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FAIRFIELD

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Reference Material for Five Years

Bachelor of Law (Hons.)

Code: 038

Semester – I

FIMT Campus, Kapashera, New Delhi-110037, Phones : 011-25063208/09/10/11, 25066256/ 57/58/59/60
Fax : 011-250 63212 Mob. : 09312352942, 09811568155 E-mail : fimtoffice@gmail.com Website : www.fimt-ggsipu.org

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LEGAL METHOD (101)

Unit-I: Meaning and Classification of Law

(a)Meaning and Definition of law

Law is a term which does not have a universally accepted definition, but one definition is that law is a system of rules and guidelines which are enforced through social institutions to govern behavior. Laws are made by governments, specifically by their legislatures. The formation of laws themselves may be influenced by a constitution (written or unwritten) and the rights encoded therein. The law shapes politics, economics and society in countless ways and serves as a social mediator of relations between people.

A general distinction can be made between civil law jurisdictions (including Canon and Socialist law), in which the legislature or other central body codifies and consolidates their laws, and common law systems, where judge-made binding precedents are accepted. Historically, religious laws played a significant role even in settling of secular matters, which is still the case in some countries, particularly Islamic.

The adjudication of the law is generally divided into two main areas. Criminal law deals with conduct that is considered harmful to social order and in which the guilty party may be imprisoned or fined. Civil law (not to be confused with civil law jurisdictions above) deals with the resolution of lawsuits (disputes) between individuals or organizations. These resolutions seek to provide a legal remedy (often monetary damages) to the winning litigant.

Under civil law, the following specialties, among others, exist: Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law regulates the transfer and title of personal property and real property. Trust law applies to assets held for investment and financial security. Tort law allows claims for compensation if a person's property is harmed. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. Administrative law is used to review the decisions of government agencies. International law governs affairs between sovereign states in activities

To implement and enforce the law and provide services to the public by public servants, a government's bureaucracy, the military and police are vital. While all these organs of the state are creatures created and bound by law, an independent legal profession and a vibrant civil society inform and support their progress.

Law provides a rich source of scholarly inquiry into legal history, philosophy, economic analysis and sociology. Law also raises important and complex issues concerning equality, fairness, and justice. All are equal before the law. The author Anatole France said in 1894, "In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets, and steal loaves of bread." Writing in 350 BC, the Greek philosopher Aristotle declared, "The rule of law is better than the rule of any individual." Mikhail Bakunin said: "All law has for its object to confirm and exalt into a system the exploitation of the workers by a ruling class". said "more law, less justice". Marxist doctrine asserts that law will not be required once

the state has withered away.

(b)Functions of Law

1. Outlines what people can and cannot do
2. Protects public order (Criminal Law)
3. To resolve disputes between people (Civil Law)
4. Protects certainty of systems
5. Outlines what the government can do and what it cannot do
6. Helps to protect us a keep people safe

The law is the body of rules imposed by a State upon its members which is designed to regulate human conduct within that State. The courts interpret these rules of conduct, decide whether they have been broken and pass sentence or make an award of compensation. A certain standard of behavior is thereby maintained amongst the members of the State in the interest of the common good.

(c)Classification of Law

(i)Procedural Law and Substantive Law

Procedural law comprises the set of rules that govern the proceedings of the court in criminal lawsuits as well as civil and administrative proceedings. The court needs to conform to the standards setup by procedural law, while during the proceedings. These rules ensure fair practice and consistency in the "due process".

Substantive law is a statutory law that deals with the legal relationship between people or the people and the state. Therefore, substantive law defines the rights and duties of the people, but procedural law lays down the rules with the help of which they are enforced. The differences between the two need to be studied in greater detail, for better understanding.

Procedural Law Substantive Law

Structure: Elaborates on the steps which the case passes through
Deals with the structure and facts of the case

Enforcement: Creates the machinery for the enforcement of law
Defines the rights and duties of citizens
Powers: No independent powers Independent powers to decide the fate of a case
: Can be applied in non legal contexts
Cannot be applied in non legal contexts

Differences in Structure and Content

In order to understand the differences between the structure and content of substantative and procedural law, let's use an example. If a person is accused and undergoing a trial, substantive law prescribes the punishment that the under-trial will face if convicted. Substantative law also defines the types of crimes and the severity depending upon factors such as whether the person is a repeat offender, whether it is a hate crime, whether it was self-defense etc. It also defines the responsibilities and rights of the accused.

Procedural law, on the other hand provides the state with the machinery to enforce the

substantive laws on the people. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings. Procedural law deals with the method and means by which substantive law is made and administered. In other words, substantive law deals with the substance of the case, how the charges are to be handled and how the facts are to be dealt with; while procedural law will give a step by step action plan on how the case is supposed to proceed in order to achieve the desired goals. Therefore its procedural law that helps decides whether the case requires trial or otherwise.

Powers of substantive vs. procedural laws

Substantive law is an independent set of laws that decide the fate of a case. It can actually decide the fate of the under-trial, whether he wins or loses and even the compensation amounts etc. Procedural laws on the other hand, have no independent existence. Therefore, procedural laws only tell us how the legal process is to be executed, whereas substantive laws have the power to offer legal solution.

Differences in Application

Another important difference lies in the applications of the two. Procedural laws are applicable in non legal contexts, whereas substantive laws are not. So, basically the essential substance of a trial is underlined by substantive law, whereas procedural law chalks out the steps to get there.

Example

An example of substantive law is how degrees of murder are defined. Depending upon the circumstances and whether the murderer had the intent to commit the crime, the same act of homicide can fall under different levels of punishment. This is defined in the statute and is substantive law.

Examples of procedural laws include the time allowed for one party to sue another and the rules governing the process of the lawsuit.

(ii)Municipal and International Law

International law governs the relation of sovereign independent states inter and constitutes a legal system the rules of which it is incumbent upon all states to observe. Municipal law also known as state law or national law is the law of state or a country.

International law regulates the behavior of states whereas national law the behavior of individuals. International law concerns with the external relations of the states and its foreign affairs. Municipal law concerns with the internal relations of states o and its domestic affairs.

International law is a law between equal sovereign states in which no one is supreme to the other but municipal laws the w law of the sovereign over the individuals subject to the sovereign rule.

Whether international law is a law or not is a debatable question and this debate is continued where as municipal law i a law in a real sense and there is o doubt about it.

However international law and municipal law relates to each other and some justice considers that both from a unity being manifestation of single conception of law while others say that international law constitutes an independent system of law essentially different from the municipal Law. Thus there are two theories knows as monastic and dualistic. According to monastic and the same thing. The origin and sources of these two laws are the same, bothspheres of law simultaneously regulate the conduct of individuals and the two systems are in their essence groups of commands which bind the subjects of the law independently of their will.

According to dualistic theory international law and municipal law are separate and self contained to the extent to which rules of one are not expressly tacitly received into the other

system. The two are separate bodies of legal norms emerging in part from different sources comprising different difference subjects and having application to different objects.

(iii)Public law and Private law

Public law (lat. ius publicum) is that part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to the society. Public law comprises constitutional law, administrative law, tax law and criminal law, as well as all procedural law. In public law, mandatory rules (not optional) prevail. Laws concerning relationships between individuals belong to private law.

The relationships public law governs are asymmetric and unequal – government bodies (central or local) can make decisions about the rights of individuals. However, as a consequence of the rule of law doctrine, authorities may only act within the law (secundum et intra legem). The government must obey the law. For example, a citizen unhappy with a decision of an administrative authority can ask a court for judicial review.

Rights, too, can be divided into private rights and public rights. A paragon of a public right is the right to welfare benefits – only a natural person can claim such payments, and they are awarded through an administrative decision out of the government budget.

The distinction between public law and private law dates back to Roman law. It has been picked up in the countries of civil law tradition at the beginning of the 19th century, but since then spread to common law countries, too.

The borderline between public law and private law is not always clear in particular cases, giving rise to attempts of theoretical understanding of its basis.

Private law is that part of a civil law legal system which is part of the jus commune that involves relationships between individuals, such as the law of contracts or torts (as it is called in the common law), and the law of obligations (as it is called in civil legal systems). It is to be distinguished from public law, which deals with relationships between both natural and artificial persons (i.e., organizations) and the state, including regulatory statutes, penal law and other law that affects the public order. In general terms, private law involves interactions between private citizens, whereas public law involves interrelations between the state and the general population.

The public law is that branch of law which determines and regulates the organization and functioning of states (country). Also it regulates the relation of the state (country) with its subjects.

Public law includes (i) constitutional law, (ii) Administrative law (iii) criminal law, (iv) municipal law (v) international law; criminal law is enforced on behalf of or in the name of the state.

On the other hand, private law is that branch of the law which regulates those of the relation of the citizens with one another as are not of public importance .In this sense the state, through its judicial organs, adjudicates the matters in dispute between them.

In other words, it is primarily concerned with the rights and duties of individuals to each other .under it, the legal action is begun by the private citizens to establish rights (In which the state is not primarily concerned) against another citizens or a group of citizens.

Private law includes, (i) Law of contract (ii) Law of tort (iii) Law of property (iv) Law of succession, (v) family laws. Private law is sometimes, referred to as civil law.

Unit-II: Sources of Law

There are six most essential sources of Law in India. By sources of law we mean its beginning as law and the point from which it springs or emanates. As regards law there are six important sources. (A) Customs

Customs are oldest source of law. It is the outcome of habits. When a particular habit is followed for a long time by the people regularly and habitually, the custom comes into being. When written laws were more conspicuous by their absence in the primitive society, it was customary laws that regulated human conduct in the primitive society. It is said that kings have no power to create custom and perhaps less to destroy it. Customs largely influence the legal system of a state and the state gets rid of the bad customs like Sati, Polygamy, and Dowry etc. only by means of legal impositions. The United Kingdom provides the best example of customary laws which are found in the common law of England. In the United Kingdom the law and custom are so intimately connected with each other that the violation of convention custom will lead to the violation of law.

(B) Religion

The religion is another important source of law. It played an important role in the primitive period when men were very much religious minded and in the absence of written laws the primitive people obeyed religion thinking it of divine origin. In the medieval period, most of the customs that were followed were only religious customs.

Even today the Hindu Laws are founded on the code of Manu and the Mohammedan Laws are based on the Holy Koran. The religious codes become a part of the law of the land in the state incorporates the religious codes in its legal system.

(C) Judicial Decisions

Since the dawn of the human civilization the dispute between two parties is referred to a third party who acts as the arbiter. His decision is generally obeyed by both the parties. The arbiter may be a tribal chief or a priest. But with the passage of time, the judicial organ of the state is given power to decide cases between the parties. While deciding a case and pronouncing a judgment, the judges generally apply their own common sense and justice. This is known as Judge-made laws or case laws. Justice Holmes commented that "judges do and must make laws". The principle by which a judicial decision becomes a precedent is known as "Stare Decisis".

(D) Scientific commentaries

Chief Justice Hughes of the U.S.A. opines that " We are living under a constitution and the constitution is what the judges say it is". The law needs interpretation and the scientific commentaries and interpretations by eminent jurists have contributed a lot for the evolution of a legal system. The views of Blackstone in the U.K., Kent in the U.S.A. have made tremendous impact on the legal system of their respective countries. The opinions of these expert legal luminaries are always kept in high esteem by the judges and the courts.

(E) Equity

The term 'equity' literally means 'just', 'fairness' and according to 'good conscience'. When the existing law is inadequate or silent with regard to a particular case, the judges generally apply

their common sense, justice and fairness in dealing with such cases. Thus, without 'equity' the term law will be devoid of its essential quality.

(F)Precedent

In common law legal systems, a precedent or authority is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The general principle in common law legal systems is that similar cases should be decided so as to give similar and predictable outcomes, and the principle of precedent is the mechanism by which that goal is attained. Black's Law Dictionary defines "precedent" as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." Common law precedent is a third kind of law, on equal footing with statutory law (statutes and codes enacted by legislative bodies), and regulatory law (regulations promulgated by executive branch agencies).

Stare decisis is a legal principle by which judges are obliged to respect the precedent established by prior decisions. The words originate from the phrasing of the principle in the Latin maxim Stare decisis et non quieta movere: "to stand by decisions and not disturb the undisturbed." In a legal context, this is understood to mean that courts should generally abide by precedent and not disturb settled matters.

Case law is the set of existing rulings which have made new interpretations of law and, therefore, can be cited as precedent. In most countries, including most European countries, the term is applied to any set of rulings on law which is guided by previous rulings, for example, previous decisions of a government agency - that is, precedential case law can arise from either a judicial ruling or a ruling of adjudication within an executive branch agency.

Trials and hearings that do not result in written decisions of a court of record do not create precedent for future court decisions.

(G) Legislation

This is the most important and modern source of law. The legislature is that organ of the state whose primary function is to make laws. To Leacock the legislatures deliberate, discuss and make laws. Thus, law can be defined as the opinion of the majority legislators. They are recorded in the Statute Book. When the legislature is not in session, the executive is empowered to issue ordinances, decrees etc. which as good as the laws are made by the legislatures

Besides the above six sources of law we can add two more sources of law in the present days. The executive in a parliamentary democracy has the support of the majority legislators in the legislature enabling it to make laws according to its choice. The executive in a presidential system can influence legislation in the floor of the legislature through its party men. With the advent of time, the legislature is required to make laws in a large number of subjects. Due to paucity of time, the legislature makes laws in the skeleton form and the flesh and blood is added to it by the executive. This is termed as 'delegated legislation which has considerably enhanced the role of the executive in the field of legislation. Public opinion in this age of democracy plays a vital role in the process of lawmaking. In Switzerland, with direct democracy, public opinion is reflected through Landsgeminde, Referendum and Initiative, which paves the way for making laws for the state.

Unit-III: Basic Concepts of Indian Legal System

(a)Common Law

Common law is the traditional unwritten law of England, based on custom and usage which developed over a thousand years before the founding of the United States. The best of the preSaxon compendiums of the Common Law was reportedly written by a woman, Queen Martia, wife of a Briton king of a small English kingdom. Together with a book on the "law of the monarchy" by a Duke of Cornwall, Queen Martia's work was translated into the emerging English language by King Alfred (849-899 A.D.). When William the Conqueror arrived in 1066, he combined the best of this Anglo-Saxon law with Norman law, which resulted in the English Common Law, much of which was by custom and precedent rather than by written code. By the 14th Century legal decisions and commentaries on the common law began providing precedents for the courts and lawyers to follow. It did not include the so-called law of equity (chancery) which came from the royal power to order or prohibit specific acts. The common law became the basic law of most states due to the Commentaries on the Laws of England, completed by Sir William Blackstone in 1769, which became every American lawyer's bible. Today almost all common law has been enacted into statutes with modern variations by all the states except Louisiana which is still influenced by the Napoleonic Code. In some states the principles of common law are so basic they are applied without reference to statute.

The ancient law of England based upon societal customs and recognized and enforced by the judgments and decrees of the courts. The general body of statutes and case law that governed England and the American colonies prior to the American Revolution.

The principles and rules of action, embodied in case law rather than legislative enactments, applicable to the government and protection of persons and property that derive their authority from the community customs and traditions that evolved over the centuries as interpreted by judicial tribunals.

A designation used to denote the opposite of statutory, equitable, or civil, for example, a common-law action.

The common-law system prevails in England, the United States, and other countries colonized by England. It is distinct from the civil-law system, which predominates in Europe and in areas colonized by France and Spain. The common-law system is used in all the states of the United States except Louisiana, where French Civil Law combined with English Criminal Law to form a hybrid system. The common-law system is also used in Canada, except in the Province of Quebec, where the French civil-law system prevails.

Anglo-American common law traces its roots to the medieval idea that the law as handed down from the king's courts represented the common custom of the people. It evolved chiefly from three English Crown courts of the twelfth and thirteenth centuries: the Exchequer, the King's Bench, and the Common Pleas. These courts eventually assumed jurisdiction over disputes previously decided by local or manorial courts, such as baronial, admiral's (maritime), guild, and forest courts, whose jurisdiction was limited to specific geographic or subject matter areas. Equity courts, which were instituted to provide relief to litigants in cases where common-law relief was unavailable, also merged with common-law courts. This consolidation of jurisdiction over most legal disputes into several courts was the framework for the modern Anglo-American judicial system.

Early common-law procedure was governed by a complex system of Pleading, under which only the offenses specified in authorized writs could be litigated. Complainants were required to satisfy all the specifications of a writ before they were allowed access to a common-law court. This system was replaced in England and in the United States during the mid-1800s. A streamlined, simplified form of pleading, known as Code Pleading or notice pleading, was instituted. Code pleading requires only a plain, factual statement of the dispute by the parties and leaves the determination of issues to the court.
Common-law courts base their decisions on prior judicial pronouncements rather than on legislative enactments. Where a statute governs the dispute, judicial interpretation of that statute determines how the law applies. Common-law judges rely on their predecessors' decisions of actual controversies, rather than on abstract codes or texts, to guide them in applying the law. Common-law judges find the grounds for their decisions in law reports, which contain decisions of past controversies. Under the doctrine of Stare Decisis, common-law judges are obliged to adhere to previously decided cases, or precedents, where the facts are substantially the same. A court's decision is binding authority for similar cases decided by the same court or by lower courts within the same jurisdiction. The decision is not binding on courts of higher rank within that jurisdiction or in other jurisdictions, but it may be considered as persuasive authority.

Because common-law decisions deal with everyday situations as they occur, social changes, inventions, and discoveries make it necessary for judges sometimes to look outside reported decisions for guidance in a CASE OF FIRST IMPRESSION (previously undetermined legal issue). The common-law system allows judges to look to other jurisdictions or to draw upon past or present judicial experience for analogies to help in making a decision. This flexibility allows common law to deal with changes that lead to unanticipated controversies. At the same time, stare decisis provides certainty, uniformity, and predictability and makes for a stable legal environment.
Under a common-law system, disputes are settled through an adversarial exchange of arguments and evidence. Both parties present their cases before a neutral fact finder, either a judge or a jury. The judge or jury evaluates the evidence, applies the appropriate law to the facts, and renders a judgment in favor of one of the parties. Following the decision, either party may appeal the decision to a higher court. Appellate courts in a common-law system may review only findings of law, not determinations of fact.

Under common law, all citizens, including the highest-ranking officials of the government, are subject to the same set of laws, and the exercise of government power is limited by those laws. The judiciary may review legislation, but only to determine whether it conforms to constitutional requirements.

(b) Rule of Law

The expression 'Rule of Law' has been derived from the French phrase 'la principle de legalite', i.e. a Government based on the principles of law. In implied by the state in the administration of justice. The Rule of law, according to Gamer, is of en used simply to describe the state le words, the term 'rule of law' indicates the state of affairs in a country where, in main, the law mules. Law may be taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognized and aloof affairs in a country where, in main, the law is observed and order is kept. It is an expression synonymous with law and order.

The basis of Administrative Law is the 'Doctrine of the Rule of Law'. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V.Dicey in his book 'The law of the Constitution' published in 1885. According Coke, in a battle against King, he should be under God and the Lank thereby the Supremacy of Law is established.
Dicey regarded rule of law as the bedrock of the British Legal System:. 'Fins doctrine is accepted in the constitutions of U.S.A. and India.
According to Prof. Dicey, rules of law contain three principles or it has three meanings as stated below:
1. Supremacy of Law or the First meaning of the Rule of Law.
2. Equality before Law or the Second meaning of the Rule of Law: and
3. Predominance of Legal Spirit or the Third meaning of the Rule of Law.
1. Supremacy of Law: The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It implies that a man may be punished for .a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offence is required to be proved before the ordinary courts in accordance with the ordinary procedure.
2. Equality before Law: - The Second meaning of the Rule of Law is that no man is above law. Every man whatever is his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.
Prof. Dicey states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He criticized the French legal system of droit Administrative in which there were separate administrative tribunals for deciding the cases of State Officials and citizens separately. He criticizes such system as negation of law 2. Predominance of Legal Spirit: - The Third meaning of the rule of law is that the general principles of the constitution are the result of juridical decisions determining file rights of private persons in particular cases brought before the Court.

Dicey states that many constitutions of the states (countries) guarantee their citizens certain rights (fundamental or human or basic rights) such as right to personal liberty, freedom from arrest etc. According to him documentary guarantee of such rights is not enough. Such rights canbe made available to the citizens only when they are properly enforceable in the Courts of law, For Instance, in England there is no written constitution and such rights are the result judicial decision.
Application of the Doctrine in England: Though, there is no written constitution, the rule of law is applied in concrete cases. In England, the Courts are the guarantors of the individual rights. Rule of law establishes an effective control over the executive and administrative power.

However, Dicey's rule of law was not accepted in full in England. In those days, many statutes allowed priority of administrative power in many cases, and the same was not challenged better c the Courts. Further sovereign immunity existed on the ground of King can do no wrong'. The sovereign immunity was abolished by the 'Crown Proceedings Act, 1947. Prof. Dicey could not distinguish arbitrary power from discretionary power, and failed to understand the merits of French legal system.
Rule of Law under the Constitution of India: - The doctrine of Rule of Law has been adopted in Indian Constitution. The ideals of the Constitution, justice, liberty and equality are enshrined (embodied) in the preamble.

The Constitution of India has been made the supreme law of the country and other laws are required to be in conformity with the Constitution. Any law which is found in violation of any provision of the Constitution is declared invalid.
Part III of the Constitution of India guarantees the Fundamental Rights. Article 13(l) of the Constitution makes it clear that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provision of Part ill dealing with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State should not make any law which takes away or abridges the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Constitution guarantees equality before law and equal protection of laws. Article 21 guarantees right to life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 19 (1) (a) guarantees the third principle of rule of law (freedom of such and expression).

Article 19 guarantees six Fundamental Freedoms to the citizens of India -- freedom of speech and expression, freedom of assembly, freedom to form associations or unions, freedom to live in any part of the territory of India and freedom of profession, occupation, trade or business. The right to these freedoms is not absolute, but subject to the reasonable restrictions which may be imposed by the State.

Article 20(1) provides that no person shall he convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subject to a penalty greater than that which might have been inflicted tinder the law in for cc at the time of the commission of the offence. According to Article 20(2), no person shall be prosecuted and punished for the same offence more than once. Article 20(3) makes it clear that no person accused of the offence shall be compelled to be witness against himself. In India, Constitution is supreme and the three organs of the Government viz. Legislature, Executive and judiciary are subordinate to it. The Constitution provided for encroachment of one organ (E.g.: Judiciary) upon another (E.g.: Legislature) if its action is mala fide, as the citizen (individual) can challenge under Article 32 of the Constitution.
In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. It is also regarded as a part of natural justice.

In Kesavanda Bharti vs. State of Kerala (1973) - The Supreme Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure.
In Menaka Gandhi vs. Union of India, AIR 1978 SC 597 - The Supreme Court declared that Article 14 strikes against arbitrariness.
In Indira Gandhi Nehru vs. Raj Narahr, Alit 1975 SC 2299 - Article 329-A was inserted in the

Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329-A as invalid since it abridges the basic structure of the Constitution.
In A.D.M Jabalpur vs., Shivakant Shukla (1976) 2 SCC 521 AIR 1976 SC 1207 - This case is popularly known as Habeas Corpus Case.

On 25th June, emergency was proclaimed under Article 359. Large number of persons was arrested under N11SA (Maintenance of Internal Security Act. 1971) without informing the grounds for arrest. Some of their filed petition in various high Courts for writ of Heabeas Corpus. The petitioners contend that their detention is violation of Article 21. It was argued on the other side that the protection tinder Article 21 is not available (suspended) during emergency. The preliminary objection (not to file writ petitions during emergency). The Preliminary objection (not to file writ petitions during emergence) was rejected by various High Courts. The Madhya Pradesh Government through Additional District Magistrate. Jabalpur and Government of India filed appeals before Supreme Court.

The question before Supreme Court was, whether there was any rule of law in India apart front Article 21 of the Constitution. The Supreme Court by majority held that there is no rule of law other than the constitutional rule of law. Article 21 is our rule of law. If it is suspended, there is not rule of law.

c)Doctrine of Separation of power

In the introduction it is explained that separation of powers and judicial review are important. The principle of checks and balances and its history and necessity are also explained. Montesquieu theory is in brief explained, if all the powers joining in one organ there can be tyrannical laws. Therefore all these three should be separate. Political theorist in the 17th century evolved that theory of separation of powers and theory of checks and balances are very closely related. In the second chapter it is compared with the Indian constitutions and also discussed the importance and necessity of exercising judicial powers. In the third it is concluded that administration of justice is primary function of the state. It should be maintained without any doubt and to be proved its efficiency and effectiveness in maintaining the administration of justice system properly. The Judiciary must bring confidence and faith among the public.

Separations of Powers

1. 1. Introduction

In the context of separation of powers, judicial review is crucial and important. We have three wings of the state, judiciary, Legislature and Executive with their function clearly chalked out in our Constitutions. Article 13 of the constitution mandates that the "state shall make no law, which violates, abridges or takes away rights conferred under part III". This implies that both the Legislature and judiciary in the spirit of the words can make a law, but under the theory of checks and balances, the judiciary is also vested with the power to keep a check on the laws made by the Legislature.

Montesquieu: The foundations of theory of separation of powers were laid by the French Jurist Baron De conclusions of Montesquieu are summarized in the following quoted passage "When the legislative and executive powers are united in the same persons or body there can be no liberty because apprehensions may arise lest the same monarch or senate should enact tyrannical laws to enforce them in a tyrannical manner...were the powers of judging joined with the legislature the life and liberty of the subject would be exposed to arbitrary control. For the judge would then be the legislator. Were it joined to the executive power, the judge might be have with all the violence of an oppressors" To obviate the danger of arbitrary government and tyranny Montesquieu advocated a separation of governmental functions.

The decline of separation of powers requires that the functions of legislations, administration

and adjudications should not be placed in the hand of one body of persons but should be distributed among the district or separate bodies of persons.

2. Principles of checks and balances

The doctrine of separations of powers may be traced back to an earlier theory known as the theory of mixed government from which it has been evolved. That theory is of great antiquity and was adurnbrated in the writings of Polybius, a great historian who was captured by the Romans in 167 BC and kept in Rome as a Political hostage for 17 years in his history of Rome Polybius explained the reasons for the exceptional stability of Roman Government which enabled Rome to establish a worldwide empire. He advanced the theory that the powers of Rome stemmed from her mixed government. Unmixed systems of government that is the three primary forms of government namely, Monarchy, Aristocracy and Democracy – were considered by Polybius as inherently unstable and liable to rapid degeneration. The Roman constitutions counteracted that instability and tendency to degeneration by a happy mixture of principles drawn from all the three primary forms of government. The consuls, the senate and the popular Assemblies exemplified the monarchical, the aristocratic and the democratic principles respectively. The powers of Government were distributed between them in such a way that each checked and was checked by the others so that an equipoise or equilibrium was achieved which imparted a remarkable stability to the constitutional structure. It is from the wok of Polybius that political theorist in the 17th Century evolved that theory of separation of powers and the closely related theory of checks and Balances.

3. Separation of powers- Indian constitutions

Indian constitution is a very well built document. It assigns different roles to all the three wings of government the Legislature, Executive and the Judiciary. There is no ambiguity about each wings power, privilege and duties. Parliament has to enact law, Executive has to enforce them and the judiciary has to interpret them. There is supposed to be no overlapping or overstepping. The judiciary versus the Executive or Legislative is a battle which is not new but in recent times, the confrontation is unprecedented with both the sides taking the democration of powers to a flash point. Justice Mukherjee observed, “it does not admit of any serious dispute that the doctrine of separation of powers has, strictly speaking no place in the system of Government that Indian has at the present day. The theory of checks and balance has been observed in the Indian constitutions. There is no rigorous separation of powers. For instance, parliament has the judicial power of impeachment and punishing for contempt. The president has the legislative powers of ordinance making. Thus the Indian constitution has not applied the doctrine of separation of powers in its strictest form.

4. Judiciary –importance and its need

Judiciary – It’s Importance: An endeavor is being made to highlights the judicial functioning in India, in the context of increasing cases of judicial corruptions and delays in administration of justice. The Indian judiciary has so far, gained the public confidence in discharging its constitutional functions. As an institution, the judiciary has always commanded considerable respect from the people of country. The roots of this high regard lie in the impartiality, independence and integrity of the members of the judiciary. The judiciary in a democratic polity governed by the rule of law stands as a bull work against abuse or misuse of excess use of powers on the part of the executive and protects the citizens against the government lawlessness. Judiciary – It Need: Expressing the needs for and importance of judiciary a learned jurist aptly remarks: “middle class people are combating with the government powers through media of the

courts". The Indian judiciary is considered as Guardian of the Rights of the citizens of India, explained, argued and emphasized in several contexts.

5. Independence of judiciary

"Judiciary is unlimited"- an unelected judiciary which is not accountable to anyone except its own temperament has taken over significant powers of Indian Governance. The courts have gone well beyond ensuring that laws are implemented. Now, the Supreme Court has invented its own laws and methods of implementation, gained control of bureaucracy and threatened officers with contempt of court if its instructions are not complied with. The question is not whether some good has come out of the all this. The issue is whether the courts have arrogated vase and uncontrolled powers of themselves which undermine both Democracy and Rule of law, including the question is no undermine both Democracy and Rule of Law including the powers exercised under the doctrine of separation of powers.

6. Conclusion

Administration of justice is a divine function. In fact a nation's rank in the civilization is generally determined to the degree in which s justice is actually administrated. This sacred functions to be an institutions manned by men of high efficiency, honesty and integrity. As the old adages goes, "Justice delayed is Justice denied". This phrase seems to be tune in so far as the administration of justice in India is concerned. While the people have reasons to feel disappointed with functioning of the legislatures and the executive, they have over the years clung to the belief that they can go to the courts for help. But unfortunately, the judiciary is fast losing its credibility in the eyes of the people for one of the main reasons that justice delivery systems have become costlier and highly time consuming. It is needless to say that the ultimate success of a democratic system is measured in terms of the effectiveness and efficiency of its administration of justice system observed by Lord Bryce, "There is no better test of the excellence of a Government than the efficiency of its judicial system".

(d)Indian Judicial System

The Indian Judicial System is one of the oldest legal systems in the world today. It is part of the inheritance India received from the British after more than 200 years of their Colonial rule, and the same is obvious from the many similarities the Indian legal system shares with the English Legal System. The frame work of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it.

The Constitution of India is the supreme law of the country, the fountain source of law in India. It came into effect on 26 January 1950 and is the world's longest written constitution.

It not only laid the framework of Indian judicial system, but has also laid out the powers, duties, procedures and structure of the various branches of the Government at the Union and State levels. Moreover, it also has defined the fundamental rights & duties of the people and the directive principles which are the duties of the State.

Inspire of India adopting the features of a federal system of government, the Constitution has provided for the setting up of a single integrated system of courts to administer both Union and State laws. The Supreme Court is the apex court of India, followed by the various High Courts at the state level which cater to one or more number of states. Below the High Court's exist the subordinate courts comprising of the District Courts at the district level and other lower courts.

An important feature of the Indian Judicial System is that it's a 'common law system'. In a common law system, law is developed by the judges through their decisions, orders, or

judgments. These are also referred to as precedents. Unlike the British legal system which is entirely based on the common law system, where it had originated from, the Indian system incorporates the common law system along with the statutory law and the regulatory law.
Another important feature of the Indian Judicial system is that our system has been designed on the pattern of the adversarial system.

This is to be expected since courts based on the common law system tend to follow the adversarial system of conducting proceedings instead of the inquisitorial system. In an adversarial system, there are two sides in every case and each side presents its arguments to a neutral judge who would then give an order or a judgment based upon the merits of the case.

Indian judicial system has adopted features of other legal systems in such a way that they do not conflict with each other while benefitting the nation and the people. For example, the Su
Court and the High Courts have the power of judicial review. This is a concept prevalent in the American legal system. According to the concept of judicial review, the legislative and executive actions are subject to the scrutiny of the judiciary and the judiciary can invalidate such actions if they are ultra virus of the Constitutional provisions. In other words, the laws made by the legislative and the rules made by the executive need to be in conformity with the Constitution of India.
The powers and the jurisdiction of the Supreme Court, the High Courts and subordinate courts like the District Courts are discussed below.

Jurisdiction & Powers of the Courts
Supreme Court of India One of the most important powers of the Supreme Court of India is that any law declared or order/judgment passed by it is binding on all the courts within the territory of India.
The jurisdiction and powers of the Supreme Court (SC) are defined under Articles 131 to 142 of the Indian Constitution. The jurisdiction includes original, writ, and appellate jurisdiction.

Original Jurisdiction refers to the power of the court to hear disputes when they arise for the first time. By exercising its power of Original jurisdiction the Supreme Court can hear disputes between,
• Government of India (GoI) and one or more States, or
• GoI & any State or States on one side and one or more States on the other, or
• Two or more States, if it involves a question - of law or fact - on which depends the existence or extent of a legal right.
The Supreme Court has also been conferred the power to issue directions or order or writs under Article 32 of the Constitution for the enforcement of any of the rights provided under Part III of the Constitution, including the Fundamental Rights. This is referred to as the Writ jurisdiction of the Supreme Court. The writ jurisdiction of the Apex court under Article 32 is part of its original jurisdiction.
[For more details on Original jurisdiction kindly refer to Articles 32&131 of the Indian Constitution.]
Appellate jurisdiction refers to the power of the Apex court to hear appeals against any judgment, decree or final order (or sentence) of a High Court in a constitutional, civil or criminal case, where exists a substantial question of interpretation of
• the constitution, or

• a law of general importance in case of a death sentence awarded in criminal matters.
However, an additional requirement is that the concerned High Court (HC) under Article 134A has to certify that the case in question is fit for an appeal to the SC.

The jurisdiction of SC also encompasses matters which fell within the jurisdiction of the Federal Court under any law just before the commencement of the Indian Constitution. The Supreme Court can also grant special leave to appeal against any judgment, decree, determination, sentence or order passed by any court or tribunal in the territory of India in any matter. The exception to this rule is the orders, judgments etc passed by any court or tribunal constituted by or under any law relating to the Armed Forces.

Apart from the original, appellate and writ jurisdiction, the Supreme Court also has special advisory jurisdiction regarding matters referred to it by the President if India under Article 143 of the Constitution.
The Apex court also has the power and authority to review any order or judgment passed by it as well as transfer cases from one High Court to another or from the District Court of one state to the District Court of another State.

The High Courts of India are the supreme judicial authority at the State level. There are currently 21 High Courts in the country and of these the oldest High Court of India is the Kolkata High Court, which was established in the year 1862.
Their powers and jurisdiction are similar to that of the Apex court, but with a few differences –
• Any law declared or orders/judgments passed by them are not binding on the other High Courts (HCs) of the country or the subordinate courts which fall under the purview of the other HCs unless the other High Courts choose to follow such law or order or judgment. • Their territorial jurisdiction is varied.
The High Courts are the appellate authority for a State or group of States and get a lot of matters in appeal from the subordinate courts.
They have the power to issue writs, just like the Apex court, under Article 226 of the Constitution, but with one difference. While the Supreme Court has the power to issue writs to enforce only the rights provided under Part III of the Constitution, the High Courts can issue writs for enforcement of the rights under Part III as well as "for any other purpose".
Just like in the case of the Supreme Court, the writ jurisdiction of the High Court is also part of their Original jurisdiction, since all writ petitions are filed directly before the High Court. Apart from writ petitions, any civil or criminal case which does not fall within the purview or ambit of the subordinate courts of a State, due to lack of pecuniary or territorial jurisdiction, can be heard by the High Court of that State. Also certain other matters or issues may be heard by the High Court as part of its original jurisdiction, if the law lay down by the legislature provides for it. For example, the company law cases fall within the original jurisdiction of the High Court.
Therefore, the High Courts' work primarily consists of appeals from the lower courts as well as the writ petitions filed before it under Article 226. The territorial jurisdiction of a High Court, as mentioned earlier, is varied.

Both the Supreme Court and the High Courts are courts of record and have all the powers associated with such a court including the power to punish for contempt of itself.
The Subordinate Courts
The District Courts are at the top of all the subordinate or lower courts. They are however under the administrative control of the High Court of the State to which the district court belongs to.

Their jurisdiction is confined to the districts they are responsible for, which could be just one or more than one. The original jurisdiction of the District Courts in civil matters is confined by not just the territorial limitations, but by pecuniary limitations as well. The pecuniary limitations are

laid down by the legislature and if the amount in dispute in a matter is way above the pecuniary jurisdiction of the District Court, then the matter will be heard by the concerned High Court of that State. In case of criminal matters, the jurisdiction of the courts is laid down by the legislature.
The decisions of the District Courts are of course subject to the appellate jurisdiction of the High Courts.
Apart from these judicial bodies who enforce the laws and rules laid down by the legislature and executive and also interpret them (the Supreme Court & High Courts), there are numerous quasi judicial bodies who are involved in dispute resolutions.

These quasi judicial bodies are the Tribunals and Regulators.

Tribunals are constituted as per relevant statutory provisions and are seen as an alternative forum for redressed of grievances and adjudication of disputes other than the Courts.
Some of the important tribunals are, Central Administrative Tribunal (CAT), Telecom Disputes Settlement Appellate Tribunal (TDSAT), Competition Appellate Tribunal (COMPAT), Armed Forces Tribunal (AFT), Debt Recovery Tribunal (DRT), etc.
The kinds of cases the tribunals hear are limited to their specific area. That is TDSAT can hear only matters related to telecom disputes and not matters of armed forces personnel. So the area of operation of these tribunals are marked out at the beginning itself by the statute under which it's constituted.
The same hold true for the various Regulators like – TRAI, DERC, etc. They regulate the activities of companies which fall under their purview as per the statute.
Thus, the Indian Judicial System is a mix of the Courts and the Tribunals & Regulators, and all these entities working together as part of an integrated system for the benefit of the nation.

Unit-IV:
Legal Writing and Research

Introduction
India's first major civilization flourished around 2500 BC in the Indus river valley. This civilization, which continued for 1000 years and is known as Harappan culture, appears to have been the culmination of thousands of years of settlement. For many thousands of years, India's social and religious structures have withstood invasions, famines, religious persecutions, political upheavals and many other cataclysms. Few other countries have national identities with such a long and vibrant history. The roots of the present day human institutions lie deeply buried in the past. This is also true about the country's law and legal system. The legal system of a country at any given time cannot be said to be creation of one man for one day; it represents the cumulative effect of the endeavor, experience, thoughtful planning and patient labor of a large number of people throughout generations. The modern judicial system in India started to take shape with the control of the British in India during the 17th century. The British Empire continued till 1947, and the present judicial system in India owes much to the judicial system

developed during the time of the British.

1. Judicial Administration in Ancient India

Law in ancient India meant "Dharma" in the broader sense. The Vedas, regarded as divine revelation, were the supreme source of authority for all codes which contained what was then understood as law or dharma. The traditional records have governed and molded the life and evolution of the Hindu community from age to age. These are supposed to have their source in the Rigveda. Justice was administered in ancient India according to the rules of civil and criminal law as provided in the Manusmriti. There was a regular system of local courts from which an appeal lay to the superior court at the capital, and from there to the King in his own court. The King's Court was composed of himself, a number of judges, and his domestic chaplain who directed his conscience; but they only advised and the decision rested with the King. Arbitrators in three gradations existed below the local courts: first of kinsmen, secondly of men of the same trade, and thirdly, of townsmen. An appeal lay from the first to the second, from the second to the third, and from the third to the local court. Thus under this system there were no less than five appeals. Decision by arbitration, generally of five (Panches), was very common when other means of obtaining justice were not available.

The village headman was the judge and magistrate of the village community and also collected and transmitted the Government revenue.

2. Legal System in India during the British Period

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back centuries, forming a living tradition which has grown and evolved with the lives of its diverse people. The history of the present judicial system may be traced back to the year 1726, when a Charter was issued by King George I for bringing about important changes in the judicial administration of the Presidency Towns of Bombay, Calcutta and Madras. The system of appeals from India to the Privy Council in England was introduced by this Charter in 1726.

In order to bring about better management of the affairs of the East India Company, the East India Company Regulating Act of 1773 was promulgated by the King. This Act subjected the East India Company to the control of the British Government and made a provision for His Majesty by Charters or Letters Patent to establish the Supreme Court of Judicature at Fort William at Calcutta, superseding the then prevalent judicial system. The Supreme Court of Judicature at Fort William was established by a letter patent issued on March 26, 1774. This Court, as a court of record, had full power and authority to hear and determine all complaints against any of His Majesty's subjects for any crimes and also to entertain, hear and determine any suits or actions against any of His Majesty's subjects in Bengal, Bihar and Orissa. Two more Supreme Courts, conceived along the same lines as that of the Supreme Court of Calcutta, were established at Madras and Bombay by King George III through Charters issued on 26th December, 1800 and on 8th December, 1823 respectively.

The role of the Privy Council has been a great unifying force and the instrument and embodiment of the rule of law in India. The Judicial Committee of the Privy Council was made a Statutory Permanent Committee of legal experts to hear appeals from the British Colonies in the year 1833 by an Act passed by the British Parliament. Thus, the Act of 1833 transformed the Privy Council into a great imperial court of unimpeachable authority.

The Indian High Court's Act 1861 reorganized the then prevalent judicial system in the country

by abolishing the Supreme Courts at Fort William, Madras, and Bombay, and also the then existing Sadar Adalats in the Presidency Towns. The High Courts were established having civil, criminal, admiralty, vice-admiralty, testimony, intestate, and matrimonial jurisdiction, as well as original and appellate jurisdiction.

Provincial autonomy was established in India with the establishment of the Government of India Act, 1935, which introduced responsibility at the provincial level and sought the Union of British Indian Provinces with the rulers of Estate in a federation. As a federal system depends largely upon a just and competent administration of the law between governments themselves, the 1935

Act provided for the establishment of the Federal Court, forerunner of the Supreme Court of India. The Federal Court was the second highest Court in the judicial hierarchy in India.

The Federal Court was the first Constitutional Court and also the first all-India Court of extensive jurisdiction, and it had Original Jurisdiction in matters where there was dispute between the provinces or federal States. It was also the Appellate Court for the judgments, decrees, or final orders of the High Courts. Thus, the Federal Court of India had original, appellate and advisory jurisdiction. The doctrine of precedent in India also had its roots in Federal Court as the law declared by the Federal Court and Privy Council has been given binding affect on all the courts in British India.

2. Constitution of India

The Indian Constitution is basically federal in form and is marked by the traditional characteristics of a federal system, namely Supremacy of the Constitution, division of power between the Union and State, and the existence of an independent judiciary in the Indian Constitution. The three organs of the State – State, Legislature and Judiciary – have to function within their own spheres demarcated under the Constitution. In other words, the doctrine of Separation of Powers has been implicitly recognized by the Indian Constitution. The basic structure of the Constitution is unchangeable and only such amendments to the Constitution are allowed which do not affect its basic structure or rob it of its essential character. The Constitution of India recognizes certain basic fundamental rights for every citizen of India, such as the Right to Equality, the Right to Freedom, the Right against exploitation, the Right to Freedom of Religion, Cultural and Educational rights, and the Right to Constitutional Remedies. Any infringement of fundamental rights can be challenged by any citizen of India in the court of law. The Constitution of India also prescribes some fundamental duties on every citizen in India.

4. Union and State Judiciary

The Constitution of India deals with the "Union Judiciary," which provides for the establishment and constitution of the Supreme Court. The Supreme Court, since its inception, was empowered with jurisdiction far greater than that of any comparable court anywhere in the world. As a federal court, it has exclusive jurisdiction to determine disputes between the Union of India and any state and the states inter-se. Under Article 32, it issue writs for enforcement of fundamental rights guaranteed under the Constitution of India. As an appellate court, it could hear appeals from the state high courts on civil, criminal and constitutional matters. It has the

special appellate power under Article 136 to grant leave to appeal from any tribunal or court. Thus, it is a forum for the redressing of grievance not only in its jurisdiction as conferred by the constitution, but also as a platform and forum for every grievance in the country which requires judicial intervention. The Supreme Court, with the present strength of 25 judges and the chief justice, is the repository of all judicial powers at the national level. Supreme Court judges holds office until they reach the age of 65 years.

The State Judiciary consists of a high court for each state and subordinate courts in each district. Each high court consists of a chief justice and a number of puisne judges. The high court judges are appointed by the President after consultation with the chief justice of India and the chief justice of that state. The high court judge holds office until he reaches the age of 62 years.

5. Independence of Judiciary

The principle of the independence of justice is a basic feature of the constitution. In a country like India, which is marching along the road to social justice with the banner of democracy and the rule of law, the principle of independence of justice should not only be treated as an abstract conception but also a living faith. Independence of justice deals with the independence of the individual judges in relation to their appointment, tenure, and payment of salaries, and also non-removal except by process of impeachment. It also means the "Institutional Independence of the Judiciary". The concept of independence of justice is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. It is absolutely essential that the judiciary must be free from executive pressure or influence and this has been secured by the constitution maker by making elaborate provisions in the constitution of India.

6. Law Commission of India

The Law Commission of India was started in 1955 by an executive order. In order to confront new situations and problems which arise from time to time and to amend law which calls for amendment, a body like the Law Commission is absolutely essential. This is because it is a body which is not committed to any political party and which consists of judges and lawyers, who are expert in the field and who would bring to bear upon the problems purely judicial and impartial minds. As the parliament is very busy in day-to-day debates and discussions, its members do not have the necessary time to consider legal changes required to meet the new situations and problems in a constructive manner. For that the Law Commission may be able to serve its purpose effectively.

The function of the law commission is to study the existing laws, suggest amendments to the same if necessary, and to make recommendations for enacting new laws. The recommendations for amendment of the existing laws are made by the commission either suo motu or on the request of the government. Presently, the eighteenth Law Commission is in existence. The Law Commission in India has brought out 207 scholarly reports to date on various legal aspects. The full text for each report is available on the commission's website.

UNIT- 4

7. Legal Profession

The profession of law is called a noble profession, and lawyers are a force for the perseverance and strengthening of constitutional government because they are guardians of the modern legal system. The first step in the direction of organizing a legal profession in India was taken in 1774 with the establishment of the Supreme Court at Calcutta. The Supreme Court was empowered "to approve, admit and enroll such and so many advocates, Vakils and Attorneys-atlaw" as to the court "shall seem meet". The Bengal Regulation VII of 1793 for the first time created a regular legal profession for the companies' courts. Other, similar regulations were passed to regulate the legal profession in the Companies courts in Bengal, Bihar, Orissa, Madras, and Bombay. The Legal Practitioner Act of 1879 was enacted to consolidate and amend the law relating to legal practitioners. This empowered an advocate/Vakil to enroll on the roll in any high court and to practice in all the Courts subordinate to the high court concerned, and also to practice in any court in British India other than the high court on whose roll he was not enrolled. After independence of India, it was felt that the judicial administration in India should be changed according to the needs of the time. Presently, the legal profession in India is governed by the Advocates Act of 1961, which was enacted on the recommendation of the Law Commission of India to consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Council and the All India Bar. Under the Advocates Act, the Bar Council of India has been created as a statutory body to admit persons as advocates on its roll, to prepare and maintain such roll, to entertain and determine instances of misconduct against advocates on its roll and to safeguard the rights, privileges, and interests of advocates on its roll. The Bar

Council of India is also an apex statutory body which lays down standards of professional conduct and etiquette for advocates, while promoting and supporting law reform.

8. Legal Education

Legal education in India is regulated by the Bar Council of India, which is a statutory body constituted under the Advocates' Act of 1961.

There are two types of graduate level law courses in India: (i) A 3 year course after graduation; and, (ii) A 5 year integrated course after the 10 + 2 leading to a graduate degree with honors and a degree in law. The Bar Council of India rules prescribe norms for recognition of the universities/colleges imparting legal education.

A graduate from a recognized law college, under the Advocates Act of 1961, is only entitled to be registered as an advocate with the Bar Council, and any law graduate registered with Bar Council is eligible to practice in any court of law in India.

9. Manifestations of Legal Literature

Legal fraternity may need different types of information, such as case laws, statutory provisions, rules framed under any act, object and reasons of any act, amendment of any act, notifications issued under any particular statute, debates in parliament at the time of enactment of any particular act, or academic articles on a given topic in different situations.

Legal literature manifests itself in many forms such as:

(i) Bare Acts
(ii) Commentaries on specific laws
(iii) Manuals/local acts
(iv) Reports
a) Law Commission Reports

b) Committee/Commission Reports
c) Annual Reports
d) Parliamentary Committee Reports
- Joint Committee
- Select Committee

- Standing Committee

10. Law Reporting in India

The theory of binding force of precedent is firmly established in England. A judge is bound to follow the decision of any court recognized as competent to bind him, and it becomes his duty to administer the law as declared by such a court. The system of precedent has been a powerful factor in the development of the common law in England. Because of common law heritage, the binding force of precedents has also been firmly established in India, meaning thereby that the judgments delivered by the superior courts are as much the law of the country as legislative enactments. The theory of precedent brings in its wake the system of law reporting as its necessary concomitant. Publication of decisions is a condition necessary for the theory of precedent to operate; there must be reliable reports of cases. If the cases are to be binding, then there must be precise records of what they lay down, and it is only then that the doctrine of stare decisis can function meaningfully. The Indian Law Reports Act of 1875 authorizes the publication of the reports of the cases decided by the high court's in the official report and provides that, "No Court shall be bound to hear cited, or shall receive or treat as an authority binding on it the report of any case decided by any of the said High Courts on or after the said day other than a report published under the authority of the Governor-General-in-Council." Though the Law Reports Act gave authenticity to the official reports, it did not take away the authority of unpublished precedents or give a published decision a higher authority than that possessed by it as a precedent. A Supreme Court or high court decision is authoritative by itself, not because it is reported. The practice of citing unreported decisions thus led to the publication of a large number of private reports. The unusual delay in publication of official reports and incompleteness of the official reports made the private reports thrive, resulting in a number of law reports in India being published by non-official agencies on a commercial basis. In India, there are more than 300 law reports published in the country. They cover a very wide range and are published from various points of view. A "union catalogue" compiled by the Supreme Court Judges' Library of the current law journals subscribed by the libraries of various high court and Supreme Court judges (appended at the end of this paper) gives details of various law reports published from India.

It also gives details of various foreign law reports submitted by law libraries in India, which gives an idea of the "foreign journals" being used by the legal fraternity in the country.

11. Legal Research Methodology

Legal fraternity may require different types of information for different purposes. One's search strategy for retrieving the desired information has to be formulated on the basis of

(v) Gazettes
a) Central Government
b) State Government

(vi) Parliamentary Debates
• Constituent Assembly Debates • Lok Sabha Debates • Rajya Sabha Debates
(vii) Parliamentary Bills
• Lok Sabha Bills • Rajya Sabha Bills • State Legislature Bills
(viii) Law Journals
• Academic Journals (containing articles only) • Law Reports (containing only the full text of case laws)
• Hybrid, i.e. a combination of both articles and case laws. Some of the journals also publish statutory materials such as acts, amendments, rules, etc. • Only legislative materials such as acts, rules, notifications, etc.
(ix) Digests
(x) Legal Dictionaries/Law Lexicons
(xi) Legal encyclopedic works: such as American jurisprudence, corpus juris secundum, Halsbury law of England and Halsbury laws of India.
the "information requirement" at hand. The most common types of information sought by the legal fraternity are: o Any particular case law o Case laws on a specific topic o Legislative intent of any act o Material for speeches to be delivered o Legislative history of any particular enactment o Corresponding foreign law to any statutory provision in India o Meaning of any particular "word" or "phrase"

11.1 Finding Case Laws The most common methods for finding the case laws on a subject are "digests" and "commentaries" on particular subjects. Subject indexes given at the end of the commentaries are a very useful aid to find out the desired case law on specific aspect. If there is no commentary on any particular enactment, "AIR Manual" published by M/s All India Reporters, Nagpur can be treated as a very useful source for finding out the case law on any Central Statute. In the electronic era, legal databases both online and on CD-ROM, are also very useful for finding any particular case law or case laws on specific topics.
11.2. Legislative Intent In case of any ambiguity while interpreting the provision of any statute, judges have to examine the "legislative intent" of the legislature for enacting a particular legislation. The legislative intent of any provision can be ascertained with the help of the following tools: • Objects and Reasons of the Act (published in the bill) • Parliamentary debates • Law Commission Reports (if the bill has been introduced on the recommendation of the Law Commission) • Standing Committee/ Joint/Select Committee Reports • Reports of the Committee appointed by the ministries for enacting/reviewing any existing enactments.

"Objects and reasons" are published in the bill introduced in the Parliament for ascertaining the legislative intent of any particular provision; they are considered very important and, for that reason, the corresponding bill of any particular act has to be examined.

Law Commission Reports, while proposing any new enactment or proposing any amendment in the existing statute, review the legal position on that particular aspect in India as well as in other countries. Hence Law Commission reports are treated as useful tools for ascertaining the legislative intent.
When a bill is introduced in the Upper House or Lower House, sometimes it is referred to a Parliamentary Committee which examines the bill and submits a report to the Parliament. Hence, these reports also contain the background material of any act and can be treated as a

useful source for determining legislative intent. "Parliamentary debates" on any bill are always helpful in assessing the legislative intent of the enactment of any particular statute because they contain the speech given by the law minister at the time of introducing the bill and the specific discussions in the House thereafter. 11.3. Legislative Intent of Tax Statutes/Excise and Customs, Tariff, Excise Tariff and Service Tax etc. Tax Statutes are amended on a year-to-year basis by the "Finance Act" passed by the Parliament/State Legislatures after the budget session. Whenever the constitutionality of any provision is challenged or there is any dispute in the interpretation of any provision in any taxing statute, courts have to ascertain the legislative intent of that provision. Legislative intent of any taxing statutes may be ascertained with the help of the following documents: • "Notes on Clauses" given in the Finance Bill/Finance Act. • "Budget Speech" of the Finance Minister. • "Parliamentary Debates" related to specific clauses. In every finance bill there is a note for each clause under the heading "Notes on Clauses," which gives an indication of the purpose for which the corresponding provision is introduced.
Speeches delivered by the Finance Minister of the Union government while presenting the budget in the Parliament or by the State Finance Ministers, while presenting the budget in the state legislatures, are important instruments for ascertaining the purpose of levying a particular tax and serve as an important source of information for the honorable judges for interpreting the provisions of a taxing statute while rendering a decision in any case.

11.4. Research for the Material for Preparing Speeches
Articles published in the law journals on any specific topic are necessary informational resources for writing speeches and can be searched by browsing through the journals, browsing through the legal databases, and browsing through the indexes of the legal articles.
Besides articles, legislative histories of the enactment relating to the topic, objects and reasons, law commission or committee reports, if any, on the topic concerned, and statistics, are important. The internet is a useful tool for retrieving the statistical information on the relevant topic through various governmental websites. The legislative history of any particular enactment can be traced with the help of the latest Bare Act. After identifying the amendments in a particular act, original amendments are to be retrieved from the government gazettes or journals containing statutory information. Objects and reasons of the particular amendment also give useful insight for the purpose of amendment in any particular act. The legislation database, developed by the Supreme Court judges' library, is also a very useful tool for ascertaining the legislative history of any central act in India. This database is going to be made available very soon on the website of the Supreme Court.
Corresponding foreign law to any statutory provision in India can be traced with the help of any international legal database containing statutory information, such as Westlaw or LexisNexis. Commentaries on the foreign case laws on the subject may also be examined for identifying the corresponding statutory provisions.

11.5. Law Lexicons/Legal Dictionaries When the meaning of a particular word or phrase used in any statute is to be interpreted, in case of any dispute between the parties on the interpretation of a particular word, law lexicons/ legal dictionaries are to be consulted in order to find out whether that particular word has been interpreted by any court.

And if that word has been interpreted in any decision by any court, the court has to give its decision on the basis of the appropriate meaning of that particular word defined in any decision of any court.

12. Important Legal Sources in India
12.1. Commentaries

CONSTITUTIONAL LAW

1 Seervai H.M. Constitutional Law of India: A Critical Commentary, Edn. 4, Vols. 3, 1996.
Bombay: N.M. Tripathi Pvt. Ltd., 1991-1996.
2 Basu D.D. Shorter Constitution of India, Edn. 13.
Nagpur: Wadhwa & Co., 2001
3 Jain M.P. Indian Constitutional Law, Edn. 5, Vols. 2.
Nagpur: Wadhwa & Co., 2003
4 Datar Arvind P. Commentary on the Constitution of India, Edn. 2, Vols. 3.
Nagpur: Wadhwa & Co., 2007

ADMINISTRATIVE LAW

1 Jain M.P. Principles of Administrative Law, Edn. 6, Vols. 2.
Nagpur: Wadhwa & Co., 2007
2 Wade H.W.R. Administrative Law, Edn. 9.
New Delhi: Oxford University Press, 2005 (Indian Edn. 2004)

INDIAN PENAL CODE

1 Batuk Lal & Nakvi S.K.A.
Commentary on the Indian Penal Code, Vols. 2.
New Delhi: Orient Pub. Co., 1860
2 Ratan Lal & Dhiraj Lal Law of Crime: A Commentary on Indian Penal Code 1860, Edn. 26, Vols. 2.
New Delhi: Bharat Law House, 2007.
3 Gour Hari Singh Commentaries on the Indian Penal Code, Edn. 13 (Abridged) 2006
Allahabad : Law Publishers, 2006

CODE OF CRIMINAL PROCEDURE

1 Mitra B.B. Code of Criminal Procedure, 1973, Edn. 20, Vols. 2.
Calcutta: Kamal Law House, 2003.
2 Ratan Lal & Dhiraj Lal Code of Criminal Procedure, Edn. 18, Vols. 2.
Nagpur: Wadhwa & Co., 2006.
3 Sarkar S.C. & Ors. Law of Criminal Procedure, Edn. 9, Vols. 2.
Nagpur: Wadhwa & Co., 2007
4 Princep Code of Criminal Procedure, Edn. 19, Vols. 2.
Delhi: Delhi Law House, 2008.

COMPANY LAW

1 Ramaiya A. Guide to Companies Act, Edn. 16, Vols. 3 + 3 Appendix Volumes.
Nagpur: Wadhwa & Co., 2004.

INCOME TAX

1 Kanga J.B. & Palkhivala N.A.
Law and Practice of Income Tax, Edn. 9, Vols. 2.
New Delhi: Lexis Nexis, 2004.

EVIDENCE

1 Monir M. Law of Evidence, Edn. 14, Vols. 2.
Delhi: Universal Law Pub. Co. 2006.
2 M.C. Sarkar & Ors. Law of Evidence in India, Pakistan, Bangladesh, Burma & Ceylon, Edn. 16, Vols. 2.
Nagpur; Wadhwa & Co., 2007.

CODE OF CIVIL PROCEDURE

1 Mulla D.F. Code of Civil Procedure, Edn. 17, Vols. 4.
New Delhi: Lexis Nexis, 2007
2 Sarkar P.C. & Sarkar S.C.
Law of Civil Procedure, Edn. 11, Vols. 2.
Nagpur: Wadhwa & Co., 2006.
3 Thakker C.K. Code of Civil Procedure, 1908, Edn. 5, Vols. 1-3-
Lucknow: Eastern Book Co., 2000-

CONTRACT LAW

1 Pullock F. & Mulla D.F.
Indian Contract and Specific Relief Acts, Edn. 13, Vols. 2.
New Delhi: Lexis Nexis, 2006.

ARBITRATION

1 Kwatra G.K. Arbitration and Conciliation Law of India, Edn. 7.
New Delhi: ICA/Universal Law Pub., 2008
2 Markanda P.C. Law relating to Arbitration & Conciliation, Edn. 6.
Nagpur: Wadhwa & Co., 2006.
3 Bachawat R.S. Law of Arbitration & Conciliation, Edn. 4, Vols. 2.
Nagpur: Wadhwa & Co., 2005.
4 Malhotra O.P. & Malhotra Indu
Law & Practice of Arbitration and Conciliation
New Delhi: Lexis Nexis, 2006.

