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के समापन सत्र में प्रतिभाग किया।

'डेस्टिनेशन उत्तराखण्ड' का मुख्य उद्देश्य ग्रीन इकोनॉमी और रोजगार के साथ इकोलॉजी एवं इकोनॉमी के समन्वय द्वारा राज्य का समग्र विकास करना है। इस ग्लोबल इन्वेस्टर्स समिट में ढाई लाख करोड़ रुपए के निवेश प्रस्तावों को प्राप्त करने का लक्ष्य था। जिसके सापेक्ष निवेश के लिए 3.5 लाख करोड़ रुपए के एमओयू पर हस्ताक्षर किए गए। अभी तक निर्धारित लक्ष्य से अधिक के निवेश प्रस्तावों पर समझौते हो चुके हैं। इनमें से अब तक 44 हजार करोड़ रुपए के निवेश प्रस्तावों को धरातल पर उतारने का कार्य प्रारंभ हो चुका है। इससे प्रदेश में स्थानीय लोगों के लिए रोजगार के अवसर तेजी से बढ़ने की संभावना जताई जा रही है। उद्योग समूहों के साथ एमओयू साइन किए जाने का कार्य गतिमान है। सरकार निवेश के जरिए राज्य में रोजगार सृजन एवं स्थानीय उत्पादों को बढ़ावा देने के लिए निरंतर कार्य कर रही है। उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के तहत अभी तक तीन लाख करोड़ रुपए के निवेश प्रस्ताव आ चुके हैं। देवभूमि उत्तराखण्ड में निवेशकों द्वारा जो रुचि दिखाई गई है, इससे राज्य की प्रगति में नई ऊर्जा का संचार हो रहा है। प्रदेश में हेल्थ, वेलनेस, शिक्षा, चिकित्सा, पर्यटन, फार्मा और ऑटोमोबाइल के क्षेत्र में बहुत संभावनाएं हैं। इसलिए, इन क्षेत्रों में विशेष फोकस किया जा रहा है। राज्य में निवेश बढ़ाने के लिए नीतियों को सरल बनाया गया है। निवेशकों के सुझावों के आधार पर 27 नई नीतियां तैयार की गई हैं।

समिट में निवेश बढ़ाने और रोजगार के अवसर पैदा करने सहित कई महत्वपूर्ण मुद्दों पर चर्चा एवं बातचीत हुई। उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट में राज्य सरकार ने जिन निवेशकों से निवेश के लिए एमओयू साइन किए हैं, उनमें प्रमुखतः टूरिज्म हॉस्पिटैलिटी, आयुष वेलनेस, मैन्युफैक्चरिंग, फार्मा, फूड प्रोसेसिंग, रियल एस्टेट-इंफ्रा, पंप्ड स्टोरेज, ग्रीन एंड रिन्यूएबल एनर्जी एवं ऑटोमोबाइल सेक्टर शामिल हैं। उत्तराखण्ड में निहित शिक्षा सामर्थ्य को संवारने के लिए इन्वेस्टर्स समिट के तहत विद्यालयी, तकनीकी और उच्च शिक्षा का द्वितीय सत्र निवेशकों के साथ आयोजित हुआ। मुख्यमंत्री शोध प्रोत्साहन योजना के जरिए राज्य के उच्च शिक्षण संस्थाओं में शोध गतिविधियों को बढ़ावा देने के लिए शिक्षकों और शोधार्थियों को 18 लाख रुपए तक का शोध अनुदान दिया जा रहा है।

## 'मेक इन इंडिया' की तर्ज पर शुरू करें 'वेड इन इंडिया': पीएम मोदी

धार्मिक, आध्यात्मिक, हसीन वादियों, हरे-भरे और बर्फीले पर्वतों का गढ़ है देवभूमि उत्तराखण्ड। जो बेहतर कनेक्टिविटी, शानदार इन्फ्रास्ट्रक्चर और सभी आवश्यक सुविधाओं से सुसज्जित है। धामी सरकार राज्य में तीर्थाटन और पर्यटन के साथ-साथ डेस्टिनेशन वेडिंग की परंपरा को बढ़ावा देने पर विशेष जोर दे रही है और इससे संबंधित सुविधाएं लगातार विकसित की जा रही हैं। लोग उत्तराखण्ड के पवित्र धार्मिक, आध्यात्मिक और प्राकृतिक स्थलों पर डेस्टिनेशन वेडिंग आयोजित करने में दिलचस्पी ले रहे हैं। पर, प्रधानमंत्री नरेन्द्र मोदी की अपील के बाद, यह उम्मीद जताई जा रही है कि आने वाले समय में उत्तराखण्ड 'डेस्टिनेशन वेडिंग' के गंतव्य के रूप में अपनी जगह बना सकता है।

देवभूमि उत्तराखण्ड वह पवित्र स्थल है, जो अपने विवाह समारोह के लिए प्रसिद्ध है। उत्तराखण्ड के रुद्रप्रयाग जिले के त्रियुगीनारायण गांव में स्थित श्री त्रियुगीनारायण मंदिर उनमें से एक है। ऐसी मान्यता है कि यही वह स्थान है, जहां भगवान शिव ने माता पार्वती के साथ सात फेरे लिए थे। यही कारण है कि यहां प्रत्येक वर्ष बड़ी संख्या में जोड़ियां शादी के पवित्र बंधन में बंधते हैं। यह स्थान डेस्टिनेशन वेडिंग के रूप में नई पहचान बना रहा है।

इसी प्रकार, धर्मनगरी हरिद्वार के शांतिकुंज में हर साल बड़ी संख्या में जोड़े विधि-विधान के साथ जन्म-जन्मांतर की डोर में बंधते हैं। तीर्थनगरी ऋषिकेश की बात की जाए तो मौजूदा समय में यह स्थल देश-विदेश के युवाओं के लिए प्रमुख वेडिंग डेस्टिनेशन के रूप में उभर रहा है। मसूरी, नैनीताल और रामनगर सभी आलीशान सुख-सुविधाओं से संपन्न स्थलों में एक हैं, जिसके वेडिंग डेस्टिनेशन का चलन देश-विदेश तक बढ़ रहा है। प्रकृति की गोद में विवाह करने के लिए उत्तराखण्ड में औली जैसे हिल स्टेशन यानी 'मिनी स्विट्ज़रलैंड' भी हैं।

उत्तराखण्ड में पर्यटन और तीर्थाटन की विकसित सुविधाओं की वजह से यहां वेडिंग डेस्टिनेशन के प्रति आकर्षण बढ़ रहा है। प्रधानमंत्री के 'वेड इन इंडिया' के नारे के बाद अब यह उम्मीद जताई जा रही है कि धामी सरकार इस मुहिम की दिशा में तेज गति से काम करेगी। 'वेड इन इंडिया' आंदोलन आने वाले समय में उत्तराखण्ड को वेडिंग के लिए सबसे परफेक्ट डेस्टिनेशन के रूप में पहचान दिलाएगा। इससे स्थानीय कारोबार में वृद्धि के साथ आजीविका के नए अवसर सृजित होंगे।

## उत्तराखण्ड सरकार की प्रमुख नीतियां

**प्रमुख नीतियाँ**

- सेवा क्षेत्र नीति 2023
- सौर ऊर्जा नीति 2023
- एमएसएमई नीति 2023
- स्टार्ट-अप नीति 2023
- कस्टमाइज्ड पैकेज
- लॉजिस्टिक्स पॉलिसी 2023
- फिल्म नीति 2015 (2019 में संशोधित)
- निजी औद्योगिक पार्क नीति 2023
- वृहद् औद्योगिक नीति 2015
- निर्यात नीति 2021
- पर्यटन नीति 2023-30
- ड्रोन नीति 2023
- सूचना प्रौद्योगिकी नीति 2019
- आयुष एवं वेलनेस नीति
- जैव प्रौद्योगिकी नीति 2018-23
- खाद्य प्रसंस्करण नीति
- पंप भंडारण परियोजना नीति 2023

## रोड शो के जरिए उम्मीद से परे निवेश

'उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023' की अभूतपूर्व सफलता की वजह से आज उत्तराखण्ड दुनियाभर के निवेशकों के बीच चर्चा का विषय बना हुआ है। इस विश्वस्तरीय निवेश शिखर सम्मेलन को सफल बनाने के लिए उत्तराखण्ड सरकार द्वारा महीनों बड़ी जोरशोर से तैयारियां की गई थीं। इसके प्रचार-प्रसार के लिए देश-विदेश में कई 'रोड शो' किए गए थे, जिनमें 3 अंतर्राष्ट्रीय और 7 घरेलू 'रोड शो' शामिल हैं।

3 अंतर्राष्ट्रीय रोड शो जहां लंदन, बर्मिंघम और दुबई में आयोजित किए गए, वहीं 7 घरेलू रोड शो दिल्ली, चेन्नई, बेंगलुरु, अहमदाबाद और मुंबई में आयोजित हुए। दरअसल, ऐतिहासिक उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के भव्य आयोजन से पहले मुख्यमंत्री पुष्कर सिंह धामी के नेतृत्व में राज्य सरकार द्वारा निरंतर कड़े प्रयास किए गए।

यह उसी कठिन परिश्रम का परिणाम था कि समिट के आयोजन से पहले ही 14 सितंबर-4 अक्टूबर, 2023 को धामी सरकार द्वारा दिल्ली में 26,575 करोड़ रुपए, 26-28 सितंबर को लंदन में 12,500 करोड़ रुपए, 17-18 अक्टूबर को दुबई में 15,475 करोड़ रुपए के निवेश का करार हुआ। वहीं, रोड शो के दौरान 26 अक्टूबर को चेन्नई में 10,150 करोड़ रुपए, 28 अक्टूबर को बेंगलुरु में 4,600 करोड़ रुपए, 1 नवंबर को अहमदाबाद में 24,000 करोड़ रुपए और 6 नवंबर को मुंबई में 30,200 करोड़ रुपए के एमओयू हस्ताक्षरित हुए।

turning into an answer. Those who want Swaraj are feeling that after a long gap, the country has finally got a spirited leadership. Such courageous leadership has a special identity. It has the depth, intensity, speed, sharpness and determination to bring about a change. It has a culture of transforming adversities into advantages. There is also the restlessness of a revolutionary in such leadership, in which a deep aspiration arising from a pure wisdom is found for its own nature and self-righteousness. When there is such a leadership at the helm, a nation of Swaraj can be created. India is in Swarajya now. She has to step forward on the journey of becoming Swaraj. It is to be remembered also that modernity should be accepted, but its roots should be entrenched in the soil of this country. It would be appropriate to call it 'indigenous modernity'.

In the end, it is appropriate to quote Ambika Dutt Sharma because, as in the case of Krishna Chandra Bhattacharya, "the de-colonisation of the Indian psyche" is also an expression of Sharma's deep thoughts. He says, "For those who believe in the destiny of India and that India is the source of inexhaustible spiritual knowledge, it is essential for them not to stop walking on the path that was revealed prior to Independence and to reconsider the question of Indian tradition in today's context. Not only this, he should consider it as the 'Rajpath' (royal route) and walk on it with determination while implementing his 'Bhashik Swaraj' (linguistic self-determination) and carrying out the 'Bhashyadharmi Abhiyan' (re-interpretation campaign) so that the quadrilateral of nationality, tradition, spirituality and language can come into expression."[25]

**References:**


1. '*Vicharon Ka Swaraj*' (Self-determination in Thoughts), Prof. Krishna Chandra Bhattacharya, Pratiman, January-June 2013, p. 438
   Note - The title of this article has been given in a book 'Bharatiya Manas Ka Bi-aupnibeshikaran' (De-colonisation of Indian Psyche). The original text is in English wherein its title is 'Swaraj in Ideas'. It has been translated by Dr. Pratap Chandra, former Assistant Professor at the Philosophy department in Sagar University.
2. *Ibid*, p. 446
3. '*Hind Swaraj and Gram Swarajya*' (Self-determination by India and Village Self-rule), Mahatma Gandhi, Navjeevan Prakashan Mandir, Ahmedabad.
4. '*Hind Swaraj*', Mahatma Gandhi, Chapter - Swarajya Kya Hai? (What is Swarajya?), p. 34
5. *Ibid*, p. 34
6. *Ibid*, p. 36
7. *Ibid*, p. 36
8. *Ibid*, Chapter - 20: Redemption, p. 107
9. '*Hindi Navjeevan*', Mahatma Gandhi, 29th January 1925, p. 198
10. '*Young Indian*', Mahatma Gandhi, 19th March 1931, p. 38
11. *Ibid*, 15th October 1931, p. 305
12. '*Samaj Vigyan Vishwakosh*' (Encyclopaedia of Social Sciences), Editor - Abhay Kumar Dubey
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14. *Ibid*
15. *Ibid*
16. *Ibid*
17. '*Bharatiya Chitta, Manas va Kaal*' (Indian Mind, Psyche and Time), Dharampal, Chapter - 'Sabhyataon Ka Naveenikaran Toh Karna Hi Padta Hai' (Civilisations must have to be modernised), p. 43
18. '*Samaj Vigyan Vishwakosh*' (Encyclopaedia of Social Sciences), Editor - Abhay Kumar Dubey, Volume - 6, pp. 1930-31
19. '*Bharatiya Manas Ka Bi-aupnibeshikaran*' (De-colonisation of Indian Psyche), Excerpt from the Foreword, Ambika Dutt Sharma, pp. 7-8
20. *Ibid*, p. 51
21. Indian Ideas of Freedom, Dennis Dalton, Foreword
22. '*Vicharon Ka Swaraj*' (Self-determination in Thoughts), Prof. Krishna Chandra Bhattacharya, Pratiman, January-June 2013, p. 438
23. *Ibid*, p. 438
24. *Ibid*, p. 446
25. '*Bharatiya Manas Ka Bi-aupnibeshikaran*' (De-colonisation of Indian Psyche), Chapter - 'Bi-aupnibeshikaran' (De-colonisation), 'Vaicharik Swaraj Aur Bhashai Rajpath' (Concept of Self-determination and Linguistic Royal Road), p. 85.

Prof. Sunil K Choudhary

# Grassroots Governance and Legislation

Legislation played an important role in strengthening of grassroot institutions as a part of government. An analytical study

While governance has broadly remained at the centre of mainstream polity from times immemorial, grassroots governance has been relegated to the background by the successive political regimes, from ancient period to the contemporary era. In view of its comparatively lower significance in mapping democratic polity, grassroots governance had to take recourse to legislation to strive towards mainstream governance. Despite their nascent informal beginnings in terms of Sabhas and Samitis, the modern polity witnessed the first such attempt of grassroots governance through colonial intervention under Lord Rippon followed by various legislatives initiations under the post-independence parliamentary legislations.

The present paper is an honest attempt to sketch the democratic trajectory of grassroots governance from Ancient India to New India as well as to analyse the role of legislation in imparting salience and sustenance to grassroots institutions in contemporary times.

## The Idea of Grassroots Governance – Theorizing from an *LR Model*

Though the idea of 'grassroots' has been a new phenomenon in political discourse, it has been much in vogue in social science vocabulary in contemporary times. Scholars have tried to conceptualize grassroots governance in terms of strengthening governance at the level of local institutions. Hence, grassroots governance has come to be with local governance. Both grassroots and local governance appear to be similar in theoretical paradigm despite having fundamental differences in terms of their plurality, diversity and multiculturality.

As a phenomenon, grassroots governance made its appearance in Indian political discourse in the aftermath of liberalization, particularly from 1980s onwards. Grassroots governance could best be explained from an *LR Model* that supports it as a social base, strengthens it as an economic face and sustains it as a political case as a symbol of democratic mechanism. One could highlight three salient bases of grassroots governance reflecting through *LR Model*, viz., linking with the root, liaising with the real and living with the real.

### Linking with the Root

Institution that is associated with its foundational ethos and gets

connected with its fundamental resource as a source of strength and survival emerges as the vibrant agency of governance. Institutions at the grassroots levels can serve the local people in far better way by way of representing their interests in both direct and indirect manner.

The true meaning of democracy as government of, for and by the people could best be achieved by linking with the root of its origin. A feeling of socio-economic and political affinity could be ensured by grassroots institutions like gram panchayats only in terms of their close linkages with their roots, sometimes discernible in the lands of their foundational beginning and upbringing. The larger the commitment between the people and the grassroots institutions, the stronger the conviction between them towards grassroots governance.

## Liaising with the Rural

Binary relations between the Centre and the Periphery, City and Village, Urban and Rural have been the significant characteristics of all modern societies. Concentration of manpower and resources with greater avenues of employment and opportunities at centre, city and urban world have imparted more divisions and fragmentations of almost all societies in the world. Both development and governance seem to be lagging far behind in all the peripheries, villages and rural world in terms of intensity and totality.

Grassroots institutions offer optimum utilization of local skills and sources channelising them towards sustainable development and good governance. Exploring rural world in terms of its natural potentialities and conventional legacies imparts longevity to governance. In fact, *rural India is a real India* and an effective liaising with the rural world paves the way for productive, protective and promotive governance.

## Living with the Real

Any governance that thrives with reality and survives with practicality has long term implications. Grassroots governance is built on the principle of bottom-up approach as against the top-down method. The feedback and inputs are important parameters of any legislation that prepares the ground for sustainable governance. Institutions working at the grassroots level have the direct and first-hand information of livid experiences.

Even though modern technology has permeated to the rural world bypassing conventional technology, most of the rural ills have not been adequately addressed resulting into rural-urban divide. Grassroots institutions appear to provide the means of minimising this division by linking the rural realities with urban governance.

Administration and governance at the level of local institutions started laying the foundation of grassroots governance through its reflection and reverberation in terms of root, rural and real world.

## Grassroots Governance: Contextualizing from History

Governance at the local level reflecting through local committees and communities formed the basis of both mythological and political history of India. The *Shantiparva* of Mahabharata as *Book of Peace* contained several references to the existence of local councils or village councils defined as *Gram Sanghas*. In fact, the very existence of the word *Panchayat* could be attributed to *Pancha Panchasvanusthitah* indicating the presence of village councils or communities exercising 'effective control over civil and judicial matters in the village community'.

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The roots of local administration could also be identified with *Manusmriti* dating back to 3500 BC. Though Manusmriti outlined an advanced social system and civilization at the time of the Indus Valley Civilization, it did mention the working of a local system of administration which was later enumerated and substantiated by the Vedic and Rigvedic period, particularly in the writings of Kautilya's *Arthasastra*, some 400 years before Christ. It was during this period that village emerged as the basic unit of administration and later constituted the basis of the formation of *Sangh, Sabha and Samiti* as the most popular assemblies created through legislative provisions of the Monarch.

Creation of village councils or communities in terms of Sabha and Samiti was not an outcome of a deliberate legislation; rather they were the result of consistent evolution and emerged as vehicles of deliberation on civil, political and judicial administration. Such a practice of local administration existed in north as well as south India. The administration during the Mauryas, the Guptas and the Cholas did contain various working examples of local units of administration in terms of regular *councils, committees and communities.*

The medieval period under Mughals enriched the local system of administration. Mughal rulers like Sher Shah Suri brought significant legislation at the system of local administration where the Panchayats were empowered to govern the villages in self-sustaining manner. Representing the elderly in a village, the Panchayats soon became institutions of administration and punishment. The Mughal Emperor, Akbar went further ahead in his scheme of local governance by making elaborate administrative management through the introduction of hierarchical administration spanning into local, revenue and judicial administration.

While legislation and executive action got combined under ancient and medieval India as far as local administration and governance were considered, it was the British Raj that formally provided the right to local self-government to Indians in late nineteenth century. The British Resolution, 1882 introduced by George Frederick Samuel Robinson, 1st Marquess of Ripon, popularly called Lord Ripon, introduced the scheme of local self-government for the development of municipal institutions hitherto under the direct control of the Raj. Lord Ripon was instrumental in initiating many legislative reforms for easing local administration with the objective of ensuring self-government at the local level. The local administration legislation as the basis of self-government was later developed by Gandhiji through the idea of *Village Panchayat* forming the basis of *Ram Rajya*.

From electing Kings to selecting judicating institutions, debating issues to deliberating justice, the local institutions from ancient to modern India became the pivot of civic administration, fiscal management and judicial adjudication where people happened to be the key drivers of governance.

Though their increasing penchant for a democratic system of parliamentary governance, the founding fathers didn't have much fascination for grassroots governance. Hence, panchayats as the basis of grassroots governance found its both its way and say only in Part IV, Article 40 of the Constitution under Directive Principles of State Policy. Placing the entire local administration under the rubric of Panchayats through constitutional obligation, nay legislation, left it at the discretion of State Governments in post-Independence India

## Grassroots Governance: A Post-Independence Perspective

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The Community Development Program as the foundational basis of local administration in post-Independence India was only an executive initiation by the Union Government undertaken in 1952. Considering village as a community instead of a local unit of self-government, the Community Development Program failed to achieve its desired results in view of excessive centralization. Some of the projects strengthened under Community Development Program like Nilokheri in Haryana were good legislative initiations but could not get materialized at the national level for lack of local support and state cooperation.

Comity of villages developing into a Village Community under the Community Development Program later paved the way for a three-tier structure of *Panchayati Raj System* recommended by Balwant Rai Mehta Committee Report in 1959. *Gram Panchayat* at the village level, *Panchayat Samiti* at the block level and *Zila Parishad* at the district level were to be carved out as part of democratic decentralization proposed by the Mehta Committee. Empowering Panchayats as units of self-government through state legislation was considered as an innovative and revolutionary experiment. The foundational exhilaration as reflected in the strict compliance of the Mehta recommendations was witnessed during the first few years in form of Panchayats and Tribal Councils in some of the states during the 1970s. However, the heightened expectations of the Panchayats began downside deceleration for increasing *politicisation, casteisation and bureaucratisation.*

The basic ills of self-government legislation untouched by Balwant Mehta Committee were later attempted to be addressed by the Ashok Mehta Committee in 1977 through a two-tier structure of the Panchayati Raj System but without much success. The Rao Committees – Hanumantha Rao and G V K Rao, Singhvi Committee, Thungan Committee, Kharra Committee throughout the 1980s and 1990s along with the Sarkaria Commission were merely recommending bodies advocating empowerment of local units through fiscal consolidation and constitutional provisions. The half-hearted attempt by Rajiv Gandhi Government through 64th Constitutional Amendment by the Parliament failed to turn into a law for lack of support in the Upper House.

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The beginning of the 1990s not only changed the local discourse towards grassroots institutions and governance, it was also marked by the successful passage of two legislations in form of 73rd and 74th amendments during 1992-1993 under the Congress regime of P V Narasimha Rao. After four decades of constitutional functioning, the post-Independence Indian polity finally made its way for imparting grassroots governance through constitutional working of grassroots institutions at both the rural and urban India. The changing political discourse from local self-government to grassroots governance also made its headway from 1990s onwards which started getting institutionalized with the celebration of *Panchayati Raj* Diwas on 24 April from 2010 onwards.

## Grassroots Governance and Legislative Processes

Legislation by parliamentary institutions always takes precedence over executive action in terms of its acceptance and permeance. Since legislation

involves a long and rigorous process of governance, grassroots governance attempts to address all layers of administration and development at the local levels. One could highlight three such features as outcome of legislative processes in contemporary Indian polity, viz., place of self-development and self-governance, power to people and people's democracy.

## Place of Self-Development and Self-Governance

The passage of the 73rd and 74th constitutional amendments have aimed at bringing the grassroots institutions at the panchayat and municipality levels to the pedestal of self-development and self-governance. Imparting constitutional status to the grassroots institutions makes it obligatory on the part of the State Governments to hold regular elections, ensure greater empowerment and integrate with the mainstream democratisation.

For a vast and diversified nation like ours, grassroots institutions could be the first place of initiating legislation for self-development and self-governance. Involving and engaging people at the grassroots level could strengthen democratic decentralisation and act as the catalyst of good governance at the higher levels of parliamentary democratic system. The working of grassroots institutions during the past three decades of the passage of parliamentary legislation has spearheaded the legislative experiences and exposures to the local people.

## Power to People

Direct democracies of the yesteryears have now transformed into the indirect democracies of contemporary times. The success of every legislation lies in its formulation through discussion, deliberation and demonstration involving people at every stage of the initiation. Empowering people at the village and municipality levels could herald a new era of democratic governance routed through grassroots institutions.

Technological revolution and transformation have brought administration closer to the people. A real check and balance system of governance could be more discernible at the grassroots levels with more decision-making power to be vested with the local people. Various campaigns and initiatives of New India launched under the BJP-led NDA Government of Prime Minister Narendra Modi like *Skill India, Stand Up India, Startup India* are based on empowering people by harnessing and generating the resources at the grassroots levels.

## People's Democracy

People have been the locus and focus of legislations in all indirect democracies of today. Grassroots democracy could be seen as real people's democracy as people at the grassroots levels have the power to elect their own representatives and make them individually and collectively accountable on all issues of development and governance. People's democracy thus attempts to ensure direct linkages between the elected and the electors at grassroots levels.

As deliberative democracy, people's democracy is the core of grassroots democracy as it provides broader platform for discussions and deliberations on the one hand and ventilation of grievances and grumblings on the other. As real sovereignty lies with the people at the grassroots levels, grassroots institutions like Gram Sabha can play most vital role in ensuring democratic compliance of its elected legislators. By making and unmaking government, grassroots institutions strengthen people's democracy and sustains people's governance by carving out legislations on different streams of socio-economic and political life.

## Grassroots Governance: Contemporary Legislative Challenges

As good legislations are the basis of good governance, so grassroots governance happen to emanate from good grassroots legislation. The post-1990s legislations on grassroots legislations in the form of 73rd and 74 constitutional amendments were undertaken with the objective of ensuring clean and green governance at the grassroots levels; however, the past three decades of working of grassroots institutions at the rural and urban India witness grave challenges to be encapsulated under three factors, viz., Market, Technology and Corruption.

## Competing Market

The 21st century is characterised by a market-driven polity. With the declining role of the State

since the 1990s, the competitive stakeholders have taken the centre stage of all socio-economic and political realms in contemporary times. The competitive market is governed by the principle of *survival of the ablest* as against *survival of the fittest*. The reliance of grassroots institutions on the competitive market factors for development and governance weaken their hold on indigenous manpower and resources. Entry of the corporate capital in the domestic market has made this competition more rigorous and challenging for grassroots players in democratic polity.

As an outcome of liberalisation and globalisation, grassroots institutions are struggling hard to sustain amidst competition from the global players. Though 'Think Local, Act Global' phrase is transforming into 'Vocal for Local' discourse in contemporary times, global market forces are impacting the quality of survival and livelihood at the grassroots levels. The agrarian sector seems to be the worst sufferer in view of high rated competition both on the issue of subsidies and the WTO restrictions on farms and farming community.

The State no longer remains a *regulator* in the competitive market-driven polity; rather it has become a *facilitator* offering more avenues of employment and growth at the grassroots level. Grassroots institutions are now finding it difficult to cope up with the new global institutions penetrating into the rural and urban hinterland with great capital investments and corresponding interventions. With little or no say in transforming global relations, the grassroots institutions are inhibiting their own governance through limited legislations.

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## Changing Technology

Radical and revolutionary changes in information and communication technology have brought new challenges for the grassroots institutions and governance besides offering several opportunities. While the West has gone decade ahead of its technological innovations and revolutions, grassroots institutions in rural India are slow and sturdy in accepting and absorbing technological knowhow and new data software to their mechanism of governance. Information technological services like Consumer integration facility, insurance payment processes, online education, beneficiary payment register are some of the services grassroots institutions are unable to cope up in the absence of communication experience, exposure and expertise. All these developments led to failure of the farming community at the grassroots levels to update themselves with the changing Minimum Support Price and transforming market technologies.

One of the key governance challenges for the grassroots institutions lies to the extent of making ICT related services to people-centric and citizen-friendly in order to ensure quality delivery support and services to the common people at the grassroots level. The Right to Education and Information have undoubtedly brought transparency and accountability in grassroots administration and governance, the decreasing educational awareness and literacy among the older generations have largely prevented the grassroots institutions from ensuring benefits of development to the people.

Low literacy, unplanned development and increasing distance from the centre of governance resulted into the failure of grassroots institutions in executing new ICT services at the local level.

## Creeping Corruption

The free entry and exit of political parties at the grassroots levels has made grassroots democracy as hotbed of politics. *Panchayat* and Municipality elections have

now become festive occasion. Caste-ridden conventional institutions have transformed into party-aligned formations at the grassroots levels. Local elections are largely contested with huge pumping of money and muscle power. Increasing politicisation has led to growing political violence as entry through panchayats and municipality has become the gateway to state assembly and federal politics.

If the lack of funding during the 1960s made the grassroots institutions defunct economically, abundance of funds and resources in contemporary times has made them *citadel of corruption*. The grassroots institutions have become the construction execution agencies of Centre and State-driven flagship programs like Mahatma Gandhi National Rural Employment Guarantee Act, *Swachch Bharat Abhiyan, Ujjawala Yojana, Antodaya* and others. Despite Union Government's Direct Beneficiary Schemes making direct payments to the accountholders, the Sarpanchs are alleged to have been using discreetly the distribution of funds at the behest of job cards. The rich people have been discovered as the Below Poverty Line (BPL) card holders. Many studies have revealed open corruption in primary education, mid-day meal provision, teacher selection and drop-outs intimation at the grassroots level.

One could see a parallel growth of grassroots development and growth of grassroots heads like Mayors and *Sarpanchs*. The cycle-riding *Sarpanchs* of the pre-amendment period during the 1960s and 1970s are now seen driving SUV (Sports Utility Vehicle). People at the grassroots level have acquiesced to the corrupt as well as corruption. Nexus between the grassroots office-bearers and higher officials, decreasing standards of social audit and increasing red-tappism have directed the grassroots institutions towards anarchy by making the common populace disgruntled.

## The Road Ahead

Legislations are the essence of democratic development and governance from mainstream political entities to the grassroots polity. The efficiency and effectiveness of legislations determine the transparency and accountability of democratic institutions. Many ills and shortcomings of legislations could be addressed at the time of formulation premised on grassroots inputs and feedback.

The new challenges of grassroots governance could be transformed into opportunities by making the grassroots institutions as catalyst of change and agency of development. For such development to happen, a synch between top-down method and bottom-up approach in initiation, formulation and execution of policies and programs are to be ensured at all levels of democratic polity.