INTERPRETATION OF STATUTES

1 Singh, Guru Prasanna Principles of Statutory Interpretation, Edn. 10.
Nagpur: Wadhwa & Co., 2006.

12.2. Digests

1 Surendra Malik Supreme Court Yearly Digest
Lucknow: E.B. Co., 2007.
2 Complete Digest of Supreme Court Cases, Vol. 1-10- (Since 1950-
Lucknow: E.B. Co., 2007
Supreme Court Millennium Digest 1950-2000, Vol. 118.
Nagpur: AIR Publications.

12.3. Law Lexicon

1 Aiyar Ramanatha P. Advanced Law Lexicon: Encyclopedia Law Dictionary with Legal Maxims, Latin Terms and Words & Phrases, Edn. 3, (Revised & Enlarged), Vols. 4.
Nagpur: Wadhwa & Co., 2005
2 Aiyar K.J. Judicial Dictionary, Edn. 13
New Delhi: Butterworths India 2001

3 Prem, Daulat Ram Judicial Dictionary, Vols. 2
Jaipur: Bharat Law Publications, 1992.

4 Legal Glossary published by Ministry of Law, Justice & Co. Affairs, 2001

12.4. Encyclopedic Reference Source

1 Halsbury's Laws of India, Approx 30 Vols.
New Delhi: Butterworths 1999-

12.5. Manual of Central Acts

1 Manohar & Chitley AIR Manual: Civil and Criminal, Edn. 6, Vol. 1-10, 1314-
Nagpur: AIR Pvt. Ltd., 2004
2 Encyclopedia of Important Central Acts & Rules, Vols. 20,
Delhi: Universal Law Publishers, 2004, Reprint 2005

12.6. Statutory Rules

1 Malik & Manchanda Encyclopedia of Statutory Rules Under Central Acts, Edn. 2
Allahabad: Law Publishers (India Pvt.) Ltd., 1989.

12.7. Important Law Reports in India

There are approximately 350 law journals, which are being published in India. The most cited law report containing Supreme Court decisions is "Supreme Court Cases (SCC)"followed by "All India Reporter (AIR)" and "Supreme Court Report (SCR)". Major law journals containing the Supreme Court judgments are as under:

1. Supreme Court Cases
2. AIR (SC)
3. Supreme Court Reports
4. Judgment Today
5. SCALE

An analysis of the citations in the Supreme Court shows that "Supreme Court Cases" is the most used law report cited by about 60% of the advocates in the Supreme Court.

12.8. Important Academic Law Journals

1 Annual Survey of Indian Law
New Delhi: ILI
2 Journal Indian Law Institute
3 Journal of Constitutional & Parliamentary Studies
4 Indian Journal of International Law
5 Indian Bar Review
6 National Law School of Indian Review
7 Journal of Human Rights (NHRC)

13. Important Legal Websites in India The Supreme Court judges' library has developed some very useful in-house legal databases, namely "SUPLIS" "SUPLIB" and"LEGISLATION". These databases are going to be released very soon on the website of the Supreme Court of India.

3.1. SUPLIS (Database of Case Laws)

SUPLIS is an indexing database of case laws decided by the honorable Supreme Court. This

database consists of more than 42,000 case laws since 1950. This database is very useful in finding out the desired case laws. As soon as a cyclostyled copy of any judgment is received in the library it is immediately entered in this database after assigning subject headings and a famous case name (if any). This database is unique, as it contains some important features that are not available in other legal databases developed by commercial vendors.

Besides retrieval of case laws by subject and case title, it also provides search capability by a "famous case name" (if any) assigned at the time of the entry – for example: "Bhopal Gas Case", "Rajiv Gandhi assassination case," "Mandal Commission Case," etc. SUPLIS also provides "equivalent citations" of case laws so that, in the event that a particular journal is unavailable, that case law could be made available from another journal with the help of this facility. The retrieval menu of the SUPLIS is as under:

13.2. SUPLIB (Database of Legal Articles)

Research articles published in various law reports and academic journals contain valuable information as they are written after comprehensive research on the aspect they deal with. SUPLIB is a database of legal articles published in about 200 foreign and Indian law reports subscribed to by the library. Presently, this database consists of more than 12,000 articles. Immediately after receipt of a journal in the library, important articles are identified, indexed

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3. Legislations (Database of Acts, Rules & all Statutory Materials)

Statutory materials such as bills, acts, joint committee reports, select committee reports, law commission reports, parliamentary and assembly debates, rules, by-laws, schemes, etc, are among the most important and sought-after library materials in any law library. The Legislative Database is a database for central government acts including amendments, rules, bills, and all subordinate legislations relating to central as well as state acts. This database is very useful for tracing the complete legislative history of any particular central or state act. All the amendments in acts, rules, schemes and by-laws framed under any particular enactment could be readily identified and retrieved with the help of their citations / source given in this database. If the text of any particular central act is desired, a link for "India Code," which is a database of the Ministry of Law, is also provided to access the full text of the desired central act. The retrieval menu of this database is as under:

4. Supreme Court of India This is the official website of the Supreme Court of India. It contains information about the full text of the Constitution of India, the jurisdiction of the Supreme Court, golden jubilee celebration, Rules, former CJI's, present CJI and judges, calendar of the Supreme Court, registrars, and former judges. This site also has links to "Indian Courts", "JUDIS", "Daily Orders", "Case Status", "Cause List", "Courts Websites", and India Code. The "Equivalent Citation Table" developed by the Supreme Court Judges Library, which gives parallel citations of any case in four major law repots in India, namely "Supreme Court Cases", "AIR(SC)", "JT" and "SCALE," can also be accessed through this website. 5.

Parliament of India This consists of three separate home pages: President of India, Rajyasabha & Lok Sabha. (i) President of India This consists of information & photographs of Rastrapati Bhawan a photo gallery of former presidents along with other information, parliamentary addresses, speeches, addresses and parliamentary addresses of the president. (ii) Rajya Sabha This contains information about business, members, questions, debates, legislation, and committees. It is useful for retrieving information from Rajyasabha debates, information about the Rajyasabha bills, and various committees constituted by Rajyasabha. It also provides links to the other country's parliamentary sites, as well as legislative sites for all the states of other countries. (iii) Lok Sabha

This is also a very important site which provides information regarding recent and previous members, committees, procedures of the house, debates, etc. It is useful for retrieving the information regarding any bill pending in the house, debate of the house, procedure of the house and about the collection of the parliament library. It also provides a link to various official sites in the country. A link to all of the sites of various ministries is also provided.

6. TRAI

This is the official site of the Telecom Regulatory Authority of India, which informs about the TRAI Act. The Telecom policy service provides registered agency regulations, which can be retrieved through this site. This site is important for retrieving tariff orders as well as the judgments delivered by the authority. 7. Central Electricity Regulatory Committee This site is an important site for knowing about the regulations, orders, power data, tariff notifications, and schedules of hearings of the authority. All the orders / decisions of the authority are available on this site in a chronological fashion. 8. SEBI Securities and Exchange Board of India This site is the official site of the Securities and Exchange Board of India, and provides information on the legal framework of the SEBI, including auto rules. Regulations, orders / rulings of the tribunal as well as of chairman / members, and reports and documents of the boards are also available on this site. 9. Ministry of Company Affairs This is an important site for knowing any information related to company affairs. Reports of various committees such as company law, notifications and circulars issued by the Ministry of Company Affairs and Information about the vanishing companies, corporate groups and concept paper are available on this site. 10. Ministry of Law & Justice This is a very important site as it contains a link to "India Code," which provides online access to the full text of any central act of Parliament. It also provides a link to various important legal websites.

11. Law Commission of India

This is a very useful site as it contains the full text of many law commission reports and a list of all law commission reports in the countries. It also contains consultation papers of the law commission on various legal aspects. 12. India Code Information System (incodis) This website belongs to legislative department of India. This is an important site for retrieving the full text of any of the central acts which are being regularly updated after amendment, if any. The full text of the Constitution of India is also available on this site. It also contains the text of the parliamentary bills / legislative bills, as well as information regarding the bills which are being introduced or passed in the current session of the Parliament. A CD-Rom version of the Constitution of India and the election laws manual could also be ordered with the help of a

requisition form available on this site. 13. India Image This is another important site developed by NIC, which is being framed as, “gateway to the government of India information over the web”. This is a very comprehensive site which verbally provides something on everything about the government of India. It contains a Government of India directory, India fact file, and information about any district in India with facts and statistics. Results of various examinations and important documents such as the union budget, economic survey, and India vision 2020 are also available. It also contains government policies, provides links to Indian Railways and Indian Airlines and all other important Indian websites. Other related information could also be retrieved with the help of this site. 14. Indian Judiciary This is the most important website of the Government of India, which provides invaluable information regarding the judiciary, covering all the cases of the Supreme Court and High Courts (reportable / non-reportable), decided or pending. It also provides information about all of the high courts. Its sub-websites are as follows:

• Judis: Contains information regarding the judgments of the Supreme Court (decided cases) from 1950 to date. It also covers judgments of the high courts. • Daily Orders: It provides the latest daily orders of the Supreme Court and high courts. • Courtnic: The current status of any case, i.e. information of all pending and disposed cases including next date of listing, date of disposal, etc, is easily available on this site. It also provides the text of latest orders. • Causelists: Contains information regarding cause lists, including weekly lists, advance lists, daily lists and supplementary lists of the Supreme Court and high courts. • Court Web Sites: This provides links to the websites of the high court and some district courts. • India Code: Can be accessed from the provided link on this site.

(b) Legal Research

Meaning of research:

Generally, the term "research" is taken as an academic activity or as an art of scientific investigation. It is not only an important prerequisite for dynamic social order but also a systematic and objective analysis of information that is discovered. It is an established fact that the research is a foundation of the progress and prosperity achieved and may be achieved in future. Nobody can get specific and deep knowledge on any matter without having research that is why, research plays significant role in gaining knowledge. As a result, research can be defined as a systematic search for attaining deep knowledge.

The Oxford Advanced Learners Dictionary defined the term "research" as a careful investigation or inquiry especially through search for new facts in any breech of knowledge.

Encyclopedia of social science defined it as the manipulation of things, concept or symbols for generalizing to extend, correct or verify knowledge, whether that knowledge aids in construction of theory or in the practice of an art. Exhaustive investigation of a specific subject matters, which has its aim, the advancement of making knowledge. Keeping in view the said definitions, the term "research" can be defined as a method of gaining specific knowledge. It is not only a major factor for human-development but also of civilization. Similarly, research not only plays a signification role in academic scenario but also plays a vital role in practical life of whole humankind. There are various methods used for pursuing research. Method applicable for research depends on the objectives of the research for instance impact analysis, theory inception or experiment, etc. Generally, research methods are divided as qualitative and quantitative,

depending on its nature. The former method is understood as descriptive research and the latter as numerical. The qualitative research is most suitable for social research.

Legal Research:

Generally, law is enacted to regulate the human conduct for the welfare of humankind. It is considered that law should be enacted to protect the interest of a person, society, and the county as a whole. The goal of legal research cannot be distinguished from the goal of law. As law is directly related with the social science, its research is also automatically related with the research of social science.

This is the age of democracy and good governance. Democracy and good governance depend upon the rule of law. In democratic society, law is changed for welfare of the people and society along with the pace of time. Alternatively, law shall not be constraint for the development rather it be facilitator. That is why law needs charges. Similarly, legal research is essential to have changes in law for socialization and betterment of the people and society.

Now-a-days, legal research is not limited only on the analyzing of criminal behavior, activities of public, court, public prosecutors, legal practitioners etc. but it also includes the protection of environment of all creatures in the world and the development as well. As a result, legal research plays crucial role for the welfare of the humankind and is more important than others to bring positive changes in our society and at the end in the whole humankind.

Meaning of legal research:

"Legal research is the field of study concerned with the effective marshaling of authorities that bears in a question of law"

"The systematic investigation of problems and matters concerned with such as codes, acts etc. are called legal research."

"Legal research is an investigation directed to discovery of some fact; careful study of a subject."

Keeping in view to the said definitions, we can say here that legal research is an act that discovers the legal principles relevant to a particular problem and it is the foundation for good legal advice.

Primary and Secondary Sources:

Primary sources contain the actual law. Constitutions, court decisions, cases, statutes, treaties and administrative regulations are all examples of primary sources.

Secondary sources are materials, which comment, explain and annotate on these primary sources. Usually, they include treaties, legal periodical, articles, legal encyclopedias, annotations, law dictionaries, commentaries, continuing legal education publications, opinions of the Attorney General, Secretary of the Ministry of Law, Justice and Parliamentary Affairs and other agencies.

On the other hand, finding tools are reference publications, which are used to find out primary and secondary sources. They include digests, indexes to legal periodicals, and indexes to annotations, law dictionaries and citations.

1. Primary Sources: The following sources are considered as primary sources in the legal research by the legal professionals.

• Constitutions, • Statutes, • Treaties, • Court decisions, and • Administrative regulations.

2. Secondary Sources: The following sources are the secondary sources used in the legal research by the legal professionals.

• Treaties, • Commentaries, • Law review/Legal periodicals,

• Articles, • Continuing legal education publications, • Law encyclopedia, • Annotations, and • Opinions of the Secretary of Justice. •

Methods/ Techniques of legal research:

In pursuing research for disclosing facts or proving a hypothesis true or false, various kinds of methods can be applied for the successful research. The following research methods collectively or individually can be applied for the successful research as the main methods.

1 Observation:

Information can be received by observing, visiting and viewing the place, society, events or the things pertinent to the study or research. Observation can be taken as primary and reliable source of information. If a researcher is careful, he/she can get the points that may play the significant role in his research or study. Observation is a method that is common in the research of legal and social science. Observation should be guided by a specific research purpose, the information receive from the observation should be recorded and subjected to checks on the trail of reliability.

2 Questionnaires:

In questionnaire method, a researcher develops a form containing such questions pertinent to his study. Generally, the researcher prepares yes/ No questions or short answer questions. In questionnaire method, researcher distributes such forms to the people to whom he/she deems appropriate. The people, to whom the questionnaires have been distributed, should answer that what they have known by filling out the form and return it to researcher.

3 Sampling:

When the subject of research is vague, comprehensive and when each indicator cannot be taken by virtue of financial constraint, time and complexity, etc. then the researcher can randomly collect data/sample depending on the reason. This is called as sampling method. For instance, in a demographic research, part of population represent various groups can be taken into consideration. That is why, it is said that sample is a method that saves time and money.

4 Interviews:

A researcher can receive information sought by him/her asking people concerned through interview. It is a direct method of receiving information. Interview can be generally held asking questions in face-to-face contact to the person or persons and sometimes through telephone conversation. This method is common in the research of legal and social science. In this method, the researcher has to use less skill and knowledge to receive information he/she had sought. Interview is known as an art of receiving pertinent information. In the opinion of P.V. Young, interview can be taken as a systematic method by which a person enters more or less imaginatively into the life of a stranger.

5 Case Study:

Case study is taken as one of the important a and reliable methods for legal research. Case study can be defined as a method of research where facts and grounds of each legal issue are dealt with by taking individual case. P.V. Young pointed out that case study is a method of exploring and analyzing of life of a social unit such as a person, a family, an institution, a cultural group or even entire community. Goode and Hatt state that case study is a way of organizing social data so as to preserve the utility character of the social object being stud

LAW OF CONTRACT-103

Unit-I: Formation of Contract

A. Meaning, nature and scope of contract

"All agreements are contracts, if they are made – by free consent of the parties, competent to contract, for a lawful consideration and with a lawful object, and not hereby expressly declared to be void." Sec.10.

Offer + acceptance = Promise
+
consideration
=
Agreement
+
enforceability By Law

Contract

1. Proper offer and proper acceptance with intention to create legal relationship.

   Cases;- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.
   In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)
   In case of commercial agreements, the law presume that the parties had the intention to create legal relations.
   [an agreement of a purely domestic or social nature is not a contract]

2. Lawful consideration:- consideration must not be unlawful, immoral or opposed to the public policy.

3. Capacity:- The parties to a contract must have capacity (legal ability) to make valid contract.

   Section 11:- of the Indian contract Act specify that every person is competent to contract provided.

(i) Is of the age of majority according to the Law which he is subject, and
(ii) Who is of sound mind and
(iii) Is not disqualified from contracting by any law to which he is subject.

Person of unsound mind can enter into a contract during his lucid interval. An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4. Free consent :- consent of the parties must be genuine consent means agreed upon samething in the same sense i.e. there should be consensus – ad – idem. A consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.

5. Lawful object :- The object of agreement should be lawful and legal.

   Two persons cannot enter into an agreement to do a criminal act. Consideration or object of an agreement is unlawful if it

   a) is forbidden by law; or
   b) is of such nature that, if permitted, would defeat the provisions of any law; or
   c) is fraudulent; or
   d) Involves or implies, injury to person or property of another; or
   e) Court regards it as immoral, or opposed to public policy.

6. Possibility of performance:

The terms of the agreement should be capable of performance. An agreements to do act, impossible in itself cannot be enforced.
Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

7. The terms of the agreements are certain or are capable of being made certain.

Example : A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term " ultra – modern" is not certain.

8. Not declared Void

The agreement should be such that it should be capable or being enforced by law. Certain agreements have been expressly declared illegal or void by the law.

9. Necessary legal formalities

A contract may be oral or in writing.
Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.
If legal formalities are not carried out then the contract is not enforceable by law. Example : A promise to pay a time. Barred debt must be in writing.
Agreement is a wider term than contract where as all contracts are agreements. All agreements are not contracts.
All Contracts are Agreements, but all Agreements are not Contracts.

Contracts as defined by Eminent Jurists

1. "Every agreement and promise enforceable at law is a contract." – Pollock.

2. "A Contract is an agreement between two or more persons which is intended to be enforceable at law and is contracted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act." – Halsbury .

3. "A contract is an agreement creating and defining obligation between the parties" – Salmond.

Conclusion: Thus we see that an agreement may be or may not be enforceable by law, and so all agreement are not contract. Only those agreements are contracts, which are enforceable by law,

Contracts = Agreement + Enforceability by Law

Hence, we can conclude "All contracts are agreement, but all agreements are not contracts."

Distinction between Contract & Agreement
Illegal contract

(1) On the basis of creation

(a) Express contract :- A contract made by word spoken or written. According to sec 9 in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express.
Example : A says to B 'will you purchase my bike for Rs.20,000?" B says to A "Yes".

(b) Implied contract:- A contract inferred by the conduct of person or the circumstances of the case.

By implies contract means implied by law (i.e.) the law implied a contract through parties never intended. According to sec 9 in so for as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

Example:

A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

(c) Tacit contract: - A contract is said to be tacit when it has to be inferred from the conduct of the parties. Example obtaining cash through automatic teller machine, sale by fall hammer of an auction sale.

(d). Quasi Contracts are contracts which are created - Neither by word spoken

Nor written

Nor by the conduct of the parties. But these are created by the law.

Example:

If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(e). e – Contract: An e – contract is one, which is entered into between two parties via the internet.

(2) On the Basis of Validity

(a) Valid contract:- An agreement which satisfies all the requirements prescribed by law On the basis of creation

(b) Void contract (2(j)):- a contract which ceases to be enforceable by law because void when of ceased to be enforceable Agreement in restrain of marriage [26] traint of trade [27]

(c) Voidable contract 2(i) :- an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract. Result of coercion, undue influence, fraud and misrepresentation.

(d) Unenforceable contract: - where a contract is good in substance but because of some technical defect i.e. absence in writing barred by imitation etc one or both the parties cannot sue upon but is described as unenforceable contract.

Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.

(e) Illegal contract:- It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessary illegal. Contract that is immoral or opposed to public policy are illegal in nature.

Unlike illegal agreements there is no punishment to the parties to a void agreement. Illegal agreements are void from the very beginning agreements are void from the very beginning but sometimes valid contracts may subsequently becomes void.

(a) Executed contract :- A contract in which both the parties have fulfilled their obligations under the contract.
Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.

(b) Executory contract:- A contract in which both the parties have still to fulfilled their obligations.

Example : D agrees to buy V's cycle by promising to pay cash on 15 thJuly. V agrees to deliver the cycle on 20thJuly.

(c) Partly executed and partly executory:- A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.

Example : A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is excuted contract whereas it is executory contract on the part of B since the price is yet to be paid.

(4) <u>On the Basis of Liability</u>
(a) Bilateral contract:- A contract in which both the parties commit to perform their respective promises is called a bilateral contract.

Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.

(b) Unilateral contract:- A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.

Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A " if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to

Difference between Void and Voidable Contract

Meaning	The type of contract which cannot be enforceable is known as void contract.	The contract in which one of the two parties has the option to enforce or rescind it, is known as voidable contract.
Defined in	Section 2 (j) of the Indian Contract Act, 1872.	Section 2 (i) of the Indian Contract Act, 1872.
Nature	The contract is valid, but	The contract is valid, until

	subsequently becomes invalid due to some reasons.	the party whose consent is not free, does not revokes it.
Reasons	Subsequent illegality or impossibility of any act which is to be performed in the future.	If the consent of the parties is not independent.
Rights to party	No	Yes, but only to the aggrieved party.
Suit for damages	Not given by any party to another party for the non-performance, but any benefit received by any party must be restored back.	Damages can be claimed by the aggrieved party.

B. Offer/proposal: definition, communication, revocation, general and specific offer

Offer(i.e. Proposal) [section 2(a)]:-When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

"When one person signifies to another his willingness – to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal."

The person who makes an offer is called "Offeror" or " Promisor" and the person to whom the offer is made is called the Offeree" or "Promisee".

Example

Mr. A says to Mr. B, "Will you purchase my car for Rs.1,00,000?" In this case, Mr. A is making man offer to Mr. B. Here A is the offeror and B is the offeree.

Essentials elements of an offer:-

(1) There must be two parties.
(2) The offer must be communicated to the offeree.
(3) The offer must show the willingness of offeror. Mere telling the plan is not offer.
(4) The offer must be made with a view to obtaining the assent of the offeree.
(5) A statement made jokingly does not amount to an offer.
(6) An offer may involve a positive act or abstinence by the offeree.
(7) Mere expression of willingness does not constitute an offer.

A tells B' that be desires to marry by the end of 2008, if does not constitute an offer of marriage by A' to B' A further adds will you marry me. Then it become offer.

Legal Rules as to valid offer:-

1. Offer must be communicated to the offeree: The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.

Example:

A's nephew has absconded from his home. He sent his servant to trace his missing nephew. When he servant had left, A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the servant was not entitled to the reward because he did not know about the offer when the discovered the missing boy.

[Lalman Shukla v. Gauri Datt (1913) All LJ 489]

2. The offer must be certain definite and not vague unambiguous and certain.

Example:

A offered to sell to B. 'a hundred tons of oil'.The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. The offer must be capable of creating legal relation. A social invitation is not create legal relation.

Example:

A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. Offer may be express and implied

The offer may be express or implied; An offer may be express as well as implied. An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, is called an implied offer [Section 9].

5. Communication of complete offer Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950". On A's refusal to sell at this price, B agreed to pay Rs.1,000. held, there was not contract at the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound go give his acceptance.

6. Counter offer – A counter offer amounts to rejection of the original offer
7. Cross offer do not conclude a contract
8. An offer must not thrust the burden of acceptance on the offeree.

Example:

A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship.

The acceptance cannot be presumed from silence. Acceptance is valid only if it is communicated to the offeror.

10. Offer must be distinguished from invitation to offer.

Example:

Menu card of restaurant is an invitation to put an offer.

Example ;

Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, the or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal.

Example:

Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example:

An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

10. Offeror should have an intention to obtain the consent of the offeree.
11. An answer to a question is not a offer.

BASIS FOR COMPARISON	OFFER	INVITATION TO OFFER
Meaning	When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Defined in	Section 2 (a) of the Indian Contract Act, 1872.	Not Defined
Objective	To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Essential to make an	Yes	No

agreement		
Consequence	The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

I. Express offer - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by Spoken word or Written word.

II. Implied offer – when the offer is not communicate expressly. An offer may be implied from the conduct of the parties or the circumstances of the case.

III. Specific:- It means an offer made in

(a) a particular person or

(b) a group of person: It can be accepted only by that person to whom it is made communication of acceptance is necessary in case of specific offer.

IV. General offer: - It means on offer which is made to the public in general.

General offer can be accepted by anyone.

If offeree fulfill the term and condition which is given in offer then offer is accepted.

Communication of acceptance is not necessary is case of general offer

Example

Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions.One lady, Mrs, Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza, She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such as entitled to recover the reward from the company.Carlill v. Carbilic Smoke Ball Co. 1893

V. Cross offer:- When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

Two cross offer does not conclude a contract. Two offer are said to be cross offer if

1. They are made by the same parties to one another
2. Each offer made in ignorance of the offer made by the
3. The terms and conditions contained in both the offers' are same.

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

VI. Counter offer :- when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

(1) Rejection of original offer
(2) The original offer is lapsed
(3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, " I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A.

Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

VII. Standing, open and continuous offer:- An offer is allowed to remain open for acceptance over a period of time is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

LAPSE OF AN OFFER

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end In any of the following ways stated in Section 6 of the Indian Contract Act:

1. By communication of notice of revocation: An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes before bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.

2. By lapse of time; Where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time.

The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.

3. By failure to accept condition precedent: Where, the offer requires that some condition must, be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.

4. By the death or insanity of the offeror: Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valied. This will result in a valid contract, and legal

representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.

5. By counter – offer by the offeree: Where, a counter – offer is made by the offeree, and then the original offer automatically comes to an end, as the counter – offer amounts to rejections of the original offer.

6. By not accepting the offer, according to the prescribed or usual mode: Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.

7. By rejection of offer by the offeree: Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.

8. By change in law: Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

C . Invitation to treat

An 'offer' is the final expression of willingness by the offerer to be bound by his offer. Sometimes a person may not offer to sell his goods, but make some statement or give some information with a view to inviting others to make offers on that basis. Where a party, without expressing his final willingness proposes certain terms on which he is willing to negotiate, he does not make an offer but merely 'invites' the other party to make an offer on those terms. For example, a book-seller sends catalogue of books indicating price of various books to many persons. This is an 'invitation to treat'. The interested part may make an offer and the bookseller may accept or reject the offer.

Similarly, advertisements for bids/ tenders are only 'invitation to offer the bid/tender constitutes the offer which can be accepted or rejected. A auctioneer is not bound to accept even the highest bid (offer). Where an auctioned sale was cancelled, the plaintiff cannot recover travel expenses as there was no contract. An offer can be withdrawn before it is accepted [Harris Verses Nickerson].

Likewise, an inducement of special discount by a shopkeeper is a "commercial puff' or an invitation to treat and not an offer. A banker’s catalogue of charges or a prospectus of a company inviting applications for job is also not an offer. A quotation of prices is not an offer. In Grainger & Sons Verses Gough, it was held that, "The transmission of a price list does not amount to an offer to supply an unlimited quantity of the wine described at the price named."

In Bank of India Verses O. P. Swarankar, it has been held that a contract of employment is governed by the Contract Act. Announcement of Voluntary Retirement Scheme by a nationalized bank is not an offer. The employee offering to retire makes an offer and the same becomes effective when the written request of retirement is accepted. An employee who has offered to retire under the scheme can withdraw before his request is accepted.

In Ghaziabad Dev. Authority Verses UOI, the court observed that when a development authority announces a scheme for allotment of plots, the brochure issued by it for public information is an

invitation to offer. Several members of public may make applications for availing benefit of the scheme. Such applications are offers. Some of the offers having been accepted subject to the rules of priority/preference laid down by the authority result into a contract between the applicant and the authority.

In McPherson Verses Appana, it was held that mere statement of the lowest price at which the offerer would sell contains no implied contract to sell at that price to the person making the inquiry. The plaintiff offered to purchase the lodge owned by the defendant for Rupees 6,000. He wrote the defendant's agent asking whether his offer had been accepted and saying that he was prepared to accept any higher price if found reasonable. The agent replied, "Won't accept less than Rupees 10,000." The plaintiff accepted this and brought a suit for specific performance. Held that the defendant did not make any offer or counter offer but was merely inviting offers. There was no assent to the plaintiff's offer to buy at Rupees and, therefore, no concluded contract.

The Supreme Court relied on the principle enunciated in Harvey Verses Facey, In that case the plaintiffs telegraphed to the defendants, writing, "Will you sell us Bumper Hall Pen? Telegraph lowest cash price". The defendants replied, also by a telegram, "Lowest price for Pen, £ 900".

The plaintiffs immediately sent their last telegram stating, "We agree to buy Pen for £ 900 asked by you". The defendants, however, refused to sell the plot of land at that price. The court observed that the defendants gave only the lowest price and did not expressed their willingness to sell. Thus they had made no offer. The plaintiffs' last telegram was an offer to buy, but that was never accepted by the defendants.

Where a proposer, in response to a proposal to purchase his land, asked for a higher price and also some advance with acceptance, it was held that the proposer accepting the same along with an advance payment amounted to a contract, although the letter of acceptance came back being refused [Byomkesh Verses Nani Gopal].

An Offer must be distinguished from:

(a) An invitation to treat or an invitation to make an offer: e.g., an auctioneer's request for bids (which are offered by the bidders), the display of goods in a shop window with prices marked upon them, or the display of priced goods in a self-service store or a shopkeeper's catalogue of prices are invitations to an offer.

(b) A mere statement of intention: e.g., an announcement of a coming auction sale. Thus a person who attended the advertised place of auction could not sue for breach of contact if the auction was cancelled (Harris v. Nickerson (1873) L.A. 8 QB 286).

(c) A mere communication of information in the course of negotiation: e.g., a statement of the price at which one is prepared to consider negotiating the sale of piece of land (Harvey v. Facey (1893) A.C. 552).

An offer that has been communicated properly continues as such until it lapses, or until it is revoked by the offeror, or rejected or accepted by the offeree.

Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.

Legal Rules for the Acceptance

1. Acceptance must be absolute and unqualified

Example: A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not pay the acceptance as the acceptance is with variation in the terms of the offer.

2. Acceptance must be communicated: Mere mental acceptance is no acceptance, But there is no requirement of communication of acceptance of general offer.

Example The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words "Approved" and put the same in the drawer of his table and forgot all about it. Held, there was no contract between the parties as the acceptance was not communicated. It may however, be pointed out that the Court construed a conduct to parties as railway company was accepting the supplies of coal from time to time.

3. Manner of acceptance

General rule say that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he accepted acceptance of offer.

Example: A offers B and indicates that the acceptance be given by telegram. B sends his acceptance by ordinary post. It is a valid acceptance unless A insists for acceptance in the prescribed manner.

5. Acceptance of offer must be made by offeror.
Example : A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected the A's action and held that there was no notice of acceptance. "Information by unauthorized person is as insufficient as overhearing from behind the door".

6. Acceptance must be communicated to offeror

7. Time limit for acceptance

If the offer prescribes the time limit, it must be accepted within specified time.

If the offer does not prescribe the time limit, it must be accepted within reasonable time.

Example : A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the reasonable time for acceptance had elapsed.

8. Acceptance of offer may be expressly (by words spoken or written); or impliedly (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)

9. Mere silence is not acceptance of the offer

Example A offers to B to buy his house for Rs.5 lakhs and writes "If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. "B does not respond. Here, no contract is concluded between A and B.

10. However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.

Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.

When there is custom or usage of trade which specified that silence shall amount to acceptance.

11. Acceptance subject to the contract is no acceptance

If the acceptance has been given 'subject to the contract" or subject to approval by certain persons, it has not effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

General Rules as to Communication of Acceptance

1. In case of acceptance by post

Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.

2. Delayed or no delivery of letter

Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.

3. Acceptance by telephones telex or tax

If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives not hears the acceptance.

4. The place of Contract

In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received,

5. The time of Contract

In case of acceptance by post, the time of posting the letter of acceptance to the time of contract. But in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.

6. Communication of acceptance in case of an agent.

Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a case, if the agent fails to convey the acceptance received from offeree, still the principal is bound by the acceptance.

7. Acceptance on loudspeakers

Acceptance given on loudspeaker is not a valid a acceptance.

Accepted is lighted match, while offer is a train of gun powder
Sir willian Anson.

Revocation of proposals and acceptances

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration

A proposes, by a letter sent by port, to sell his house to B.

B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance to any time before or at the moment when B posts his letter of acceptance, but not afterwards.

E. Effect of void, voidable, valid, illegal, unlawful agreements

There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw, vice or error somewhere. As a result of such a flaw, the apparent agreement is not a real agreement.

Where there is no real agreement, the law has three remedies:

Firstly: The agreement may be treated as of no effect and it will then be known as void agreement.

Secondly: The law may give the party aggrieved the option of getting out of his bargain, and the contract is then known as voidable.

Thirdly: The party at fault may be compelled to pay damages to the other party.

(a) Void Agreement

A void agreement is one which is destitute of all legal effects. It cannot be enforced and confers no rights on either party. It is really not a contract at all, it is non-existent. Technically the words 'void contract' are a contradiction in terms. But the expression provides a useful label for describing the situation that arises when a 'contract' is claimed but in fact does not exist. For example, a minor's contract is void.

(b) Voidable Contract

A voidable contract is one which a party can put to an end. He can exercise his option, if his consent was not free. The contract will, however be binding, if he does not exercise his option to avoid it within a reasonable time. The consent of a party is not free and so he is entitled to avoid the contract, if he has given misrepresentation, fraud, coercion or undue influence.

(c) Illegal Agreement

An illegal agreement is one which, like the void agreement has no legal effects as between the immediate parties. Further transactions collateral to it also become tainted with illegality and are, therefore, not enforceable. Parties to an unlawful agreement cannot get any help from a Court of law, for no polluted hands shall touch the pure fountain of justice. On the other hand, a collateral transaction can be supported by a void agreement.

“All illegal agreements are void agreements but all void agreements are not illegal.”

For example, one party may have deceived the other party, or in some other way there may be no genuine consent. The parties may be labouring under a mistake, or one or both the parties may be incapable of making a contract. Again, the agreement may be illegal or physically impossible. All these are called "the FLAWS in contract or the VICES of contract".

The chief flaws in contract are:

(i) Incapacity
(ii) Mistake
(iii) Misrepresentation
(iv) Fraud
(v) Undue Influence
(vi) Coercion
(vii) Illegality

(d) Valid contract: An agreement which has all the essential elements of a contract is called a valid contract. A valid contract can be enforced by law.

Difference between Void and illegal Agreement :-

The Contract Act draws distinction between an agreement which is only void and the one which is unlawful or illegal . An illegal agreement is one which is forbidden by law ; but a void agreement may not be forbidden , the law may merely say that if it is made , the courts will not enforce it . Thus every illegal contract is void but a void contract is not necessarily illegal.

The main difference between a void and illegal contract is that , a void contract is not punishable and its collateral transactions are not affected but on the contrary illegal contract is punishable and its collateral transactions are also void

Difference between Void and Voidable Agreement :-

While a void contract becomes invalid at the time of its creation, a voidable contract only

becomes invalid if it is cancelled by one of the two parties who are engaged in the contract.
In the case of a void contract, no performance is possible, whereas it is possible in a voidable contract. While a void contract is not valid at face value, a voidable contract is valid, but can be declared invalid at any time.
While a void contract is nonexistent and cannot be upheld by any law, a voidable contract is an existing contract, and is binding to at least one party involved in the contract.

F. Standard form of contract

"Standard form Contracts" are 'take it or leave it' contracts i.e a contract signed between two parties that has no room for negotiation.

The customer is in no position to renegotiate the standard terms of the contract and the company's representative usually does not have the authority to do so. Such contracts are also known as- "Contracts of adhesion" which means that the individual has no choice 'but to accept; he does not negotiate, but merely adheres', "Compulsory Contracts", they being a kind of imposition; and "Private Legislation", they being a kind of code of bye-laws on the basis of which the individual can enjoy the services offered.
For large organizations, it is very difficult to draw up a separate contract with every individual. As Kessler puts it Therefore, they keep printed forms of contract i.e SFC's containing a large number of terms and conditions in "fine-print" which restricts and often excludes the liability of the other party under the contract. Briefly, one can say that the SFC's have arisen as a result of:
a) The convenience in having a printed form;
b) The fact that one party stands in a position where the terms dictated by it can be imposed upon the other, notwithstanding the will of the other, and since the terms of such bargains are known to the former even prior to the entry into the contract, the former prints it out and keeps it ready, waiting for the persons to come forward and enter into such contracts; and
c) The willingness of the customer to allow the provider and his or her perceptions as to the likelihood of the contract being enforced to the latter.

III. Reasons for Acceptance of Standard Form Contracts:
There are a number of specific reasons why such terms and conditions laid down in the contract are accepted, which are as follows:
a) SFC's are rarely read: Such contracts are always printed in fine print and written in complicated legal language which most of the times seems irrelevant to the common mass. And such contracts are always on "take it or leave it" basis. Coupled with the large amount of time needed to read the terms, the expected payoff from reading the contracts is low and very few people read it.
b) Access to the full terms may be difficult or impossible before an acceptance: Often the document being signed is not the full contract; the purchaser is told that the rest of the terms are in another location. This reduces the likelihood of the terms being read and in some situations, such as software license agreements, can only be read after they have been notionally accepted by purchasing the good and opening the box.
c) Boilerplate terms are not salient: The most important terms to purchasers of a commodity are the price and quality which is generally understood before the SFC is signed so the other terms which may be exploitative in nature are not read at all.

d) There may be diverse social pressure to sign: SFC's are signed at a point when the main details of the transactions have either been negotiated or explained. Social pressure to conclude the bargain at that point may come from a number of sources. For eg. If the purchaser is in front of a queue there is additional pressure to sign quickly or the salesperson may imply that the additional terms are "just something that lawyers want us to do", and in a hurry the purchaser concludes the transaction by signing the SFC.

e) SFC's may exploit unequal power relations: If the commodity which is being sold using a SFC is an essential one for the purchaser or appeals to the purchaser such as a rental property or a needed medical item, then again the "take it or leave it" condition has an impact and the purchaser in many cases has no choice but to buy that commodity.

IV. The Legal Issues Arising And The Protective Devices:

As explained above with reasoning an individual can easily be exploited through the SFC's by mere insertion of certain clauses which will completely exclude the seller from the liability. Now, some interesting legal issues arise in these circumstances:

- Generally speaking, what is the legitimacy/validity of such a clause in a SFC?
- What are the limits on its enforceability?

A problem may arise in proving the terms of the agreement where it is sought to be shown that they are contained in a contract in a printed form i.e in some ticket, receipt, or other standard form document. Chitty states that:

"The other party may have signed the document, in which case he is bound by its terms. More often, however, it is simply handed to him at the time of making the contract and the question will then arise whether the printed conditions which it contains have become terms of the contract. The party receiving the document will probably not take trouble to read it, and may even be ignorant that it contains any conditions in at all. Yet standard form contracts very frequently embody clauses which purport to impose obligations on him or to exclude or restrict the liability of the person supplying the document. Thus it becomes important to determine whether these clauses should be given contractual effect."

The individual therefore deserves to be protected against the possibility of exploitation inherent in such contracts. Stated below are some of the important modes of protection evolved by the courts:

1. Reasonable Notice:

It is the prime duty of the person delivering the document to give proper notice to the offeree of the printed terms and conditions, especially ones which can create a situation of ambiguity. Where this is not done, the acceptor will not be bound by the terms of the contract. The same was laid down in Henderson v Stevenson by the House of Lords:

The plaintiff brought a steamer ticket on the face of which was these words only: "Dublin to Whitehaven"; on the back of the ticket certain conditions were printed which excluded the liability of the company for any loss, injury or delay to the passenger or his luggage. The

plaintiff did not see the back of the ticket and was unaware of these conditions and nor were they brought to his notice. The plaintiff's luggage was lost in shipwreck caused by the company's fault. He was held entitled to recover the loss inspite of the exemption clauses because the same were not brought to his notice.

The case would have been entirely different if the terms would have been to the notice of the plaintiff eg : through the words "For conditions see back". This was clearly stated in the subsequent case of Parker v South Eastern Rly Co.-
The plaintiff deposited his bag at the cloakroom at a railway station and received a ticket, on the face of which were printed, among other words, "see back" and on the back there was a notice that "the company would not be responsible for any package exceeding the value of £ 10". A notice of the same was hung up in the cloakroom. The plaintiff lost his bag and claimed full value of the same. The company relied upon the exemption clause. The plaintiff contended that although he knew that there was something written on the ticket he did not bother to read it. The ticket was a mere receipt for him.

Mellish LJ stated that if the plaintiff "knew there was writing on the ticket, but he did not know or believe that the writing contained conditions, nevertheless he would be bound", for there was reasonable notice that the writing contained conditions.

2. There Should Be A Contractual Document
Now, the dilemma was that to apply this principle, the courts had to clearly distinguish between contractual documents and receipts. Mellish LJ clearly solves this problem in Parker v. South Eastern Railway Co. and the conclusion was that a document was said to be contractual if it embodies the contract, that is to say, of the persons to whom it is delivered should know that it is supposed to contain conditions. But if the paper does not express or imply conditions of the contract then it will be regarded as a voucher, receipt etc. In Chapelton v Barry Urban District Council the same was reiterated. To bring the exemption clause to the notice of the receiver, Lord Denning MR remarked in Thornton v Shoe Lance Parking Ltd : "In order to give sufficient notice, it would need to be printed in red ink with a red hand pointing to it, or something equally startling". If this is not done then the agreement would not form part of the contract. One can clearly distinguish between a contractual document and a receipt from the following passage:

"The document must be of a class which either the party receiving it knows, or which a reasonable man would expect, to contain contractual conditions. Thus a cheque-book, a ticket for a deck chair, a ticket handed to a person at public bath house, and a parking ticket issued by an automatic machine have been held to be cases where it would be quite reasonable that the party receiving it should assume that the writing contained no conditions and should be put in his pocket unread. "

Contract signed by the Acceptor
It was laid down in L'Estrange v Graucob Ltd that when a party signs a written contract thereby

accepting it, he becomes bound by all its terms whether he has read it or not. But in such cases the affected party can be protected by the doctrine of fundamental breach or by finding that the terms are unreasonable or that there was a misrepresentation about them.

3. There Should Be No Fraud Or Misrepresentation:
The leading authority in the case of misrepresentation is Curtis v Chemical Cleaning & Dyeing Co. :
The plaintiff delivered a white satin wedding dress to the defendant for cleaning. She was asked to sign a receipt, which made her responsible for any damage to beads and sequins, which she did without reading the receipt. Now, the receipt contained a clause that excluded the company from any damage to the dress. When the dress was returned there was a stain on it. When plaintiff sought damages the defendants pleaded the exemption clause.

Even though the acceptor had signed the document, the defendants were held liable and the reasoning was that A party to the contract cannot rely on the exclusion clause to avoid liability or misrepresentation or fraud. The same was held in Chau v Van Pelt. A rule, which is a modern development in this regard, is stated in American RESTATEMENTS OF CONTRACTS. It stated that when the other party has a reason to believe that the party manifesting written assent would not do so if he knew that the writing contained a particular term; the term is not a part of the agreement.

4. The Notice Should Be Contemporaneous With The Contract:
The reasonable notice of the terms should be given before or at the time of the contract. A subsequent notification would amount to modification of the original contract and will not be binding on the other party unless he has given his assent for the same. Now, when the contract materializes by the issue of a ticket by an automatic machine, the dilemma faced is that whether the notice printed on the ticket has been given contemporaneously with the contract or subsequent to it. Lord Denning MR. considered this matter in Thornton v Shoe Lance Parking Ltd. The theory in case of tickets issued by clerks is that the company makes the offer of the ticket and the customer by paying for the ticket without objection accepts it with all its terms. He has a chance to reject the ticket. But where the ticket is issued by an automatic machine, the customer cannot refuse it. He is committed the moment when puts his money into the machine. The contract is then made. The terms of the offer are contained in the notice placed on the rear of the machine. The customer is bound by its terms if they are sufficiently brought to his notice beforehand, but not otherwise. He is not bound by the terms printed on the ticket if they differ from the notice, because the contract has already been made and the ticket comes too late. The ticket is therefore no more than a receipt for money. Hence, it is the duty of the party relying on the exclusion clause to make the terms and conditions clear to the other party at the time of contract that the same has been incorporated into the contract.

5. Theory of Fundamental Breach:
This is another method to protect the weaker section from exploitation. It is a method of controlling unreasonable consequences of wide and sweeping exemption clauses. Even where adequate notice of the terms and conditions in a document has been given, the party imposing

these conditions may not be able to rely on them if he has committed a breach of contract which can be described as "fundamental". This has been laid down by Lord Denning LJ in J. Spurling Ltd. V Bradshaw. The Supreme Court of India also emphasized on the same rule in B.V. Nagaraju v Oriental Insurance Co. Ltd.

"Every contract contains a 'core' or fundamental obligation must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of contract whether or not any exempting clause has been inserted which purports to protect him." In Davies v Collins it was held that the mere fact of the particular limitation clause in the contract was sufficient to exclude any right to the sub-contract the performance of the substance of the contract. Limitation clauses of this kind do not apply where the goods are lost not within the four corners of the contract but while something was being done which was outside the terms of the contract altogether, or when loss takes place in the course of some operation which was never contemplated by the contract at all.

G. Online contracts

Definition: E-contract is a contract modeled, specified, executed and deployed by a software system. E-contracts are conceptually very similar to traditional (paper based) commercial contracts. Vendors present their products, prices and terms to prospective buyers. Buyers consider their options, negotiate prices and terms (where possible), place orders and make payments. Then, the vendors deliver the purchased products. Nevertheless, because of the ways in which it differs from traditional commerce, electronic commerce raises some new and interesting technical and legal challenges.

For recognition of e-contracts following questions are needed to be considered:

Whether e-contract is a valid contract?

Would a supplier making details of goods and services with prices available on a website be deemed to have made an offer?

Whether e-contracts satisfy the legal requirements of reduction of agreements to signed documents.

Whether e-contracts interpret, adopt and compile the other existing legal standards in the context of electronic transactions?

Recognition E-contracts

Offer: The law already recognizes contracts formed using facsimile, telex and other similar technology. An agreement between parties is legally valid if it satisfies the requirements of the law regarding its formation, i.e. that the parties intended to create a contract primarily. This intention is evidenced by their compliance with 3 classical cornerstones i.e. offer, acceptance and consideration.

One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Advertisement on website may or may not constitute an offer as offer and invitation to treat are two distinct concepts. Being an offer to

unspecified person, it is probably an invitation to treat, unless a contrary intention is clearly expressed. The test is of intention whether by supplying the information, the person intends to be legally bound or not.

When consumers respond through an e-mail or by filling in an online form, built into the web page, they make an Offer. The seller can accept this offer either by express confirmation or by conduct.

Acceptance:
Unequivocal unconditional communication of acceptance is required to be made in terms of the offer, to create a valid e-contract. The critical issue is when acceptance takes effect, to determine where and when the contract comes into existence. The general receipt rule is that acceptance is effective when received. For contracting no conclusive rule is settled. The applicable rule of communication depends upon reasonable certainty of the message being received. When parties connect directly, without a server, they will be aware of failure or partial receipt of a message. Such party realizing the fault must request re-transmission, as acceptance is only effective when received. When there is a common server, the actual point of receipt of the acceptance is crucial in deciding the jurisdiction in which the e-contract is concluded. If the server is trusted, the postal rule may apply, if however, the server is not trusted or there is uncertainty concerning the e-mail's route, it is best not to apply the postal rule. When arrival at the server is presumed insufficient, the 'receipt at the mail box' rule is preferred.

Consideration and Performance:
Contracts result only when one promise is made in exchange for something in return. This something in return is called 'consideration'. The present rules of consideration apply to e-contracts. There is concern among consumers regarding Transitional Security over the Internet. The e-directive on Distance Selling tries to generate confidence by minimizing abuse by purchasers and suppliers. It specifies---
A list of key points, must be supplied to the consumer in 'a clear and comprehensible manner.'
Written confirmation, or confirmation in another durable medium available and accessible to the consumer, of the principle points.

The right of withdrawal enabling consumers to avoid deals entered into inadvertently or without sufficient knowledge, providing for seven-day cooling-off period free from penalty or reason to return the goods or reimburse the cost of services.
Performance should be delivered within thirty days of order unless otherwise expressly agreed.
Reimbursement of sums lost to fraudulent use of credit cards. It places the risk of fraud on the credit card Company, requiring them to take steps to protect their position.

On the other hand, there is also need to protect sellers from rogue purchasers. For this, the provision of 'charge-back clauses' and encouragement of pre-payment by buyers is recommended.
Thus, this Directive adequately protects rights of consumers against unknown sellers and sellers against unknown buyers.

Liability And Damages:
A party that commits breach of an agreement may face various types of liability under contract

law. Due to the nature of the systems and the networks that business employ to conduct e-commerce, parties may find themselves liable for contracts which technically originated with them but, due to programming error, employee mistake or deliberate misconduct were executed, released without the actual intent or authority of the party.

Sound policies dictate that parties receiving messages be able to rely on the legal expressions of the authority from the sender's computer and this legally be able to attribute these messages to the sender.

In addition to employing information security mechanisms and other controls, techniques for limiting exposure to liability include:
1. Trading partner and legal technical arguments
2. Compliance with recognized procedures, guidelines and practices
3. Audit and control programmers and reviews
4. Technical competence and accreditation
5. Proper human resource management
6. Insurance
7. Enhance notice and disclosure mechanisms and
8. Legislation and regulation addressing relevant secure electronic commerce issuing.

Digital Signatures: Section 2(p) of The Information Technology Act, 2000 defines digital signatures as authentication of any electronic record by a subscriber by means of an electronic method or procedure. A digital signature functions for electronic documents like a handwritten signature does for printed documents. The signature is an unforgeable piece of data that asserts that a named person wrote or otherwise agreed to the document to which the signature is attached. A digital signature actually provides a greater degree of security than a handwritten signature. The recipient of a digitally signed message can verify both that the message originated from the person whose signature is attached and that the message has not been altered either intentionally or accidentally since it was signed. Furthermore, secure digital signatures cannot be repudiated; the signer of a document cannot later disown it by claiming the signature was forged. In other words, digital signatures enable "authentication" of digital messages, assuring the recipient of a digital message of both the identity of the sender and the integrity of the message. The fundamental drawback of online contracts is that if there is no alternate means of identifying a person on the other side than digital signatures or a public key, it is possible to misrepresent one's identity and try to pass of as somebody else.

Unit . II CONSIDERATION & CAPACITY

A. Consideration- Definition, kinds, essentials, privity of contract

MEANING

1.(a) Consideration is a quid pro quo i,e something in return it may be –

(i) some benefit right, interest, loss or profit that may accrue to one party or,

(ii) some forbearance, detriment, loss or responsibility suffered on undertaken by the other party [currie V mussa]

(b) According to Sir Frederick Pollock, "consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.

2. Definition [Sec 2(d)]:- when at the desire of the Promisor, the promise or any other person.

(a) has done or abstained from doing , or [Past consideration]

(b) does or abstains from doing, or [Present consideration]

(c) promises to do or abstain from doing something [Future consideration] such act or abstinence or promise is called a consideration for the promise.

3. Example

(i) 'P' aggress to sell his car to 'Q' for Rs.50,000 Here 'Q's Promise to pay Rs50,000 is the consideration for P's promise and 'P's promise to sell the car is the consideration for 'Q's promise to pay Rs.50,000.

(ii) 'A' promises his debtor 'B' not to file a suit against him for one year on 'A's agreeing to pay him Rs.10,000 more. Here the abstinence of 'A' is the consideration for 'B's Promise to pay.

Legal Rules for valid consideration

1. Consideration must move at the desire of the promisor.

D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.
Durga Prasad v. Baldeo

2. Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya's Vs Ramayya]

A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A's account. Held, the discharge of A's account was consideration for C's promise.
National Bank of Upper India v. Bansidhar

3. Consideration may be past, present, Future:

Under English law, Past consideration is no consideration.

Present consideration :- cash sale

Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.

Consideration should be real and not illusory. Illusory consideration renders the transaction void consideration is not valid if it is.

(i) Physically impossible
(ii) Legally not permissible
(iii) Uncertain
(iv) illusory (fulfillment of a pre existing obligation)

Must be legal:-

Consideration must not be unlawful, immoral or opposed to public policy.

Consideration need not be adequate. A contract is not void merely because of the fact that the consideration is inadequate. The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.

Example:

A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not. [Section 25 Explanation II]

The performance of an act what one is legally bound to perform is not consideration for the contract mean's something other than the promisor's existing obligation –

A contract not supported by consideration is void . Ex. Nudo Pacto non oritur action, i,e, an agreement without consideration is void.

Exceptions to the Rule " No consideration . No contract".

Written and registered agreements arising out of love and affection:- [25 (1)]

Expressed in writing and registered under law for the time being in force for registration of document

Natural love and affection

Between parties standing in a near relation to each other

Example:- An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

Exception: - Rajlukhy Dabee Vs Bhootnath Mukharjee

Example: A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence. Held that the promise was unenforceable since natural love and affection was missing.

2. Promise to compensate [25(2)]

Promise to compensate wholly or in part

Who has already voluntarily done something for the promisor

Something which the promisor was legally compellable to do.

Example:- A finds B's purse and give to him. B Promise to give A Rs.500. This is a valid contract.

3. Promise to pay a time – barred debt. [Sec 25(3)]

A debt barred by limitation con not recovered. Hence, a promise to pay a such a debt is without any consideration.

Can be enforced only when – in writing and sighed by Debtor or his authorized agent.

Example : A owes B Rs.10,000 but the debt is barred by Limitation Act. A signs a written promise to pay B Rs.8,000 on account of debt. This is a valid contract.

4. Completed gift- gift do not require any consideration.

5. Agency (185) – According to the Indian contract Act. No consideration is necessary to create an agency.

6. Bailment (148)- consideration is not necessary to effect a valid bailment of goods. It is called Gratuitous Bailment.

KINDS OF CONSIDERATION

Consideration can be classified as: -

1. Executory
2. Executed
3. Past

1. Executory Consideration

It is when one promise is made in return for another or a promise in return of promise.

Example: -

M promised to sell his mobile phone to K for RM550/- and K promised to pay the price upon delivery by M. Here, the promise to sell is in return to promise to buy.

See Murugesu v Nadarajah [1980] 2 MLJ 82

M agreed to sell his house to N. An agreement was written on a scrap paper and says as follows: -

I agree to sell my house No. (address) held under…. to Mr. N, the present tenant of the house at $26,000/- within three months from the date.

M later refused to sell the house and a specific performance was ordered at the trial and the appellant took the matter to Federal Court. The appeal was dismissed, gave effect to Illustration of Section 24. Chang Min Tat F.J held:

"The agreement must be seen to be a case of Executory consideration. A promisee is made by one party in return for a promise made by the other; in such a case each promise is the consideration for the other"

Example

A agrees to sell his car for RM20,000/- to B. B promise to pay the sum of RM 20,000/- in consideration for A's promise to sell the car, and A's promise to sell the car is the consideration for B's promise to pay the RM20,000/-. These are lawful considerations.

2. Executed Consideration

It is when a promise is made in return for the performance of an act.

Example

M lost his pen and offered RM 200/- to anyone who finds and returns the documents to him. K found M's pen in response to the offer and returns them to M. By returning the pen, K has given consideration to M's promise to pay. Should M refuse to pay, K may take an legal action against him.

3. Past Consideration

Where a promise is made subsequent to and in return for an act that has already been performed, the promise is made on account of a past consideration.

Example

If K finds and returns M's pen and in gratitude, M promise to pay K RM200/- the promise is made in return for a prior act.

Under English law the general rule is that past consideration is insufficient to support a contract.

PRIVITY OF CONTRACT

The doctrine of privity of contract means that only those involved in striking a bargain would have standing to enforce it. In general this is still the case, only parties to a contract may sue for the breach of a contract, although in recent years the rule of privity has eroded somewhat and third party beneficiaries have been allowed to recover damages for breaches of contracts they were not party to. There are two times where third party beneficiaries are allowed to fall under the contract. The duty owed test looks to see if the third party was agreeing to pay a debt for the original party. The intent to benefit test looks to see if circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance. Any defense allowed to parties of the original contract extend to third party beneficiaries.

Indian law is practically same as the English common law. However, under the Indian law 'consideration may move from the promisee or any other person .' In the chinnaya v. rammayya case, an old lady by a deed of gift, gave over certain properties to her daughter under the direction that she should pay her aunt a certain sum of money. The same day the daughter refused to pay her aunt the money on the plea that no consideration has moved from her aunt to her. It was held that sister of the old lady (aunt) was entitled to maintain the suit as consideration had move from the old lady, for her sister to the daughter.

In Donoghue v. Stevenson a friend of Ms. Donoghue bought her a bottle of ginger beer, which was defective. Specifically, the ginger beer contained the partially decomposed remains of a snail. Since the contract was between her friend and the shop owner, there was no privity of contract between the manufacturer and the consumer, but it was established that the manufacturer has a duty of care owed to their consumers and she was awarded damages in tort.

Section 2(d) in The Indian Contract Act, 1872: When, at the desire of the promisor, the promisee or any other person has clone or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such Act or abstinence or promise is called a consideration for the promise.
One of the most notable features of Section 2(d) is that the act which is to constitute a consideration may be done by "the promisee or any other person". It means therefore, that as long as there is a consideration for a promise, it is immaterial who has furnished it. It may move from the promisee or, if the promisor has no objection, then from any other person. This is the principle as established by the English Courts in as early as 1677 in the case of Dutton v. Poole.

B. capacity to contract

1. Who is competent to make a contract:-

Section 11. Every person is competent to contract who is of age of majority according to the Law to which he is subject, who is of sound mind and not is disqualified from contracting by any Law to which he is subject.
Age of majority:- According to section 3 of Indian majority Act-1875 every person domiciled in Indian attains majority on the completion of 18 years of age.
Exception: - 21 years- in the following cases.

a. Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.
b. Where minor's property has passed under the superintendence of the court of words. Position of Agreements by Minor:-

1. Validity: - An agreement with a minor is void-ab-initio [Mohoribibee v. Dharmodas Ghose]
Example :
Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor and therefore he is not liable to pay anything to the lender.
2. A minor's has received any benefit under a void contract, he cannot be asked to return the same.
3. If a minor has received any benefit under a void contract, he cannot be asked to return the same.
4. Fraudulent representation by a minor- no difference in the status of agreement. The contract remains void.
5. A minor with the consent of all the partners, be admitted to the benefits of an existing partnership.
6. Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts.
7. Minor's parent/guardians are not liable to a minor's creditor for the breach of contract by the minor.
8. A minor can act as an agent but not personally liable. But he cannot be principal.
9. A minor cannot become shareholder of a the company except when the shares are fully paid up

and transfer by share.

10. A minor cannot be adjudicated as insolvent.

11. Can enter into contracts of Apprenticeship, Services, Education, etc:

(a) A minor can enter into contract of apprenticeship, or for training or instruction in a special art, education, etc.

(b) These are allowed because it generates benefits to the Minor.

12. Guarantee for and by minor

A contract of guarantee in favour of a minor is valid. However, a minor cannot be a surety in a contract of guarantee. This is because, the surety is ultimately liable under a contract of guarantee whereas a minor can never be held personally liable.

13. Minor as a trade union member

Any person who has attained the age of fifteen years may be a member for registered trade union, provided the rules of the trade union allow so. Such a member will enjoy all the rights of a member.

EXCEPTION

Contract for the benefit of a minor.

Contract by Guardian

Benefit of a minor by his guardian or manager of his estate.

a. within the scope of the authority of the guardian.

b. Is for the benefit of the minor.

Contract for supply of Necessaries. Example :

Food, clothes, bed, shelter, shoes, medicines and similar other things required for the maintenance of his life or for the life of his dependents, expenses for instruction in grade or arts; expenses for moral religions or intellectual education, funeral expenses of his deceased family members, marriage expenses of a dependent female member in the family; expenses incurred in the protection of his property or personal liberty, Diwali pooja expenses, etc. have been held by courts to be necessaries of life. However, the things like earrings for a male, spectacles for a blind person or a wild animal cannot be considered as necessaries.