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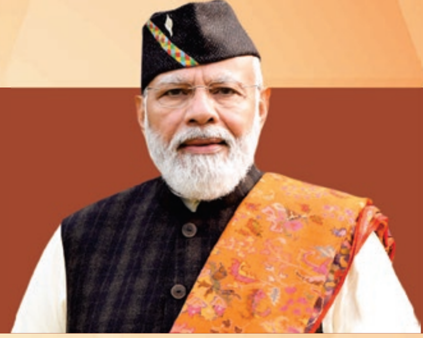
75 आज़ादी का अमृत महोत्सव



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# आगे बढ़ता उत्तराखण्ड

**प्रधानमंत्री नरेन्द्र मोदी के दिशा निर्देश व मुख्यमंत्री पुष्कर सिंह धामी के कुशल नेतृत्व में डबल इंजन सरकार में उत्तराखण्ड विकास के नए आयाम गढ़ रहा है।**

- वर्तमान सरकार के कार्यकाल मे माह सितम्बर 2023 तक लोक निर्माण विभाग द्वारा 1275 किमी मार्गों का नवनिर्माण, 2063 किमी0 लम्बाई में पुनः निर्माण तथा 58 नए सेतुओं का निर्माण किया गया। इसके अतिरिक्त 227 ग्रामों को सड़क यातायात से जोड़ा गया। पूर्व निर्मित पक्के मोटर मार्गों में कुल 3047 किमी मार्गों का नवीनीकरण कार्य किया गया।
- जनपद टिहरी गढ़वाल के विधानसभा क्षेत्र नरेन्द्रनगर के अन्तर्गत लक्ष्मणझूला सेतु के समीप 132.30 मीटर स्पान के वैकल्पिक सेतु (बजरंग सेतु) का निर्माण कार्य प्रगति पर है।
- ऑल वेदर रोड़ परियोजना के अन्तर्गत स्वीकृत 737 कि.मी. लम्बाई के विरुद्ध 671 कि.मी. लम्बाई में कार्य गतिमान है। जिसके अन्तर्गत वर्तमान तक 597 कि.मी. लम्बाई में 02 लेन चौड़ीकरण एवं 574 कि.मी. लम्बाई में सतह लेपन के कार्य पूर्ण किये जा चुके है, शेष कार्य प्रगति पर है। चारधाम परियोजना के अन्तर्गत कुल प्रदत्त स्वीकृति लागत ₹9399.45 करोड़ के सापेक्ष वर्तमान अवधि तक कुल ₹6810.49 करोड़ का व्यय किया जा चुका है।
- मिशन अमृत सरोवर के अंतर्गत उत्तराखण्ड राज्य को आवंटित 975 अमृत सरोवरों के लक्ष्य के सापेक्ष 1239 सरोवरों को पूर्ण किया गया है जो 127% है।
- लखपति दीदी योजना। मुख्यमंत्री श्री पुष्कर सिंह धामी द्वारा महिलाओं को आर्थिक रूप से सशक्त बनाने के लिये विजन 2025 तक स्वयं सहायता समूह की 1.25 लाख महिलाओं को लखपति दीदी बनाया जायेगा। इसी क्रम में यू.एस.आर.एल.एम द्वारा समूहों की 40270 सदस्यों को वित्तीय वर्ष 2022-23 में लखपति दीदी के रूप में तैयार किया है व वित्तीय वर्ष 2023-24 में 50000 दीदीयों को लखपति दीदी के रूप में तैयार किये जाने का लक्ष्य है जिसकी प्रक्रिया गतिमान है।
- महिला समूहों द्वारा निर्मित उत्पादों को मुख्यमंत्री सशक्त बहना उत्सव योजना के अन्तर्गत रक्षा बन्धन के सुअवसर पर महिलाओं द्वारा निर्मित उत्पादों के विपणन हेतु राज्य में 337 स्टाल लगाकर सामग्री का विपणन कराया गया। जिससे महिलाओं द्वारा ₹57.16 लाख की सामग्री विपणन कर अपनी आजीविका में वृद्धि की गयी।
- वाईब्रेन्ट विलेज कार्यक्रम - इस महत्वकांक्षी योजना के तहत उत्तराखण्ड के तीन सीमान्त जनपद क्रमशः उत्तराकाशी, चमोली तथा पिथौरागढ़ के कुल 05 विकासखण्डों के 51 ग्रामों को चिन्हित किया गया है। इसके अन्तर्गत समस्त चिन्हित गांवों की कार्ययोजना तैयार कर ली गयी है। जिसमें एक ओर सभी गाँव को मूलभूत सुविधाओं से संतृप्त करने की प्राथमिकता दी गयी है, वहीं दूसरी ओर पर्यटन सुविधाओं का विकास, सांस्कृतिक धरोहर का संरक्षण सतत आजीविका कार्यक्रमों के क्रियान्वयन के माध्यम से लगभग ₹755 करोड़ से अधिक लागत की 500 से अधिक योजनाओं को प्रस्तावित कर इन गाँवों में वाईब्रेन्सी लाते हुए अधिकाधिक परिवारों को बसाया जायेगा।

**सूचना एवं लोक सम्पर्क विभाग, उत्तराखण्ड द्वारा जनहित में जारी**

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आज़ादी का अमृत महोत्सव

G20 भारत 2023 INDIA

NCCF

The National Cooperative Consumers Federation of India Ltd., (NCCF) is an Apex level Consumer Cooperative Federation in the Country. Its function under the administrative control of Department of Consumer Affairs, Government of India, New Delhi. The Membership of the NCCF comprises of Govt. of India, National Level Cooperative Organization, State level Consumer Cooperative Federations, District and Primary level Consumer Cooperative Societies engaged in procument & supply of Consumer articles. The NCCF has a network of 27 Branches all over the country located at different state capitals and other places. It is engaged in procurement and supply of various items of food grains, Pulses, Oil seeds for various State Government, as one of the nominated Government Agency. The NCCF is also successfully managing supply of various consumer items at the hour of crises and price hike in the open market for the benefit of end consumers at reasonable prices. It is also engaged in construction work like Hospitals, Universities, Cattle sheds and housing. The Government of Uttar Pradesh had nominated NCCF being an agency for construction works. The Government of India have special focus for upliftment of farmers and motivating them to enhancing their agricultural produces so that the farmers Community could be benefitted. Various farmers related schemes of the Government of India are being conducted through NCCF like procurement of paddy, oil seeds, food Grains etc. on Minimum Support Price (MSP) and procurement of different kind of Pulses (like Tur, Urad, Moong, Masoor & Gram) and Onion under Price Stabilization Fund (PSF) for Buffer stocking for supply at subsidized rates during the period of crises of these items in the market. The NCCF is supplying 'Bharat' Rice @ Rs.29 per kg, 'Bharat' Atta @ Rs.27.50 per kg and 'Bharat' Dal (Chana dal) @ Rs.60 per kg to the consumers throughout the country as a measure of helping poors at the behest of the Department of Consumer Affairs (DoCA). The Honourable Union Minister of Consumer Affairs, Food & Public Distribution Shri Piyush Goyal Ji launched the sale of Bharat Rice and flagged off 100 Mobile Vans at Kartavya Path, New Delhi on 06 February, 2024. The NCCF has been serving the Consumers by making available the items of their need at reasonable prices.

Dr. D.D. Pattanaik

# Legislative Competence of Parliament: Parameter and Anomalies

A Legislature is entrusted with the work of enacting law. The theoretical provisions in our Constitution are visibly alright, there are manifold operational apprehensions and inconsistencies in the realm of legislation. Let's discuss

Sublime tradition of ancient India is replete with legislative domain in the state besides the 'panch' system, albeit in different paradigm[1]. Swami Dayananda Saraswati in his 'Satyarth Prakash' underscores 'Raj Sabha' (Political Assembly) along with 'Dharma Sabha' and 'Vidya Sabha'.

However, it is a different discourse if the earlier experience could have some bearing on present day legislative organ. Imbued with western ideals and institutions the framers of the Indian Constitution could not delve upon the age-old Indian traditions under the driving force of pressing circumstance[2]. It is at the moment 'fait accompli' that we have a Parliament with the constitutional fabric and our polemic would be confined accordingly.

## Compared with British, American System

Our constitutional system and particularly the positioning of the Parliament stand in between the West Minister and the American framework. Indian Parliament is not at all sovereign as that of the British counterpart so much so that the former is product of a written Constitution and it is limited to the provision of judicial review. On the contrary the Indian Parliament is obviously a step upward than the American Congress since the executive in the former is fused with the legislature, a distinctive feature of parliamentary system of governance. The Prime Minister is leader of both the Government and the Parliament, which facilitates the Government to get its desired measures passed in the Parliament by virtue of its majority strength. Further, the American practice confers judicial supremacy upholding the doctrine "due process of law" as distinguished from Indian / British worldview of "procedure established by law", which means the law enacted by the Parliament. In A.K. Gopalan's case (1950), the Supreme Court held that the expression "procedure established by law" is the settled Indian norm. The latter is obviously increasingly democratic than the former.

## The Constitutional Provisions

Article 79 of the Constitution provides: "There shall be a Parliament consisting of the President, Council of the States (Rajya Sabha) and the House of the People (Lok Sabha)"; and this is the legislative organ of India's constitutional order.

A Legislature is obviously meant to legislate, that is to enact law. It can formulate a new law, amend and abolish an existing law. Its parameter to legislate is only subject to limitation conditioned by the Constitution. It functions in a sphere where the executive and the judiciary are inextricably interwoven, which means not absolutely insulated from each other. Legislations are not self-operative and they are to be activated by the executive. At this juncture the Supreme Court surfaces to guard if at all either of them violates the constitutional corridor.

Further, India opting for having a parliamentary system emulating the foot-step of the British system may be debatable. Indian leaders had been accustomed with British paraphernalia and particularly under the Government of India Act, 1935. Hence they did not prefer presidential system suggested by some Members in the Constituent Assembly like K.T. Shah and M.V. Kamath. In Great Britain there has been apparently bi-party system throughout their constitutional history; whereas India is constraint to have multi-party system owing to multiple languages, demographic conditions etc.. Therefore political instability is home to it as evident from 1979-80, 1990, 1998 and 1999; and since late eighties coalition government had been an order till 2014. Bitter experience of Italy and Japan for the same reason are on record.

## Constituent Powers

Let us swerve the discourse with this caption. The Parliament is designated to amend the constitutional provisions within the ambit of its legislative power. Justice Hidayatulla during the hearing of Minerva Textile Mill case in the Supreme Court in 1980 stated, “Constituent Power means virtually legislative procedure”. Amendment of the Constitution is strove by means of law shaped by the Parliament. This deliberation also underlines the relative role and position of the Parliament vis-à-vis the Supreme Court.

The Provisional Parliament in 1950 effected the first Constitution Amendment entailing the legislation on preventive detention. It surfaced in the form of A.K. Gopalan vs. the State of Madras. In the course of hearing Justice S.R. Das succinctly remarked, “Instead of judicial supremacy we have the doctrine of legislative supremacy subject to constitutional limitation”. The Vice President Jagdeep Dhankar testified the same on the eve of Constitution Day on 26 November 2023.

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In the case of Shankri Prasad vs. Union of India (1957) and Sujan Singh vs State of Rajasthan (1965), the Supreme Court held that the competence of Parliament to amend any provision of the Constitution including the Fundamental Rights and Article 368 itself was valid. Two years later, ie., in 1967, the Supreme Court over-ruled its own verdict in the case of Golak Nath vs. State of Punjab. The Court held by 6 to 5 majority (as sequel to casting vote by Chief Justice K. Subba Rao) that Fundamental Rights were sacrosanct, and under Article 13(2) the Parliament could not amend the Fundamental Rights so as to abridge or infringe them. The judgement further clarified that if Fundamental Rights were to be amended, a new Constituent Assembly must be convened, for making a new Constitution which could have authority to change it radically. Article 368 was interpreted as merely procedural and not substantive. With the instrumentality of Article 368 Parliament could hardly amend the Constitution whimsically, which would compromise the manifestation of the Constitution itself.

The 24th Constitution Amendment Act was materialised in 1971, which over-ruled the Golak Nath judgement by inserting Clause (2) in Article 368, which reads, “Notwithstanding anything

in this Constitution, Parliament may in exercise of its constituent power amend by way of alteration, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article". "It shall be presented to the President who shall give his assent to the Bill (which means the President cannot withhold his assent). (3) "Nothing in Article 13 shall apply to any amendment made under this article. Therefore, Parliament has been empowered to amend Part III of the Constitution as well".

This Amendment Act was challenged in the Supreme Court in the form of historic Keshavananda Bharati vs. State of Kerala. The judgement of this case constitutes a mile-stone in the annals of our constitutional history. The Court, in its full Bench, delivered judgement on 24 April 1923. It held by majority vote of 9 by 4, the validity of 24th Amendment. It held that Parliament could amend any part of the Constitution, but not the Basic Structure of the Constitution. Thus a new theory termed 'Basic Structure' entered the lexicon of constitutional edifice; but it was not defined as to what constitutes the Basic Structure. It was deduced out of the individual judgements of the Judges affirming it variably. In sum, it includes democratic republican secular character, parliamentary system, federal structure, rule of law and independence of judiciary. Article 31© of the 24th Constitution Amendment Act was, however, nullified by the Court, which had provided that the Constitution Amendment Act would be beyond the purview of the Court.

The 25th Constitution Amendment Act, which had been passed simultaneously with that of the 24th, also supplemented the Parliament's right to amend Fundamental Rights to give effect to Directive Principles of State policy. Chief Justice A.N. Ray constituted a full Bench to define the scope of Basic Structure of the Constitution in mid-1976; but abruptly he suspended it leaving the question in ambiguity

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The 42nd Constitution Amendment Act, 1976 had curtailed the power of Judicial Review over the constituent power of the Parliament. However, 43rd Constitution Amendment Act, 1977 restored the power of judiciary.

Present position is that the Parliament can amend any provision of the Constitution, but cannot alter the Basic Structure as comprehended by equity. A balance must be struck so much so that the Constitution could act as the vanguard of social change and not merely act as a mere legal mechanism.

## Legislative Scope

Article 246 (1) of the Constitution provides, "Not with standing anything in Clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule"[3].

In common words, the parameter of the legislative powers within the scope of Seventh Schedule and entailing provisions of the Constitution in different parts are as below:

1. The Parliament can legislate on all the items under the Union List of the Seventh Schedule of the Constitution.
2. All the items under the Concurrent List. The States have also power over the same; but the laws made by the Parliament would be supreme.
3. Items under the State List, if felt expedient during proclamation

of National Emergency (Article 353 of the Constitution) the Parliament could legislate.

4. Further, when a State is under President's Rule, the Parliament shall enact law on the State List for the concerned State.
5. Moreover, Article 252 of the Constitution provides that the Parliament's power to legislate from two or more States by consent and adoption of such legislation by other State.

Then again, during the normal period the Parliament, under Article 249 of the Constitution can legislate from the State List if the Council States (Rajya Sabha) passes a resolution by special majority (two third present and voting but not less than 50% of the strength of the House) that it is expedient on national interest to legislate from the State List. Under the first session of the unicameral Parliament (Provisional) passed such a resolution extending Parliament's competence to legislate on items 26 and 27 of the State List. Further, in 1986 the Parliament under this provision legislated to empower the Union Government to deploy armed forces to the disturbed areas of Punjab. The opposition BJP also lent support to this move buttressing the cause of national interest. Moreover, Article 252 of the Constitution provides that the Parliament's power to legislate from two or more States by consent and adoption of such legislation by other State.

Finally, the residuary powers are exercised by the Parliament under the signification of Article 248(1) which reads, "Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List".

Article 253 empowers the Parliament to legislate for giving effect to intervene agreements. Further, Parliament can legislate on extra-territorial matters which involves the concern of India and Indian nationals abroad.

Therefore it prompts an American Constitutionalist K.C. Where to conclude that "Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features". Indian academics jump to the wagon that federal structure is being jeopardised, and they clamour for increasing state autonomy and state rights as 'sine qua non' for a federal system. Their eye fish on the American model whenever federal issue is involved. They are oblivious that American federation is centripetal whereas Indian mode is just the reverse, centrifugal. Hence the American model could never be employed in Indian context of Union vs. State powers and position.

## Legislative Procedure

The legislative procedure is laid down under Article 107-110 of the Constitution. Article 107 reads that a non-monetary bill (ordinary bill) shall originate in either House of Parliament. A distinction of money bill is made available under Article 110, as such :" A Bill is deemed to be a Money Bill if it contains any provision dealing with or any of the following matters :

(a) The imposition, remission, alteration or regulation of the money by the Government;
(b) The regulation of the borrowing of money by the Government;
(c) The custody of the Consolidated Fund of India, the payment of Money into or withdrawal of money from any fund;
(d) The appropriation of money out of the Consolidated Fund of India;
(e) The declaring of any expenditure to be expenditure charged upon the Consolidated Fund of India;
(f) The receipt of money on account of the Consolidated Fund of such money or the audit of the accounts of the Union of a State;
(g) Any other matter whether a Bill is Money Bill or not shall be defined.

Money Bill could originate only in the Lok Sabha with prior assent of the President. It also implies that he does not withhold it when presented for his consent later.

If a Bill has sanction of the Cabinet, it is called Public Bill or Government Bill. This kind of Bill is moved in the House by the concerned Minister. Members in their individual capacity can also move Bills, which are known as Private Member's Bill. However, behaviourally unless a Bill has the backing of the ruling party it is hardly possible to get pass since

he can hardly muster majority support. It seems the individual Members move the bills only to stir public opinion. It is evident from the fact that only 14 Private Members' bills have been passed within the present term of Lok Sabha whereas 700 such bills are pending, whose are obviously at vanishing point.

A Bill passed in the Rajya Sabha but pending nod of the Lok Sabha remains alive if even if the Lok Sabha is dissolved in the meantime. But if it has been passed only in the Lok Sabha waiting for affirmation of the Rajya Sabha, but it ends its term then the Bill dies down.

A Bill may be referred to a Standing Committee or a Select Committee or Joint Select Committee if agreed upon by the other House if urgently required or if the Bill is a complex in nature. Very often the Members demand for such reference only to buy time as it happened in case of Agriculture Bill (2018) and Delhi Civil Service Appointment and Transfer Ordinance (2023) besides innumerable Bills in the past.

The Speaker has exclusive power to interpret if a bill is money bill. In case of difference of the two Houses on Money Bills, the opinion of the Lok Sabha prevails upon. In case of difference over other Bills between the two Houses, or if six months elapses waiting for the opinion of the other House, then the Bill is referred to the Joint Sitting of Parliament under Article 108 of the Constitution, which is presided over by the Speaker. For the first time it met on the question of Dowry Prohibition Bill in 1961. In recent past such a Joint Siting was held on 26 March 2002 over the Prevention of Terrorism Act (POTA). One point is crystal clear that the Lok Sabha dominates in Joint Sitting by virtue of its numerical strength which is more than double to Rajya Sabha.

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Visibly there is one anomaly. Though the Constitution provides that a Bill may be referred to elicit public opinion, there is no tangible mechanism to work it out. The provision of referendum is not at all there under Indian Constitution.

## Behavioural Inconsistencies

While the theoretical provisions are visibly alright, there are manifold operational apprehensions and inconsistencies in the realm of legislation.

Let us see the Bill to jettison Article 370 of the Constitution in August 2019 pertaining to the special status of Jammu and Kashmir. Full preparation was made by the Home Ministry to keep peace in the state when the Assembly had been dissolved under the spell of President's Rule. While the rainy session of the Parliament was on move it was informed that the Home Minister would give a statement in Rajya Sabha at 11 am on 5 August 2019[4]. But the Home Minister introduced a Bill to scrap Article 370 from the Constitution. Some Members got irked and Members like Kapil Sibal argued that such a measure would be rejected in the Supreme Court. The Home Minister Amit Shah in a cool mood asked the members to deliberate on the Bill later, and he instantly sought if at all the Bill was qualified to be introduced. By voice vote it was agreed upon. The Chairman of Rajya Sabha immediately allotted eight hour time for deliberation – of course it continued longer, ending with division at 10.30 pm. Some Members' futile move to refer it to a Select Committee was silenced on the plea by the Home Minister that Article 370 had passed through hot debate right since seventy years and the Modi government had earned mandate to abolish it. The Bill was passed and transmitted to the Lok Sabha instantly and passed in the Lok Sabha next day, ie., 6 August receiving the President's assent on 8 August 2019. Eye brows

were raised as to how the Bill moved across with electrifying acceleration. Well, it is the job of the Parliamentary Affairs Minister to make liaison with the Presiding Officers on behalf of the Government; and when the intention is rational no bookish provisions could prevent.

There is another recent illustration which unfolds that proper legislation meets doom on the face of intense public pressure. It is the Agriculture Produce Bills – the three Farmer's Bills, pending since 1994 caused by obstructionist attitude of the disgruntled Members. The Congress Party also promised so in its election manifesto for this kind of farm reform. The Government prepared it keeping in view the demand of the Farmers' associations as well. But after its passage in November 2019 resistance of unprecedented measures started, and those who were supporting earlier back trapped, the Government had no escape to repeal the three Bills on 1 December 2021 even though the Supreme Court had constituted a Committee to re-examine the Bills[5].

Populist Bills like reservation of seats in the legislatures and government jobs every ten years since 1960 used to get pass in the Parliament within a minute. It was also discerned during the passage of Women Reservation Bill on 18-19 September 2023. No adequate procedure are being employed in such cases since no party ventures to be isolated reserving its stance otherwise in the populist measures[6].

Another controversy arises on the factor of President's assent. To recall the British practice, the Crown can exercise three options, viz., absolute veto, suspensive veto and pocket veto. Queen Anne for the last time exercised absolute veto in 1707 on Scottish Militia Bill[7]. We emulate the British practice, though not in verbatim, yet it is admixture of it. The President can return a Bill for reconsideration of a Bill with his dissenting note. Even when Sardar Zail Singh delayed the Postal Secrecy Bill in 1987 apprehension was aired on the President's negative desire on the face of his supposed cold relationship with the Prime Minister Rajib Gandhi.

Pocket veto tacitly means to keep reticence over a Bill. Very recently the chief Justice of the Supreme Court D.Y. Chandrachud has expressed exception to the delaying tactics of three Governors during September October 2023, viz., Arif Ahmed Khan of Kerala, R.N. Rabi of Tamil Nadu and Banwarilal Purohit of Punjab. His words were harsh – "The Governors must realise that they are not elected by the people….."[8]. It is to be noticed that Tamilnadu Assembly has repassed as many as ten such legislations without any amendment returned by the Governor since January 2020. The Governor is of course the Head of the State. The constitutional institution that is of the Governor has some signification, who may display his reasoning for greater end of the State. Let us envision a case – that is Kashmir Rehabilitation Bill. It was passed in the Kashmir Assembly in 1986 by the National Conference Government headed by Farooq Abdulla, which stated that the relatives of the Kashmiris who had migrated to Pakistan in 1947 might return back to Kashmir. The Governor B.K. Nehru kept it pending, and the term of the Assembly became over and thus the Bill died down. In the Assembly election of 23 March 1987[9] Farooq Abdulla again returned to power, and he got passed the same Bill. The Governor then referred it to the President for his consideration. The President R. Venkataraman sought Advisory Opinion from the Supreme Court under Article 143 of the Constitution. But the matter was silenced under the driving vicissitude of politics. It could hardly be argued that legitimate legislation was jeopardised; but the question at stake here involved in-built erosion of the demography of the state affecting the country at large, and hence the Head of the State was duty bound to employ his conscience for greater end overlooking the heat of contemporary political compulsion.

Peculiarity is that the Parliament has annulled its own legislation in short succession. The 42nd Constitution Amendment Act, 1976 is in hand. It was a major overhaul of the Constitution since its inception; and all the provisions were intended to affect independence of judiciary, rule of law, personal liberty, widening the scope of national emergency provision, prolonging the span

of Lok Sabha etc.. Next year the political guard was succeeded by the rival who effected the 44th Constitution Amendment Acts in 1978 to marginalise the 42nd Constitution Amendment Act.

Further, the Parliament has bitter experience of legislation. The Parliament is supposed to reflect sovereign popular opinion, and as such its legislation ought to be honoured. We have experienced the fall of Agriculture Bill in 2021 in the course of outburst of traumatic agitation. But the nullifying the Parliamentary legislation by the Supreme Court for its own end is beyond comprehension. The Judicial Amendment Act had been in the legislative fray since nineties. But after much deliberation, taking confidence of the Law commission and the former Judges of the Supreme Court and the High Courts and eminent jurists the Parliament unanimously passed the Bill in order to streamline the appointment of the august court. Article 124 simply prescribes that the President the Chief Justice shall be appointed by the President; and other Judges shall be appointed by him in consultation with the Chief Justice. The general practice is that the judicial officials (Judges) shall be appointed by the executive as practised by the standard American practice, whom we have broadly emulated. But the Act was put to dust by the Supreme Court in 2015 on the ground that it compromised the Basic Structure of the Constitution - that is, independence of Judiciary. The Judges liked to appoint the Judges. Illustrations are abundant to find that the sphere of the legislature have been usurped by the Judiciary.

There are two phenomena which needs serious attention. One is the provision of Ordinance under Article 123 of the Constitution. It is legislation by the executive so much so that it has the same potent as that of Act notwithstanding the fact that it ought to be passed within six weeks in the next session of the Parliament, otherwise it would lapse. This is a colonial design since the parliament approval of the need of the Viceroy might not be available urgently. The Government of India Act, 1935 also incorporated it, and in independent India the same provision continued. Though it could be justified at some time, it has been largely envisioned that it is abrupt violation of the sanctity of the Parliament. The Supreme Court accepted a Ph. D. thesis on Ordinance as a writ petition in 1985. The Court termed Ordinance as a "fraud on the Constitution".

The second one is the apparent device of Delegated Legislation sub-ordinate legislation. This is of course employed in all democracies so much so that the Parliament has neither competence nor time to legislate in details. It only formulates the skeleton form of a Legislation leaving out to the Government to work out in details. The latter, in its course of executing, issues various rules, sub-rules, regulations and bye-laws in order to make the Law operative. British constitutional experts like Lord Hewart of Bury termed delegated legislation as 'new despotism'. It is argued that the Parliament itself has been delegated by the people to legislate, so how the delegated authority could again delegate its functioning. However, there is provision of Consultative Committee on Sub-ordinate Legislation. It recommends its scrutiny to be accepted by the Speaker, and the latter in consultation with the leader of the Lok Sabha can find redress; which are published in the Gazette of India. But the provisions were more honoured in the breaking than observance"[10].

## The Phenomenon of Judicial Review

Judicial review is the corner-stone of constitutionalism, which otherwise limited government; which is fundamental to liberalism. Though this is western concept, it is akin to Indian tradition. Montesquieu had hit upon the theory of separation of powers according to which division of power was made synonymous with limitation of authority. Judiciary was raised to the status of third organ of the constitutional arrangement as it is to interpret the laws made by the legislature. Judicial restraints are thereupon to be regarded as guarantee of the constitutionalism[11]. Dr. Bonham's case in England in 1610 underlines that "common law will control acts of Parliament and sometimes adjudge them to be utterly void". Chief Justice Marshall of the United States,

in Marbury vs. Madison case in 1803, emerged as the precedent of Judicial Review[12].

Though judicial supremacy is non-existent in India, the essence of Judicial Review is an established norm here. Judicial Review is not one of assigned powers of the Supreme Court of India. This is only deducible from certain other powers provided under the Constitution. The only Article which confers such power in the Supreme Court is Article 137 which reads: "Subject to the provision of any law made by Parliament or any rules made under Article 145, the Supreme Court shall have power to review or judgement pronounced or order made by it". However, judicial review of legislation in India is subject to the provisions of Article 245 and 250 which leave the appropriate legislature supreme in its own jurisdiction and the court is not expected to exercise veto power over the legislation or behave like a Third Chamber[13].

Besides the power vested in the Supreme Court under Article 139 for issuing writs, orders and directives confers complementary jurisdiction and enables it to scrutinise any law. On the other hand Article 21 dealing with right to life and liberty established by law", which means law enacted by Parliament as supreme.

The first case surfaced in India amounting to judicial review is A.K. Gopalan vs. the State of Madras in 1950[14] which is tantamount to Marbury vs. Madison case of USA. It was the fall out of the Preventive Detention Act, 1950, which compromised Articles 13, 19, 21, 22 and 32 of the Constitution. The Court exercised its power within the original jurisdiction under Article 32 of the Constitution. The court pronounced the P.D. Act as 'ultra vires' or unconstitutional and hence null and void. Next such instance which drew public attention was the ordinance proclaimed on 19 July 1969 nationalising fourteen major Banks which was legislated on 4 August 1969. The Supreme Court declared it 'ultra vires' on 10 February 1970 since it infringed upon Article 31 of Part III of the Constitution[15]. It was again reversed under 25th Constitution Act, 1971. Subsequent such cases include Rajasthan Electricity Board (1965), Golak Nath case (1967), Keshabananda Bharati case (1973) and National Judicial Appointment Act (2015)[16]. However, one point which is to be noticed is that such cases do not surface in the Court 'suo motto', but a petition is to be filed for the purpose. Further, nothing prevents the court to take initiative by itself, of course in exceptional cases.

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This kind of scenario often apt to create dichotomy between the Parliament and the Supreme Court. Let us discern a couple of instances to anatomise the point at stake. On 12 June 1975 Justice Jagmohan Lal Sinha of Allahabad High Court unseated the Prime Minister Indira Gandhi from Lok Sabha on the charge of misuse of power during the Lok Sabha election of 1971, and provided relief to appeal in the Supreme Court within 15 days. Instead of attempting so she moved to declare a presidential ordinance that no election case could be filed against the President, Vice President and the Prime Minister. It was legitimatised under 39th Constitution Amendment Act on 10 August 1975.

Another shining instance in reverse direction is Shah Bano case. The Supreme Court on 23 April 1985 lent support to Shah Bano, a divorcee of Jabalpur and asked her advocate husband, Ahmed Khan, for maintenance under Section 125 of the Criminal Procedure Code, 1973[17]. However, the then Prime Minister Rajib Gandhi submitted to the demands of the Ulemas that no organ could exercise jurisdiction over the Shariat which governs the personal code of the Muslims. The Government

moved a Bill which marginalised the Supreme Court verdict.

Thus often the Court rejects the law made by the Parliament and vice versa – each flexing its muscle to marginalise the other as a matter its own sphere of action. Under this circumstance it is quixotic to conclude that either of these two organs is supreme over the other. In fact, both are supreme in their respective spheres without encroaching upon the other. A popular quote of Lord Acton reads, "For forms of government let fools context, the best administered is best". The same was outlined by Dr. B.R. Ambedkar thus, "However good a Constitution may be, it is sure to turn out bad because those who are called to work it happen to be a bad lot. However bad a Constitution may be, it may turn out to be a good if those are called to work it happen to be a good lot"[18].

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Prof. Himanshu Roy

# Business Chambers, Linguistic Regions and Federalism in India

Business chambers played a significant role in federalization of India. An overview of the history

This paper discusses the role of regional business chambers like the Bengal National Chamber of Commerce and Industry (BNCCI), South Indian Chamber of Commerce and Industry (SICCI), etc., in the federalization of India premised on the linguistic provinces since 1885. It tracks their trajectory of demand, and the impact of it, till 1948.

In the development of federalism in India the business chambers and the linguistic regions have played an important role. The idea and the demand for it, and its incorporations in the political programmes-manifestos of the Indian National Congress- were the result of their constant persuasions. The colonial act of partition of Bengal in 1905 generated a mass support for linguistic provinces in their favour which subsequently expanded to other linguistic regions and sub-regions. This support had emerged out of linguistic homogeneity that had developed over the centuries in different linguistic regions under the pre-colonial mercantile economy which was further consolidated under colonial rule as a result of new technologies, economy and administrative acts despite their social-structural differences within a regional community. The Chambers represented the collective business interests of their trade associations.

The first chamber of commerce in India was established in 1834 in Calcutta after the British East Indian Company external trading rights were liquidated by the British Parliament in 1833. It was followed by the formation of Madras and Bombay Chambers of Commerce in 1835 and 1836, respectively.

These chambers were of European merchants formed to protect their trading interests under the new policy of free trade. The first Indian merchants' chamber, different from the British, was formed in 1885 in Kakinada in Andhra Pradesh, a part of Madras presidency. It was named as the Native Merchant Chamber. It was followed by the formation of BNCCI in 1887. Its constitution was drafted by A. O. Hume and was revised by W. C. Bannerjee, the founder of the Indian National Congress. Subsequently, many other chambers were formed such for example as the SICCI in 1909, and the Andhra Chamber of Commerce and Industry (ACCI) in 1934.

The objective of the regional chambers was to "*aid and stimulate*

*the development of commercial enterprise in the regions and to protect the commercial interests of all persons trading therein…for example, the BNCCI had intended from the very outset that…the chamber should all along regard itself as virtually interested in the economic development of Bengal in a manner which would not be possible through unqualified membership as businessman with their principal centres outside Bengal couldn't devote concentrated attention and enthusiasm for the development and economic welfare of this province. It is this limitation of its scope which imparts a distinctive strength to the chamber from the point of view of this state.*[1]"

The formation of these chambers led to their annual sessions, of the Indian Industrial Conference, (IIC) since 1905. These sessions were held along with the annual sessions of the Indian National Congress. The IIC continued their sessions till 1915. In 1916, at Lucknow, the Congress accepted in principle the policy of a federal polity; and in 1920 it accepted, in principle, the formation of the federating units to be constituting of linguistic regions. As a result, in 1921 the Madras, Bihar and Odissa Legislative Councils accepted this principle. In 1927, the government of India and India Office were flooded with memoranda for the formation of Oriya, Kannada, Andhra, Tamil, Bengali and Jharkhand Provinces. Both the offices were requested to forward these memoranda to the Simon Commission which was set up to suggest the future shape of Indian polity. Subsequently, resolutions were 'moved in the Central Legislatures for the formation of separate Andhra, Tamil and Kannada provinces, and a resolution urging the formation of a separate Andhra province was adopted in the Madras Legislative Council'.[2]

In 1942, in the Quit India Resolution, the Congress promised 'the largest measure of autonomy for the federating units[3]; and in 1946 the Communist Party of India (CPI) proposed 'seventeen sovereign National Constituent Assemblies based on the national homelands of various Indian people'[4] and stood for 'a voluntarily union of National States'. The Congress, too, promised a federation based on the 'willing union of its various parts', the parts themselves being constituted on the necessary homogeneity of language and culture[5].

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Business chambers were consulted by the governments-provincial and federal- to seek their views on business policies. They were granted constitutional rights to send their representatives to the Legislative bodies to represent their collective business interests. Since 1905, there was a change in the industrial policy of the Government of India which had begun to offer 'help and guidance' through the provincial governments to native businesses in areas like handloom, weaving and leather processing. The Madras Government, in particular, provided considerable impetus to the application of this new policy. These chambers, in turn, sought conducive business policies for themselves from the government.

Over the decades, these regional business chambers enjoyed substantive business freedom and regional business clout in the making of trade and industrial policies. They had inside information on the developments which used to be discussed in the local administrative setup. For example, BNCCI was aware of the proposal of partition of Bengal in 1904 itself. a year before the actual partition was enacted in 1905. These regional chambers, once they began to enjoy the fruits of regional business policies and market dominance, began to insist on retaining the industrial and business planning locally framed to benefit 'the sons of the soil' in the face of the growing

opposition from the Federation of Indian Chamber of Commerce and Industry (FICCI) representing the collective interests of the nation's big business, which itself had emerged out of the regional business chambers of commerce in 1927, and was now against the dominant roles of the regional chambers in the regional market. It opposed the principle of regionalization of industries and urged that each business enterprise of the nation should be given the full freedom and facilities to establish industries in places most suitable for such development. It regretted that every time a proposal to establish an industry in the Madras Presidency is given, it is turned down on the ground that the firm sponsoring the establishment of that industry doesn't belong to that presidency. It complained that the present policy of regional development would lead to the creation of monopolies for persons of firms borne only in a particular province.[6]

In 1945, as a result of this constant critique of the 'regionalisation' of industrial policy by the FICCI which was led by G.D Birla and P. Thakur Das who were also instrumental in its formation, the colonial government in 1945, in a major policy shift, transferred twenty major industries from the purview of the provincial government to federal government. Yet, when the Cabinet Mission arrived in 1946 for the transfer of power, the FICCI had the fear that under the pressure of regional business chambers, the power over the industries may shift back to provincial governments. For, the FICCI was afraid that under the Cabinet Mission Plan, which was premised on the concept of federalism envisaging larger powers to federating units and lesser power for the centre, the provinces 'will exercise a larger measure of autonomy on all matters pertaining to the province. Almost all the aspects of trade and commerce will thus be exclusively provincial spheres'[7]. It urged the central government 'to include special provisions in the constitution acts… to provide that any unit, province or state shall not have the power to pass any law or take any executive actions prohibiting and restricting the entry into or export from one unit or province to another of any goods of any class of description. It should similarly be led down that no unit or province should be entitled to impose any tax, cess, toll or due which, as between goods manufactured or produced in one province or unit and similar goods not so manufactured and produced, discriminate in the favour of the former[8]. When the Constituent Assembly was formed, big business lobbied through different Constitutional Committees and sub-committees to put more numbers of industries-business sectors under the purview of the central government; and in its role, it was ably supported by the political leadership which was best expressed by Nehru who had stated that provincialism is the worst threat to the country at this juncture "The more dangerous thing, that can be seen, is of provincialism. It's not a good that the people of each province make a separate policy for themselves and create hurdles.[9] It was in response to the FICCI which was repeatedly demanding from Nehru that 'for the purpose of trade and commerce, geographical India should be treated as a single unit and inter-provincial and state barriers and administrative restrictions should disappear immediately[10]. The FICCI was arguing that "the establishment of such units will facilitate the introduction of uniform policies in respect of the country's economic development[11]". It was believed that "there will no longer be conflicting policies either regarding labour laws or taxation or such other matters now obtaining between the Provinces and the Indian State". The more the merger of States is brought about the more they will integrate with the Union of India[12]. This demand was against the State Paper of May 16, 1946, of the Cabinet Mission Plan which had envisaged only three subjects to be allocated to the Centre, namely Defence, Foreign Affairs, and Communications. The FICCI finally succeeded in its mission of bringing in the major industries under the purview of the Centre including the items enlisted earlier in the State List. It also brought the residuary powers under the purview of the Centre. With the merger of Princely States with the Indian Union and their reorganization into rationalised administrative units the Indian big business developed an unhindered market

at its command which hitherto was devoid of. The Constituent Assembly facilitated a common code of banking laws, laws of contract, laws of arbitration and bank-corruptcy- a common code of business laws- to remove major internal custom barriers. It was vastly different from the earlier provincial laws which hindered the application of common business laws in India.

These conflicts of the business chambers- regional versus FICCI- were visible in the changing political stance of the Congress on the linguistic provincial demand. While, before independence, the Congress had agreed to the idea of linguistic provinces, it changed its demand once it came into power. The Congress leadership was now reluctant to implement its accepted principle

These conflicts of the business chambers- regional versus FICCI- were visible in the changing political stance of the Congress on the linguistic provincial demand. While, before independence, the Congress had agreed to the idea of linguistic provinces, it changed its demand once it came into power. The Congress leadership was now reluctant to implement its accepted principle. Three different committees were formed namely the S.K. Dhar Committee (1948), the JVP Committee (1948), and the Citizens Committee of business houses. While the Dhar Committee was formed by the Constituent Assembly, The JVP Committee was formed by the Congress party to study the report of the Dhar Committee. It may be stated here that Justice S.K Dhar was the retired judge of the Allahabad High Court and the committee was constituted of three members including the chairperson. The JVP Committee was constituted of Jawaharlal Nehru, Vallabh Bhai Patel, and Pattabhi Sitaramayya, the last one was the President of the Congress. The Citizen's Committee was constituted of J.R.D Tata, H. P Modi, P. Thakurdas and two others. All three different committees rejected the demand of linguistic provinces on the premise that the time was not conducive for its application. It postponed the application of the idea as a future project. The two committees, namely the Dhar Committee Report and the JVP Committee Report stated the reasons for their non-acceptance of the demand of linguistic states in 1948-49. The Dhar committee was tasked to suggest the desirability "of the creation of the proposed provinces of Andhra, Karnataka, Kerala, and Maharashtra" while "accessing the financial, economic, administrative and other consequences" (Dhar Committee Report). The Report submitted to the President of the Constituent Assembly unanimously recommended against the demand of the linguistic provinces. But the persistent vocal demand for it within the Congress and outside it forced the Congress leadership to relook into the Report. The JVP Committee was constituted to go through it. This Committee again reported against the desirability of the proposed provinces as referred to in the Dhar Committee Report.

It was feared that the linguistic reorganisation would further destabilise the country in the backdrop of the partition that India had faced. Patel had felt that "linguistic provinces would let loose a host of disasters for the country and would be like the opening of Pandora's box[13]" Patel's act of reorganization of the administrative setups of the princely states after their merger with the Indian Union was highly appreciated by the FICCI. 'It is… a matter of great satisfaction to the country that amid (different) preoccupations… The National Government succeeded in their efforts of (administrative reorganization). It was felt that the linguistic provinces will lead to parochialism- son of the soil feeling- that may retard the national integration process. It may also lead to huge taxable burdens on the citizens, many of the tiny linguistic states may not find, in the long run, their units economically viable and ultimately fall back upon the Centre for financial support[14]. From December 1947 to April 1949, in less than two years Patel had reorganized, before his death, the whole of India into four categories of administrative units. It was a dream come true for the FICCI.

The provincial leadership of the Congress who were not in the national reckoning sensed an opportunity under the mass pressures of the cadres and the masses to generate public

movement on the Congress's national leadership. The reorganization of the states on the linguistic principles would have provided them an opportunity for a regional-national reckoning. VP Menon, to demonstrate a fact, had warned the local Tamil-Malyali leaders of the Congress in 1949 not to raise the issue of linguistic states. It was "wrong to press linguistic arguments forgetting the economy and historic ties[15]" The JVP had felt that the demand by the provincial Congress leadership for linguistic states in different regions was 'article one' and was 'backed by parties seeking conquest of power[16]' There were, however, few Gandhian leaders who had felt that the linguistic provinces will be able to solve the economic-social problems efficiently and democratically. The ordinary citizens, they felt, needed governance, employment, and economic development. It was, however, believed that the linguistic provinces would solve their existing problems.

The regional Business Chambers of Commerce who had enjoyed unprecedented financial autonomy from 1905 to 1945, when the colonial administration had transferred twenty major industries from the purview of the provincial governments to the federal government, had supported this demand of the linguistic state, and it continued to do so to regain their lost autonomy. Patel was open to the ideas of linguistic provinces if they represented the collective will of the regions and the Indian state. But he could see through the veneer of demand of the linguistic state, the greed of local business and politics in which citizens were being used as cannon fodder. Therefore, he had postponed its application for the future. He had felt long back that local politicians in search of power would fan this demand. Menon, therefore, had instructed the provincial Congress leaders not to raise the issue of linguistic states[17].

The demand of the linguistic states itself was buttressed by the new emergent social forces that were unleashed by the anti-colonial mobilization, the consequences of the Second World War, and Independence. The political-administrative opportunities, with the creation of new states, beckoned a new vista for the urban-rural upwardly mobile segments of the society who were bottled up under the old ruling elite and the alien colonial administration. Linguistic provin-ces provided them 'moment of arrival' and 'conquest of power'. The business and political leadership from municipalities and panchayats to assemblies and different tiers of organisations of parties were aspiring for new higher political-administrative occupancies and business opportunities. The 1946 election and the administrative-political vacancies after the elections, and the partition provided unprecedented opportunities in scale and expanse. The subsequent development after the formation of the linguistic states reflects it.

The irony of history is interesting. Approximately a hundred years after accepting the principle of linguistic provinces by the Congress, the same Congress buried this principle in Andhra Pradesh, which it had created as the first linguistic province under the mass movement after independence. It broke it to create another new province the Telangana state in 2014. Earlier, it created many new states in the north-east premised on the principle of ethnicity. Left to itself, the Congress was more in favour of national homogenization and administrative reorganization for its federating units for a better uniformity of rules and business laws.

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Dr. Chander Pal Singh

# Legislation Strengthened British Rule in India

Legislation, in British India, was always aimed at strengthening the colonial rule. A look into the historical developments

With the establishment of the rule of the East India Company (EIC) on some parts of India in the second half of eighteenth century, the British were forced to introduce rudimentary legislative, judicial and executive bodies in India to facilitate their administration and later sustain their empire in India. Legislation or law making by legislature evolved gradually along with the development of legislative bodies in India which were themselves a product of the changing historical circumstances and to meet the evolving needs of the ruling establishment in India and Britain. The present-day legislature and legislation are the culmination of a process which started in the eighteenth century. No wonder that indigenous lawmaking practices have no trace in the current legislative process. This article while arguing that legislation in British India was a site of strengthening the foundations of British colonisation in India takes a two-prong approach. On one hand it tries to present briefly the evolution of legislature in British India; secondly it will attempt to highlight how the legislation served the colonial and imperial interests of first the EIC up to 1857 and after that the British Crown and the British parliament to counter the rising nationalist consciousness and the freedom struggle. At the same time steady growth of Indian element in the legislative bodies played an important role in the freedom struggle but it is outside the scope of the present paper.

The Royal Charter in 1600 for the establishment of EIC 'conceded certain limited power of legislative character' with the condition that laws must not be contrary, or repugnant to English laws and interests.[1] Though EIC was a purely maritime commercial enterprise in the beginning, its charters were drawn by the British Crown. Subsequent charters widened the legislative powers of the Company. After the battles of Plassey (1757) and Buxor (1764), Company started controlling Bengal and became a political power. Territory, revenue and incredible wealth of Company officials generated incredulous awe in Britain leading to Regulating Act of 1774 wherein parliamentary control over civil, military and revenue matters was recognised for the first time. Thus, Britain started controlling India through EIC. The legislative powers were vested in

the Governor-General and his Council but they could make no laws which the judges of Supreme Court did not consent with. Pitt's India Act of 1784 further subordinated the decision making of EIC by Crown by placing a new body called Board of Control over the existing Court of Directors.

As we shall further see, interests of Britain dictated the policies initiated in India and legislation was used as a via media in this process. In this context, the Charter Act of 1813 is very illustrative. In order to open up India to British capitalists as beneficiaries of the industrial revolution, this act deprived the Company of its monopoly over trade with India. 1813 Act also started the process of cultural conquest of India by allowing Christian missionaries to enter India and start their proselytising mission. This Act also laid the ground for controlling the education of the natives which culminated into Macaulay's Minute of 1835. Governor-General of Bengal was made the Governor-General in India who with his Council was to legislate for the entire British territories in India.

The process of centralisation which began with the Regulating Act reached its culmination in 1833 when the Charter Act of 1833 was passed which abolished the legislative powers of the governors of Bombay and Madras.[2] All laws now began to be made in Calcutta by the Governor-General and his Council. The Act also provided for separation of the executive and legislative functions of the Governor-General's Council. A law member was added to his Council and a law commission was setup to frame the laws.[3] None other than Lord Thomas Babington Macaulay was the first law member and he also headed the first law commission which framed the penal code which has remained in existence till now.

Centralisation of lawmaking had its reaction in the form of Charter Act of 1853, the last charter act, wherein each provincial government would send one member to the governor-general's council in Calcutta. It was the first recognition of the principle of local representation in the Indian legislature though all representatives were British officials.[4] Still, the council adopted parliamentary practices like open oral discussions, examination of bills by select committees and sometimes even took strong anti-Government stand. No wonder that a section of British officials began accusing the council of behaving like 'petty parliament'. These developments perturbed imperialists like Charles Wood, the framer of the Charter Act of 1853. He made it clear that he never wished to create a body in India which could 'set itself up as independent of the Government'[5]. He feared that it would disregard the right of Secretary of State to interfere with the process of legislation in India.

Within four years of working of the Charter Act of 1853, the British authorities faced a mighty tempest in the form of the revolt of 1857 which nearly uprooted the British empire. All the British policies here onwards were aimed at preventing another 1857 like revolt. The revolt of 1857 underlined the need for associating Indians with the process of law-making in India as the British officials and sympathetic natives like Syed Ahmad Khan emphasised on the futility to govern a big and diverse land with the aid of official opinion alone. Sir Bartle Frere[6] said that "unless you have some barometer and safety-valve combined in the shape of a deliberative Council, I believe you will be liable to very unlooked for and dangerous

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explosions".[7] Since the revolt had also proved to be a financial disaster, the British Government wanted to increase taxation, especially direct taxation which was resented by non-official Anglo-Indians who raised the cry of 'no tax without representation' to demand introduction of non-officials into the legislative council. To counterweight non-official Anglo-Indians, Indian members were needed.

The British response to INC demands led by Viceroy Lord Dufferin on one hand dismissed the Congressmen as 'a microscopic minority'. But on the other hand, he aimed to isolate hard liners among educated Indians and native press and to accommodate liberal moderates. Dufferin put forward certain suggestions for introducing changes in the composition and functions of Legislative Councils which became the basis of Indian Councils Act 1892 during the viceroyalty of Lansdowne. Indian Councils Act of 1892 was a cautious extension of the Act of 1861 by increasing the size and functions of the Council for legislative purposes

The Indian Councils Act of 1861 was passed to meet the above objectives. It authorised the Governor-General to nominate six to twelve members to his Council for the purpose of making laws. Half of them were to be non-official members and some of these non-official members were Indians. So, this Act marked the entry of Indians in the law-making process. The additional members were carefully handpicked from feudal sections of Indian society with proven loyalty but their role and status were advisory. Out of a total of 36 Indian members in the Imperial Legislative Council during the period 1862-1888, 23 were landholders and 6 were ruling princes.[8] Any idea of forming electoral constituencies was rejected out of hand, and the claims to representation of rising educated nationalist classes were promptly rejected. The laws made by the Council were in actually the orders of the Government and the Council was more of a committee for the purpose of making laws. The Government made it clear nobody should contemplate anything like a representative Council or responsible government for India. Wood was of the opinion that "The only Government suitable for such a state of thing as [existed] … in India … [was] despotism controlled from home."[9]

1870s and 1880s witnessed rising national consciousness among Indians on modern lines in the form of political associations and most remarkably in the birth of Indian National Congress (INC) in December 1885. British response to Indian nationalism was two-fold. Diehard imperialists like John Strachey refused to accept that India was a nation or a nation in the making due to her vast diversity while liberal British Viceroys like Lord Ripon tried to devise additional channels for apprising Indian people of the British benevolence and of knowing their wishes. Lord Ripon made some efforts to involve educated Indians with administration and legislation. In 1883, the rules of legislative business were so amended as to provide for the publication of every bill immediately after the motion to introduce it so that the people could express their opinion if they wanted.[10] But Indian nationalists were not satisfied with these half-hearted measures. In its very first session the INC passed a resolution asking for the expansion of the legislative councils by admission of elected members and enlargement of their functions. These demands were reiterated year after year.

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and functions of the Council for legislative purposes. Members of the imperial Legislative Council could discuss the annual financial statement of the Governor-General in Council but they did not have the power to alter it. They could also ask questions in order to seek information but supplement questions were not allowed. The Act allowed the non-official members of the provincial councils to make recommendations for four seats in the governor-general's council and the municipalities, district boards, chambers of commerce and universities to make recommendations for eight seats in the provincial councils. Overall, the legislature envisioned by the 1892 Act failed to satisfy the Indian demand of the steady development of representative institutions in India. But at the same time, it can be said that British government in India achieved its objective of placating the majority of Congress moderates as from 1894 to 1904 because no resolution was moved on this subject.[11]

Beginning of the twentieth century marked a sea change in the political atmosphere in India. Announcement of the Bengal partition plan in December 1903 was met with a vociferous opposition to partition which began in Bengal but soon spread to other parts of the country. Anti-partition movement gathered storm in the form of Swadeshi movement with the battle cries of Swadeshi, national education and passive resistance marking the beginning of active involvement of common people in politics. An extremist section in the Congress had already emerged with iconic leaders like Lala Lajpat Rai, Bal Gangadhar Tilak, Bipin Chandra Pal and Aurobindo Ghosh. Revolutionary groups had also made their appearance in India. Japan had defeated Russia. A Liberal ministry committed to reform had come to power in Britain. John Morley was the Secretary of State for India and Lord Minto was the Viceroy. The moderates in India were losing ground as a virile Hindu nationalism expounded by the extremists was becoming more appealing to politically conscious Indians than prayers and petitions.

Colonial response to these circumstances can be summed in the words of Lord Minto: "I am more and more convinced that the most important factor we have to deal with in India is not the agitation set up by Extremists for impossible objects, but the steady growth of a moderate educated class, who will be more and more inclined to ask for a greater share of responsibility and power, I want to get them on our side-if we do not, we may drive them into the enemy's camp."[12]

The situation called for a new constitutional reform initiative which became known as Morley-Minto Reforms passed in 1909. These reforms were aimed at rallying the moderates on one hand and putting down revolutionary violence and sedition with the other hand. The fundamental premises behind the reforms were that representative government was totally inapplicable in Indian conditions; while the paramount power and ultimate decision will still be in British hands, Indians will have a larger share in shaping the conclusions arrived at; develop counterpoise to the educated middle class with nationalist leanings with conservative elements i.e. princes, landlords and Muslims and lastly making bridges with the Moderate leadership of Congress by offering the seats in legislative councils; but in return ask them to keep extremists in check.

The Morley Minto reforms increased the number of Indians in the legislative councils both imperial and provincial but this number was still not enough to control the executive. The legislative councils were allowed more time to discuss the budget, they could call for division and could ask supplementary questions. The colonial authorities took care to repudiate that these enlarged councils could pave way for anything resembling parliamentary institutions. Rather the government used the representation of different classes in legislative councils in a competitive manner. The Act introduced the principle of elections in India for the first time but they were indirect, except in the case of landlords and Muslims; the electorate was indefinite and severely restricted. The constituencies for the imperial legislative council were provincial legislative councils, landholders, chambers of commerce, and

Muslims. For the provincial legislative councils, the electors were municipal and district boards, landholders, planters, universities, Muslims, and the trading community. These reforms gave communal electorates to Muslims which ultimately led to creation of Pakistan in 1947. Muslim League, created a little earlier with British help was used to represent Muslim opinion and demands of Muslims were given a favourable response. Separate electorate was a blatant example of 'divide and rule' against Indian nationalism. It must also be noted that election as envisaged in the 1909 Act did not mean territorial constituencies but instead representation of classes and interests.

Congress did not accept the 1909 Act till 1916. The decade after the Morley-Minto Act witnessed the transformation of freedom struggle into a mass movement. Colonial administration also responded with new forms of divide and rule. Dalits were identified as a new category to be pitted against mainstream Congress politics. In the 1911 census there was a questionnaire about the status of the caste groups belonging to Dalit castes. And dalit question was hotly debated in Central Legislative Assembly. International events like Balkan wars and Muslim disenchantment with Britain's Turkey policy, and crisis created by the first world war created new political dynamics. In the changed circumstances, British statesmen were forced to answer questions like what was the goal of British rule in India?

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Lord Montague, the Secretary of State for India, was forced to declare on 20 August 1917 that the goal of British rule in India was "the increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India." But there was no time frame for the achievement of this goal.

The Government of India Act, 1919 which became operative in 1921 devised 'dyarchy' a new mechanism to control the rapidly expanding freedom struggle and keep the British flag flying high in India. In the name of responsible government, provincial governments were divided into two compartments: reserved and transferred with important and revenue generating departments being put under the charge of governor and his executive council while transferred subjects were in the charge of governor acting through his Indian ministers. Provincial legislative councils were enlarged with about 70 percent elected members. Franchise was also extended but still only 10 lakh people out of total population of more than 25 crore could vote for central legislature due to property and educational qualifications. Separate electorate was extended to Sikhs, Europeans, Anglo-Indians, and Indian Christians. Central legislature became bicameral. The lower house had 145 members out of which only 52 were elected in general category, the rest being vested interests who were either elected through separate electorate (52), nominated (25) and non-officials (16).[13] The Act maintained significant powers for the British government by allowing the Governor-General and provincial governors to veto any legislation they deemed against British interests.

Reforms of 1919, faced difficult circumstances right from beginning. Negative economic impact of the first world war including scarcity and high prices, devastating influenza epidemic, mass protests following

the Jallianwala Bagh massacre, uneasiness among Muslims over Turkey, Khilafat movement and Non-Cooperation Movement, Increase in revolutionary activities. The process of revising the Act of 1919 began in 1927 with the appointment of Simon Commission, Civil Disobedience movement, Round Table Conferences in 1931-32. The Act became ready in 1935.

In the provinces dyarchy was abolished and introduced at the center.

Representation in the legislatures was arranged in accordance with the 'communal award' as modified by the Poona Pact, an understanding reached between Mahatma Gandhi and Babasaheb Ambedkar for reservation of seats for 'scheduled castes'. About ten percent of the population - roughly three crore people - was enfranchised. The 1935 Act provided for a federal scheme in which both the provinces and princely states would participate. But as it happened, the required number of princely states did not join the federation and federation did not materialize. The 1935 Act had already provided that for such eventuality Government of India with minor amendments would continue. The Governor general was given special powers regarding defence, external affairs, and ecclesiastical affairs. These matters could be discussed in the legislature, but the supplies for dealing with them would not be subject to vote. Moreover, on these matters Governor -general was to be assisted not by ministers responsible to the legislature, but by 'counsellors' responsible only to him.

Studies on 1935 Act have established that this Act like the previous instalments of constitutional reform was not an act of benevolence but was meant to maintain British hold over India under changed circumstances. The proposed federation, including princely states, was a way to divide and weaken national unity. By making accession voluntary and granting significant autonomy to princes, the British could potentially maintain influence within individual states and create obstacles to a unified Indian government. The Act included provisions protecting British commercial interests, such as restrictions on discriminatory taxation and guarantees for property rights. These measures ensured continued economic benefits for the British Empire under a nominally self-governing India. The Act maintained significant central control in the hands of the British by keeping crucial powers such as finance, defence, and the administration of provinces under the authority of the Governor-General and the Viceroy, who were appointed by the British government. This ensured that the ultimate decision-making power remained vested in British hands. While the Act granted provincial autonomy, it retained many essential powers with the central government, limiting the authority of provincial governments. The British government also held the right to intervene and override decisions made by provincial legislatures, undermining the autonomy granted to them. Similar to the Government of India Act of 1919, the 1935 Act maintained a limited franchise based on property qualifications and introduced separate electorates. These provisions aimed to divide Indian society along religious and communal lines, allowing the British to manipulate and control different groups through separate representation. The Act continued the policy of reserved seats for minorities, perpetuating the divisive strategy of communal representation. By allocating seats based on religion and caste, the British administration intended

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to create internal divisions within the Indian population and weaken the unified voice against colonial rule. The Act included emergency provisions that granted the Viceroy extraordinary powers during emergencies. These provisions allowed for the suspension of civil liberties, censorship, and arbitrary arrests without trial, providing the British with tools to suppress dissent and political opposition, especially during times of heightened nationalist activities. Despite the expansion of legislative councils and some devolution of authority to Indian representatives, the Act did not provide for full responsible government or genuine transfer of power to Indian hands. The British government retained control over critical areas of governance and continued to exercise significant influence over decision-making processes.

The Act of 1935 was the lase major episode of the series of constitutional reforms undertaken by the British in India before India became independent. Overall, the Government of India Act of 1935 was structured in a way that superficially granted some degree of autonomy and representation to Indians while ensuring continued British control and dominance over the governance of India. Its provisions aimed to maintain the divide and rule policy, limit the transfer of power to Indians, and retain ultimate authority in the hands of the British colonial administration.

No wonder that Congress leaders called this Act 'anti-India', 'slave constitution, and 'a new charter of bondage'. Congress resolved to combat this constitution. It is another matter that they soon agreed to hold elections under this act in 1937. Later the Constitution of new India retained without any substantial change about three-fourth of the 1935. Lord Linlithgow, the Viceroy stated with clarity the colonial objectives which went into the making of the Act: "We framed the …Act of 1935, because we thought the best way… of maintaining the British influence in India. It is no part of our policy… to expedite in India constitutional changes for their own sake, or for gratuitously to hurry the handing over of controls to Indian hands at any rate faster than we regard as best calculated on a long view, to hold India to the Empire."[14]

Thus, the post-1857 India was controlled not through military but through 'representative' and lawmaking bodies besides information gathering through census, gazetteers, and education policy. Constitutional developments were British responses to crises before the empire. The educated class had hoped to see representative and responsible government in India like they saw in Britain. Legislature was one such avenue which was used to accommodate increasing number of natives but the authorities made sure that the constitution of legislative bodies was such that they served to sustain and strengthen the British rule in India.

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Dr. Seema Singh

# Spirituality: The Foundation of Law

Exploration of the spiritual facets of law can significantly augment the comprehension of Dharma and its applicability to legal practice. A philosophical study

The Supreme Court's motto, "*Yato Dharmastato Jayah*" (Sanskrit: यतो धर्मस्ततो जयः), originates from the Mahabharata, a Hindu epic, and carries a profound message: "Where there is Dharma, there will be Victory." This motto embodies the conviction that justice and righteousness will ultimately succeed and bring about triumph. It stands as a guiding principle, emphasizing the importance of maintaining moral and ethical values within both the legal system and society as a whole.

The significance of the motto "*Satyameva Jayate*" (Sanskrit: सत्यमेव जयते), meaning "Truth alone triumphs," is rooted in its origin from a mantra in the Hindu scripture *Mundaka Upanishad*. On 26 January 1950, coinciding with the day India became a republic, this mantra was adopted as the national motto. When examining both the slogans "*Satyameva Jayate*" and "*Yato Dharmastato Jayah*," it becomes clear that they are interconnected expressions of the same fundamental principle.

Certainly, these two mottos underscore the symbiotic connection between truth and righteousness. "*Satyameva Jayate*" underscores the fundamental importance of truth, emphasizing that honesty should be the guiding principle in every facet of life. Simultaneously, "*Yato Dharmastato Jayah*" emphasizes the notion that victory and success are achievable only when one adheres to and follows the path of righteousness, or dharma.