Liability for tort: A minor is liable for a tort, i.e., civil wrong committed by him. Example:

A, a 14 – year – old boy drives a car carelessly and injures B. He is liable for the accident i.e., tort.

Person of Unsound Mind

A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of Unsound mind, may not make a contract when he is of unsound mind.

At time of entering into a contract, a person must be sound mind. Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.

An idiot

An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.

Delirious persons

A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.

Hypnotized persons
Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.

Mental decay
There may be mental decay or senile mind the to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.
Lunatic is not permanently of unsound mind. He can enter into contract during lucid intervals i.e., during period when he is of sound mind.

Person Disqualified by Law
Body corporate or company or corporation
Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.

Alien enemy
An 'alien' is a person who is a foreigner to the land. He may be either an 'alien friend' or an 'alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.
During the war, contract can be entered into with alien enemy with the permission of central government.
Convict can't enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, be becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.

Insolvent
When any person is declared as an insolvent, his property vests in receiver and therefore, he can't enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.
Foreign sovereigns, diplomatic staff and representative of foreign staff can enter into valid contract. However, a suit cannot be filed against them, in the Indian counts without the prior sanction of the central Government.

c. Minor's position

According to the Indian Majority Act, 1875, a minor is a person, male or female, who has not completed the age of 18 years. In case a guardian has been appointed to the minor or where the minor is under the guardianship of the Court of Wards, the person continues to be a minor until he completes his age of 21 years. According to the Indian Contract Act, no person is competent to enter into a contract who is not of the age of majority. It was finally laid down by the Privy Council in the leading case of *Mohiri Bibee* v. *Dharmodas Ghose*, (1903) 30 Cal. 539, that a minor has no capacity to contract and minor's contract is absolutely void. In this case, X, a minor borrowed Rs. 20,000 from Y, a money lender. As a security for the money advanced, X executed a mortgage in V's favour. When sued by Y, the Court held that the contract by X was void and he cannot be compelled to repay the amount advanced by him.

Indian Courts have applied this decision to those cases where the minor has incurred any liability or where the liabilities on both sides are outstanding. In such cases, the minor is not liable. But if the minor has carried out his part of the contract, then, the Courts have held, that he can proceed against the other party. The rationale is to protect minor's interest. According to the Transfer of Property Act, a minor

cannot transfer property but he can be a transferee (person accepting a transfer). This statutory provision is an illustration of the above principle.

Law acts as the guardian of minors and protects their rights, because their mental faculties are not mature- they don't possess the capacity to judge what is good and what is bad for them. Accordingly, where a minor is charged with obligations and the other contracting party seeks to enforce those obligations against minor, the agreement is deemed as void ab-initio. In the leading case of Mohori Bibi vs Dharmo Das Ghosh, a minor executed a mortgage for Rs. 20,000 and received Rs. 8,000 from the mortgagee.

The mortgagee filed a suit for the recovery of his mortgage money and for sale of the property in case of default. The Privy Council held that an agreement by a minor was absolutely void as against him and therefore the mortgagee could not recover the mortgage money nor could he have the minor's property sold under his mortgage.

No restitution except in certain cases :

A minor cannot be ordered to make compensation for a benefit obtained under a void agreement, because Sections 64 and 65 of the Contract Act, which deal with restitution, apply only to contracts between competent parties and are not applicable to a case where there is not and could not have been any contract at all (Kanta Prasad vs. Sheo Gopal Lai).

The court may, however, in certain cases, while ordering for the cancellation of an instrument, at the instance of a minor, require for the cancellation of an instrument, require the minor plaintiff to make compensation to the other party to the instrument. This is as per Section 33 of the Specific Relief Act, 1963, which states as follows:

"On adjudging the cancellation of an instrument, the Court may require the party to whom such relief is granted, to restore, so far as may be any benefit which he may have received from the party and to make any compensation to him which justice may require."

Thus, the Court will compel restitution by a minor when he is a plaintiff. For example, if a minor sells a house for Rs. 50,000 and later on, files a suit to set aside the sale on the ground of minority, he may be directed by the Court to refund the purchase money received by him before he can recover possession of the property sold (Jager Nath Singh vs Lalta Prasad).

It may be emphasized that Section 33 of the Specific Relief Act, 1963, is framed so as to afford relief in only a case where the minor himself as plaintiff seeks the assistance of Court and the Section is inapplicable as he happens to be merely a defendant in a suit by the person who dealt with him when he was a minor. This Section is based on the well known principle that "he who seeks equity must do equity."

Beneficial agreements are valid contracts:

As observed earlier, the court protects the rights of minors. Accordingly, any agreement which is of some benefit to the minor and under which he is required to bear no obligation, is valid. In other words, a minor can be a beneficiary e.g., a payee, an endorsee or a promise under a contract (Goekda Latcharao vs Vishwanadham Bhomayya). Thus money advanced by a minor can be recovered by him by a suit because he can take benefit under a contract.

The Hindu Minority and Guardianship Act, 1956, also provides to the same effect, namely, a natural guardian is empowered to enter into a contract on behalf of the minor and the contract would be binding

and enforceable if the contract is for the benefit of the minor.

Illustrations :

(a) A duly executed transfer by way of sale or mortgage in favour of a minor, who has paid the whole of the consideration money, is enforceable by him or by any other person on his behalf (Raghava Chariar vs. Srinivasa).

(b) Where a minor purchaser of immovable property was, subsequent to his purchase, disposed by a third party, it was held that the minor could recover from his vendor the sum which he has paid as purchase money (Walidad Khan vs. Janak Singh).

(c) A minor purchaser of immovable property was held entitled to recover possession of property purchased from his vendor, when refused by vendor (Collector of Meerut vs Hardian).

(d) A promissory note executed in favour of a minor is valid and can be enforced in a court (Sharaft Ali vs. Noor Mohd.)

(e) Where a minor had performed his part of the agreement and delivered the goods, he was held entitled to maintain a suit for the recovery of their price (Abdul Gafar vs Piare Lai).

d. Nature/ Effect of Minor's Agreement

The following points must be kept in mind with respect to minor's contract:

(a) A minor's contract is altogether void in law, and a minor cannot bind himself by a contract. If the minor has obtained any benefit, such as money on a mortgage, he cannot be asked to repay, nor can his mortgaged property be made liable to pay.

(b) Since the contract is void *ab initio,* it cannot be ratified by the minor on attaining the age of majority.

(c) Estoppel is an important principle of the law of evidence. To explain, suppose X makes a statement to Y and intends that the latter should believe and act upon it. Later on, X cannot resile from this statement and make a new one. In otherwords, X will be estopped from denying his previous statement. But a minor can always plead minority and is not estopped from doing so even where he had produced a loan or entered into some other contract by falsely representing that he was of full age, when in reality he was a minor.

But where the loan was obtained by fraudulent representation by the minor or some property was sold by him and the transactions are set aside as being void, the Court may direct the minor to restore the property to the other party.

For example, a minor fraudulently overstates his age and takes delivery of a motor car after executing a promissory note in favour of the trader for its price. The minor cannot be compelled to pay the amount to the promissory note, but the Court on equitable grounds may order the minor to return the car to the trader, if it is still with the minor.

Thus, according to Section 33 of the Specific Relief Act, 1963 the Court may, if the minor has received any benefit under the agreement from the other party require him to restore, so far as may be such benefit to the other party, to the extent to which he or his estate has been benefited thereby.

(d) A minor's *estate* is liable to pay a *reasons-ble price* for necessaries supplied to him or to anyone whom the minor is bound to support (Section 68 of the Act).

The necessaries supplied must be according to the position and status in life of the minor and must be

things which the minor actually needs. The following have also been held as necessaries in India.

Costs incurred in successfully defending a suit on behalf of a minor in which his property was in jeopardy; costs incurred in defending him in a prosecution; and money advanced to a Hindu minor to meet his marriage expenses have been held to be necessaries.

(e) An agreement by a minor being void, the Court will never direct specific performance of the contract.

(f) A minor can be an agent, but he cannot be a principal nor can he be a partner.

He can, however, be admitted to the benefits of a partnership.

(g) Since a minor is never personally liable, he cannot be adjudicated as an insolvent.

(h) An agreement by a parent or guardian entered into on behalf of the minor is binding on him provided it is for his benefit or is for legal necessity. For, the guardian of a minor, may enter into contract for marriage on behalf of the minor, and such a contract would be good in law and an action for its breach would lie, if the contract is for the benefit of the minor *(Rose Fernandez* v. *Joseph Gonsalves,* 48 Bom. L. R. 673) e.g., if the parties are of the community among whom it is customary for parents to contract marriage for their children. The contract of apprenticeship is also binding.

However, it has been held that an agreement *for service,* entered into by a father on behalf of his daughter who is a minor, is not enforceable at law *(Raj Rani* v. *Prem Adib,* (1948) 51 80m. L.R. 256).

UNIT.III VALIDITY, DISCHARGE PERFORMANCE OF CONTRACT

A. Free consent

It means an act of assenting to an offer. According to section 13, "Two or more persons are said to consent when they agree upon the same thing in the same thing in same sense." Thus, consent involves identity of minds in respect of the subject matter of the contract. In English Law, this is called 'consensus-ad-idem'.

One of the essential elements of a valid contract as highlighted in Section 10 is that the parties should enter into the contract with free consent. The foundation of every contract is the free consent of the parties which is the yardstick for measuring the validity of the contract.

Effect of absence of consent:

When there is no consent at all, the agreement is void – ab –initio'. It is not enforceable at the option of either party.

Example 1:-

X have two car one Maruti car and one Honda city car. Y does not know that X has two cars Y offers to buy car at Rs.50,000. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is void – ab – inito.

Example 2:-

An Illiterate woman signed a gift deed thinking that it was a power of attorney – no consent at all and the agreement was void – ab – inito [Bala Devi V S. Manumdats]

Free consent

Consent is said to be free when it is not caused by [Section 14]

(a) coercion [Section 15]

(b) Undue influence [Section 16]

(c) Fraud [Section 17]
(d) Misrepresentation [Section 18]
(e) Mistake [Section 20, 21,22]

Effect of flaw in consent – absence of free consent and its effect on contract

Section 19 of the ICA deals with the effect of flaw in consent caused by coercion, fraud, and misrepresentation while Section 19A deals with flaw in consent due to undue influence. It may be noted that there is a distinction between the flaw in consent due to coercion, fraud and misrepresentation and that caused by mistake . In case of mistake the contract is void but in other cases , the contract is voidable .

According to Section 19 when consent to an agreement is caused by coercion , fraud and misrepresentation – the agreement is a contract voidable at the option of the party whose consent was caused. Until then the contract is valid. A party to contract whose consent was taken by coercion , misrepresentation, and fraud may also, if he thinks fit, insists that the contract shall be performed.

In case of fraud, apart from avoiding the contract, the person whose consent has been so caused may also bring an action for damages because fraud is considered a kind of tort. When a person at whose option the contract is voidable rescinds it , he is bound to restore the benefit if any received by him under such a contract.

According to Section 19 B– when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent has been so caused. Any such contract may be set aside either absolutely or upon such terms and conditions as the Court may deem fit.

B. Coercion, Undue Influence, Misrepresentation, Fraud, Mistake

COERCION

Meaning of coercion[section 15]: It means compelling a person to enter into a contract, by use of physical force/activities forbidden by Indian penal code, OR
threatens to do activities forbidden by I.P.C, OR
threatens to damages the property.

Effect of coercion:Voidable and can be canceled at the option of aggrieved party. OR A 'suicide and a 'threat to commit suicide' are not punishable but an attempt to commit suicide is punishable under the Indian penal code.

X threatens to kill Y if he does not sell his house for Rs. 1,00,000 to X. Y sells his house to X and receives the payments. Here, V's consent has been obtained by coercion. Hence, this contract is voidable at the option of Y. If Y decides to avoid the contract, he will have to return Rs 1,00,000 which he had received from X.

"Y" (aggrieved party) will return Rs. 1,00,000
"X" (defendant party) will return the house and any benefit from the goods.

When voidable contract cannot be canceled:

When the third party become interested into a voidable contract. E.g. A obtain the car of B through coercion. Let, A sold it to "C" an innocent buyer, now B cannot get the contract canceled.

When the aggrieved party ratify/confirm/affirm then contract can not be cancel.

2. UNDUE INFLUENCE:

Meaning of Undue influence[section 16(1)]: The term 'undue influence' means dominating the will of the other person to obtain an unfair advantage over the other. According to section 16(1), a contract is said to be induced by undue influence

where the relations subsisting between the parties are such that one of them is in a position to dominate the will of the other, and the dominant party uses that position to obtain an unfair advantage over the other.
When two-partner are in relation, and one of them is dominant and other is in weaker position and dominant person takes undue-Advantage, then it is called "Undue- influence."
No presumption of domination of will
According to judicial decisions held in various cases, there is no presumption of undue influence in the following relationships:

Husband and wife
landlord and tenant
Creditor and debtor

Effect of undue influence [section 19A]:when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.
Comparison between coercion and undue influence:
Similarities: In case of both coercion and undue influence, the consent is not free and the contract is voidable at the option of the aggrieved party.

3. FRAUD
Meaning and essential elements of fraud [section 17]: The term 'fraud' means a false representation of fact made willfully with a view to deceive the other party. Fraud includes following:

Wrong suggestion about a fact, knowing that it is not-true;
E.g. X sells to Y locally manufactured goods as imported goods charging a higher price, it amounts to fraud. OR A seller claimed that his projector is made in Singapore, and sold it for Rs. 100,000/- However the fact is that "Projector was made in south India".

Active concealment (Hide) of defect in goods:
E.g. "A car-painter, uses paint to hide the scratches over the old furniture and sold it claiming that is Now". This is fraud. OR X a furniture dealer, conceals the cracks in furniture sold by him by using some packing material and polishing it in such a way that the buyer even after reasonable examination can not trace the defect, it would tent amount to fraud through active concealment.

Promise made without intention to perform:
E.g. "A man and a woman underwent a ceremony of marriage with the husband not regarding it as a real marriage. Held, the husband had no intention to perform the promise from the time he made it and hence the consent of the wife was obtained under fraud. OR "A farmer agrees to supply 100kg potato that will be produced by him out of his field, after three month". Two months has been lapsed, but the farmer neither implant seeds, nor does cultivation. This is case of fraud.
Any activity declared fraud as per other law; under companies act and insolvency acts, certain kinds of transfers have been declared to be fraudulent.
Note: In case of fraud, the seller is always liable even though buyer has an opportunity to check the fraud.
Any activity fitted (supported) to deceive. It covers those acts which deceive but are not covered under any other clause.

Effect of Fraud[section-19]

The effects of fraud are as follows:
(a) The party whose consent was caused by fraud can rescind (cancel) the contract but he cannot do so in the following cases:
Where silence amounts to fraud, the aggrieved party cannot rescind the contract if he had the means of discovering the truth with ordinary diligence;
Where the party gave the consent in ignorance of fraud;
Where the party after becoming aware of the fraud takes a benefit under the contract;
Where an innocent third party before the contract is rescinded acquires for consideration some interest in the property passing under the contract.
Where the parties cannot be restored to their original position.

(b) The party whose consent was caused by fraud may, if he thinks fit, insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true.
The party whose consent was caused by fraud, can claim damage if he suffers some loss.
Whether silence is fraud? Comment:
General concept: According to explanation to section 17, "Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud".
In other words, Silence is not fraud. It is buyer, who must check the goods & suitability.
E.g. X purchased a used computer from Z thinking it as a computer imported from USA, Z failed to disclose the fact to X. On knowing the fact X wants to repudiate the contract. So, here X cannot repudiate/rescind/cancel the contract.
Exceptions to the general rule:
The general rule that silence does not amount to fraud has the following exceptions. Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Such duty arises in the following two cases:
When silence is equivalent to speech: E.g. "A student of BBA select a Business law-book and asks the seller". If seller don't stop me from buying this book, I will assume that "it is best". The seller remained silent here the student will treat "silence" as speech. If the book was inferior, then it is a case of fraud.
Disclosure of dangerous nature: E.g. Shyam sold his horse to Ram a buyer for Rs. 11000/- Shyam knows that horse was "wicked" but fails to disclose it to buyer. Here seller has committed fraud by remaining silent.

4. Misrepresentation
The term "misrepresentation" means a false representation of fact made innocently or non-disclosure of a material fact without any intention to deceive the other party. Section 18 defines the term "misrepresentation" as follows
"Misrepresentation" means and includes-
The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
Any breach of duly which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading an other to his prejudice or to the prejudice of anyone claiming under him;
Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is the subject of the agreement.

Essential elements of misrepresentation:
By a party to a contract: The representation must be made by a party to a contract or by anyone with his connivance or by his agent. Thus, the misrepresentation by a stranger to the contract does not affect the validity of the contract.
False representation: There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly even it is to be true.

Representation as to fact: The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to misrepresentation.
"Innocent misstatement made into good faith OR without any intention to cause loss"
E.g. A farmer says that his land is very productive and produces 100 quintal per acre. This is misrepresentation and buyer can cancel the contract.
Note: When the buyer has an opportunity to check the misrepresentation, but he fails then buyer cannot cancel the contract.
E.g. An owner of factory, while selling his factory, express his opinion as my factory produces 1000 kg per annum and requested the buyer to find out exact production by checking "production-record". If the buyer fails to check the production record then buyer cannot blame seller.

Effect of misrepresentation [section 19]
The effects of misrepresentation are as follows:
Right to rescind the contract The party whose consent was caused by misrepresentation can rescind (cancel) the contract but he cannot do so in the following cases:
where the party whose consent was caused by misrepresentation had the means of discovering the truth with ordinary diligence;
where the party gave the consent in ignorance of misrepresentation;
where the party after becoming aware of the misrepresentation, takes a benefit under the contract;
where an innocent third party, before the contract is rescinded, acquires for consideration some interest in the property passing under the contract;
where the parties cannot be restored to their original position.

(b) Right to insist upon performance The party whose consent was caused by misrepresentation may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representation made had been true.
Comparison between fraud and misrepresentation
Similarities: There are basically two similarities in case of fraud and misrepresentation as follows:
In both the cases, a false representation is made by a party;

In both the cases, the contract is voidable at the option of the party whose consent is obtained by fraud or misrepresentation.

5. Mistake
Meaning of mistake [section 20]
A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is "erroneous belief" concerning something.
Classification of Mistake of Law:
(a) Mistake of Indian Law(In sense of penalty): The contract is not voidable because everyone is supposed to know the law of his country. e.g. disobeying traffic rules"
(b) Mistake of Foreign Law(void-ab-initio): A mistake of foreign law is treated as mistake of fact, i.e.

the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.

Mistake of fact
Mistake of fact be either Unilateral mistake or Bilateral mistake.
Unilateral mistake [section 22]: The term 'unilateral mistake' means where only one party to the agreement is under a mistake. According to section 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact."
Bilateral mistake [section 22]: The term 'bilateral mistake' means where both the parties to the agreement are under a mistake. According to section 20, "where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void." thus, the following three conditions must be satisfied before declaring a contract void under this section:

Both the parties must be under a mistake
Mistake must be of fact but not of law.
According to explanation to section 20. "An erroneous opinion as to the value of the thing which forms the subject matter of agreement is not to be deemed a mistake as to a matter of fact."

c. Unlawful Consideration and Object

According to Section 23, in the following cases consideration or object of an agreement is unlawful:
1. If it is forbidden by law:
Where the object of a contract is forbidden by law, the agreement shall be void. An act is said to be forbidden if it is punishable by criminal law or any special statute, or if it is prohibited by any law or order made in exercise of powers or authority conferred by the legislature.
Example:
(1) A and B agreed to deal in smuggled goods. It is forbidden by law and therefore void.
(2) A committed B's murder in the presence of C. A promises to pay Rs. 500 to C, if C does not inform the police about the murder.
The agreement in example No. 2 given above is illegal as its object is unlawful. Besides, A and C will be liable for the act of murder and its concealment under the Indian Penal Code.

2. If it is of such a nature that if permitted, it would defeat the provisions of any other law:
The object of an agreement may not be directly forbidden but indirectly, it may defeat the object of any other law, the agreement would be void in such a case.

Example:
(1) A failed to pay his land revenue. Therefore, his estate was sold for arrears of revenue by the Government. By the law, the defaulter is prohibited from purchasing the land again. A asks B to purchase the estate and later on, transfer the same to him at the same price. The agreement is void as it will defeat the object of the law which prohibits a defaulter to purchase back the land, for indirectly A will again become the owner of the estate.

The second agreement is also void as it would defeat the provision or object of the law of limitation. [Rama Murthy y Goppayya],

3. If it is fraudulent:
If the object of an agreement is fraudulent, i.e., to cheat people, it is void. Example:
A, B & C enter into an agreement to sell bogus plots of land in Delhi. The agreement is void as it is fraudulent and thereby unlawful.

4. If it involves or implies injury to the person or property of another: Law protects property and person of its citizens. It cannot permit any contract which results in an injury to the person or property of any one.
Examples:
(1) A promises to pay Rs. 500 to B if B beats C. It involves injury to C, hence it is unlawful and void.

5. If the Court regards it as immoral or opposed to public policy: If the object of an agreement is immoral or opposed to public policy, it will be void. Morality here means something which the law regards as immoral.

Examples:
(1) A agrees to give his house on rent to a prostitute for her immoral purpose. A cannot recover the rent of his house if he prostitute refuse to pay. However, he may be allowed to get his house vacated from the prostitute as it will put an end to the immoral purpose.
(2) A agrees to give his daughter on hire to B for concubinage. The agreement is void because it is immoral, though the letting may not be punishable under the Indian Penal Code.

Effect of Illegality :

1. An illegal agreement is void: It is not enforceable at law.
2. Collateral transactions to illegal transactions are also void:
Not only the illegal agreement is void but also the collateral transactions are void.

Example:
A borrows Rs. 2,000 from B to buy a revolver to shoot C. Since the object of the transaction is illegal, B cannot recover his Rs. 2,000 if he has given the loan, knowing that A is taking the loan to purchase a revolver to shoot C.
Thus people will be discouraged to finance or assist illegal transaction when they know that they will not be able to recover their loans.

3. Law does not help any party:
Where the agreement is illegal, the law will not help any of the parties. The reason is that both the parties are equally guilty and the law does not help a guilty person. The law wants to discourage both the parties.

Example:
A promise to pay a bribe of Rs. 200 to B, if B does his work. The agreement is illegal. B cannot recover the amount of Rs. 200 after doing A's work. Similarly, if A has paid the bribe in advance, he cannot get it back if B does not do his work.

4. Indirectly defendant is helped:

Defendant is a person against whom the suit is filed. When the law does not help any of the parties, it means the party who has paid the amount will not be able to get it back as we have seen in the above example. The party who has received the amount is thus helped to keep the money with it and is not asked by the Court to return it. The Court is neutral and the defendant gets the benefit of the Court's neutrality. In the example given above, B can keep Rs. 200, even if B does not do the work of A. The Court will not ask B to return the amount. Thus B is indirectly benefited or helped by the refusal of the Court to intervene.

5. In cases of fraud, coercion, etc., money or property transferred can be recovered:
Where the illegality is the result of coercion and fraud of the other party, the Court can compel the guilty to return the money paid or property transferred.

6. Agreement partly legal and partly illegal (Sec. 24):
An agreement may consist of promises which are legal and illegal. If the legal promise can be separated from the illegal one, the legal promise can be enforced. In Such a case the illegal part will be void.
Where the legal promise cannot be separated from the illegal one, the whole of it would be void.
Where there is a single consideration for one or more unlawful objects, the agreement is void.

Example:
(1) A promises to manage B's factory, where genuine and bogus motor parts are manufactured. B agrees to pay A (Manager) a salary of Rs. 1,000 per month.
The agreement is void as partly it is legal and illegal and the legal part cannot be separated as the salary is for both the parts.

7. Reciprocal promises, legal and illegal (Sec. 57):
Where persons reciprocally promise, firstly to do certain things which are legal, and secondly under specified circumstances to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

Example:
A and B agree that A shall sell a house to B for Rs. 10,000 but that if B uses it as a gambling house, he shall pay A Rs. 50,000 for it.
The first set of promise, i.e., to sell the house and to pay Rs. 10,000 is a contract.
The second set of promise, i.e., B may use the house as a gambling house and pay Rs. 50,000 is a void agreement.

8. Alternative promise, legal and illegal (Sec. 58):
In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

d. Discharge of Contract

A Contract may be discharged in any of the following ways

1. Discharge by Performance.
2. Discharge by Mutual Consent or Agreement

i. Novation - When a new contract is substituted for an existing contract
ii. Alteration
iii. Rescission
iv. Remission - Accepting the lesser sum of amount than what was contracted for

3. Discharge by subsequent illegality or impossibility

i. Destruction of Subject-matter
ii. Failure of ultimate purpose
iii. Death or personal incapacity of Promisor
iv. Change of Law

4. Discharge by lapse of time
5. Discharge by operation of law
6. Discharge by breach of contract

i. Anticipatory breach
ii. Actual breach

Discharge by performance

Fulfilment of obligations by a party to the contract within the time and in the manner prescri bed in the contract.

(a) Actual performance – no party remains liable under the contract. Both the parties performed.

(b) Attempted performance or tender.:- Promisor offers to perform his obligation under the contract but the promise refuses to accept the performance. It is called as attempted performance or tender of performance but the contract is not discharged.

Discharge by mutual agreement

(a) Novation [Sec 62] – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.

Between the same parties (by change in the terms and condition)

Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-

(1) All the parties must consent to novation

(2) The novation must take place before the breach of original contract.

(3) The new contract must be valid and enforceable.

Example:
A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)

A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) Rescission [62]:- Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1 st oct his go down and Y promises to par for goods on 1 Nov. X does not supply the goods. Y may rescind the contract.
(c) Alteration [62] :- Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.
Ex:- X Promises to sell and delivers 100 bales of cotton on 1 oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) Remission [63]:- Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-
(a) dispense with (wholly or part) the performance of a promise made to him.
(b) Extends the time for performance due by the promisors
(c) Accept a lesser sum instead of sum due under the contract
(d) Accept any other consideration that agreed in the contract
A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.
(e) Waiver:- Intentional relinquishment of a night under the contract.
(f) Merger :- conversion of an inferior right into a superior right is called as merger. (Inferior right end)

Discharge by operation of law
(a) Death :- involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent. Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.
(b) Insolvency:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.
Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.
(c) By unauthorized material alteration – without the approval of other party – comes to an end – nature of contract substance or legal effect.
Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.
(d) Merger: When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, then the contract conferring inferior right is discharged.
Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

(e) Rights and liabilities vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.
Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

Discharge by Lapse of time
Where a party fails to take action against the other party within the time prescribe under the limitation Act, 1963. All his rights to come end. Recover a debt – 3 Years recover an immovable property – 12 years

Discharge by Breach of contract
Failure of a party to perform his part of contract

(a) Anticipatory Breach of contract :- Anticipatory breach of contract occurs when the part declares his intention of not performing the contract before the performance is due .
(i) Express repudiation: - 5 agrees to supply B 100 tunes of specified category of iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to B.
(ii) Party disables himself: - Implied by conduct.
Ex.:- 5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car to T.
(b) Actual Breach of contract :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contact.
Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it) is discharged from his obligation and get rights to proceed against the party at fault. The various remedial available to an aggrieved party.

e. Performance, Impossibility of performance and frustration
Sec 37:- That the parties to a contract must either perform or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of contract Act, or of any other law.

Performance: - Two types
1. Actual performance – actually performed – liability of such a party comes to an end.
2. Attempted performance or tender of performance refusal to accept offer of performance by promisee .
Promisor is not responsible for non performance and they can sue the promisee for breach of contract – nor he (promisor) thereby lose his rights under the contract.
A. Tender or offer of performance to be valid must satisfy the following conditions:-
(i) It must be unconditional
Ex :- 'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.
(ii) It must be made at a proper time and place.
Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;
(iii) Reasonable opportunity to examine goods.
Ex:- Delivery of something to the promise by the promisor promise must have reasonable opportunity of inspection.
(iv) It must be for the whole obligation :- goods and amount.

Ex:- ‘X’ a debtor, offer’s to pay ‘Y’ the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [Behari lal v ram gulam]

(v) It must be made to the promise or his duty authorized agent.

Ex:- It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Type of Tender

Tender of goods and services

When a promisor offers to delivery of goods or service to the promise, it is said to be tender of goods or services, if promisee does not accept a valid tender, It has the following effects:

(i) The promisor is not responsible for non – performance of the contract.

(ii) The promisor is discharged from his obligation under the contract. Therefore, he need not offer again.

(iii) He does not lose his right under the contract. Therefore, he can sue the promise.

Tender of money

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have the following effects:

(i) The offeror is not discharged from his obligation to pay the amount.

(ii) The offeror is discharged from his liability for payment of interest from the date of the tender of money.

Effect of refusal of party to perform promise Wholly Sec 39.

Promisor – Refuse – Promise – wholly

Promisee can put – can end of the contract or – he can continue the contract if he has given his consent either by words or – by conducts in its continuance.

Result – claim damages.

Who can demand performance?

1. Promisee – stranger can’t demand performance of the contract.

2. Legal Representative – legal representative can demand Exception performance.

- contrary intention appears from the contract
- contract is of a personal nature.

3. Third party – Exception to “stranger to a contract”

Person by whom promise is to be performed Sec 40.

[who will perform the contract]

1. Promisor himself :- include personal skill, taste or art work.

Ex:- ‘A’ promises to paint a picture for ‘B’ as this promise involves personal skill of ‘A’. If must be performed by ‘A’.

2. Promisor or agent :- [does not involves personal skill]

3. Legal Representative [does not involve personal skill and taste]

4. Third person [Sec 41] :- Acceptance of promise from the third party:-

If the promisor accepts performance of a contract by a third party, he can't after wards enforce the performance against the promisor although the promisor had neither authorized not ratified the act of the third party.

Performance of Joint Promises:-
Two or more person make a promise
Performed by all the joint promisor [42]
All the joint promisor – liable
Thus in India the liability of joint promisors is joint as well as several.
In England, however the liability of the joint promisors is only joint and not several and accordingly all the joint promisors must be sued jointly.

Liability of joint promisor [43]
1. Liability – joint as well as several [unless express A + B + C 900 D. D may compel either A, B or C or any of two of them or all of them.
2. Where a joint promisor has been compelled to perform the whole promise, be may compel every other joint promisor to contribute equally with himself to the performance of the promise (unless a contrary intention appears from the contract).

Impossibility of Performance and Frustration
Section 56 of the Indian Contract Act, 1872 provides:

AGREEMENT TO DO IMPOSSIBLE ACT – An agreement to do an act impossible in itself is void.
Contract to do act afterwards becoming impossible or unlawful – A contract to do an act which, after the contract is made, becomes impossible, or, by reason of same event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

For an example: A agrees with B to discover treasure by magic. The agreement is void.
A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

HISTORICAL OVERVIEW

In the seventeenth century the judges in Paradine vs. Jane laid down what is sometimes called the rule as to absolute contracts. It amounts to the law casts a duty upon a man which, through no fault of his, he is unable to perform, he is excused for non performance; but if he binds himself by contract absolutely to do a thing, he cannot escape liability for damages for proof that as events turned out performance is furtile or even impossible. It was held that "when the party by his own contracts creates a duty, he is bound to make it good, if he may, notwithstanding any accident by inevitable necessity, because he might have provided against it by his contract; though the land be surrounded or gained by the seas, or

made barren by wildfire, yet the lessor will have his whole rent.

If a contract is made, and for whatever reason it later becomes impossible to for one party to perform their obligations, then we need to think about frustration. Be careful to note that frustration is about subsequent impossibility; if a contract was impossible to perform right from the outset, then the issue is one of mistake and not frustration!

The doctrine of frustration, the frustration is divided into two important parts:

1. Initial impossibility: Section 56 first lays down the simple principal that "an agreement to do an act impossible in itself is void." For example, an agreement to discover a treasure by magic, being impossible of performance, is void.
2. Subsequent Impossibility: Section 56 lays down the effect of subsequent impossibility of performance. Sometimes the performance of a contract is quite possible when it is made by the parties. But some event subsequently happens which renders its performance impossible or unlawful. In either case the contract becomes void. Where, for example, after making a contract of marriage, one of the parties goes mad, or where a contract is made for the import of goods and the import is thereafter forbidden by a government order. In this context there was a famous case of Chamanlal Jain vs. Arun Kumar Jain, in this case the court held that where a singer contracts to sing and becomes too ill to do so, the contract in each case becomes void.

MEANING OF FRUSTRATION

To understand the concept of frustration first we analyze one famous case decided by BLACKBURN J in the case of Taylor vs. Caldwell[4], "rule is only applicable when the contract is positive and absolute, and not subject to any condition either expressed or implied". The fact of the case is that the defendants had agreed to let the plaintiffs the use of their music hall between certain dates for the purpose of holding a concert there. But before that first day on which a concert was to be given, the hall was destroyed by fire without the fault of either party.

The plaintiff sued the defendants for their loss. It was held that the contract was not absolute, as its performance depended upon the continued existence of the hall. It was, therefore, "subject to an implied condition that the parties shall be excused in case, before breach, performance becomes impossible from the perishing of thing without default of the contractor."

Thus, the doctrine of frustration comes into play in two types of situation, first, where the performance is physically cut off, and, second, where the object has failed. The Supreme Court of India has held that Section 56 will apply to both kinds of frustration. Referring to the section, B. K. MUKHERJEA J of the Supreme Court observed in Satyabrata Ghose vs. Mugneeram Bangur & Co. as follows:

This much is clear that the word "impossible" has not been used here in the sense of physical or literal impossibility. The performance of an act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose which the parties had in view. And if an untoward event or change of circumstances totally upsets the very foundation upon which the parties rested their bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do.

THEORIES OF FRUSTRATION

The theories of frustration are divided into two important parts:

1. Theory of Implied Term

The theory of implied term was explained by LORD LOREBURN in F.A. Tamplin co ltd vs. Anglo – Mexican Petroleum Products co ltd in these words: A court can ought to examine the contract and the circumstances in which it was made, not of course to vary, but to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract.

In another case LORD SUMNER observed in Joseph Constantine steamship Line Ltd VS. Imperial smelting corpn Ltd in this case Lordship observed that the meaning of the frustration of contract and its application to the actual occurrences, the court has to decide, not what the parties actually intended but what as reasonable men they should have intended.

2. Just and Reasonable Solution

According to DENNING LJ attempted to explain the doctrine of frustration on a different basis in the case of British Movie to news Ltd vs. District Cinemas Ltd. He said the court really exercises a qualifying power a power to qualify the absolute, literal or wide terms of the contracts in order to do what is just and reasonable in the new situation.

Theories not Applicable in India

Referring to the theories B.K. MUKHERJEA J of the supreme court said in Satyabrata case, in India the only doctrine that we have to go by is that of supervening impossibility or illegality as laid down in section 56 of the contract Act, taking the word 'impossible' in its practical and not literal sense. Section 56 does not leave the matter to be determined according to the intention of the parties.

Commercial Hardship

The alteration of circumstances must be "such as to upset altogether the purpose of the contract. Some delay or some change is very common in all human affairs, and it cannot be supposed that any bargain has been made on the tacit condition that such a thing will not happen in any degree. It is observed by Lord LOREBURN in F.A. Tamplin steamship Co. v Anglo Mexican Petroleum Products. A situation like this has been described as one of commercial hardship, which may make the performance unprofitable or more expensive or dilatory, but is not sufficient to excuse performance, for it does "not bring about a fundamentally different situation such as to frustrate the venture." The doctrine of frustration or impossibility does not apply to a situation so as to excuse performance. "Where performance is not practically cut off, but only rendered more difficult or costly. Such cases may not fall within the purview of section 56 and this is amply shown by the Privy Council decision in Harnandrai Fulchand v. Pragdas, in this case the privy council held that the adventure was not frustrated as the stipulation as to delivery did not make delivery by the mills a condition precedent. It was a simple case of breach.

F. Breach: Anticipatory and Present

A breach of Contract takes place when a party corresponding consents formally to abandon his liability under it, or by his own act makes it impossible that he should perform his obligations under it or fully or partially fails to perform such obligations. In the case of Food corporation v. J.P Kesharwani , 1994 Supp (1) SCC 531, where one party making unilateral alterations without any intimation to the other and then cancelling the contract, this amounted to breach (repudiation). Therefore it can be correctly stated that, any kind of contract may be examined as broken once a party refuses to perform under the contract as promised, regardless of when performance is supposed to occur. This unconditional refusal is known as a repudiation of contract.

The courts generally recognize three different types of repudiation:

When the refusal made to the other party stands positive and unconditional (express repudiation) in such cases, the renunciation must be clear, straightforward, and directed at the party thereto in the contract. (for example: "A" contracts to sell crops to "B" within a due date, however before the due date he gives a written application to "B" saying, " I'll not deliver the crops as promised").

When it comes to repudiation, sometimes action makes it impossible for the other party to perform. Action speaks as loudly as words. Such a case may be cited with an example, 'A' being a renowned businessman, was supposed to repay his bank loan. However, just before the due date he became bankrupt, which made it impossible for him to pay back his loans, his reckless voluntary actions that led to his insolvency was counted as a repudiation of the loan agreements.

If the contract is for the sale of property, repudiation occurs when one party transfers (or makes a deal to transfer) the property to a third party.

A breach of contract maybe of two types, viz,

(1) Anticipatory breach of contract,

(2) Present breach.

The failure to perform the obligations may take place at the time of performance or at a date even before that. Examples given below may be cited to explain it,

If 'A' enters into a contract to sell 200mtrs of cloth to an 'XYZ' garment manufacturing firm, on say, May 15th and eventually on April 17th 'A' corresponds saying he has changed his mind and declines his services, and thereby his contract. Then the said situation leads to an anticipatory breach of contract. And in such cases the aggrieved or injured party may sue him for damages for breach. The injured party has the option to sue immediately or till the time the act was to be performed. This was an anticipatory breach of contract by express repudiation.

If 'X' promised to assign 'G', within seven years from the date of his promise, all his interest in a lease for the sum of Rs. 80,000/- . Before the end of seven years he assigned his interest to another person. Held, this was anticipatory breach of contract by implied repudiation.

Anticipatory breach of contract is a declaration made by one of the contracting parties of his intention not to fulfill the contract. And proclaim that he will no longer remain bound by it.

The anticipatory renunciation or repudiation that has affected and gave away immediate rights of action upon the contracting parties thereto, was recognized as early as 1853 in the case of Hochester v. De La Tour (1853) 2E &B 678:95RR 747: 118Er 922: 22LJQB 455, where in April, De La Tour engaged Hochester as his courier for three months from 1st June 1852 onwards, and was told to accompany him to a tour around the European Continent. However on the 11th of May of that year, (De La Tour) the defendant had written to say that the plaintiff's services were no longer required. Thus on May 22nd Hochester sued. The defendant's counsel very powerfully argued that Hochester was still under an obligation to stay ready and willing to perform till the day when the performance was due and there could commence no action before. But Lord Campbell CJ ruled out the objection, and allowing the claim pointed out that a contract is contract from the date it is made and not from the date that its performance is due.

However the principle also applies to contingent contract, as was the case in Frost v Knight (1872) 7Exch 111. The defendant promised to marry the plaintiff on the event of the death of his father. The father was then still living and the defendant proclaimed his intention that he would not fulfill his promise on the event of his father's death off the engagement. The plaintiff did not wait for the death of the father, but immediately brought an action for the breach of contract. He asserted that the breach could arise only on the contingency taking place. But CockBurn CJ held that the case falls within the principle of Hochester v. De La Tour, hence the option is with the aggrieved party to sue immediately or wait for the performance.

In 1957 case, Universal Cargo, Justice Delvin said:
"Anticipatory breach means that a party is in breach from the moment that his actual breach becomes inevitable. Since the reason for the rule is that a party is allowed to anticipate an inevitable event and is not obliged to wait till it happens, it must follow that the breach which he anticipates is of just the same character as the breach which would actually have occurred if he had waited."

A failure to perform a contract whether it is total or a partial failure will not constitute an anticipatory breach of contract. The reason for this is that, this breach can only take place once performance of the contract is due. Accordingly this will constitute an actual breach of contract rather than an anticipatory breach of contract.
Renunciation is the main avenue by which a party can show that there has been an anticipatory breach of the contract.
The following four key factors will be taken into consideration in determining whether there has been a dismissal of a contract amounting to an anticipatory breach:
If there has been a clear case of refusal to perform contractual obligations that it goes to the root of the contract.

The renunciation or repudiation to perform a contract cannot be conditional on certain circumstances taking place. The refusal, therefore should be absolute.
When deciding whether there has been a sufficient refusal to perform contractual obligations, it must be judged according to whether a reasonable person in the position of the innocent party would regard the refusal as being clear and absolute.
There are however some consequences of not accepting the repudiation. If the aggrieved or injured party does not accept the repudiation and lets the contract remain alive the consequences will be as follows:

The party, repudiating the contract may nevertheless opt to perform when the time arrives and the promisee will be bound to accept the same.
If while the contract lies open such event occurs which dismisses the contract otherwise than by repudiation for example , by supervening impossibility or frustration, the promisor would also be entitled to take advantage of the changed circumstances. The most suitable example which can be cited is that of Avery v. Bowden (1855) 5 E & B 714: 25 LJ QB 49: 103 RR 695. In this particular case the defendant had chartered the plaintiff's ship and agreed to load it with a cargo at Odessa within a period of 45 days. On arrival of the ship at that place, the defendant told him that the Captain had no cargo for him and requested to go away. The Captain however stayed there, having a hope in his mind that the defendant would fulfill his contract. But before the specified period of 45 days had expired a war broke out which thereby rendered the performance illegal. The plaintiff then brought about an action for breach. It was held by the court that the contract had ended by frustration and not by breach.
In case the anticipatory repudiation is accepted, damages for breach would be assessed at the time when the repudiation takes place. Where the promisee does not accept the repudiation, damages will be assessed at the time fixed for performance of the contract and the promisee takes the risk of market rate declining in the mean time, he will have to take all the reasonable steps to keep his loss to the minimal.

This law has been explained in plain and simple terms in the speech of Viscount Simon LC in Heyman v Darwin Ltd 1942 AC 356 at p 361: (1942) 1 All ER 337 at p 341. It has been held by the Supreme Court in State of Kerala v Cochin Chemical Refineries Ltd AIR 1968 SC 1316 that by refusing to advance the loan which the state had undertaken to advance, its obligation to purchase groundnut cake from the company did not come to an end. That repudiation just by one party alone does not bring an end to the contract. It has to be repudiation, on one side and acceptance of repudiation on the other. This law was

emphasized by Lords in White and Carter (councils) ltd v Mc Gregor 1962 AC 413: (1962) 2 WLR 17: (1961) 3 All ER 1178(HL). A contract for display advertisement for three years of motor garage business was struck between advertisement contractors and the agent of the garage owner, but the latter repudiated the contract by writing an issuing a letter of cancellation. The contractors, however did not pay any heed to his request, refused it and subsequently displayed the advertisement. The contract provided for the annual payments and in event of any default in the payment for all the three years was to become due. Accordingly the contractors went on to claim full payment. Their lordships held that the contractors where in the process of only claiming what was due to them under the contract, and, therefore where entitled to it. In order to lay emphasis upon another aspect of repudiation, the Supreme Court has thereby observed that whatever be the implications. The acceptance by the other party may have certain remedial purposes, as far as the repudiating party is concerned he becomes free from the contract, to the same extent as if the contract has ended. This disqualification, if any meant for the election purposes by virtue of the contract would end as soon as the contract is repudiated.

Where the anticipatory breach of contract is established by the innocent party, three essential remedial measures are made available, first and the most likely remedy is damages. Damages are a monetary sum to compensate for actual loss suffered taking into account whether the loss suffered arose naturally from the breach and whether it would have been reasonably foreseeable to the guilty party.

The other two remedies are specific performance (an order from the court requiring the guilty party to honour the contract) or an injunction (an order from the court preventing the guilty party carrying out a specific action) and in practice they are less likely to be used over damages.

The case of Aslhing v L.S. John, (1984) 1 SCC 205, whereby the respondent who was a party to a subsisting contract with the government for widening of a road, had written a letter to the concerned Executive Engineer stating that he was closing the said contract. The appellant contended that the contents of the letter did not have the effect of putting an end to the contract. In this case the judgement of the court was delivered by Fazal Ali J. it was argued that the contents of the said letter made no effect in closing the contract. However after going through the contents of the letter it was absolutely made clear, that the contractor unilaterally dismissed the contract and informed the concerned department, also he resigned from the contractors list's of PWD Manipur. Thus after this letter the contract got repudiated and acceptance of the letter by the authorities was unnecessary for putting an end to the contract although breach may give rise to an action for damages.

Unit IV: REMEDIES AND QUASI CONTRACTS

a) Breach

Contract is made between the parties who are intended to bind together in a legal obligation i.e.to serve the interest of both the parties. The parties, in order to govern themselves and to safeguard their interest make their own terms and conditions. And when such terms and conditions are accepted by both the parties, there is an enactment of the contract i.e. the liability is imposed on the party to the contract and to function in accordance with the terms and conditions of the contract.

Though many a times, the contracting parties work according to the terms and conditions of the other party, there are instances when one party back steps, thus leading to the loss to other party.

This is referred as repudiation. According to the section 39 of the Indian contract Act, "Any intimation whether by words or by conduct that the party declines to continue with the contract is repudiation, if the result is likely to deprive the innocent party of substantial the benefit of the contract" Thus, repudiation can occur when the either party refuses to perform his part, or makes it impossible for him to perform or even fails to perform his part of contract in each of the cases in such a manner as to show an intention

not to fulfill his part of the contract.

Breach of contract is defined is a legal cause of action in which a binding agreement or bargained for exchange is not honored by one or more parties to the contract by non-performance or interference with the other partys performance. It the party does not fulfill his contractual promise, or has given information to the other party that he will not perform his duty as mentioned in the contract or if by his action and conduct he seems to be unable to perform the contract, he is said to be breach of contract.

Thus when a party having a duty to perform a contract fails to do that, or does an act whereby the performance of the contract by him becomes impossible, or he refuses to perform the contract, there is said to be a breach of contract on his part. On the breach of contract by the one party, the other party is discharged of his obligations to perform his part of the obligations.

Breach of a contract does not discharge the contract, thereby automatically termination the obligation of the innocent party. It gives an opinion to the innocent party to regard itself as discharged. The innocent party rescinds the contract, the primary obligation of both the parties is over, but the defaulting parties become liable for payment of compensation for the breach. The innocent party may also waive the defective performance and elect to accept damages instead of ending the contract.

The breach of contract may be either: (i) actual, i.e. non-performance of the contract on the due date of performance, or (ii) anticipatory, i.e. before the due date of the performance has come. Thus, when the party to the contract refuses to do an act or does an act at the time of the performance of the contract then it is said to be the actual breach of the contract, but when the party to the contract refuses to do an act or does an act before the time of performance by which the performance of the contract is not possible, the such breach is known as the anticipatory breach of contract.

Fundamental Breach of Contract

In todays globalized world, thousands of companies engage in business which involves millions of consumers. Thus, it would be difficult for these companies to draw up separate contract with every individual, they came out with Standard Form Of Contract, whereby a standard form with a large number of terms and conditions are there restricting the liability of the party to the contract. The individuals can hardly bargains with the massive organizations and therefore the only option available to them is either to accept it or reject it.

B. Remedies :

i. Damages: Kinds

REMEDIES FOR BREACH

A contract being a correlative set of rights and obligations for the parties would be of no value, if there were no remedies to enforce the rights arising there under. The Latin maxim ‘Ubi jus, ibi remedium’ denotes where there is a right, there is a remedy.

The remedies for breach of contract are:

1. Suit for damages or compensation
2. Suit for specific performance
3. Suit for injunction
4. Suit for rescission
5. Punitive damages

The law on this issue is dealt with in two statues viz., The Specific Relief Act, 1963 and The Indian Contract Act, 1872.

SUIT FOR DAMAGES

The word 'damages' means monetary compensation for the loss suffered. Whenever a breach of contract takes place, the remedy of 'damages' is the one that comes to mind immediately as the consequence of breach. The aggrieved party may seek compensation from the party who breaches the contract.
When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract. The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach. The court would first identify the losses caused and then assess their monetary value.

Section 73 of the Indian Contract Act, 1872 lays down the basic guidelines for identifying the losses. Section 73 reads as follows:
"Compensation for loss or damage caused by breach of contract: When a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss of damage caused to him thereby, which naturally arose in the usual course of things from such breach or which, the parties knew when they made the contract to be likely to result from the breach of it.
Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."
Keeping in view the provisions of section 73 and the court judgments, the aggrieved party would be entitled to one of the following types of damages, depending upon the circumstances of the case:

A. General or ordinary damages.
Damages arising naturally and directly out of the breach in the usual course of the things.

B. Special damages.
Compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.

C. Exemplary damages.
Damages for the mental or emotional suffering also caused by the breach.
In Ghaziabad Development Authority V Union of India (AIR 2000 SC 2003), the Hon'ble court held that in case of breach of contract mental anguish not a head of damages in ordinary commercial contract. In order to claim damages, party has to plead specifically the manner in which he suffered the loss. [State V Pratibha Prakash Bhawan AIR 2005 Ori 58]. The Plaintiff to the suit must prove damage and the amount of the damage. [AIR 1962 SC 366]

LIQUDATED DAMAGES AND PENALTY
Where the contract itself addresses the issue of consequences of a breach and stipulated a penalty, section 74 of the Indian Contract Act will come into play. When such a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named.

The Hon'ble Supreme court in Fateh Chand V Balkishan Das [AIR 1963 SC 1405], had held that the jurisdiction of the court to award compensation under section 73 in case of breach of contract is unqualified except as to the maximum stipulated, and compensation has to be reasonable. This section has to be read in conjunction with section 74, section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive reasonable compensation whether or not the

actual loss is proved.
There is no impediment or any obstacle for the parties to a contract to make provisions of liquidated damages for specific breaches only, leaving other types of breaches to be dealt with as unliquidated damages. There is no principle which requires that once the provision of liquidated damages has been made in the contract, in the event of breach of one of the parties, such clause has to be read covering all types of breaches although parties may not have intended and provided for compensation in express terms of all types of breaches. [Steel Authority of India V Gupta Brothers Steel Tubes Ltd. (2009) 10 SCC 63.]

In Oil and Natural Gas Corporation Ltd V Saw Pipes Ltd [AIR 2003 SC 2629], the Supreme court laid down the following guidelines:
1. Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming is entitled to the same;
2. If the terms are clear and unambiguous stipulating liquidated damages in case of the breach of the contract, unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, the party who has committed the breach is required to pay such compensation and that is what is provided in section 73 of the Contract Act.
3. Section 74 to be read along with section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequences of the breach of the contract.
4. In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is a genuine pre-estimate by the parties as the measure of reasonable compensation.

SUIT FOR SPECIFIC PERFORMANCE
In certain cases of breach of a contract, damages may not be an adequate remedy. Then the court may direct the party in breach to carry out his promise according to the terms of the contract. This is an order of the court requiring performance of a positive contractual obligation. But in general, courts do not wish to compel a party to do that which he has already refused to do. Part II of the Specific Relief Act, 1963 lays down detailed rules on the specific performance of contracts.

Specific performance is not available in the following circumstances:
1. Damages provide an adequate remedy.
2. Where the order could cause undue hardship.
3. Where the contract is of such a nature that constant supervision by the court would be required.
4. Where the party seeking the order has acted unfairly.

Cases where specific performance may be ordered:
1. Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance.
2. Where monetary compensation will not be adequate relief.
3. Where the act to be done is in the performance of trust.
4. In general the court will only grant specific performance where it would be just and equitable to do so.

SUIT FOR INJUNCTION
An injunction is an order of the court requiring a person to perform a negative obligation. But for

performance of the positive terms of the contract, the aggrieved party may seek other remedies.

The right to relief by way of injunction is contained in part III of the Specific Relief Act, 1963. Section 36 provides that preventive relief may be granted at the discretion of the court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in addition to or in substitution of injunctions. Section 41 provides for contingencies when an injunction cannot be granted. Clause (e) of section 41 specifically provides that no injunction can be granted to prevent the breach of contract the performance of which would not be specifically enforced. Section 42 provides for injunction to perform negative agreement. Section 42 states; if the court is unable to compel the specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement, provided Plaintiff has not failed to perform the contract.

SUIT FOR RESCISSION

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e., cancellation, of the contract. This will enable the Plaintiff to be free from his own obligations under the contract.

PUNITIVE DAMAGES

Punitive damages are damages intended to reform or deter the defendant. Although the purpose of punitive damages is not to compensate the plaintiff, the plaintiff will in fact receive all or some portion of the punitive damage award. Punitive damage are often awarded where compensatory damages are deemed an inadequate remedy. The court may impose them to prevent under-compensation of plaintiffs, to allow redress of undetectable torts and taking some strain away from the criminal justice system.

ii. Quantum Meruit

Quantum Merit means "As much as earned or deserved", "as much as is merited". The principle of law provides for payment of compensation under certain circumstances, to a person who has rendered goods or services to another person under a contract which could not or has not been fully performed. The action of Quantum Meruit is allowed in Indian Courts under Section 70 of the Contract Act. The claim of quantum merit arises in the following cases:

1. Breach of Contract:
Where there is a breach of contract, the injured party is entitled to claim reasonable compensation for what he has done under the contract.

2. When a contract is discovered to be void:
When a agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it. (Section 65).

3. Where something has been done non-gratuitously:
Where work is done or goods delivered by a person without an intention to do so gratuitously, and the benefit of the same is enjoyed by the other party, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or so delivered. For example, X forgets certain goods at Y's house. He had no intention to leave them with him gratuitously. Y uses those goods for his personal benefit. X can compel Y to pay for those goods.

4. Where the contract is divisible:
Where a contract is divisible, and a party to the contract has done a part of his obligation, he may sue on quantum merit. This rule applies even though the party claiming on quantum merit is himself guilty of breach of contract.

Doctrine of 'quantum merit is, however, subject to the following two limitations:

1. In a contract which is not divisible into parts and a lumpsum of money is promised to be paid for the complete work, part performance will not entitle the party to claim any payment.
2. A person, who himself is guilty of breach of contract, cannot be allowed to claim any payment under the doctrine of quantum merit.

But this rule is subject to following exceptions:

1. If the contract is divisible, part performance will also entitle the defaulting party to claim compensation on the basis of quantum merit if the other party has taken the benefit of what has been done.
2. If a lump sum is to be paid for the compensation of an entire work and the work has been completed in full though badly, the defaulting party can recover the lumpsum less a deduction for bad workmanship.
Hoeing vs Isaacs. In this case, A agreed to decorate B's flat for a lump sum of Rs. 750. A did the work, but B complained of faulty workmanship. B got the defect removed by paying Rs. 294. Held, A could recover Rs. 750 less 294.

3. Any claim based upon the doctrine of quantum merit cannot be entertained unless there is an evidence of an express or implied promise to pay for the work which has already been done.
4. Where one party to the contract is prevented from performing the contract by the other party or by impossibility or illegality.
Clay vs Yates. In this case, printing of a book had to be abandoned as it contained libelous matter. He was held entitled to recover on quantum merit.

C. Quasi Contracts

There are certain situations wherein certain persons are required to perform an obligation despite the fact that he hasn't broken any contract nor committed any tort. For instance, a person is obligated to restore the goods left at his home, by mistake, and keep it in good condition. Such obligations are called quasi-contracts.

Rationale
The rationale behind "quasi-contract" is based on the theory of Unjust Enrichment. Lord Mansfield is considered to be the founder of this theory. In Moses v. Macferlan, he explained the principle that law as well as justice should try to prevent "unjust enrichment", i.e., enrichment at the cost of others.
A liability of this kind is hard to classify. Since it partly resembles liabilities under the law of tort and partly it resembles contract since it owed to only a party and not a person or individual generally. Therefore, it comes within the ambit of an implied contract or even natural justice and equity for the prevention of unjust enrichment.

However, in Sinclair v. Brougham, the theory of implied-in-fact was adopted.

Facts: a building society undertook banking business which was outside its object, and therefore, ultra vires . the society came to wound up. After paying up all outside creditors, a mixed sum of money was left which represented partly the shareholders money and partly that of the ultra vires depositors, but the money wasn't sufficient to pay all of them. The depositors tried to get priority by resorting to the quasi-contractual action for recovery of money had and received for the depositors' benefit, else the shareholders would have been unjustly enriched.
The House of Lords allowed pari passu distribution of the mixed funds among the claimants, but did not allow any remedy under quasi-contract. It was maintained that the common law knows personal actions of only two classes, viz.,
a) those founded on contract;
b) those founded on tort.

" when it speaks of action arising quasi ex contractu it refers only to a class of action in theory which is imputed to the defendant by a friction of law." This approach dominated the scene for quite some time and quasi contracts were taken to be fictional contracts.

Since this approach was restricting the scope of relief and was leading to "unjust enrichment", the theory of unjust enrichment was again restored in Fibrosa Spolka Akeyjna v. Fairbain Lawson Combe Barbour Ltd. by Lord Wright. While referring the ratio decidendi of the decision in Sinclair v. Borogham, he stated that it was against public policy to allow the recovery of an ultra vires deposit, whether the claim is based on contract or quasi-contract. The observations in this particular case were merely the obiter dicta of the Sinclair Case.
In Indian context, the quasi-contracts are put under chapter V of the Indian Contract Act as " OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACTS". The framers avoided the direct term "quasi-contract" in order to avoid the theoretical confusion regarding the same.

Sections 68 to 72 provide for five kinds of quasi-contractual obligations:
1. Supply of necessities [s.68]
2. Payment by interested persons [s.69]
3. Liability to pay for non-gratuitous acts [s.70]
4. Finder of goods [s.71]
5. Mistake of coercion [s.72]

Supply of necessities [S.68]
When necessities are supplied to a person who is incompetent of contract or to someone who is legally bound to support, the supplier is entitled to recover the price from the property of the incompetent person. "incompetency to contract", here, would mean parties that are not competent to contract as per sec. 10 of the Act, i.e., in following circumstances:

1. Minors
2. Persons of unsound mind
3. Persons disqualified by law to which they are subject

Payments by interested persons [S.69]
A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it is entitled to be reimbursed by the other.

This section s subject to certain conditions:

1. The plaintiff must be interested in making the payment. The interest which the plaintiff seeks to protect must be legally recognizable;
2. It is necessary that the plaintiff himself should not be bound to pay. He should be interested in making the payment in order to protect his own interest;
3. The defendant should have been "bound by law" to pay the money;
4. The plaintiff should have made the payment to another person and not to himself.

Liability for non-gratuitous act [S.70]

S.70 creates liability to pay for the benefit of an act which the doer did not intend to do gratuitously. Where a person does something for another person not intending to do so gratuitously and such person is entitled to enjoy benefits from it. And then such a person who has used the thing has to compensate the other or restore or deliver the thing.

For example, A, a tradesman, leaves goods at B's house by mistake. B, treats the goods as his own. He is bound to pay A for them. Conditions of liability under this section are as follows:

1. One of the purposes of the section is to assure payment to a person who has done something for another voluntarily and yet with the thought of being paid.
2. The person for whom the act is being done is not bound to pay unless he had the choice to reject the services.
3. It is necessary that the services should have been rendered without any request.
4. Services should have been rendered lawfully.
5. The person rendering services should not have intended to act gratuitously.

Finder of goods [S.71]

Section 71 lays down the responsibility of a finder of goods. The duties and liability of a finder is treated at par with the bailee. The finder's position, therefore, has been considered along with bailment.

Mistake or coercion [S. 72]

Section 72 states that payments or delivery made under mistake or coercion must be made good or be returned. In Sri Shiba Prasad Singh v. Maharaja Srish Chandra Nandi, it was made clear that money paid under mistake is recoverable whether the mistake is of fact or of law. If a mistake either of law or of fact is established, the assessee is entiled to recover the money and the party receiving it is bound to return it irrespective of any other consideration. The scope of the word "mistake" has been clarified by the Supreme Court in Tilokchand Motichand v.Commissioner of Sales Tax.