These two mottos complement each other, illustrating that the victory of dharma is intricately tied to the prevalence of truth. The establishment of truth and the embrace of righteousness lay the foundations for justice and triumph. Therefore, these mottos act as perpetual reminders of the significance of truth, morality, and justice in both personal and societal contexts.

The mottos "*Satyameva Jayate*" and "*Yato Dharmastato Jayah*" declare that the Supreme Court holds the responsibility of upholding dharma by protecting satya (truth). This legal philosophy centers on the pursuit of truth to establish righteousness. Unfortunately, it is often lamentable that the process of determining the meaning of "Satya" to establish "Dharma" is seldom addressed in the field of legal jurisprudence.

While the mottos underscore the significance of truth and

righteousness, they don't explicitly explore the methodologies used to ascertain truth within the legal system. Deciphering the meaning of "Satya" and its implementation in establishing "Dharma" is an intricate and multi-dimensional undertaking[1].

## Legal Jurisprudence & Quest for Truth

Legal jurisprudence must indeed delve into the inquiry of determining the significance of "Satya" in the pursuit of justice. This requires a comprehensive investigation into evidence, legal precedents, factual accuracy, logical reasoning, and adherence to principles of fairness. The court's responsibility is to scrutinize facts, analyze arguments, assess testimonies, and gauge the overall credibility and reliability of the information presented.

Determining "Satya" demands a thorough and unbiased approach that takes into account the various perspectives and intricacies involved. This may encompass cross-examination, expert testimony, forensic evidence, and other investigative methods, all geared toward unveiling the truth and upholding justice.

In the pursuit of establishing "Dharma," the legal system must consistently strive to enhance its methods of determining truth, incorporating advancements in technology, research, and legal scholarship. By fostering open dialogue and rigorous analysis, legal jurisprudence can more effectively address the crucial question of how to ascertain the meaning of "Satya" to establish "Dharma."

To grasp the meanings of "Satya" and "Dharma," we can explore the philosophical traditions of both Greek and Hindu cultures. While these belief systems share some aspects, they also exhibit fundamental differences. Greek philosophy was rooted in humanism, focusing on the tangible world and what was perceptible to the senses. In contrast, the Bhartiya (Indian) system was grounded in spiritualism, acknowledging the existence of a metaphysical realm beyond the physical world[2].

The Greeks placed significant emphasis on the tangible and observable aspects of life, seeking to comprehend the world through rational inquiry and logical reasoning. Philosophical frameworks developed by figures like Socrates, Plato, and Aristotle centered on ethics, politics, and the pursuit of knowledge through observation and analysis of the material world[3].

In contrast, the Bhartiya (Indian) philosophical tradition, deeply rooted in spiritualism, acknowledged the existence of a higher plane beyond the physical realm. Concepts like "Satya" (truth) and "Dharma" (righteousness) in Hindu philosophy are intricately linked to this metaphysical understanding. The pursuit of truth and the establishment of righteousness in the Bhartiya system encompass not only the material world but also the spiritual and moral dimensions of existence.

While the Greek and Bhartiya systems diverge in their philosophical foundations, they both aim to grapple with questions of ethics, morality, and the pursuit of truth[4]. Examining these varied perspectives can offer valuable insights into the meaning and significance of "Satya" and "Dharma" within their respective cultural contexts.

Bhartiya (Indian) metaphysics doesn't adhere to a single doctrine but encompasses a rich diversity of perspectives on the nature of "Being." This diversity is evident

in the broad spectrum of ideas found in ancient texts like the Vedas, as well as in the classical systems of Hinduism, Buddhism, and Jainism.

The Vedas, an ancient collection of scriptures, contain profound insights and reflections on the nature of reality, the self, and the cosmos. Within Hinduism, various philosophical systems such as Advaita Vedanta, Vishishtadvaita, and Dvaita provide distinct perspectives on metaphysical questions, exploring concepts like Brahman, Atman, and the relationship between the individual and the universal[5].

Similarly, Buddhism and Jainism, emerging as distinct traditions within the broader Indian cultural context, also present their unique metaphysical frameworks. These systems delve into notions such as the impermanence of phenomena, the nature of suffering, the concept of non-self, and the interconnectedness of all beings.

The diversity in Bhartiya metaphysics reflects the richness and complexity of Indian philosophical thought, recognizing the existence of multiple ways to understand and relate to the nature of "Being." Through critical inquiry, dialogue, and the exploration of these diverse ideas, one can develop a deeper appreciation for the multifaceted nature of Bhartiya metaphysics and its significance within various philosophical traditions.

## Sanatan Darshan & Satya

Hindu philosophers primarily delved into metaphysical questions, epistemology, philosophy of language, and moral philosophy. They established various schools of thought, each distinguished by its unique approach to understanding reality. However, a common thread among these schools was their acknowledgment of the Vedas as authoritative scriptures. Additionally, they shared a belief in the existence of a permanent individual self-known as *ātman*, considered an integral part of a broader reality known as Brahman.

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The Hindu philosophical tradition encompassed diverse perspectives on metaphysics. Various schools, including Advaita Vedanta, Vishishtadvaita, and Dvaita, presented unique interpretations of the nature of reality and the connection between the individual self and the broader cosmic order.

In the realm of epistemology, another significant area of inquiry, Hindu philosophers explored questions related to knowledge, perception, and the methods of acquiring valid understanding. They formulated a range of theories of knowledge, such as *pramāṇas* (means of valid cognition), laying the foundation for understanding the nature of truth and the validity of knowledge claims.

The philosophy of language played a pivotal role in clarifying the dynamics of communication, meaning, and the correlation between language and reality within the Hindu philosophical tradition. Philosophers delved into the intricate aspects of language, examining its capacity to convey truth, while also recognizing its limitations and challenges.

Moral philosophy in the Hindu tradition centered on comprehending ethical principles, moral duties (dharma), and the pursuit of moral excellence. The teachings of Hindu philosophers offered guidance on ethical conduct, social responsibilities, and the cultivation of virtues.

Throughout these philosophical explorations, the concept of *ātman* held a central position. In Hindu metaphysics, *ātman* was acknowledged as an eternal, individual self intricately linked to the ultimate reality of Brahman. The understanding of the relationship between *ātman* and Brahman varied among different schools of thought, with some emphasizing their identity and others underscoring their distinction while maintaining a profound interconnectedness.

The diverse nature of Hindu philosophy encompasses a

broad spectrum of metaphysical, epistemological, linguistic, and ethical considerations. These investigations into the nature of reality and the self remain a fertile ground for philosophical exploration and contemplation.

## Shaḍ Darshan, Inquiry & Validation

Given the diversity of philosophical perspectives within Hinduism, there arose a need to rigorously establish and validate these views through inquiry. Consequently, logical and epistemological tools were developed, customized to the specific requirements and beliefs of individual philosophers. Although more than a dozen schools of thought existed, they are commonly grouped into six major schools, with this approach often combining several distinct schools together. These six schools can be organized into three pairs: Sāṅkhya–Yoga, Vedānta–Mīmāṃsā, and Nyāya–Vaiśeṣika.

The Sāṅkhya and Yoga schools of thought are considered one pair. Sāṅkhya focuses on the analysis and comprehension of the components of existence, while Yoga emphasizes the practical application of methods to achieve spiritual realization and union[6].

Vedānta and Mīmāṃsā form another pair within the six major schools of thought. Vedānta delves into the study of the Upanishads, interpreting them as revealing the ultimate truth of reality and emphasizing the oneness of the individual self (ātman) and the supreme reality (Brahman). In contrast, Mīmāṃsā focuses on ritualistic practices and the interpretation of Vedic texts, particularly concerning religious duties and rituals[7].

The final pair comprises Nyāya and Vaiśeṣika. Nyāya is concerned with logical reasoning and epistemology, offering a systematic approach to the acquisition of knowledge and valid cognition. Vaiśeṣika explores the metaphysics of the universe, analyzing the nature of reality through the categorization and classification of different types of substances.[8]

Although these six schools of thought are frequently highlighted, it's crucial to acknowledge that they constitute only a segment of the diverse philosophical panorama within Hinduism. Each school crafted its distinct perspectives, methodologies, and insights, adding to the intricate tapestry of the Hindu philosophical tradition.

In addition to their philosophical frameworks, numerous darshanas (schools of thought) within Hindu philosophy have formulated comprehensive methods and practices designed to facilitate individual liberation. At the core of these darshanas is the theory of consciousness. Yoga, in particular, stands as a valuable tool for elevating one's level of consciousness and establishing a connection with the supreme divine.

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## Spirituality & Law

The diverse darshanas within Hindu philosophy all prioritize spiritual life, devotion, introspection, and meditation on the ultimate reality. These practices are deemed crucial for spiritual evolution, self-discovery, and achieving liberation (moksha).

Yoga, blending physical and spiritual disciplines, presents a methodical way to cleanse the body and mind, foster inner awareness, and surpass the confines of everyday consciousness. Practices like asanas (physical postures), pranayama (breath regulation), concentration, and meditation aim to reach elevated states of consciousness, facilitating a profound comprehension of oneself and the divine.

In Hindu philosophy, devotion (bhakti) holds immense

significance as a potent channel to commune with the divine. It entails profound love, surrender, and veneration of the ultimate reality through rituals, prayers, and introspection. Bhakti practices nurture a profound spiritual bond and a feeling of oneness with the divine.

Additionally, the darshanas encourage directing the mind inward through self-reflection, self-inquiry, and introspection. This practice entails scrutinizing one's thoughts, desires, and attachments, culminating in self-awareness and the recognition of the authentic nature of the self.

The practice of focusing the mind through meditation, be it through concentration or contemplation, holds a key position in the quest for spiritual understanding. By quieting the mind, individuals strive to move beyond everyday awareness and directly encounter the divine essence.

Together, the practices and philosophies within Hindu darshanas offer a complete structure for spiritual growth. They seek to elevate consciousness, nurture devotion, and guide seekers on their path toward self-discovery and merging with the ultimate reality.

Within the framework of Sanatana Dharma (Eternal Truth), humans are perceived beyond mere physical forms. This philosophy views individuals as embodiments of the entire universe and as beings of pure consciousness. They traverse multiple existences across diverse realms within the expansive cosmos, with their core

Sanatana Dharma underscores the unity among all beings and the innate divinity within each person. It promotes a comprehensive perception of human life, surpassing physical limitations and acknowledging the everlasting essence of consciousness. By adhering to Dharma's principles and fostering this bond with the supreme divine, individuals aspire to discover their authentic selves and play a role in the broader harmony of the universe

The consciousness innate in every person establishes a deep link with the supreme divine. Through it, one comprehends the dynamic relationship between Satya (truth) and the essence of Dharma (righteousness). Within Sanatana Dharma, Dharma is acknowledged as the guiding force that sustains communities and preserves balance in the universe.

Recognizing the vastness of consciousness and its inherent link to the divine, individuals attain profound insights into the core truths of existence. They grasp that their essence transcends the confines of their bodies, belonging instead to a larger cosmic harmony.

In this philosophical structure, the quest for Dharma takes precedence. Dharma includes not just individual moral obligations but also the wider duty to preserve virtue and foster societal concord. When individuals synchronize their actions with Dharma's principles, they actively nurture societal welfare and play a role in upholding cosmic equilibrium.

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Within Hindu philosophy, the role of law is to establish Dharma, which occupies a pivotal role in individuals' lives. Hindus acknowledge four primary aims or Purusharthas: Dharma, Artha, Kama, and Moksha. Among these, Dharma is seen as fundamental and paramount. The ultimate objective for Hindus is to pursue the path of Dharma to achieve Moksha, signifying Salvation.

Dharma acts as a guiding principle for Hindus, offering a moral and ethical structure for righteous living. It highlights the significance of adhering to moral and societal responsibilities, fostering harmony and fairness within the community. Adhering to Dharma enables individuals to synchronize their actions with elevated spiritual truths.

The other Purusharthas, like Kama (desire) and Artha (wealth), hold acknowledgment but must be pursued within Dharma's constraints. Hindu spirituality instructs that desires or wealth accumulation sought outside Dharma's scope are deemed sinful. This principle extends to modern legal interpretations where actions conflicting with Dharma, such as sexual offenses or other transgressions against individuals, are seen as unethical and subject to legal consequences.

Likewise, accumulating wealth without upholding Dharma is considered sinful and is addressed as an offense under different legislations, including the Prevention of Corruption Act or laws related to property offenses.

Dharma acts as a moral compass, directing individuals to align their actions with elevated principles and ethical values. Upholding Dharma in their decisions and conduct allows individuals to live virtuously and move closer to the ultimate goal of Moksha.

Comprehending Dharma enables individuals to grasp both codified and unspoken laws, while the fundamental goal of the justice system remains the preservation and defense of this Dharma. Article 142 of the Indian Constitution echoes this by conferring upon the Hon'ble Supreme Court the jurisdiction to issue any directive essential for safeguarding Dharma, signifying absolute justice. The Supreme Court's unique authority, coupled with the discretionary and intrinsic powers of other courts, collectively serves the overarching objective of upholding Dharma.

This perspective can similarly extend to understanding the philosophies of "Natural Law of Justice" and "Due process of law." These concepts advocate that all laws and processes must be rooted in principles of justice, fairness, and rationality. Through adherence to these principles, the legal system strives to guarantee that the established laws and procedures are equitable, fair, and reasonable for all individuals concerned.

Ultimately, comprehending Dharma offers a complete structure for grasping and maintaining the law. It steers the interpretation and implementation of legal principles, ensuring that the justice system fulfills its core objective of safeguarding and advancing justice, fairness, and righteousness within society.

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The conversation underscores that Dharma, deemed the highest law, merits protection by the judiciary despite its lack of a precise definition. Grasping Dharma can be attained by employing the six systems of Indian philosophy (Shad Darshana) and delving into spiritual exploration.

Spirituality entails recognizing a belief in something beyond individual existence, surpassing mere sensory encounters. It involves acknowledging that the collective whole, of which we're a part, holds a cosmic or divine essence. Yet, delving into profound spirituality isn't readily accessible to all and demands a committed process to unravel the enigma of Dharma.

Some Hindu texts outline three avenues for uncovering Dharma. The initial source involves acquiring wisdom from a Guru, attained through studying diverse philosophical Sanskrit texts. The second source lies in observing the conduct of noble and virtuous individuals, serving as a guiding example. The third source stems from personal experiences, as individuals navigate their own lives and glean lessons from the repercussions of their actions.

Together, these three sources enrich the comprehension and application of Dharma in life. Through studying philosophical texts, emulating virtuous role models, and reflecting on personal experiences, individuals cultivate a profound understanding of Dharma

and its significance in their lives.

To unravel the enigma of Dharma, one must delve into spirituality, utilizing the tools offered by the six systems of Indian philosophy. This exploration involves integrating wisdom from mentors, observing virtuous conduct, and learning from personal experiences. Through these avenues, individuals gradually gain insight into the supreme law of Dharma and its practical application in their lives.

Although personal experience might not be universally accessible, the other two avenues—studying Hindu philosophy and observing noble behavior—remain potent means of gaining insight into Dharma. However, it's unfortunate that the modern legal system overlooks these aspects of Hindu philosophy and Sanskrit texts in our legal studies. Consequently, there's a dearth of effective knowledge systems within legal education to instruct us about the processes and philosophies essential for comprehending Dharma.

## Judicial Ruling & Principles of Dharma

This knowledge gap is evident in specific judicial rulings that consistently neglect the principles of Dharma while prioritizing individual choice and liberty. It's regrettable that without a proper mechanism to grasp the essence of Dharma, our judicial system proceeds to dispense justice. This inherent flaw in the system reflects in the declining confidence of the public in the judiciary.

Due to the lack of a holistic grasp of Dharma within legal education, there exists a disconnection between the principles of justice and the spiritual and philosophical underpinnings guiding Dharma. This disconnection may lead to a sense of injustice and diminish public trust in the judiciary.

Rectifying this deficiency necessitates re-evaluating the legal education system to encompass a wider viewpoint that integrates the philosophical and spiritual dimensions of Dharma. By integrating Dharma's principles into legal studies, aspiring legal practitioners can cultivate a more comprehensive comprehension of justice, thus bridging the divide between the legal system and the spiritual underpinnings of Dharma.

It's clear that embracing a path of spirituality is crucial for safeguarding Dharma. Yet, since India gained independence, there has been limited advancement in forging a robust connection between law and spirituality.

Explorations at the crossroads of law and spirituality have been notably few. The integration of spiritual principles and philosophical teachings into legal education and practice has not garnered adequate attention. Consequently, there exists a deficiency in the comprehensive understanding and integration of spiritual values within the legal system.

Closing this gap requires initiatives that cultivate a stronger link between law and spirituality. This might entail integrating aspects of spiritual teachings, drawn from Hindu philosophy and other spiritual traditions, into legal education and professional development initiatives. Moreover, establishing forums for dialogue and exploration of the spiritual facets of law can significantly augment the comprehension of Dharma and its applicability to legal practice.

Advocating for a more extensive integration of spirituality and law allows for a holistic approach to justice, in accordance with the core principles of Dharma. Achieving this demands dedicated efforts to narrow the divide between law and spirituality, nurturing a profound comprehension and recognition of the spiritual elements inherent in the pursuit of justice.

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Prof. Sanjeev Kumar Sharma

# The Traditional Form of Lawmaking in India Democracy and Societal Dharma

In our traditional setup, the main objective of establishing a State is to follow dharma. In this, legislation originates from the society and addresses the society alone. A closer look...

In modern and Western concepts of the origin of the State, priority has been accorded to an entity called establishment, in order to determine the interrelationships between individuals. In keeping with this idea, the State has actually originated for regulating a society that is devoid of any rule or law, so that a regulated system can be created. In a way, it is the outcome of the Western acceptance of the basic element of contractualist thought under the aegis of which justification was provided by handing over the responsibility of governance to the State. Among the organs of government, it is legislation that is prominent. The need for execution arises subsequently. The provision for judicial enforcement was made to prevent violation of the system laid down by legislation and executive orders, and to determine punishment for adverse conduct. In this way, the legislature, executive and judiciary were respectively laid down as organs of governance. But the underlying element in this design is that these three are separate organs at the level of structure, nature, authority and functioning. Wherever this desired separation could not be established among these three organs, the idea of separation of powers was effectively put forth. Here, it would also be appropriate to understand that this essentiality of the separation of the three organs is based on the concentration of power. Over time, the development and continuous expansion of all three organs as centres of power came to be considered as evidence of the success and salience of democracy. As a result, many a time the differences in the attainment of power and sharing of authority among the three organs began giving way to conflict and opposition. Fundamentally, as a result of the desire to control the entire process of governance for a specific purpose and under expert control, many scholars started considering the coordination and cooperation among the three organs of governance as an unexpected outcome.

This situation is seen in a completely different form in the Indian way of life and governance. In India, the State emerges as an administrative system. The State is actually an institution originating from the society and is always expected to remain within the boundaries of the society. It is never a sovereign institution that independently controls the society. It has been created by society. It is

created according to the way approved of by dharma and its values, and it has to be continually controlled by dharma. That is why any abandonment of dharma by the State is also not acceptable. The violation of dharma by the state is as punishable as the violation of dharma committed by human beings is. Therefore, the State cannot deviate from dharma even in its mundane functioning. In fact, the main objective of establishing a State is to follow dharma. The State reminds all citizens of their *swadharma* (each one's respective dharma). The State encourages them to behave in accordance with their respective dharmas and cautions them against deviation from dharmic conduct. It is the State that punishes its denizens for deviation from dharma. In this way, the State uses all its rights and power only in the establishment and furtherance of dharma. This is *rajdharma*. Hence the state too is a kind of dharma.

The state is responsible for the enforcement of dharma in its organs and appendages as well. It creates a system by treating creatures, living beings, citizens and animals and birds in a righteous way. That is why there is no need for any separation between its legislative, executive and judicial responsibilities. All those responsibilities are associated with dharma and are mutually complementary. Legislation therefore, is not a separate arena. It is not an isolated task, nor a separate right. It is a dimension of *rajdharma* in which the state, through its ruler, brings about the framework for the proper establishment of dharma among human beings. This system generally operates in accordance with socially prevalent and popularly accepted dharmic rules. Deviation from this invites judicial punishment, which is not considered an isolated act. Rather, through *rajdharma*, conduct against social dharma, folk dharma and individual dharma is to be punished under the provisions of dharma. In this established system, there are gradual changes, improvements, refinements and enhancements, which are the result of regular communication between people engaged in the fields of society, knowledge, learning, administration, justice, religion, culture, art, commerce, etc. Therefore, it is not static but a totally dynamic process. Therefore, law-making, legislation, administration, execution, dispensation of justice, etc., are not separate but interwoven tasks and processes whose development, expansion, scope, influence and authority are interwoven. For this reason, the sources of law in the Indian tradition of *rajdharma* are the Vedas, Vedangas, Upanishads, epics, theology, ethics, codes, folk opinion, wisdom, etc. None of these are reliant on any one individual or authority or any one group or culture. Law is that which is in the interest of the society and is generally accepted by society. Legislation too originates from the society and addresses the society alone.

The concept of the Vedic raja (monarch) is actually an attempt to impart a structural form to the inherent democracy existing in the cultural ethos of Indian society. Even though the community exercised total control over the society and every decision was based on the majority, the power of the king was in actuality focused on regulation, organization, ensuring public welfare and gaining the acceptance of and ensuring reach to all. That is why the origins of the idea of modern validity or propriety are visible in the acceptability and desirability of a regulatory and legislation-oriented king in the Vedic Visha, Sabha, Samiti or Vidatha (ancient communitarian assembly). It is said: ***Bahavaḥ sambhūya yadi eka vākyam vadeyustādvinaḥ pare rati sandhyam;*** meaning,

The state is responsible for the enforcement of dharma in its organs and appendages as well. It creates a system by treating creatures, living beings, citizens and animals and birds in a righteous way. That is why there is no need for any separation between its legislative, executive and judicial responsibilities. All those responsibilities are associated with dharma and are mutually complementary. Legislation therefore, is not a separate arena. It is not an isolated task, nor a separate right

"If many come together and speak one word (i.e., speak in one voice), then they can be drawn to each other (above differences)."

The system of selection of the king and discussion of his qualifications cab be seen in the Vedic period itself. Provisions and examples to punish the wanton, despotic and unrestrained conduct of elected or anointed kings are present in many ancient Indian texts. There are instances of dismissal of the king as well as collective communitarian punishment for acting against the interests of the people. Thus, the king's wantonness as a ruler was controlled and he was expected to remain engaged in the task of public welfare. The Atri Smriti has defined good governance as follows:

*Duṣṭasya daṇḍaḥ swajansya pūjā nyāyena kośasya hi vardhanam ca|*
*Apakṣapātaḥ nijarāṣṭrarakṣā pancaiva dharmāhā kathitā nṛipāṇām||*[1]

Meaning: Punishment of the wicked, worship (exaltation) of one's own (i.e., the citizenry), enhancing the kingdom's treasury (wealth and prosperity) through just means, being impartial to one and all and protection of his nation (kingdom) have been laid down as the five prominent dharmas of a king.

This was the Indian form of monarchy, which, although in its nomenclature, has been called monarchy in the form of power concentrated in one individual and therefore been placed on the same pedestal as the monarchy of the West, in its original nature, character, shape, incarnation is naturally democratic in scope and expansion.

The emergence of a new administrative structure of the society in the form of a state certainly freed communities from the administrative aspects of making laws but it never separated them from the line of propriety of dharma, the strong foundation of society. That is why the cultural acceptance of the boundaries and parameters established by the society continued to emanate from dharma. Dharma alone remained the way of regulating communitarian conduct and also the holistic content of the activities, powers and responsibilities of the state. Due to this, the indispensability of adherence to dharma endured even in the monarchical system which accorded primacy to the king. Indian philosopher Somdev Suri said that *rajdharma* is the protection and fulfillment of dharma through the medium of the State. "***Atha dharmaphalāya rājyāya namaḥ*** (I therefore offer my obeisances to the kingdom for the fruits of righteousness).[2] It is for this reason, dharma remained paramount among all the agencies for determining the political and administrative interactions of individuals in society. While describing the nature of law and legislation in the conditions before the rise of the state, the author of the *Mahabharata* (sage Vyasa) has stated that there was a time when neither the State nor the king existed. During that age neither was there any provision for punishment nor was any punishment available. People of the society used to protect each other only by behaving in accordance with dharma. This dharma was in accordance with the prevalent rules of behaviour in the society. The feeling of reciprocity among everyone became the basis of protecting each other.

*Na vai rājyam na rājās t na daṇḍo na ca dāṇḍikaḥ|*
*Dharmeṇaiva prajāhā sarvā rakṣanti sma parasparam||*[3]

With time, the need for discipline and regulation became visible in the conditions of dissipation of dharma in the society and the king now began being anointed or elected for law making. This king was bound by an oath and used to work for the welfare of the majority by sacrificing everything of his own for the welfare of the society as a whole. In the *Aitaréya Brāhmaṇa* text, there is a description of the onerous oath taken at the time of election of the king.

*Yām ca rātrimajāyeha yām ca pretāsmi tadubhayamantareṇa|*
*Iṣṭāpūrte may loké sakritamāyuhu prajnām vrijjīthā yadi say drahyé yammiti||*

Meaning, If I betray my people, then between the night I was born and the night I die, all the good deeds done by me will be destroyed and may I not be able to attain heaven and salvation and not be able to save my life and children. May I be deprived of everything.[4] This oath is a dharmic, social

and cultural assurance that the individual occupying the throne will not be allowed to deviate from the path of duty. In fact, royal power is a social and moral contract which is continually covered by dharma. Therefore, the king's assurance of his future law and order is combined with the idea that only knowledgeable, dharmic, scripture-based, societal rule-bound and public interest-oriented actions and objectives will form the basis of *rajdharma*. The Vedic concept of ***Yogakṣemah nah kalpatām*** (May the holistic world of *yogakṣhéma* i.e., attainment and wellbeing, be ours)[5] sees a further unfoldment in the form of the following verse:

*Yanmām bhavantī vakṣyanti*
*kāryamarthasamanvitam*|
*Tadaham vaḥ kariṣyāmi*
*nātrakāryā vicāraṇā*||[6]

In the Indian tradition, the law arising with the design of Creation is natural and in the Vedic tradition is called Rta. "***Ṛtam ca satyam ca tapasodhyajāyat***" Rta and Satya originate together. "Rta is the Vedic universal knowledge. Rta is the origin of the universe. The power of Rta is the origin of all powers. Mitrāvaruṇa, the guardian of Rta, also derives strength from it. The elements of truth, strong individualism and universal coordination are present in Rta. Rta is the progenitor of all things required for human welfare. It utilizes them for human welfare. "Rta means optimum movement and definite rules."[7]

Rta has also been called a ruler and god as well. Its form is of natural law due to which the course of progress in the universe becomes systematic. The initial basis and determinant of the relationship between individual and society was Rta. Due to the amalgamation of morality, tradition, behaviour and conduct, it became a direct form of social legislation. The purpose of Rta was to establish dharma, i.e. to achieve unison with the consciousness of responsibility. Subsequently, the shape and nature of dharma came into contact with society, individual, institution, community, living beings, the conscious and inert, environment, animals, birds, and rules, norms, laws, *shruti*, tradition etc., became the basic elements of dharma. That is why Vedic disorder is also dharmic and governed by natural law. The only difference is the decisiveness of the centre of power. Therefore, the king or ruler is bound by responsibility but not endowed with power. The Vedic stateless society is not anarchic but merely a public absence of a distinct political and administrative power or figurehead of authority. With the passage of time, the political form of Vedic social institutions too began taking shape and their organizational dimensions started acquiring social expansion. In this sequence, Vedic Sabha, Samiti, *Vidatha*, army, council, warriors, etc., started emerging.

The advanced and developed economy and all-round State power of Kautilya's age used to oversee an entire well-organized gamut of activity with regulation, management, and stratified supervision, encompassing all human activity like trade, industry, mining, agriculture, animal husbandry, land revenue, irrigation, highways, waterways, etc. That is why Kautilya's economic philosophy, while ensuring a completely scientific and administrative system of Indian governance and legislation, also makes well-organized departmental divisions. The authentic nature of tribunals is a clear manifestation of Kautilya's way of conduct.[8]

The great poet Bāṇa, in his famous work *Kādambarī*, has advised the king to consider Kautilya's Arthashāstra as the standard for running the State. (**Kautalīye Arthaśāstram Pramāṇam**) Kautilya himself also proclaims:

*Sarvaśāstrāṇyanukramya*
*prayogamupalabhya ca*|
*Kautakyena narendrārthe*
*śāsanasya vidhi kṛtaḥ*||[9]

Meaning, by adhering all the *śāstras* and previously prevalent opinions and making full use of principles and practices, Kautilya has laid a method of governance for the king.

*Yena śastram ca śāstrām ca*
*nandarājyagatā ca bhūhū*|
*Amarṣeṇoddhritānyāshu tena*
*śāstrāmidam kṛtam*||[10]

That is, this *śāstra* has been composed by the person who has elevated both weapons and scriptures, by uprooting of the kingdom of the Nandas, has liberated the subjugated earth, has quickly uplifted everyone from amarṣa (resentment and rancour)

and has established a new order of State. In ancient Indian literature, there is sufficient expansion in the rights of the *mahāmātya* (high official of the state administration) and *rājpurohit* (royal priest) to ensure the form, nature and dignity of conduct of the monarchy, which also proves that in a large monarchy with numerous administrative and economic branches and sub-branches, it was impossible for all powers to be centralized in a single individual. The author of the *Mahābhārata* says: "***Rājyam hi sumhat tantra***".[11] That is why political decisions were not discretionary acts of the king, but were collective decisions made, keeping in mind the counsel of the heads of the concerned departments and the council of ministers or the *amātya parishad*, established law, social tradition, defence of the nation, wider public welfare, economic progress, administrative convenience, etc. Therefore, all of ancient Indian literature considers the consultation of the council of ministers as an inalienable prerequisite for any decision of the king. The provision for establishment of tribunals is also an assurance to the people that administrative decisions regarding property and crime and the penal system would be made with their (the governing council's) own discretion and independent of the position and power of the king.

In accordance with the *shāstras*, Shri Krishna says to Arjuna in the *Shrīmad Bhagavad Gītā* with respect decisions in all circumstances:

*Tasmāt śāstram pramāṇam te kāryākāryavyavasthitou*|
*Jnātvā śāstravidhānokta karma kartumihārhasi*||[12]

Meaning, in case of dilemma or doubt while deciding about one's duty or non-duty, the *śāstras* are the only evidence. Therefore, it is appropriate to act only after knowing the karma described in the *śāstras*.