Recovery proceedings generally are instituted by way of writ petition. There is no period of limitation in writs. The only requirement is that there should not be unreasonable delay amounting to laches. In Chrisine Hoaden India Ltd. v. N.D. Godag, it was held that the period of limitation would not begin to run until the applicant has discovered the mistake or could have discovered it with reasonable diligence. The claim was laid within one month of the mistake of law becoming known. It was held that the claim could not b e defeated on the ground of limitation. The term "coercion" is used in this section in its general sense and not as defined in Sec.15.

Nature of quasi-contractual obligations

The English Law identified quasi-contractual obligations first, the framers of the Indian Contract Act modified it and placed it in the Act as- "certain relations resembling those created by contracts". Therefore the elements that are present in the English Quasi-contract are also found in that of the Indian Contract Act.

1] Payments to the defendant's use.

Two principles govern this liability they are:

· payment should have been made under pressure and not voluntarily;

· The defendant should have been bound to pay and has been relieved of his liability by the payment made by the plaintiff.

The kind of pressure that the law recognizes for the purposes of this remedy is clearly understood by the case of Exall v. Partridge, where, the plaintiff had left his carriage upon the premises which the defendant was leaving as a tenant. The landlord lawfully seized all the goods on the premises including the carriage for non-payment of rent and would have sold them in execution of his claim. The plaintiff paid the outstanding rent to get back his carriage and then sued the defendant for the amount. He was held entitled to it.

2] Voluntary payments

Payments made under the mistake of fact can be recovered provided that the party paying would have been liable to pay if the mistake of fact were true. In this respect one must look at the case of Kelly v. Solary, where the money was paid under a life insurance policy which to the knowledge of the company had lapsed. But, the fact of lapse having been forgotten at the moment, the company was held entitled to recover back the money. One of the essential conditions of this action is that the mistake must be of fact and must make the person liable to pay the money.

3] Quantum Meriut

There are situations wherein a party does the performance of a contract and further performance is made useless by the other party. In such cases the former can recover reasonable compensation from latter. An authority over the principle of "quantum meruit" is the case of Plinche v. Colburn,

FACT: the plaintiff was the author of several dramatic entertainments. He was engaged by the defendants, who were the publishers of a work called "The Juvenile Library" that used to illustrate the history of armour and costumes from the earlier times. For this he was to be paid 100 guineas. The plaintiff made several drawings and completed a considerable part of the manuscript when the defendants discontinued his services. The plaintiff claimed an amount of 50 guineas for his work. Due to the principle of quantum meruit the plaintiff was held to be entitled to the claim.

Conclusion

The principle of quasi-contract is often ignored but still it holds a very important place, since the principle is grounded on the principles of justice and equity. Despite the fact that quasi contract are moulded in the Indian Contract Act under a new name. However, the basic nature and essence of the principle remains same without any drastic change. Thus, quasi-contracts form an integral part of the contracts act and it definitely comes to an aid of the victim when a person is enriched unjustly over the former.

LEGAL ENGLISH & COMMUNICATION SKILLS (105)

Unit 1: Comprehension and Composition

- **Reading Comprehension of General and Legal Texts.**

Meaning of the term "reading comprehension" and its importance in law

Law and the practice of law involve the comprehension of general and legal texts that are dense, vast, extensive and heavy in terms of vocabulary and varied details. These include cases, contracts, evidences and decisions. It requires proper reading, understanding, analysis and application of the text. The study of law requires a penetration into the content of the text and decoding of the unfamiliar and challenging aspects of the content.

Reading comprehension refers to one's ability to read and understand a text. "Reading", here has many connotations, it's about reading between the lines, making comparisons and connections between various meanings of the text. Thus, one's level of understanding depends on how good the vocabulary of the person is. A person with small vocabulary will have shallow understanding of the text. To improve comprehension skills, one needs to improve his/her vocabulary and posses language skills like phonology, semantics, and morphology. The comprehension is recommended for the study in law because a student learns how to understand and grasp legal writing quickly and effectively.

There are various strategies that improve the comprehension of complex texts.

1. Reading and re reading of the text i.e. trying to read between the lines. A close interaction of the reader with the text is of utmost importance.
2. Summarizing and drawing inferences out of the text. Finding out the main idea or purpose that is stated and drawing inferences as to bring out its inherent meaning and purpose.
3. Asking questions to one self and inquiring about the real purpose and import of subject of the text. It's important to have an opinion of your own while analyzing and comprehending the text.
4. Synthesizing the text after determining its purpose is very important. It involves making comparisons and analyzing with other texts.
5. Making connections and parallels. To have a deeper and better understanding of text, one needs to read beyond the lines and try identifying with the text on a personal level. It's important to connect one's personal feelings, experiences and knowledge of previous texts with the context of the text in order to comprehend better.

- **Paragraph and Paragraph writing**

Writing a paragraph refers to a group of sentences that illustrate or develop one particular idea or topic. There is no particular number of sentences to be used in a paragraph; there could 8, 10 or 15 sentences. Content of the paragraph determines its length.

1. **Clarity** of the subject matter that needs to be developed in a paragraph. Confusion with the theme to be developed can mar the purpose of paragraph writing.
2. **Unity** of the idea that needs to be presented in the paragraph. The whole paragraph should be unified around one main idea, mentioned distinctly in the very first sentence of the paragraph. The following sentences should follow a proper order and develop the main idea or theme.
3. **Coherence** of the matter presented in a paragraph. Coherence indicates that the text should be meaningful and should be in context with the larger text as a whole. Transition words such as 'just' and 'then' should be used to make the paragraph coherent.
4. **Completeness.** Completeness in a paragraph is characterized by completion of the idea developed and elaborated by the supporting sentences in a paragraph. The last sentence of the paragraph must summarize the main idea and then the next paragraph should develop a new idea or a theme.

- **Précis Writing**

  The word 'précis' is derived from French which means a 'summary'. It's an abridgment, summary or a synopsis. Précis writing refers to summarizing of a passage or a paragraph by extracting its main points and conveying them as accurately and as briefly as possible. It should be an effective piece of writing. It should be clear, coherent, complete, short and concise.

  Important rules to be followed while writing a précis:

1. Read the given passage twice, thrice to have a broad understanding of the main idea and main points of the text.
2. Underline the central idea or argument of the text and prepare a rough draft keeping important points in mind.
3. Précis should be approximately one third of the original passage.
4. Omit unnecessary example, words, phrases given in the passage and focus on the central idea.
5. Write the main points in your own words but sticking to the original statements in the passage.
6. Précis should be written in third person account and in reported speech.
7. Avoid grammar and spelling mistakes as they are unacceptable, also avoid exceeding its word limit.
8. Give your précis a suitable title and revise your final draft to make sure that it's accurate and effective.

- **Abstract writing.**

  Abstract is a brief, compact statement of long, detailed legal documents or papers. It contains all the main points of a detailed account in an abridged or abbreviated form. For example, an abstract of a land title will necessarily have the list of the names of all the previous owners of the land as well as the present owner with the conveyances, mortgages, will and all other documents and agreements.

  Abstract for an official record will begin by stating the proceedings of the case in court in order to review the entire history of the case, the actions taken place and whether the issue presented has been properly reviewed in lower courts or not.

- **Note- taking**

a. While taking notes in a law school, one has to make sure that the notes are personalized as it becomes easy to abide by them.

b. It's important to go through your previous notes to facilitate making new notes. Examining previous notes help familiarizing with the context of the subject to be discussed in the next class.

c. It's important to give a structure to your notes and organize them properly. Haphazard writing of notes reflect one's confused state of mind.

d. Prefer to make hand written notes than typed.

e. Be selective in choosing words and cut out all unnecessary information.

f. Try to use bullets or pointers while making notes.

g. Create your own abbreviations for better understanding to the subject and saving time.

h. Recurring themes and issues raised in the topic should be kept in mind as they are important.

i. Lastly, review and revise the notes after you finish making them as they are still fresh in your memory and will aid the learning process.

- **Drafting of reports and projects.**

  Law report is a record of judicial opinions, facts, legal discussions and judgments of different cases. An outline of a document is called drafting and the person who does the drafting is called a draftsman. Drafting of law reports is similar to brief writing in law. Drafting should be done in a concise manner with the presentation of complete details of the case decided by the court. Mostly, the legal reporters of newspapers and magazines are engaged in drafting of law reports and it is expected that they should be familiar with legal language and the terminology associated with law.

  Drafting of reports and projects in legal profession includes a narrative of the facts of the document which is to be presented in a summarized form. It should bring out the issues involved or framed, contentions raised and the case laws cited.

a. It should be based purely on facts as there is no room for any kind of imagination or assumptions.
b. It should be written in an absolute clear, compact and effective language.
c. Proper sequence of the case/incident should be maintained.
d. The draft must be a third person narrative written in past tense.

- **Petition Writing**

  Petition is a formally written request appealing to an authority like a government body or any government official or a public entity to provide some relief in a particular matter or grant them favors

in a particular case. It can be signed by a single person or many people as well. In the case of law, petition is a formal request or a complaint to have a legal matter heard and processed upon.
Petition for a public cause needs to be written in the best and most effective way possible as it has to garner support from people. Petition should be a simple, clear document stating the cause clearly. There should be a header that denoting the title, the purpose of your petition. Main part of the petition consists of rows and lists of names and their signatures of those who have come forward and showed their support. The end should express the urgent desire to improve the entire situation and do the needful.

Legal Petition or a petition in law is an official document given to the court. The petitioner who writes a petition to the court has one important purpose i.e. to inform the defendant with the notice for the impending law suit. The petition should provide the basic outline or an overview of the case. What must be included in a petition varies according to the state and the law but it is basically a complaint, a brief summary of the wrongs done by the defendant and the demands of a plaintiff.

The term "petition" is often confused with "complaint", though both are similar but there is one significant difference. Complaint in a lawsuit asks for the damages done or the property destroyed whereas petitions include the demand for writs, Mandamus and orders to produce show cause notice.

Unit 2: Language, Communication and Law

- **Meaning of communication and communication process**

What is communication and why is it important to study communication skills in a profession like law.

Communication is derived from the Latin word "communicare" which means tom share. Communication is the sharing or conveying of messages or information from one person to another person or a group of people. A person can communicate with himself as well by conveying his thoughts and ideas with himself. The goal of communication is successful conveying of message by the sender and the understanding of the meaning of the message by the receiver.
Taking example from the earlier times, tribes in Ajanta Alora caves used to communicate with each other through drawings, carvings and pictorial representations on the rocks. Their engravings on the rocks have been successful in conveying their culture, lifestyle to the coming generations. Here, their drawings and inscriptions become the medium of communication. Thus, a communication process requires a medium of communication. The basic communication process requires a sender, a receiver and a medium to convey particular information. The sender has a thought, an idea or a concept that he encodes into words and uses a medium like letters, T.V, newspaper to convey his thoughts to the receiver. Receiver does the encoding part of the communication process i.e. interpreting the message and perceiving its meaning. Feedback is another important aspect of the communication process as it checks whether the receiver has received and understood the message properly or not. For example, nowadays printed and online forms for hotels, shops are there which demands the feedback of the customer. The feedback of the customer is important to determine the quality of service provided by the shop or hotel to them. Thus, communication is a two way process as the receiver receives the message sent by the sender and then sends a response back to the sender after receiving and understanding the message successfully.

Possession of good communication is one of the most important qualities of a good lawyer. Good communication skills are desired both in our personal lives as well as professional careers. Being a good

listener only aids the whole communication process. Being a person of law or a lawyer, one has to communicate with his/her clients, staff, other lawyers, judges and put forth your argument clearly, effectively and convincingly. One has to be well versed with his subject and value the time given as it is important to put your point of argument persuasively within as given time frame. A successful lawyer has to have great persuasive power to build the trust of his clients and to sway thoughts and feelings of the audiences as well. Great persuasive verbal skills will help put forth the point of argument before the judge and jury believably. The argument being presented should be absolutely detached and nothing, not even ones personal thought should hamper your communication and at as a barrier to it.

- **Barriers to effective communication**

There are barriers to effective communication which can retard or distort the message being conveyed and there could be complete failure in conveying the true intention of the message. These include filtering, selective perception, information overload, emotions, language, silence, communication apprehension and gender differences.

This also includes a lack of expressing "knowledge-appropriate" communication, which occurs when a person uses ambiguous or complex legal words, medical jargon, or descriptions of a situation or environment that is not understood by the recipient.

Physical barriers: Physical barriers are present in the environment and the surroundings around us. For example if staff is located in different buildings or on different sites, poor or outdated equipment, particularly the failure of management to introduce new technology, may also cause problems. Staff shortages are another factor which frequently causes communication difficulties for an organization.

System design: System design faults refer to problems with the structures or systems in place in an organization. Examples might include an organizational structure which is unclear and disorganized and one doesn't know with whom to know whom to communicate. Other examples could be inefficient or inappropriate information systems, a lack of supervision or training, and a lack of clarity in roles and responsibilities which can lead to staff being uncertain about what is expected of them.

Attitudinal barriers: Attitudinal barriers come about as a result of problems with staff in an organization. For example, poor management, lack of consultation with employees, personality conflicts which can result in people delaying or refusing to communicate, the personal attitudes of individual employees which may be due to lack of motivation or dissatisfaction at work, or by insufficient training to enable them to carry out particular tasks, or just resistance to change due to entrenched attitudes and ideas.

Ambiguity of words/phrases: Words sounding the same but having different meaning can convey a different meaning altogether. Hence the communicator must ensure that the receiver receives the same meaning. It is better to avoid such ambiguous words and use alternative words whenever possible.

Individual linguistic ability: The use of jargon, difficult or inappropriate words in communication can prevent the recipients from understanding the message. Poorly explained or misunderstood messages can also result in confusion. However, research in communication has shown that confusion can lend legitimacy to research when persuasion fails.

Physiological barriers: These may result from individuals' personal discomfort, caused—for example

by ill health, poor eyesight or hearing difficulties.

- **Types of Communication**

People communicate with each other in a number of ways that depend upon the message and its context in which it is being sent. Choice of communication channel and your style of communicating also impacts the communication process.

Types of communication based on the communication channels used are:

1. Verbal Communication
2. Nonverbal Communication

1. Verbal Communication

Verbal communication refers to the form of communication in which message is transmitted verbally; communication is done by word of mouth and a piece of writing. Objective of every communication is to have people understand what we are trying to convey. In verbal communication remember the acronym **KISS** (keep it short and simple).

When we talk to others, we assume that others understand what we are saying because we know what we are saying. But this is not the case. Usually people bring their own attitude, perception, emotions and thoughts about the topic and hence creates barrier in delivering the right meaning.

So in order to deliver the right message, you must put yourself on the other side of the table and think from your receiver's point of view. Would he understand the message? How it would sound on the other side of the table?

Verbal Communication is further divided into:

- Oral Communication
- Written Communication

Oral Communication

In oral communication, Spoken words are used. It includes face-to-face conversations, speech, telephonic conversation, video, radio, television, voice over internet. In oral communication, communication is influence by pitch, volume, speed and clarity of speaking.

Advantages of Oral communication are:

It brings quick feedback.

In a face-to-face conversation, by reading facial expression and body language one can guess whether he/she should trust what's being said or not.

Disadvantage of oral communication

in face-to-face discussion, user is unable to deeply think about what he is delivering, so this can be counted as a

Written Communication

In written communication, written signs or symbols are used to communicate. A written message may be printed or hand written. In written communication message can be transmitted via email, letter, report, memo etc. Message, in written communication, is influenced by the vocabulary & grammar used, writing style, precision and clarity of the language used.

Written Communication is most common form of communication being used in business. So, it is considered core among business skills.

Memos, reports, bulletins, job descriptions, employee manuals, and electronic mail are the types of written communication used for internal communication. For communicating with external environment in writing, electronic mail, Internet Web sites, letters, proposals, telegrams, faxes, postcards, contracts, advertisements, brochures, and news releases are used.

Advantages of written communication includes:
Messages can be edited and revised many time before it is actually sent.
Written communication provides record for every message sent and can be saved for later study.
A written message enables receiver to fully understand it and send appropriate feedback.
Disadvantages of written communication includes:
Unlike oral communication, Written communication doesn't bring instant feedback.
It takes more time in composing a written message as compared to word-of-mouth. And number of people struggles for writing ability.

2. Nonverbal Communication

Nonverbal communication is the sending or receiving of wordless messages. We can say that communication other than oral and written, such as gesture, body language, posture, tone of voice or facial expressions, is called nonverbal communication. Nonverbal communication is all about the body language of speaker.

Nonverbal communication helps the receiver in interpreting the message received. Sometimes nonverbal response contradicts the verbal response which results in distortion of the message being conveyed.

Nonverbal communication has the following three elements:

Appearance

Speaker: clothing, hairstyle, neatness, use of cosmetics

Surrounding: room size, lighting, decorations, furnishings

Body Language

facial expressions, gestures, postures

Sounds

Voice Tone, Volume, intonation

- **NON-VERBAL COMMUNICATION IN THE COURTROOM**

Nonverbal Communication Law

Nonverbal communication—such as facial expressions, gestures, posture, and tone of voice—is an important component of most human communications, including, of course, business communications. Most people use nonverbal signals when communicating. Even the blind use nonverbal communications to aid in both sending and receiving messages since nonverbal techniques includes such things as tone of voice and physical proximity. Understanding nonverbal communication techniques can help a small business owner to get a message across or successfully interpret a message received from another person. On the other hand, nonverbal communication can also send signals that interfere with the effective presentation or reception of messages. "Sometimes nonverbal messages contradict the verbal; often they express true feelings more accurately than the spoken or written language,".

In fact, studies have shown that between 60 and 90 percent of a message's effect may come from nonverbal clues. Therefore, it is important for small business owners and managers to be aware of the nonverbal messages they send and to develop the skill of reading the nonverbal messages contained in the behaviour of others. There are three main elements of nonverbal communication: appearance, body language, and sounds.

It is generally agreed by experts in the field that over 60% of the impact of meaning of the communicated message resides in the non-verbal behaviour accompanying the oral message. The ability to read and decode this leakage is of invaluable aid to the trial lawyer. It can be used in detecting deception during the interview or interrogation; it can be used in orchestrating your conduct and your witness's conduct during the course of the trial; it can be used to enhance your ability to communicate to the jury or to the court.

As attorneys, we must be aware of the fact that we are communicating before we open our mouths to speak. We constantly create impressions which we may or may not want to create and which we may or may not be aware of. Physical appearance, dress, clothing colour, facial expressions, gestures, tone or voice and personal distance are but some of the areas of non-verbal behaviour which may modify the verbal message by reinforcing or contradicting it. When non-verbal and verbal messages conflict, our instinct invariably relies on the non-verbal; we trust our actions more than we trust our words. While the verbal language is conscious, rational and describes emotion, the non-verbal language is unconscious, subjective and expresses emotion.

1. ***Facial Expressions***

Facial expressions are responsible for a huge proportion of nonverbal communication. Consider how much information can be conveyed with a smile or a frown. The look on a person's face is often the first thing we see, even before we hear what they have to say.

While nonverbal communication and behaviour can vary dramatically between cultures, the facial expressions for happiness, sadness, anger, and fear are similar throughout the world.

2. Gestures

Deliberate movements and signals are an important way to communicate meaning without words. Common gestures include waving, pointing, and using fingers to indicate numeric amounts. Other gestures are arbitrary and related to culture.

In courtroom settings, lawyers have been known to utilize different nonverbal signals to attempt to sway juror opinions.

An attorney might glance at his watch to suggest that the opposing lawyer's argument is tedious or might even roll his eyes at the testimony offered by a witness in an attempt to undermine his or her credibility. These nonverbal signals are seen as being so powerful and influential that some judges even place limits on what type of nonverbal behaviours are allowed in the courtroom.

3. Paralinguistic

Paralinguistic refers to vocal communication that is separate from actual language. This includes factors such as tone of voice, loudness, inflection and pitch. Consider the powerful effect that tone of voice can have on the meaning of a sentence. When said in a strong tone of voice, listeners might interpret approval and enthusiasm. The same words said in a hesitant tone of voice might convey disapproval and a lack of interest.

Consider all the different ways simply changing your tone of voice might change the meaning of a sentence. A friend might ask you how you are doing, and you might respond with the standard "I'm fine," but how you actually say those words might reveal a tremendous amount of how you are really feeling. A cold tone of voice might suggest that you are actually not fine, but you don't wish to discuss it.

A bright, happy tone of voice will reveal that you are actually doing quite well. A sombre, downcast tone would indicate that you are the opposite of fine and that perhaps your friend should inquire further.

4. ***Body Language and Posture***

Posture and movement can also convey a great deal on information. Research on body language has grown significantly since the 1970's, but popular media have focused on the over-interpretation of defensive postures, arm-crossing, and leg-crossing. While these nonverbal behaviours can indicate feelings and attitudes, research suggests that body language is far more subtle and less definitive that previously believed.

5. Proxemics

People often refer to their need for "personal space," which is also an important type of nonverbal communication. The amount of distance we need and the amount of space we perceive as belonging to us is influenced by a number of factors including social norms, cultural expectations, situational factors,

personality characteristics, and level of familiarity. For example, the amount of personal space needed when having a casual conversation with another person usually varies between 18 inches to four feet. On the other hand, the personal distance needed when speaking to a crowd of people is around 10 to 12 feet.

6. Eye Gaze

The eyes play an important role in nonverbal communication and such things as looking, staring and blinking are important nonverbal behaviours. When people encounter people or things that they like, the rate of blinking increases and pupils dilate. Looking at another person can indicate a range of emotions including hostility, interest, and attraction.

People also utilize eye gaze a means to determine if someone is being honest. Normal, steady eye contact is often taken as a sign that a person is telling the truth and is trustworthy. Shifty eyes and an inability to maintain eye contact, on the other hand, is frequently seen as an indicator that someone is lying or being deceptive.

7. ***Hepatices***

Communicating through touch is another important nonverbal behaviour. There has been a substantial amount of research on the importance of touch in infancy and early childhood. Study demonstrated how deprived touch and contact impedes development. Baby monkeys raised by wire mothers experienced permanent deficits in behaviour and social interaction. Touch can be used to communicate affection, familiarity, sympathy, and other emotions.

8. Appearance

Our choice of colour, clothing, hairstyles, and other factors affecting appearance are also considered a means of nonverbal communication. Research on colour psychology has demonstrated that different colours can evoke different moods. Appearance can also alter physiological reactions, judgments, and interpretations. Just think of all the subtle judgments you quickly make about someone based on his or her appearance. These first impressions are important, which is why experts suggest that job seekers dress appropriately for interviews with potential employers.

Researchers have found that appearance can play a role in how people are perceived and even how much they earn. One 1996 study found that attorneys who were rated as more attractive than their peers earned nearly 15 percent more than those ranked as less attractive. Culture is an important influence on how appearances are judged. While thinness tends to be valued in Western cultures, some African cultures relate full-figured bodies to better health, wealth, and social status.

9. ***Artefacts***

Objects and images are also tools that can be used to communicate nonverbally. On an online forum, for example, you might select an avatar to represent your identity online and to communicate information about who you are and the things you like. People often spend a great deal of time developing a particular image and surrounding themselves with objects designed to convey information about the things that are important to them. Uniforms, for example, can be used to transmit a tremendous amount of information about a person. A soldier will don fatigues, a police offers will wear a uniform, and a doctor will wear a white lab coat. At a mere glance, these outfits tell people what a person does for a living.

Nonverbal communication plays an important role in how we convey meaning and information to others, as well as how we interpret the actions of those around us. The important thing to remember when looking at such nonverbal behaviours is to consider the actions in groups. What a person actually says along with his or her expressions, appearance, and tone of voice might tell you a great deal about what that person is really trying to say.

There has been limited research done on the role of non-verbal communication in law. A study of legal literature suggests that what little research has been done on non-verbal communication in law has focused mainly on the courtroom environment. Considering that the legal profession places a great deal

of emphasis on communication, it is difficult to fathom that such little research has been done on the impact of non-verbal communication in the legal sector.
Lawyers live in a world of communication. The spoken and unspoken discourse forms the very foundation of the legal discipline. On a professional level, they communicate in court, they communicate at the office, and they communicate to court officials, clients and colleagues on a daily basis.

It is a profession that requires them to be competent communicators and predictors of outcomes. Within the domain of the legal arena, non-verbal signs serve a multitude of functions.

The most significant of these are creating good first impressions of us and stereotyping others, influencing others, communicating our attitudes and thoughts, promoting interaction, facilitating speech production and being actively involved in detecting and engaging in deception. The ability to detect and analyse non-verbal signs within the legal domain is the mark of a skilled lawyer.

In a courtroom environment, nonverbal signals may at times influence the judgment of the presiding officer or even the testimony of the witnesses. It has been widely accepted that in countries where the jury system is applied, knowledge of non-verbal techniques is fundamental to influencing the jury and controlling trial proceedings

"In the courtroom, nonverbal communication subtly affects the entire proceedings of a trial. It is constantly present and being asserted, yet the attorney is often unaware of its existence."

Likewise, negative non-verbal cues such as hostile gestures and lack of eye contact can be devastating to the attorney's prospect of success in the case. The attorney's ability to elicit favourable information out of a witness depends largely on non-verbal cues such as eye contact, facial expressions, body positioning, tone of voice and intonation.

It therefore becomes important to look at non-verbal communication within the context of the attorney, client consultation at the office which is the primary setting where all lawyers, litigators and non-litigators alike conduct their "groundwork". The first consultation process between the attorney and client is the most important in the legal process, as the client's statement forms the basis of her case. The consultation process is pivotal to obtaining pertinent information from client. Despite there being some research done on the impact of non-verbal communication in the courtroom, little work has been done on the impact of non-verbal communication on the attorney, client interview process.

- **Types of Communication Based on Purpose and Style i.e. formal and informal communication**

Based on style and purpose, there are two main categories of communication and they both bears their own characteristics. Communication types based on style and purpose are:

1. Formal Communication
2. Informal Communication

1. Formal Communication

In formal communication, certain rules, conventions and principles are followed while communicating

message. Formal communication occurs in formal and official style. Usually professional settings, corporate meetings, conferences undergo in formal pattern. In formal communication, use of slang and foul language is avoided and correct pronunciation is required. Authority lines are needed to be followed in formal communication.

The communication in which the flow of information is already defined is termed as Formal Communication. The communication follows a hierarchical chain of command which is established by the organisation itself. In general, this type of communication is used exclusively in the workplace, and the employees are bound to follow it while performing their duties.

2. Informal Communication

Informal communication is done using channels that are in contrast with formal communication channels. It's just a casual talk. It is established for societal affiliations of members in an organization and face-to-face discussions. It happens among friends and family. In informal communication use of slang words, foul language is not restricted. Usually informal communication is done orally and using gestures. Informal communication, unlike formal communication, doesn't follow authority lines. In an organization, it helps in finding out staff grievances as people express more when talking informally. Informal communication helps in building relationships. The communication which does not follow any pre-defined channel for the transmission of information is known as informal communication. This type of communication moves freely in all directions, and thus, it is very quick and rapid. In any organization, this type of communication is very natural as people interact with each other about their professional life, personal life, and other matter.

Difference between Formal and Informal Communication

It is said very correctly "The very attempt of, not to speak, speaks a lot."Communication plays a crucial role in our life, as people interchange their ideas, information, feelings, and opinions by communicating. Formal communication is one that passes through predefined channels of communication throughout the organization. On the contrary, Informal communication refers to the form of communication which flows in every direction, i.e. it moves freely in the organization. Communication could be verbal – spoken or written, or non-verbal i.e. using sign language, body movements, facial expressions, gestures, eye contact or even with the tone of voice.

In an organization, there are two channels of communication – formal communication and informal communication. People often confuse between these two channels, so here we have presented an article which explains the difference between formal and informal communication network.

- **Culture and language sensitivity**

Speech language should be culturally sensitive, unbiased, simple, concise, concrete, and vivid. Cultural sensitivity is a conscious attempt to be considerate of cultural beliefs, norms, or traditions that are different from one's own.

Biased language is a language that relies on unfounded assumptions, negative descriptions, or stereotypes of a given group's age, class, gender, or geographic, ethnic, racial, or religious characteristics; also includes language that is sexist, or ageist. Use of sexist Pronouns refers to the exclusive use of he, she, him, her, when talking about both men and women.

Language can, intentionally or not, cause offense or perpetuate discriminatory values and practices by emphasizing the differences between people or implying that one group is superior to another. Beware of the possible consequences of the words they choose. Before looking at the words themselves, it is

important to note that offensive or insensitive speech is not limited to a specific group of words. One can be hurtful and insulting by using any type of vocabulary, if that is one's intent.

In most cases it is easy to avoid blatantly offensive slurs and comments, but more subtle bias are an inherent part of our language or a habit of a lifetime and are much harder to change. Insensitive use of language can send discriminatory or negative messages to other people: can affect learning, self-esteem, and career choices. In a business environment, interactions with co-workers and relationship with clients can be affected. Thus, there should be some general guidelines for using written and spoken language that are diversity- and culture sensitive

Gender

Scientific communications (articles, presentations, etc.) should be free of implied or irrelevant evaluation of the sexes

Sexist communication is not logical or accurate. Some adjectives connote bias: e.g., ambitious men and aggressive women. Some signify that gender in some way makes a difference: e.g., male secretary, female manager

Race, Ethnicity and National Origin

Styles and preferences for words referring to ethnic and racial groups change over time. Sometimes even members of a group disagree about the preferred name at a specific time. Ask/learn the most acceptable current terms and use them

In graphics, photos and examples, show people from all racial and ethnic backgrounds.

Disabilities

A person is not a condition. Place the person before the disability: Use "person with a disability" rather than "disabled/handicapped person."

Age

Older people should be given equal importance.

Younger people at times can be more matured than older people.

Language usage builds or destroys trust and by being appropriate, accurate, and showing conviction for your topic, you demonstrate your trustworthiness towards others.

Avoid gender specific phrasing

Use "Employees should read their packets carefully," and not "Each employee should read his packet carefully."Or use pronoun pairs: "Each employee should read his or her packet carefully."Practice of using *he* and *man* as generic terms poses a common problem *He* and *man* used generically can mislead the audience

Research shows that average reader's tendency is to imagine a male when reading *he* or *man,* even if the rest of the passage is gender neutral. Therefore, you cannot be sure that your reader will *see* the woman on the job if you refer to every technician as *he,* or that your reader will *see* the woman in the *history of man.*

Race, Ethnicity, and National Origin

Some words and phrases that refer to racial and ethnic groups are clearly offensive. Avoiding Language that excludes or Unnecessarily Emphasizes differences related to age, sex, religion, race, and the like should be included only if they are relevant.

- **Legal Maxims.**

  Legal maxims are short, concise, technical sayings or sentences often used while arguing the case before the court of law. These are Latin words and idioms that are widely accepted on their own merits and used in the language of judgment. These maxims are the nectar of all the judicial administration which has been taking place all these years. According to Salmond, "Maxims are the proverbs of the law". Maxims are similar to proverbs having same merits and demerits of proverbs but are brief, pithy and concise. These maxims provide a meaning to the leading, complicated doctrines of law in a brief, crisp and intelligible way.

Here are some of the Latin words used in legal language:

- **Ab Initio**- Ab Initio is a Latin word meaning 'from the beginning'. In legal language, it is often used with the word 'void'. For example, void ab initio means that the document is rendered ineffective from the very beginning. There is a difference between 'void' and 'voidable'. The document that is voided in legally invalid whereas a document that is voidable has not yet been voided but is capable of being voided or cancelled.
- **Ad idem**- Ad idem is a Latin word which means 'same' or having the 'same effect'. For example, there was no unanimous opinion ad idem. Hence, no legal contract could be executed. Ad idem refers to the meeting of two minds or opinions on a particular contract.
- **Alibi**- Alibi means being 'somewhere else'. If a person has an alibi for the day and time when the crime was committed, then it is impossible for him to take part in the crime. The court has explained that the plea of alibi is not a specific or general exception in the Indian penal code, 1860. It is related to the rule of evidence which is recognized under the Section 11 of Evidence Act 1872. The court asks to provide an alibi for the day the crime is said to have taken place and if the claimant fails to provide the piece of evidence that he was elsewhere, the court then considers the plea for alibi invalid or cancelled.
- **Corpus delicti**- it refers to the body of crime. It can also be the evidence that proves that crime was committed, for example a dead body or a damaged property. It refers to the physical object upon which the crime was committed like the murdered body of the victim.
- **Ambiguitas latens**- doubts and ambiguities that do not appear prima facie i.e. on the very first appearance of a document. They are hidden doubts in the document which are not caused by the language of the document but by external factors. They can be changed or removed by correcting the extrinsic evidence.
- **Ambiguitas patens**- it is a Latin term meaning patent ambiguity. These are ambiguities and doubts that appear on the very face of the document. These doubts cannot be corrected by removing or correcting

external evidence as the language used in the legal document is ambiguous, vague and defective and vague.

- **Amnicus Curaie**- the literal meaning of this word is 'friend of the court'. Amnicus curaie is a person who helps the court by bringing courts attention to a particular point or evidence that the court had overlooked previously. He should be an impartial adviser to a court of law. For example, a senior official or counsel is specially invited to the court to render his assistance in a particular case as an amnicus curaie.
- **Audi alteram partem**- this is a Latin phrase meaning, 'listen to the other side'. Every person or party deserves an equal hearing as every case has another side of the story as and it's impartial to ignore the other side of the coin. This phrase is based on the principle of natural justice and equality. It is also called the principle of fair play.
- **Bona fide**- literally means "in good faith". It means having made, done and presented in good faith without any kind of deception or fraud. It refers to being honest and genuine; the word is used both as a noun and a verb adjective.
- **Caveat emptor**- it is a Latin term that means "let the buyer or purchaser beware'. It aims to caution and make the buyer beware of the product he is buying under common law. It is the responsibility of the buyer alone for checking the quality of the goods before making a purchase. The seller is not necessarily bound to reveal every defect of the product and this makes the buyer even more responsible while purchasing the product.
- **De facto**- it is a Latin word which means in fact, in reality, in actuality or as a matter of fact. The expression denotes recognition of the state and its sovereignty. It refers to the existence or holding of a specified position especially without lawful authority. For example, the de facto head of state.
- **De jure-** this expression refers to the existence or holding a specified position by legal right. It means by right or by lawful title or as a matter of right.
- **De novo-** the Latin expression "de novo" means afresh, anew, from the beginning. Literal meaning of the term is "of new". For example, the court reviews a summary judgment "de novo".
- **Ex- officio-** the Latin term literally means 'from the office'. The expression denotes by virtue of one's office i.e. his position or status. For example, the Vice President to be ex-officio Chairman of the Council of States.
- **Ex-parte –** this term is with respect to only one side. An example of an ex-parte hearing is when the victim is not represented. It is a legal term used when one of the parties involved are not present or represented.
- **Ex- post facto-** the expression means by a subsequent act. An ex-post facto law has a retrospective effect as it is literally a law made after an act is done or has an effect upon the act after it is done. It is the law that punishes improper use of given legal rights.
- **Facts Probantia-** it refers to a fact that is absolutely evident and related to the issue. Facts given in evidence to prove other facts and this can be proved by testimony, documents and other kinds of evidences.
- **Felo de se-** the term is Latin for "a felon of himself". It is a legal term referred to the one who commits suicide. Under the section 309 of the Indian penal code, 1860, a person attempting to commit suicide is considered a legal offense.

- **Fiat justicia-** it is a Latin phrase which means "let the justice be done". The term "fiat" means "judge" and the term "justicia" means an institution that has been instituted to protect the public from any unlawful or tyrannical act.
- **In choate-** the expression refers to the beginning or an early state, not yet complete. An offense such as inciting or conspiring against someone but not yet committed a crime, it is in anticipation of a criminal act.
- **In Limine-** it means on the threshold, at a preliminary state. It refers to the motion before the real trial of the case begins.
- **Injuria sine damno-** this maxim means wrong or injury without damages. It means injury to a legal right without any damage or monetary loss. Even though the plaintiff suffers no loss, the defendant is liable as there has been violation of legal right.
- **In rem-** this expression indicates that an action is not taken against any person but against a thing. For example, legal action directed towards property but not any particular person.
- **In personam-** this expression indicates an action taken against a person, proceedings taken against a particular person.
- **Locus standi-** this expression denotes a place to stand and a right to be heard. It denotes sufficient interest or legal capacity to challenge any particular decision.
- **Prima facie-** it is a Latin word which means first appearance or on the face of it. Prima facie case is the one in which the evidence in favor of a particular party is sufficient to call for an answer from the opposition party.
- **Ultra vires-** the term means "beyond the powers". The term refers to excess of legal power and authority. It describes the actions taken by the government bodies or corporations that exceed the limit of power given to them by law. The constitution of the country is the measuring stick that determines one's limit of power.
- **Actus non facit reum, nisi mens sit rea-** The legal maxim means that the act itself does not constitute guilt unless done with a guilty intent. The maxim embodies a cardinal doctrine of English Criminal law. The presence of "mens rea" is necessary to prove that the mind is guilty and under the Penal Law, there are two elements of crime- "actus rea" and "mens rea". The term "actus rea" means the body is guilty and the term "mens rea" means the mind is guilty.
- **Res Ipsa Loquitur-** this maxim means that the thing speaks for itself and this doctrine is frequently invoke in the Law of Tort. In other words, event itself speaks that the defendant was negligent and therefore, plaintiff is relieved of burden of proof. This maxim is a rule of evidence and not a rule of substantive law.
- **Ubi jus ibi remedium-** this maxim means that where ever there is right, there will be a remedy. The court propounded that no right can exist without a remedy. Under the common law, where there is right, it provides protection. For example, any kind of interference with the private property is seen as an encroachment rather than trespassing. A person who faced damages is entitled to claim damages as well as compensation by the court.
- **Volentie non fit injuria-** this maxim means that to which a person consents cannot be considered an injury. Term referring to the harm suffered with the plaintiff is freely given assent and with his prior knowledge of the risk involved, and hence, a general defense in tort. Knowledge is not assent, but

merely evidence of assent. A person does not necessarily assent to a situation because he has knowledge of its potential danger.

- **Counseling and interviewing**

The aim of Client's Interview and Consultation Skills is to make a lawyer adept in; listening skills, advising skills, communication skills, analytical skills and questioning skills. This is evident in the case of a lawyer who though is quite knowledgeable in the substantive law, but is far less effective and skilful with people. The skills of a successful lawyer lie in the mastery of human interaction and in the subtle awareness of the emotions, concerns and anxieties of others. One of the lawyer's functions is to guide a client into safer and better courses of conduct. The lawyer-client relationship with all its human and conceptual content must be employed, taught and learned.

It is glaring that the intense training of rationalism in law school lacks a sense of how legal problems must be solved for those who lack enough recourses for doing so. For most lawyers and law students, the strict legal side, the book and research thing is fairly easy, but what is harder is to know how to use the results of that work effectively with people .So, the essence of Client's Interview and Counselling Skills is to master the art of becoming a good lawyer. They should know how to listen, how to persuade, how to meet emotional and psychological needs of clients, opponents, judges, and even everyone they dealt with emotionally.

The Very Basics of Legal Interviewing

1. **Motivate the Client's Participation** (Develop Rapport through Active Listening**):** A legal interview often concerns sensitive topics that an individual would not necessarily tell a stranger. Thus, the first step in the interview is developing rapport and motivating the client to talk freely. The client may be reluctant to reveal information for several reasons—for instance, she may believe the information will hurt the legal case, she may not understand its relevance, or she may find the information too traumatic to discuss. Countervailing factors will motivate the client to talk, however. The client's desire to resolve the problem favourably may overcome her reluctance to talk. Or she may respond to appeals to help others, recognition of her efforts, or simply the expectations expressed by the lawyer. The lawyer can gently bring into play each of these factors. As a lawyer one should put himself in the position of the client to understand his point and empathize with the client's problems better. (Active listening can also involve non-verbal signals of attention, such as head nodding, eye contact, or phrases of reassurance).

2. **Ask open minded questions**. Open-ended questions encourage the client to talk, and allow her to provide information that the lawyer would not otherwise obtain. Begin interviews with broad, open-ended questions that allow the client to tell her story in her own words, and "get her problem off her chest." Content free questions avoid skewing the data received. Prompt the client by asking questions like, "What happened next?" and then what?"In later stages of an interview open-ended questions often do not elicit enough detail and will not stimulate the client's memory, so you will need to use narrow questions to probe for more information. Leading questions suggest an answer and thus pose the risk for distorting the client's answer and promoting unethical behaviour by the lawyer. Use leading questions

only to confirm information provided by the client, or to obtain information that the client may be reluctant to admit.

(3) **Allow the Client to Tell the Story Initially**. The client comes to the interview with crucial information – what brings him to the lawyer, and usually, what result he wants. The lawyer has important information also – knowledge about the law and what facts are relevant given the law. Lawyers tend to use their knowledge to focus on the specifics of the case, and take control before giving the client a chance to tell his whole story. As a result, the client may feel like he never got a chance to tell his story, and the lawyer may fail to understand what the client really wants.

(4) **Structure the Interview:** By using the following structure for an interview, the lawyer can ensure that the client has a chance to tell his story:

(a) Briefly Explain What Will Happen in the Interview.

Tell the client what will happen in the interview, and how long you expect the interview to last. Emphasize that what the client says in the interview will remain confidential. Although awkward, some lawyers talk about fees at this point to avoid misunderstanding. Let the client know that you will discuss the client's legal rights and possible solutions at the end of the interview.

(b) Preliminarily Identify the Problem.

Ask the client for a general description of the underlying transaction and the relief desired. Ex.: "Tell me what your problem is, how it came about, and what you think you'd like to have done about it." When the client has completed his description of the problem, summarize your understanding of it.

(c) Get a Chronological Overview of the Problem.

Ask the client for a detailed step-by-step chronological description of what has happened. Prompt the client with open-ended, non-leading questions like "what happened next?" but do not probe for detail at this stage. Listen carefully and remember, this is the client's chance to tell his story. You will obtain fuller information if you let him focus on his concerns at this stage.

(d) Develop and Verify Theories

Based on the information obtained in the first stages of the interview, the lawyer can mentally generate theories supporting possible legal claims. The lawyer should consider all plausible possible legal claims. The lawyer should consider all plausible theories, and then proceed to obtain relevant information that would support or negate a claim using each theory. This is the time to pursue questions that occurred to you while the client was going through the overview, and to obtain greater detail on relevant facts.

(e) Conclude the Interview.

Give the client a brief summary of the law governing his legal rights, and the questions that you must research. Tell the client what you will do next and when you will get back to the client.

The benchmark of a good interview is simple: the client will feel that he has consulted an attorney who is a caring human being. These suggestions on building rapport, questioning technique, and structuring the interview can provide a framework for approaching the interview and help you communicate your concern. However, remember that the client will recognize the difference between caring and technique.

Unit 3: Legal Communication

- **LEGAL COMMUNICATION**

What is legal communication and communications law?
Communications law encompasses the laws and regulations concerning public communication, such as newspapers, the internet, and cable, as well as the mechanisms by which people communicate privately, through telephone, emails, and texts. As communications technology evolves and proliferates at a dizzying pace, becoming ever more omnipresent and critical for personal and professional needs, there is need for attorneys with expertise governing this industry. Attorneys may specialize in media, such as telephones, cable, and the internet, while others focus on information technology itself. In the United States, the Federal Communications Commission, which is an independent federal agency, regulates interstate and international communications by radio, wire, satellite, and cable and is the primary authority for communications law and regulation. The rapid rise of cloud "computing" and the use of mobile devices is an especially "hot" topic matter in this sector.

Role of lawyers in legal communication
The attorney's primary role is to help clients navigate the complicated laws and policies. Given the complexity of the field and the continuous changes in the practice, communication attorneys enjoy a wide variety of daily activities. Attorneys in private law firms and in-house advice companies on commercial transactions including mergers and acquisitions, negotiate contract terms and disputes, and manage compliance and tax issues. Attorneys in government practice may focus on policy issues, such as competition and cyber security. Expertise in administrative law and knowing who to "go to" in the agency in question is particularly important. Advocates for the public interest may focus on issues including privacy and the effect of mergers on low-income and disadvantaged communities. In all areas, the successful practitioner will have excellent research, analytical and writing skills, in addition to interpersonal, teamwork and negotiation skills.

Over the course of our lives we learn may qualities such as:

- we learn to appreciate the effect that tone and content have on meaning and how our communications are received;

- we learn to appreciate silence and non-verbal communication;
- we develop fluency with written communication; and
- We understand the rules that govern communication in our society, including distinguishing communications that are considered acceptable from communications that fall below the societal norm.

Lawyers provide information services, and effective communication skills represent the qualities of good lawyers because lawyers have sworn a professional oath, they are expected to communicate at a higher standard than members of the general population.

Many of the complaints the Law Society receives could have been avoided (or dismissed) if the lawyer:

1. listened to his or her client in order to understand the client's needs, and determine at the outset whether the client was a good match for the lawyer's experience, personality and style of practice
2. advised the client (in realistic and clear terms) of potential outcomes, and the cost associated with the legal services;
3. told the client what the lawyer would do, and would not do, and kept his or her word;
4. established an understanding with the client regarding future communications between them (both the preferred method of communication and the lawyer's process for responding to communications in a timely fashion);
5. confirmed his or her understanding of the existence and scope of the retainer using a written retainer, or if not retained, by sending a non-engagement letter;
6. kept the client informed of progress on the file, even if only to explain why matters have been delayed or are in a holding pattern;
7. responded promptly to communications from his or her client as agreed, other lawyers, the Law Society, and other interested parties;
8. ensured that the tone of every communication was civil and that their content was limited to relevant matters;
9. avoided delay in billing and ensured that bills were fully explained; and
10. Managed his or her client's expectations.

Lawyers are subject to numerous stereotypes, many of them negative. Consequently, few people approach a lawyer without a set of assumptions and perceptions already in place. Poor or disrespectful communication skills diminish your standing within the profession and reinforce the public's negative perception of the entire profession. There is no practical benefit to such behaviour, and the harm associated with it is very real. The best opportunity you have to overcome negative perceptions is to adhere to a high standard of conduct and communication.

- **Mooting and moot courts**

Moot court is an extracurricular activity that takes place in many law schools in which participants take part in simulated court proceedings, usually involving drafting memorials or memoranda and participating in oral argument. The term "moot" traces its origins to Anglo-Saxon times, when a moot was a gathering of prominent men in a locality to discuss matters of local importance. The modern activity differs from a mock trial, as moot court usually refers to a simulated appellate court or arbitral case, while a mock trial usually refers to a simulated jury trial or bench trial. Moot court does not involve actual testimony by witnesses, cross-examination, or the presentation of evidence, but is focused solely on the application of the law to a common set of evidentiary assumptions and facts to which the competitors are introduced. In most countries, the phrase "moot court" may be shortened to simply "moot" or "mooting." Participants are either referred to as "mooters" or "mooties".

Moot court and law review are the two key extracurricular activities in many law schools. Depending on the competition, students may spend a semester researching and writing the memorials, and another semester practicing their oral arguments, or may prepare both within the span of a few months. Whereas

domestic moot court competitions tend to focus on municipal law such as criminal law or contract law, regional and international moot competitions tend to focus on subjects such as public international law, international human rights law, international humanitarian law, international criminal law, international trade law, international maritime law, international commercial arbitration, and foreign direct investment arbitration. Procedural issues pertaining to jurisdiction, standing, and choice of law are also occasionally engaged, especially in arbitration moots.

In most moot competitions, each side is represented by two speakers (though the entire team composition may be larger) and a third member, sometimes known as of counsel, may be seated with the speakers. Each speaker usually speaks between 10 and 25 minutes, covering one to three main issues. After the main submissions are completed, there will usually be a short round of rebuttal. Depending on the format of the moot, there may be one or two rounds of rebuttal. In larger competitions, teams have to participate in up to ten rounds. The knockout/elimination stages are usually preceded by a number of preliminary rounds to determine seeding. Teams almost always must switch sides throughout a competition, and, depending on the format of the moot, the moot problem usually remains the same throughout. The scores of the written submissions are taken into consideration for most competitions to determine qualification and seeding, and sometimes even up to a particular knockout stage.

Clinical legal education has an important role in transforming a law student to a good advocate. In this transformation, moot courts play a vital role. In this article let us try to understand the importance of moot courts OR in other words, the advantages of moot courts OR the educational value of moot courts.

Major advantages of active participation in moot courts are given below

1. It rectifies the defects of class room lecture methods.
2. Each branch of law, which is connected with the moot problem, is simultaneously taught in functional manner.
3. An effective technique of teaching law by means of practical training.
4. It helps the law student to develop his argumentative talent. At the same time, moot court will also help him to check his irrelevant behaviours.
5. Without attending the ordinary courts, students can learn the court procedures by participating in moot court.
6. By participating in a moot court, students learn about the relevant facts of the moot problem, arguments of both the sides, and the judgment.
7. Moot court helps the law students to learn the theory of law by way of practical approach.
8. Moot court enhances argumentative talent of the law student as well as his presentation skills in a timely manner.
9. Moot court further enhances the research skills of the students.
10. Moot court helps to develop self-possession, fluency, clarity or enunciation, practice of court procedure, and the art of persuasion and presentation of moot problem (cases).
11. Moot court helps the student to develop his ability to argue for the party with Court etiquette.
12. Moot court will also help the law students to learn the duties of an advocate. It further helps the students to develop their presentation skills as well as court mannerisms.

How is mooting done?

The Problem

A typical moot problem is concerned solely with a point (or points) of law. Normally it will take the form of a case heard on appeal from a lower court with the grounds of appeal clearly stated.

The Teams

A moot usually consists of four speakers, divided into two teams, each consisting of a leading and junior counsel. One team represents the appellants, the other the respondents. Mooters may be judged individually or as a team.

The Moot Court

The moot 'court' should reflect, as far as possible, a courtroom scenario in reality. The moot is presided over by at least one judge who delivers a judgment at the end of the moot on the law and on the result of the moot itself. The presiding judge is supported by the clerk of the moot who also times the moot speeches. The two teams of mooters sit at separate tables, taking turns to stand to present their arguments to the moot court.

A moot 'speech' will normally have a time limit of between 15 and 20 minutes. So be prepared to be on your feet, either presenting your argument or answering questions about your argument, for that amount of time. For the duration of their arguments the mooters are required to maintain the appropriate courtroom manner (remembering, amongst other things, to address the court and fellow counsel in the accepted form).

Unit 4: Literature and law.

- **The play "Justice" by John Galsworthy.**

Galsworthy's plays deal with social problems, concerned with the naturalistic aspects of life. The play 'Justice' is about Falder, a weak-willed person, who forges a cheque to help Ruth, who is harassed by her husband Honeywill. He is caught, brought to court and imprisoned, thus, justice being done according to the law but, Galsworthy talks about the injustice done to Falder who tried to rescue Ruth. He says that from a humanitarian point of view Falder was right on his part and makes the audience sympathise with him. The decision to imprison him was taken from the 'blind' rigid side of law depicting inhuman nature. The play shows the defect of the legal system in its rigidity in treating prisoners inhumanly and that no follow up is done to rehabilitate the discharged prisoners which in turn alienate them from society.

Crime of any nature is never supportable, neither the crime committed by Falder. Falder was given a cheque for encashment and he tampered with the figured amount thus, misguiding the bank. He had to pay the penalty for his deed in multiple magnitudes. In the jail he was in solitary confinement and was treated horribly. He became an out-cast and was reabsorbed conditionally. But, the shadow of country's law was in constant pursuit and that caused his doom. So, when the custodian of justice serves little in rectification and worsens the state of the individual, the condition of the individual brings out the justness of the so called "just" system.

Important characters:

Falder:

Falder is the most important character in the play around whom the story of the play revolves. Unlike the great, tragic heroes in literature, Falder is not a towering personality. He is just an ordinary junior clerk working in solicitor's office of James and Walter How. The most striking aspect of Falder's character is his weak nature. In his first conversation with Ruth in Act I, his nervous nature becomes apparent. We note that he has "rather scared eyes". When we meet him in the opening Act of the play, Falder is not a habitual criminal and the extreme pressure of the circumstances force him to commit the crime. He is not calm and composed and his nervous nature is visible in the very act of alters the cheque to get the cash in the simplest possible way. He wanted the money so badly in order to save a distressed woman from the cruelties of her husband. It is possible to accept that Falder was sincere in his love for Ruth. He becomes upset to hear about her husband's brutality towards her and becomes all the more desperate to rescue her. The way he tries to get the money for her help depicts a lot about his weak mind and personality. There is something pathetic in Falder all through the play. The way he tries to rescue a woman in distress, the way he tortures himself in his solitary confinement , the way he tries to start all over again by forging references , the way he was treated by his relatives and acquaintances in his past convict life, bring out a pathetic side of his character . When he comes to know of Ruth's relationship with her employer, we feel that with his love lost, it is all over with him. The suicide is inevitable in his case.

Ruth:

Ruth is the only woman character in Galsworthy's play Justice. She is married to a drunken, inhuman person and her life has been a nightmare. The conventions and shackles of social morality make her a helpless victim. But she does not appear as helpless as the weak-minded Falder. She presents herself as a strong-willed, determined woman who is conscious of her position in relation to the society but not willing to submit to it tamely. She is determined to run away with Falder rather than live with a brutal husband. But when Falder is arrested on the charge of forging the cheque, she has to fend for herself. She leaves her husband by taking the children with her and finds an employment. However, though she got involved with her employer, her love for Falder was alive in her. Hence, in the court scene when Frome asked her if he still loved Falder, she made no hesitation in replying that he had ruined himself for her. A little later she told the jury "I would have done the same for him; I would indeed." Even when Falder was in prison she felt that Falder was the only thing in her life. It is this love for Falder and her own stern dignified manner that is the most striking side of her character. However, at the end of the play when Ruth confronts the dead body of Falder in the outer office of the solicitors' firm, her passions for Falder become fairly revealing. Her heart- broken whisper, 'my dear', my pretty' are indeed the revelations of a lovelorn heart. Outwardly she has poise and self-control but, in fact, her passion for Falder is evident throughout the ply. She suffers much indeed and undoubtedly this is largely due to her love for a person with a weak will and nervousness.

Cokeson:

Robert Cokeson is introduced in Galsworthy's play Justice as the managing clerk of the solicitor's firm of James and Walter How. Unlike the other characters of the play, Cokeson displays different perspectives of his character in his dealings with the other characters of the play. The first striking

feature that we notice in Cokeson's character is the innate goodness of his nature. When Ruth visited the office to see Falder, a junior clerk, he was a little taken aback. He suggested that she should go to his private address as it was rather unusual to have private meetings in the office. He liked everything in the office to be in proper order, to be "jolly together" but when Falder confessed his guilt of forging the cheque he was greatly disturbed. All he could say was, "Dear, dear! What a thing to do! However such a thing could have come into your head!" He was startled that someone who was working in the office could break the law like that. Cokeson has great affection for Falder and is full of appreciation for his sincerity in work. So he is rather puzzled when Falder commits the offence. Nevertheless, his affection for Falder has not been affected. In fact, he not only gives the court positive evidence in support of his good behaviour but also visits the prison to see him during the period of his solitary confinement. He is rather disappointed that the prison Governor didn't allow the meeting.

- **George Bernard Shaw's "Arms and the Man"**

The main themes running in this novel weave the story of the novel. Major themes are as follows:

DISILLUSIONMENT WITH WAR

The play discusses how war is made, how it is fought, and how parties sue for peace at the close of it. Indeed, the play's title is a direct quote from Virgil's *Aeneid*, the Roman epic that glorifies war. Shaw used this quote ironically, drawing attention to how war should not be seen as romantic.The Serb-Bulgarian War is not addressed directly in the text, although that is the historical template on which Shaw bases his production. Bluntschli is a Swiss mercenary who has hired himself to the Serb cause, along with soldiers from other nations. Sergius is supposed to representing the "heart" of the Bulgarian enterprise, with his gutsy charge at the start of the work demonstrating just how powerfully he wishes to defend his nation's honour. What becomes clear as the play progresses, however, is that war is simply a job for soldiers, and nothing more. Sergius is not the hero he is initially thought to be. He romanticizes war to such an extent that he leads a foolish charge against the enemy, and only does so in order to climb the ranks for recognition. Bluntschli also destroys Raina's romantic idea of war and heroism when he proves that the best soldiers are often not identified as such on the outside.

For Shaw, war is simply a way for men to occupy themselves, perhaps in redrawing small parts of the national borders, while others on the domestic front, who are predominantly women, shape many more aspects of life. Though Catherine and Raina are ostensibly dependent upon the outcome of the war, in dealing with Bluntshli they are also active participants in some of its intrigues. In harboring an enemy and ultimately marrying him, they add to the argument that war and its divisiveness can be meaningless.

THE COMPLEXITY OF ROMANTIC LOVE

The interactions of characters are primarily driven by romantic love, or lack of it. Social conventions of love during Shaw's time period included public and formal courting, parental approval, and consideration of social status and wealth of each partner. However, the characters in this play defy the norms and each end up with a person that is best suited to them.

Characters slowly disabuse themselves of the features of romantic love they have most cherished all their lives, and realize that it is far more complex. For example, Raina does appear to love Sergius in the beginning of the play, but when she falls in love with Blunstshcli, she realizes her love for Sergius was superficial. Perhaps Raina only felt this way because Sergius was lauded as a hero and because Catherine and Petkoff supported the union to maintain the family's social status.

By contrast, Louka, though engaged to her fellow servant Nicola, does not appear to have ever been in love with him, and demonstrates that she is willing to work hard to marry into a higher rank. Romantic love does not seem to

be a factor in her decisions. The beginnings of Louka's relationship with Sergius are illicit, and defy social norms of courtship. Bluntschli's introduction to Raina is also unconventional, as they meet secretly in her bedroom. And when they finally become engaged, Bluntschli, the pragmatic and calculating soldier, surprises everyone by revealing himself to be a lifelong romantic.

THE ARBITRARY NATURE OF SOCIAL STATUS

The social station of the characters in the play is one of the dynamics that becomes most pronounced by its end. Louka wants to be more than a servant, whereas Nicola seems content to remain one. Bluntschli appears to be middle class, but reveals later that he is far, far wealthier than the noble Petkoffs. Petkoff and Catherine want Raina to reinforce the family's position however she can, either by marrying the ostensibly bravest man in Bulgaria, Sergius, or by adding greatly to the family's coffers by joining with Bluntschli.

As in any marriage narrative of the nineteenth century, romantic love might be a part of the marriage calculation, as it certainly didn't hurt to love one's partner. But that is far from the point of marriage in this time period. Characters want to unite noble families and improve financial situations. What romantic love tends to do in these situations, then, is cut across and destabilizes what might be the otherwise orderly transfer of money between families.

Some of the important symbols in the novel are:

PETKOFF'S COAT

Catherine and Raina lend Bluntschli Major Petkoff's coat to escape the estate in the fall, under cover of darkness. The coat is a symbol of the various instances of deception around which the novel unfolds. Bluntschli brings the coat back to the Petkoffs without realizing that Raina has left an inscribed picture of herself in its pocket, thus indicating to anyone who might see it that she loves Bluntschli despite being engaged to Sergius. The coat literally hides Raina's love for Bluntschli, and this love is only revealed once Raina's photograph is removed from the coat. Petkoff cannot find the coat in his closet until Nicola, on Catherine's urging, places the coat there after Bluntschli's return in an attempt to cover up the story. Major Petkoff is as sure the coat is not in his closet as he is that nothing is the matter between Raina, Bluntschli, and Sergius in that moment. When Nicola produces the coat, the turmoil between the characters is revealed, and Major Petkoff is just as shocked at both revelations.

CHOCOLATE CREAMS

Raina keeps candies, including chocolate creams, in her bedroom. She appears not to like chocolate creams, as they're the only candies left in the box. But Bluntschli loves them especially, and famished as he is after the battle, he eats them greedily when Raina offers. From then on, she calls him "the chocolate cream soldier." Chocolate creams are a symbol of delicacy and high society, as well as a symbol of youthfulness. However, Bluntschli's willingness to stuff them in his pockets in place of ammunition indicates that they are also a symbol of maturity and knowledge. Bluntschli knows how difficult war is. He is a veteran, not a rookie. Thus the creams are over-determined in the play, meaning there is no single significance that can be placed on them. This is similar to how Raina and Bluntschli are neither paragon of total good nor total evil, but complex humans who behave practically as best they can.

THE LIBRARY

For the Petkoffs, the library is a sign of cultivation and status in the family, which they perceive as rare among Bulgarians. The Petkoffs worry that the Bulgarians are not as refined as their Russian enemies, and Raina is quick to point out to Bluntschli that their library is perhaps the only one in the area but it's only a small room with dusty old volumes scattered on the shelves. The library symbolizes both the Petkoffs' preoccupation with what they see as fine taste, and the reality of the family that falls far short of this ideal.

- The Play "Final Solutions" by Mahesh Dattani

Mahesh Dattani is a contemporary writer who writes specifically in English. Dattani plays question a few of the norms and conventions of society. In the process, interesting questions arise regarding gender and other conditions like homo-sexuality, lesbianism, child sexual abuse. Dattani tackles issues that

afflict societies the worldwide. Dealing with issues like male-female ascendance divide, the patriarchal tradition, consumerism, communalism, Dattani holds back nothing. His plays deal with contemporary issues. They're plays of today sometimes as actual concerning cause controversy, but at the same time they are plays which embody many from the classic concerns of world drama. Dattani's play has a universal appeal. They could be staged anywhere on earth, they would draw full attention of the crowd. Dattani moulds his subject in such a way that it is both topical as well as appealing. His plays speak across linguistic and cultural barriers. Dattani makes an abundant use of Indian mythology, rituals and traditions and contemporary problems, India is beset with but he elevates these themes to a higher level, touching the human chords that emanate love, happiness, sexual fulfilment and problem of identity. Though he lives in Karnataka, he writes about the entire nation of India, in regards to the whole world he lives in. It's in the fitness of stuff that we must make an work for balance evaluating the playwright thematic concerns along with his exploration of, and experimentation with stage. His last play, *Final Solutions*, which imaginatively examines what really lies at the core of communal fear and hatred of the Hindus for the Muslims, and the other way round, is perhaps the most on target. And frighteningly clairvoyant. Written before the mosque in Ayodhya was destroyed and the repercussions of the act, it brings to the surface and articulates communal prejudice with embarrassingly brutal frankness. Dattani is an authentic contemporary voice whose plays are rooted in contemporary urban experience and yet have a significance which can travel beyond India's borders.

- **Draupadi The Symbol of Retaliation**

  Take Mahasweta Devi's story *Draupadi*, for instance. Named after Mahabharata's heroine Draupadi, Devi's lower-caste protagonist is given the name by her upper-caste mistress. We're told she can't even pronounce it—as Gayatri Chakravorty Spivak explains in her rather lengthy translator's note, the Dalit tongues and dialects simply don't form those syllables, and she is called "Dopdi" instead—and we're told the regional police are after her since she is suspected of being a guerrilla Maoist. Wrung in a manner only Devi's stories are, this one too explores the tensions between the remnant colonial morality (embodied in the police force) and the Subaltern. The tale ends with Dopdi in captivity, gang-raped by the police officers. Unlike Mahabharata's Draupadi, this one doesn't ask Lord Krishna to come save her (she knows he doesn't listen to her anyway), but struts back to the officers, naked and defiant, asks them to rape her again, and they turn their eyes away in shame. I wish I could ever fully convey what a powerful moment that is, having such a revered religious epic overturned like that, in an instant, and before you know it Dopdi has charmed you with her resistance and retaliation.

  To Devi and Spivak's credit, the awe and wonder of such a moment doesn't compromise the rape, nor does it take away the pain. However, the story does posit law enforcement as a body that occurs *after* colonization, and suggests that if we were to move beyond it, we'd find our revolution, and by extension says that power simply changed hands between the old colonial masters and the ruling elites today, but the nature and location of power has remained the same. Wish it were that simple, but as we know, history never is. There is no utopia before colonization—my culture as well as yours were

and are entrenched in power dichotomies; such "declension narratives" do more harm than good. In India, this translates to seeing a time before colonization as one of a harmonious society, completely sidelining slavery, patriarchy, and the oppressive caste system.

Devi's *Draupadi* hits all the marks—it has a lower-caste protagonist actively subverting the Hindu/Colonial regime, is extremely empathetic to not just its protagonist but also the communities it talks about, and it still manages to portray exclusion from the "mainstream" as a privilege. Celebrations of resistance, congratulations on portraying diversity "correctly" serve an extremely limited purpose at best, and actively engender a frame of seeing the "always resisting marginalized body" (in a warped way, justifying the marginalization because the "strong Dalit women can handle it anyway"). "Good representations" harm too, and it's quite imperative we remember that as we congratulate ourselves on "resisting the Empire." Resistance isn't a medal one can flash—not when one's survival depends on it.

The backdrop of this story is the 1971 war between Pakistan and Bangladesh in which thousands of women were victims of genocidal rape. The Pakistani millitary killed thousands of Bengali civilians, students, intelligentsia, religious minorities, and armed personnel. Draupadi is a tribal woman who is captured by Senanayak, a Third World Army officer who is also a First World scholar. The army brutally rapes her under his orders. Ironically, the rapists later tell her to cover herself up, but Draupadi defies them and remains publicly naked. Senanayak is befuddled as she strips her clothes and confronts him with her gaping wounds. After it becomes clear that they cannot succeed in breaking her psychologically through their weapon of rape, she brazenly declares

There isn't a man here that I should be ashamed… What more can you do?

As Spivak suggests in an essay preceding the story, *Draupadi* can be interpreted as a story that rewrites an episode of the Mahabharata, where Draupadi's eldest husband "gambles" her away. As the enemy chief pulls and pulls at her sari, there is more and more of it. She cannot be stripped, thanks to the divine intervention of Krishna.

In Devi's story, it is not male leadership but Draupadi's strength and courage to challenge the patriarchy that bring resolution to the story. Devi understood the essence of *rape culture*, long before the term became famous in feminist jargo.

HISTORY (107)

HISTORY-107#UNIT-1

A. RELEVANCE OF HISTORY TO LAW ---- INTERDISCIPLINARY APPROACH.

Interdisciplinary Approach- Interdisciplinary approach means the combining of two or more academic discipline into one activity. According to Heidi Jacob; interdisciplinary approach is a knowledge, view and curriculum approach that consciously applies methodology and language from more than one discipline to examine a central theme, topic, issue, problem or work… it involves researchers, students and teachers in the goals of connecting and integrating several academic school of thought and professions along with their specific perspectives in pursuit of a common task. Klein and Newell offered a wide definition of interdisciplinary studies, according to them, it is a process of answering a question, solving a problem, or addressing a topic that is too broad or complex to be dealt with adequately by a single discipline or profession…it draws on disciplinary perspectives and integrates their insights through construction of a more comprehensive perspective.

RELATIONSHIP BETWEEN LAW AND HISTORY

History is information, interpretation, education and enlightenment. To the legal community, history is the very process of understanding law in context. Without history, law is a set of bare principles devoid of social meaning and cultural orientation. It is in historical context, law assumes the quality of life and evolves organic structures, developing and changing to the need of good governance. No wonder, historical jurisprudence both as a method as well as a substantive school of thought, captured the attention of scholars pursuing legal studies everywhere since long. Admittedly, history is essential reading for every law student.

The importance of history has led to a variety of problems too. Because history can be written from a variety of viewpoints and the interpretation can be as varied as the author choose to have it, there have been a lot of differences and great deal of disenchantment in the study of legal history. Student of law look at history with a view to understand the nature of polity, the development of freedom and human rights, the pattern of administration of justice and the nature of legal and judicial institutions. There are value assumptions and cultural imperatives implicit in the analysis of these aspects and unless the historian is careful about them, there is likelihood of distortions with dangerous consequences to society. This is all the more true when the history relates to pluralist society in colonial domination.

Legal history- History of law is the study of how law has evolved and why it changed. Legal history is closely connected to the development of civilisations and is set in the wider context of social history. Among certain jurists and historians of legal process, it has been seen as the recording of the evolution of laws and the technical explanation of how these laws have evolved with the view of better understanding the origins of various legal concepts; some consider it a branch of intellectual history. History always brings forth the facts and interpretation of law like the customary law and left the discretion on the masses to rethink and reinterpret the legitimacy. Twentieth century historians have viewed legal history in a more contextualised manner more in line with the thinking of social historians. They have looked at legal institutions as complex systems of rules, players and symbols and have seen these elements interact with society to change, adapt, resist or promote certain aspects of civil society. Such legal historians have tended to analyse case histories from the parameters of social science inquiry, using statistical methods, analysing class distinctions among litigants, petitioners and other players in various legal processes. By analysing case outcomes, transaction costs, number of settled cases they have begun an analysis of legal institutions, practices, procedures and briefs that give us a more complex picture of law and society than the study of jurisprudence, case law and civil codes can achieve.

Importance-Students who plan to practice in almost any area of law, as well as those interested in the

academic study of legal history have much to gain from courses in Law and History. The Program of Study in Law and History offers students a chance to examine law and its relationship to the larger world of social movements, economic change, politics and government – in the context of studying law in a period of time different from our own. It is designed to reflect the present evolution of interdisciplinary university education in our rapidly changing world. Law and History offers students a chance to contrast our present circumstances with the past, a chance to understand the long path of development that led to the legal problems we grapple with in the present, and the chance to see the deep roots of the social forces that are changing the shape of our own world. The program offers a chance to study lawyers, legal institutions, and the larger society and its interaction with law. The study of law in historical context provides a rich foundation for both practice and scholarship in all fields of law.

History is the present of the past. Today's present will be the history in the future. Current life, trends and views cause change in laws, and laws cause changes in everyday life. Life and law are reflections of each other. Law is the mirror of life and life is the mirror of law. One cannot separate law and life. Each affects and influences the other. It is impossible to understand law and legal trends of any period, without learning and understanding the real life and trends during the period, not only in a definite geographical location but also the international trends and political pressures. Likewise it is impossible to understand and follow social and political trends, without being acquainted and understanding the law of that time.

B. Rethinking History and Historians Crafts.

This means we would do well to recognise and remember that the histories we assign to things and people are composed, created, constituted, constructed and always situated literatures. And, what is more, they carry within them their author's philosophy or 'take' on the world present, past and future. Such is the importance and influence of the subject, especially among the younger generation of history students, that it now seems quaintly to bother to point out that 'history' is not the same as 'the past' on the same verse as a form of knowledge history is – plainly and palpably – a narrative representation. The point at issue is the one about knowledge – what and how it is possible 'to know' the past? Keith Jenkins pointed out that history is first and foremost a literary narrative about the past, a literary composition of the data into a narrative where the historian creates a meaning for the past. The implication is that in producing our historical narratives we must no longer suppress history's character as literature. But there is a hugely important consequence of this. As Jenkins argues, we must acknowledge the epistemological and philosophical assumptions historians make about the 'proper' way to 'do history'.

An approach that we call the "five C's of historical thinking." The concepts of change over time, causality, context, complexity, and contingency, we believe, together describe the shared foundations of the discipline. The five C's do not encompass the universe of historical thinking, yet they do provide a remarkably useful tool for helping students at practically any level learn how to formulate and support arguments based on primary sources, as well as to understand and challenge historical interpretations related in secondary sources.

History refers both to the past and to the systematic study of the past. There are benefits from increased attention to the past. The arguement that significant benefits can be gained from increased attention to the systematic study of the past, the historian's craft. The essence of the historian's craft is the critical evaluation of sources. Failure to critically evaluate sources has the potential to lead to erroneous conclusions, whether one is using historical documents or more recently created data.

C. INDIAN HISTORIOGRAPHY

Orientalists-'Oriental' had always been understood simply as the opposite of 'Occidental' ('western'). 'Orientalism was a European enterprise from the very beginning. The scholars were Europeans; the audience was European; and there the Indians figured as inert objects of knowledge. The Orientalist spoke for the Indian and represented the object in the texts. Because the Indian was separated from the

Orientalist knower, the Indian as object-as well as its representation-was constructed to be outside and opposite of self; thus both the self and the other, the rational and the materialist, British and the emotional and spiritual Indian , appeared an autonomous, ontological and essential entities. Of course, the two essential entities, the spiritual India and the materialistic West, made sense only in the context of each other and the traces of each in the other. This suggested that the heterogeneity and difference lay beneath the binary opposition, although the process of rendering India into an object external both to its representation and to the knower concealed this difference. It also made the colonial relationship-the enabling condition of British Orientalism-appear as if it was relevant to the production of knowledge. As a result, though colonial dominance produced the East-West construct, it looked as if this 'binary opposition' not only predated the colonial relationship but also accounted for it. In other words, Orientalist textual and institutional practices created the spiritual and sensuous Indian as opposite of the justifications for the British conquest." For years, this theory remained in practice until in 1978 when Edward Said appeared on the screen.

It was with the ideological quest that modern methods of historical research and reconstruction then spreading in Europe were introduced into India. The Asiatic Society of Bengal which William Jones had consciously modeled on the Royal Society in London ushered in the age of scientific and specialized study in Indian history and culture. Jones revelation of the kinship between the Indo-European languages and peoples almost created the modern sciences of comparative philology, comparative mythology and ethnology; he had demonstrated the importance of linguistic studies in historical inquiry. Princep seminal success with the riddle of Old Brahmi not only solved the problem of the Asokan edicts but set the grand example of epigraphic revelations of Indian history; in the course of 19th Century three-fourths of ancient and medieval Indian history would be read from inscriptions. Indian archaeology and numismatics, taking shape with the indefatigable Cunningham, were to make history in the years to come. Burnouf's Essai Sur Le Pali opened up another untapped fount of Indian religion and thought, the Buddhist and roused his great pupil Max Muller to make possible the translation of all the sacred books of the East into English, and Rhys Davids to devote his whole life to the exposition of Buddhist literature. By the end of the nineteenth century, ancient Indian that terra incognita to the academic world had been historically charted and mapped.

The Ideologist findings should be reckoned as one of the major breakthroughs affected in the history of knowledge. A.A. Mac Donnel writes: Since the Renaissance there has been no event of such worldwide significance in the history of culture as the discovery of Sanskrit literature in the latter part of the eighteenth century. By a supreme irony of history even as India was helplessly passing under British rule, the British Orientalists were holding up before the world an image of the Indians as one of the creative peoples of the world with an impressive continuity of development and civilization for more than three thousand years. The literate West often compared the Orientalist with the Italian humanists and praised them in the press for their gift of a new Renaissance in the East. William Jones was accorded the greatest honor of all, as the one who had restored Indian to its rightful place among the civilizations of the world. The work of the Orientalist historiographer had their seamy side which should not be ignored. A cloud of doubt came to be cast on William Jones's notion of the language-race nexus and the theory of the Aryan race has now been generally discarded. The theory however, came to have a somewhat harmful influence on future thought. The belief in the superiority of the white Aryan race became a basic assumption of European imperialism everywhere, and the British imperialist historians of India would duly employ it as the raison d'etre of British rule in India.

Great as were the Orientalist revelations, much of it was fanciful too, and this letter aspect misled some modern Indian historians. The Orientalists, particularly William Jones, had, in the enthusiasm of discovery, romanticized and exaggerated the value of the new revelations, not always warranted by the sources. Jones had found the Sanskrit language " more perfect than the Greek, more copious than the Latin, and more exquisitely refined than either…" He labored to show that the Indian division of the

Zodiac was not borrowed from the Greeks or Arabs; he supported the story that Plato and Pythagoras borrowed their philosophical ideas from India and concluded that the six Hindu school of Philosophy comprised all the metaphysics of the old Platonic Academy; he endeavored to prove that India had excelled in arithmetic, geometry and logic; he thought that it is possible that Aristotle based his system of logic on Brahmanic syllogisms; and took pains to show that the fertile genius of the Hindus invented the decimal scale, the science of grammar and the game of chess. Such claims were a soothing balm to a wounded, decaying civilization, and nothing could have been bred chauvinism. When, at the turn of the nineteenth century and beginning of the twentieth, nationalist historiography grew in reaction to British imperialist historiography on India, some of the nationalist historians- in their enthusiasm to whip up national feeling by extolling national achievement and virtues- found a ready quiver in Orientalist assertions and read into the source things that were not there.

This school tried to link the history of India to the history of Europe. This was done, by the study of languages (as the European and the Indian languages both belong to the strata of Indo-European languages with the same origin). They also tried to link the biblical texts of India like the Dharmashastras to those present in Europe, again indicating similar origin of both these civilizations.

This school also studied the social structures like the caste system in India. This was important not only from the point of intellectual curiosity but it was of administrative importance as well, as this knowledge was helpful in furthering colonial rule in India.

This school to a large extent, considered India as an exotic civilization bereft of all material considerations and a civilization which focused on aspects like spiritualism and other similar meta-physical concepts. This can be interpreted as 'in part a reflection of an escape from 19th century European industrialization and the changes which this industrialization brought, which were somehow difficult to comprehend.'

One important thing to be noted about this school is that it was the first to apply the Aryan label to the Indian society , which again pointed to a unified origin of the Indian and European societies. Further, they intermingled caste and race, and thus the upper castes were considered Aryan (as they were advanced) and the lower castes were considered of non-Aryan and mixed origins.

In my view this school and its prominent historians like Max Muller were to a large extent responsible in the creation of the 'stereotype' of the Indian society in the European academic and social discourses. It should also be noted that, the nature of colonial rule in this school was non-interventionist in nature.

Utilitarians Interpretation: This school also believed in the 'exocity' of Indian society, but it used those facts to state that the Indian society lacked rationality and individualism and hence the European civilization was needed to make the 'stagnant' Indian society 'progressive'. This was a departure from the oriental school's non-interventionist policies. This school of historiography is responsible for the three staged periodization of the Indian history into, the Hindu civilisation, the Muslim civilisation and the British period. This school created the concepts of 'oriental despotism' , which again was used to legitimise the colonial conquest of the sub-continent. It should be noted that this change in historical thinking also coincided with a change in the colonial policies. By this time the colonial conquest of India was nearly complete, and the need of the hour was to reconstruct the economic structure of the colony, so as to be a source of raw material and an importer of the finished British goods. Thus, the change from a non-interventionist to an interventionist ruler, required certain kinds of interpretation of the history of India, which was provided by the utilitarian historians. It should also be noted that the concept of Indian society being the 'other' of the European societies, had an important place in this school of historiography. This is clear from the ideas of 'Asiatic mode of production' which is an anti-thesis of the 'European mode of production'. This was used to give legitimacy to the British intervention in the sub-continent as it was necessary to break the stagnancy of the Indian society, so it was the lesser of the two evils, the first being remaining in the same stagnant state for eternity. This contrast between Europe and India became a primary concern, and in many cases resulted in the non-representation of those empirical

facts which were not in congruence with the thesis.

The Nationalist Interpretation - This school of historians emerged towards the end of the 19th century. This was used for the anti-colonial movement for independence. In this school, history was used for two purposes, firstly, to establish the identity of Indians and secondly by establishing the superiority of the past over the present.

For the first purpose, the Aryan theory of race and other similar concepts came handy, whereas for the second purpose, the concept of the 'golden era of the Hindu civilisation' was created. This was done because the remoteness in history of the 'golden age' was directly proportional to its utility in imaginative reconstructions and inversely proportional to factual scrutiny.

The basic thing to be noted is that, the colonial nationalists to a large extent used the same methods of historiography as the imperialists but they interpreted these 'facts' differently so as to suit their socio-political needs. Though they did reject some of the imperial concepts like 'oriental despotism' etcetera but to a large extent they agreed on the historical facts with the imperialists.

This school was also responsible for the rise of religious nationalism based on the classification of the Hindu and Muslim civilisations. It has been argued that this was the period where the concept of separate countries for hindu's and muslims was conceptualised.

These interpretations are in the view of Ms. Thapar, distortions of Indian history. She states, "they are ideologically limited and intellectually even somewhat illiterate, because history becomes a kind of catechism in which the questions are known, the answers are known and there is adherence to just those questions and answers. No attempt is made to explore intellectually beyond this catechism."

Marxist Historiography - Indian Marxist historians do not follow the theories of Marx and Engels regarding Asian history. All they do is to follow the Marxist analysis, the dialectical method and historical materialism which are all part of the Marxist philosophy. The basic point to be noted here is that the theories of Marx and Engels were based on their studies of the European society and economy. So, the applicability of these theories to the Indian historiography was not adequate. This is shown by the refutation of Marxist concepts like Asiatic mode of production; application of the five stages of European history etcetera.

The focus of Marxist historiography is on social and economic history and it has challenged the prevailing periodization of Indian history as enunciated by Mills. The Marxists have also addressed the following important issues; the difference between pre-modern and modern societies; the differences between pre-capitalist and modern societies; changes in the caste system and the transition from clan to caste; interpretation of religion as social ideology etc.

Subaltern School - This school believes that all other schools of history were elitist in nature as they were focused on either the colonial state, the indigenous elites, the bourgeois nationalists or the middle class. So, they highlight the need to study the 'participation of the subaltern groups'.

This school prefers local sources both private and popular in nature upon archives and official papers. They also use 'oral tradition' as legitimate historical source material. The following

extract is useful in understanding this school, "they encourage the investigation of minutiae of what goes into the making of an event, of the author, of the audience, of the intention…… This kind of history then challenges the validity of making broad based historical generalizations. Each study is self-contained. Eventually there are a large number of well documented studies with little cross connection." Romila Thapar has certain objections to this school which are as follows, firstly, there attitude against generalization is not acceptable to her as she thinks that by strictly avoiding generalizations there is a possibility of missing the big picture. She states that this school 'has no framework of explanation which relates itself to a central point and to which each study can refer'. So, there is a large possibility of missing the complete picture. Secondly, she also disagrees with the axiom of this school that all readings are equally significant and that there can be no prioritization of readings. This makes it in form similar to

19th century historiography which believed that all sources are equal. In her view this school of historiography is still to make an impact on the historiography of pre-modern India. But, it has had a great impact on the history of the third world and has encouraged international comparative studies.

CONCLUSION

The modern historiography of India is a continuing dialogue between colonial, nationalist and post-colonial interpretations. This has enriched historical theory and has also sharpened the debate and evaluation of comprehending the Indian past and will provide for a more perceptive understanding of the past, which is essential on order to understand the present.

UNIT-2 ANCIENT INDIA.

Nature of state, notions of kingship

BUDDHIST (STATE AND KINGSHIP)

A king (manujinda, narinda or raja) is a hereditary male ruler of royal descent. The Buddha defined a king as 'the chief of men' (raja mukhaṃ manussanaṃ). Different religions have different theories about the origins and nature of kingship. The Bible, for example, says that all rulers derive their power from God and, thus, to obey the king is to obey God (Romans 13, 1-2). In Europe this doctrine came to be known as 'the divine right of kings.' Confucianism taught a similar idea called 'the mandate of Heaven.' According to Shinto, Brahmanism and later Hinduism, kings actually were gods. It naturally followed from all these ideas that a king's legitimacy was not derived from his fitness to rule but from divine assent or approval.

The Buddha had an entirely different and more realistic concept of kings and kingship. In the Aggana Sutta he posited a social contract theory of monarchy. In ancient days, he said, people saw the need for some form of government and so they elected from amongst themselves a person who they thought would be best able to rule them. According to the Hindu myth, the first king of India was Mahasammata, a name whose origin the Buddha reinterpreted in support of his idea to mean 'elected by the majority'. Thus according to the Buddhist theory, kings derived their legitimacy from general consent, i.e. from the people they ruled. It followed from this that a king retained his right to rule only for so long as his subjects benefited from it. Several stories in the Jataka implicitly suggest that people had a right to overthrow a king who was cruel, unjust or incompetent.

Such ideas were far too ahead of their time and there is little evidence that they were ever applied. However, the Buddha's teaching of good governance had some influence in making kings more humane. The best example of this is Asoka who was probably being completely genuine when he said: 'All subjects are my children. I wish for them what I wish for my own children – their welfare and happiness both in this world and the next.'

While the Tipiṭaka and later literature always exhort kings to abide by Buddhist values, the general impression they give, almost certainly based on hard experience, is of kings as despotic, arbitrary, self-indulgent and ruthless. 'Kings are fickle-minded,' 'Kings are cruel,' 'Like a raging fire, kings are dangerous to be near.' Some were described as being 'like dust in the eye, like grit in the soup, like a thorn in the heel'. When King Milinda asked Nagasena if they could have a discussion on the Dhamma the latter said: 'Sire, I will discuss with you if you do so like a learned person and not like a king.' Milinda asked what the

difference was between these two approaches and Nagasena replied: 'When the learned are discussing, beliefs are overturned, theories are unravelled, assertions are refuted, ideas are accepted, points are made and other points are made against them. When kings are discussing they say something and punish anyone who disagrees with it'.

Whether kings were good or bad, they had great power and the Buddha modified some of his teachings so as to avoid coming into conflict with them. In deference to the monarch he said that a person could not join the Sagha until they have fulfilled any obligations they had to the king and that Vinaya rules could be changed if the king required it. At the same time he told monks and nuns to steer clear of royal courts so as not to get involved in all their intrigues, jealousies and temptations.

The three kings who appear most frequently in the Tipiṭaka are Pasenadi of Kosala, Bimbisāra of Magadha and his son and heir Ajatasattu. It was about two years after his enlightenment that the Buddha first met King Pasenadi in Savatthi, the capital of Kosala. Impressed by his teaching, the king and his chief queen Mallikā soon became two of the Buddha's most dedicated disciples. Many discourses in the Tipiṭaka record dialogues between the Buddha and the king and nearly all the discourses in one chapter of the Saṃyutta Nikāya consists of such dialogues (S.I,68-102). Pasenadi's genuine integration of the Dhamma into his life is nowhere better illustrated than by the fact that his commitment to the Buddha's teachings did not prevent him from having respect for and being generous towards other religions (S.I,78; Ud.14). According to tradition, Pasenadi had two sons, one of whom, Brahmadatta, became a monk (Th.441-6).

Bimbisāra came to the throne at the age of 15 and ruled for 52 years. He had met Prince Siddhattha briefly while he was still a wandering ascetic (Sn.408-9), again in the year after his enlightenment and on several subsequent occasions. Bimbisāra donated one of his pleasure gardens, the Bamboo Grove, to the Buddha to be used as a monastery (Vin.I,35). Although Buddhist tradition says Bimbisāra was a devout Buddhist there is no discourse in the whole of the Tipiṭaka addressed to him. Like many Indian kings, he probably supported all religions and each claimed him as one of their followers.

While the Buddha called Bimbisāra 'a just and righteous king' (D.I,86), his son Ajātasattu is depicted in the Tipiṭaka as ruthless, scheming and unpredictable. He murdered his father to get the throne and supported Devadatta in his machinations against the Buddha (Vin.II,185). He also had territorial ambitions. He provoked a war with Kosala which turned out to be a disaster for him (S.I,82-5) and we read of him fortifying the border town of Pāṭaligāma in preparation for invading Vajji (D.II,86). There is also a brief reference to him strengthening the walls of his capital out of suspicion that his neighbours were going to attack him (A.II,182). In time, Ajātasattu came to be haunted by thoughts of his murdered father and sought consolation from the Buddha (D.I,47-9). Tradition tells us that Ajātasattu ruled for 35 years and was eventually murdered by his own son Udāyibhadda.

KAUTILYAN (STATE AND KINGSHIP)

The history of tradition of Indian Politics is ancient and dates back during the time of Vedas. The discussions regarding politics are found in 'smritis' and 'puranas' by the name 'dandaniti'. References to various political texts are available which studied and explored the concept of 'dandaniti'. It is perhaps Kautilya's Arthashastra which stands out to be thoroughly scientific and most authoritative interpretations of these ancient studies. Written in around 4th century BC by the Prime Minister of The Great Mauryan Empire Kautilya, also known as Chanakya or Vishnugupta, Arthashastra is one of the most influential and comprehensive treatises in Political Science in the Indian Vedic Civilization. Regarded as quintessence of ancient Vedic wisdom in politics and economics, Arthashastra holds remarkable relevance in today's times with some curious resonance with the thoughts and theories of various philosophers, economists and political scientists around the world.

Unlike many other writers in the polity, Kautilya is unique Indian political thinker who was both thinker and statesman. He participated in various social and political revolutions of his Age and abstracted from his study of conflicts some general principles capable of universal application and effective in all times

and ages. With more and more studies in the field of politics and economics and with a modern outlook and understanding of world affairs, the relevance and appreciation of Kautilya's 'arthashastra' is incontrovertible.

Arthashastra

Arthashastra means the science (sastra) of wealth/earth/polity (artha). 'Artha' however is bit wider and an all-embracing term with variety of meanings. In 'Arthashastra' itself it is being used in various contexts, points out L N Rangarajan in his translation of Kautilya –Arthashastra. It is used in the sense of material well-being, in livelihood, economically productive activity trade etc. This is bit similar with 'wealth' which is defined in 'Wealth of Nations'. In rather simple way, 'arthashastra' can be defined as 'science and art of politics and diplomacy'. This treatise is divided into sixteen books dealing with virtually every topic concerned with the running of a state – taxation, law, diplomacy, military strategy, economics, bureaucracy etc. The book is a masterpiece which covers a wide range of topics like statecraft, politics, strategy, selection and training of employees, leadership skills, legal systems, accounting systems, taxation, fiscal policies, civil rules, internal and foreign trade etc. Arthashastra advocates rational ethic to the conduct of the affairs of the state. The emphasis is on codification of law and uniformity of law throughout the empire. In this essay we shall try to explore Kautilya's views on legal systems, justice and king's role in maintaining law and order as discussed in Arthashastra by Kautilya himself.

Law and Justice as proposes by Kautilya maintained that it is essential duty of government to maintain order. He defines 'order' broadly to include both social as well as order in the sense of preventing and punishing criminal activity. Arthashastra thus contains both the civil law and criminal law. Kautilya ascribed a lot of importance to 'dharma'. According to him, 'the ultimate source of all law is dharma'. He appealed in the name of 'dharma' to the sense of honour and duty and to human dignity, to moral responsibility and to enlightened patriotism. It's quite intelligible that the judge in the arthashastra was called 'dharmashta' or upholder of dharma. He maintained that so long every 'Arya' follows his 'svadharma' having due regard to his 'varna' and 'ashrama' and the king follows his 'rajdharma', social order will be maintained.

Kautilya's emphasis on duties of King in maintaining law and order in the society is so much that he writes in Arthashastra, "because the King is the guardian of right conduct of this world with four 'varnas' and four 'ashramas' he [alone] can enact and promulgate laws [to uphold them] when all traditional codes of conduct perish [through disuse or disobedience]."

The King was looked upon an embodiment of virtue, a protector of dharma. He too was governed by his dharma as any other citizen was. Thus if any actions of the King went against the prevailing notion of dharma, associations and/or the individual citizens were free to question him. He recalls every time that 'dharma' alone is guiding star for every king, or rather every individual and that following 'dharma' one shall have a life of dignity while social order prevailing in society. He remarks, "A King who administers justice in accordance with 'dharma', evidence, customs, and written law will be able to conquer whole world". Kautilya recognized the importance of rational law or King's law and its priority to 'dharma', 'vyayhara' and 'charitra'. He maintained that King's law was to be in accordance with the injunctions of the three Vedas wherein the four 'varnas' and 'ashramas' are defined. King was not the sole interpreter of dharma. In fact there was no specific institution vested with the authority of interpreting dharma. Every individual was deemed competent to interpret it. This was an important factor in ensuring the non-religious character of the Vedic state.

Kautilya did not view law to be an expression of the free will of the people. Thus sovereignty – the authority to make laws, did not vest with citizens. Laws were derived from four sources – dharma (scared law), vyavhara (evidence), charita (history and custom), and rajasasana (edicts of the King). Kautilya prescribe that any matter of dispute shall be judged according to four bases of justice. These in order of increasing importance are:

'Dharma', which is based on truth
'Evidence', which is based on witnesses
'Custom', i.e. tradition accepted by the people
'Royal Edicts', i.e. law as promulgated.

In case of conflict amongst the various laws, dharma was supreme. The ordering of the other laws was case specific. Rajasasana ordered the relationship between the three major social groupings – the citizen, the association, and the state. The constitutional rules at the state level were specified in the rajasasana but the constitutional rules at the level of the association were to be decided by the members of the association. The collective choice and the operational level rules of the association were also decided by the members of the association though the state did promulgate laws to safeguard the individual member from the tyranny of the majority in the association. Arthashastra outlines a system of civil, criminal, and mercantile law (now known as business laws). For example the following were codified: a procedure for interrogation, torture, and trial, the rights of the accused, what constitutes permissible evidence, a procedure for autopsy in case of death in suspicious circumstances, what constitutes defamation and procedure for claiming damages, valid and invalid contracts.

We see in Arthashastra that law was not viewed just as code of prohibition, nor was it limited to corrective justice of law courts. Its range was wider than morality itself and institutions were creation of law while traditions and customs rested on its sanctions. All ideas of society were moulded by it and law was blended with religion, with morality and with public opinion and by its subtle operations subjected the society to its will. The role of law in the society was to bring a just order in society and the tremendous task was to be shouldered by the King along with his subordinates. As rightly pointed out by Kautilya in his famous verse – "In the happiness of his subjects lies the King's happiness; In their welfare his welfare. He shall not consider as good only that which pleases him but, Treat as beneficial to him whatever pleases his subjects".

VEDIC POLITY (ADMINISTRATION)

Tribal Polity in Rig Veda

In Ancient India, there wasn't a clear distinction between the state and government and the king wasn't wholly identified with the state.

At the time of the Aryan invasion agricultural and urban communities existed in India. They were organized under powerful monarchies.

1. The early Aryans could not develop stable kingdoms as they were semi nomadic people. The result was the development of the tribal principalities.
2. The social structure of the Rig-Veda was based on kinship. The term gotra is used in the sense of cow-pen or cow enclosure and the people who lived in the same cowshed belonged to the same gotra.
3. *Vrata* (hoard or troop or assemblage) also a kin-based group functioned under a head called *vratapati*.
4. Grama meant a collection of related families (kin-based) that was a basic element of the social structure. It came to denote a village when its members took to agriculture and sedentary life.
5. It also formed the smallest political unit.
6. Jana was the highest social unit based on the patriarchal kinship. It corresponds with the tribe whose chief is known as the janapati , janasya gopta or king(raja)
7. *Vis* was the sub-division of the jana or tribe whose head was called the visapati. The *Visas* were closely knit together and on the battlefields, battalions were often arranged as per vis from which they have been recruited.
8. The basic elements of the state like the fixed territory, a regular source of income and the standing army was absent in the Vedic period.
9. The people were more attached to the kin rather than to any territory.
10. The tributes which the victorious king received from the vanquished were obligatory but not regular.

11. This is also true of the army which seems to be an impoverished one mobilised out of the tribesmen, whenever the need arose. But the process that gave rise to the state organs had already begun in this period.

TRIBAL ASSEMBLIES

Vidatha

According to Altekar, the term vidhata "probably indicated a religious or sacrificial gathering, rituals at which required the highest knowledge."

From it emerged the sabha, samiti and sena.

1. It was the earliest village folk assembly attended by men and women, performing all kinds of functions, economic, military, religious and social.
2. It made laws for the regulation of tribal affairs.
3. It answered the need of the primitive society which hardly knew the division of labour or domination of male over the female.
4. The keystone of the vidatha system was co-operation.
5. It does not appear to have taken active part in the administration.

Sabha

1. Sabha and Samiti are regarded as the twin daughters of the Lord Prajapati.
2. The ***Sabha*** at first was the association of the kinsfolk, but later became also an association of men bound together either by ties of blood or local contiguity.
3. It was a central aristocratic gathering associated with the king and can be labelled as the political council.
4. It was like the upper House where the priests and aristocrats were represented.
5. It was a tribal assembly where the members debated over the domestication of cattle, played dice and offered prayers and sacrifices. In the later Vedic times women also attended the Sabha but it was discontinued later in the Vedic times.
6. This assembly came to assume a patriarchal and aristocratic character in the later Vedic period.
7. It was composed of the members of high character and integrity, learning and bearing--in other words men of distinction and high social status.
8. The *sabha* transacted both political and non-political business. It deliberated over the pastoral affairs and matters concerning religion. It also functioned as the national judicature.
9. The sabha conducted its business by debate and discussions. Free and frank discussions were held before arriving at unanimous decisions. The decision of the sabha was binding on all. The king attended the meeting of the sabha and considered its advice to be of supreme importance.
10. The president of the sabha was called sabhapati.

Samiti

1. It was like a lower house ,a more comprehensive body consisting of all the common people (visah), the Brahmans and the lower and rich patrons .
2. It was an august assembly of a larger group of people for the discharge of tribal business and was presided over by the king.
3. Amongst its most important functions was the election of the king. It could even re-elect a king who had been banished.
4. All matters of the state, military and executive affairs were discussed and decided by the *Samiti*.

5. Questions which were non-political in character were also discussed by the samiti .As a national academy; it tested the knowledge of educated persons.
6. As a deliberative body, the proceedings of the samiti were conducted by debates and discussions with a view to achieving agreement.
7. Emphasis was laid on the concord between the king and the assembly and on the spirit of the harmony among its members.
8. The sabha developed as the Privy Council of the King.

MAURYAN STATE AND POLITY

The period from the 4th century to the 13th century A.D saw the rise of two major dynasties, the Mauryas (4th C B.C to 2nd C BC) and the Guptas (4th Century AD to 6th Century AD).

1. The formation of state was completed around 500 B.C. The development of the full-fledged state system with all four essential factors of the state namely a territory, a population, unity and organisation in a completely evolved form was a distinguishing feature of the mauryan age.
2. According to the *Arthashastra* of Kautilya, the State consisted of the seven limbs (saptanga)---------

a. The king(swamin)
b. The minister(amatya)
c. the territory or the country(janapada or rashtra)
d. The fort(durga)
e. The treasury(kosha)
f. The army(bala)
g. The ally(mitra)

3. The idea behind the saptanga theory was that without a proper organisation, a state of lawlessness (matsyanyaya) would set in and that hinders the development of state's personality.
4. In the Mauryan polity the king was considered all-powerful though the Arthashastra lay emphasis on the conception of the king as the servant of the state which was one of the basic principles of ancient Indian political thought.
5. The exaltation of the royal authority is a striking feature of the nature of the Mauryan state the Arthashastra grants the power of legislation by edicts and decrees, a power which was never enjoyed by the king before in India.
6. The Mauryan state had developed a highly organized bureaucratic administration capable of maintaining the stability of the empire spanning the length and breadth of the land and controlling all spheres of life.
7. In one passage the Arthashastra speaks of 18 tirths (departments) and in addition makes provision for 27 superintendents (adhyaksas).
8. They were concerned with the economic, military and social functions.
9. Of the chief departments charged with the economic functions are those of commerce, forest produce, weaving agriculture, pasturelands, mines, oceanic mines, metals, mints, salts, wastelands, tolls and exercise.
10. The chief military departments are those of armoury, horses, elephants, chariots and infantry.
11. The administration showed equal concern for the health of the society becomes evident from the appointment of superintendents to control the prostitutes, gambling dens, liquor shops etc.
12. The police was the most important civic administration department. It prevented the commission of crimes and brought the transgressors of law to justice. If they failed to trace the thief, they had to make good the loss.

13. In order to suppress crime the Arthashastra advises the imposition of stringent curfew from about two and a half hours after the sunset to the same time before the dawn.
14. There was an efficiently organised espionage system and the spies in disguise helped the police in the detection of crimes
15. Kautilya attaches great importance to the selection of the superintendents .he lays down qualifications and prescribes rules for their promotion.
16. To keep this highly organised bureaucracy from the clutches of nepotism and monopoly, Kautilya suggested that each department be officered by several temporary heads.
17. He also talks about the transfer of the government servants.
18. The text says that no superintendent shall be allowed to take any decision without bringing it to the knowledge of their masters except remedial measures against imminent dangers.
19. The book gave detailed information about the pays of different dignitaries and officers.
20. The higher functionaries such as the priest, the teacher, the minister, the commander of the armed forces, the heir-apparent prince, the mother of the king, and the queen received 48000 panas monthly. (*punchmarked coins)*
21. The lower officials like the palace workers attendants and the body-guards received only 60 panas.
22. A messenger of the middle quality was given only 10 or 20 panas.
23. The ratio between the highest and the lowest servant of the government therefore showed an enormous difference between the two.
24. The navy, transport and the commissariat are the mauryan innovations.
25. There were elaborate rules and regulations for the training and drilling of soldiers and that special attention was paid by the military authorities to the sick and wounded in the army and for this the army was supplemented by a contingent of doctors and nurses.
26. Munitions of war were made in state arsenals and there was a state control over the artisans who produced weapons
27. *Dhamasthaya* were the civil courts and *Kantakshodhan* were the criminal courts which differed from the civil courts by their more summary produce and speedy disposal.
28. Officers charged with the murder, thefts, dacoity and the sexual offences appeared before the latter.
29. The officers like *pradesta* performed both police and revenue functions. Similarly, officials like *samaharta*, the *sthanika* and the *gopa* performed both the fiscal and police and magisterial functions.

City administration

1. The increasingly complex social economic activities of the state coupled with the need of the urban settlements necessitated the creation of machinery for the administration of the towns, which was perhaps the innovation of the Mauryas.
2. Megasthenes gave a detailed description of the municipal administration of Pataliputra.
3. He says that the city of Pataliputra was administered by the committee of thirty members divided into six committees of five members each.
4. The Kautilya does not envisage the involvement of local elements in the city administration.
5. The most important element there was *Nagarika*, the governor of the city.
6. His responsibilities were that of the revenue collection, preservation of law and order and the supervision of the sanitation arrangements.
7. The nagarika was assisted in the administration by two officials called *sthanika* and *gopa*.
8. The gopa was charged with the responsibilities of the collection of the revenue and the supervision of the forty households each.
9. The sthanika attended to the accounts of the four quarters of the town.
10. A new set of officials called *antamahamatras* was appointed so as to set the border people right.
11. Mauryas possess the world's most ancient theory on public finance.

12. Kautilya made a distinction between the war economy and the peace economy and said that the stability of the administration depends on the treasury.
13. He demonstrates great ingenuity in devising and justifying means for augmenting the wealth of the state.
14. He does not neglect any source because of its smallness and leaves nothing out of taxation.
15. He brought rural and urban areas in addition to artisans, and traders under the tax net.
16. The manual labourers had to work in the state farms for one day.
17. The *sannidhata* (custodian of the treasury) and the *samaharta* (the chief revenue collector) were the important officials of the finance department.
18. Kautilya advocated the gradual system of taxation.
19. The traders taxed not on their gross earning but on the net profits and the articles were taxed only once.
20. This large system of taxation was for maintaining the army and the bureaucracy.

Mauryan system of administration was highly centralized and they recognized the need for uniformity in administrative institutions. There seems to be a complete picture of the administration of provinces (*janapadas*) and the districts, but little attention was given to the village institutions. Ashoka showed traces of decentralization when he granted large executive and judicial powers to the *rajukas.*

GUPTA POLITY AND STATE

India, had witnessed a number of empire building effort throughout the period of its history. We have already discussed one such successful effort at the initiative of the Mauryas. Even after the fall of the Mauryas this imperial ambition continued for centuries when different royal dynasties like Sunga, Satavahana etc tried to emulate the Mauryas, but nothing special happen on the lines of an empire, till the appearance of the Guptas in Indian politics during the 4th century AD. However Scholar like Romila Thapper refused to recognize the initiatives of the Gupta as being the perfect realization of the concept of an empire, primarily because of its decentralized form of administration. Whatever might be the fact the Gupta period (starting from 4th century AD to that of 6th century AD) is an important phase of Indian history when every manifestation of life reached a peak of excellence as to a line of classicalism.

The origin and emergence of Gupta, like most of the ruling dynasties of ancient India, is somewhat obscure in nature. Different theories have been put forwarded by the historians about the origin of Gupta families from time to time. Some historian believed that they were the rulers of a small principality in Magadha, while others believed that their original homeland was the Western Ganga plain. On the other hand, depending on their name, some historians tried to identify them as being the person belonging to the Vaishya community but others tried to accord them with a status of a Brahman.

Now regarding the question of their actual emergence, the Gupta records mentioned the name of the first three rulers of the family as Maharaja Sri Gupta, his son Maharaja Ghatotkacha and the latter's son Maharajadhiraja Chandra Gupta. Depending on different records the majority of historians now confirm that during the 4th century AD there was a general tradition among the subordinate chiefs to be normally styled as Maharaja while the independent Kings liked to call themselves Maharajadhiraja. As to the line of that description- the first two rulers of the Gupta dynasty appeared to be the feudatory chief, but it is difficult to know the name of their suzerain.

Chandra Gupta I, the third ruler of the Gupta line succeeded Ghatotkacha and brought the house successfully under the full light of history by removing the veil of obscurity. It was he who determined the tract of an imperial identity for the Guptas in future. Chandra Gupta I married into the Lichchavi family, once an old established Gana- Sangha of north Bihar, now associated with the kingdom of Nepal. This Lichchhavi- Gupta matrimonial alliance had a special significance for the emergence of Gupta power in future. Eminent historian Romila Thapper has put forwarded the view that perhaps the Guptas had no royal origin, and under such circumstances, the marriage alliance with an old prestigious

family, had normally set a stamp of acceptability. On the other hand V.A Smith expressed the view that the Lichchhavei prince Kumaradevi brought to her husband as her dowry valuable influence which in due course of time offered him a paramount position in Magadha and in the neighbouring countries. In other word it can be said that the marriage alliance of Chandra Gupta I was important not from the social point of view but form political point of view. Thus being received with the status of political acceptability in Indian politics, Chandra Gupta I successfully extended his rule over the main heartland of Ganga plain which had included some of the important territories like Magadha, Saketa, Prayaga. This inclusion sufficiently proved his independent status to adopt the title like Maharajadhiraja or king of kings. Based upon the campaigns of Samudra Gupta some historians consider his kingdom as consisting of whole of Bihar, a portion of Bengal except the part of Samatala or eastern Bengal, Eastern U.P. i.e. a territory extending upto Benaras. However, there are a lot confusions over the question of the extension of his empire. The establishment of the Gupta era from the date of his accession i.e. in and about 319-320 AD has further highlighted the political importance of the reigning period of Chandra Gupta I. Thus the first three rulers of the Gupta line had successfully establish them as an emerging power of Indian politics.

We have a few important sources for the study of the Gupta polity and administration. Some literary sources like various Smritis, Manava Dharma Sastra, Yajnavalka Smritis, Narada Smriti and Kamandaka's Nitisara etc are important sources. The Damodarpur and the Eran inscriptions throw light on Gupta administration.

Monarchy was advocated as an ideal system of government in the Gupta period. There were some tribal republics like those of the Malavas, Yaudheyas, Arjunayanas in Northern India. There was always contradiction between the two systems of government. Kingship being sanctioned by the Brahmanical shastras was powerful and aggressive against the republics.

The king or samrata was at the head of the government. He ruled by hereditary right. The Gupta emperors adopted the high sounding titles of Maharajadhiraja, Paramabhattaraka etc. They brought additional lustre to their position by claiming for themselves divine origin and super human qualities. Hence, they assumed magnificent titles like Paramesvara and as one equal to gods Kubera, Varuna, Indra etc. Achintyapurusha, Lokadhamadeva, Parama-daivata, etc.

Theoretically there was no limit on the King's power. He ruled over his vast empire with absolute command over all the branches of the government. He was the supreme commander of the army. Samudragupta and Chandragupta II personally led the army. The governors, important civil and military officers were appointed by the king and held office at his pleasure. The central bureaucray functioned under his personal supervision. The king was the master of all lands and he could grant them to anybody.

However, the claim of divine origin and the enjoyment of vast theoretical rights did not convert the Gupta emperors into crude despots without any touch of benevolence among them. Samudragupta and Chandragupta II were aware of their duties to the people. The government did not interfere in the daily life of the people. It was sympathetic to peoples needs. Moreover, there were certain practical checks on the king's authority and power. He had to share power with high officials. It was a custom for the king to abstain from routine duties of ministers. He had to obey the rules laid down by the Dharma Shastras. The local bodies enjoyed a good deal of autonomy in which he normally did not interfere. Moreover the system of granting agrahara and brahmadeya lands led to increasing decentralization in administration and weakening hold of the central authority.

The succession to the throne was hereditary but the emperor reserved the right of selecting the heir apparent. Samudra Gupta was nominated by Chandragupta I as his successor from among the sons of the latter. Kumara Gupta I probably nominated Skanda Gupta. But the system of nomination was not free from trouble.

The King was the supreme head of the government. Next in rank to him was the Yuvaraja or crown

prince. The mantrin or ministers stood at the head of the civil administration and their offices were generally hereditary. Perhaps some other high offices were also hereditary and limited to a number of families. The Mahadanda nayakas held offices in hereditary capacity. Sandhi- vigrahika or minister of war and peace was a new office of minister created in the Gupta period. Some of the ministers combined different offices at the same time. We do not know whether there was a Mantri-Parishad or council of ministers of the Mauryan type. Kalidasa refers to a council of ministers whose decision was conveyed to the emperor by the chamberlain or kanchuki. Generally ministers acted as individual advisers and assistants of the king.

The vast empire of the Guptas could only be managed with the help of an organized bureaucracy. The central and provincial officials were differentiated by their designation. Among the high officials in the central administration mention may be made of Mahabaladhikrita (Commander-in-chief), Mahadandanayaka (chief general), Mahapratihara (chief of the palace guards), Sandhivigrahika (minister in charge of war and peace), Akshapataladhikrita (keeper of State documents); Mahakapati (head of the cavalry force) etc. They were assisted by a host of junior officials. There was no distinction between civil and military officials and sometimes both duties were combined in a single person.

KINGSHIP, CASTE AND CLASS -

The meaning of caste system is by those classes in which our ancient society was divided. Each caste had its own customs and members of each caste had to follow those customs. Earlier there were four castes namely Brahmanas, Kshatriyas, Vaishyas and Shudras but later on their number was increased. At present, more than 3,000 castes and sub-castes exist in India.

Origin of Caste System : Following theories are given about the origin of caste system :- (i) On the basis of Colour. Some scholars are of the view that first of all society was divided, in different castes, on the basis of colour. White colour meant the Aryan people and black colour meant for non-Aryan people. White people hardly liked to live with black people. In this way society was divided into two classes—Aryans and non Aryans. (ii) On the basis of Purush Sukta. Few other scholars are of the view that caste system is given by the God. According to Purush Sukta, Brahmanas were originated from the mouth of God, Kshatriyas from arms, Vaishyas from thighs and Shudras from feet of the God. (iii) On the basis of division of Labour. Modern historians are of the view that caste system originated due to division of labour. Powerful and healthy persons were given the work of protection of the country. So a specific caste of soldiers i.e. Kshatriyas was originated. In this way yajnas could be performed by only few people. These few people became Brahmanas. People engaged in trade and agriculture came to be known as Vaishyas. People who served these three castes came to be known as Shudras.

Advantages of Caste System: (i) Indians hardly kept contacts with foreigners. As a result Indian culture remained safe from external impact. (ii) Only because of. caste system, people used to marry within their own caste. It led to maintenance of purity of blood. (iii) People used to adopt occupation of their family right from their childhood. As a result, they became efficient ,specialists in their respective fields. (iv) People with bad intentions were generally thrown out of their castes. That's why people hardly try to move on a wrong path. (v) Members of each caste used to help the needy and poor members of their caste. It led to encouragement to sense of social service and sense of sacrifice. (vi) People had to adopt their hereditary occupation in caste system. That's why there was no problem of finding occupation for self as it was available exactly after the birth. (vii) According to caste system, main function of Brahmanas was to give education. He used to teach free of cost to his pupils. (viii) People of other castes could convert to Hinduism through the powers of 'Shuddhi'. That's why many invaders like Shakas, Greeks etc. became part of Hindu society.

Disadvantages of Caste System: (i) Caste system was a severe blow to the sense of nationalism. People began to think about their own caste instead of national interests. (ii) Because of caste system, only Kshatriyas were allowed to take military training. As a result military training was limited to limited

number of persons. (iii) It was very difficult for people to change their hereditary occupation. As a result individual development of persons stopped to a great extent. (iv) Brahmanas, Kshatryas and Vaishyas used to consider Shudras as inferior to them and used to hate them. As a result the sense of untouchability was encouraged. (v) Brahmanas and Kshatriyas used to consider themselves superior than other castes. It led to increase in mutual differences. (vi) Brahmanas started few customs for their interests so that they could be more benefited. In this way many social evils came in society.

There were three main reasons of gender differences in early societies and these were (i) Gender inequality patrilineal system (ii) Gotra of woman (iii) Right over property (i) Gender inequality: Earlier societies were male dominated societies and were running according to patrilineal system. That's why male child was desired in every type of family as sons were important for the continuity of the patri-lineage. Daughters were viewed rather differently in this system. They had no right over ancestral resources. They were expected to marry out of their gotras. This custom of marriage is known 'exogamy'. It means that young girls and women of reputed families were regulated in a way that they could marry at right time and with right person. This gave rise to belief that Kanyadana was an important religious duty of the father.
(ii) Gotra of Women: From C 1000 BCE onwards, people were classified gotras by Brahamanas. Each gotra was named after a Vedic seer as all the members of that gotra were assumed as the descendants of that seer. There were two important rules of gotras (a) Woman had to adopt gotra of her husband after her marriage. (b) Members of same gotra could not marry with each other. i.But some evidences have been found in which these rules were not obeyed. For example some of the Satavahana rulers had more than one wife (polygynous). A study of the names of wives of Satavahana rulers revealed that few of them had names derived from gotras such as Gotama and Vasistha which were their father's gotras. ii.They probably had retained these names instead of adopting names of their husbands gotras. Some women also belonged to the same gotra as of their husbands. This fact was against the rules of exogamy. This fact actually exemplified an alternative practice that of endogamy or marriage within the kin group. iii.This type of marriage still exists in many communities of South India. These sorts of marital relations give strength to organised communities. Satavahana rulers were identified through the names derived from that of the mother. Although this may suggest that mothers were important but we should note down the fact that succession to the throne, among Satavahanas, was generally patrilineal.
(iii) Access to Property:i. According to Manusmriti, ancestral property of parents should be distributed (after their death) equally among all the sons. But eldest son should be given special share. Women could not demand their share in these ancestral resources. ii. But they had the right over the gifts given to her at the time of her marriage. It was known as stridhana or woman's wealth. This wealth could be inherited by her children. Their husbands had no right over this wealth. iii. But Manusmriti restricts women to secretly collect any valuable goods or familial property without the permission of their husbands. Some evidences indicate that yet women of upper class had resources within their reach but still land, animals and wealth were under the control of males. In other words, social differences among men and women were increased because of the difference in access of resources or property.
1. According to the Manusmriti, the paternal estate was to be divided equally amongst sons after the death of the parents, with a special share for the eldest. Women could not claim a share of these resources. 2.However, women were allowed to retain the gifts they received on the occasion of their marriage as stridhana This could be inherited by their children, without the husband having any claim on it. 3.At the same time, the Manusmriti warned women against hoarding family property, or even their own valuables, without the husband's permission. 4.Wealthy women like the Vakataka queen Prabhavati Gupta , cumulative evidence – both epigraphic and textual – suggests that while upper-class women may have had access to resources, land, cattle and money were generally controlled by men. 5. In other words, social differences between men and women were sharpened because of the differences in access

to resources.

The Buddhists also developed an alternative understanding of social inequalities, and of the institutions required to regulate social conflict. 1. In a myth found in a text known as the Sutta Pitaka they suggested that originally human beings did not have fully evolved bodily forms, nor was the world of plants fully developed. 2. All beings lived in an idyllic state of peace, taking from nature only what they needed for each meal. 3. However, there was a gradual deterioration of this state as human beings became increasingly greedy, vindictive and deceitful. 4. The institution of kingship was based on human choice, with taxes as a form of payment for services rendered by the king. 5. At the same time, it reveals recognition of human agency in creating and institutionalising economic and social relations. There are other implications as well. For instance, if human beings were responsible for the creation of the system, they could also change it in future.

Rules of Marriage.

I. The sons were considered important to continue the patrilineage. So the daughters had no claims to the resources of the house-hold. They were married into families outside the kin. This system was called exogamy which literaly meant marrying outside one's kin or gotra. The women of high status families were married to the right persons at right time. Thus Kanayadana or the gift of a daughter in marriage was an important religious duty of the father. ii. As the new towns emerged, the social life became more complex. The people bought and sold their products in the cities. So they shared the views with each other. Hence the Brahmans laid down codes of social behavior in great detail. They expected all the Brahmans in particular and the others in general to follow these rules. iii. Later on these rules were enshrined in Dharamashastras. These texts recognised eight forms of marriage out of which four were considered as good and the other four were considered as condemnable. The condemnable marriages were solemnized by those who did not accept Brahmanical norms. iv. Inscriptions of Satavahana rulers indicate that they thd not followed the method of exogamy of Brahmanas. They had many queens and even from their own gotra. This fact is an example of endogamy method or marital relations within kinfolk.

The Features of gotra included as – A. Gotra refers to the name given to a particular group of people on the name of a Vedic seer as their fore father so as to establish kinship between them. B. The system of gotra had significance to the women. Women were expected to take up the gotra of her husband upon marriage and gave up their father's gotra. Members of same gotra could not marry. When we examine the names of the women married to the Satavahana rulers, we will find that many of them had names derived from their father's gotras such as Gotama and Vasistha. They retained these names instead of adopting names derived from their husband's gotra as instructed by the Brahmanical rules. Some of the women married to Satavahana rulers belonged to the same gotra. As is obvious, this ran counter to the ideal of exogamy recommended in the Brahmanical texts. In fact, it exemplified an alternative practice, that of endogamy or marriage within the kin group, which was prevalent amongst several communities in south India. Such marriages amongst kinfolk ensured a close-knit community.

Jati, also spelled jat, caste, in Hindu society. The term is derived from the Sanskrit jāta, "born" or "brought into existence," and indicates a form of existence determined by birth. In Indian philosophy, jati (genus) describes any group of things that have generic characteristics in common. Sociologically, jati has come to be used universally to indicate a caste group among Hindus.

FAMILY.

In human context, a family is a group of people affiliated by consanguinity (by recognized birth),

affinity (by marriage), or co-residence/shared consumption (see Nurture kinship). Christopher Harris notes that the western conception of family is ambiguous, and confused with the household, as revealed in the different contexts in which the word is used:

"We have seen that people can refer to their relatives as 'the family.' 'All the family turned up for the funeral.... But of course, my brother didn't bring his family along - they're much too young.' Here the reference is to the offspring (as distinct from 'all' the family). The neighbors were very good, too. 'The Jones came, and their two children. It was nice, the whole family turning up like that.' Here the usage is more restricted than 'relatives' or 'his relatives,' but includes just both parents and offspring. 'Of course, the children will be leaving home soon. It's always sad to see the family break up like that.' Here the reference is not only to parents and children but to their co-residence, that is, to the household."

Olivia Harris states this confusion is not accidental, but indicative of the familial ideology of capitalist, western countries that pass social legislation that insists members of a nuclear family should live together, and those not so related should not live together; despite the ideological and legal pressures, a large percentage of families do not conform to the ideal nuclear family type.

In most societies it is the principal institution for the socialization of children. As a unit of socialization the family is the object of analysis for anthropologists and sociologists of the family. Sexual relations among the members are regulated by rules concerning incest such as the incest taboo.