Even with the Vedic emergence of sovereign State power in India, there was a sense of aspiration and expectation for collective, communitarian, global and holistic welfare. The Vedic saying is "***Viśāstvā sarvāhā vācchantu***". This Vedic prayer urges the ruler to become popular. That is why public acceptance, public consent, greater welfare and defence and security were sought from *rājkrita* (the action of the State or the ruler), *grāmaṇī* (the village bodies), *visha* (the citizenry or the people of the country), *janapada* (districts or local regions), *gopa* (agricultural and cattle-rearing communities), etc. The elected king was also placed under the social control of the representatives, nobles and councils. This means that the necessity of the ruler and the empowerment of the political leadership were drawn into the scope of social responsibility, which confirms the existence of the basic values of modern democracy even in that age. But it is also important to note here that this is merely a process of increasing the authority of the king in the form of an administrative system. There is no proof that the power of legislation is concentrated solely in the king. In fact, in the Indian tradition, legislation has never been a separate and distinct mode of political system. This does not mean that India's long knowledge tradition and well-organized social structure did not give adequate importance to legislation or neglected it even somewhat. But the truth and fact is that in India, a wonderful and well-organized interweaving of state, dharma, society, individual, law, etc., is reflected where the state is within the boundaries of dharma. Society is controlled by dharma. Dharma is determined by the expectations and aspirations of welfare of the society. A person is governed by society, dharma and self-dharma. Law is the collective assurance of dharma, society and state towards human welfare.

Therefore, legislation is totally connected to society, dharma, knowledge, scriptures, literature, custom, tradition, etc., and hence is not a specific, separate process in any way. Over time, as anarchy transformed into a polity of rule and order, the need for a sovereign political system began to be felt. As a result, the monarch gradually started begetting the responsibility of protecting dharma. Although he did not become the authority to himself determine dharma, the king started acquiring the right to keep everyone engaged in their *swadharma* (individual dharmas) and to inform everyone about the direction thereof. The author of

the *Mahābhārata* has said:
*Asammohāya martyānāmartha samrakṣaṇāya ca|*
*Maryādāsthapitā loke daṇḍasangyā viśāmpatiḥ||*[13]

The king's continual involvement in the tasks of associating everyone in the society with their dharma, providing security to all, obtaining the consent and acceptance of all, resolving conflicts and coordinating all social institutions started providing a wider arc to periphery of his powers.
*Caturvarṇāśramo loko rājā daṇḍena pālitaḥ|*
*Swadharmakarmābhirato vartate sweṣu vartmasu||*[14]

For this reason, the king who protected law also started ensuring its observance. The result of this was essentially seen in the concentration of power of punishment and justice in the king, in accordance with the law, to remove the obstacles to following the law. This increased the power of the king and he became capable of proclaiming himself as *adaṇḍyosmi* (I am unpunishable) but did not acquire the power to make laws. He was himself involved in fulfilling the responsibility of adherence to the law. That is why the royal priest commands him to live within the limits of dharma and informs him that he is *Dharma Daṇḍyosi* (thou art punishable by law). You are a ruler but not a despot, or free from the control of dharma. Therefore, he acquired kingship in which divine bequeathment was denominated, but he was not given freedom from worldly and social restraint and norm. That is why law continued to be created by society alone, and society continued to be governed by dharma.

In the post-Vedic period and the period of the epics, the change in the relationship between law and the king began obtaining social acceptance and the power of the king to wield the sceptre of dispensing punishment started moving from dharmic observance to dharmic enforcement. In the epics, the king was handed many responsibilities and rights to ensure public welfare. From the questions asked by Shri Rama to Bharata in the Ayodhya Kāṇḍa of the *Vālmīki Rāmāyaṇa* about the governance in the kingdom, it becomes clear that the king was now no longer a mere follower of dharma, but had also become its administrator.[15] The king also has the separate responsibility for policies and decisions. The detailed discussion about *rājdharma* by Bhiṣma in the Shanti Parva of the *Mahabharata* also makes it clear that along with following dharma, the king also has the right to protect and promote dharma. He can make arrangements for ruling the people—"***Lokaranjanmātreva rajnān dharmaḥ Sanātanaḥ***".[16] The king also started making decisions related to dharma in order to adhere to dharma. He also started dispensing justice with the power of wielding the sceptre of punitive action. But all this authority also did not allow him to be independent or arbitrary because his entire conduct remained under the control of the larger social dharma. He remained bound by his own dharma, social dharma and human dharma. He remained dependent on the *shāstras*. He remained constrained by dharma.

In this context, it is also necessary to mention the order of ancient Indian republics and their internal democratic structure. The historical perspective of *gaṇas* (republican communities) and *mahājanapadas* (regions) throws sufficient light on the ancient Indian political system. Regarding *gaṇas*, Kashi Prasad Jaiswal believes that a republic was that system of governance where in action would be effected by a group of many people or by a parliament. *Gaṇa* was a group or society of people and was called so because the people present in it were either in some specific number and/or were counted. In this way, the second meaning of *gaṇa* came to be a parliament or senate and the democratic states were ruled by them, hence the meaning of *gaṇa* itself became a democratic state.[17]

The *gaṇa* were famous for their successful policy in conduct with other republics or kingdoms/ States, for their rich treasury, ever-ready armies, skills in warfare, appealing political rules and well-organized system. In the 107th chapter of Shānti Parva of the *Mahābhārata*, there is mention about the policy or credo of the State and the discussion regarding that policy as well, by the majority of the people of the community.[18]

In the context of the diversity

of systems of governance, an incident in the *Avadānashataka* is interesting and informative, wherein the king of Dakṣhiṇāpatha (southern Bharat) asked the merchants from Madhyadesha (the central region of the country) who the king of their region was. Upon this, the merchants of Madhyadesha replied that in some regions, there was the rule of *gaṇas* (republics) and in some, the rule of a king.

*(Atha Madhyadeshād vaṇijo Dakṣhiṇāpatham gatāhā|*
*Taiḥ rājnyo Mahākapphiṇasya prābhritamupanītam|*
*Rājnyā uktam bho vaṇijaḥ kastra rājeti|*
*Vaṇijaḥ kathayanti|*
*Deva kecid deśāhā gaṇādhīnāhā kecid rājādhīnā iti|)*

It is clear from the above that both a republican system and monarchy were prevalent in the same age in different regions of India. In the context of national law, the *Shatapatha Brāhamaṇa* gives us important insights regarding the manner of coronation of the king, and law and order as well.

*Iyam tay rāta yantāsi yamano dhruvosi dharuṇaḥ|*
*Kṛṣyai kṣemāya tvā rayyai tvā poṣāya tvā||*[19]

The following is being proclaimed while addressing the king and conferring royal authority on him: "This is your kingdom now. You are the controller and determiner of this nation. You are the holder of the sceptre of responsibility of this State. This State is given to you for (the development of) agriculture, welfare, prosperity, nourishment and growth". This proves that this is a position given with the utmost sacredness, in the form of a social responsibility. Therefore, it is essential to constantly remember all the expectations with respect to regulation, control, decision-making and justice. It is an expression of collective social aspirations and is both a strong insistence and the basis of democracy.

Politics and political system(s) in India remained inseparable from dharma and philosophy since ancient times. "A distinct tradition of politics was established, which was worldly in outlook and practical in nature."[20] The vision of the Indian state is basically to create a system capable of fulfilling its social responsibilities and to make it supportive in the operation of the dharmic order, so that every component of the society remains engaged in following its *swadharma* in a disciplined way and the national dharma is preserved. This dharmic nature is actually a manifestation of society-centric spirituality. Therefore, in the legislative tradition of India, the basic idea of the welfare, interest(s) and happiness of all is presented in the form of *rājdharma*. Therefore, contemporary political systems, with all the modernity of their structures, can well tend towards adopt the underlying social values of traditional democracy. In fact, this will also enhance their internal sensitivity and the manifestation of their external propriety too will be more potent.

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# Culture, Constitution & Secularism

Our scriptures are not religious in nature. They are rather the source of knowledge useful for universal humanity. Here is a look at their role in the legislative affairs in current times

There has been a well-established tradition of law-governed state legislation in India since ancient times. In ancient Indian scriptures, rule of 'Vidhi' or law is considered paramount. These governing laws mentioned in our scriptures were considered immutable even for the kings. Today, Article 28 of the Indian Constitution prohibits imparting of religious teachings in government-funded institutions and, unfortunately, the Vedas, Vedic literature, Vedanga, Puranas, Brahman Sutras, Smritis and ancient Indian scriptures on '*Rājśāstra*' (science of governance) are considered to be in the category of religion. In effect, teaching of these scriptures itself has been abolished whereas the fact is that they are not the sources of religion-related knowledge but of the knowledge useful for universal humanity.

The rules and regulations applicable to the rulers and the protocol to be followed by them are mentioned in these scriptures in greater details than given in our Constitution and jurisprudence today. Therefore, ignoring those scriptures considering that studying them and people adopting lifestyle based on them as being related to religion is unfair. At the beginning of this article, it is appropriate to make it clear that in our ancient scriptures, the concept of law-based governance or rule of law was more deep-rooted than that of today.

The ancient Vedic and scriptural norms of governance were much more comprehensive, strict, stable and long-term than today's law-based governance or rule of law. Ancient administrative laws have been more stable and advanced sources of jurisprudence. Even in a modern constitutional democracy, the rights, duties and responsibilities of people holding high positions in the government including the President, the Prime Minister and other ministers are defined by law.

Constitution, statutes, regulations and policies keep a tab on the individual whims and fancies, favouritism and arbitrariness. The provisions mentioned in the ancient Indian scriptures have always been stronger than today's constitutional norms. Let us discuss some of these provisions here.

## Immutability of Ancient Laws of Governance

Even though the basic structure of the Indian Constitution has not been

compromised, as many as 124 amendments have already been made in it so far. But, in the ancient texts like Gautam Smriti etc., amendment in the rules of governance is prohibited and declared outside the rights of the king.

Gautam (9/19/25) has said that the king should make rules on the basis of -- (1) the scriptures like Vedas, Dharma Shastras, Vedanga (i.e. grammar, verses etc.), Upvedas and Puranas; (2) the customs of the country, castes and clans; (3) the traditions of farmers, traders, moneylenders (loan givers), artisans, etc; (4) universal logic; and (5) the decisions taken on basis of consensus by the committee of scholars of the three Vedas.

Judicial work was also carried out on the basis of proof of prevailing customs, traditions and conventions, which later became binding as rules over time. 'Parishads' or councils of scholarly people used to have a role in the legislation process (*Yajnavalkya* 1/9). Shankha too has considered the Parishads as the authority in determining the state legislation and execution of responsibilities including '*Rajdharma*' or royal duties.

***Śloka:*** *Tasya ca vyavahāro vedo dharmaśāstrāṇyangānyupavedaḥ purāṇam| Deśajātikuladharmāścāmnāyaira viruddhāḥ pramāṇam|Karṣaka vaṇikypaśupālakusī dikāravaḥ sve sve varge|Nyāyādhigame tarkobhyupāyaḥ| Vipratipattau trevidyavṛddhabhyeḥ pratyavahṛtya niṣṭhām gamayet tathā hyasya niḥśreyasam bhavati|*

***(Gautam Smriti 9/19-25)***

Many things which were prevalent during Ashoka's rule are written on the stone pillars put up during his time. According to Gautam Smriti (11/15-17) and Yajnavalkya (1/308), the king should remain committed to protect Dharma on the basis of impartial advice received from the priests. Worldly and practical work should be accomplished without any bias. The worldly tasks of the king include increasing the wealth of the nation, protecting the people during famine and other calamities, treating everyone as equal in the eyes of justice, protecting people and wealth from thieves and marauders (Panduranga Vamana 621). The ancient inscriptions of the king of Kalinga found in Hathi Gumpha or elephant caves are the finest example of the Hindu tradition of all sects having equal respect in the eyes of the king.

## Scripture-suggested Checks on the King

The ancient texts contain instructions for the king's commitment to more stringent rules and policies than today's constitutional democracy. The king did not have the right to amend these instructions. Under these rules, only the committee of scholars at the municipality, district and state level, 'Vish' or 'Gramadhip' etc could do it. According to Pandurang Vaman (page 620), due to such controls on the king, he could not act arbitrarily. According to Haradatta as well as Medhatithi and Rajniti Prakash (page 23-24) in the commentary on Narada Samhita and Gautam Smriti Mantra 9/2, the king could not go against the scriptures and could not relax the rules.

According to Medhatithi **(Manusmriti 7/13)**: "*Rājā prabhavati smṛtyantaravirodha prasangāta, avirodhe casmin viṣaye vacanasyārthavacvāta|*"

According to *Shukranitisara* (1/312-313), the king should disseminate the rules clearly. According to *Shukraneeti* (1/292-311), "Watchmen should roam on the streets every four '*ghatika*' (one and a half hours) or 6 hours and stop thieves and lecherous people from playing mischiefs. They should not abuse or beat people, slaves, servants, wives, sons or disciples. There should be no fraud with regard

The ancient texts contain instructions for the king's commitment to more stringent rules and policies than today's constitutional democracy. The king did not have the right to amend these instructions. Under these rules, only the committee of scholars at the municipality, district and state level, 'Vish' or 'Gramadhip' etc could do it. According to Pandurang Vaman, due to such controls on the king, he could not act arbitrarily

to weights and measures, coins, metals, ghee, honey, milk, meat, flour etc. Government servants should not take or give bribe. No written evidence should be taken by force. Evil characters, thieves, scoundrels, traitors and enemies should not be given shelter. Parents, respectable people, scholars, people of good character should not be disrespected or ridiculed. The seeds of discord should not be sown between husband and wife, master and servant, teacher and disciple, father and son and among brothers. There should not be any obstruction or control in the way of construction of wells, gardens, boundary walls, inns, temples, roads and the pathways for crippled persons. Gambling, sale of liquor, hunting, carrying of weapons, buying and selling (of elephant, horse, buffalo, slave, immovable property, gold, silver, gem, intoxicant, poison, medicine, etc), rendering medical services etc should not be carried out without the permission of the king.''*Meghatithi* (Manu 8/399) says that at the time of famine, the king can stop the export of food items.

## Laws for Progress and Protection of the People

There are abundant provisions for the prosperity of the state, nation and people in *Apastamba Dharmasutra*, *Mahabharata* (Anushasana Parva 39/10-11 and Drona Parva 6/1), Valmiki Ramayana (2/100/14) etc. Reiterating from the Artha Shastra of Shri Ram's disciple Sudhanva, Chanakya has written that it is the paramount duty of the king to fulfil the following 4 things for acquiring land for the state and for the people to live happily on that land -- (i) Attainment of wealth (ii) Preservation of the achievement (iii) Augmentation or increase of the gain and (iv) Distribution of the gain among the eligible.

The king was considered as the protector and guardian of minors. According to Gautam (10/48-49) and Manu (8/27), the king should protect the property of the boy until he attains adulthood or returns from the Gurukul. *Baudhayana Dharmasutra* (2/2/43), *Vashishtha* (16/8-9), *Vishnu Dharmasutra* (3/65), Shankha - Likhit (written), etc also have the same opinion. According to Narad (Runadan, 35), minorhood lasts till 16 years of age. According to Manu (8/28-29) and Vishnu Dharmasutra (3/65), the king should make arrangements for the safety of barren women, sonless women, clanless women and patients. According to Narada, if there is no one in the family of a woman's husband or father, the king should make arrangements for her safety. According to Kautilya (2-1), it is the duty of the village teachers to manage the growth of children (minors) and the wealth of the temples.

***Śloka:*** *Rakṣyam bāladhamā vyavahāra prāpaṇāt| Samāvṛttervā| (**Gautam Smṛti** 10/48-49); Rakṣedrājā bālānam dhanānyaprāptavyavahārāṇām śrotiyavīrapatnīnām|(Śankha-written **Vivādaratnākara** p.598)| Bāaladhanam rājnā śswadhanavatparipālanīyam| Anyathā pitṛvyādibandhavā bhayedam rakṣaṇīyamiti vivaderan|* Medhatithi ***(Manu 8/27)|***

Explaining Manu **(8/28)** Medhatithi has said - *Yaḥ kaścidanāthastasya sarvasya dhanam rājā yathāvat parirakṣet| Tathā codaharaṇamātram vaśadayaḥ|*

*Viniyogātmarakṣāsu bharaṇe ca sa Īśvaraḥ| Parikṣīṇa patikule nirmanuṣye nirāśraye|| Tatpiṇḍeṣu vāsatsu pitṛpakṣaḥ prabhuḥ striyāḥ|| Explanation of Manu* **(5/3/28)** *by Medhatithi| Bāladravyam grāmavṛddhā vardhayeyurāvyavahāraprāpaṇāt| Devadravyam ca|* Kautilya (2/1)

The king should ensure that weights and measures are used in appropriate value in his state. Kautilya (2/19) has talked about the head of the weights and measures department. According to Vashishtha (19/13) and Manu (8/240), the state seal should be stamped on the weighing and measuring instruments which should be re-checked twice every year so that the traders do not cheat their customers. Yajnavalkya (2/240) and Vishnu Dharmasutra (5/122) have provided for severe punishment for committing irregularities in weights and measures, coins, etc or making them in an unauthorised manner. Nitivakyamrit (p. 98) has also deliberated upon the weighing scales and measuring tools of the 11th century.

One of the main responsibilities of the king is protection

from thieves. There were no thieves, misers or drunkards in the kingdom of Kaikeyaraj Ashwapati (Chhandogyopanishad 5/11/5). According to Apastamba Dharmasutra (2/10/26/6-8), the government employees were responsible for protection of citizens from thieves up to one ‘yojana’ (12 km) of the city limits and up to one ‘kosh’ (3 km) of the village border as well as granting compensation for theft.

Thus, the state legislation in ancient India were broader, more comprehensive and more fundamental than today's 'rule of law'. The legal system and the advanced principles of public welfare, social security and public protection that existed thousands of years ago are even more well-defined than that of today.

## Need for Separate Interpretation of Culture and Religion in the Constitution

This tradition of Indian legislation based on scriptures is the ultimate foundation of Indian culture and its life-force. Its teaching, protection and promotion is the mandatory responsibility of the state and our fundamental human right. Indian knowledge tradition cannot be kept in the category of prohibition of teaching of religion in Article 28 of the Constitution. Minority institutions are not only allowed to provide their own religious education, they are also being given government support and encouragement to provide all types of education related to their religion with generous financial assistance being given to them. Indian knowledge tradition is the vital element of our culture. Its teaching cannot be dubbed ‘communal’ by linking it to any religion. On the other hand, there should be a constitutional responsibility of the government to protect the advanced knowledge, science and social sciences embedded in the Indian knowledge tradition in the same way as Article 49 of the Constitution provides for the state as an obligation to protect the places, monuments and objects of artistic and historical interest as well as national importance.

Indian culture is the world's oldest and knowledge-oriented culture. While including 30 manuscripts of Rig Veda in the World Heritage list, UNESCO has acknowledged that such long, intact and ancient manuscripts are rare anywhere else in the world. According to American historian Mark Twain regarding the primacy of knowledge, many information in modern knowledge and science were already there in the ancient Indian Hindu literature and many references to the new discoveries and inventions happening now can also be found in the ancient Indian scriptures. This complete knowledge is not the rituals related to any religion but is a treasure trove of universal knowledge for the welfare of the whole human race.

## Indian Scriptures have Unique Knowledge Useful for all Times

Many modern information related to political science, economics, modern astronomy, solar system, space science and geology as well as the creation of the universe are found in abundance in Sanskrit literature. Today, many facts related to anatomy, health science and mathematics as well as physics are found in abundance in Vedas, Vedangas, Aranyakas, Upanishads, Brahman Sutras, Samhitas and other Sanskrit texts and literature. Various social sciences like systems and principles of governance, economics and civics along with advanced principles of modern technology and trade and commerce are also found in ancient scriptures. This knowledge useful for universal humanity is not related to any religious rituals but is the eternal heritage of the anima of our culture and world humanity. The Vedas contain innumerable formulas ranging from the speed of light to the electrical vibrations of the heart and from the dark energy of the universe to the microscopic value of Pi. Many advanced subjects ranging from metallurgy to aeronautics are included in them. It contains all subjects, ranging from the vibration of the earth's axis to the heart related knowledge, which are of utmost importance. Knowledge of modern economics, political science, commerce, sociology, international diplomacy and even advanced management science is compiled in them.

## Obliteration of World’s Rarest Knowledge

Due to branding the study and teaching of this precious treasure of knowledge as ‘anti-secular’

and keeping it out of the formal curriculum of schools, this knowledge tradition has become a victim of obliteration and is facing total extinction. Due to lack of formal study, preservation, promotion and exploration of ancient Indian scriptures, the generation of scholars capable of interpreting them is also coming to an end and today, these scriptures are becoming victims of permanent extinction in independent India. Today, more than a thousand branches of the Vedas have become extinct. The Artha Shastra preceding Kautilya's Artha Shastra and the grammar preceding Panini's Ashtadhyayi have also become extinct.

According to Patanjali's Mahabhashya, there were 1,131 branches of Vedas prevalent in the country. Today, only 13 of those branches are available. The remaining 1,119 branches have gone extinct from the country. Even today, 103 branches are said to be available in German, which have been kept so safe by the German government that they can be studied only by the top scholars there. Veda mantras are subject to ‘Nirukta’ (interpretation). In ancient times, 18 Niruktas were prevalent. Now only one -- Yaskin Nirukta -- is available in India. Three Niruktas are said to be available in Germany. In comparison to the Veda Samhitas, the quantity of other categories of missing Sanskrit literature is much greater. Lakhs of texts, including scores of branches of Veda and Niruktas, have already gone extinct.

In states where there were 30 to 40 subjects in Sanskrit for completing the course of Acharya, only 4 to 6 subjects are available there today. That too, the number of both students and teachers are gradually becoming negligible. There is a lack of career for them too. If extensive teaching of complete Sanskrit literature including Vedas, Vedanga, Upanishads, Aranyakas, Brahman Sutras, Samhitas and Niruktas is imparted in all the schools, the demand for its further study, research and experimentation on these will increase at the university level too. Today, there seems to be a need for setting up of national and regional Sanskrit services to drive this goal home.

## Preservation of Indian Knowledge Tradition is Necessary

Even after a large part of ancient Sanskrit literature, running into several crores of pages, was burnt and destroyed during the foreign invasions in the last 1,200 years, we have still managed to preserve a lot of it till the time of Independence. As many as 1.25 crore Sanskrit manuscripts are still kept unread in various archives in the world. However, their promotion, interpretation, translation and elucidation seems not only difficult but impossible in today's environment. After Independence, under the centralised regulation and government-run education as well as in the name of so-called secularisation by the Congress, which is against Hindu renaissance, they were repealed and deleted from the formally recognised courses whereas preserving this world's oldest and universally important literature intact should have been the first responsibility of the post-Independence governments. After Independence, due to the anti-Hindu rejuvenation vision of Jawaharlal Nehru and a large section of the Congress, 'religious education' was completely prohibited under Article 28 of the Constitution while the treasure trove of the knowledge and science of our ancient literature was sacrificed on the altar of pseudo secularism by branding them as religious education.

## The Tragedy of Extinction of Ancient Cultures

Today, many ancient cultures of the world such as the Sumerian, Assyrian, Akkadian, Babylonian and Chaldean cultures of Mesopotamia and the cultures of Egypt, Iran, Greece and Rome have gone extinct or become obsolete. India was the ‘Vishwaguru’ (spiritual leader of the world) and the indelible impact of our advanced knowledge-based culture is still visible today in places right from Siberia to Sinhala or Sri Lanka, from Madagascar to Iran and Afghanistan as well as in the entire South East Asian region including countries like Borneo, Bali, Sumatra, Java, Malaysia, Vietnam, Philippines, Thailand and Myanmar in the Pacific Ocean. Apart from this, it is clearly visible till Europe. But now we ourselves have banned

our scriptures from being taught.

## Religion is Different from Dharma, Our Culture and Knowledge Tradition

Indian culture and knowledge tradition cannot be placed in the category of 'religion' which inspires to have commitment only towards one's own way of worship and to eliminate the followers of other sects. More than 20 million people have died between the twelfth and seventeenth centuries in the conflicts due to 'jihad' and crusade inspired by the monotheism of the Abrahamic and Semitic religions. The Indian knowledge tradition is not any solipsistic religion but is inspired by the ideal of pluralism, according to which a person may worship or may not even worship and do whatever he wants to according to his natural inclination. All he has to do is to follow the principles of Dharma simply by performing his duties as per the social code of conduct. So, Dharma means walking on the path of duty.

## Every Word of Sanskrit Literature is a Treasure of Knowledge

Every word of Sanskrit has been composed as a storehouse of immense knowledge. For example, the meaning of the word 'van' (forest) is "vanyate yachate vrushti pradayate iti vanah" (that which is helpful in causing natural rainfall is called a forest). According to modern meteorology, forests provide 40 per cent of the moisture required for rainfall. Similarly, the word 'hriday' (heart) is a well-planned combination of four letters -- 'Ha', 'Ra', 'Da' and 'Ya' which represent "Harate, Dadate, Rayate, Yamam" respectively -- which ultimately means it gives blood to the body, takes blood from it, circulates the blood in the body and regulates heartbeats. Similarly, every word in Sanskrit has its own meaningful definition. Ancient grammar and interpretations are storehouses of such meaningful words. Panini's Ashtadhyayi, the only remaining grammar among the many grammars of Sanskrit and Vedas, is not only the oldest surviving one but also the most precisionist, completely systematic and scientific grammar in the world. There are countless such scriptures and every word of them is based on deep science.

## Education of Indian Knowledge Tradition and Scriptures is Important

These ancient scriptures of ours and their study and teaching have not been rituals related to any sect or religion but have been a part of the eternal and shared culture of the entire human race. These scriptures of ours were part of the knowledge that was conducive to universal human welfare even before the birth of all of today's religions. This knowledge bank of Sanskrit literature of universal, timeless and eternal importance is getting extinct due to its neglect under the influence of pseudo secularism. Today, the government hands out financial assistance to minority institutions in the country for imparting religious education. But it is extremely unfortunate that India's universally useful and rare Sanskrit literature and its advanced knowledge are ignored in schools by dubbing their education, study, teaching and research as 'communal'. By terming the proper teaching, learning and preservation of Vedas, Vedanga and Sanskrit scriptures as non-secular, their study and teaching has been disrupted in school education and has been rendered lifeless by excluding them from the purview of formal education. This opposition to Sanskrit literature, including our Vedas, which is the essence of the country's national identity, is no less than an attack on the essence of our nation and its culture. Due to their teaching in government schools being termed non-secular after Independence, they have almost disappeared from the curriculum of the Central and State Boards. It would be appropriate to henceforth teach ancient Indian literature like Vedas, Vedangas, Upanishads, Aranyakas, Brahman Sutras, Puranas, astronomy related and other codex as well as the governance and political science related scriptures, etc in schools from the upper primary level. Consequently, due to an increasing demand for qualified teachers holding the title of Shastri and Acharya in these subjects, the study and teaching of these subjects would not disappear even at the level of higher education. Our present governance system too would then become more just, religion-neutral and based on Dharma.

Dr. Chanchal

# Lawmaking through the Smritis, Samhitās and Dharmasūtras

The Indian process of legislation emanates from the same principle that is the basis of the functioning of nature. This is called Ṛta. An insight

The germination and expansion of Indian law is linked to the holistic nature of ancient Indian culture. While in the initial order of development of various components of the totality of Indian culture, natural law in the form of *ṛta* (the verified and established way), *vrata* (resolve) and *satya* (truth) has been preponderant, in the secondary order, social law established in the form of dharma has provided dynamism to the social system through the indivisible form of morality, ethical conduct and ethos. Indian literature has kept creation of laws a livened construct in the systematic observation of legal rules, traditions, codes of conduct, the Smritis, Samhitās and Dharmasūtras, which enables all aspects of an individual's life attain self-realization through tradition and legal rules, thereby revealing many aspects of administrative and legal life.

In ancient Indian thought, the form of natural law is reflected in the idea of *Ṛta*. *Ṛta* means certain rules and optimum progress, which establish orderliness in the development and process of Creation. Both Creation and society remain functional due to the rules of *Ṛta*. Consciousness and stability is established in the society, which is aware of the element of self-realization inherent in *Ṛta*. Due to the orderliness of the rules of creation of *Ṛta*, the Sun and the Moon rise and set as per the order determined by Creation, the celestial constellations and the constellation of stars remain fixed and functioning in their respective places while remaining in the state of motion. Similarly, plants, fruits, flowers etc. in nature ripen. These rules of *Ṛta* are a perennial, eternal and infinite, which are omnipresent, omniscient and omnipotent by whom the entire world and the gods are governed; even they do not violate these rules and powers. The concept of *Ṛta* is available at many places in the Rigveda, in which it is also said that the form of heaven, Usha, Surya and Brahma is presented in *Ṛta*. By this, it is clear that everything is in *Ṛta* alone and has emanated from it.[1] In this way, the orderliness of Creation is *Ṛta*, by adherence to which not only does Creation became a functioning entity, but the individual's relationship with nature and society too came into being. The goals of human life have expanded only as an outcome of the functioning of this mutual relationship.

Truth has originated only through

the supreme power of *Ṛta*. Whatever rules and systems are visible in the world are all due to the existence of truth. Only if the nature of anything is true is it acceptable. The ideas of *Ṛta* and truth have been infusing dharmic life since very early times. That is why in the prayers, mantras, verses of the Vedic sages and in the Shrutis (Vedic hymns) themselves, these resonant voices are heard: just as the sun keeps moving incessantly, you too should remain continuously on the move. Only by being constantly in motion will you be able to attain *Swādu udumbar*, i.e., the fruitful moment of the realm. This idea was further developed in the Upanishads and Brahmana texts by proclaiming "*Caraiveti-Caraiveti*"—let us continually move forward. *Ṛta* and Satya are replete with the attributes of stability, systematicity and certainty, which is what facilitates societal progress.

All systemic structures of early societies were governed only by *Ṛta*. Societal rules and systems were not above *Ṛta*. While on one hand the rules of *Ṛta* were organizing the society, on the other hand they were also establishing control for a dignified life due to which *Ṛta* led to the formation of social laws in which the role of dharma is fundamental. Dharma is based on truth and it helps in the prosperity and progress of the entire world. There was a direct connection between dharma and *Ṛta*. The objective form of dharma developed due to its presentation in the form of social conduct, morality, tradition and behaviour. Over time, due to changes in the form of dharma from time to time, it became synonymous with duties helpful in worldly and transcendental progress. Dharma therefore took the place of a self-governing society in accordance with the natural rules of *Ṛta*, whose guardian became the king, i.e., the ruler.

On the one hand, in the Rigveda, the king is called the protector of wealth and the nation (*Rāṣtrasmudhārya*)[2] while on the other, he has also been called *Pāyuviśaḥ*[3] which means the sustainer of the realm. Due to his being a protector of people (*Gopājanasya*) he has also been considered a *Viśastwā sarvā vāncantu*, which means loved by the realm.[4] As a result, dharma is the basic purpose of the existence of the state. The safeguarding of dharma was envisaged in the creation of the state. The system that has been depicted in the Indian Smritis, Samhitās and Dharmasūtras before the state came into being, is called *mātsya nyāya*, in which the set parameters of conduct and the universal values of propriety have a plurality of selfish elements and physical force has been used to attain the objectives. In that age, there was no government that could enforce appropriate moral and value-based standards and establish order by laying down direction for the adherence of dharma. The origin of the state led to the emergence of an ideal polity in which the king is the guardian of dharma, law and justice. In the Samhitās of the *Yajurveda*, dharma has been compared to king. Dharma has the same importance as the king does in the welfare of his subjects. It is said in *Kāṭhak Samhitā* that the king is established as of dharma among the subjects. He is the embodiment of dharma to the people. The ruler, in his own

reign, in the nation, in villages and among those came before him, regulates everything by being situated in the form of dharma. In the *Yajurveda Samhitā*, the term "Dharma Rashtra" has been used in a wide sense and context. It also appears to be related to dharma, law, order and injunctions of the gods. It is mentioned in a mantra of the *Yajurveda*: "O Ishtadeva! Like the rays of the sun intended for the enhancement of truthful conduct, may you enhance the truthful conduct in the nation by the wise who are capable of revealing even the concealed things through prudence. May you advance dharma or the system or law by a person possessing good knowledge of law, which organizes the people.[6] Thus, dharma means those rules and laws that organize the people and establish an ideal society.

Law holds the first place in all the forms of early societies described in Indian *Smritis* and *Samhitās*. Society is created only through law and states function only by following the legal tradition. In fact, the place of law is paramount in the regulation, control and functioning of society. The special powers that the king acquires due to his status as a king in the state are the result of the mutual consent of the society. That is why the king is not the creator of law but its guardian. The basis of law-making in ancient India was both dharmic and worldly. The sources of dharmic law are scriptures, *Shruti* and *Smritis*, whereas in laws made by mankind, practices and customs have been accorded acceptance. The conduct prescribed in *Shruti* and the *Smritis* is considered as dharma.[7] Manu says that the king should perform his functions according to the dharma of his creed, country, class and family.[8] Manu also says that the king should always discharge his tasks towards human beings by taking recourse to Sanatan Dharma.[9] From this point of view, Manu has in the *Manusmriti* laid down four sources of dharma for the ruler to make laws—the Vedas, *Smritis*, morality and regard for the self, i.e., contentment of the mind. In the *Manusmriti*, Manu does not entrust the task of lawmaking to the king.[10] The king is not a lawmaker but only a protector of law. Bhishma the Kuru grandsire has cited four sources of lawmaking—*Devsrota* (the gods or celestials as the source), *Ārshasrota* (the source being the learning, wisdom and writings of rishis), *Loksrota* (the traditions, conventions and practices of the people) and *Sammatsrota* (norms, conventions and way of life agreed upon and accepted by society as the source).[11] Source of celestial origin, i.e., *Devsrota*, refer to methods created by Brahma the Creator himself. By Ārshasrota we mean rules that originated from the wisdom of sages, seers, Brihaspati (the preceptor of the gods), Shukrāchārya and Bhishma himself to regulate human life according in accordance with time, place and conditions. The creation of laws from Sammat Srota (originating from accepted norms and practices) happened through the acceptance of people[12] Laws made from sources of popular acceptance are based on rules made by ancient institutions and originate from clan, caste, dharma and national dharma. When all of these conventions and practices acquire acceptance by the State over time, they take the form of law.

While describing the four circumstances of law-making, namely dharma, conduct, character and royal decree, Acharya Chanakya has said that these are the four legs of the nation as they are the decisive aspects of discord. Of these, conduct is better than all dharma, character is better than conduct and royal command(s) are better than character.[13] According to Kautilya (Chanakya), dharma depends on truth, conduct upon witnesses, character on one's life in society and royal decree depends on kingly rule. The king should decide disputes solely on the basis of these four conditions. Shukrāchārya too has approved of *Shruti*, *Smriti* and conduct as the basis of law. Apart from these, royal decree or command is considered an important source of law. According to Shukra, the king should protect the strictures and dignity of the scriptures every day. Along with this, while following *kuldharma* (family dharma), *jātidharma* (clan's dharma), *rāshtradharma* (the nation's dharma) and *trayī dharma* (the triad of dharmas), the dharmas of the country, community and families should be mandatorily followed. If this is not done, the people become discontented.[14]

Therefore, in ancient India, law was made on the foundation of the combination of dharma, conduct, character and kingly decree. The main source of ancient Indian law is society. It on these that *Shruti*, *Smriti* and good conduct have been according their approval. That is why law evolves from society and becomes supreme in presenting legislation for the society.

In ancient India, the State played a leading role in securing and protecting the lives of the people. The progress of the State is possible only when freedom, equality and justice are available to the people in equal measure. It is the primary duty of the king to distribute justice with equity in the State and to satisfy the subjects through his dispensation of justice. The king represents the State in the kingdom. That is why it is said in the *Mahabharata* that first of all one should acquire a king. Only then should one obtain a wife; wealth should be accumulated after that. Because, in the absence of a king, there will be neither wife, nor wealth, nor can any other household exist.[15] In the ancient polity, the king had the responsibility of administering justice, which is why he was the supreme authority of justice. The setting up of courts, appointment of judges and officials was done by the king. The king could remove the judges from their posts and also had the right to hear appeals against the decisions taken by different courts in other courts. The king administers justice in the State only in accordance with the legal rules. In the Vedic era, the king was a dharmic person who was the creator of the law and watched over its conduct and practice. A detailed disposition of the essential qualifications for the position of a judge has been presented in the *Smritis* and *Dharmasūtras*. It is said in the *Manusmriti* that the judge should be a person who can make decisions by knowing the external signs, tone, colour, indication, shape, eye and movement, speech and feelings of the mind through facial contortions. He should deliver all that seekers of justice want in a chronological order, knowing very well what is desirable and harmful and keep only righteousness and unrighteousness in focus.[16] The *Āpastamba Dharmasūtra* describes how a judge must be a learned individual, pure, born in a noble family, elderly, well-versed in argument and aware in the discharge of his duties. A person endowed with these attributes ought to be made a judge. In the *Smritis*, *Dharmasūtras* and *Samhitās*, the king is called the highest authority in the dispensation of justice, who wields the sceptre of punishment in accordance with the canons of justice.[17] The *Yājnavalkya Smriti* considers justice to be the primary dharma of the king. Manu says that power obstructs the path of justice, whether in the material or spiritual path, and it is the duty of the king to remove such obstacles.[18] The role of a king was very important in a proper system of justice, who imparted leadership to the administration of justice in order to shape a State governed by the principles of justice. Law is important in scrutinizing conduct in a system of administration of justice. In a rule based on justice, the king administers justice without being swayed by his personal opinions or biases. Shukrāchārya is of the opinion that the king ought to pronounce judgments on issues keeping in view the dharma propounded by tradition, convention, the Vedas and *shāstras* (scriptures).[19] It is on the basis of law that the king fulfils the tasks of appointing judges, discharge of tasks regarding conduct of the administration and State. Thus, it is through law alone the administration was controlled, which is denotive of the welfare and well-being of the people.

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In ancient Indian thought, the entirety of human life was subject to law. There remained no aspect of human life to regulate which recourse to law(s) was not taken. Traditions, beliefs and acceptances had special importance in the making,

refining and amending of laws. In the State, the king was only the protector and guardian of law, not its maker. In the age of the Mahabharata, sages commanded the king to take the following oath: “O scorcher of foes! Swear by your mind, word and karma that you shall fearlessly and devoid of doubt, always adhere to the constant dharma established by rishis in accordance with the policy of penalization, and never yield to wantonness.[20] From this point of view, law holds the highest place.

The responsibility of the king in the State was subject to the laws of the State. An important post in the administration was completely dependent on its laws. A person could hold the position of king in the State only as long as he followed its laws in actuality. The appointment of the king was subject to important institutions like the assembly and the committee, which could either place the king on the throne or depose him. The fixed rules for attaining the throne included acceptance by the subjects, coronation and the royal oath, which inspire the king to conduct himself in accordance with dharma in every situation. The ceremony of coronation in the state was completely republican in nature, in which the presence of representatives of every class and interest group was mandatory, who would give their consent to entrust the throne to the king. Thus, the king in the kingdom was given the throne with some restrictions. As long as the king complied with these bounds, he was worthy of respect. When he violated the laws born of these restrictions, he was destroyed on his own and in his place, another capable individual was given the throne. The ancient Indian tradition was replete with rules and law(s), in which law had the highest place. One of the main objectives was to realize the vision of a State governed by the rule of law. In ancient Indian *Smritis*, *Samhitās* and *Dharmasūtras*, the king is the highest executive official in a state, whose primary responsibility is to form the council of ministers to assist and carry out the functions of the government. To establish the rule of law in the State, Manu says that even the simplest task cannot be accomplished by a single individual. How then can a single individual be able to accomplish state-related functions that yields particular outcomes?[21] Propounding the necessity of the consent of the ministers, Kautilya says that every important work of the king should be done only in accordance with the advice of the council of ministers and in doubtful and controversial matters, it should be done only in accordance with the decision supported by the majority.[22] The king should always carry out his kingly functions only with the consent of his officers, *amātyas* (distinguished courtiers), ministers and presidents, because the State suffers disintegration due to the arbitrariness of the ruler. For the ideal functioning and well-organized form of the State, it is necessary that the king executes his tasks with the counsel of truth.

In the ancient Indian tradition, the legislative system of the State, in order to establish the rule of law, never gave the king the right to reject the consent obtained through the council of ministers. That is why Kautilya says that all the work of the State should be done in the presence of ministers only. If anyone is absent, his consent should be sought in writing. At the time of any sudden incident or any great apprehension, the king should call his smaller council of ministers as well as the ministers of the larger council and only a decision adopted by the majority should be implemented.[23] During the age of the Mahabharata, ministers were expected to give proper advice to the king only after careful consideration, because it is their advice that is the main basis for the progress of the State and making the people favourably disposed towards them.[24] In this way, the king used to conduct administrative work with the help of the council of ministers. The form of governance presented to us in converting the cabinet's counsel into orders is totally contrary to autocracy and arbitrariness and is in accordance with rules and rooted in law.

In the ancient Indian *Smritis*, *Samhitās* and *Dharmasūtras*, the highest official for clarifying the laws and regulations is the priest. In the Mahabharata, the responsibilities of a priest in analyzing his own actions and eschewing wrongdoings are considered important.[25] Kautilya says that just as a disciple follows

a teacher, a son follows his father and a servant follows his master, similarly the king should follow the priest. According to Shukrāchārya, the main function of the priest is to exercise control over the government. This is the basis of his position and the prestige associated with it.[26] Manu has even accorded the king control over the priest. According to him, if the priest acts contrary to the State and society, then the king should punish him like inmates and judges.

The study of legislation described in ancient Indian *Smritis*, *Samhitās* and *Dharmasūtras* reveals that the rules that were made to discipline and control human life had taken the form of law. With the coming into being of these rules, the State was completely legalized, in which the duties and rights of the king and the subjects were delineated. The king was not the creator of the law but its guardian and protector. There was predominance of law in the state. In the field of human endeavour, the task of laying down the final decision was accomplished by law, which held worldly and transcendental importance. Under the aegis of worldly importance, the people felt that society was being governed according to the law. The law is supreme and controls their conduct. Brahma the Creator has Himself created law, which has transcendental significance. By transgressing the command of Brahma, the people deviate from dharma, which can become a factor in their downfall in the hereafter. That is the reason people accept the legitimacy of the king over themselves in the context of the primacy of law. In Indian tradition, the king, despite being the supreme authority, is also subject to the law established by society and dharma, whose commands and injunctions apply equally to the State's subjects. To prevent the king from becoming arbitrary in the realm of the State, there was an ideal system of dharma, the position of the priest, council of ministers, daily routine, local institutions, public opinion and the primacy of law.

In fact, in the Indian Shastra tradition, the process of legislation has not been related or tied to the executive or judiciary in any way. The king and his council of ministers and councilors also ensured the implementation of established and tested laws that were just, dharmic, accepted by the people, beneficial to society and based on values. The separation of powers that the present political and administrative instruments have arrived at through records and chronicles is the result of present-day legalistic aspirations. The contemporary relevance of the important elements of Indian traditional legislation also lies in the continuity of the humane, sensitive, dharmic, socially utilitarian and public welfare intent of punishment, justice, administration and law. This can also become the guiding principle of the current-day lawmakers and can also be the existent sustenance drawn from thousands of years of unbroken eternal tradition.

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Prof. Mazhar Asif

# Imprint of Medieval Invasions on Bharat: *Shariat* versus *Vidhi*

Shariat divides humanity into two clear groups based on belief and faith. Whereas Vidhi is based on Dharm and Darshan. A relative study

Bharat was called Vishwa Guru not because we were number one in warfare or in armed ammunition or in making dangerous weapons or in deception or in deceit, but because our ethics, our knowledge, our tradition, our wisdom and our Darshan have made us eternal and universal. We have illuminated the darkness and obscurity of the world with the light of our knowledge. Our saints, Mahatmas have enlightened the world by their rigorous spiritual practices. We, since time immemorial, firmly believed in *Vasudhaiva kuṭumbakam*. For us, the whole world is our home and the whole of mankind is our family. *Sarve bhavantu sukhinaḥ sarve santu nirāmayāḥ* has been our mantra for survival of this universe. It is noteworthy and history is also a witness that India has not attacked any other country in any part of its history.

Bharat has always been a self-reliant and self-sufficient country in every sphere of life. For centuries, we have followed the philosophy of live and let live. This peaceful thought gave us the spiritual strength due to which we have been able to preserve our identity and *dharma* otherwise all the civilizations who were contemporaries of the *Sanatani* civilization were either erased from the page or their names were changed. Unfortunately, our philanthropy, our good intentions, our truthfulness, our beauty and our immense wealth become a curse for us. This was the reason why people all over the world looked at us with great longing. Within time, this desire started to turn into jealousy and enmity. As a result, India has been subjected to various attacks by foreign rulers, over the centuries and has tried to annex and rob the country around 200 times.

## Medieval Invasion

It is worth mentioning that the expansionist policy of Islam provided an opportunity for Islam to move out of the Arabian Peninsula for the first time during the time of the second Caliph Hazrat Umar. And after the battle of Nehavand which was fought in 633 and the battle of Qadasia which was fought in 636, Islam entered into Iran by defeating the last ruler of the Sasanian dynasty named Yazgard III. When the Arabs, whose civilization and culture were not so rich, entered the land of Iran, they would be amazed to see the culture of Iran, its luxurious lifestyle, its

splendor and glory. Consequently, they started adopting Persian culture almost in every aspect of their social and administrative life. The Sassanid court customs such as salutations, prostration to the king, organizing music and dance parties. All these gradually became part of the Islamic court now shifted to Baghdad. It can be said that now all the administrative departments of the Islamic government have been Persianized.

However, since Iran has been our neighbor, it was inevitable that its Islamization would affect India. The history of India has been deeply influenced by several decades of Muslim invasions, beginning with Muhammad bin Qasim's conquests in the early eighth century and ending with the establishment of the Mughal Empire in the sixteenth century. Most of the invaders who attacked India in the Middle Ages were mostly Afghans and Turks. The main reason for their attack was to loot the immense wealth and spread Islam in Bharat.

The first recorded medieval invasion of Bharat took place during the time of Hajjaj bin Yusuf, the most notable governor of Umayyad Caliphate. When Caliph Abd al-Malik (685–705) appointed him governor of the Hejaz and the eastern parts of the Caliphate. In 694, he first sent Abdullah Aslami to Sindh with 6000 troops. Abdullah was killed while fighting Raja Dahir's army on reaching Sindh and this campaign failed. For the second time, Hajjaj commissioned a chief named Badil and sent him to Dibil with six thousand troops.[1] He was also defeated and killed. The failure of these two campaigns did not let his morale and determination down, on the contrary, he sent Muhammad Bin Qasim to conquer Sindh in the form of the third campaign due to his strong desire to loot the wealth of India and plant the flag of Islam on this holy land of Bharat. In June 712 AD, Muhammad Bin Qasim defeated Raja Dahar and conquered Sindh. Consequently, the door of Islam opened to India from here. Sindh, why so, is called Bab of Islam by the Muslim historians. Although, Muhammad bin Qasim returned to his homeland after the conquest of Sindh, some soldiers decided to stay in India due to the charm of Sindh and the abundance of wealth. However, many of them married Sindhi women and settled in Sind permanently. Though brief, this expedition created a model for later relations between Islamic and Indian cultures and laid the foundation for future Muslim conquests. Bharat, therefore, was immediately opened for others to attack. The country which had given the message of peace and tranquility to the whole world has now become a place of looting and killing by the invaders.

**Mahmud Ghazni** launched a series of seventeen raids into Bharat **between 1000 and 1027** and in each attack he not only looted but also destroyed the temples and, with the wealth of the loot, he built and decorated his capital city of Ghazni in Afghanistan. Mahmud's main objective was not just to conquer new lands but also to amass an enormous fortune; his conquests were often motivated by the attraction of the legendary treasures stored in India's well-known temples. The siege of Gujarat's Somnath temple stands out as a turning point in Mahmud's conquests. The plundering of the Somnath has been immensely glorified by the court poets of Mahmud such as Farrokhi, Unsuri and Gordezi.[2] These invasions left a lasting impact on the Indian subcontinent, both culturally and politically.

Ghiyas-ud-din, ruler of the Ghurid dynasty in Afghanistan died in 1203. After his death, Muhammad Ghori who was his younger brother, became his successor and imposed heavy taxes on the people. As a result, he became quite unpopular

Ghiyas-ud-din, ruler of the Ghurid dynasty in Afghanistan died in 1203. After his death, Muhammad Ghori who was his younger brother, became his successor and imposed heavy taxes on the people. As a result, he became quite unpopular among the local people. Due to the increase in taxes, the anger among the people was increasing day by day. He tried every possible way to generate income but failed. Since wealth was piled up in India at that time, he invaded India in 1175 with the intention of looting

among the local people. Due to the increase in taxes, the anger among the people was increasing day by day. He tried every possible way to generate income but failed. Since wealth was piled up in India at that time, he invaded India in 1175 with the intention of looting. After winning Multan and Punjab, he advanced towards Delhi. He fought two battles at Tarain in 1191 and in 1192 against Raja Prithviraj Chauhan; the most powerful rajah of India. His victory in the second battle of Train paved the way for Ghori to push Muslim rule further in India. His empire extended from Herat (Afghanistan) up to Western Bengal. The rise of the Ghurid Dynasty and the establishment of the Delhi Sultanate that followed had a significant impact on the political climate in Northern India. The most important event recorded during this period was the arrival of Moinuddin Cheshti in India which latter on impacted socio-religious condition of Bharat.

After murder of Mohammad Ghori near Jhelum on 15th March 1206 Qutb-ud-Din Aybak announced his accession to the throne in June 1206 in Lahore and became the first Muslim king who founded the Islamic government in Delhi, which became known as the Delhi Sultanate. Every dynasty contributed in a different way and faced different difficulties, which helped to shape the Sultanate's path and the future development of Indian history.

Bakhtiyar Khilji - He was also a slave of Ghori and commander of Qutbuddin, who expanded Islam by attacking the states of Eastern India like Assam, Bihar and Bengal. It set Nalanda University on fire and is responsible for the end of Buddhism in north-eastern India. According to Persian chronicles such as Tabaqate Naseri written by Minhaj Seraj in 1260 and Tarikhe Aasham of Shehabuddin Talish in 1695 and Kanhai-Boroxiha rock, he is the first Muslim who invaded Assam in 1206, much before the Ahom' invasion, and set up Muslim colonies there. Bakhtiyar Khilji, in fact, wanted to invade Tibet and Turkistan by way of Assam, but was killed by his own commander named Ali Mardan Khan.[3] The most remarkable event of this invasion of Assam was the conversion of one of the chiefs of the Kuch and Mich tribes, whose name was Ali Mich. Today, the Muslims of Assam who are called Thalua, Axomiya Mussalman or Khilonjia Musalman are their descendants.[4]

India was considered to be a rich region in those days. Therefore, Timur's main objective like other invaders was, to plunder the wealth of this country and not, to establish a government here. To realize his goal, Timur attacked Delhi in 1399. Sultan Nasiruddin Mahmud Tughlaq of the Delhi Sultanate was easily defeated. Mahmood was afraid and left Delhi and hid in the forests. After that, Timur played an orgy of killings and brutality on the streets of Delhi which is unparalleled.[5]

Babur was born in Andijan (present-day Uzbekistan) in Central Asia and was a descendant of Genghis Khan and Timur. It was his long-standing dream to establish a large empire and accumulate wealth. To realize this dream, he conquered Samarkand and Ferghana and attacked India. Babur marched towards Delhi via Sirhind. He reached Panipat on 20th April 1526 and there he faced the army of Ibrahim Lodi. Despite having a huge army, the last king of the Lodi dynasty had to face a severe defeat. In the history of India, this war is the most important because after this, the foundation of the Mughal Empire was laid in the country, which lasted for about three hundred years.[6]

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All the invaders who came to India as conquerors, except Mahmud Ghaznavi, Ghurid and Taimur, adopted India wholeheartedly. Since Persia has been an integral part of our undivided Greater Aryan

land, our culture, traditions, and thoughts and ideas are almost similar. As mentioned above, now the socio-cultural and administrative aspects of Islam were Persianized, hence the invaders found this land favourable and made this land as their homeland. They settled down here permanently even after death, they chose to be buried on this land. Apart from this, they had no other option, because there was no sign of peace and tranquility in the countries from which they came. There was an atmosphere of looting and killing everywhere. In such circumstances, the attraction of India became more and more, its beauty and prosperity and its prosperity did not let them go away. All these invasions mentioned above have had a deep and long-lasting impact on every aspect of Indian life. Be it religion, culture, society, language, food, ethics, rules or regulations.

## *Shariat* vesus *Vidhi*

### *Shariat*

The concept of Islam is that God is the creator and master of this universe. He loves each of his servants, he loves each of his creatures. He, therefore, has original right to make laws for his subjects. Islam's concept of justice is a complete code of law for fruitful life. Nearly every aspect of human conducts such as religion, criminal, marriage, divorce, adoption, inheritance, succession are regulated by the Shariat. A person, hence, who does not accept the command of Allah and His Messenger, system of life and has a different opinion is a disbeliever. Every principle is disbelief, every rule is disbelief that is adopted without the Islamic code of life. Man cannot go outside the Shariat in any of his matters, because all the matters that are beneficial to him are included in the Shariat, whether they are of a fundamental nature or of a secondary nature, related to the state of man or actions. From politics or trade, or any other kind of affairs, all are included in the Shariah. O you who believe, obey Allah and obey the Messenger and those in charge among you. (Al-Nisaa: 59) Ibn Manzoor has defined the Shariat in the following words, “The way of living for the servants which Allah Ta'ala has prescribed and commanded the servants to follow (such as prayer, fasting, Hajj, Zakah and all righteous deeds).” (Ibn Manzoor, Lisan al-Arab, 8: 175)

The primary element of Shariat is the Quran. If the solution of a particular problem is not found in the Qur'an, then the second element of Sharia Law is known as the Sunna i.e the teachings of the Prophet Mohammed were collected in the form of a book known as Hadith. If any provision is not mentioned in the Hadith then it is decided after extensive consultation among Islamic scholars known as Ulema. It is the result of Ijma that today five schools of thought in Islamic jurisprudence; Hanafi, Shafi'i, Maleki, Hanbali and Ja'fari have developed and there are many differences of opinion among them regarding marriage, divorce, maintenance, inheritance and adoption. If the Islamic scholars fail to reach a consensus, then speculation is made about the meaning of certain words or writings in the Quran and Hadith. This process is called Qiyas which is the fourth element of Shariat.[7]

Shariat divides humanity into two clear groups based on belief and faith. A people of faith, true followers of the Prophets who are called by the words Mominin/ Muslims. And others are called servants of self-desires, infidels, polytheists and hypocrites. Shariat never talks about equality but it talks about justice only. The Holy Qur'an says, “Indeed, Allah orders you to be just and to be good”. (Sura Al-nahl: 90). In

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Surah Al-Nesa aayat 58 God says, "God commands you to reject the deposits to their owners, and when you judge between people, judge with justice. In truth, good is what God advises you to do. God is hearing and seeing."

Shariat does not give equal status to all world religions or different ways of living. This is what the Quran declares, "The true religion of Allah is Islam. The people of the book adopted many different ways rather than following the true way of Islam even after the knowledge of truth had reached them, and this was merely to commit excesses against one another. Let him who refuses to follow the ordinances and directives of Allah know that Allah is swift in His reckoning" (Sura Al Imran:19).

## Vidhi

Whereas Vidhi is based on Dharm and Darshan and has a documented history dating back to the Vedic era. What we call Vidhi today was called 'Dharma' in ancient India. The main objective of Vidhi in the Vedic period was to preserve 'Dharma' which means righteousness and duty. This Vidhi was inspired by the Vedas, which contained rules concerning conduct and rituals that were put together in *Dharma Sutras* and *Smritis* including *Manusmriti* (200BC-200CE); *Yajnavalkya Smriti* (200-500CE); *Naradasmriti* (100BC-400CE); *Vishnusmriti* (700-1000 AD); *Brihaspatismriti* (200-400CE); and *Katyayana Smriti* (300-600 BC). These texts were often used for legal decisions and opinions and practiced in many branches of the Vedic schools. Compared to modern law, Sanatani law was a unique legal system because it followed a unique system of law and politics with a unique scheme of values. According to Vidhi all human beings are equal and enjoy equal status and there will be no discrimination between them on the basis of their religion, caste, creed, race, region, sex or economic and social conditions. There is no superiority of a Sanatani over a non-Santani, a white over a black, a black over a white, a learned over an ignorant man, a big over a small, a good over a bad, a man over a woman, a rich man over a poor man, a minister over an ordinary man, a king over his subject. In the eyes of Vidhi no matter how high you are, be it an Imam, Archbishop, or a Shankaracharya or a Granthi, he is bound by the law. And any discrimination between human beings on the basis of any creed is against fundamental rights and a crime. The main principle of the rule of law is equality of all people before the law, that is, the law is supreme and it applies equally to all the citizens of the country. Indian philosophers such as Chanakya have also espoused the Vidhi in their own way, by maintaining that the King should be governed by the word of law. The concept of the Rule of Law is that the state is governed, not by the ruler or the nominated representatives of the people, but by the law.[8]

However, the foundation of Muslim authority in India marked the beginning of a new chapter in our legal history. The Muslim invaders brought a new religion, civilization, and social order with them. Several religions and sects coexisted and influenced one another. Sanatani Dharm underwent immense changes throughout this time. Buddhism collapsed. Sikhism and Islam were the two new religions introduced in India. Religion influenced social, political, and economic systems as well as the arts and education

## Imprint of the Invasion

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Akbar, to combine Islamic and Hindu legal customs. One such example is the creation of the Sadr-i-Jahan, a high court that handled cases involving both groups.[9]

The rule of law which had been followed in the country for thousands of years was violated by the invaders, resulting in the classification of non-Muslim subjects into two groups: 1. Zimmis, who had accepted the ruler's overlord ship, and 2. Musta'mins, who were given a period of security by the State and enjoyed all the rights of an alien in a modern state. The Sharia had little effect on non-Muslim residents' enjoyment of their own religion, laws, and historical customs. A clear-cut distinction was made between 'believers' and 'non-believers'. The following proclamation by Akbar demonstrates his stance toward non-Muslims:

"No man should be persecuted because of his religion, and everyone should be free to change his religion if he so desires. If a Hindu woman falls in love with a Muslim and converts to Islam, she should be taken from him and returned to her family. People should not be harassed if they desire to construct churches, prayer rooms, idol temples, or fire temples."[10]

During the medieval period, the Department of Law and Justice was known as the 'Adalat' and it had two separate branches; 'Mahekmae Adalat' and Mahekmae sharia. The first one dealt with the common law, comprised of Islamic law of crimes, tort, nuisance, etc., and applied to all subjects of the state, regardless of faith, albeit in terms of punishment, Muslims were subjected to more severe penalties for offenses like adultery and drinking

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## Conclusion

Bharat, in medieval times, had repeatedly faced a nation whose culture and civilization, whose faith and belief, whose language and literature, whose thought and ideas, whose religious ideas and establishment, whose customs and traditions were different in every respect. Even so, following our high standard of thinking, we accepted the invaders' rule. It is also a bitter truth that the Muslim attackers were only a few, but all the Muslims in Bharat were Sanatani and are Sanatani, though their religious beliefs and method of prayer and worship, may be different. But despite all this cultural and religious imperialism imposed on us, we never compromise with our traditions, way of life, value system and Dharma. independent country, hence it is important that the rule of law should be implemented in the entire country where no discrimination of any kind should be done to anyone except for activities of worship.

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the Khana Kaba. On the day of the conquest of Makkah, when prophet Mohammad entered the Sacred Mosque, he saw that there were 360 idols installed around the house of Allah. He had a bow in his hand, he used to hit these idols with it and say: "Truth has come and falsehood has gone, surely falsehood is something that is going away." (Sura Bani israyil:81) Idols fall on their faces from his touch (Sahi bukhari ketab Altafsir: 4720) According to the events described by Farrokhi Sistani in one of his Qasida number 35 included in his Diwan under the title "invasion of Somnath and breaking its idol", idol of Manat was somehow stolen from the Khana Kaba in Mecca and moved to an area where idolatry was common, such as India, and it was likely that the idol is preserved there. This may be the reason why Mahmud invaded Somnath and by this plunder he wanted to be famous as Ghazi in the Muslim Umma. One thousand Brahmins and three hundred and fifty singers and dancers served there, and the income of ten thousand villages was endowed. It was Somnath temple. Mahmud captured the temple after a bloody war, and took more than twenty million dinars of booty from there, and finally, he set fire to the temple."

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Dr. Chandrashekhar Pran

# 73rd Constitutional Amendment An Incomplete Legislative Effort

The path to direct participation of citizens in the running of the government was opened through the 73rd Amendment, but till date it has not been established in the true sense. Here is an analysis of its causes and effects

22nd December 1992 was that important day when the citizens of India were legally equipped with civil rights in true sense through the 73rd and 74th Constitutional Amendments and along with it, preparations were set in motion to bring democracy to the grassroots level. About 450 BC, in the city-states of Greece, common people were called 'citizens', who were directly involved in the operation of government affairs. The Western philosophy of democracy establishes this participation of citizens in governance and positions them as the lords of the nation-state. Along with bringing democracy to the ground level through Panchayats, the 73rd Constitutional Amendment also opened the way for direct participation of citizens in governance. In fact, exactly 72 years before that, the common people were legally given some responsibilities for the development and justice system of their villages through the Panchayat Acts of various provinces under the British Raj, while after Independence, sporadic responsibilities of rural development were continued through the Panchayat. But the 73rd Constitutional Amendment very clearly inspired and provided the opportunity to the states to give ownership rights to villages by constitutionally ensuring direct participation of the adult citizens in the development of villages in the form of self-government. Due to this, the process of amending Panchayati Raj Acts of all the states of the country started accordingly. Due to constitutional imperative, almost all the states completed this amendment process by March 1994 and also started the process of forming laws to delegate powers to the local self-governments. It is a different matter that till date, this system could not be established in its true sense.