As the basic unit for raising children, Anthropologists most generally classify family organization as matrifocal (a mother and her children); conjugal (a husband, his wife, and children; also called nuclear family); avuncular (a brother, his sister, and her children); or extended family in which parents and children co-reside with other members of one parent's family.

Genealogy is a field which aims to trace family lineages through history.

Conjugal (nuclear) family

The term "nuclear family" is commonly used, especially in the United States, to refer to conjugal families. A "conjugal" family includes only the husband, the wife, and unmarried children who are not of age.[14] Sociologists distinguish between conjugal families (relatively independent of the kindred of the parents and of other families in general) and nuclear families (which maintain relatively close ties with their kindred).

Matrifocal family

A "matrifocal" family consists of a mother and her children. Generally, these children are her biological offspring, although adoption of children is a practice in nearly every society. This kind of family is common where women have the resources to rear their children by themselves, or where men are more mobile than women.

Extended family

The term "extended family" is also common, especially in United States. This term has two distinct meanings. First, it serves as a synonym of "consanguinal family" (consanguine means "of the same blood"). Second, in societies dominated by the conjugal family, it refers to "kindred" (an egocentric network of relatives that extends beyond the domestic group) who do not belong to the conjugal family. These types refer to ideal or normative structures found in particular societies. Any society will exhibit some variation in the actual composition and conception of families.

Blended family

Male same-sex couple with a child

The term *blended family* or *stepfamily* describes families with mixed parents: one or both parents remarried, bringing children of the former family into the new family. Also in sociology, particularly in the works of social psychologist Michael Lamb, *traditional family*refers to "a middleclass family with a bread-winning father and a stay-at-home mother, married to each other and raising their biological children," and *nontraditional* to exceptions from this rule. Most of the US households are now non-

traditional under this definition.
In terms of communication patterns in families, there are a certain set of beliefs within the family that reflect how its members should communicate and interact. These family communication patterns arise from two underlying sets of beliefs. One being conversation orientation (the degree to which the importance of communication is valued) and two, conformity orientation (the degree to which families should emphasize similarities or differences regarding attitudes, beliefs, and values).

POSITION OF WOMAN

The position of women was not identical throughout ancient period. But mostly the woman could not lead a free life and she lived under the tutelage of her parents, her husband or her sons. The early law books treated the women as equivalent to the Sutra. However this did not effect the position of the women in the family. Manu, who was not advocate of the right of women, also said that gods live in joy where women are revered and if a husband abandoned the wife without sufficient reason, he should be expelled from the caste by the ruler. The high esteem in which the wife was held during the Vedic age is evidence from the fact that she was considered the half that completed the husband.
The wife assisted the husband not only in his secular duties. The husband and wife together were supposed to keep the household fire burning so that the daily offering of the angophora could be carried on. If a person lost his wife he was either expected to bring another wife to keep the sacred fire burning or else to retire and take to Vanaprastha Ashram.
No religious rites and rituals could be performed without the wife. The Rig-Veda relates us a story of a grihapati who left his wife because of her impertinence and went away for practicing penance but the God explained to him that he could not perform the penance without his wife.
Social Activities
In addition to an important position in the family the women actively participated in the various social activities. This is confirmed by the ancient Indian sculptures in which women was shown with their husbands in a number of religious and secular functions.
The women also took active part in the religious activities, though they could not officiate as priests. In the literary sphere also the women made valuable contribution. Some of the Vedic hymns and a number of Buddhist hymns are ascribed to the Buddhist nuns. In Brhudaranyaka Upanishad we are told about the learned lady Gargi Vaca Knavi, who held discussions with Yajnavalkya and nonplussed him with her searching questions. Another scholar Mastery, wife of Yajnavalkya, also participated in the learned discourses. Around the beginning of the Christian era, the women were denied access to the Vedas and Vedic literature.
Unlike, the medieval and modern times women were-encouraged to learn singing, dancing and other arts like painting and garland- making. Dancing was not merely the profession of the low-caste women and prostitutes, but ladies from respectable families also took keen interest in it.
The Rig-Veda tells us that young men and unmarried girls mixed freely and we do not find any instances of unnecessary restrictions on the married women. However, Arthashastra says that the kings kept their womenfolk in seclusion. It gives details regarding the antashpura or royal harem and the measures taken to guard it effectively. But it can certainly be said that the women were not secluded to the extent as in Muslim communities.
In the Tamil literature also we get a number of references to show that girls of good class and marriageable age visited temples and took part in the festivals without guardians. The early sculptures also confirm this impression. The sculptures at Baht and Sanchi show, wealthy ladies, necked to the waist, leaning from their balconies and watching the processions. Similarly we find scantily dressed women in the company of men worshipping the Bodni Tree. In short we can Say that though the freedom of the women was considerably restricted, it was not completely denied to them.
One of the chief duties of the women was to bear children and to rear them up. In view of the odious

duties the women were exempted from duties concerning moral purification or spiritual advancement. It was believed that a women attained purification and reached the goal by associating herself with her husband in the religious exercises, in the worship through sacrifices and vows etc.
Manu says, "The women, destined to bear children as they are, are possessed of the highest excellence, are worthy of worship and brighten up the household with their radiance in the homes the wives are veritable goddesses of fortune, with no difference whatsoever. The begetting of offspring, the nurture of those born and ice carrying out of the daily duties are possible because of the wife as we see before our eyes.
Offspring, the due discharge of religious duties, faithful service, highest conjugal happiness, and besides, heavenly bliss for the fathers and for one's own self, all these things are absolutely dependent on the wife". However, the women were too much dependent on men for protection and were not supposed to take any initiative.

Standard of Morality
The women observed high standard of morality. The wives were expected to follow the path adopted by her husband, even if it meant the path of death. Even after the death of her husband a widow did not remarry and led a very pure and chaste life.
Manu says "A faithful wife, who desires to dwell after death with her husband, must never do anything that might displease him who took her hand, whether he is alive or dead. At her pleasure let her emaciate her body by living on pure flowers, roots and fry its, but she must never even mention the name of another man after her husband has died.
Until death let her be patient of hardships, self controlled and chaste and strive to fulfill that most excellent duty which belongs to yes who know but one husband only." Widow Remarriage was not favored and it was considered a sacrilege and adultery.
The Sati system was probably also in vogue. The Greek writers have recorded the incident of widow's burning themselves alive along with the dead pyre of her husband. It was considered to be a matter of great honor and the various wives weighed with each other for this privilege. We get a number of historical examples of the widows burning themselves with their dead husband viz. The queens of Kshema gupta and his predecessor Yashkar on Kashmir. Most probably during the rule of the choler king Purantaki, the practice of Sati was in vogue.

C) Religious Traditions-
Jainism, like Buddhism, is one of the Sramaṇa traditions of ancient India, those that rejected the Vedas. **Jainism** traditionally known as **Jain Dharma**, is an ancient Indian religion. The origins of Jainism are obscure. The Jains claim their religion to be eternal, and consider Rishabhanatha to be the founder in the present time cycle, the first of 24 Jain tirthankaras in Jain belief, and someone who lived for 8,400,000 purva years. According to the hypothesis of the philosopher Sarvepalli Radhakrishnan, Jainism was in existence before the Vedas were composed. According to historians, the first 22 of the 24 tirthankaras were mythical figures. These figures were supposed to have lived more than 85,000 years ago. They were five to one hundred times taller than average human beings and lived for thousands of years. The 23rd tirthankara, Parshvanatha, is generally accepted to be based on an ancient historic human being of uncertain dates, possibly the eighth to sixth century BCE. Some Indian history scholars such as Parikh have hypothesized that images such as those of the bull in Indus Valley Civilization seal are related to Jainism.
There is inscriptional evidence for the presence of Jain monks in south India by the second or first centuries BC, and archaeological evidence of Jain monks in Saurashtra in Gujarat by the second century CE. Statues of Jain tirthankara have been found dating back to the second century BC.

Followers of Jainism are called "Jains", a word derived from the Sanskrit word jina (victor) referring to the path of victory in crossing over life's stream of rebirths by destroying karma through an ethical and spiritual life. Jainism is a transtheistic religion, and Jains trace their spiritual ideas and history through a succession of twenty-four victorious saviours and teachers known as tirthankaras, with the first being Rishabhanatha, who according to Jain tradition lived millions of years ago, the twenty-third being Parshvanatha in 900 BCE, and the twenty-fourth being the Mahāvīra around 500 BCE. Jains believe that Jainism is an eternal dharma with the tirthankaras guiding every cycle of the Jain cosmology.Their religious texts are called Agamas. The main religious premises of Jainism are ahimsa (non-violence), anekantavada (many-sidedness), aparigraha (non-attachment) and asceticism. Devout Jains take five main vows: ahimsa (non-violence), satya (truth), asteya (not stealing), brahmacharya (celibacy or chastity or sexual continence), and aparigraha (non-attachment). These principles have affected Jain culture in many ways, such as leading to a predominantly vegetarian lifestyle that avoids harm to animals and their life cycles. Parasparopagraho Jivanam (the function of souls is to help one another) is the motto of Jainism. Ṇamokara mantra is the most common and basic prayer in Jainism.

Jainism has two major ancient sub-traditions, Digambaras and Svetambaras; several smaller sub-traditions that emerged in the 2nd millennium CE. The Digambaras and Svetambaras have different views on ascetic practices, gender and which Jain texts can be considered canonical. Jain mendicants are found in all Jain sub-traditions except Kanji Panth sub-tradition, with laypersons (Sravakas) supporting the mendicants' spiritual pursuits with resources.

Jainism has between four and five million followers, with most Jains residing in India. Outside India, some of the largest Jain communities are present in Canada, Europe, Kenya, the United Kingdom, HongKong, Suriname, Fiji, and the United States. Major Jain festivals include Paryushana and Daslakshana, Ashtanika, Mahavir Janma Kalyanak, and Dipawali.

Jains consider the king Bimbisara, Ajatashatru, and Udayin (c. 460–440 BCE) of the Haryanka dynasty as a patron of Jainism.

Jain tradition states that Chandragupta Maurya, the founder of the Mauryan Empire and grandfather of Asoka, became a monk and disciple of Jain ascetic Bhadrabahu during later part of his life. According to historians, Chandragupta's story appears in various versions in Buddhist, Jain, and Hindu texts. Broadly, Chandragupta was born into a humble family, abandoned, raised as a son by another family, then with the training and counsel of Chanakya of *Arthashastra* fame ultimately built one of the largest empires in ancient India. According to Jain history, late in his life, Chandragupta renounced the empire he built and handed over his power to his son, became a Jaina monk, and headed to meditate and pursue spirituality in the Deccan region, under the Jaina teacher Bhadrabahu at Shravanabelagola. There state Jain texts, he died by fasting, a Jaina ascetic method of ending one's life by choice (*Sallenkana vrata*). The 3rd century BCE emperor Ashoka, in his pillar edicts, mentions several ancient Indian religious groups including the *Niganthas* (Jaina). According to another Jain legend, King Salivahana of the late 1st century CE was a patron of Jainism, as were many others in the early centuries of the 1st millennium CE. But Von Glasenapp states that the historicity of these stories is difficult to establish. Archeological evidence suggests that Mathura was an important Jain centre between the 2nd century BCE and the 5th century CE. Inscriptions from the 1st and 2nd century CE show that the schism between Digambara and Svetambara had already taken place.

King Harshavardhana of the 7th century grew up in Shaivism, following his family, but he championed Jainism, Buddhism and all traditions of Hinduism. King Ama of the 8th century converted to Jainism, and the Jaina pilgrimage tradition was well established in his era. Mularaja, the founder of Chalukya dynasty, constructed a Jain temple, even though he was not a Jain.

In the second half of the 1st century CE, Hindu kings sponsored and helped build major Jaina cave temples. For example, the Hindu Rashtrakuta dynasty started the early group of Jain temples,[407] and

the Yadava dynasty built many of the middle and later Jain group of temples at the Ellora Caves between 700 and 1000 CE.

'Brahmanism' is the term one use to refer to a movement that arose out of Vedic religion. Vedic religion was what the German Egyptologist Jan Assmann might call a 'primary religion' (Assmann 2003). It was a priestly religion, not unlike the priestly religions of ancient Egypt and Mesopotamia. As such it was indissociably linked to one single culture, to one single society, and to one single language. It had a close association with the rulers of the society to which it belonged, for whom it provided ritual services. Like other primary religions, Vedic religion had no exclusive truth claims of a religious nature, and did not try to make converts. Like other primary religions, it depended for its survival on the continued existence of the society to which it belonged. The society to which it belonged did not continue to exist. Beginning in the fourth century BCE northern India became unified into an empire, or rather a sequence of two empires, the first one under the Nanda dynasty, the second under the Mauryas. The centre of these two empires lay in the eastern part of the Ganges plane, outside the realm of traditional Vedic religion, which was centred in its western part. Therefore, its rulers did not continue the Vedic traditional sacrificial cult. The degree of centralization, especially of the Maurya empire, though weak by modern standards, was high enough to discontinue traditional rulership in the Vedic heartland. This meant the end of traditional support for Vedic religion. Without regular and systematic support from the rulers, the Vedic ritual tradition was threatened. Vedic religion, if it wanted to survive at all, had to reinvent itself. Vedic religion did reinvent itself, and the result is what I call 'Brahmanism' (or 'the new Brahmanism', to distinguish it from the preceding Vedic period). Brahmins, i.e., the successors (and, at least in theory, descendants) of the Vedic priests, now offered their services to new customers, also outside their traditional heartland. Some of these services were continuations of the elaborate rituals they had performed in the good old days, but the demand for these expensive sacrifices was now limited. New services were however added. These included other uses of the Brahmins' supernatural powers, such as predicting the future through reading the stars and bodily signs.

Ritual services related to major I thank Vincent Eltschinger for valuable feedback. transitions in the lives of individuals (birth, death, weddings, etc.) were on offer, too. Brahmins also developed a vision of society, how it should be, and how it should be run, and offered counselling services to rulers. We know that Brahmanism, this reinvented form of Vedic religion, became extraordinarily successful, and that without the help of an empire, military expansion, or even religious missionary activity. Brahmanical notions spread from a rather limited area during the last centuries preceding the Common Era and ended up, less than a thousand years later, imposing themselves all over the Indian subcontinent and in much of Southeast Asia. One factor that may have played a major role in this remarkable expansion is the spreading conviction among rulers that they could not risk to rule their kingdom without the supernatural and practical advice that Brahmins could provide. Brahmanism was much concerned with the image it projected of itself. Its representatives, the Brahmins, had to live exemplary lives, especially in terms of ritual purity, which became a major issue. This affected almost all aspects of a Brahmin's life, and included purity of descent: with few, precisely specified exceptions, the only way to become a Brahmin is through birth from parents who are both pure Brahmins.

There is another aspect of the self-projected image of Brahmanism, and this one has a direct bearing on the theme of this volume. Brahmanism projected an image of its history that is, in its basic outline, extremely simple. Brahmanism, in this image, has always been there and does not change. Indeed, it made this claim with regard to the world, but also with regard to the corpus of texts it preserved, the Veda, and its sacred language, Sanskrit: they had all been there since beginningless time. There is therefore no such thing as a founder of Brahmanism, and indeed, the historical reconstruction of Brahmanism I just presented, of its reinvention as a response to political changes that had taken place in northern India, all this has no place in the manner Brahmanism visualized its own past. Brahmanism had

always been there, and had neither been reinvented nor otherwise adapted to changing circumstances. This particular vision of the past found its perhaps most striking expression in the school of Vedic interpretation, Mimamsa, that may be regarded as close to the most orthodox, and orthoprax, form of brahmanical culture. The Vedic corpus of texts, I had occasion to observe, was looked upon as beginningless, and therefore authorless. Brahmanical students learnt to recite a portion of this literature from a teacher, who had learnt it from his teacher, who in his turn had learnt it from an earlier teacher, and so on without beginning. No one had composed this literature or any of its parts, and this conviction was the basis of an intricate interpretative strategy. The fact that the Veda had no author, for example, implied that it was pure word, not soiled by human (or divine) interference, 28 Johannes Bronkhorst and therefore necessarily faultless. Faults can occur in verbal communication, but analysis shows that such faults result from the speaker's shortcomings: speakers may wish to mislead their interlocutors, or may not be properly informed about the situation they talk about. In the case of the Veda, there is no author who may wish to mislead, or who may not be properly informed; no faults therefore attach to the Veda. Numerous further consequences were drawn from the presumed authorlessness of the Veda, and a complicated technique of analysis was based on it for which the Mimamsa remained famous until today. The beginninglessness of the Veda had another consequence. The Veda could not possibly refer to any historical event. It could not do so, because it existed already before the historical event concerned took place. Passages that seem to describe or refer to historical events had to be reinterpreted in such a manner that they no longer do so. Anonymity and absence of historical events was in this manner anchored in the Veda, the corpus of texts indissociably associated with Brahmanism. It is possible – and Sheldon Pollock has actually argued – that the impersonal and non-referential nature of Mimamsa (remember that the Veda has no author) is partly responsible for the impersonal and non-referential nature of most of Sanskrit literature. However, this is not the whole story.

Buddhism, like most of the great religions of the world, is divided into a number of different traditions. However, most traditions share a common set of fundamental beliefs. One central belief of Buddhism is often referred to as reincarnation -- the concept that people are reborn after dying. In fact, most individuals go through many cycles of birth, living, death and rebirth. A practicing Buddhist differentiates between the concepts of rebirth and reincarnation. In reincarnation, the individual may recur repeatedly. In rebirth, a person does not necessarily return to Earth as the same entity ever again. He compares it to a leaf growing on a tree. When the withering leaf falls off, a new leaf will eventually replace it. It is similar to the old leaf, but it is not identical to the original leaf.

Buddhism is a philosophy of life expounded by Gautama Buddha ("Buddha" means "enlightened one"), who lived and taught in northern India in the 6th century B.C. The Buddha was not a god and the philosophy of Buddhism does not entail any theistic world view. The teachings of the Buddha are aimed solely at liberating sentient beings from suffering.

The Basic Teachings of Buddha which are core to Buddhism are: • The Three Universal Truths; • The Four Noble Truths; and • The Noble Eightfold Path. II. THE THREE UNIVERSAL TRUTHS 1. Nothing is lost in the universe 2. Everything Changes 3. The Law of Cause and Effect In Buddhism, the law of karma, says "for every event that occurs, there will follow another event whose existence was caused by the first, and this second event will be pleasant or unpleasant according as its cause was skillful or unskillful." Therefore, the law of Karma teaches that the responsibility for unskillful actions is borne by the person who commits them. After his enlightenment, the Buddha went to the Deer Park near the holy city of Benares and shared his new understanding with five holy men. They understood immediately and became his disciples. This marked the beginning of the Buddhist community.

For the next forty-five years, the Buddha and his disciples went from place to place in India spreading the Dharma, his teachings. Their compassion knew no bounds; they helped everyone along the way, beggars, kings and slave girls. At night, they would sleep where they were; when hungry they would ask for a little food. Wherever the Buddha went, he won the hearts of the people because he dealt with their

true feelings. He advised them not to accept his words on blind faith, but to decide for themselves whether his teachings are right or wrong, then follow them. He encouraged everyone to have compassion for each other and develop their own virtue: "You should do your own work, for I can teach only the way." Once, the Buddha and his disciple Ananda visited a monastery where a monk was suffering from a contagious disease. The poor man lay in a mess with no one looking after him. The Buddha himself washed the sick monk and placed him on a new bed. Afterwards, he admonished the other monks: "Monks, you have neither mother nor father to look after you. If you do not look after each other, who will look after you? Whoever serves the sick and suffering, serves me." After many such cycles, if a person releases their attachment to desire and the self, they can attain Nirvana. This is a state of liberation and freedom from suffering. The three trainings or practices These three consist of: 1. Sila: Virtue, good conduct, morality. This is based on two fundamental principles: The principle of equality: that all living entities are equal. The principle of reciprocity: This is the "Golden Rule" in Christianity - to do unto others as you would wish them to do unto you. It is found in all major religions. 2. Samadhi: Concentration, meditation, mental development. Developing one's mind is the path to wisdom which, in turn, leads to personal freedom. Mental development also strengthens and controls our mind; this helps us maintain good conduct. 3. Prajna: Discernment, insight, wisdom, enlightenment. This is the real heart of Buddhism. Wisdom will emerge if your mind is pure and calm. The first two paths listed in the Eightfold Path, described below, refer to discernment; the last three belong to concentration; the middle three are related to virtue.

III. THE FOUR NOBLE TRUTHS The Buddha's Four Noble Truths explore human suffering. They may be described (somewhat simplistically) as: 1. Dukkha: Suffering exists: Life is suffering. Suffering is real and almost universal. Suffering has many causes: loss, sickness, pain, failure, and the impermanence of pleasure. 2. Samudaya: There is a cause of suffering. Suffering is due to attachment. It is the desire to have and control things. It can take many forms: craving of sensual pleasures; the desire for fame; the desire to avoid unpleasant sensations, like fear, anger or jealousy. 3. Nirodha: There is an end to suffering. Attachment can be overcome. Suffering ceases with the final liberation of Nirvana (Nibbana). The mind experiences complete freedom, liberation and non-attachment. It lets go of any desire or craving. 4. Magga: In order to end suffering, you must follow the Eightfold Path. There is a path for accomplishing this. The five precepts, These are rules to live by. They are somewhat analogous to the second half of the Ten Commandments in Judaism and Christianity -- that part of the Decalogue which describes behaviors to avoid. However, they are recommendations, not commandments. Believers are expected to use their own intelligence in deciding exactly how to apply these rules: 1. Do not kill. This is sometimes translated as "not harming" or an absence of violence. 2. Do not steal. This is generally interpreted as including the avoidance of fraud and economic exploitation. 3. Do not lie. This is sometimes interpreted as including name-calling, gossip, etc. 4. Do not misuse sex. For monks and nuns, this means any departure from complete celibacy. For the laity, adultery is forbidden, along with any sexual harassment or exploitation, including that within marriage. The Buddha did not discuss consensual premarital sex within a committed relationship, thus, Buddhist traditions differ on this. Most Buddhists, probably influenced by their local cultures, condemn same-sex sexual activity regardless of the nature of the relationship between the people involved. 5. Do not consume alcohol or other drugs. The main concern here is that intoxicants cloud the mind. Some have included as a drug other methods of divorcing ourselves from reality -- e.g. movies, television, and the Internet. Those preparing for monastic life or who are not within a family are expected to avoid an additional five activities: 6. Taking untimely meals. 7. Dancing, singing, music, watching grotesque mime. 8. Use of garlands, perfumes and personal adornment. 9. Use of high seats. 10. Accepting gold or silver. There is also a series of eight precepts which are composed of the first seven listed above, followed by the eighth and ninth combined as one. "Ordained Theravada monks promise to follow 227 precepts!"

IV. THE EIGHTFOLD PATH The Buddha's Eightfold Path consists of: Panna: Discernment, wisdom: 1. Samma ditthi: Right Understanding of the Four Noble Truths. Right View is the true understanding of the four noble truths. 2. Samma sankappa: Right thinking; following the right path in life. Right Aspiration is the true desire to free oneself from attachment, ignorance, and hatefulness. These two are referred to as Prajna, or Wisdom. Sila: Virtue, morality: 3. Samma vaca: Right speech: No lying, criticism, condemning, gossip, harsh language. Right Speech involves abstaining from lying, gossiping, or hurtful talk. 4. Samma kammanta Right conduct or Right Action involves abstaining from hurtful behaviors, such as killing, stealing, and careless sex. These are called the Five Precepts. 5. Samma ajiva: Right livelihood: Support yourself without harming others. Right Livelihood means making your living in such a way as to avoid dishonesty and hurting others, including animals. These three are referred to as Shila, or Morality. Samadhi: Concentration, meditation: 6. Samma vayama: Right Effort: Promote good thoughts; conquer evil thoughts. Right Effort is a matter of exerting oneself in regards to the content of one's mind: Bad qualities should be abandoned and prevented from arising again. Good qualities should be enacted and nurtured. 7. Samma sati: Right Mindfulness: Become aware of your body, mind and feelings. Right Mindfulness is the focusing of one's attention on one's body, feelings, thoughts, and consciousness in such a way as to overcome craving, hatred, and ignorance. 8. Samma samadhi: Right Concentration: Meditate to achieve a higher state of consciousness. Right Concentration is meditating in such a way as to progressively realize a true understanding of imperfection, impermanence, and non-separateness There are, however, many sects of Buddhism and there are different kinds of Buddhist monks all over the world. The life and customs of Buddhist monks are not only different and unique but consist of a spiritual meaning. Their daily life follows a strict schedule that revolves around meditation, study of scriptures, and taking part in ceremonies. There are Buddhist shrines, Buddhist monasteries, where monks live, Gompas and Buddhist Stupas all over the world. Though it originated in northern India, the Emperor Ashoka helped to spread Buddhism into South East Asian countries such as Sri Lanka, Myanmar, Thailand and Indo-China, from where it moved on to influence people in the Himalayan kingdoms of Sikkim, Bhutan, Nepal, Tibet, Mongolia, Central Asia as well as China, Korea, Viet Nam and Japan. Around 95 per cent of the population in Thailand is Buddhist, the highest concentration in the world, with Cambodia, Myanmar, Bhutan, Sri Lanka, Tibet, Lao People's Democratic Republic, Viet Nam, Japan, Macao (China) and Taiwan Province of China following close behind. Devotees reaffirm their faith in the five principles called Panchsheel: 1. Do not to take life; 2. Do not to steal; 3. Do not to commit adultery; 4. Do not lie; 5. Do not to consume liquor or other intoxicants.

Unit 3- Medieval India

A. CHOLA VILLAGE ADMINISTRATION

The Chola kings followed a highly efficient system of administration. The entire Tanjore district, parts of Trichy, Pudukottai and South Arcot districts formed the part of the Chola Mandalam. The Cholas had three major administrative divisions called Central Government, Provincial Government and Local Government. Tanjore was the capital of the Cholas. The efficient Chola administrative system has been well appreciated by many historians and rulers.

Kingship- The king was the head of the administration. The Chola kings and Queens were considered as representatives of God. Their idols were kept in temples. The Chola kingship was hereditary. The Chola royal family followed the principle that eldest son should succeed the king to the Chola throne. The heir apparent was called Yuvaraja, The Chola monarchs enjoyed enormous powers and privileges. The Chola kings took up titles which marked their achievements. They lived in very big royal palaces. Kings were assisted by ministers and officials in their administration. Chola kings had tiger as their royal emblem.

Central Government

The Central Government under the headship of the King. Council of ministers and officials took active part in running the administration of Central Government. The higher officials were called Peruntaram and the lower officials were called Siruntaram.

Provincial administration

The Chola Empire was divided into nine provinces. They were also called mandalams. The head of the province was called viceroy. Close relatives of kings were appointed as viceroys. The Viceroys were in constant touch with the Central Government. Viceroys received orders from the king. They sent regular reply to the king. The viceroys had a large number of officials to assist them in the work of administration.

Administrative Divisions

The success of the Chola administration depended more on the proper functioning of the administrative division us. Generally mandalams were named after the original names or the titles of the Chola kings. Each mandalam was divided into number of Kottams or Valanadus. Each kottam was sub divided into nadu. Each nadu was further divided into (Urs) villages which form part of the last unit of the administration. Uttaramerur inscriptions speak about the administration of the Cholas.

Revenue

The land revenue was the main source of income of the Chola Government. Proper land survey was made. Lands were classified as taxable land and non taxable land. There were many grades in the taxable lands. Land revenue differed according to these grades. Generally 1/6 of the land yield was collected as tax either in cash or in kind or both according to the convenience of the farmers. Besides land revenue, there were some other sources of income like customs and tolls. Taxes on mines, ports, forests and salt pans were collected. Professional tax and house tax were also collected. Many other taxes were levied. Tax burden was more on the society. Sometimes due to failure of rain and famine people could not pay tax.

Military

The Cholas had an efficient army and navy. The Chola army consisted of elephant, cavalry and infantry. Soldiers were given proper training. Commanders enjoyed the ranks of nayaks and senapathis. The army was divided into 70 regiments. The Chola arm had 60,000 elephants. Very costly Arabian horses were imported to strengthen the cavalry. The Chola kings defeated the Cheras at Kandalur salai. The kings of Ceylon and Maldives were also defeated. The Chola navy was formidable one in South India. With the help of their navy the Cholas controlled Coromandal and Malabar coasts. Bay of Bengal became the Chola lake. The Chola army and navy together had 1,50,000 trained soldiers. The armies of the tributary chieftains also joined Chola army at needy times. Generally the Chola army was led by the King or Yuvaraja.

Justice

The Chola king was the chief justice. The Chola kings gave enough care for the judicial administration. The village level judicial administration was carried on by the village assembly. Minor disputes were heard by the village assembly. Disputes were settled with proper evidences. Village assemblies exercised large powers in deciding local disputes. Punishments were awarded by the judicial officers. The trial of serious offences and major cases were conducted by the king himself.

Chola Local Administration

The most important feature of the Chola administration was the local administration at districts, towns and villages level. Uttaramerur inscriptions speak much about the Chola administration. Village autonomy was the most unique feature of Chola administrative system.

Nadu

Nadu was one of the important administrative units of the Cholas. Nadus had representative assemblies.

The heads of the nadus were called Nattars. The council of nadu was called nattavai. Representatives of the Nattavais and nattars promoted agriculture. They also took care of the protection of the people and tax collection.

Village Administration

The entire responsibility of the village administration was in the hands of the village assembly called Grama Sabha. The lowest unit of the Chola administration was the village unit. The village assemblies looked after the maintenance of peace, tanks, roads, public ponds revenue collection, judiciary, education and temples. The village assemblies were in charge of the payment of taxes due from the villages to the treasury. They regulated public markets and helped people at times of fathine and flood. Assemblies provided provisions for education. The village assemblies possessed absolute authority over the affairs of villages. They maintained law and order in every village. Brahmin settlement was called Chathurvedi mangalam.

Variyams

Village Assemblies carried on village administration effectively with the help of variyams. Male members of the society were the members of these variyams. Composition of these variyams, qualification and durations of membership differed from village to village. There were many variyams in every village. Niyaya variyam administered justice, Thottavariyam looked after flower gardens. The Dharma variyam looked after charities and temples. Erivariyam was in charge of tanks and water supply. The pon variyam was in charge of the finance. The Gramakariya variyam looked after the works of all committees. The members of these varivams were known as "Varivaperumakkal They rendered honorary service. The village officials were paid salary either in cash or in kind. Good functioning of these variams increased the efficiency of the local administration of the Cholas.

The Chola government during the imperial period (850 – 1200 CE) was marked for its uniqueness and innovativeness. Cholas were the first dynasty who tried to bring the entire South India under a common rule and to a great extent succeeded in their efforts. Although the form and protocols of that government cannot be compared to a contemporary form of government, the history of the Chola empire belongs to a happy age in their history and great things were achieved by the government and the people.

DELHI SULTANATE

The organization and reorganization of Delhi reign demonstrated various ways through the phases of the Delhi Sultanate is the name used to describe five short-lived medieval dynasties which were successful in establishing the Muslim rule in India for the first time. These dynasties or sultanates were of Turkic origin and ruled from Delhi between 1206 and 1526 AD. The five dynasties which are together termed as the Delhi Sultanate are listed as follows:

Mamluk Dynasty (1206 AD to 1290 AD) Khilji Dynasty (1290 AD to 1320 AD) Tughlaq Dynasty (1320 AD to 1414 AD) Sayyid Dynasty (1414 AD to 1451 AD) Lodi Dynasty (1451 AD to 1526 AD)

Mamluk Dynasty (1206 AD to 1290 AD)

The Mamluk Dynasty (sometimes referred as Slave Dynasty or Ghulam Dynasty) was directed into Northern India by Qutb-ud-din Aybak, a Turkic general from Central Asia. It was the first of five unrelated dynasties to rule India's Delhi Sultanate from 1206 to 1290. Aybak's tenure as a Ghurid dynasty administrator ranged between 1192 to 1206, a period during which he led invasions into the Gangetic heartland of India and established control over some of the new areas.

The Qutub Minar, an example of the Mamluk dynasty's works. Mamluk, literally meaning *owned,* was a soldier of slave origin who had converted to Islam. The phenomenon started in 9th century and gradually the Mamluks became a powerful military caste in various Muslim societies. Mamluks held political and military power most notably in Egypt, but also in the Levant, Iraq, and India. In 1206, Muhammad of Ghor died. He had no child, so after his death, his sultanate was divided into many parts by his slaves

(mamluk generals). Taj-ud-Din Yildoz became the ruler of Ghazni. Mohammad Bin Bakhtiyar Khilji got Bengal. Nasir-ud-Din Qabacha became the sultan of Multan. Qutub-ud-din-Aybak became the sultan of Delhi, and that was the beginning of the Slave dynasty.

Aybak rose to power when a Ghorid superior was assassinated.[4] However, his reign as theSultan of Delhi was short lived as he died in 1210 and his son Aram Shah rose to the throne, only to be assassinated by Iltutmish in 1211.

The Sultanate under Iltutmish established cordial diplomatic contact with the Abbasid Caliphate between 1228–29 and had managed to keep India unaffected by the invasions of Genghis Khan and his successors. Following the death of Iltutmish in 1236 a series of weak rulers remained in power and a number of the noblemen gained autonomy over the provinces of the Sultanate. Power shifted hands from Rukn ud din Firuz to Razia Sultana until Ghiyas ud din Balban rose to the throne and successfully repelled both external and internal threats to the Sultanate. The Khilji dynasty came into being when Jalal ud din Firuz Khilji overthrew the last of the Slave dynasty rulers, Muiz ud din Qaiqabad, the grandson of Balban, and assumed the throne at Delhi.

The architectural legacy of the dynasty includes the Qutb Minar by Qutb-ud-din Aybak in Mehrauli, the Mausoleum of Prince Nasiru'd-Din Mahmud, eldest son of Iltumish, known as *Sultan Ghari* near Vasant Kunj, the first Islamic Mausoleum (tomb) built in 1231, and Balban's tomb, also in Mehrauli Archaeological Park.

Khilji Dynasty (1290 AD to 1320 AD)

The Khilji dynasty was the second dynasty to rule the Delhi Sultanate of India. Towards the end of Slave Dynaty rebellions. Jalaluddin Khilji killed Muizuddin Qaiqabad, the last operational sultan of Slave Dynasty and founded the Khilji Dynasty in 1290 AD. This dynasty ruled the Delhi Sultanate from 1290 AD to 1320 AD.

The Rulers

The rulers of Khilji dynasty who ruled the Delhi Sultanate were:

1. Jalal uddin Khilji 2. Alauddin Khilji 3. Qutubuddin Mubarak Shah

Jalaluddin Khilji was the first sultan of Khilji dynasty. He ruled the dynasty from 1290 AD – 1296 AD. He was very liberal towards Hindus and it was not fully accepted by the nobles. His mild policies failed to control the unfaithful nobles. In 1296 AD, his nephew Alauddin Khilji killed him while he went to welcome his victorious nephew after the conquest of Devagiri.

Aladuudin Khilji

Aladuudin Khilji was the most powerful ruler of Khilji Dynasty. He killed Jalaluddin Khilji and became the sultan of Delhi in 1296 AD. He expanded his territory to a larger area including most of the India and part of Pakistan and Afghanistan. His childhood name was ‘Ali Gurshap Bam’. In 1296 AD, he killed Jalaluddin, the founder of Khilji Dynasty and became the sultan of the dynasty.

Alauddin Khilji was a very good military commander and a brilliant strategist. His policies were very strict and he had the full control over his nobles. He was extremely harsh, ruthless and cruel ruler. He expanded the borders of his empire to most of the Indian territories and part of Pakistan and Afghanistan. Alauddin Khilji had multiple powerful military commanders like Zafar Khan, Ulugh Khan, Malik Kafur and Nusrat Khan.

Alauddin Khilji inherited most of the northern Indian territories, which were occupied at the time of Slave Dynasty and his predecessor Jalal uddin Khilji. He occupied Gujrat in 1298 AD, Ranathambhor in 1301 AD, Chittor in 1303 AD, Makwa ub 1305 AD and Jalor 1311 AD.

Alauddin Khilji is also known for defeating Mongols in multiple instances. In 1297 AD Mongol army invaded his territory but the sultan army led by Zafar Khan and Ulugh Khan defeated the Mongol invasion at Jalandhar. Mongol again attacked in 1299 AD with a larger army. Sultan army had a convincing victory and defeated the Mongol.

Alauddin started his military campaign in Southern India. Malik Kafur was appointed as the military commander and he carried out tha attack to the Deccan. In 1305 AD, Malik Kafur attacked King Ram Chandra of Devgiri and made him a tribute paying ruler under the protection Sultan, King Ram Chandra paid huge indemnity to Delhi Sultan.

In 1310 AD, Alauddin sent Malik Kafur to attack against Hoysalas of Dearasamudra. Sultan army defeated Vira Ballala III of Dearasanydra and the king paid huge amount of indemnity to Delhi Sultan and accept his protection and over lordship.

In 1311 AD , Malik Kafur attacked king Vir Pandya of Pandya kingdom in Madurai of Tamil Nadu. King Vir Pandya fled away from the capital and Sultan army occupied the capital of Pandya Kingdom.

Administrative work of Alauddin Khilji

Alauddin Khilji was an efficient administrator and known for his strict and harsh policies. He introduced strict and harsh policies. He introduced a strict Price Control measure and cut all unnecessary expenditure. He controlled the market price of the commodities. He increased the tax of agriculture and introduced a strict monitoring system to prevent bribes. He controlled the demand and supply by introducing godowns to store the surplus grain and make available at the time of scarcity.

Tughlaq Dynasty (1320 AD to 1414 AD)

Ruler of the Tughlaq Dynasty Rulers of the Tughlaq Dynasty AD, Ghiyasuddin Tughlaq Shah 1320-1325 , Mohammad Bin Tughlaq 1325-1351 ,Firuz Tughlaq 1351-1388 , Later Tughlaq 1388-1414

The Tughlaq Dynasty, a North Inidian Dynasty ruled the Delhi sultanate from 1320 AD to 1414 AD. In 1320 AD, Khusro Khan, a Hindu convert killed the last ruler of Khilji Dynsasty Qutubuddin Mubarak Shah and thus ended the Khilji Dynasty, Khusro Khan ruled for a shorth period of time. Ghiyasuddin Tughlaq was a governor from the time of Alauddin Khilji, he attacked khusrao Khan and overthrew him. After defeating Khusro Khan, he founded the Tughlaq Dynastym the third dynasty of Delhi Sultanate. Ghiyasuddin Tughlaq wa the first ruler of Tughlaq Dynasty and ruled the Delhi sultanate from 1320 AD to 1325 AD. He built the fort Tughlaqabad in the southern part of Delhi.

Administrative work and Development

It was not a happy period when he started his reign. There were numerous existing problems in his territory. He implemented policies to control the nobles, took measured to reinstate peace in his kingdom he improved the postal system and encourages agriculture.

Muhammad bin Tughlaq

Muhannad bin Tughlaq succeeded his father Ghiyas uddin Tughlaq and ascended the thorone of Tughlaq Dynasty in 1325 AD. He ruled the Delhi Sultanate from 1325 AD to 1351 AD. He was one of the most controversial rulers in India History. He undertook many administrativereforms but most of them failed due to his lack of plan and judgement. In Indian history, he is referred as the wisest fool king. Bin Tughlaq was a very knowledgeable person and knew different languages like Persian, Arabic, Turkish and Sanskrit.

Bin Tughlaq’s Work

After becoming the Sultan of Delhi, Muhammad bin Tughlaq wanted to expand his territory and occupied Kalanaur and Peshawar in the north west. He desired to expand his borders in southern India and re-occupied states those were initially conqueredby malik Kafur during the reign of Alauddin Khilji. He occupied Andhra, Karnataka, Maharashtram larger parts of Tamil Nadu and Kerala and thus he conquered major part of south India and annexed it to the Delhi Sultanate.

Capital from Delhi to Dulatabad

Muhammad bin Tughlaq prepared to shift his capital from Delhi to Daulatabad. He ordered the whole population of Delhi and royal household including ministries, scholars, poets, musicians to move to the new capital. It is believed that he wished to shift the capital as a safeguard measure from Mongol Invasion. During the journey from Delhi to Daulatabad many people died on the way. By the time

people reached Daulatabad, Muhammad changed his mind and decided to abandon the new capital and move to his old capital Delhi. Many people died in the movement. A severe plague broke and half of the army died in the epidemic. The plan of shifting capital completely failed.

Taxation System

Muhannad bin Tughlaq increased the tax on the alluvial lands between the Ganga and the Yanunavalley. During his reign, the empire faced a severe famine and the king took worse measures. People abandoned their home involved in robbery and theft, thousands perished. He ordered his revenue department to keep the record of revenue and expenditure of all his provinces. Governor of each province were ordered to submit their book of accounts to Delhi.

Agriculture Polices

Muhammad bin Tughlaq formed a separate agriculture department for the improvement of agriculture. He spent huge amount of money but the scheme didn't succeed due to corruption of officers and other factors.

BALBAN KINGSHIP -

Ghiyas-ud-din Balban who ruled India as the Sultan of Delhi from 1266 to 1287 A.D. was one of the greatest Sultans of the Medieval period. He like his master Iltutmish rose to power and became the Sultan of Delhi. His period has been marked as an illustrious chapter in the history of the Delhi sultanate.

His Early Difficulties: Balban had to face a number of problems after his accession to the throne. The affairs of the state had fallen into confusion as well as the prestige of the crown had sunk low due the misrule of weak and incompetent successors of Iltutmish. The powers of the nobles had increased and the majority of the members of the famous Forty had become disloyal to the throne. They were proud, arrogant and were jealous of Balban. In the words of Barani, "Fear of the governing power which is the basis of all good governments and the source of the glory and splendor of the state, had departed from the hearts of all men, and the country had fallen into a wretched condition." The royal treasury was empty and the army was not well-organised. The Mongol invasion was imminent as well as the internal rebellions were raising their heads at regular intervals. Such was the critical stage, when Balban had been given the responsibility to face and fight. However he proved himself to be more than an equal for them.

Meaning of the policy of **blood and iron**: This policy implied being ruthless to the enemies, use of sword, harshness and strictness and shedding blood. It allowed use of all sorts of methods of terrorisms the enemies and inflicting violence upon them. Even before becoming the Sultan of Delhi, Balban had tried these measures to some extent to rise to high posts. He had betrayed Razia and engineered revolts against her. He was responsible for the dethronement of Bahram Shah and installment of Masud as a King. Thus even before assuming the reigns of administration, Balban had gained sufficient experience to make use of the power of the sword against his enemies.

Theory of **Kingship**: Balban realized that problems arose on account of the weak position of the king. He therefore put forward the concept of Divine Right of Kings i.e. the king was the representative of God on earth. None could challenge him. The king was there to rule and the nobles and others were there to obey him. The powers of the king were absolute and he was a despot. Loose administration: The administration needed a strong ruler to bring about order out of chaos. Corps of Forty: Balban himself belonged to the 'Corps of Forty' an institution or the group created by Iltutmish for strengthening his position. Iltutmish used this group to get all sort of information about his nobles. Balban was fully aware of the destructive activities of these. In due course, these slaves became so powerful that the rulers became captives in their hands. Balban realized that they were responsible for the chaotic and unstable condition of the state. Balban considered them as trouble shooters and realized the necessity of getting rid of them through stern measures. Revolts: There was the danger of revolts of some sections of

Muslim chiefs and Rajput rulers. Mongol invasions: The Mongols posed a serious threat to the empire.

Achievements 1. Balban's Theory of Kingship and Restoration of the Prestige of the Sultan: Balban was the first ruler of the Delhi Sultanate who expressed clear and firm opinion regarding the powers of the Sultan. Professor K.A. Nizami has expressed that it was necessary for restoring not only the dignity of the Sultan and eradicating the possibility of conflict with the nobility but also the result of an inferiority complex and guilty conscience.

2. The Destruction of 'The Forty': Even when Balban worked as the Naib of Sultan Nasir-ud-din, he tried to break up the power of the group of 'the forty' (Turkan-i-Chihalgani) as he regarded it necessary to restore the powers of the Sultan. When he himself became the Sultan, he used every means to achieve this aim. By the time Balban ascended the throne, most of these nobles had either died by themselves or were destroyed by Balban. The rest who remained were now killed or deprived of power.

3. The Army: A strong army was a necessity for a powerful monarchy. Balban realised its necessity to make his despotism effective, to safeguard his empire from the invasion of the Mongols and to suppress rebellions. He increased the number of officers and soldiers of his army, paid them good salaries and took personal interest in their training.

4. The Administration and the Spy-System: The administration of Balban was half-military and half-civil. All his officers were supposed to perform both administrative and military duties. Balban himself kept control over the entire administration. Balban owed his success largely due to an efficient organisation of his spy- system. He appointed spies (Barids) to watch the activities of his governors, military and civil officers and even that of his own sons. Balban appointed them himself and they were well-paid. They were expected to provide every important information to the Sultan and those who failed were punished severely. Every spy had direct access to the Sultan though none met him in the court.

5. The Conquest of Bengal: Bengal was lost to the Delhi Sultanate during the reign of Sultan Nasirud-din when Arsalan Khan had declared himself independent. However, when Balban ascended the throne.

B. MUGHALS (Administration)

From his exile in Burma in 1857, the last Mughal Emperor penned these famous words of defiance: As long as there remains the least trace of love of faith in the heart of our heroes, so long, the sword of Hindustan shall flash even at the throne of London.

The last emperor of India, Bahadur Shah, was forced into exile in Burma by Britain during the so-called "Sepoy Rebellion," or First Indian War of Independence. He was deposed to make space for the official imposition of the British Raj in India. It was an ignominious end to what was once a glorious dynasty, which ruled the Indian subcontinent for more than 300 years.

Founding of the Mughal Empire

The young prince Babur, descended from Timur on his father's side and Genghis Khan on his mother's, finished his conquest of northern India in 1526, defeating the Delhi Sultan Ibrahim Shah Lodi at the First Battle of Panipat. Babur was a refugee from the fierce dynastic struggles in Central Asia; his uncles and other warlords had repeatedly denied him rule over the Silk Road cities of Samarkand and Fergana, his birth-right. Babur was able to establish a base in Kabul, though, from which he turned south and conquered much of the Indian subcontinent.

Babur called his dynasty "Timurid," but it is better known as the Mughal Dynasty - a Persian rendering of the word "Mongol."

Babur's Reign

Babur was never able to conquer Rajputana, home of the warlike Rajputs. He ruled over the rest of northern India and the plain of the Ganges River, though.

Although he was a Muslim, Babur followed a rather loose interpretation of the Quran in some ways. He drank heavily at his famously lavish feasts, and also enjoyed smoking hashish.

Babur's flexible and tolerant religious views would be all the more evident in his grandson, Akbar the Great.

In 1530, Babur died at the age of just 47. His eldest son Humayu fought off an attempt to seat his aunt's husband as emperor, and assumed the throne. Babur's body was returned to Kabul nine years after his death, and buried in the Bagh-e Babur. Height of the Mughals under Akbar the Great:Humayan was not a very strong leader. In 1540, the Pashtun ruler Sher Shah Suri defeated the Timurids, deposing Humayan. The second Timurid emperor only regained his throne with aid from Persia in 1555, a year before his death, but at that time he managed even to expand on Babur's empire. When Humayan died after a fall down the stairs, his 13-year-old son Akbar was crowned. Akbar defeated the remnants of the Pashtuns, and brought some previously unquelled Hindu regions under Timurid control. He also gained control over Rajput through diplomacy and marriage alliances.

Akbar was an enthusiastic patron of literature, poetry, architecture, science and painting. Although he was a committed Muslim, Akbar encouraged religious tolerance, and sought wisdom from holy men of all faiths. He became known as "Akbar the Great."

Shah Jahan and the Taj Mahal:

Akbar's son, Jahangir, ruled the Mughal Empire in peace and prosperity from 1605 until 1627. He was succeeded by his own son, Shah Jahan.

The 36-year-old Shah Jahan inherited an incredible empire in 1627, but any joy he felt would be short lived. Just four years later, his beloved wife, Mumtaz Mahal, died during the birth of their fourteenth child. The emperor went into deep mourning and was not seen in public for a year.

As an expression of his love, Shah Jahan commissioned the building of a magnificent tomb for his dear wife. Designed by the Persian architect Ustad Ahmad Lahauri, and constructed of white marble, the Taj Mahal is considered the crowning achievement of Mughal architecture.

Mughal Empire Weakens---

Shah Jahan's third son, Aurangzeb, seized the throne and had all of his brothers executed after a protracted succession struggle in 1658. At the time, Shah Jahan was still alive, but Aurangzeb had his sickly father confined to the Fort at Agra. Shah Jahan spent his declining years gazing out at the Taj, and died in 1666.

The ruthless Aurangzeb proved to be the last of the "Great Mughals." Throughout his reign, he expanded the empire in all directions. He also enforced a much more orthodox brand of Islam, even banning music in the empire (which made many Hindu rites impossible to perform).

A three-year-long revolt by the Mughals' long-time ally, the Pashtun, began in 1672. In the aftermath, the Mughals lost much of their authority in what is now Afghanistan, seriously weakening the empire.

MANSABDARI SYSTEM

The mansabdari system introduced by Akbar was a unique feature of the administrative system of the Mughal Empire. The term mansab (i.e. office, position or rank) in the Mughal administration indicated the rank of its holder (mansabdar) in the official hierarchy. The mansabdari system was of Central Asian origin. According to one view Babur brought it to North India.

But the credit of giving it an institutional framework goes to Akbar who made it the basis of Mughal military organization and civil administration. The mansabdars formed the ruling group in the Mughal Empire. Almost the whole nobility, the bureaucracy as well as the military hierarchy, held mansabs.

Consequently, the numerical strength of the mansabdars and their composition during different periods materially influenced not only politics and administration but also the economy of the empire.

Since the mansabdars of the Mughal empire received their pay either in cash (naqd) or in the form of assignments of areas of land (jagir) from which they were entitled to collect the land revenue and all other taxes sanctioned by the emperor, the mansabdari system was also an integral part of the agrarian and the jagirdari system.

Basic Features

The mansabdars belonged both to the civil and military departments. They were transferred from the civil side to the military department and vice versa. The Mughal mansab was dual, represented by two members, one designated zat (personal rank) and the other sawar (cavalry rank). The chief use of zat was to place the holders in an appropriate position in the official hierarchy.

In the early years of Akbar's reign the mansabs (ranks) ranged from command of 10 to 5,000 troops. Subsequently the highest mansabs were raised from 10,000 to 12,000; but there was no fixed number of mansabdars.

From the reign of Akbar to Aurangzeb their number kept on increasing. In or about 1595 the total numbers of mansabdars during the reign of Akbar was 1803; but towards the close of Aurangzeb's rein their number rose to 14,449.

In theory all mansabdars were appointed by the emperor, who also granted promotions on the basis of gallantry in military service and merit. The mansabdars holding ranks below 500 zat were called mansabdars, those more than 500 but below 2,500 amirs and those holding ranks of 2,500 and above were called amir-i-umda or amir-i-azam or omrahs. The mansabdars who received pay in cash were known as naqdi and those paid through assignments of jagirs were called jagirdars.

The jagirs were by nature transferable and no mansabdar was allowed to retain the same jagir for a long period. The watan-jagirs were the only exception to the general system of jagir transfers. The watan-jagirs were normally granted to those zamindars who were already in possession of their watans (homelands) before the expansion of the Mughal empire.

The mansab was not hereditary and it automatically lapsed after the death or dismissal of the mansabdar. The son of a mansabdar, if he was granted a mansab, had to begin afresh. Another important feature of the mansabdari system was the law of escheat (zabti), according to which when a mansabdar died all his property was confiscated by the emperor. This measure had been introduced so that the mansabdars did not exploit the people in a high-handed manner.

C. Peasant Zamindars And The State: Reforms of **Akbar**

Revenue administration Reforms: Scientific systems of land revenue collection followed: 1. The zabti system or Todarmal’s bandobast system: the system of measurement of the land (by means of bamboos linked with iron rings) and the assessment based upon it. 2. The dahsala system- improvement over zabti system- the average produce of different crops as well as the average prices prevailing over the last ten (dah) years were calculated . One third of the average produce was the state share stated in cash. 3. Quanungos and karoris were the officials performing the duties. It gave certainty of their dues for the peasants. 4. The batai or ghalla-bakhshi system: the most common system. The produce was divided between the peasants and the state in a fixed proportion. The crop had been divided after it had been thrashed, or when it had been cut andtiedin sacks, or while it was standing in the field. 5. Nasaq system or kankut: a rough calculation of the amount payable by the peasant on the basis of what he had been paying in the past. In fixing the land revenue, continuity of cultivation was taken into account. Polaj land was the one which remained under cultivation; parati was uncultivated (fallow) land; chachar land which had been fallow for2 to 3 years and banjar, the land fallen fallow for longer periods.

Military administration The Mansabdari system: every officer in the army was assigned a rank (mansab) ranging from 10 to 5000 or more. Princes of the royal blood and nobles received high mansabs. The ranks were divided into two- zat (indicating the personal status) and sawar (indicating the number of cavalry men (sawars) a person was required to maintain. The chehra (a descriptive roll) and the dagh (branding the horse with imperial mark) was introduced to ensure efficiency of the cavalry maintained by the nobles. For every cavalry man, the mansabdar had to maintain 2 horses. Akbar’s nobility consisted of Mughals, Pathans, Hindustani and Rajput and mixed contingents were maintained. The salaries due to the soldiers were added to the salary of the mansabdar who was paid by assigning a jagir to him. Sometimes the mansabdars were paid in cash. Apart from cavalry , elephantry, bowmen,

musketeers , sappers and miners were also recruited. The mansabdari system was the steel frame of administration and it was unique. It ensured stable and efficient army. Akbar also maintained artillery. And he had a fleet of boats.

Admin -Diwan or wazir- head of revenue dept, Mir bakshi- head of military dept as well as the head of intelligence wing, Mir Saman – in charge of imperial household, Karkhanas – royal workshops where the items for the imperial household were manufactured, Chif quazi- head of judicial dept, Jharoka darshan- personal appearance on a daily basis by Akbar on the jharoka of the palace before the masses to hear their petitions.

Explained----

When Akbar got the rein of government in his hand he introduced drastic changes in the administration of the country. He adopted to some extent the reforms initiated by Sher Shah, but set up the judicial machinery under a new name and style. The designa- tion of some of the judicial officers was also changed. Similarly, changes were also made in the administra- tive machineries. As they are inter-connected it is necessary that some notice should be taken of them.

Sher Shdh divided the provinces of his Empire into sarhttrs which were again subdivided into parganas. Akbar divided the whole empire into tiubahs or provinces. The Subahs comprised more than 100 sarkars or districts, and each sarkar was an aggregate of parganas called mahals. 1 Sher Shah placed the Chief Shiqdtir in charge of each aarkdr. Akbar appointed Subalidars in the provinces. In the time of Sher Shah the Chief Munsif (Munsij-i-Muusifdn) was responsible for civil administration ; Akbar appointed Mtr-i-'Adl for the same purpose. Sher Shah entrusted the criminal justice to the Shiqd&r ; Akbar to the Subahddr and

The predecessors of Akbar employed a number of Muftis and Muhtasibs for the administration of justice ; lie retained them, and added to the state- machinery the offices of the Wakil, the Wazir, the Diwdn-i-Kul, the Mir-i-Saman, the Bayutdt, the Sadr-i-Jahdn, the Bakhshi, the Sadr, the Mustajy, the Amin, the 'Amil, the Tepukchi, the Mushrif, the Mir-i-Mahal, the Mir-i-Bahr, the Mir-i-Bar and many other officials whom the author of the 4 'yin-i-A kbari has mentioned in the preface of his work. These offices will be explained in their proper places.

Akbar's Idea of Justice

Speaking of this Emperor Mr. Vincent Smith quotes from the A'yin-i-Akbari the saying of Akbar, " If I were guilty of an unjust act, I would rise in judgment against myself," and then observes" The saying was not merely a copy-book maxim. He honestly tried to do justice according to his lights in the summary fashion of his age and country. Peruchi following the authority of Monserrate declares that 'as to the administration of justice, he is most zealous and watchful Ininflicting punishment he is deliberate and after he has made over the guilty person to the hands of the judge and court to suffer either the extreme penalty or the mutilation of some limb, he requires that he should be three times reminded by messages before the sentence is carried out.

From the above quotation one need not run away with the idea that the Emperor used to inflict only two kinds of punishments, ufe., of death and mutilation of some limbs. For we find in the A'yin-i-Akbari the following instructions to the Subahddr (Provincial governor) : "He should strive to reclaim the dis-obedient by good advice. If that fails, let him punish with reprimands, threats, imprisonment, stripes or even amputation of limbs; but he shall not take away life till after the most mature deliberations.

Those who apply for justice let them not be inflicted with delay and expectation. Let him ' shut his eyes against offences and accept the excuse of the penitent.

Let him object to no one on account of his religion or sect."

Elphinstone points out that " a letter of instructions to the governor of Gujrat preserved in a separate history of that province, restricts his punishments to putting in irons, whipping and death; enjoining him to be sparing in capital punishments, and, unless in cases of dangerous sedition to inflict none until he

has sent the proceedings to court and received the emperor's confirmation ; capital punish- ment is not to be accompanied with mutilation or other cruelty.""

The judicial officers such as the Chief Q&zi, the Qazi and the Mir-i-'Adl

According to the Muhammadan law as far as it was applicable to Muslims and non-Muslims respectively ; and in conformity with the Common law, i.e., edicts, ordinances and instructions issued by the Emperor. These officers as usual with them followed the procedure laid down in the books of Fiqah.

Trial Procedure… The Subedar and the Foujdar being lay judges used to take the help of the Qazi and the Mufti, and follow the rules laid down for their guidance in the Shdhi Farmans. The Revenue officers were guided solely by the rules framed by the authority for their guidance. The Ayii gives the following directions to the Qazi and the MiriAdl fortrial of cases: " He shall begin with asking the circumstances of the case and then try it in all its parts. He must examine each witness separately upon the same point, and write down their respective evidence. Since these objects can only be effectually obtained by deliberateness, intelligence and deep reflection, they will sometimes require that the cause should be tried again from the beginning and from the similarity or disagreement, he may be enabled to arrive at the truth." Akbar used to decide suits and hear appeals at Trial by the Daulat-khdnah (the Chamber appear in person. of Audience in the palace "generally after 9 o'clock in the morning when all people are admitted." But this assembly is sometimes held in the evening and sometimes at night. He also frequently appears at a window which opens into the Daulat-khanah and from thence he receives petitions without the intervention of any person, and tries and decides upon them. Every officer of government represents to His Majesty his respective wants, and is always instructed by him how to proceed. He considers an equal distribution of justice, and the happiness of his subjects as essential to his own telicity, and never suffers his temper to be ruffled whilst he is hearing cases."

It appears from the records of history that when the Emperor sat in the Daulat-khdnah to hear cases, the nobles, the law officers of the Crown, the Darogha-i-adaiat (Superintendent of the Court), the clerks and scribes used to attend the Emperor's court. Cases were decided and decision pronounced in consultation with the law officers and the wazirs. His order and decrees were communicated to the proper authorities for execution under the seal of the Court. The scribe used to take down notes, and the Mir-Muiishi to draw up proper order under the direction of the Mir-i-Adl. When the judgment and order were to be despatched to the Subahdar or the Provincial Governor for execution, they were fair-copied and sent under the Imperial sea.

As to the mode of hearing cases by the Emperor in person, Mr.Smith has made the following absurd observations :

"The Emperor occasionally called up civil suits of importance to his own tribunal. No record of proceedings, civil or criminal, were kept, everything being done verbally, and no sort of code existed, except in so far as the persons acting as judges thought fit to follow Quranic rules. Akbar and Abul Fazl made small account of witnesses and oath. The governor of a province was instructed that in judicial investigations, he should not be satisfied with witnesses and oaths, but pursue them by manifold inquiries.

Records and Proceedings..

If everything was done verbally how were the Emperor's orders communicated to the authorities either at the capital or in the Subdh for execution? In deciding appeals often had he to reverse the decision of the lower court, or of the provincial governor. How could the decision of the Emperor have been communicated unless it was reduced to writing. As to "the Quranic rules" the learned historian ought to have known that Al-Qurdn does not contain the rules of procedure and the law of evidence. They were propounded and elaborately worked out by the Muslim jurists. All these have been embodied in the books of Fiqah. The Qazis and other judicial officers whom Mr.Smith refers to as" the persons acting as judges," were bound by the Shard to follow the prescribed procedure and prepare Mazdlir and Sijildr , i.e. records of proceedings and decrees in proper forms. As to his remark that no sort of code existed, it

is not at all correct. Quite a large number of legal treaties, digests and commentaries did exist at the time of Akbar and have been in existence all along since the foundation of the four schools of Muslim jurisprudence. In addition to these there were the "Institutes" of Tainmr, Babar, and Akbar, and they contain the edicts, ordinances and farmans of those sovereigns. The judicial officers used to decide cases with the aid of those books and farmans. The strange part of Mr, Smith's remark is that he has not cited any authority in support of his quaint views. His observations are as absurd as they are incredible. Moreover, they are contrary to the facts of history.

Akbar adopted sometimes the ancient method of trial by **ordeals.**

In the Capital.

Tribunals

1. The Roy ul Court
2. Diwdn i-'Addlat or thi 1 Court of the Diwdn.
3. The Court of the Chief Judge
4. The Chief Court of Justice

6 The Court of Canon Law

7. The Office of the Muhtasib who held no regular court but exercised the quasi-judicial power of the Police and the Municipal Officer.

B. Bhakti Tradition -

The Bhakti movement refers to the theistic devotional trend that emerged in medieval Hinduism It originated in the seventh-century Tamil south India (now parts of Tamil Nadu and Kerala), and spread northwards. It swept over east and north India from the fifteenth-century onwards, reaching its zenith between the 15th and 17th century CE. The Bhakti movement regionally developed around different gods and goddesses, such as Vaishnavism (Vishnu), Shaivism (Shiva), Shaktism (Shakti goddesses), and Smartism The movement was inspired by many poet-saints, who championed a wide range of philosophical positions ranging from theistic dualism of Dvaita to absolute monism of Advaita Vedanta.

The Child Saint Sambandar, Chola dynasty, Tamil Nadu. from Freer Gallery of Art, Washington DC, He is one of the most prominent of the sixty-three Nayanars of the Saiva bhakti movement.

The movement has traditionally been considered as an influential social reformation in Hinduism, and provided an individual-focussed alternative path to spirituality regardless of one's caste of birth or gender Postmodern scholars question this traditional view and whether Bhakti movement ever was a reform or rebellion of any kind. They suggest Bhakti movement was a revival, reworking and re-contextualization of ancient Vedic traditions.

Scriptures of the Bhakti movement include the Bhagavad Gita, Bhagavata Purana and Padma Purana.

Terminology

The Sanskrit word bhakti is derived from the root bhaj, which means "divide, share, partake, participate, to belong to". The word also means "attachment, devotion to, fondness for, homage, faith or love, worship, piety to something as a spiritual, religious principle or means of salvation". The meaning of the term Bhakti is analogous but different than Kama. Kama connotes emotional connection, sometimes with sensual devotion and erotic love. Bhakti, in contrast, is spiritual, a love and devotion to religious concepts or principles, that engages both emotion and intellection. Karen Pechelis states that the word Bhakti should not be understood as uncritical emotion, but as committed engagement. Bhakti movement in Hinduism refers to ideas and engagement that emerged in the medieval era on love and devotion to religious concepts built around one or more gods and goddesses. One who practices bhakti is called a bhakta.

Ancient Indian texts, dated to be from the 1st millennium BCE, such as the Shvetashvatara Upanishad, the Katha Upanishad and the Bhagavad Gita mention Bhakti.

Meerabai is considered as one of the most significant sants in the Vaishnava bhakti movement. She was from a 16th century aristocratic family in Rajasthan.

The Bhakti movement originated in South India during the seventh-century CE, spread northwards from Tamil Nadu through Karnataka and Maharashtra, and gained wide acceptance in fifteenth century Bengal and northern India.

The movement started with the Saiva Nayanars and the Vaisnava Alvars. Their efforts ultimately help spread bhakti poetry and ideas throughout India by the 12th-18th century CE. The Alvars, which literally means "those immersed in God", were Vaishnava poet-saints who sang praises of Vishnu as they travelled from one place to another. They established temple sites such as Srirangam, and spread ideas about Vaishnavism. Their poems, compiled as Alwar Arulicheyalgal or Divya Prabhandham, developed into an influential scripture for the Vaishnavas. The Bhagavata Purana's references to the South Indian Alvar saints, along with its emphasis on bhakti, have led many scholars to give it South Indian origins, though some scholars question whether this evidence excludes the possibility that bhakti movement had parallel developments in other parts of India

Like the Alvars, the Saiva Nayanar poets were influential. The Tirumurai, a compilation of hymns on Shiva by sixty-three Nayanar poet-saints, developed into an influential scripture in Shaivism. The poets' itinerant lifestyle helped create temple and pilgrimage sites and spread spiritual ideas built around Shiva. Early Tamil-Siva bhakti poets influenced Hindu texts that came to be revered all over India.

Some scholars state that the Bhakti movement's rapid spread in India in the 2nd millennium, was in part a response to the arrival of Islam and subsequent Islamic rule in India and Hindu-Muslim conflicts This view is contested by some scholars with Rekha Pande stating that singing ecstatic bhakti hymns in local language was a tradition in south India before Muhammad was born. According to Pande, the psychological impact of Muslim conquest may have initially contributed to community-style bhakti by Hindus. Yet other scholars state that Muslim invasions, their conquering of Hindu Bhakti temples in south India and seizure/melting of musical instruments such as cymbals from local people, was in part responsible for the later relocation or demise of singing Bhakti traditions in the 18th century.

According to Wendy Doniger, the nature of Bhakti movement may have been affected by the "surrender to god" daily practices of Islam when it arrived in India. In turn it influenced devotional practices in Islam such as Sufism and other religions in India from 15th century onwards, such as Sikhism, Christianity, and Jainism.

Bhakti movement witnessed a surge in Hindu literature in regional languages, particularly in the form of devotional poems and music. This literature includes the writings of the

Several writers developed different philosophies within the Vedanta school of Hinduism, which were influential to the Bhakti tradition in medieval India.

Social impact

The Bhakti movement was a devotional transformation of medieval Hindu society, wherein Vedic rituals or alternatively ascetic monk-like lifestyle for moksha gave way to individualistic loving relationship with a personally defined god. Salvation which was previously considered attainable only by men of Brahmin, Kshatriya and Vaishya castes, became available to everyone Most scholars state that Bhakti movement provided women and members of the Shudra and untouchable communities an inclusive path to spiritual salvation. Some scholars disagree that the Bhakti movement was premised on such social inequalities.

Poet-saints grew in popularity, and literature on devotional songs in regional languages became profuse. These poet-saints championed a wide range of philosophical positions within their society, ranging from theistic dualism of Dvaita to absolute monism of Advaita Vedanta. Kabir, a poet-saint for example, wrote in Upanishadic style, the state of knowing truth:

There's no creation or creator there, no gross or fine, no wind or fire, no sun, moon, earth or water, no radiant form, no time there, no word, no flesh, no faith, no cause and effect, nor any thought of the Veda,

no Hari or Brahma, no Shiva or Shakti, no pilgrimage and no rituals, no mother, father or guru there... Kabir Shabda

Alauddin Khilji reform

Allaudin was the second monarch of the Khilji Dynasty. He was a prominent as a great conqueror amongst the Turk Afghan Sultans. He was an able administrator, who thought of consolidating Muslim supremacy in India. He surpassed his predecessors and many of his successors as regards his achievement and reputation. He was the first to conquer Hindu States of Deccan and it was he who fought against onslaughts of Mongols and under whom power the Mongols were suppressed and crushed. He can be attributed as the fore-runner of Sher Shah and Akbar. Allauddin needed to maintain a large army not only to resist Mongols but also to carry on campaigns of conquest. Besides expense of army, he needed money for administrative purposes. He wanted provision of necessities of life to his soldiers and subjects on fixed prices in order to keep state.

Economic policies of Alauddin can be divided into two:- I) **Agrarian** Reforms II) **Market Policy** Alauddin Khilji's agrarian and market reforms should be seen both in the context of the efforts at the internal restructuration of the Sultanate, as also the need to create a large army to meet the threat of the external Mongol invasion. I) Agrarian Reforms Types of Taxes: The essence of Alauddin's agrarian reforms was to bring the villages in closer association with the government in the area extending from Dipalpur and Lahore to Kara near modern Allahabad. In this region, the villages were to be brought under Khalisa, i.e, land not assigned to any of the nobles as Iqta. Lands assigned in charitable grants were also confiscated and brought under Khalisa. Further, the land revenue in this area was fixed at half of the produce and assessed on the basis of measurement. Apart from Khalisa, no extra cesses were to be levied, except a grazing tax on cattle (charai) and house tax (ghari). Both these taxes had been levied earlier and were traditional. The land revenue was calculated in kind, but demand in cash. For the purpose, the cultivators had either to sell the produce to the banjaras, or take it for sale to the local market.

a) **To Upper Class**: The enforcement of these taxes over a large area of land was a significant contribution of Alauddin. When the Turkish Sultanate consolidated their rule in India, the earlier intermediaries (small chiefs) such as the rai, ranas, etc. disappeared. In place of them, a new set of intermediaries whom Barani called khuts appeared. The privileges of these khuts (also muqaddams and chaudhuris) were curbed by Alauddin through these taxes. Earlier these intermediaries were very wealthy and they rode Arabian and Iraqi horses, wore fine clothes, etc. they often passed on the burden of their share of the land revenue on to the shoulders of the weak. But after Alauddin came to the throne, he not only forced the khuts, muqaddams and chaudhuris to pay the grazing and house taxes but they were also deprived of collecting land revenue. In the exaggerated language of Barani, they were reduced to the level of the balahars, or the lowest of the low in village society. Their women were forced to go and work for wages. Though this might have been exaggerated, Barani words show that the intermediaries became obedient to the king. b) **To the Lower Class** or Cultivators: The cultivators benefitted from these taxes as their burden were also shifted to the upper class. But since Alauddin's market policy was very harsh, the cultivators could hardly see the benefits. The fear of the government was such that the cultivators would sell even their wives and cattle to pay land-revenue.

While reforming the agrarian system, Alauddin tried to ensure the efficient and honest working of the machinery of revenue administration. This was not easy since with the extension of the Khalisa, large number of accountants (mutsarrif), collectors (amils) and agents had to be appointed. Alauddin desired that the accounts of all these officials should be audited strictly by the Naib Wazir and Sharaf Qais. Any mistakes made by them were severely punished. Alauddin was prepared to give them sufficient wages to lead a decent life, but took a serious action of bribery and corruption. Barani says that none of the amils and mutsarrifs could take bribes, and had long been reduced to such a position by hardships,

imprisonment for long period or torture for small outstanding dues that people considered these posts to be worser than fever, and were not prepare to marry their daughters to those who hold these posts. A significant and lasting effect of Alauddin's agrarian reforms was the furthering of the growth of market economy in the villages and bringing about a more integrated relationship between the town and the country.

Alauddin Khilji's **market reforms** were oriented towards administrative and military necessities. But the reforms also helped in many ways, whose effectiveness was a cause of wonder to the contemporaries. Few rulers of the Islamic world were able to control market prices effectively as Alauddin Khilji. He was in fact the first ruler who looked at the problem of price control in a systematic manner, and was able to maintain stable prices for a considerable period. Barani says that Alauddin wanted to institute the market reforms because of two reasons. First, was due to the Mongol Threat. He wanted to recruit a large army to protect against the Mongol invasion. In order to give them a reasonable salary, he controlled the market prices by letting the price to fall. Second, was to impoverish the Hindus so that they would cease to harbor thoughts of rebellion.Alauddin set up three markets in Delhi. a) The food-grains Market b) The cloth, sugar, ghee, oil, dry fruits, etc. market c) The horses, slaves and cattle market

a) The food-grains Market- Alauddin tried to control the supply of food-grains from the villages, its transportation t the city by the grain merchants (banjaras/ karmanis) and its proper distribution to the citizens. These undoubtedly were the three most important aspects in controlling food prices. b) The cloth, sugar, ghee, oil, dry fruits, etc. markets- Alauddin ordered that all cloth brought by the merchants from different part of the country including foreign lands was to be stored and sold only in this market at governmental rates. If any commodity was sold even at a few higher than the official price, it would be confiscated and the official price, it would be confiscated and the seller punished. All the merchants whether Hindu or Muslim, were registered and a deed were taken from them, so that they would bring the same quantities of commodities of commodities to the sarai-adl every year, and sell them at government rates. The rich Multani merchants were given advance money for their trade from the royal treasury. They were also given the power and responsibility for obeying these orders. In order to ensure that costly clothes were not sold outside Delhi for double/ triple prices by the merchants, an official was appointed by the king in order to give permit to the amir or maliks of Delhi to buy the stuffs. c) The horses, slaves and cattle market- The third market dealt with horses, cattle and slaves. The supply of horses of good quality at fair prices was important both for the military department and the soldier. In horse trade, the overland trade was being monopolized by Multanis and Afghans, but they were sold in market by middlemen or dallals. According to Barani, the rich dallals were as powerful as the officials of the market and were shameless in their dealings, resorting to bribery and other corrupt practices. They were always on the lookout for raising the prices of horses.

CONCULISON: Aauddin Khilji's military ambitions required a standing and strong army, especially after the Mongol siege of Delhi. Maintaining a large army at regular salaries, however, would be severe drain on the treasury. A system of price controls reduced the salary amount that needed to be paid. Three separate markets were set up in Delhi. The first one for food grains, the second for cloth and items such as ghee, oil and sugar. The third market was horses, cattle, and slaves. Regulations were laid out for the operations of these markets. He took various steps to control the prices. He exercised supervisions over the market. He fixed the prices of all the commodities from top to bottom. Market officers called shahna were appointed to keep a check on the prices. The defaulters were heavily punished. Land revenue was fixed and the grain was stored in government granaries. These market regulations and stability of prices were the wonders of his age. The soldiers and the civil population were greatly benefitted from these measures due to the low prices of the essential goods.

UNIT-4 - THE CONCEPT OF JUSTICE AND JUDICIAL INSTITUTIONS IN ANCIENT AND MEDIEVAL INDIA

A. **Sources** of law in Ancient India

1. **Smriti** means "what is remembered". With smrutis, a systematic study and teaching of Vedas started. Many sages, from time to time, have written down the concepts given in Vedas. So it can be said that Smrutis are a written memoir of the knowledge of the sages. Immediately after the Vedic period, a need for the regulation of the society arose. Thus, the study of vedas and the incorporation of local culture and customs became important. It is believed that many smrutis were composed in this period and some were reduced into writing, however, not all are known. The smrutis can be divided into two - Early smritis (Dharmasutras) and Later smritis DHARMASUTRAS

The Dharmansutras were written during 800 to 200 BC. They were mostly written in prose form but also contain verses. It is clear that they were meant to be training manuals of sages for teaching students. They incorporate the teachings of Vedas with local customs. They generally bear the names of their authors and sometime also indicate the shakhas to which they belong. Some of the important sages whose dharmasutras are known are : Gautama, Baudhayan, Apastamba, Harita, Vashistha, and Vishnu.They explain the duties of men in various relationship. They do not pretend to be anything other than the work of mortals based on the teachings of Vedas, and the legal decisions given by those who were acquainted with Vedas and local customs.

Gautama - He belonged to Sam veda school and deals exclusively with legal and religious matter. He talks about inheritance, partition, and stridhan.

Baudhayan - He belonged to the Krishna Yajurved school and was probably from Andhra Pradesh. He talks about marriage, sonship, and inheritance. He also refers to various customs of his region such as marriage to maternal uncle's daughter.

Apastamba - His sutra is most preserved. He also belonged to Krishna Yajurveda school from Andhra Pradesh. His language is very clear and forceful. He rejected prajapatya marriage. Vashistha - He was from North India and followed the Rigveda school. He recognized remarriage of virgin widows.

Dharmashastras were mostly in metrical verses and were based of Dharmasutras. However, they were a lot more systematic and clear. They dealt with the subject matter in three parts

Aachara: This includes the theories of religious observances,

Vyavahar: This includes the civil law.

Prayaschitta: This deals with penance and expiation.

While early smrutis deal mainly with Aachara and Prayaschitta, later smrutis mainly dealt with Vyavahar. Out of may dharmashastras, three are most important.

DHARMASHASTRAS

The Dharma Sutras are manuals on correct behavior inspired by the Vedas and which exist in a number of different formats and styles. Many of the numerous verses within the Dharma Sutras consider such topics as appropriate dietary behavior, the duties and rights of kings and rulers, and suitable forms of behavior or people of different ranks in various circumstances. Some sutras were developed and codified into shastras, which are more established frameworks of rules that were used to create Hindu laws.

The principal Dharma Sutra is considered to be the Manusmirti (The Laws of Manu), which was created around 200 c.e. (although probably begun earlier) and consists of 12 chapters with a total of 2,694 verses. The contents range from practical prescriptions for funerary and dietary practices to legal systems and religious strictures. This sutra acted as the law that governed the societies of much of India for a number of centuries. This led to the four-caste conception of society and the social structure that underlay the whole of Hindu society. The fundamental structure of society, therefore, has integrated

within it the notions of hell, heaven, and the proper behavior of the individual as a member within a designated caste.
Another sutra of great influence and prestige was written by Yajnavalkya and has just over 1,000 verses arranged in areas relating to the law, expiation, and methods of good conduct. This makes the canon rather lengthy in nature, and it contains disparate elements that would seem irrational from the Western point of view. However, the Hindu conception of the universe is able to reconcile these elements, so far as they are fully aware of them, into a coherent whole.
The Dharma Sutras are combined with the Srauta Sutras (dealing with sacrificial rituals) and the Grhya Sutras (dealing with domestic rituals) to make up the Kalpa Sutra, which is a manual of religious practice written in a short and aphoristic style that facilitates committing the material to memory. Each school of the Vedas had its own Kalpa Sutra, and each Kalpa Sutra is one of the six vedangas, the canon of religious and philosophical literature, descended from the Vedas. They are created by humans and hence have the name smrti, or “tradition.”

Shruti means "what is heard". It is believed that the rishis and munis had reached the height of spirituality where they were revealed the knowledge of Vedas. Thus, shrutis include the four vedas - rig, yajur, sam, and athrava along with their brahmanas. The Brahmanas are like the apendices to the Vedas. Vedas primarily contain theories about sacrifices, rituals, and customs. Some people believe that Vedas contain no specific laws, while some believe that the laws have to be inferred from the complete text of the Vedas. Vedas do refer to certain rights and duties, forms of marriage, requirement of a son, exclusion of women from inheritance, and partition but these are not very clear cut laws.
During the vedic period, the society was divided into varns and life was divided into ashramas. The concept of karma came into existence during this time. A person will get rewarded as per his karma. He can attain salvation through "knowledge". During this period the varna system became quite strong. Since vedas had a divine origin, the society was governed as per the theories given in vedas and they are considered to be the fundamental source of Hindu law. Shrutis basically describe the life of the Vedic people.
The vedic period is assumed to be between 4000 to 1000 BC. During this time, several pre-smriti sutras and gathas were composed. However, not much is known about them today. It is believed that various rishis and munis incorporated local customs into Dharma and thus multiple "shakhas" came into existence.

MANUSMRITI
This is the earliest and most important of all. It is not only defined the way of life in India but is also well know in Java, Bali, and Sumatra. The name of the real author is not known because the author has written it under the mythical name of Manu, who is considered to the the first human. This was probably done to increase its importance due to divine origin. Manusmriti compiles all the laws that were scattered in pre-smriti sutras and gathas. He was a brahman protagonist and was particularly harsh on women and sudras. He holds local customs to be most important. He directs the king to obey the customs but tries to cloak the king with divinity. He gives importance to the principle of 'danda' which forces everybody to follow the law.
Manusmriti was composed in 200 BC.
There have been several commentaries on this smruti. The main ones are: Kalluka's Manavarthmuktavali, Meghthithi's Manubhashya, and Govindraja's Manutika.
Yajnavalkya Smriti
Though written after Manusmruti, this is a very important smruti. Its language is very direct and clear. It is also a lot more logical. He also gives a lot of importance to customs but hold the king to be below the law. He considers law to be the king of kings and the king to be only an enforcer of the law. He did not

deal much with religion and morality but mostly with civil law. It includes most of the points given in Manusmriti but also differs on many points such as position of women and sudras. He was more liberal than Manu.
This was composed in around 0 BC.
Vijnaneshwar's commentary 'Mitakshara' on this smruti, is the most important legal treatise followed almost everywhere in India except in West Bengal and Orissa. Narada Smriti
Narada was from Nepal and this smriti is well preserved and its complete text is available. This is the only smriti that does not deal with religion and morality at all but concentrates only on civil law. This is very logical and precise. In general, it is based on Manusmriti and Yajnavalkya smriti but differ on many points due to changes in social structure. He also gives a lot of importance to customs.
This was composed in 200 AD.

Commentaries and Digests..
After 200 AD, most the of work was done only on the existing material given in Smrutis. The work done to explain a particular smriti is called a commentary. Commentaries were composed in the period immediately after 200 AD. Digests were mainly written after that and incorporated and explained material from all the smruitis. As noted ealier, some of the commentaries were, manubhashya, manutika, and mitakshara. While the most important digest is Jimutvahan's Dayabhag that is applicable in the Bengal and Orissa area. Mitakshara literally means 'New Word' and is paramount source of law in all of India. It is also considered important in Bengal and orissa where it relents only where it differs from Dayabhaga. It is a very exhaustive treaties of law and incorporates and irons out contradicts existing in smritis. The basic objective of these texts was to gather the scattered material available in preceeding texts and present a unified view for the benefit of the society. Thus, digests were very logical and to the point in their approach. Various digests have been composed from 700 to 1700 AD.

Customs..
Most of the Hindu law is based on customs and practices followed by the people all across the country. Even smrutis have given importance to customs. They have held customs as transcendent law and have advised the Kings to give decisions based on customs after due religious consideration. Customs are of four types:
Local Customs - These are the customs that are followed in a given geographical area. In the case of Subbane vs Nawab, Privy Council observed that a custom gets it force due to the fact that due to its observation for a long time in a locality, it has obtained the force of law.
Family Customs - These are the customs that are followed by a family from a long time. These are applicable to families where ever they live. They can be more easily abandoned that other customs. In the case of Soorendranath vs Heeramonie and Bikal vs Manjura, Privy Council observed that customs followed by a family have long been recognized as Hindu law.
Caste and Community Customs - These are the customs that are followed by a particular cast or community. It is binding on the members of that community or caste. By far, this is one of the most important source of laws. For example, most of the law in Punjab belongs to this type. Custom to marry brother's widow among the Jats is also of this type.
Guild Customs - These are the customs that are followed by traders.
Requirements for a **valid custom**
Ancient : Ideally, a custom is valid if it has been followed from hundreds of years. There is no definition of ancientness, however, 40 yrs has been determined to be a ancient enough. A custom cannot come into existence by agreement. It has to be existing from long before. Thus, a new custom cannot be recognized. Therefore, a new form of Hindu marriage was not recognized in Tamil Nadu. In the case of Rajothi vs Selliah, a Self Respecter’s Cult started a movement under which traditional ceremonies were

substituted with simple ceremonies for marriage that did not involve Shastric rites. HC held that in modern times, no one is free to create a law or custom, since that is a function of legislature.
Continuous: It is important that the custom is being followed continuously and has not been abandoned. Thus, a custom may be 400 yrs old but once abandoned, it cannot be revived.
Certain: The custom should be very clear in terms of what it entails. Any amount of vagueness will cause confusion and thus the custom will be invalid. The one alleging a custom must prove exactly what it is.
Reasonable: There must be some reasonableness and fairness in the custom. Though what is reasonable depends on the current time and social values.
Not against morality: It should not be morally wrong or repugnant. For example, a custom to marry one's granddaughter has been held invalid. In the case of Chitty vs. Chitty 1894, a custom that permits divorce by mutual consent and by payment of expenses of marriage by one party to another was held to be not immoral. In the case of Gopikrishna vs. Mst Jagoo 1936 a custom that dissolves the marriage and permits a wife to remarry upon abandonment and desertion of husband was held to be not immoral.
Not against public policy: If a custom is against the general good of the society, it is held invalid. For example, adoption of girl child by nautch girls has been held invalid. In the case of Mathur vs Esa, a custom among dancing women permitting them to adopt one or more girls was held to be void because it was against public policy.
Not against any law: If a custom is against any statutory law, it is invalid. Codification of Hindu law has abrogated most of the customs except the ones that are expressly saved. In the case of Prakash vs Parmeshwari, it was held that law mean statutory law.
Proof of Custom
The burden of proving a custom is on the person who alleges it. Usually, customs are proved by instances. In the case of Prakash vs Parmeshwari, it was held that one instance does not prove a custom. However, in the case of Ujagar vs Jeo, it was held that if a custom has been brought to notice of the court repeated, no further proof is required. existence of a custom can also be proved through documentary evidence such as in Riwaz-i-am. Several treaties exist that detail customary laws of Punjab.

Usage and Custom
The term custom and usage is commonly used in commercial law, but "custom" and "usage" can be distinguished. A usage is a repetition of acts whereas custom is the law or general rule that arises from such repetition. A usage may exist without a custom, but a custom cannot arise without a usage accompanying it or preceding it. Usage derives its authority from the assent of the parties to a transaction and is applicable only to consensual arrangements. Custom derives its authority from its adoption into the law and is binding regardless of any acts of assent by the parties. In modern law, however, the two principles are often merged into one by the courts.

ARTHASHASTRA AS A SOURCE
Arthashastra remains unique in all of Indian literature because of its total absence of specious reasoning, or its unabashed advocacy of realpolitik, and scholars continued to study it for its clear cut arguments and formal prose till the twelfth century. Espionage and the liberal use of provocative agents is recommended on a large scale. Murder and false accusations were to be used by a king's secret agents without any thoughts to morals or ethics. There are chapters for kings to help them keep in check the premature ambitions of their sons, and likewise chapters intended to help princes to thwart their fathers' domineering authority. However, Kautilya ruefully admits that it is just as difficult to detect an official's dishonesty as it is to discover how much water is drunk by the swimming fish.
Kautilya helped the young Chandragupta Maurya, who was a Vaishya, to ascend to the Nanda throne in

321 BC. Kautilya's counsel is particularly remarkable because the young Maurya's supporters were not as well armed as the Nandas. Kautilya continued to help Chandragupta Maurya in his campaigns and his influence was crucial in consolidating the great Mauryan empire. He has often been likened to Machiavelli by political theorists, and the name of Chanakya is still reminiscent of a vastly scheming and clever political adviser. In very recent years, Indian state television, or Doordarshan as it is known, commissioned and screened a television serial on the life and intrigues of Chanakya.

A strong foundation is the key to any successful business. Your vision, your commitment, your purpose - all form the basis for an organisation. They are the all-important pillars, the most essential part of any building. In his groundbreaking Arthashastra, Chanakya (Kautilya) (c. 350 - 283 BCE) lists seven pillars for an organisation.

"The king, the minister, the country, the fortified city, the treasury, the army and the ally are the constituent elements of the state".

Let us now take a closer look at each of them:

1. THE KING (The leader)

All great organisations have great leaders. The leader is the visionary, the captain, the man who guides the organisation. In today's corporate world we call him the Director, CEO, etc. Without him we will loose direction.

2. THE MINISTER (The manager)

The manager is the person who runs the show - the second-in-command of an organisation. He is also the person whom you can depend upon in the absence of the leader. He is the man who is always in action. An extra ordinary leader and an efficient manager together bring into existence a remarkable organisation.

3. THE COUNTRY (Your market)

No business can exist without its market capitalisation. It is the area of your operation. The place from where you get your revenue and cash flow. You basically dominate this territory and would like to keep your monopoly in this segment.

4. THE FORTIFID CITY (Head office)

You need a control tower - a place from where all planning and strategies are made. It's from here that your central administrative work is done. It's the nucleus and the center of any organisation.

5. THE TREASURY

Finance is an extremely important resource. It is the backbone of any business. A strong and well-managed treasury is the heart of any organisation. Your treasury is also your financial hub.

6. THE ARMY (Your team)

When we go to war, we need a well-equipped and trained army. The army consists of your team members. Those who are ready to fight for the organisation. The salesmen, the accountant, the driver, the peon - all of them add to your team.

7. THE ALLY (friend / consultant)

In life you should have a friend who is just like you. Being, in the same boat, he can identify with you and stay close. He is the one whom you can depend upon when problems arise. After all, a friend in need is a friend in deed.

Look at these seven pillars. Only when these are built into firm and strong sections can the organisation shoulder any responsibility and face all challenges.

And while building them, do not forget to imbibe that vital ingredient called values, speaking about which, in his book 'Build to last', Jim Collins has said, "Values are the roots from where an organisation continuously gets its supply as well as grounding-build on them!"

TYPES OF **COURTS**

COURTS OF LAW

From the description given in the historians sections, it has been seen that during the pre-Mughal period the judiciaries and their designations were not always the same. They were different with different designations under different monarchs. But the Qazi, Mufti and Muhtasib were the permanent limbs of the judicial machinery. In addition to these judicial officers, India had Mir-i-'Adl, Shiqrtdr, Munsif, Did-bdk, Diwan, and Qfai-ul-Quzdt who were included within the official category of Arkdn-i-Daulat. Similarly, the judicial tribunals were not the same during the pre- Mughal period. It appears that two kinds of tribunals

As regards non-Muslims Hindus, Buddhists, etc., they were subject to the tribunals of the country, but the cases which involved their personal law, were decided by the Court of Common Law assisted by the learned men of their respective community, just as the Court of Canon Law was assisted by the Mufti.

During the reign of Sher Shah the two kinds of tribunals assumed a distinct character. The judicial reforms introduced by him had a marked effect upon the constitution of the courts. It appears that Sher Shah did not much favour the old system of administration of justice by the Qazis only. He issued comprehensive instructions for the constitution of the court and guidance of the judicial officers. His farmans led to the differentiation of the two classes of courts. As pointed out by Al-Badayuni his regulations concerning religious matters and civil admini-stration" were written in these documents (farmans) whether agreeable to the Religious Law or not; so that there was no necessity to refer any such matter to the Qazi or Mufti, nor was it proper to do so. "Thus the functions of the two sets of tribunals were made distinct, and the administration of Muslim law was greatly modified. Further, the powers and jurisdiction of the Court of Canon Law were restricted to particular classes of cases. From the farmans it also appears that Sher Shah used to select talented men as judges whether they were Ulamas or not. Consequently, the civil judges of this period were not necessarily Canon Lawyers.

The judicial reforms were first initiated by Sultan Sikandar Lodi. They were given effect to by Shershah. But Shershah had his own scheme of administrative and judicial reforms, and he took bold steps to carry them out.

Below in a tabular form the name of the tribunals and the designation of the presiding officers so that the reader may see at a glance what sort of **judicial** machinery existed before the Mughal period.

A. During the Reigns of the Slave, Khalji, Tuyhlaq and Lodi Dynasties.

Tribunal and Presiding Officer.

1. The Royal Court ... The Sultan.
2. The Chief Court of The Mir-i-'Adl. Justice.
3. The Court of the Chief The Qazi-ul-Quzat. Qazi.
4. The Subordinate Court of The Qazi. Canon Law.
5. The Subordinate Court of The 'Adi or adili. Common Law.

B. During the Reign of Sher Shah.

Tribunal and Presiding Officer.

1. The Court of the Sultan The Sovereign.
2. The Chief Civil Court ... The Munsif -i-Munsif an (Chief Munsif).
3. The Chief Criminal The Shiqdar-i-Shiqddr- Court. an (Chief Shiqddr).
4 The Civil Court of Common- The Munsif.
5. The Criminal Court of The Shiqdar.
6. The Court of Canon Law The Qazis.

Appeal lay from the Subordinate Courts to the Chief Civil and Criminal Courts respectively and there from to the Royal Court .

The period of the Great Mugals was the Golden Age of India. It was the period of pomp, power and

glory, when the prosperity of the country rose to the zenith. The general features of the Mughal Administration had several characteristics of which four may be noticed : First, a strong and well-organized Government contributing to peace and order ; secondly, a highly centralized form of Government with an extensive administrative machinery ; thirdly, an age of Renaissance in Art and Literature ; and fourthly, an Empire of Unity in which different racial elements were more or less reconciled and contributed their skill, ability and wisdom to make the Government prosperous. Volumes can be written on each of these points, but as the scope of this book is limited, I am obliged to confine myself only to the judicial administration of the period.

B. MANUSMRITI

This is the earliest and most important of all. It is not only defined the way of life in India but is also well know in Java, Bali, and Sumatra. The name of the real author is not known because the author has written it under the mythical name of Manu, who is considered to the the first human. This was probably done to increase its importance due to divine origin. Manusmriti compiles all the laws that were scattered in pre-smriti sutras and gathas. He was a brahman protagonist and was particularly harsh on women and sudras. He holds local customs to be most important. He directs the king to obey the customs but tries to cloak the king with divinity. He gives importance to the principle of 'danda' which forces everybody to follow the law.

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Vijnaneshwar's commentary 'Mitakshara' on this smruti, is the most important legal treatise followed almost everywhere in India except in West Bengal and Orissa.

SOURCES OF ISLAMIC LAW

In the eighth century, a difference in legal approach arose amongst Islamic thinkers in two prevailing schools of legal thought. The traditionalists (ahlal-hadith) relied solely on the Quran and the sunna (traditions) of the Prophet as the only valid sources for jurisprudence, such as the prevailing thought emanating from Medina. The non-traditional approach (ahlal-ray) relied on the free use of reasoning and opinion in the absence of reliable ahadith, which was heralded in Iraq. The reason for the difference in technique is that in Medina, there was an abundance of reliable ahadith that scholars could depend on for forming legislation, since the Prophet lived the last ten years of his life during a period of legislation in the young Muslim community. In Iraq, the sources that were available were not as reliable as in Medina and so the jurists had to turn to analogy because of their circumstances. Therefore, a hadith may have been accepted by Malik (from Medina) and not by Abu Hanifa (from Iraq) who had to use analogy in the absence of reliable hadith. A challenge that jurists had to reconcile was which of the Prophet’s actions and decisions were religiously binding and which were merely a function of personal discretion of the Prophet. In general, ahlal-hadith eventually lent legislative significance to much of the Prophet’s decisions, whereas other schools tended to distinguish between the various roles that the Prophet played in his life.

Muhammad ibn Idris al-Shafi'i was concerned about the variety of doctrine and sought to limit the

sources of law and establish a common methodology for all schools of Islamic law.3 His efforts resulted in the systemization of usulal-fiqh, the following four sources of Islamic law:
The Quran;
The sunna or tradition of the Prophet;
Qiyas or analogies;
Ijma or unanimous agreement.

The **Quran**
Is a plain statement to mankind, a guidance and instruction to those who fear God. God revealed the Quran in Arabic through the Angel Gabriel to Prophet Muhammad over a period of 23 years. For ten years in Mecca and 13 years in Medina the Quran taught the oneness of God and guided believers to the path of morality and justice. As the Muslim community grew and its needs became more complex, the Quran addressed those issues and tried to replace old tribal customs with more just reforms. For example, the Quran outlawed prevalent customs such as idolatry, gambling, liquor, promiscuity, unbridled polygamy, usury, etc. It also improved the status of women by proclaiming women's equality to men and providing women with decreed rights in the areas of marriage, divorce and inheritance. The sharia, foundations of Islamic law, are derived from verses from the Quran. "The bulk of Quranic matter consists mainly of broad, general moral directives as to what the aims and aspirations of Muslims should be, the 'ought' of the Islamic religious ethic." Because many of the directives in the Quran are so broad, interpretation takes on such a significant role. There have been so many different interpretations of the Quran, claims widely read and revered Islamic thinker Abul Aala Maududi, that "there is hardly to be found any command with an agreed interpretation." And that doesn't just refer to modern scholars, but also includes the founding schools of thought and even the companions of the Prophet, who "did not all agree in every detail in regard to Commands and Prohibitions." Nevertheless, the authenticity of the Quran has never been questioned by any Muslim scholar or institution.
Sunna of the Prophet
You have indeed in the Apostle of God a beautiful pattern of conduct for anyone whose hope is in God and the Final Day (33:21). As the last messenger of God, Muhammad (570-632) brought the Quranic teachings to life through his interpretation and implementation as leader of the Muslim community. The sunna of the Prophet generally means "tradition" and includes the following three categories: sayings of the Prophet; his deeds; and his silent or tacit approval of certain acts which he had knowledge of. The record of the Prophet's words and deeds were recorded in narrative ahadith, reports that were transmitted before finally being compiled in authoritative collections decades after the death of the Prophet. (For more discussion about hadith, see next section, "The Role of Hadith.") In the first centuries of Islam, "it should finally be stressed that there was no suggestion, at this stage, that the Prophet was other than a human interpreter of the divine revelation; his authority lay in the fact that he was the closest, in time and spirit, to the Quran and as such was the ultimate starting-point of the Islamic sunna."
Qiyas or analogy
The third source of law, qiyas, is reasoning by analogy. In order to apply qiyas to similar cases, the reason or cause of the Islamic rule must be clear. For example, because the Quran clearly explains the reason that consumption of alcohol is prohibited (because it makes the user lose control of his actions), an analogy can be drawn to drugs which induce the same affect. But because the Quran does not specifically state the reason why pork is prohibited, Muslims cannot justify banning another meat product with a similar cholesterol level, etc. The use of analogies greatly varied among scholars; for example, Spain's Ibn Hazm (10th century) who was formidable proponent of the Zahiri school, rejected the use of qiyas, whereas Imam Abu Hanifa of the Hanafi school (8th century) applied them extensively.
Ijma or unanimous agreement
Ijma constitutes the unanimous agreement of a group of jurists of a particular age on a specific issue and

constitutes the fourth and final source of law in Shafis methodology. If questions arose about a Quranic interpretation or an issue where no there no guidance from either the Quran or sunna, jurists applied their own reasoning (ijtihad) to come to an interpretation. Through time, "one interpretation would be accepted by more and more doctors of law. Looking back in time at the evolved consensus of the scholars, it could be concluded that an ijma of scholars had been reached on this issue." 8 Unfortunately, unanimous agreement rarely happened among intellectual elite and since there were always diverse opinions, one could always find several scholars of the day who concurred on an issue. Also, the definition of ijma and which ijma would be considered valid was a point of contention, because ijma is not simply the consensus of all past jurists. Besides, using the concept of ijma poses the problem of having to look to the past to solve the problems of the future, and scholars of yesteryear didn't wrestle the same issues that are challenging Muslims today.

C. SALIENT **FEATURES** OF ISLAMIC CRIMINAL LAW

Islamic criminal law is criminal law in accordance with Islamic law. Strictly speaking, Islamic law does not have a distinct corpus of "criminal law," as sharia courts do not have prosecutors, and all matters, even criminal ones, are in principle handled as disputes between individuals.

As opposed to other legal systems, in which crimes are generally considered violations of the rights of the state, Islamic law divides crimes into four different categories depending on the nature of the right violated:

A. Hadd: violation of a boundary of God.
B. Tazir: violation of the right of an individual.
C. Qisas: violation of the mixed right of God and of an individual in which the right of the individual is deemed to predominate.
D. Siyasah: violation of the right of the state.

Crimes --

Hadd (Boundary) meaning "limits", is the most serious category and includes crimes specified in the Quran.

These are:

Drinking alcohol (sharb al-khamr), Theft (as-sariqah), Highway robbery (qataat-tariyq), Illegal sexual intercourse (az-zina) Fornication, False accusation of illegal sexual intercourse (qadhf), Apostasy (irtidād or ridda), - includes blasphemy.

The Shafii school of Islamic jurisprudence does not include highway robbery. The Hanafi school does not include rebellion and heresy.

Except for drinking alcohol, punishments for all hudud crimes are specified in the Quran or Hadith: stoning-Hadith, amputation and flogging.

Amputation

The **punishment** for stealing is the amputation of the hand and after repeated offense, the foot. This practice is still used today in countries like Iran, Saudi Arabia, and Northern Nigeria. In Iran, amputation as punishment has been described as "uncommon", but "not unheard of, and has already been carried out at least once" during 2010.

Qisas

Qisas is the Islamic principle of an eye for an eye. This category includes the crimes of murder and battery.

Punishment is either exact retribution or compensation (Diyya).

The issue of qisas gained considerable attention in the Western media in 2009 when Ameneh Bahrami, an Iranian woman blinded in an acid attack, demanded that her attacker be blinded as well.

Diyya

Diyya is **compensation** paid to the heirs of a victim. In Arabic the word means both blood money and ransom.

The Quran specifies the principle of Qisas (i.e. retaliation), but prescribes that one should seek compensation (Diyya) and not demand retribution.

We have prescribed for thee therein 'a life for a life, and an eye for an eye, and a nose for a nose, and an ear for an ear, and a tooth for a tooth, and for wounds retaliation;' but who so remits it, it is an expiation for him, but he who so will not judge by what God has revealed, these be the unjust.

Tazir

Tazir includes any crime that does not fit into Hudud or Qisas and which therefore has no punishment specified in the Quran. These types of crimes range from homosexuality to perjury to treason.

SOCIOLOGY (109)

SOCIOLOGY- I

UNIT I: INTRODUCTION TO SOCIOLOGY

A) DEFINITION, GROWTH AND SCOPE:

'**Sociology**' which had once been treated as social philosophy, or the philosophy of the history, emerged as an independent social science in 19th century. **AugusteComte**, a Frenchman, is traditionally considered to be the father of sociology. Comte is accredited with the coining of the term sociology (in 1839). "Sociology" is composed of two words: **Socius**, meaning companion or associate; and '**logos**', meaning **science or study**. The etymological meaning of "sociology" is thus the science of society. John Stuart Mill, another social thinker and philosopher of the 19th century, proposed the word ethnology for this new science. Herbert Spencer developed his systematic study of society and adopted the word "sociology" in his works. With the contributions of Spencer and others it (sociology) became the permanent name of the new science. The question 'what is sociology' is indeed, a question pertaining to the definition of sociology. No student can rightfully be expected to enter on a field of study which is totally undefined or unbounded. At the same time, it is not an easy task to set some fixed limits to a field of study. It is true in the case of sociology. Hence it is difficult to give a brief and a comprehensive definition of sociology. Sociology has been defined in a number of ways by different sociologists. No single definition has yet been accepted as completely satisfactory. In fact, there are a lot of definitions of sociology as there are sociologists. For our purpose of study a few definitions may be cited here.

Auguste Comte, the founding father of sociology, defines sociology as the science of social phenomena "subject to natural and invariable laws, the discovery of which is the object of investigation".

Kingsley Davis says that "Sociology is a general science of society".

Harry M. Johnson opines that "sociology is the science that deals with social groups".

Emile Durkheim: "Science of social institutions".

Max Weber defines sociology as "the science which attempts the interpretative understanding of social action in order thereby to arrive at a casual explanation of its course and effects".

Morris Ginsberg: of the various definitions of sociology the one given by Morris Ginsberg seems to be more satisfactory and comprehensive. He defines sociology in the following way: "In the broadest sense, sociology is the study of human interactions and inter-relations, their conditions and consequences".
A careful examination of various definitions cited above, makes it evident that sociologists differ in their opinion about definition of sociology. Their divergent views about the definition of sociology only reveal their distinct approaches to its study. However, the common idea underlying all the definitions mentioned above is that sociology is concerned with man, his social relations and his society.

***SCOPE OF SOCIOLOGY*:**

Every Science has its own areas of inquiry. It becomes difficult for anyone to study a science systematically unless its boundaries are demarcated and scope determined precisely. Unfortunately there is no consensus on the part of sociologist with regard to the scope of sociology.

V.F Calberton comments**: "Since sociology is so elastic a science, it is difficult to determine just where its boundaries began and end.**

The two main school of sociology are:

1) Specialistic or formalistic school of thoughts.
2) The synthetic school.

Ever science the beginning of sociology, sociologists has shown a great concern in man and the dynamic of society. The emphasis has been oscillating between man and society. "Sometimes the emphasis was on man in society, at other times, it was on man in society. But at no stage of its development, man as an individual was its focus of attention. On the contrary, sociology concentrated heavily on society and its major units and their dynamics. It has been striving to analyze the dynamics of the society in terms of organized patterns of social relations. It may be said that sociology seeks to find explanations for three basic questions: How and why societies emerge? How and why societies persist? How and why societies change?

An all-embracive and expanding science like sociology is growing at a fast rate no doubt. It is quite natural that sociologists have developed different approaches from the time to time in their attempts to enrich its study. Still it is possible to identify some which constitute the subject matter of sociology on which there is little disagreement among the sociologists. Such topics and areas broadly constitute the field of sociology. A general outline of the fields of sociology on which there is considerable agreement among sociologists could be given here.

Firstly, the major concern of sociology is sociological analysis. It means the sociologist seeks to provide an analysis of human society and culture with a sociological perspective. He evinces his interest in the evolution of society and tries to reconstruct the major stages in the evolutionary process. An attempt is also made "to analyze the factors and forces underlying historical transformations of society". Due importance is given to the scientific method that is adopted in the sociological analysis.

Secondly, sociology has given sufficient attention to the study of primary units of social life. In this area, it is concerned with social acts and social relationships, individual personality, groups of all varieties, communities (urban, rural, and tribal), associations, organizations and populations.

Thirdly, sociology has been concerned with the development, structure and function of a wide variety of basic social institutions such as the family andkinship, property and religion, economic, political, legal, educational and scientific, recreational and welfare, aesthetic and expressive institutions.

Fourthly, no sociologist can afford to ignore the fundamental social processes that play a vital role. The social process such as co-operation and competition, accommodation and assimilation, social conflict including war and revolution; communication including opinion formation expression and change; social differentiation and stratification, socialization and indoctrination, social control and deviance including crime, suicide, social integration and social change assume prominence in sociological studies.

Fifthly, sociology has placed high premium on the method of research also. Contemporary sociology has tended to become more and more rational and empirical rather than philosophical and idealistic. Sociologists have sought the application of scientific method in social researches. Like a natural scientist, a sociologist senses a problem for investigation. He then tries to formulate it into a researchable proposition. After collecting the data he tries to establish connections between them. He finally arrives at meaningful concepts, propositions and generalizations.
Sixthly, sociologists are concerned with a task of "formulating concepts, propositions and theories". "Concepts are abstract from concrete experience to represent a class of phenomena". For example, terms such as social stratification, differentiation, conformity, deviance etc., represent concepts. A proposition "seeks to reflect a relationship between different categories of data or concepts". For example "lower-class youths are more likely to commit crimes than middle-class youths". This preposition is debatable. It may be proved to be false. To take another example, it could be said that "taking advantage of opportunities of higher education and occupational mobility leads to the weakening of the ties of kinship and territorial loyalties". Though this preposition sounds debatable, it has been established after careful observations, inquiry and collection of relevant data. Theories go beyond concepts and propositions. "Theories represent systematically related propositions that explain social phenomena". Sociological theories are mostly rooted in factual than philosophical. Thesociological perspective becomes more meaningful and fruitful when one tries to derive insight from concepts, propositions and theories.

Finally, in the present era of explosion of knowledge sociologists have ventured to make specializations also. Thus, today good number of specialized fields of inquiry are emerging out. Sociology of knowledge, sociology of history, sociology of literature, sociology of culture, sociology of religion, sociology of family etc., represent such specialised fields., The field of sociological inquiry is so vast that any student of sociology equipped with genius and rich sociological imagination can add new dimensions to the discipline of sociology as a whole.

EMINENT SOCIOLOGISTS:

EMILE DURKHIEM:

David Émile Durkheim (April 15, 1858 – November 15, 1917) was a French sociologist. He formally established the academic discipline and, with Karl Marx and Max Weber, is commonly cited as the principal architect of modern social science and father of sociology.
Much of Durkheim's work was concerned with how societies could maintain their integrity and coherence inmodernity; an era in which traditional social and religious ties are no longer assumed, and in which new social institutions have come into being. His first major sociological work was *The Division of Labor in Society* (1893). In 1895, he published his *Rules of the Sociological Method* and set up the first European department of sociology, becoming France's first professor of sociology.[4] In 1898, he established the journal *L'AnnéeSociologique*. Durkheim's seminal monograph, *Suicide* (1897), a study of suicide rates in Catholic and Protestant populations, pioneered modern social research and served to distinguish social science from psychology and political philosophy. *The Elementary Forms of Religious Life* (1912), presented a theory of religion, comparing the social and cultural lives of aboriginal and modern societies.
Durkheim was also deeply preoccupied with the acceptance of sociology as a legitimate science. He refined the positivism originally set forth by Auguste Comte, promoting what could be considered as a form of epistemological realism, as well as the use of the hypothetico-deductive model in social science. For him, sociology was the science of institutions if this term is understood in its broader meaning as

"beliefs and modes of behaviour instituted by the collectivity"and its aim being to discover structural social facts. Durkheim was a major proponent of structural functionalism, a foundational perspective in both sociology and anthropology. In his view, social science should be purely holisticthat is, sociology should study phenomena attributed to society at large, rather than being limited to the specific actions of individuals.
He remained a dominant force in French intellectual life until his death in 1917, presenting numerous lectures and published works on a variety of topics, including the sociology of knowledge, morality, social stratification, religion, law, education, and deviance. Durkheim's terms such as "**collective consciousness**" have since entered the popular lexicon.

To give sociology a place in the academic world and to ensure that it is a legitimate science, it must have an object that is clear and distinct from philosophy or psychology, and its own methodology. There is in every society a certain group of phenomena which may be differentiated from those studied by the other natural sciences. A fundamental aim of sociology is to discover structural "social facts".
Establishment of sociology as an independent, recognized academic discipline is amongst Durkheim's largest and most lasting legacies. Within sociology, his work has significantly influenced structuralism or structural functionalism.

MAX WEBER:

Max Weber (April 21, 1864, Erfurt, Prussia [now Germany]—died June 14, 1920, Munich, Germany), German sociologist and political economist best known for his thesis of the "Protestant ethic," relating Protestantism to capitalism, and for his ideas onbureaucracy. Weber's profound influence on sociological theory stems from his demand for objectivity in scholarship and from his analysis of the motives behind human action. Weber was the eldest son of Max and Helene Weber. His father was an aspiring liberal politician who soon joined the more compliant, pro-Bismarckian "National-Liberals" and moved the family from Erfurt to Berlin, where he became a member of the Prussian House of Deputies (1868–97) and the Reichstag (1872–84). The elder Weber established himself as a fixture of the Berlin social milieu and entertained prominent politicians and scholars in the Weber household.
Weber spent most of his formative academic years in his childhood home, where he was continually subject to his parents' conflicting interests. Since he spent his mid- and late 20s working simultaneously in two unpaid apprenticeships—as a lawyer's assistant and as a university assistant—he could not afford to live on his own until the autumn of 1893. At that time he received a temporary position teaching jurisprudence at the University of Berlin and married Marianne Schnitger, a second cousin.
After his marriage Weber followed a compulsive work regimen that he had begun after his return to Berlin in 1884. Only through such disciplined labour, believed Weber, could he stave off a natural tendency to self-indulgence and laziness, which could lead to an emotional and spiritual crisis.
Weber's great capacity for disciplined intellectual effort, together with his unquestionable brilliance, led to his meteoric professional advance. One year after his appointment at Berlin, he became a full professor in political economy at Freiburg, and the following year (1896) he attained that position at Heidelberg. Following his doctoral and postdoctoral theses on the agrarian history of ancient Rome and the evolution of medieval trading societies, respectively, Weber wrote a comprehensive analysis of the agrarian problems of eastern Germany for one of the country's most important academic societies, the Union for Social Policy (1890).

AUGUSTE COMTE

Isidore Marie Auguste François Xavier Comte (19 January 1798 – 5 September 1857) was a French philosopher and writer who formulated the doctrine of positivism. He is often regarded as the first philosopher of science in the modern sense of the term. Comte is also seen as the founder of the academic discipline of sociology.

Influenced by the utopian socialist Henri Saint-Simon, Comte developed the *positive philosophy* in an attempt to remedy the social malaise of the French Revolution, calling for a new social doctrine based on the sciences. Comte was a major influence on 19th-century thought, influencing the work of social thinkers such as Karl Marx, John Stuart Mill, and George Eliot. His conceptof *sociologie* and social evolutionism set the tone for early social theorists and anthropologists such as Harriet Martineau and Herbert Spencer, evolving into modern academic sociology presented by Émile Durkheim as practical and objective social research.Comte's social theories culminated in his "Religion of Humanity", which presaged the development of non-theistic religious humanist and secular humanist organizations in the 19th century.

B) RELATIONSHIP WITH LAW

The **sociology of law** (or **legal sociology**) is often described as a sub-discipline of sociology or an interdisciplinary approach within legal studies. Some see sociology of law as belonging "necessarily" to the field of sociology, but others tend to consider it a field of research caught up between the disciplines of law and sociology. Still others regard it neither a sub-discipline of sociology nor a branch of legal studies but as a field of research on its own right within the broader social science tradition. Accordingly, it may be described without reference to mainstream sociology as "the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience". It has been seen as treating law and justice as fundamental institutions of the basic structure of society mediating "between political and economic interests, between culture and the normative order of society, establishing and maintaining interdependence, and constituting themselves as sources of consensus, coercion and social control".

Criminology refers to “the study of criminal behavior” of man. The French anthropologist P. Topinard seems to be the first man to use the term criminology in his writings towards the end of the 19th century.Criminology refers to “the study of criminal behavior of man. The French anthropologist P. Topinard seems to be the first man to use the term criminology in his writings towards the end of the 19th century. However several studies in penology and the treatment of offenders had been made still earlier. Even studies on crime were also made earlier.

“Scientific study of law breaking and serious attempts to uncover the causes of criminality has usually taken place within an area of study called “criminology”, which is concerned with the objective analysis of crime as a social phenomenon. “**Criminology includes within its scope inquiry into the process of making laws, breaking laws, and reacting to the breaking of laws”- Don C. Gibbons**

C) LAW AS A TOOLOF SOCIAL ENGINEERING

According to Pound, sociological jurisprudence should ensure that the making, interpretation and application of laws take account of social facts. Pound linked the task of the lawyer to engineering. The aim of social engineering is to build a scientific structure of society as possible, which requires the satisfaction of the maximum of wants and with the minimum of friction and waste. It is the task of the jurist to assist the country by identifying and classifying the interests to be protected by law.

Roscoe Pound's social engineering theory is the American correlative to the German jurisprudence of interests. Roscoe Pound described the task of modern law as social engineering. By social engineering he meant the balancing of competing interests in society. He observed: "Law is the body of knowledge and experience with the aid of which a large part of social engineering is carried on. It is more than body of rules. It has conceptions and standards for conduct and for decision, but it has also doctrines and modes of professional thought and professional rules of art by which the precepts for conduct and decision are applied and given effect. Like an engineer's formulae, they represent experience, scientific formulations of experience and logical development of the formulations, but also inventive skill in conceiving new devices and formulating their requirements by means of a developed technique."

Jurisprudence thus becomes a science of social engineering which means a balance between the competing interests in a society. Pound entrusts the jurist with a commission. He lays down a method which a jurist shall follow for social engineering. He should study the actual social effects of legal institution and legal doctrines, study the means of making legal rules effective, sociological study in preparation for law making, study of juridical method, a sociological legal history.

Pound's theory is that the interests are the main subject matter of law and the task of the law is the satisfaction of human wants and desires. It is the function of law to make a 'valuation of interests', in other words to make a selection of socially more valuable interests and to secure them. This all is nothing more than an experiment. That is why Prof.C.K.Allen describes Pound's approach as **'Experimental Jurisprudence'**.

UNIT II: BASIC CONCEPTS OF SOCIOLOGY

A) SOCIETY

The term "society" came from the Latin word ***societas***, which in turn was derived from the noun ***socius***("comrade, friend, ally"; adjectival form *socialis*) used to describe a bond or interaction among parties that are friendly, or at least civil. Without an article, the term can refer to the entirety of humanity (also: "society in general", "society at large", etc.), although those who are unfriendly or uncivil to the remainder of society in this sense may be deemed to be "antisocial". Adam Smith wrote that a society "may subsist among different men, as among different merchants, from a sense of its utility without any mutual love or affection, if only they refrain from doing injury to each other."

Used in the sense of an association, a society is a body of individuals outlined by the bounds of functional interdependence, possibly comprising characteristics such as national or cultural identity, social solidarity, language, or hierarchical organization.

A **society**, or a **human society**, is a group of people involved with each other through persistent relations, or a large social grouping sharing the same geographical or social territory, subject to the same political authority and dominant cultural expectations. Human societies are characterized by patterns of relationships (social relations) between individuals who share a distinctive culture and institutions; a given society may be described as the sum total of such relationships among its constituent members.

A society can also consist of like-minded people governed by their own norms and values within a dominant, larger society. This is sometimes referred to as a subculture, a term used extensively within criminology. More broadly, a society may be illustrated as an economic, social, or industrial infrastructure, made up of a varied collection of individuals. Members of a society may be from different ethnic groups. A society can be a particular ethnic group, such as the Saxons; a nation state, such as Bhutan; or a broader cultural group, such as a Western society. The word *society* may also refer to an organized voluntary association of people for religious, benevolent, cultural, scientific, political, patriotic, or other purposes. A "society" may even, though more by means of metaphor, refer to a social

organism such as an ant colony or any cooperative aggregate such as, for example, in some formulations of artificial intelligence.

DEFINITIONS:

MACIVER AND PAGE: "Society is system of usages and procedures, of authority and mutual aid, of many groupings and divisions. of controls of human behavior and of liberties"

GIDDINGS: **"**Society is union itself, the organization, the sum of formal relations in which associating individuals are bound together"

GINSBERG: "Society is collection of individuals united by certain relations or modes of behavior which mark them off from others who do not enter into these relations or who differ from them in behavior."

Over time, some cultures have progressed towards more complex forms of organization and control. Thiscultural evolution has a profound effect on patterns of community. Hunter-gatherer tribes settled around seasonal food stocks to become agrarian villages. Villages grew to become towns and cities. Cities turned into city-states and nation-states.

Many societies distribute largess at the behest of some individual or some larger group of people. This type of generosity can be seen in all known cultures; typically, prestige accrues to the generous individual or group. Conversely, members of a society may also shun or scapegoat members of the society who violate its norms. Mechanisms such as gift-giving, joking relationships, which may be seen in various types of human groupings, tend to be institutionalized within a society. Social evolution as a phenomenon carries with it certain elements that could be detrimental to the population it serves.

Some societies bestow status on an individual or group of people when that individual or group performs an admired or desired action. This type of recognition is bestowed in the form of a name, title, manner of dress, or monetary reward. In many societies, adult male or female status is subject to a ritual or process of this type. Altruistic action in the interests of the larger group is seen in virtually all societies. The phenomena of community action, shunning, scapegoating, generosity, shared risk, and reward are common to many forms of society.

B) SOCIALGROUPSA social group consists of two or more people who interact with one another and who recognize themselves as a distinct social unit. The definition is simple enough, but it has significant implications. Frequent interaction leads people to share values and beliefs. This similarity and the interaction cause them to identify with one another. Identification and attachment, in turn, stimulate more frequent and intense interaction. Each group maintains solidarity with all to other groups and other types of social systems.