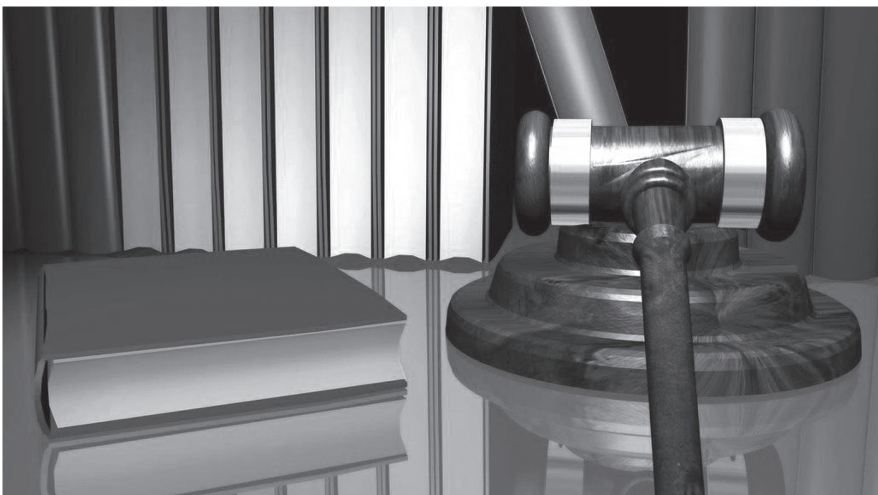
To understand this grassroots democracy and ownership rights of the common people more deeply, it is necessary to turn to the old pages of Indian culture and history. It will also help reveal the truth behind India being called the "birthplace of democracy". Actually, the social system under which human society was living in its initial phase in the world was naturally its own system of consent and cooperation based on mutual cooperation. In that system, people were generally the "king of their own mind." As the state and market became essential parts of their life with the entangled

and deteriorating relations among themselves and the increasing needs according to time and understanding, people's ownership rights of freedom became weaker. Gradually, they got trapped in the maze of slavery and servitude. But these freedom and rights remained with the common people for a long time in the villages of India as self-rule and self-reliance were the basis of their life. However, this independence was curtailed during the British rule to the extent that 60 to 70 per cent of the people of this most prosperous country in the world were forced to live in abject poverty, filth and misery.[1]

When the process of formation of the Constituent Assembly started in 1946 with the certainty of gaining Independence, Shri Narayan Aggarwal prepared a draft of 'Gandhian Constitution' on the basis of Mahatma Gandhi's concept and resolution of 'Gram Swaraj'. He even presented it before the members of the Constitution Assembly.[2] But as it is well known to all, there was not even a mention, leave apart a proposal, of villages and Panchayats in the first draft of the Constitution which was presented before the Constituent Assembly. However, due to the intense opposition and under the pressure of some members of the Constituent Assembly, this topic came into the centre of discussion and after a long debate, it was included in the Directive Principles section of the Constitution, leaving it for the future generation to decide.[3]

Though right after Independence, Panchayati Raj system was started in most of the states on the basis of the Panchayat Acts enacted by various provinces or governments during the British rule, these efforts were very weak as implementation of these Acts depended on the mercy of the state governments. At the national level, it did not find any place even in the agenda of the Union government. It was neglected at the national level perhaps because it was a subject in the state list.

When the 'Community Development Programme', which started in the year 1952, was reviewed after four years, it came to light that the participation of the community, with which the fabric of this development program was woven, was negligible. Due to this, the target was left far behind. In the given situation, the Government of India once again came to understand the importance of Gandhiji's 'Gram Swaraj' and 'Panchayat' but, that too, less as a form of self-governance and more as a development agency (medium).



In this sequence, Balwant Rai Mehta Committee was formed and on the basis of its report, Panchayati Raj system was launched with great enthusiasm in October 1959, but its development journey could not travel too far. Gradually, due to the neglect of the Union and state governments, the system became ineffective in most of the states. Meanwhile, some necessary changes were made in the Acts already made for the Panchayats and some new structures were also created to make it effective from the development point of view.

When the Panchayat system was kept limited to villages, new structures which were created for rural development (Block Development Committee and District Development Council) were also made a part of this system. Due to this, laws were also enacted for 'Block Development Committee' and 'Zilla Parishad' in all the states along with the Gram Panchayat Act. Responsibilities were also assigned to them at village, block and district levels. Although necessary provisions

of authority and responsibility were made in the laws prepared for them according to the then situation and arrangements, there were very few opportunities for autonomy in it. Much of the system was subject to the will, mercy and permission of the state governments. In this system, there were very few opportunities for the 'village society' to use its own discretion. Whereas in Gandhiji's 'Gram Swaraj', the right to take decisions was reserved with the village society while political and economic power was to be decentralized as per expectations. In fact, the dream of 'democratic decentralization' could not stand on its own legs even on the ground of 'administrative decentralization'.

Due to this discrepancy, the concern of the Central and state governments about the adverse results of development continued to increase. Meanwhile, sporadic efforts were made to form committees, bring reforms and carry out experiments in search of a solution to it, but there was very less meaningful outcome. The efforts of some states like West Bengal and Karnataka were definitely noteworthy who kept alive the possibilities of a better system of local self-governance

Due to this discrepancy, the concern of the Central and state governments about the adverse results of development continued to increase. Meanwhile, sporadic efforts were made to form committees, bring reforms and carry out experiments in search of a solution to it, but there was very less meaningful outcome. The efforts of some states like West Bengal and Karnataka were definitely noteworthy who kept alive the possibilities of a better system of local self-governance.

Although the West Bengal Panchayat Act was passed and implemented in 1957 itself, but in true sense, when the Zilla Parishad Act was enacted in 1963, a new form of the Panchayat system came into existence. Here a four-tier Panchayat system was implemented -- (1) Gram Panchayat (2) Anchal Panchayat (3) Zonal Panchayat and (4) Zilla Parishad.

Of them, direct elections were held only for the Gram Panchayats while at the remaining levels, the formation process was completed by the ex-officio or nominated members. After 10 years, the three-tier Panchayat system was again introduced by amending the Act in 1973. However, the active role of the Panchayat system on the basis of this amended Act started only in 1978 when the Left government was formed. Two important events took place in the 1978 elections -- first, elections were held on the election symbol of a political party and a large number of youth came out to elect them. Due to this, public awareness and participation in Panchayat affairs increased and this became the basis of a remarkable land reform program called ‘Operation Barga’. Secondly, three important works took place -- (1) Land Reforms (2) Rural Development and (3) Literacy -- during this period.[4]

Important experiments and efforts were also made in the state of Karnataka during this period. On the basis of the report of Ashok Mehta Committee, the Panchayati Raj Act of the state was amended in 1978, and Zilla Parishad, Mandal Parishad and Nyaya Panchayat Act 1985 were enacted. Along with this, two other statutory institutions were also brought into being -- firstly, Taluka Panchayat Parishad was formed at the Taluka level for consultation and coordination. Secondly, Gram Sabha was formed below the Mandal Parishad. Mandal Parishad and Zilla Parishad were established as bodies directly elected by the people. Both of them were given a lot of powers. There was direct interference of political parties in the elections of these two institutions. Here an important provision of 25% reservation for women was also made.

Due to these provisions, the status of District Panchayat was elevated to that of a district government as its Chairman and Vice-Chairman were accorded the status of Minister of State and Deputy Minister of State respectively. As the head of the executive, the President of District Panchayat had the authority of general administration over all the officers and employees. The 'Chief Secretary' of the District Panchayat was the senior most

administrative officer of the district and his confidential report was written by the District Panchayat President himself.

Apart from this, the second important provision that was made was the formation of a 'Nyaya Panchayat' with five members including a woman. Election to this body was conducted by the Mandal Parishad. This Nyaya Panchayat had the right to hear and decide certain civil and criminal cases. Thus, the provisions of 1985 were very important from the point of view of local self-governance. But the biggest shortcoming was the absence of the 'Panchayat' at the village level, due to which the common people were deprived of direct participation in the governance.[5]

## New Panchayati Raj system

The foundation of this constitutional effort to establish Panchayat and municipalities as self-governments through the 73rd and 74th Constitutional Amendments of 1992 was prepared in a very concrete manner in 1988 and 1989. As we know, it was introduced by the then Prime Minister Rajiv Gandhi in the year 1989 as the 64th and 65th Constitutional Amendment. Lok Sabha had passed both these Bills, but they did not get the approval of Rajya Sabha, due to which it could not become a part of the Constitution. In 1992, it was reintroduced with some modifications and was passed by both the Houses along with the state legislatures.

Varied experiences were gained from the ups and downs that took place at various stages of the nearly 30-year journey of Panchayati Raj, which was finally implemented in 1995. Keeping this in mind, committees were formed from time to time by the Central government for studies and suggestions. The Ashok Mehta Committee (1977), J.K.V. Rai Committee (1985) and L.M. Singhvi Committee were prominent among them. Keeping in mind the suggestions of these committees, a sub-committee of the Parliamentary Consultative Committee of 1988, constituted under the chairmanship of P.K. Thungan, had recommended giving constitutional status to the Panchayat in the form of self-government. On this basis, the process of communication and suggestions at various levels was intensified by the then Union government from January 1989 itself. It summarizes the views of thousands of elected representatives of local governments, hundreds of district officials, scores of senior bureaucrats, state government employees and dozens of ministers and chief ministers.

In May 1989, the 64th Constitutional Amendment Bill for Panchayat was introduced in the Lok Sabha. This process of dialogue and suggestion by the Government of India was completely based on Mahatma Gandhi's vision of Gram Swaraj, the resolutions of the Constituent Assembly and the experiences of state governance. Confirming this at the Panchayati Raj and Scheduled Castes Conference held in Delhi on 27th January, a day after the Republic Day was celebrated in 1989, the then Prime Minister Rajiv Gandhi said in very clear terms that "during the freedom struggle and after Independence, we had promised in the Constitution that we will strengthen the third tier of our democracy. To strengthen our democracy, the democracy at the Panchayat level should be as strong as that of Delhi or state capitals."

His own belief was that due to the weakening of the third tier of democracy, everyone looked at the government as their "be-all and end-all". He also admitted that "the responsibility given to the state governments to strengthen Panchayati Raj was not fulfilled properly. It is for this

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that the idea of Constitutional Amendment has arisen."[6]

Panchayat being a state subject, when questions and opposition started being raised by some state governments during the debate on the Constitutional Amendment, the then Prime Minister gave a very clear statement in his response at the 1989 Conference that "this question is not of the Centre or the state, nor of any party. This question is between the common people on one side and the capitalist powers and power brokers on the other side. This is a question of giving the real power into the hands of the public, so that they can raise their voice against these powers." He also made it clear that "this battle cannot be fought from Delhi alone. This battle is a grassroots battle, a battle to be fought in the countryside, a battle to be fought in the streets and bylanes."

With the presentation of the 64th Constitutional Amendment Bill in Parliament, he specially mentioned about Article 40 of the Constitution directing the states to organize the Panchayats and give them the status of self-government. He also expressed deep regret over the role of state governments in this regard. People believe that the state legislatures have given huge powers to the government in this regard to dismantle the Panchayat institutions. According to them, Panchayats exist less on the orders of the public and more on the whims and fancies of the state governments.[7]

Citing the definition of state in Article 12 of the Constitution in the sense of all the authorities, the then Prime Minister made it clear that "the creation of the constitutional framework of Panchayati Raj is basically the responsibility of the Centre. Legislative details fall within the purview of the state. Therefore, the Centre is only discharging its responsibility through this Bill."

While discussing the justification and importance of this Bill, on one hand he called for incorporating all the development agencies in the framework of Panchayati Raj through this Bill, while on the other hand he said that due to the fragmentation of these agencies, the administration at the district and tehsil level has become irresponsible towards the public. "We cannot make them responsible by opening some more new windows. The essential condition of responsible administration is representative administration, which is accountable to the voters. Such responsible administration in rural India can be established only through true Panchayati Raj. This is the aim of this Bill."

At the end of his address in the House, the Prime Minister appealed to the members that "our democracy has reached a point where the full participation of the people cannot be delayed. Now, it is the people who have to decide their destiny and also the destiny of this country. Let us give maximum democracy and hand over maximum power to the people of India. Let us hand over all power to the people."[8]

The Lok Sabha gave its support to the resolution of handing over all power to the people but this support could not be found in the Rajya Sabha. Both the 64th and 65th Panchayat and Municipality Bills were introduced together in the Rajya Sabha in October 1989.

In this context, some states and Opposition members had raised allegations against these Bills regarding its back door entry, structural uniformity, reservation, violation of political decorum, encroachment on allocation of resources etc.

In the same sequence, the special objection of the state governments was also answered in which the 11th and 12th Schedules were alleged to have encroached on the constitutional legislative sovereignty of the state legislatures and the freedom to work of the state governments. The government clarified that these Schedules contain a detailed list of topics related to development programs that can be implemented by Panchayats and municipalities. These are matters on which a local body is likely to have a deeper understanding than the distant capital of a state and implementation by local elected bodies will be more sensitive to the needs of the public than the lukewarm service of government agencies.

While promising to give the responsibility of laying down the legislative parameters for delivery of these rights to the state legislatures and to the state governments to give practical effect to those parameters, the Prime Minister ultimately said that the content and nature of the transfer of power should be left

to the people. According to him, those state governments which will live up to the expectations of the people will get public approval. Those who fail to fulfill the wishes of the public will be rejected by the public.[9]

An important aspect of the Prime Minister's statement was regarding the lack of public participation in the planning and implementation of development programs. In this context, it was said that the public is not consulted in this matter at all. Even if it is done, it is in a very careless manner. Through this amendment, the primary responsibility of planning will be handed over to Panchayats and municipalities at every level. Each local community will prepare its own plan for its development. Regarding the responsibility of implementation along with planning, it was said with great clarity that only by giving the responsibility of implementation of programs to the elected local bodies instead of the disinterested and distant government agencies, they would develop a sense of responsibility towards the public. When responsibility is also attached with representation, then the administration also becomes sensitive.

In the end, the belief was expressed that through this Bill, Gandhiji's vision would be realized and power would reach into the hands of the people. This will end the rule of power brokers and give responsibility to the lower levels. This Bill will bring public participation in planning and implementation of development and social justice. These Bills have been made to secure democracy in the foundation of our polity so that the superstructure of democracy in the state capitals and the national capital can become permanently strong and have a firm foundation.[10]

But as it is well known that this Bill could not be passed in the Rajya Sabha in October 1989, due to which this important effort of local self-governance could not be materialised.

In the Lok Sabha elections held in December 1989, the Congress party was separated from power. National Front government was formed under the chief ministership of S.R. Bommai. This government recommended an alternative Bill in opposition to the previously presented Bills (64th and 65th Amendments). The new Bill was placed for discussion and consent in the meeting of Chief Ministers in June 1990 and after that, this Bill was introduced in the Lok Sabha on 7th November 1990. But this effort for local self-governance also went in vain due to the dissolution of the Lok Sabha on the same day itself.

When Congress returned to power in 1991, it was again introduced on 16th September 1991 as the 73rd Constitutional Amendment which was passed by the Parliament on 22nd December 1992. After the approval of the President on 24th April 1993, most of the states amended their Panchayati Raj Acts as per the Constitution, before 24th April 1994.

After this Constitutional Amendment, the form of "own government" or self- government of Panchayat that emerged has the following special features:-

1. To bring structural uniformity in the entire country, the system of three-tier Panchayat (village, central area and district) was implemented. The election of Panchayat members at all three levels (village, area and district) was ensured by direct election by the public.
2. The tenure of Panchayats was fixed at 5 years. It became mandatory to hold elections within 6 months after the end of the tenure. For this, there was a provision for a separate 'State Election Commission'.
3. Seats were reserved for Scheduled Castes and Scheduled Tribes at all levels in proportion to their population in that area. One-third of the seats were reserved for women at all levels. This system was also applicable for the post of President. The issue of reservation for backward classes was left to the state governments.
4. For proper arrangement of resources, 'State Finance Commission' was formed and proper system of audit was brought in.
5. In the same sequence, provision was also made in the 74th Constitutional Amendment for formation of 'District Planning Committee' for planning with public participation from

Gram Panchayat to district level.

6. Through the Eleventh Schedule, the work of 29 subjects was handed over to the Panchayats.
7. Formation of 'Gram Sabha' at the village level was made mandatory. This body is formed by consisting of the persons registered in the voter list belonging to the village.

The responsibilities of 29 subjects that the Constitution has entrusted with the Panchayat through the Eleventh Schedule include not only the basic subjects pertaining to village life like agriculture, water, forests and animals but also the issues of material prosperity and poverty alleviation like education, health, industry etc. On the other hand, along with the construction and development of physical infrastructure resources like housing, roads, culverts, electricity, community buildings etc, the Panchayat has also been entrusted with the responsibilities of women and child development, social welfare and welfare of Scheduled Castes and weaker sections of the society. In this way, all those elements and subjects of regulation and development of rural life which are necessary for the prosperity of the village have been linked with the Panchayat.

Under the 73rd Constitutional Amendment, Part 4(b) of Article 243E, Parliament was also entrusted with the responsibility of making a separate Act, keeping the Scheduled Areas separate from it.[11] Under this initiative, the Panchayat Provisions (Extension to Scheduled Areas) Bill was introduced in the Upper House (Rajya Sabha) of the Parliament of India on 12th December 1996. It came into force on 24th December 1996 after being passed in both the Houses of the Parliament and later signed by the President. To draft this Bill, a committee was formed in June 1994 under the chairmanship of Dilip Singh Bhuria. The Bill was prepared on the basis of the report of this committee.

The specialty of this Extension Act is that while giving full respect to the traditional rules and social and religious customs of the tribals and the traditional methods of management of community resources, the state legislatures have been instructed to make laws accordingly. Along with this, considering their traditional villages as its units, it has been accepted as Gram Sabha and it has been given full right to resolve the disputes among themselves while protecting the traditions, community resources and cultural identity of the concerned community. Along with this, there is a provision to seek advice from the Gram Sabha before acquiring land and granting licences for minor minerals, to ban the sale of drugs in the village, to stop the transfer of land and to control the process of money lending. It has also been given the power to control the public sector workers.[12]

Continuous efforts have been made at the level of the Government of India so that Panchayats can be established as the third form of government in the true sense. But the state governments have largely been indifferent. In this direction, the letter of Baba Gowda Patil, the then Rural Development Minister of the Government of India in 1999, which he sent to all the Chief Ministers of the country on 17th March 1999, is especially noteworthy. He began the letter by saying, “Despite the directive of Article 40 of the Constitution to constitute Gram Panchayats as units of self-governance, the progress made so far is not sufficient. The obsession with so-called development forced these institutions to basically act as hangers-on of the powerful machinery of state governments.” In the same letter, he had written that for Panchayats to actually function as governments, the scope of their functions and powers should be quite wide for real self-government. No doubt development programs are important, but they cannot be the essence of self-governance. Unless the rights to manage land and other resources and settle disputes are handed over to Gram Sabhas, there cannot be real self-governance.[13]

At the level of the Government of India, commissions and groups have been formed from time to time to establish the Panchayati Raj system as the third tier of governance as per the intention of the Constitution. Among them, the recommendations and suggestions of the 'Second Administrative Reforms Commission' and the working group formed under the chairmanship of V.

Ramachandran in the year 2011 in this regard are important.

The Second Administrative Reforms Commission, in its report submitted to the Government of India, has clearly suggested re-amendment of Article 243G of the Constitution, which deals with the authority and responsibility of the Panchayats. The commission also submitted its new draft which is as follows: “Subject to the provisions of this Constitution, the Legislative Council of the state shall, by law, delegate such powers and authority to the Panchayats of the appropriate level as may be necessary for carrying out their functions as institutions of self-government in respect of all such functions as may be prescribed by law which includes work related to the matters listed in the Eleventh Schedule.”

Not only this, it also suggested to immediately review all the relevant laws of the Union and the state and amend them accordingly. Citing Article 252 of the Constitution which empowers Parliament to make laws for two or more states, it said that a broad principle of devolution of powers, responsibilities and functions to local governments and communities should be prescribed, in which the principle of complementarity, democratic decentralization, true transfer of power and citizen-centric system are specifically included.

In view of the way the recommendations of the State Finance Commission are being ignored by many states, it has expressed the need to establish a mechanism that continuously reviews the implementation of the recommendations of the Finance Commission.

As is well known, the elected representatives of the Panchayat government are being suspended by the District Magistrates day in day out. Due to this fear, the representatives are forced to accept all the right and wrong decisions of the higher government officials. Taking cognizance of this reality, the Reforms Commission had suggested the appointment of a Lokpal. On the basis of this recommendation, provisions have been made for the appointment of such Lokpals in only a few states like Jammu and Kashmir. That too has not been fully implemented in practice as yet. It has been advised by the commission that the state governments do not have the power to postpone or cancel any resolution passed by the Panchayati Raj Institutions or to take action against the elected representatives on the grounds of abuse of office, corruption etc or to supersede or dissolve the Panchayats. The power to investigate and recommend action in all such cases should rest with the local Lokpal who will send his report to the Governor through the Lokayukta.[14]

In much the same way, the working group headed by V. Ramachandran has given its recommendations keeping in mind the development of a strong system of local government. In the second chapter of the report, the working group's concern that the Panchayat is not visible as a 'local government' and the reasons behind it have been clearly mentioned, which include lack of transfer of powers, lack of control over the Panchayat by the Central and state governments. The reasons identified by the Central government are setting up of other parallel institutions, controlling the bureaucracy, giving funds only to the Central and state schemes and not giving adequate rights to the Gram Sabha in the state Acts. The way to get rid of these reasons is also suggested in it. For this, a road map was also prepared for the next 6 years (2011 to 2017). Many important suggestions have been given to make the Panchayat a strong, capable and accountable self-government as per the spirit of the Constitution. Recommendations have also been made to make the Panchayat accountable by strengthening and empowering the Gram Sabha. Along with this, emphasis has been laid on creating a separate cadre of employees for the Panchayat, merging parallel institutions into the Panchayat system, handing over all the work, personnel and funds related to the 29 subjects to the Panchayats as well as giving priority to local planning. That apart, emphasis has also been laid on the development of capabilities and skill of the elected representatives as well as creating awareness among the voters (members of the Gram Sabha).[15]

At this juncture, the points that need to be amended afresh

in the Constitution include issues like making clear provision for providing rights and responsibilities, making the subjects of Panchayat a part of the Seventh Schedule, making the recommendations of the State Finance Commission effective, constituting Lokpal to investigate into allegations against the elected representatives, creating a separate Panchayat cadre, abolishing parallel institutions, making provision for Nyaya Panchayats to provide easy and affordable justice at the local level and establishing Gram Sabhas as the legislature of the village self-government. For that matter, a law can also be enacted by the Parliament on some of these issues, among which the issues of re-establishment of 'Nyaya Panchayat' and establishing 'Gram Sabha' as legislature are prominent. From this, it appears that without the intervention of Parliament, it is no longer possible to develop Panchayats as a true third tier government, i.e. people's 'own government', in the entire country.

For all this to happen, it is also necessary that Gram Sabha be given utmost importance in this system. In fact, Gram Sabha has been given a lot of importance at the level of the Government of India. Gram Sabha has generally been given the right to decide on the Acts and programs made by it for the development and governance of the village. For example, in 'Mahatma Gandhi National Rural Employment Guarantee Act' and 'Gram Panchayat Development Scheme', complete decision-making authority has been given to the Gram Sabha. It has been the intention of the Government of India since the very beginning that under the new Panchayati Raj system, the Gram Sabhas should get the same place and rights as the legislature has in the country's polity. But on the other hand, the level of awareness of the people towards Gram Sabha is very weak. People are not clear about the difference between Gram Sabha and Gram Panchayat. In many states, the Gram Panchayat is not bound to accept the suggestions of the Gram Sabha. Therefore, attendance in Gram Sabha meetings is negligible. Special focus has been given to Gram Sabha in those states where Panchayats are functioning effectively. Along with this, in view of the wide area the Gram Sabha operates in and the unnecessarily large number of its members, public participation is being encouraged by linking it with community by making provision for Ward Sabha in the electoral areas (wards) falling under the Gram Panchayat area. Wherever such honest efforts are being made, their results have also been very encouraging.

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Dr. Mahesh Kaushik

# Nation, State and Legislation
# The Western and Eastern Outlooks

There is a vast difference in the basic concept of the nation and state between the East and West. That is why our concept and process of statute-making and legislation is totally different from theirs. A perspective

A generally state of confusion prevails regarding the concepts of nation and state. Are both of them synonymous? Or is either the nation or the state more important? In the present times, due to the increase in the power of the state, the state itself has become the maker of laws and conducts itself as the power to enforce those laws. Has the nation become negligible in the present times? Which is the notional template of welfare from the people's point of view—the nation or state? There is also a difference between the Western and Eastern concepts of nation. Can the Western concept of nation apply equally to all nations? Who requires legislation and why? On the basis of their concept of nation, Western thinkers say that India is not a nation whereas Eastern thinkers firmly believe that India is an ancient nation. The presented research paper, while clarifying the need for legislation and the difference between nation and state, also tries to clarify the Eastern and Western concepts regarding them.

**Key words:** Rashtra, State, Nation, Legislation

## The Concept of Nation

The rashtra is called 'nation' in English. Hence, generally the definition of nation while explaining the term rashtra. The word nation originates from the word 'Natio'. 'Natio' means "to be born" or "to take birth". Thus, nation is that human conglomerate which is united as a result of caste, religion, language and tradition (Tiwari, Dr. Shashi).[1] The nation has been defined in the Oxford Dictionary as well in the following way: "A large number of people of mainly common descent, language, history etc. Usually, a territory bounded by defined limits and forming a society under one government".[2] The concept of the nation in the West has been developed on the basis of language, caste, race and geographical boundaries. "Analogous territorial nations and political communities emerged shortly afterwards in late eighteenth-century America and later in Latin America. Here, too, the ethnic empires of Spaniards and Portuguese, and the colonies of Englishmen, were bound by political ties and territorial residence".[3]

But it is also worth considering how this concept of 'nation' came about in the West. "Nation states were established to stabilize the political anarchy of the West.

The United Nations accorded authenticity to the establishment of the nation state. The Western idea of nation says that 'it is an expression of material sentiments' (Karl Marx). …The discussion that commenced in the West regarding cultural nationalism never led to the creation of such a nation in the West. Nations were formed in the West on the basis of language, which they called secular nation states. Nation states created empires to further their dominance. To extend their imperialism, European countries fought among themselves. There were two European wars that were called World Wars, although they were not actually world wars, but only European wars. Because only European countries took part in them, and the countries under their colonial yoke were forced to take part in both these wars. When those countries under the rule of these imperialist powers rebelled against their them, it was called the awakening of nationalism".[4]

The Eastern concept of nation is different from the Western one. "The word nation is derived from the root raja, in which the suffix 'shtran' has been added. Accordingly, its meaning is "Rājate dīpyate prakāśate śobhate iti rāṣṭram" i.e., the one (entity) that is resplendent by itself is called a nation. The etymology of 'Rājate tat rāṣṭram" indicates that the territory that is sovereignly independent and is not suppressed by anyone is called a nation" (Tiwari, Dr. Shashi).[5] According to the Eastern concept, a nation is not formed merely by the land or by the people living in it speaking the same language or by their caste or lineage. The basis of language or lineage is an incomplete basis in itself. "It must therefore be admitted that a nation can exist without the dynastic principle, and that nations that are created by dynasties can be separated from them without ceasing to exist".[6] If we accept language as the basis of the Western concept of nation, then all countries that speak the same language should be one nation, but this is not so. "What we have just stated about race also applies to language. Language invites people to unite but it does not force them to do so. The United States and England, Latin America and Spain speak the same language yet do not form one nation. Switzerland, on the contrary, is very well settled, because it was built with the consent of the speakers of three or four languages in its different constituents".[7] Although mere possession of a piece of land is not sufficient, it is an important requirement. Unless the people living in that land associate themselves with the spirit of sacrificing everything for their culture and motherland, it is not a nation. If this happens, even if their language and dress, or caste and lineage are different, they will still remain unbroken as a nation.

"Nation refers to a group or community of people who have traditionally lived in a particular land, who have their own distinct culture, and who distinguish themselves from other peoples of the world on the basis of the distinctiveness of their culture." The cultural distinctiveness of a nation may be based on its race, or religion, or language, or a combination of some or all of these factors, but overall, there must be a distinct culture that gives the nation a distinct identity and distinguishes it from the people belonging to other lands. Third, there may be internal differences in many matters between the people concerned, but this culture, despite these differences, is an overall feeling of harmony arising from the basic elements of their culture, and a sense of pride that gives rise to a desire in them to keep themselves distinct from the rest of the world. Ultimately, as a result of these factors, this group of people has its own attitude towards the history of their

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traditional homeland; it has its own heroes and villains, its own view of glory and shame, success and failure, victory and defeat".[8]

"The community of people possessing the above characteristics is a nation, and the country in which it has traditionally lived, and where it has developed its distinctive culture, is called the motherland of that nation, its traditional homeland.…In other words, a nation is not a territorial unit but an emotional unit with a territorial basis. As Sri Aurobindo said, 'A nation is really the outward expression of a community of feelings whether it be the feeling of a common blood, or the feeling of a common religion, or the feeling of a common interest, or any one of these or all these feelings combined'." [9]

The word 'Rajya' is the Hindi translation of the English word 'State', which originates from the Greek word 'Polis'. In ancient Greece, city states were called 'polis'. Different definitions of the word 'state' are given by scholars of political science. According to the definition given in the international dictionary Webster, a group of people who live permanently in a land (country), are politically an organized self-governing polity and are completely free from foreign control and have the ability to exercise control over their community constitute a state

## The Concept of the State

The word 'Rajya' is the Hindi translation of the English word 'State', which originates from the Greek word 'Polis'. In ancient Greece, city states were called 'polis'. Different definitions of the word 'state' are given by scholars of political science. According to the definition given in the international dictionary Webster, a group of people who live permanently in a land (country), are politically an organized self-governing polity and are completely free from foreign control and have the ability to exercise control over their community constitute a state. State actually means that system of government which helps in maintaining peace in the country through law and order.

The State in Hindu politics has been called a 'punishment', i.e., a penal system to keep unruly people on the right path. The chief official of the state can be considered as the King, Pradhan or as per the present Constitution of India, the Prime Minister. Explaining the ideas of Deendayal Upadhyay, who pioneered the philosophy of Integral Humanism, Dr. Mahesh Chandra Sharma writes: "(1) The state originated after the society. (2) Before the origin of the state, society followed its own intrinsic dharma, the rishis, who expounded dharma and Brahma the Creator themselves were not rulers. (3) The state is the outcome of human failings. It was a manifestation against elements like greed, anger etc., arising among people, which cause harm to dharma. Therefore, the initial form of the state was negative, in the form of punitive policy. (4) The king arose from the dual contract of the state and the people. The function of establishing dharma was regarded as being of the sages while the task of preserving dharma was considered to be that of the king (separation of the legislature and executive). (5) The state is an institution of the society, not the entire society".[10] There is neither religion nor class in the eyes of the state. All residents of the country are citizens of the country and are equal.

The origin of the concept of nation state is believed to lie in the Treaty of Westphalia, according to which nation and state are considered one and the same. Today, in countries where there is a parliamentary state system, both state and nation are generally taken in the same sense. But there is a difference between the concepts of nation and state. In fact, the concept of the nation is broader than that of state. "While the truth is that thousands of years ago in India, during the Rig Vedic period, when no one could have even imagined the British rule, our sages presented the embodiment of the nation by saying "Rāṣṭre vayam jagruyāma purohitāhā"; meaning, "We in the nation are ever alive as its (guiding) priests". Such a nation is not a state.[11] Ashoka was the first king in India who merged the state and the nation and worked to expand and propagate a particular sect under the protection of the state so that it could not bear the blame for the

violence committed by itself, and so that he could absolve himself in the eyes of the people. In the present system, the state appears to be encroaching on the rights of the nation at many places. Before the advent of the British, the state had no control over the education system in India. Although, during the rule of the Mughals, the language of official work was Persian. If anyone wanted to join the government, he had to learn Persian. But there was no ruling decree for it; that is, there was no mandatory system whereby education could take place only under the patronage of the regime. But the British not only made English the medium of education but also brought it under the purview of the state, whereas education is actually the function of the nation. Although, even before Macaulay arrived on the scene, the state had definitely passed on to the British, but the nation had its own separate system of education. What is seen is that even in the present times, owing to the democratic structure of the state, it has become more powerful. It is for this reason that in the present times the interference of the state in the affairs of the nation is continuously increasing. In the present age, there are several functions that are the duty of the nation, but owing to the concept of a welfare state becoming prevalent, have come under the purview of the state. The state directly operates even those industries which is actually not its function at all. Education and health were already taken over by the state, under whose patronage presently even highly undesirable activities like the sale of liquor and lottery, i.e., gambling are conducted, with the sole objective of earning more income.

## Is India a State or a Nation?

The nation in India came into being long ago during the Vedic age. Nations arise from the amalgamation of land, people and culture. We call India Mother India, because along with considering India as our birthplace and land of karma (action), we also consider it our sacred land. One who does not consider India as his sacred land can never see her as Mother India. For him it is just a piece of land, which he has to partake of. That is why India can never be like a mother to him. The 'ism' in nationalism is also not an Indian concept. This is a term that has come from the West. The Indian idea is one of rāṣṭrīyatā. When the association of land, people and culture is disturbed, dispute arises over the concept of nation. In fact, even today there is no proper definition of a nation in Western thought. Whatever is recognized by the institutionalized association of nations, i.e., the United Nations Organisation, is considered a nation. Therefore, the number of nations keeps increasing and decreasing. Thus, what the United Nations calls a nation cannot be the definition of a nation. The West's definition of nation is based on political boundaries whereas our definition of nation is a geo-cultural one.[12]

The nation has more to do with its system of dharma and ethos than it has to do with education and the economy.[#] The nation itself should create the institutions of dharmic and judicial systems. All constituents in the nation have equal rights. That is the decree of democracy. But rights should be based on merit. If there exists equal qualification, there should not be any difference among those with similar qualifications on account of religion, caste, gender, birthplace. etc. This is the meaning of equality. Equality does not mean that the blind and those with eyesight should be given equal rights or that a person who cannot even pass the fifth-grade examination should be given the right to elect

[#]Sharma, Baldev Bhai; Bharat: Sanskritik Chetana ka Adhishthan; Prabhat Prakashan; pages 58-59.
Unlike the concept of nation as a mere economic and political entity in the European context, India as a nation is a cultural entity. It has three main elements: (1) A huge territory (2) A filial society that looks upon its country as motherland) (3) A similar feeling of that society towards its history, culture, great men and values of life. It is these elements that impart a living expression to the nature of the nation beyond its gross, geographical or physical unit. Through this, the feeling of mutual unity is strengthened and the feeling of peace, harmony and brotherhood increases in the society. In the Pṛthvī Sūkta of the Yajurveda, this nationalism has been further strengthened by stating "Mātā bhūmi putro aham pṛthivyāḥ".
Nationalism is about keeping this unity intact, feeling proud about it and not allowing it to be disaffected in any way. ... Because India's nationalism is based on our life values like "Sarveṣam avirodhena", "Sarve bhavantu sukhinaḥ" and "Vasudhaiva kuṭumbakam". Therefore, Indian nationalism cannot be compared with German or other European nationalism.

At the dawn of Creation, there was no need for a king or a constitution because what was being provided by Nature far exceeded the consumption needs of the population at that time. Therefore, there was no tendency to forcibly seize from others. But gradually, man's desires started becoming his needs, as a result of which more and more consumption gradually began being considered as the measure of quality of life. Owing to this, the tendency to accumulate and exploit more and more resources provided by Nature started increasing in human beings

a judge. That is not the meaning of democracy. Today, the meaning of democracy is taken to mean that all the citizens have the equal right to elect everyone from the Prime Minister to the sarpanch of an ordinary village panchayat. The actual meaning of democracy is that equal rights should be given to only those having similar qualities, actions and nature. Viewed thus, the functions of the nation are education, economy, state, religious and justice systems.[13] However, with the passage of time, many of the characteristics of India being a nation have been obscured, the result of which is that it now appears before us as only a state.

Our roots as a nation are very old, so much so that over time, even after being divided into small kingdoms and despite the diversity of different languages and attire, we still hold a single identity as a nation. We can also see a similar example in the form of Israel, where Jews resided in different parts of the world for more than one and a half thousand years. But they were determined to maintain their existence as a nation. That is why when they acquired their land in 1948, they established their own country and state. “It can be stated through various historical examples that a nation can exist without achieving sovereign statehood”.[14] We already had our territory, i.e., the country and the people who had resolved to exist as a nation, although the state definitely first passed into the hands of the Muslims and then the British. Despite being a state under the rule of foreigners, India always remained a well-endowed nation. In 1947, it was divided on the basis of religion. On the basis of Western thought, two nations were carved out of a single nation. But if religion itself were sufficient basis for the formation of a separate nation, then why did the adherents of the same religion suffer a division again, into Pakistan and Bangladesh? If there exist differences in cultural heritage, people cannot live together even if they are of the same religion. If we look at the present times, people who believe in various sects and modes of worship like Jainism, Buddhism, Arya Samaj, Sanatan etc., live in mutual harmony in India.

## The Necessity of a Constitution

At the dawn of Creation, there was no need for a king or a constitution because what was being provided by Nature far exceeded the consumption needs of the population at that time. Therefore, there was no tendency to forcibly seize from others. But gradually, man's desires started becoming his needs, as a result of which more and more consumption gradually began being considered as the measure of quality of life. Owing to this, the tendency to accumulate and exploit more and more resources provided by Nature started increasing in human beings. The need for some rules was therefore felt for the smooth functioning of society. At that time, the wise collectively thought about this and the idea of establishing a state was born as a solution to this problem. Be it adherence to the Ten Commandments during the time of Moses or thousands of years prior to that in India, when the first constitution of the world was prepared by the learned society. A Dharmaśāstra, i.e., penal code was conceived of and a firm and capable king was appointed as the guardian of the law. He was Ananga, the son of the first king Kardama, and was given the task of ruling in accordance with the Smritis created by Brahma. Ananga ruled according to the Dharmaśāstra of Brahma and after him his son Atibala became the king and then after his passing, his son Vena became the king. Initially, Vena began ruling in accordance with dharma, but later turned autocratic and tyrannical. He

started accumulating power and wealth to satiate his selfish needs. He took to tormenting even the dharmic, good and learned people. It was then that the wise folk organized society and had Vena slain. After his death, the question arose as to who should be made the king who would rule according to dharma and not deviate from its path. The sages and scholars together discovered an individual named Prithu, who was a Kshatriya and devoted to dharma. Before making him the ruler of the earth, the wise and the sagely put him to test, after passing which a promise was exacted from him that he would adhere to the rules of dharma.[15] This was the first constitution of the world, which was drawn up by the wise of the society. These rules laid down by sages and scholars had to be followed by everyone, including the king. Thus, the first legislation that came about was prepared was by the society, in which the state had no role.

King Prithu, while taking this oath, assured all that he would not only follow this dharma himself but would also make everyone in his kingdom follow it. These rules regarding the nation are really the fundamental principles, which are immutable. Besides these, all other things are subject to change in accordance with the needs of time and circumstances. Therefore, this statute, or what we call a constitution appears very small, but even this small constitution fulfilled the needs of the nation in that era. The result of this was that Prithu ruled righteously and justly for a long time in such a way that he became an example worthy of emulation for the rulers of coming generations. It is said that Lord Vishnu himself resided in the kingdom of King Prithu and wealth, happiness and prosperity were present everywhere in his domain. In common parlance, it was the same kind of state that we conceive of as Ram Rajya. The Constitution in fact, sets out the boundaries and functions of the nation and the state.

When the first constitution of the West in the form of the Magna Carta was written and adopted, it was the result of political compulsions born of the self-interests of different classes and the needs of the royal family. The same was the situation in the case of the United Nations Organisation, which was born of the environment of unrest and insecurity arising from the Second World War. But the constitution that was created during the time of Prithu was prepared by the sages of the society, in which they had no interest of their own, but were guided purely by a sense of the welfare of the entire nation. At present the government makes rules or we can say that in democratic countries the Parliament makes rules. But is there any discussion or consultation with the public for whom those rules are made? No. The public is expected to follow those rules even if they cause hardships and pain to them. For example, the government keeps increasing the burden of various types of taxes on the public, but the MPs who represent the public do not care about it. The question then arises as to what should be its proper arrangement? In the present times, when technology is continuously developing, it is not a difficult task to know the public opinion for special purposes and rules. Ultimately, under the concept of welfare state, the government is committed to the welfare of the people. Therefore, it becomes the responsibility of the state to ascertain public opinion.

## Conclusion

In the present Constitution, every function of the country has been placed under the control of the ruler (cabinet of ministers). This is the biggest lacuna of this Constitution. When the government cannot carry out any task properly, it starts distorting the very nature of the nation. This is not today's problem; it was set in motion with the process of making the Constitution. "The dream on the basis of which efforts were being made to build a new India was now almost dead. The meeting of the Constituent Assembly of India was held in accordance with the wishes of the British government. One-fourth of the country was not a participant in the deliberations of the Assembly. Did this body have any power or authority of its own that it could call its own? Could it represent the whole of India? Could it indeed be called sovereign"?[16] If the feeling of nationalism is to be developed among the people of the country, the nation will have to be stronger than the state. The state always strives to become more

powerful, but if the society is organized as a nation, it can make the state aware of its limitations, as and when needed. This is because a nation is associated with culture. The boundaries that circumscribe the concept of a nation do not permit any wantonness.# Legislation then acts as a guide for the citizens of the nation, not as a weapon of the state to control their lives.

#Sharma, Dr. Mahesh Chandra; Pandit Deendayal Upadhyay: Kartritva Evam Vichar; page 198. Upadhyay has expounded Western nationalism as being opposed to world peace and has also critiqued the orderless political element inherent in it.)

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**Form IV**

**Statement about ownership and other particulars about 'Manthan'**

| | | |
|---|---|---|
| Place of publication | : | New Delhi |
| Periodicity of its publication | : | Quarterly |
| Printer's Name | : | Ocean Trading Co. |
| Nationality | : | Indian |
| Address | : | Shahdara, Delhi |
| Publisher's and owner's Name | : | Dr. Mahesh Chandra Sharma and Research and Development Foundation For Integral Humanism |
| Nationality | : | Indian |
| Address | | Ekatm Bhawan, 37, Deendayal Upadhyaya Marg, NewDelhi-110002 |
| Editor's NameEditor | : | Dr. Mahesh Chandra Sharma |
| Nationality | : | Indian |
| Address | : | Ekatm Bhawan, 37, Deendayal Upadhyaya Marg, NewDelhi-110002 |

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1 Mar, 2024

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''पंडित दीनदयाल उपाध्याय के विषय में जानकारियाँ बहुत ही सीमित हैं। डॉ. महेशचंद्र शर्मा ने इस विषय पर गवेषणात्मक अध्ययन किया है। इस शोध-ग्रंथ का प्रकाशन न केवल जनसंघ की राजनीति व विचारधारा के प्रति लोगों को लाभदायक जानकारियाँ देगा वरन् राजनीति शास्त्र की वैचारिक बहस को भी आगे बढ़ाएगा। दीनदयाल उपाध्याय व भारतीय जनसंघ को समझने के लिए यह शोध-ग्रंथ प्रामाणिक आधारभूमि प्रदान करता है।''

—डॉ. इकबाल नारायण

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—डॉ. श्यामा प्रसाद मुकर्जी

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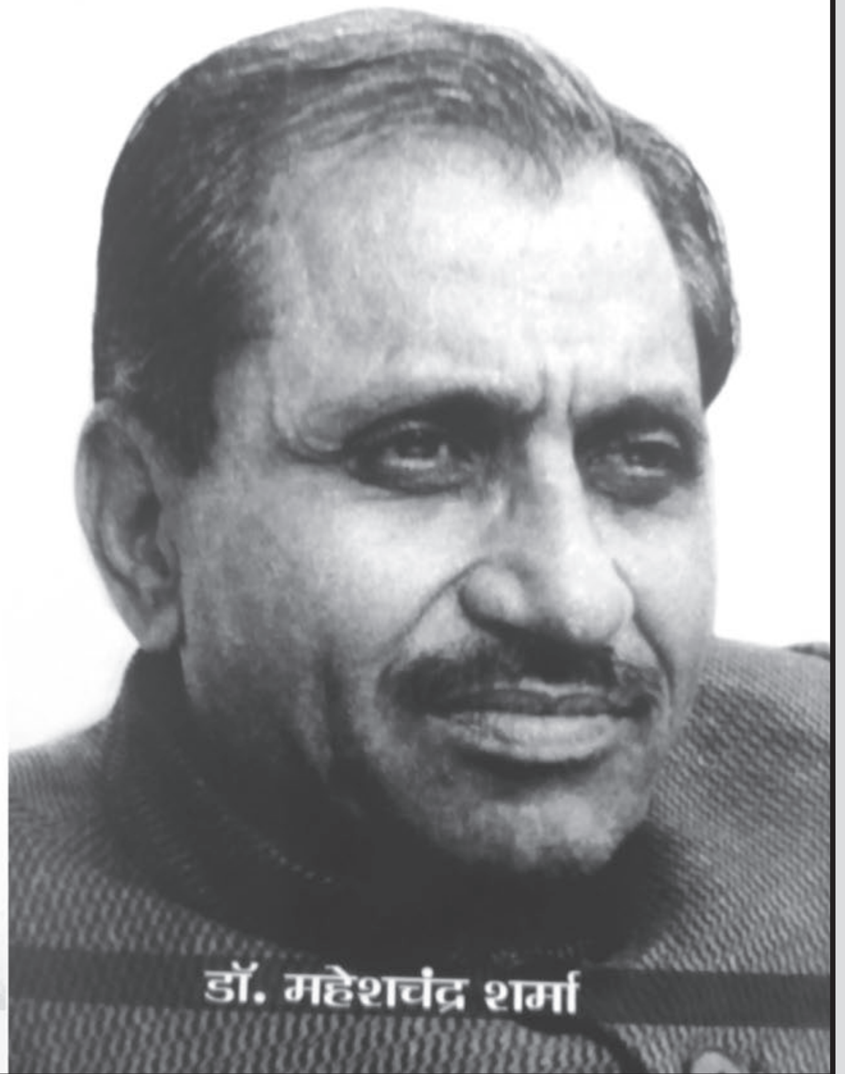

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| Single Issue | ₹ 200 | US$ 9 |
| Annual | ₹ 800 | US$ 36 |
| Three Year | ₹ 2000 | US$ 100 |
| Life Time | ₹ 25,000 | |


Managing Editor

**Manthan Quarterly Magazine**

Ekatm Bhawan, 37, Deendayal Upadhyaya Marg, New Delhi-110002

Phone: 9868550000, 011-23210074

E-mail: info@manthandigital.com

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प्रधानमंत्री

## सपनों का साकार करती उत्तराखण्ड सरकार

- राष्ट्रीय पर्यटन पुरस्कार-भारत सरकार, पर्यटन मंत्रालय द्वारा उत्तराखण्ड पर्यटन को सर्वश्रेष्ठ साहसिक गतव्य के रूप में तथा पर्यटन के सर्वांगीण विकास हेतु वर्ष 2022 में पुरस्कृत किया गया।

- श्री केदारनाथ उत्थान चैरिटेबल ट्रस्ट द्वारा भारत सरकार के सार्वजनिक उपक्रमों से सी0एस0आर0 मद के अन्तर्गत प्रथम चरण में ₹225 करोड़ के कार्य पूर्ण कराये गये है तथा वर्तमान में दूसरे चरण में ₹198 करोड़ के निर्माण कार्य एवं तीर्थ यात्रियों हेतु आवासीय सुविधाऐं विकसित किये जाने हेतु ₹190 करोड़ के कार्य गतिमान है। जिनका वर्ष 2024 तक पूर्ण कराये जाने का लक्ष्य निर्धारित है।

- वर्ष 2023 चार धाम यात्रा के दौरान 55 लाख से अधिक श्रद्धालुओं / यात्रियों द्वारा चार धाम के दर्शन किये गये हैं।

- प्रधानमंत्री श्री नरेंद्र मोदी के दिशा-निर्देशों पर बद्रीनाथ धाम को Smart Spiritual Hill Town के रूप में विकसित किये जाने के उद्देश्य से राज्य सरकार द्वारा चरणवद्ध रूप से कार्य किये जा रहे है। भारत सरकार के विभिन्न सार्वजनिक उपक्रमों से ₹273 करोड के कार्य निगमित सामाजिक उत्तरदायित्व निधि के अंतर्गत कराये जा रहे हैं। इन कार्यों में घाट निर्माण, रेन सेल्टर, टूरिस्ट इन्टरपिटेशन सेन्टर आदि अवस्थापना सुविधाओं के कार्य किये जा रहे है। उक्त के अतिरिक्त तीर्थ यात्रियों हेतु आवासीय सुविधाऐं विकसित किये जाने हेतु ₹40 करोड के कार्य सी0एस0आर0 मद के अन्तर्गत गतिमान है।

- गोविंदघाट से हेमकुंड साहिब तथा सोनप्रयाग-केदारनाथ तक रोपवे का निर्माण कार्य आगामी वर्षों में पूर्ण करने का लक्ष्य।

- नंदा गौरा योजना के अन्तर्गत पात्र परिवार की 02 बालिकाओं को दो किश्तो क्रमशः जन्म के समय ₹11000 एवं बालिका द्वारा कक्षा 12वीं उत्तीर्ण करने पर ₹51000 की धनराशि डी.बी.टी. के माध्यम से उपलब्ध करायी जाती है। वर्तमान में योजनान्तर्गत अपणि सरकार पोर्टल के माध्यम से ऑनलाइन आवेदन जमा करने की प्रक्रिया गतिमान है।

- मुख्यमंत्री बाल पोषण योजना के अंतर्गत राज्य में बच्चों के वजन एवं पोषण में सुधार, शारीरिक विकास, स्कूल पूर्व बच्चों (3 वर्ष से 06 वर्ष) को आंगनवाडी केन्द्रों पर प्रवेश को प्रोत्साहित करने के लिए, बच्चों को सप्ताह में दो दिन अण्डा एवं दो दिन केले चिप्स योजना के अन्तर्गत उपलब्ध कराये जा रहे हैं।

**सूचना एवं लोक सम्पर्क विभाग, उत्तराखण्ड द्वारा जनहित में जारी**

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Regd. R.No. 32485/78 (English)

# यही समय है, सही समय है,

# उत्तराखण्ड में निवेश का

"माननीय प्रधानमंत्री जी के मार्गदर्शन में उत्तराखण्ड की आर्थिकी और पर्यटन विकास में वृद्धि हुई है। हमारा राज्य व्यापार के लिए सदैव खुला है, जो निवेशकों को व्यापक अवसर प्रदान करता है । सुव्यवस्थित उद्योग की मंजूरी से लेकर निवेशकों को प्रोत्साहित करने तक हम सदैव प्रतिबद्ध हैं। अपने उद्यमों के लिए एक सम्पन्न पारिस्थितिकी तंत्र का निर्माण हमारी प्राथमिकता है। आइये मिलकर उत्तराखण्ड के भविष्य को नया आकार प्रदान करें!

**पुष्कर सिंह धामी**
मुख्यमंत्री, उत्तराखण्ड

"[illegible]ीं शताब्दी का ये तीसरा दशक, उत्तराखण्ड का दशक है। उत्तराखण्ड एक ऐसा राज्य है, जहां दिव्यता और विकास एक साथ महसूस होता है। वह दिन दूर नहीं, जब दिल्ली-देहरादून के बीच की दूरी ढाई घंटे की रह जाएगी। देहरादून और पंतनगर हवाई अड्डे के विस्तार से हवाई कनेक्टिविटी मजबूत होगी। प्रदेश में हेली-टैक्सी सेवाओं का विस्तार किया जा रहा है तथा रेल कनेक्टिविटी को सुदृढ़ किया जा रहा है। यह सब कृषि, उद्योग, लॉजिस्टिक्स, भंडारण, पर्यटन और आतिथ्य के लिए नए अवसर पैदा कर रहा है। वहीं, हाउस ऑफ हिमालयाज वोकल फॉर लोकल और लोकल फॉर ग्लोबल की हमारी अवधारणा को और मजबूत करता है।"

**नरेन्द्र मोदी**
प्रधानमंत्री

- उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 सफलतापूर्वक संपन्न
- निवेश के लिए 3.5 लाख करोड़ रुपए से अधिक के एमओयू पर हस्ताक्षर
- 44 हजार करोड़ रुपए के निवेश प्रस्तावों को धरातल पर उतारने का कार्य प्रारंभ
- सफल आयोजन के लिए मुख्यमंत्री धामी और राज्य प्रशासन को मिली बधाई
- 'मेक इन इंडिया' की तर्ज पर 'वेड इन इंडिया' आंदोलन शुरु करने का प्रस्ताव
- ब्रांड हाउस ऑफ हिमालयाज लाँच
- 30 से अधिक नीतियां लागू करके नीति-संचालित राज्य का सम्मान
- उत्तराखण्ड में भव्य कन्वेंशन सेंटर के निर्माण की योजना

## उत्तराखण्ड में निवेश के कई कारण

उत्तराखण्ड में निवेश बढ़ाने के उद्देश्य से राज्य के विभिन्न सेक्टरों में 'निवेश मित्रों' की नियुक्ति की गई है। ये सभी मित्र 5 करोड़ रुपए से अधिक के पूंजी निवेश करने वाले उद्यमियों के लिए 'सिंगल पॉइंट ऑफ कांटेक्ट' के रूप में कार्य कर रहे हैं। मौजूदा समय की बात की जाए तो उत्तराखण्ड में परिवहन मार्गों का तेजी से विस्तार हुआ है। नए एयरपोर्ट के विकास, नई रेलवे लाइन के विस्तार, डेडिकेटेड फ्रेट कॉरिडोर, हेलीपोर्ट और रोपवे के निर्माण द्वारा कनेक्टिविटी के क्षेत्र में उत्तराखण्ड अपनी एक अलग पहचान बना रहा है।

वह दिन दूर नहीं, जब दिल्ली-देहरादून के बीच की दूरी मात्र ढाई घंटे की रह जाएगी। देहरादून और पंतनगर हवाई अड्डे के विस्तार से हवाई कनेक्टिविटी और मजबूत होगी। प्रदेश में हेली-टैक्सी सेवाओं का विस्तार और रेल कनेक्टिविटी को सुदृढ़ किया जा रहा है। इससे कृषि, उद्योग, लॉजिस्टिक्स, भंडारण, पर्यटन और आतिथ्य के लिए नए अवसर पैदा हो रहे हैं।

पर्यटकों को प्रकृति के साथ-साथ भारत की विरासत से परिचित कराने के उद्देश्य से थीम आधारित पर्यटन सर्किट बनाने की योजना है। प्रकृति, संस्कृति और विरासत को अपने में समेटे उत्तराखण्ड एक 'ब्रांड' के रूप में उभर रहा है। यहां निवेशक योग, आयुर्वेद, तीर्थ और साहसिक खेल आदि के क्षेत्रों में नए अवसर तलाश सकते हैं।

## उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 की मुख्य विशेषताएं

12 से अधिक फोकस सेक्टर | 4 सहभागी देश | 200 से अधिक निवेश अनुकूल परियोजनाएं | 13 जिला स्तरीय इवेंट | 75,000 करोड़ से अधिक रेडी निवेश अनुकूल परियोजना लागत | 16 सत्र | 6000 से अधिक एकड़ उपलब्ध लैंडबैंक |

### फोकस सेक्टर

- ऑटोमोबाइल्स
- सूचना प्रौद्योगिकी
- हर्बल एवं एरोमैटिक्स
- कृषि एवं कृषि सम्बद्ध क्षेत्र
- जैव प्रौद्योगिकी
- औषधि
- आयुष एवं वैलनेस
- खाद्य प्रसंस्करण
- फ़िल्म शूटिंग
- हॉर्टिकल्चर एवं फ्लोरीकल्चर
- अक्षय ऊर्जा
- शिक्षा
- पर्यटन
- इलेक्ट्रॉनिक्स
- नेचुरल फाइबर

## निवेश जगत में अलग पहचान बनाता उत्तराखण्ड

**मुख्यमंत्री पुष्कर सिंह धामी के 'युवा नेतृत्व में युवा प्रदेश' जिस गति से आज आगे बढ़ रहा है, इसका श्रेय प्रधानमंत्री नरेन्द्र मोदी की दूरगामी सोच को जाता है। उत्तराखण्ड के सर्वांगीण विकास के लिए युवा मुख्यमंत्री पूर्ण समर्पण के साथ कार्य कर रहे हैं। बाहरी प्रदेशों में बड़े निवेशकों को आकर्षित करने की दिशा में लगातार सार्थक कदम उठा रहे हैं। सभी को बेहतर औद्योगिक माहौल देने के लिए राज्य की धामी सरकार लगातार प्रयासरत है।**

## पीएम मोदी द्वारा 'हाउस ऑफ हिमालयाज' का शुभारंभ

### 31 मिनट समिट को संबोधित किया पीएम ने

उत्तराखण्ड के उत्पादों को इंटरनेशनल मार्केट में नई पहचान दिलाने के लिए राज्य सरकार द्वारा नई पहल की शुरुआत की गई है। उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के उद्घाटन समारोह में प्रधानमंत्री नरेन्द्र मोदी द्वारा 'हाउस ऑफ हिमालयाज' का शुभारंभ किया गया। इससे अब महिला स्वयं सहायता समूहों के उत्पादों को वैश्विक स्तर पर पहचान और वृहद स्तर पर बाजार उपलब्ध होगा। राज्य सरकार के इस अद्भुत प्रयास से अब उत्तराखण्ड के 65,000 से अधिक महिला स्वयं सहायता समूहों से जुड़ी 5.25 लाख महिलाओं के सामने से अब उनके द्वारा तैयार उत्पादों की ब्रांडिंग का संकट दूर होगा। राज्य सरकार ने काफी मेहनत के बाद इन उत्पादों के लिए 'अंब्रेला ब्रांड' के रूप में 'हाउस ऑफ हिमालयाज' तैयार किया है। इस पहल के प्रथम चरण में भौगोलिक संकेतक प्राप्त राज्य के उत्पादों को प्राथमिकता दी गई है। शीघ्र ही प्रदेश के महिला समूहों के अन्य उत्पादों को इसमें शामिल किया जाएगा।

## 'हाउस ऑफ हिमालयाज' से महिलाएं सशक्त

महिला स्वयं सहायता समूहों के उत्पादों की ब्रांडिंग के लिए आने वाली परेशानियों को दूर करने के उद्देश्य से प्रदेश सरकार द्वारा 'हाउस ऑफ हिमालयाज' की शुरुआत की गई है। पहले समूह की महिलाएं अपने सभी उत्पादों को अलग-अलग नाम से बिक्री कर रही थीं। इसी बात को ध्यान में रखते हुए प्रधानमंत्री नरेन्द्र मोदी ने पिछली बार अपनी माणा यात्रा के दौरान उत्तराखण्ड सरकार को सुझाव दिया था कि स्थानीय उत्पादों को बढ़ावा देने के लिए एक 'ब्रांड' होना चाहिए। धामी सरकार ने प्रधानमंत्री के इस विचार पर अमल करते हुए समूहों के उत्पादों के लिए 'अंब्रेला ब्रांड' बनाने का निश्चय किया। कई उच्च स्तरीय गहन मंथन के बाद इन उत्पादों की ब्रांडिंग के लिए 'हाउस ऑफ हिमालयाज' नाम को अंतिम स्वरूप दिया गया।

## उत्तराखण्ड के उत्पादों को मिली नई पहचान

उत्तराखण्ड ग्लोबल इन्वेस्टर्स समिट 2023 के अवसर पर प्रधानमंत्री नरेन्द्र मोदी ने अन्य करोड़ों की परियोजनाओं के साथ 'हाउस ऑफ हिमालयाज' नामक 'अंब्रेला ब्रांड' का शुभारंभ किया। जिसके तहत, अब समूहों द्वारा तैयार किए जाने वाले उत्पाद 'हाउस ऑफ हिमालयाज' के नाम से बाजार में आएंगे। इन उत्पादों की क्वालिटी एवं पैकिंग आदि पर विशेष ध्यान केंद्रित किया गया है। हाउस ऑफ हिमालयाज ब्रांड उत्तराखण्ड के स्थानीय उत्पादों को विदेशी बाजारों तक ले जाने का एक अभिनव प्रयास है। देवभूमि उत्तराखण्ड के उत्पाद स्वाद और सेहत जैसे कई प्राकृतिक गुणों से भरपूर हैं। मौजूदा समय में हिमालय की गोद से निकलने वाले ये उत्पाद हिमाद्री, हिलांस और ग्राम्य-श्री जैसे नामों से बाजार में जाने जाते हैं। लेकिन, अब ये दमदार उत्पाद 'हाउस ऑफ हिमालयाज' के नाम से जाने-पहचाने जाएंगे। यानी उत्तराखण्ड के महिला समूहों द्वारा तैयार अलग-अलग उत्पाद अब 'हाउस ऑफ हिमालयाज' के नाम से दुनियाभर में अपना कमाल दिखाएंगे। हाउस ऑफ हिमालयाज, उत्तराखण्ड के उत्पादों को वोकल फॉर लोकल से लोकल टू ग्लोबल बनने में मदद करेगा।