Groups are among the most stable and enduring of social units. They are important both to their members and to the society at large. Through encouraging regular and predictable behavior, groups form the foundation upon which society rests. Thus, a family, a village, a political party a trade union is all social groups. These, it should be noted are different from social classes, status groups or crowds, which not only lack structure but whose members are less aware or even unaware of the existence of the group. These have been called quasi-groups or groupings. Nevertheless, the distinction between social groups and quasi-groups is fluid and variable since quasi-groups very often give rise to social groups, as for example, social classes give rise to political parties.

Primary Groups:

If all groups are important to their members and to society, some groups are more important than others. Early in the twentieth century, Charles H. Cooley gave the name, primary groups, to those groups that he said are characterized by intimate face-to-face association and those are fundamental in the development and continued adjustment of their members. He identified three basic primary groups, the family, the child's play group, and the neighborhoods or community among adults. These groups, he said, are almost universal in all societies; they give to people their earliest and most complete experiences of social unity; they are instrumental in the development of the social life; and they promote the integration of their members in the larger society. Since Cooley wrote, over 65 years ago, life in the United States has become much more urban, complex, and impersonal, and the family play group and neighborhood have become less dominant features of the social order.

Secondary Groups:

Secondary groups, characterized by anonymous, impersonal, and instrumental relationships, have become much more numerous. People move frequently, often from one section of the country to another and they change from established relationships and promoting widespread loneliness. Young people, particularly, turn to drugs, seek communal living groups and adopt deviant lifestyles in attempts to find meaningful primary-group relationships. The social context has changed so much so that primary group relationship today is not as simple as they were in Cooley's time

An understanding of the modern industrial society requires an understanding of the secondary groups. The social groups other than those of primary groups may be termed as secondary groups. They are a residual category. They are often called special interest groups.Maclver and Page refers to them as great associations. They are of the opinion that secondary groups have become almost inevitable today. Their appearance is mainly due to the growing cultural complexity. Primary groups are found predominantly in societies where life is relatively simple. With the expansion in population and territory of a society however interests become diversified and other types of relationships which can be called secondary or impersonal become necessary. Interests become differentiated. The services of experts are required. The new range of the interests demands a complex organization. Especially selected persons act on behalf of all and hence arises a hierarchy of officials called bureaucracy. These features characterize the rise of the modern state, the great corporation, the factory, the labor union, a university or a nationwide political party and so on. These are secondary groups.Ogburn and Nimkoff defines secondary groups as groups

which provide experience lacking in intimacy. Frank D. Watson writes that the secondary group is larger and more formal ,is specialized and direct in its contacts and relies more for unity and continuance upon the stability of its social organization than does the primary group.

Characteristics of secondary group:

Dominance of secondary relations: Secondary groups are characterized by indirect, impersonal, contractual and non-inclusive relations. Relations are indirect because secondary groups are bigger in size and members may not stay together. Relations are contractual in the sense they are oriented towards certain interests.

Largeness of the size: Secondary groups are relatively larger in size. City, nation, political parties, trade unions and corporations, international associations are bigger in size. They may have thousands and lakhs of members. There may not be any limit to the membership in the case of some secondary groups.
Membership: Membership in the case of secondary groups is mainly voluntary. Individuals are at liberty to join or to go away from the groups. However there are some secondary groups like the state whose membership is almost involuntary.
No physical basis: Secondary groups are not characterized by physical proximity. Many secondary groups are not limited to any definite area. There are some secondary groups like the Rotary Club and Lions Club which are international in character. The members of such groups are scattered over a vast area.
Specific ends or interest: Secondary groups are formed for the realization of some specific interests or ends. They are called special interest groups. Members are interested in the groups because they have specific ends to aim at. Indirect communication: Contacts and communications in the case of secondary groups are mostly indirect. Mass media of communication such as radio, telephone, television, newspaper, movies, magazines and post and telegraph are resorted to by the members to have communication.
Communication may not be quick and effective even. Impersonal nature of social relationships in secondary groups is both the cause and the effect of indirect communication.
Nature of group control: Informal means of social control are less effective in regulating the relations of members. Moral control is only secondary. Formal means of social control such as law, legislation, police, court etc are made of to control the behavior of members. The behavior of the people is largely influenced and controlled by public opinion, propaganda, rule of law and political ideologies. Group structure: The secondary group has a formal structure. A formal authority is set up with designated powers and a clear-cut division of labor in which the function of each is specified in relation to the function of all. Secondary groups are mostly organized groups. Different statuses and roles that the members assume are specified. Distinctions based on caste, color, religion, class, language etc are less rigid and there is greater tolerance towards other people or groups.
Limited influence on personality: Secondary groups are specialized in character. People involvement in them is also of limited significance. Member's attachment to them is also very much limited. Further people spend most of their time in primary groups than in secondary groups. Hence secondary groups have very limited influence on the personality of the members.

Reference Groups

According to Merton reference groups are those groups which are the referring points of the individuals, towards which he is oriented and which influences his opinion, tendency and behavior.The individual is surrounded by countless reference groups. Both the memberships and inner groups and non memberships and outer groups may be reference groups.

C) COMMUNITY:

The term community is one of the most elusive and vague in sociology and is by now largely without specific meaning. At the minimum it refers to a collection of people in a geographical area. Three other elements may also be present in any usage. (1) Communities may be thought of as collections of people with a particular social structure; there are, therefore, collections which are not communities. Such a notion often equates community with rural or pre-industrial society and may, in addition, treat urban or industrial society as positively destructive. (2) A sense of belonging or community spirit. (3) All the daily activities of a community, work and non work, take place within the geographical area, which is self contained. Different accounts of community will contain any or all of these additional elements.
We can list out the **characteristics of a community** as follows:

1. Territory
2. Close and informal relationships
3. Mutuality
4. Common values and beliefs
5. Organized interaction
6. Strong group feeling
7. Cultural similarity

Talcott Parsons defined community as collectivity the members of which share a common territorial area as their base of operation for daily activities. According to Tonnies community is defined as an organic natural kind of social group whose members are bound together by the sense of belonging, created out of everyday contacts covering the whole range of human activities. He has presented ideal-typical pictures of the forms of social associations contrasting the solidarity nature of the social relations in the community with the large scale and impersonal relations thought to characterize industrializing societies. Kingsley Davis defined it as the smallest territorial group that can embrace all aspects of social life. For Karl Mannheim community is any circle of people who live together and belong together in such a way that they do not share this or that particular interest only but a whole set of interests.

Theories of the development of Communities:

Man has always lived in groups. It was not however until human groups began living a more or less sedentary life that settlements or communities appeared. The eminent economic historian N.S.B Gras propounded the theory that a nomadic economy and the latter preceded the village community by a collectional economy that was the most primitive. Villages developed into towns when a class of traders settled permanently in the villages and began trading from their homes. Finally when conditions were favorable the towns developed into metropolises or large cities that according to Gras appeared with the rise of empires and nation states. Gras contended that the following conditions must be present in order for a metropolis to arise- considerable natural resources, good transportation conditions-land that lends itself to the construction of highways with a location near navigation water but a considerable distance from other large cities and a temperate climate. Charles Cooley put forth the theory that the development of large cities is primarily due to a break in transportation that is an interruption in the movement of goods for the purpose of transferring them from one type of conveyance to another. He distinguished two types of Breaks the physical and commercial both of which may be involved at the same time.
By the first he meant mere physical transfer or storage of goods and by the second a change in ownership. Transfer necessitates various activities that bring people together. People cooperate to unload and store the commodities and to complete the financial transactions involved in the transfer of ownership. This procedure requires warehouses and financial institutions each with its personnel. The

person engaged in various tasks the primary workers attract other secondary workers who cater to their needs. Consequently houses have to be built and hotels, shops have to be established. Institutions and organizations of all types must befounded to satisfy the need of the people. The more extensive the activities connected with the break in transportation the greater is the number of people involved. The concentration of people and activities stimulates production. Commercialdevelopment induces industrial activity. Metropolitans manifest itself in a remarkable development of subordinate communities around a central city or their orientation towards it so as to give the arrangement more or less of an integrated unity.R.D McKenzie in the Metropolitan Community showed that the development of each of the three types of transportation- water, rail and motor had a specific influence upon the course of city development in United States. These three types of transportation played effective roles in certain periods corresponding to phases of urbandevelopment. The water transportation period was important up to 1850 and marked the development of urban communities along the seacoasts, lakes and navigable rivers. Rail transportation made possible the growth of cities and towns at Junction Island. **Comparison between Society and Community**

Community	**Society**
Population is one of the most essential characteristicsof a community irrespective of the consideration whether people have or do not have conscious relations.	Population is important but here the population is conditioned by a feeling of oneness. Thus conscious relations are more important than the mere population for a society.
A community by nature is discrete as compared with society.	By nature and character society is abstract.
For community area or locality is very essential and that perhaps is the reason that the community had a definite shape.	Society is area less and shapeless and for a society area is no consideration.
A community has comparatively narrow scope of community sentiments and as such it cannot have wide heterogeneity.	A society has heterogeneity and because of its wide scope and field can embrace people having different conflicts.
The scope of community is narrow than that of society because community came much later than the society. Though the primitive people might not have understood the importance of community but they realized that of the society and lived in it.	The society has much wider scope as compared with the community.
In a community every effort is made to avoid differences or conflicts and to bring likeness as nearly as possible because cooperation and conflicts cannot exist in a community.	In a society likeness and conflict can exist side by side andin fact the scope of society is so vast that there is every possibility of adjustment.

ASSOCIATION:

Men have diverse needs, desires and interests which demand satisfaction. There are three ways of fulfilling these needs. Firstly they may act independently each in his own way without caring for others. This is unsocial with limitations. Secondly men may seek their ends through conflicts with one another. Finally men may try to fulfill their ends through cooperation and mutual assistance. This cooperation has a reference to association. When a group or collection of individuals organize themselves expressly for the purpose of pursuing certain of its interests together on a cooperative pursuit an association is said to be born. According to Morris Ginsberg an association is a group of social beings related to one another

by the fact that they possess or have instituted in common an organization with a view to securing a specific end or specific ends. The associations may be found in different fields. No single association can satisfy all the interests of the individual or individuals. Since Man has many interests, he organizes various associations for the purpose of fulfilling varied interests. He may belong to more than one organization.

Main characteristics of Association:

An association is formed or created by people. It is a social group. Without people there can be no association. It is an organized group. An unorganized group like crowd or mob cannot be an association. Common interest: An association is not merely a collection of individuals. It consists of those individuals who have more or less the same interests. Accordingly those who have political interests may join political association and those who have religious interests may join religious associations and so on. Cooperative spirit: An association is based on the cooperative spirit of its members. People work together to achieve some definite purposes. For example a political party has to work together as a united group on the basis of cooperation in order to fulfill its objective of coming to power. Organization: Association denotes some kind of organization. An association is known essentially as an organized group. Organization gives stability and proper shape to an association. Organization refers to the way in which the statuses and roles are distributed among the members. Regulation of relations: Every association has its own ways and means of regulating the relation of its members. Organization depends on this element of regulation. They may assume written or unwritten forms.

D) TRIBES

The tribes in India form an important part of the total population. It represents an element in Indian society which is integrated with the culture mosaic of our civilization. The tribal population of India constitutes nearly 8 percent of the total population. There are a number of tribes in India, spread over different parts at different levels of socioeconomic development. They live all over the country from the foot hill of the Himalayas to the lands tip of Lakshadweep and from the plains of Gujarat to the hills in the North-East. According to 1991 census, the numerical strength of the scheduled tribes in India stood at 52.03 million. Bihar leads all other States as regards the tribal population. It is followed by Maharashtra and Orissa.

The names of tribes like the Kurumba, the Irula, the Panga in South India; the Asura, the Saora, the Oraon, the Gond, the Santhal, the Bhil in Central India; the Bodo, the Ahom in North-East India; are found in old classical Indian literature.

The term ‘tribe’ is derived from the Latin word ‘tribus’. Earlier Romans used this term to designate the divisions in society. Latter use suggests that it meant poor people. The present popular meaning in English language was acquired during the expansion of colonialism particularly in Asia and Africa.

The present popular meaning of ‘Tribe’ in India refers to a category of people, included in the list of Scheduled Tribes. It has carried different connotations in different countries. In none of the Indian language there were the term tribes. In India the term ‘tribe’ conveys a meaning of a bewildering and enchanting group of people. It refers to preliterate, localized social group the members of which speak a common dialect. The tribal people have been known by various names such as Adivasi, Vanavasi, Vanyajati, Adimjati, Girijan and Pahari etc. Ghurey has described them as backward Hindus.

The Indian Constitution has made important provisions for the development and welfare of the tribes. A list of tribes was adopted for this purpose. The list has been modified from time to time. In 1971, the list contained names of 527 tribes.

The people who have been listed in the Constitution and mentioned in successive presidential orders are called Scheduled Tribes. This is the administrative concept of tribe. A tribe has been defined in various ways. The Constitution, however, does not provide a definition of a tribe. The people who have been

listed in the Constitution have been termed as Scheduled Tribes. Academicians have been making their efforts to define tribe. The Dictionary of Sociology defines tribe as a "social group, usually with a definite area, dialect, cultural homogeneity and unifying social organisation.

According to the Imperial Gazetteer,
"A tribe is a collection of families bearing a common name speaking a common dialect, occupying or professing to occupy a common territory and is not usually endogamous though originally it might have been so."

Following are some of, the leading definitions of tribe:

According to Gillin,
"Any collection of preliterate local group which occupies a common general territory, speaks a common language and practises a common culture, is a tribe". ,

As Ralph Linton says,
"In its simplest form the tribe is a group of bands occupying a continuous territory and having a feeling of unity deriving from numerous similarities in culture and certain community of interests."

According to Rivers,
"A tribe is a social group of simple kind, the members of which speaks a common dialect and act together in such common purpose as warfare"

Accoding to DN Majumdar,
"A tribe is a collection of families, bearing a common name, members to which occupy the same territory, speak the same language and observe certain taboos regarding marriage profession or occupation and have developed a well assessed system of reciprocity and mutuality of obligation."

Tribe has been defined as a group of indigenous people having common name, language and territory tied by strong kinship bonds, practising endogamy, having distinct customs, rituals and belief etc. Such definitions are not very helpful because we find lot of variations n life styles of different tribes.
There are a number of tribes in India, spread over different parts at different levels of socioeconomic development. Contrasting pictures regarding £ H e are visualised in India. For example, whereas the tribes like Khas, or the Lush, are economically and educationally advanced to a considerable extent the tribes like Birhor of Bihar or the Kattunayakan of Kerala are backward and maintain their livelihood through hunting fishing and food collecting.
Further, we hardly find out any difference between minas of Rajasthan or the Bhumaj of West Bengal and their neighbours. Therefore, tribes have been considered as a stage in the social and cultural revolution. For S. C Sinha the tribe is ideally defined in terms of its isolation from the networks of social relations and cultural communications of the centres of civilisation. According to Sinha "in their isolation the tribal societies are sustained by relatively primitive subsistence technology such as 'shifting cultivation and, hunting and gathering and maintain an egalitarian segmentary social system guided entirely by non-literate ethnic tradition.

CULTURE

Humans are social creatures. Since the dawn of Homo sapiens nearly 250,000 years ago, people have grouped together into communities in order to survive. Living together, people form common habits and behaviours—from specific methods of childrearing to preferred techniques for obtaining food.

Almost every human behaviour, from shopping to marriage to expressions of feelings, is learned. In Canada, people tend to view marriage as a choice between two people, based on mutual feelings of love. In other nations and in other times, marriages have been arranged through an intricate process of interviews and negotiations between entire families, or in other cases, through a direct system such as a "mail order bride." To someone raised in Winnipeg, the marriage customs of a family from Nigeria may seem strange, or even wrong. Conversely, someone from a traditional Kolkata family might be perplexed with the idea of romantic love as the foundation for the lifelong commitment of marriage. In other words, the way in which people view marriage depends largely on what they have been taught.Behavior based on learned customs is not a bad thing. Being familiar withunwritten rules help people feel secure and "normal." Most people want to livetheir daily lives confident that their behaviours will not be challenged or disrupted. But even an action as seemingly simple as commuting to work evidences a great deal of cultural propriety.

Material culturerefers to the objects or belongings of a group of people. Metro passes and bus tokens are part of material culture, as are automobiles, stores, and the physical structures where people worship.

Nonmaterial culture, in contrast, consists of the ideas, attitudes, and beliefs of a society. Material and nonmaterial aspects of culture are linked, and physical objects often symbolize cultural ideas. A metro pass is a material object, but it represents a form of nonmaterial culture, namely, capitalism, and the acceptance of paying for transportation. Clothing, hairstyles, and jewellery are part of material culture, but the appropriateness of wearing certain clothing for specific events reflects nonmaterial culture. A school building belongs to material culture, but the teaching methods and educational standards are part of education's nonmaterial culture. These material and nonmaterial aspects of culture can vary subtly from region to region. As people travel farther afield, moving from different regions to entirely different parts of the world, certain material and nonmaterial aspects of culture become dramatically unfamiliar. What happens when we encounter different cultures? As we interact with cultures other than our own, we become more aware of the differences and commonalities between others' worlds and our own.

CULTURAL UNIVERSALS

Often, a comparison of one culture to another will reveal obvious differences. But all cultures share common elements. **Cultural universals** are patterns or traits that are globally common to all societies. One example of a cultural universal is the family unit: every human society recognizes a family structure that regulates sexual reproduction and the care of children. Even so, how that family unit is defined and how it functions vary. In many Asian cultures, for example, family members from all generations commonly live together in one household. In these cultures, young adults will continue to live in the extended household family structure until they marry and join their spouse's household, or they may remainand raise their nuclear family within the extended family's homestead. In Canada, by contrast, individuals are expected to leave home and live independently for a period before forming a family unit consisting of parents and their offspring. Anthropologist George Murdock first recognized the existence of cultural universals while studying systems of kinship around the world. Murdock found that cultural universals often revolve around basic human survival, such as finding food, clothing, and shelter, or around shared human experiences, such as birth and death, or illness and healing. Through his research,

Murdock identified other universals including language, the concept of personal names, and, interestingly, jokes. Humour seems to be a universal way to release tensions and create a sense of unity among people (Murdock 1949). Sociologists consider humour necessary to human interaction because it helps individuals navigate otherwise tense situations.

ETHNOCENTRISM AND CULTURALRELATIVISM

Despite how much humans have in common, cultural differences are far more prevalent than cultural universals. For example, while all cultures have language, analysis of particular language structures and conversational etiquette reveal tremendous differences. In some Middle Eastern cultures, it is common to stand close to others in conversation. North Americans keep more distance, maintaining a large "personal space." Even something as simple as eating and drinking varies greatly from culture to culture. If your professor comes into an early morning class holding a mug of liquid, what do you assume she is drinking? In the United States, it's most likely filled with coffee, not Earl Grey tea, a favourite in England, or Yak Butter tea, a staple in Tibet.

The way cuisines vary across cultures fascinates many people. Some travellers, like celebrated food writer Anthony Bourdain, pride themselves on their willingness to try unfamiliar foods, while others return home expressing gratitude for their native culture's fare. Canadians often express disgust at other cultures' cuisine, thinking it is gross to eat meat from a dog or guinea pig, for example, while they do not question their own habit of eating cows or pigs. Such attitudes are an example of **ethnocentrism**, or evaluating and judging another culture based on how it compares to one's own cultural norms. Ethnocentrism, as sociologist **William Graham Sumner** (1906) described the term, involves a belief or attitude that one's own culture is better than all others. Almost everyone is a little bit ethnocentric. For example, Canadians tend to say that people from England drive on the "wrong" side of the road, rather than the "other" side. Someone from a country where dogs are considered dirty and unhygienic might find it off-putting to see a dog in a French restaurant. A high level of appreciation for one's own culture can be healthy; a shared sense of community pride, for example, connects people in a society. But ethnocentrism can lead to disdain or dislike for other cultures, causing misunderstanding and conflict. People with the best intentions sometimes travel to a society to "help" its people, seeing them as uneducated or backward, essentially inferior. In reality, these travellers are guilty of cultural imperialism—the deliberate imposition of one's own cultural values on another culture. Europe's colonial expansion, begun in the 16th century, was often accompanied by a severe cultural imperialism. European colonizers often viewed the people in the lands they colonized as uncultured savages who were in need of European governance, dress, religion, and other cultural practices. On the West Coast of Canada, the aboriginal "potlatch" (gift- giving) ceremony was made illegal in 1885 because it was thought to prevent natives from acquiring the proper industriousness and respect for material goods required by civilization. A more modern example of **cultural imperialism** may include the work of international aid agencies who introduce modern technological agricultural methods and plant species from developed countries while overlooking indigenous varieties and agricultural approaches that are better suited to the particular region. Ethnocentrism can be so strong that when confronted with all the differences of a new culture, one may experience disorientation and frustration. In sociology, we call this "**culture shock**." A traveller from Chicago might find the nightly silence of rural Montana unsettling, not peaceful. An exchange student from China might be annoyed by the constant interruptions in class as other students ask questions— a practice that is considered rude in China. Perhaps the Chicago traveller was initially captivated with Montana's quiet beauty and the Chinese student was originally excited to see an American-style classroom firsthand. But as they experience unanticipated differences from their own culture, their excitement gives way to discomfort and doubts

about how to behave appropriately in the new situation. Eventually, as people learn more about a culture, they recover from culture shock. Culture shock may appear because people aren't always expecting cultural differences. Anthropologist Ken Barger (1971) discovered this when conducting participatory observation in an Inuit community in the Canadian Arctic. Originally from Indiana, Barger hesitated when invited to join a local snowshoe race. He knew he'd never hold his own against these experts. Sure enough, he finished last, to his mortification. But the tribal members congratulated him, saying, "You really tried!" In Barger's own culture, he had learned to value victory. To the Inuit people, winning was enjoyable, but their culture valued survival skills essential to their environment: how hard someone tried could mean the difference between life and death. Over the course of his stay, Barger participated in caribou hunts, learned how to take shelter in winter storms, and sometimes went days with little or no food to share among tribal members. Trying hard and working together, two nonmaterial values, were indeed much more important than winning.

During his time with the Inuit, Barger learned to engage in cultural relativism. **Cultural relativism** is the practice of assessing a culture by its own standards rather than viewing it through the lens of one's own culture. The anthropologist Ruth Benedict (1887–1948) argued that each culture has an internally consistent pattern of thought and action, which alone could be the basis for judging the merits and morality of the culture's practices. Cultural relativism requires an open mind and a willingness to consider, and even adapt to, new values and**norms**. However, indiscriminately embracing everything about a new culture is not always possible. Even the most culturally relativist people from egalitarian societies—ones in which women have political rights and control over their own bodies—would question whether the widespread practice of female genital mutilation in countries such as Ethiopia and Sudan should be accepted as a part of cultural tradition. Sociologists attempting to engage in cultural relativism may struggle to reconcile aspects of their own culture with aspects of a culture they are studying. Pride in one's own culture doesn't have to lead to imposing its values on others. And an appreciation for another culture shouldn't preclude individuals from studying it with a critical eye.

Feminist sociology is particularly attuned to the way that most cultures present a male-dominated view of the world as if it were simply the view of the world. Androcentrism is a perspective in which male concerns, male attitudes, and male practices are presented as "normal" or define what is significant and valued in a culture. Women's experiences, activities, and contributions to society and history are ignored, devalued, or marginalized.

In part this is simply a question of the bias of those who have the power to define cultural values, and in part, it is the result of a process in which women have been actively excluded from the culture-creating process. It is still common, for example, to use the personal pronoun "he" or the word "man" to represent people in general or humanity. Despite the good intentions of many who use these terms, and the grammatical awkwardness of trying to find gender neutral terms to replace "he" or "man," the overall effect is to establish masculine values and imagery as normal. A "policeman" brings to mind a man who is doing a man's job, when in fact women have been involved in policing for several decades now. Replacing "he" with "she" in a sentence can often have a jarring effect because it undermines the "naturalness" of the male perspective.

VALUES AND BELIEFS

The first, and perhaps most crucial, elements of culture we will discuss are its values and beliefs. **Values** are a culture's standard for discerning what is good and just in society. Values are deeply embedded and critical for transmitting and teaching a culture's beliefs. **Beliefs** are the tenets or convictions that people hold to be true. Individuals in a society have specific beliefs, but they also share collective values. To illustrate the difference, North Americans commonly believe that anyone who works hard enough will be successful and wealthy. Underlying this belief is the value that wealth is good and important. Values help shape a society by suggesting what is good and bad, beautiful and ugly, sought or avoided.

Consider the value the culture North Americans place upon youth. Children represent innocence and purity, while a youthful adult appearance signifies sexuality. Shaped by this value, individuals spend millions of dollars each year on cosmetic products and surgeries to look young and beautiful.

Sometimes the values of Canada and the United States are contrasted. Americans are said to have an individualistic culture, meaning people place a high value on individuality and independence. In contrast, Canadian culture is said to be more collectivist, meaning the welfare of the group and group relationships are a primary value. Seymour Martin Lipset used these contrasts of values to explain why the two societies, which have common roots as British colonies, developed such different political institutions and cultures (Lipset 1990).

Living up to a culture's values can be difficult. It's easy to value good health, but it's hard to quit smoking. Marital monogamy is valued, but many spouses engage in infidelity. Cultural diversity and equal opportunities for all people are valued in Canada, yet the country's highest political offices have been dominated by white men.

Values often suggest how people should behave, but they do not accurately reflect how people do behave. As we saw in Chapter 1, Harriet Martineau's basic distinction between what people say they believe and what they actually do are often at odds. Values portray an

Ideal culture, the standards society would like to embrace and live up to. But ideal culture differs from **Real culture**, the way society actually is, based on what occurs and exists. In an ideal culture, there would be no traffic accidents, murders, poverty, or racial tension. But in real culture, police officers, lawmakers, educators, and social workers constantly strive to prevent or repair those accidents, crimes, and injustices. Teenagers are encouraged to value celibacy. However, the number of unplanned pregnancies among teens reveals that not only is the ideal hard to live up to, but that the value alone is not enough to spare teenagers from the potential consequences of having sex. One way societies strive to put values into action is through rewards, sanctions, and punishments. When people observe the norms of society and uphold its values, they are often rewarded. A boy who helps an elderly woman board a bus may receive a smile and a "thank you." A business manager who raises profit margins may receive a quarterly bonus. People sanction certain behaviours by giving their support, approval, or permission, or by instilling formal actions of disapproval and non-support.

Sanctions are a form of **social control**, a way to encourage conformity to cultural norms. Sometimes people conform to norms in anticipation or expectation of positive sanctions: good grades, for instance, may mean praise from parents and teachers. When people go against a society's values, they are punished. A boy who shoves an elderly woman aside to board the bus first may receive frowns or even a scolding from other passengers. A business manager who drives away customers will likely be fired. Breaking norms and rejecting values can lead to cultural sanctions such as earning a negative label—lazy, no-good bum—or to legal sanctions such as traffic tickets, fines, or imprisonment.

Values are not static; they vary across time and between groups as people evaluate, debate, and change collective societal beliefs. Values also vary from culture to culture. For example, cultures differ in their values about what kinds of physical closeness are appropriate in public. It's rare to see two male friends or co-workers holding hands in Canada where that behaviour often symbolizes romantic feelings. But in many nations, masculine physical intimacy is considered natural in public. A simple gesture, such as hand-holding, carries great symbolic differences across cultures.

NORMS

So far, the examples in this chapter have often described how people are expected to behave in certain situations—for example, when buying food or boarding a bus. These examples describe the visible and invisible rules of conduct through which societies are structured, or what sociologists call norms. Norms define how to behave in accordance with what a society has defined as good, right, and important, and most members of the society **Formal norms** are established, written rules. They are behaviours worked

out and agreed adhere to themupon in order to suit and serve the most people. Laws are formal norms, but so are employee manuals, college entrance exam requirements, and "no running" signs at swimming pools. Formal norms are the most specific and clearly stated of the various types of norms, and the most strictly enforced. But even formal norms are enforced to varying degrees, reflected in cultural values For example, money is highly valued in North America, so monetary crimes are punished. It's against the law to rob a bank, and banks go to great lengths to prevent such crimes. People safeguard valuable possessions and install antitheft devices to protect homes and cars. Until recently, a less strictly enforced social norm was driving while intoxicated. While it is against the law to drive drunk, drinking is for the most part an acceptable social behaviour. Though there have been laws in Canada to punish drunk driving since 1921, there were few systems in place to prevent the crime until quite recently. These examples show a range of enforcement in formal norms.

There are plenty of formal norms, but the list of informal norms—casual behaviours that are generally and widely conformed to—is longer. People learn informal norms by observation, imitation, and general socialization. Some informal norms are taught directly—"Kiss your Aunt Edna" or "Use your napkin"—while others are learned by observation, including observations of the consequences when someone else violates a norm. Children learn quickly that picking your nose is subject to ridicule when they see someone shamed for it by other children. But although informal norms define personal interactions, they extend into other systems as well. Think back to the discussion of fast food restaurants at the beginning of this chapter. In Canada, there are informal norms regarding behaviour at these restaurants. Customers line up to order their food, and leave when they are done. They do not sit down at a table with strangers, sing loudly as they prepare their condiments, or nap in a booth. Most people do not commit even benign breaches of informal norms. **Informal norms** dictate appropriate behaviours without the need of written rules. Norms may be further classified as either mores or folkways **Mores** (mor-ays) are norms that embody the moral views and principles of a group. Violating them can have serious consequences. The strongest mores are legally protected with laws or other formal norms. In the United States, for instance, murder is considered immoral, and it is punishable by law (a formal norm). But more often, mores are judged and guarded by public sentiment (an informal norm). People who violate mores are seen as shameful. They can even be

shunned or banned from some groups. The mores of the Canadian school system require that a student's writing be in the student's own words or use special forms (such as quotation marks and a whole system of citation) for crediting other writers. Writing another person's words as if they are one's own has a name— plagiarism. The consequences for violating this norm are severe, and can usually result in expulsion. Unlike mores, **Folkways** are norms without any moral underpinnings. Folkways direct appropriate behaviour in the day-to-day practices and expressions of a culture. Folkways indicate whether to shake hands or kiss on the cheek when greeting another person. They specify whether to wear a tie and blazer or a T-shirt and sandals to an event. In Canada, women can smile and say hello to men on the street. In Egypt, it's not acceptable. In Northern Europe, it is fine for people to go into a sauna or hot tub naked. Typically in North America, it is not. An opinion poll that asked Canadian women what they felt would end a relationship after a first date showed that women in British Columbia were "pickier" than women in the rest of the country (*Times Colonist* 2014). First date "deal breakers" included poor hygiene (82 percent), being distracted by a mobile device (74 percent), talking about sexual history and being rude to waiters (72 percent), and eating with their mouths open (60 percent). All of these examples illustrate breaking informal rules, which are not serious enough to be called mores, but are serious enough to terminate a relationship before it has begun. Many folkways are actions we take for granted. People need to act without thinking to get seamlessly through daily routines; they can't stop and analyze every action (Sumner 1906). People who experience culture shock may find that it subsides as they learn the new culture's folkways and are able to move through their daily routines more smoothly Folkways might be small manners, learned by observation and imitated, but they are by

no means trivial. Like mores and laws, these norms help people negotiate their daily life within a given culture.

SYMBOLS AND LANGUAGE

Humans, consciously and subconsciously, are always striving to make sense of their surrounding world.**Symbols**—such as gestures, signs, objects, signals, and words—help people understand the world. Symbols provide clues to understanding experiences. They convey recognizable meanings that are shared by societies. The world is filled with symbols. Sports uniforms, company logos, and traffic signs are symbols. In some cultures, a gold ring is a symbol of marriage. Some symbols are highly functional; stop signs, for instance, provide useful instruction. As physical objects, they belong to material culture, but because they function as symbols, they also convey nonmaterial cultural meanings. Some symbols are only valuable in what they represent. Trophies, blue ribbons, or gold medals, for example, serve no other purpose other than to represent accomplishments. But many objects have both material and nonmaterial symbolic value.

A police officer's badge and uniform are symbols of authority and law enforcement. The sight of an officer in uniform or a squad car triggers reassurance in some citizens, and annoyance, fear, or anger in others.

It's easy to take symbols for granted. Few people challenge or even think about stick figure signs on the doors of public bathrooms. But those figures are more than just symbols that tell men and women which bathrooms to use. They also uphold the value, in North America, that public restrooms should be gender exclusive. Even though stalls are relatively private, it is still relatively uncommon for places to offer unisex bathrooms.

Symbols often get noticed when they are used out of context. Used unconventionally, symbols convey strong messages. A stop sign on the door of a corporation makes a political statement, as does a camouflage military jacket worn in an antiwar protest. Together, the semaphore signals for "N" and "D" represent nuclear disarmament—and form the well-known peace sign (Westcott 2008). Internet "memes"—images that spread from person to person through reposting— often adopt the tactics of "detournement" or misappropriation used by the French Situationists of the 1950s and 1960s. The Situationists sought to subvert media and political messages by altering them slightly—"detouring" or hijacking them—in order to defamiliarize familiar messages, signs, and symbols. An ordinary image of a cat combined with the grammatically challenged caption "I Can Has Cheezburger?" spawned an internet phenomenon (LOL Cats) because of the funny, nonsensical nature of its non-sequitur message. An image of Prime Minister

Stephen Harper in a folksy sweater holding a cute cat, altered to show him holding an oily duck instead, is a detournement with a more political message.

Even the destruction of symbols is symbolic. Effigies representing public figures are beaten to demonstrate anger at certain leaders. In 1989, crowds tore down the Berlin Wall, a decades-old symbol of the division between East and West Germany, communism, and capitalism.

While different cultures have varying systems of symbols, there is one that is common to all: language.**Language**is a symbolic system through which people communicate and through which culture is transmitted. Some languages contain a system of symbols used for written communication, while others rely only on spoken communication and nonverbal actions. Societies often share a single language, and many languages contain the same basic elements. An alphabet is a written system made of symbolic shapes that refer to spoken sound. Taken together, these symbols convey specific meanings. The English alphabet uses a combination of 26 letters to create words; these 26 letters make up over 600,000 recognized English words (*OED Online* 2011). Rules for speaking and writing vary even within cultures, most notably by region. Do you refer to a can of carbonated liquid as a "soda," "pop," or "soft drink"? Is a household entertainment room a "family room," "rec room," or "den"? When leaving a restaurant, do you ask your server for the "cheque," the "ticket," "l'addition," or the "bill"?

Language is constantly evolving as societies create new ideas. In this age of technology, people have adapted almost instantly to new nouns such as "email" and "internet," and verbs such as "downloading," "texting," and "blogging." Twenty years ago, the general public would have considered these nonsense words.

Even while it constantly evolves, language continues to shape our reality. This insight was established in the 1920s by two linguists, Edward Sapir and Benjamin Whorf. They believed that reality is culturally determined, and that any interpretation of reality is based on a society's language. To prove this point, the sociologists argued that every language has words or expressions specific to that language. In Canada, for example, the number 13 is associated with bad luck. In Japan, however, the number four is considered unlucky, since it is pronounced similarly to the Japanese word for "death."

CULTURAL CHANGE

As the hipster example illustrates, culture is always evolving. Moreover, new things are added to material culture every day, and they affect nonmaterial culture as well. Cultures change when something new (say, railroads or smartphones) opens up new ways of living and when new ideas enter a culture (say, as a result of travel or globalization).

DIFFUSION AND GLOBALIZATION

The integration of world markets and technological advances of the last decades have allowed for greater exchange between cultures through the processes of **globalization** and **diffusion**. Beginning in the 1970s, Western governments began to deregulate social services while granting greater liberties to private businesses. As a result of this process of neo-liberalization, world markets became dominated by unregulated, international flows of capital investment and new multinational networks of corporations. A global economy emerged to replace nationally based economies. We have since come to refer to this integration of international trade and finance markets as "globalization." Increased communications and air travel have further opened doors for international business relations, facilitating the flow not only of goods but of information and people as well (Scheuerman 2010). Today, many Canadian companies set up offices in other nations where the costs of resources and labour are cheaper. When a person in Canada calls to get information about banking, insurance, or computer services, the person taking that call may be working in India or Indonesia. Alongside the process of globalization is diffusion, or, the spread of material and nonmaterial culture. While globalization refers to the integration of markets, diffusion relates a similar process to the integration of international cultures. Middle-class North Americans can fly overseas and return with a new appreciation of Thai noodles or Italian gelato. Access to television and the internet has brought the lifestyles and values portrayed in Hollywood sitcoms into homes around the globe. Twitter feeds from public demonstrations in one nation have encouraged political protesters in other countries. When this kind of diffusion occurs, material objects and ideas from one culture are introduced into another.

SOCIALIZATION

Socialization is the process through which people are taught to be proficient members of a society. It describes the ways that people come to understand societal norms and expectations, to accept society's beliefs, and to be aware of societal values. *Socialization* is not the same as *socializing* (interacting with others, like family, friends, and coworkers); to be precise, it is a sociological process that occurs through socializing. As Danielle's story illustrates, even the most basic of human activities are learned. You may be surprised to know that even physical tasks like sitting, standing, and walking had not automatically developed for Danielle as she grew. And without socialization, Danielle hadn't learned about the material culture of her society (the tangible objects a culture uses): for example, she couldn't hold a spoon, bounce a ball, or use a chair for sitting. She also hadn't learned its nonmaterial culture, such as its beliefs, values, and norms. She had no understanding of the concept of "family," didn't know cultural expectations for using a bathroom for elimination, and had no sense of modesty. Most importantly, she hadn't learned to use the symbols that make up language—through which we learn about who we are,

how we fit with other people, and the natural and social worlds in which we live.

STAGES OF SOCIALIZATION

However, some sociologists formulated different stages of socialization. These are (1) oral stage, (2) anal stage (3) oedipal stage, and (4) adolescence. In all these stages, especially in the first three, the main socializing agent is the family. The first stage is that of a new-born child when he is not involved in the family as a whole but only with his mother. He does not recognize anyone except his mother. The time at which the second stage begins is generally after first year and ends when the infant is around three. At this stage, the child separates the role of his mother and his own. Also during this time force is used on the child, that is, he is made to learn a few basic things. The third stage extends from about fourth year to 12th to 13th year, that is, till puberty. During this time, the child becomes a member of the family as a whole and identifies himself with the social role ascribed to him. The fourth stage begins at puberty when a child wants freedom from parental control. He has to choose a job and a partner for himself. He also learns about incest taboo.

AGENTS OF SOCIALIZATION

SOCIAL GROUP AGENTS

Social groups often provide the first experiences of socialization. Families, and later peer groups, communicate expectations and reinforce norms. People first learn to use the tangible objects of material culture in these settings, as well as being introduced to the beliefs and values of society.

FAMILY

Family is the first agent of socialization. Mothers and fathers, siblings and grandparents, plus members of an extended family, all teach a child what he or she needs to know. For example, they show the child how to use objects (such as clothes, computers, eating utensils, books, bikes); how to relate to others (some as "family," others as "friends," still others as "strangers" or "teachers" or "neighbours"); and how the world works (what is "real" and what is "imagined"). As you are aware, either from your own experience as a child or your role in helping to raise one, socialization involves teaching and learning about an unending array of objects and ideas.

PEERGROUPS

A **peer group** is made up of people who are similar in age and social status and who share interests. Peer group socialization begins in the earliest years, such as when kids on a playground teach younger children the norms about taking turns or

the rules of a game or how to shoot a basket. As children grow into teenagers, this process continues. Peer groups are important to adolescents in a new way, as they begin to develop an identity separate from their parents and exert independence.

INSTITUTIONAL AGENTS

The social institutions of our culture also inform our socialization. Formal institutions—like schools, workplaces, and the government—teach people how to behave in and navigate these systems. Other institutions, like the media, contribute to socialization by inundating us with messages about norms and expectations.

SCHOOL

Most Canadian children spend about seven hours a day, 180 days a year, in school, which makes it hard to deny the importance school has on their socialization. In elementary and junior high, compulsory education amounts to over 8,000 hours in the classroom (OECD 2013). Students are not only in school to study math, reading, science, and other subjects—the manifest function of this system. Schools also serve a latent function in society by socializing children into behaviours like teamwork, following a schedule, and using textbooks.

THE WORKPLACE

Different jobs require different types of socialization. In the past, many people worked a single job until

retirement. Today, the trend is to switch jobs at least once a decade. Between the ages of 18 and 44, the average baby boomer of the younger set held 11 different jobs (U.S. Bureau of Labor Statistics 2010). This means that people must become socialized to, and socialized by, a variety of work environments.

RELIGION

While some religions may tend toward being an informal institution, this section focuses on practices related to formal institutions. Religion is an important avenue of socialization for many people. Important ceremonies related to family structure—like marriage and birth—are connected to religious celebrations. Many of these institutions uphold gender norms and contribute to their enforcement through socialization

GOVERNMENT

Although we do not think about it, many of the rites of passage people go through today are based on age norms established by the government. To be defined as an "adult" usually means being 18 years old, the age at which a person becomes legally responsible for themselves. Government program marks the points at which we require socialization into a new category.

MASS MEDIA

Mass media refers to the distribution of impersonal information to a wide audience, via television, newspapers, radio, and the internet.

THEORIES OF SELF DEVELOPMENT

When we are born, we have a genetic makeup and biological traits. However, who we are as human beings develops through social interaction. Many scholars, both in the fields of psychology and in sociology, have described the process of self development as a precursor to understanding how that "self" becomes socialized.

SOCIOLOGICAL THEORIES OF SELF DEVELOPMENT

One of the pioneering contributors to sociological perspectives on self- development was Charles Cooley (1864–1929). As we saw in the last chapter, he asserted that people's self understanding is constructed, in part, by their perception of how others view them—a process termed "the **looking glass self**" (Cooley 1902). The self or "self idea" is thoroughly social. It is based on how we imagine we appear to others. This projection defines how we feel about ourselves and who we feel ourselves to be. The development of a self therefore involves three elements in Cooley's analysis: "the imagination of our appearance to the other person; the imagination of his judgment of that appearance, and some sort of self- feeling, such as pride or mortification."

PSYCHOLOGICAL PERSPECTIVES ON SELF DEVELOPMENT

Psychoanalyst Sigmund Freud (1856–1939) was one of the most influential modern scientists to put forth a theory about how people develop a sense of **self**. He believed that personality and sexual development were closely linked, and he divided the maturation process into psychosexual stages: oral, anal, phallic, latency, and genital. He posited that people's self development is closely linked to early stages of development, like breastfeeding, toilet training, and sexual awareness (Freud 1905). Key to Freud's approach to child development is to trace the formations of desire and pleasure in the child's life. The child is seen to be at the centre of a tricky negotiation between internal, instinctual drives for gratification (the pleasure principle) and external, social demands to repress those drives in order to conform to the rules and regulations of civilization (the reality principle). Failure to resolve the traumatic tensions and impasses of childhood psychosexual development results in emotional and psychological consequences throughout adulthood. For example, according to Freud failure to properly engage in or disengage from a specific stage of child development results in predictable outcomes later in life. An adult with an oral fixation may indulge in overeating or binge drinking. An anal fixation may produce a neat freak (hence the term "anal retentive"), while a person stuck in the phallic stage may be promiscuous or emotionally immature.

STATUS AND ROLE

The term has two sociological Uses:

1. R. Linton (1936) defined status simply as a position in a social system, such as child or parent. Status refers to what a person is, whereas the closely linked notion of role refers to the behaviour expected of people in a status.

2. Status is also used as a synonym for honor or prestige, when social status denotes the relative position of a person on a publicly recognized scale or hierarchy of social worth. (See 'Social Stratification').

It is the first meaning of the term status, status as position, which we are going to refer to in the following paragraphs. Status as honour or prestige is a part of the study of social stratification.

A status is simply a rank or position that one holds in a group. One occupies the status of son or daughter, playmate, pupil, radical, militant and so on. Eventually one occupies the statuses of husband, mother bread-winner, cricket fan, and so on, one has as many statuses as there are groups of which one is a member. For analytical purposes, statuses are divided into two basic types:

Ascribed Statuses & Achieved Status

Ascribed statuses are those which are fixed for an individual at birth. Ascribed statuses that exist in all societies include those based upon sex, age, race ethnic group and family background.

Similarly, power, prestige, privileges, and obligations always are differentially distributed in societies by the age of the participants. This has often been said about the youth culture in the U.S. because of the high value Americans attach to being young. Pre-modern China, by contrast, attached the highest value to old age and required extreme subordination of children. The perquisites and obligations accompany age change over the individual's lifetime, but the individual proceeds inexorably through these changes with no freedom of choice.

As the discussion implies, the number and rigidity of ascribed statuses vary from one society to another. Those societies in which many statuses are rigidly prescribed and relatively unchangeable are called caste societies, or at least, caste like. Among major nations, India is a caste society. In addition to the ascribed statuses already discussed, occupation and the choice of marriage partners in traditional India are strongly circumscribed by accident of birth. Such ascribed statuses stand in contrast to **achieved statuses**.

UNIT 3: SOCIAL CHANGE

SOCIAL CHANGE

Introduction: Change is the internal law. History and science bear ample testimony to the fact that change is the law of life. The wheel of time moves on and on. The old dies and the young steps into the world. We ring out the old and ring in the new. A child changes into a boy, a boy into a youth and then into a man.

It is said, "Today is not yesterday, we ourselves change. No change is permanent, it is subject to change. This is observed in all spares of activity. Change indeed is painful, yet needful Change is an ever-present phenomenon. It is the law of nature. Society is not at all a static phenomenon, but it is a dynamic entity. It is an ongoing process. The social structure is subject to incessant changes. Individuals may strive for stability, yet the fact remains that society is an every changing phenomenon; growing, decaying, renewing and accommodating itself to changing conditions.

The change of man and society has been the central and quite dominant concern of sociology right from the time when it emerged as branch of learning. The concern for social change is of great importance not only in studying past changes but also in investigating 'future' developments.

Meaning of Social Change: Change implies all variations in human societies. When changes occur in the modes of living of individuals and social relation gets influenced, such changes are called social changes. Social change refers to the modifications which take place in life pattern of people. It occurs because all societies are in a constant state of disequilibrium.

The word 'change' denotes a difference in anything observed over some period of time. Hence, social change would mean observable differences in any social phenomena over any period of time.

Social change is the change in society and society is a web of social relationships. Hence, social change is a change in social relationships. Social relationships are social processes, social patterns and social interactions. These include the mutual activities and relations of the various parts of the society. Thus, the term 'social change' is used to describe variations of any aspect of social processes, social patterns, social interaction or social organization.

Social change may be defined as changes in the social organization, that is, the structure and functions of the society.

Whenever one finds that a large number of persons are engaged in activities that differ from those which their immediate forefathers were engaged in some time before, one finds a social change.

Whenever human behaviour is in the process of modification, one finds that social change is occurring. Human society is constituted of human beings. Social change means human change

Theorists of social change agree that in most concrete sense of the word 'change', every social system is changing all the time. The composition of the population changes through the life cycle and thus the occupation or roles changes; the members of society undergo physiological changes; the continuing interactions among member modify attitudes and expectations; new knowledge is constantly being gained and transmitted.

Defining Change: The question to what social change actually means is perhaps the most difficult one within the scientific study of change. It involves the often neglected query of what 'kind' and degree of change in what is to be considered social change.

According to Jones "Social change is a term used to describe variations in, or modifications of any aspect of social processes, social patterns, social interaction or social organization".

As Kingsley Davis says, "By Social change is meant only such alternations as occur in social organization – that is, the structure and functions of society".

Morris Ginsberg defines, "By social change, I understand a change in social structure, e.g., the size of the society, the composition or the balance of its parts or the type of its organization".

H.M. Johnson says, "Social change is either change in the structure or quasi- structural aspects of a system of change in the relative importance of coexisting structural pattern".

As H.T. Mazumdar says, "Social change may be defined as a new fashion or mode, either modifying or replacing the old, in the life of people or in the operation of a society".

TWO TYPES OF CHANGES

(i) changes in the structure of society,

(ii) changes in the values and social norms which bind the people together and help to maintain social order. These two types of changes should not, however, be treated separately because a change in one automatically induces changes in the other.

For example, a change in the attitude of the people is mainly responsible for change in the social structure. On the other hand, a change in the social structure may bring about attitudinal change among the members of the society. Transformation of rural society into industrial society is not simply a change in the structure of society. For example, industrialisation has destroyed domestic system of production.

The destruction of domestic system of production has brought women from home to factory and office. The employment of women gave them a new independent outlook. The attitude of independence instead of dependence upon men has become the trait of women's personally. Hence, these two type of changes should not be treated separately but both of them should be studied together.

The problem of social change is one of the central foci of sociological inquiry. It is so complex and so significant in the life of individual and of society that we have to explore the 'why' and 'how' of social change in all its ramifications.

Characteristics of Social Change: The fact of social change has fascinated the keenest minds and still

poses some of the great unsolved problems in social sciences. The phenomenon of social change is not simple but complex. It is difficult to understand this in its entirety. The unsolved problems are always pressurising us to find an appropriate answer. To understand social change well, we have to analyse the nature of social change which are as follows:

1. Social Change is Social: Society is a "web of social relationships" and hence social change obviously means a change in the system of social relationships. Social relationships are understood in terms of social processes and social interactions and social organizations.

Thus, the term social change is used to describe variation in social interactions, processes and social organizations. Only that change can be called social change whose influence can be felt in a community form. The changes that have significance for all or considerable segment of population can be considered as social change.

2. Social Change is Universal: Change is the universal law of nature. The social structure, social organization and social institutions are all dynamic. Social change occurs in all societies and at all times. No society remains completely static.

Each society, no matter how traditional and conservative, is constantly undergoing change. Just as man's life cannot remain static, so does society of all places and times. Here adjustment take place and here conflict breaks down adjustment. Here there is revolution and here consent. Here men desire for achieving new goals, and here they return to old ones.

3. Social Change occurs as an Essential law: Change is the law of nature. Social change is also natural. Change is an unavoidable and unchangeable law of nature. By nature we desire change. Our needs keep on changing to satisfy our desire for change and to satisfy these needs, social change becomes a necessity. The truth is that we are anxiously waiting for a change. According to Green, "The enthusiastic response of change has become almost way of life.

4. Social Change is Continuous: Society is an ever-changing phenomenon. It is undergoing endless changes. It is an "ongoing process". These changes cannot be stopped. Society is subject to continuous change..

Society is a system of social relationship. But these social relationships are never permanent. They are subject to change. Society cannot be preserved in a museum to save it from the ravages of time

Circumstances bring about many a change in the behaviour patterns.

5. Social Change Involves No-Value Judgement: Social change does not attach any value judgement. It is neither moral nor immoral, it is amoral. The question of "what ought to be" is beyond the nature of social change. The study of social change involves no-value judgement. It is ethically neutral.

6. Social Change is Bound by Time Factors: Social change is temporal. It happens through time, because society exists only as a time-sequences. We know its meaning fully only by understanding it through time

factors. For example, the caste system which was a pillar of stability in traditional Indian society, is now undergoing considerable changes in the modern India.

7. Rate and Tempo of Social Change is Uneven: Though social change is a must for each and every society, the rate, tempo, speed and extent of change is not uniform. It differs from society to society. In some societies, its speed is rapid; in another it may be slow. And in some other societies it occurs so slowly that it may not be noticed by those who live in them. For example, in the modern, industrial urban society the speed and extent of change is faster than traditional, agricultural and rural society.

8. Definite Prediction of Social Change is Impossible: It is very much difficult to make out any prediction on the exact forms of social change. A thousand years ago in Asia, Europe and Latin America the face of society was vastly different from that what exists today. But what the society will be in thousand years from now, no one can tell.

9. Social Change Shows Chain-Reaction Sequences: Society is a dynamic system of interrelated parts. Changes in one aspect of life may induce a series of changes in other aspects. For example, with the

emancipation of women, educated young women find the traditional type of family and marriage not quite fit to their liking.

10. Social Change takes place due to Multi-Number of Factors: Social change is the consequence of a number of factors. A special factor may trigger a change but it is always associated with other factors that make the triggering possible. Social change cannot be explained in terms of one or two factors only and that various factors actually combine and become the 'cause' of the change

11. Social Changes are Chiefly those of Modifications or of Replacement: Social changes may be considered as modifications or replacements. It may be modification of physical goods or social relationships. For example, the form of our breakfast food has changed. Though we eat the same basic materials such as meats, eggs corn etc.

12. Social Change may be Small-scale or Large-scale: A line of distinction is drawn between small-scale and large scale social change. Small-scale change refers to changes within groups and organizations rather than societies, culture or civilization.

13. Short-term and Long-term Change: The conceptualization of the magnitude of change involves the next attribute of change, the time span. That is to say, a change that may be classified as 'small- scale from a short-term perspective may turn out to have large-scale consequences when viewed over a long period of time, as the decreasing death rate since the 1960 in India exemplifies.

14. Social Change may be Peaceful or Violent: At times, the attribute 'peaceful' has been considered as practically synonymous with 'gradual' and 'violent' with 'rapid'. The term 'violence' frequently refers to the threat or use of physical force involved in attaining a given change. In certain sense, rapid change may 'violently' affect the emotions, values and expectations of those involved.

.15. Social Change may be Planned or Unplanned:

Social change may occur in the natural course or it is done by man deliberately. Unplanned change refers to change resulting from natural calamities, such as famines and floods, earthquakes and volcanic eruption etc. So social change is called as the unchangeable law of nature. The nature is never at rest. Planned social change occurs when social changes are conditioned by human engineering. Plans, programmes and projects are made by man in order to determine and control the direction of social change.

Besides that by nature human beings desire change. The curiosity of a man never rests; nothing checks his desire to know. There is always a curiosity about unknown. The needs of human beings are changing day by day. So to satisfy these needs they desire change.

16. Social Change may be Endogenous or Exogenous:

Endogenous social change refers to the change caused by the factors that are generated by society or a given subsystem of society. Conflict, communication, regionalism etc. are some of the examples of endogenous social change.

On the other hand, exogenous sources of social change generally view society as a basically stable, well-integrated system that is disrupted or altered only by the impact of forces external to the system (e.g., world situation, wars, famine) or by new factors introduced into the system from other societies.

17. Change Within and Change of the System: The distinction between kinds of change has been developed by Talcott Parsons in his analysis of change 'within' and change 'of the system, i.e., the orderly process of ongoing change within the boundaries of a system, as opposed to the process resulting in changes of the structure of the system under consideration. Conflict theorists draw our attention to the fact that the cumulative effect of change 'within' the system may result in a change 'of' the system.

EVOLUTION THEORY.

Sociologists adopted the word 'evolution' to convey the sense of growth and change in social institutions. Social institutions are the result of evolution. They began to work to trace the origin of the ideas, institutions and of the developments.

The term 'evolution' is derived from the Latin word 'evolvere' which means to 'develop' or 'to unfold'.

It is equivalent to the Sanskrit word 'Vikas'. Evolution literally means gradually 'unfolding' or 'unrolling'. It indicates changes from 'within' and not from 'without'. The concept of evolution applies more precisely to the internal growth of an organism.

Evolution means more than growth. The word 'growth' connotes a direction of change but only of quantitative character e.g., we say population grows, town grows etc. But evolution involves something more intrinsic; change not merely in size but also in structure.

According to Maclver and Page, "Evolution involves something more intrinsic, a change not merely in size but at least in structure also".

Ogburn and Nimkoff write, "Evolution is merely a change in a given direction".

Ginsberg says, "Evolution is defined as a process of change which results in the production of something new but revealing "an orderly continuity in transition". That is to say, we have evolution when" the series of changes that occur during a period of time appear to be, not a mere succession of changes, but a 'continuous process', through which a clear 'thread of identity runs'.

Evolution is an order to change which unfolds the variety of aspects belonging to the nature of changing object. We cannot speak of evolution when an object or system is changed by forces acting upon it from without. The change must occur within the changing unity.

Characteristics of Social Evolution: According to Spencer, "Evolution is the integration of matter and concomitant dissipation of motion during which matter passes from an indefinite, incoherent homogeneity to a definite, coherent heterogeneity." Society, according to his view, is also subject to a similar process of evolution; that is, changing from a state of 'incoherent homogeneity' to a state of 'coherent heterogeneity.'

Evolution is, thus, a gradual growth or development from simple to complex existence. The laws of evolution which were initially fashioned after the findings of charters. Darwin, came to be known as social Darwinism during the nineteenth century.

Spencer's point of view can best be illustrated by an example. In the beginning, the most primitive stage, every individual lived an individualistic life, trying to know and do things about himself alone.

Every man was more or less similar, in so far as his ignorance about organized social life was concerned. In this sense, the people were homogenous. At that stage, neither they were able to organize their social life, nor could they work together. There was no system; nothing definite, expect their incoherent or loose- group-formations.

Thus, they formed "an indefinite, incoherent homogeneity," But gradually, their experiences, realizations and knowledge increased. They learnt to live and to work together. The task of social organisation was taken on, division of labour was elaborated; and each found a particular type of work which he could do best. All worked in an organized and definite way towards a definite goal. Thus, a state of "definite, coherent heterogeneity" was reached.

Herbert Spencer has prescribed four important principles of evolution. These principles are:

1. Social evolution is on cultural or human aspect of the law of change of cosmic evolution.
2. Hence, social evolution take place in the same way at all places and progress through some definite and inevitable stages.
3. Social evolution is gradual.
4. Social evolution is progressive.

Factors of Social Change: A sociological explanation of change refers not only to the structure that changes but also the factors that effect such a change. Social change has occurred in all societies and in all periods of time. We should, therefore, know what the factors are that produce change. Of course there is little consensus among the representatives of theoretical proposition on the sources.

. **Technological Factor:**Technological factor constitute one important source of social change. Technology, an invention, is a great agent of social change. It either initiates or encourages social change. Technology alone holds the key to change. When the scientific knowledge is applied to the problems of life, it

becomes technology. In order to satisfy his desires, to fulfill his needs and to make his life more comfortable, man builds civilisation.

Technology is fast growing. Every technological advance makes it possible for us to attain certain results with less effort, at less cost and at less time. It also provides new opportunities and establishes new conditions of life. The social effects of technology are far-reaching.

In the words of W.F. Ogburn, "technology changes society by changing our environment to which we in turn adapt. This change is usually in the material environment and the adjustment that we make with these changes often modifies our customs and social institutions".

The pace of change in the modern era is easily demonstrated by reference to rates of technological development. The technological revolution enabled human kind to shift from hunting and gathering to sedentary agriculture and later to develop civilizations.

Technological revolutions enabled societies to industrialize urbanize, specialize, bureaucratize, and take on characteristics that are considered central aspects of modern society. Most important, modern technology has created things that could scarcely have been conceived in the pre-industrial era the camera, the motor car, the aeroplane, the whole array of electronic devices from the radio to the high speed computer, the nuclear power plant, and so on almost adinfinitum.... The result has been an enormous increase in the output and variety of goods and services, and this alone has changed man's way of life more than anything since the discovery of fire..."

Every technological revolution has brought about increase in the world population. Development and advancement of agriculture resulted in the increase of population in the agricultural communities; rise of commerce gave birth to the populous towns, international trade and international contact and the industrial revolution set the human society on the new pedestal.

Technological changes have influenced attitudes, beliefs and traditions. The factory system and industrialization, urbanization and the rise of working class, fast transport and communication have demolished old prejudices, dispelled superstitions, weakened casteism, and has given rise to the class based society.

Railways in India have played tremendous role in bringing about social mixing of the people. It has helped people to move out of their local environments and take up jobs in distant corners of the country. Movement of people from East to West and North to South has broken social and regional barriers.

There have come into existence new vocations and trades. People have begun to give up their traditional occupations and are taking to work in the factories and in the offices-commercial as well as Government. This has also made possible the vertical mobility.

A person can now aspire to take up an occupation with higher status than he could have ever thought of in the pre-technological days. Technology has brought about Green Revolution with abundance and variety for the rich.

The rapid changes of every modern society are inextricably interwoven or connected with and somehow dependent upon the development of new techniques, new inventions, new modes of production and new standards of living.

Technology thus is a great bliss. It has made living worthwhile for the conveniences and comfort it provides, and has created numerous vocations, trades and professions. While, giving individual his rightful place, it has made the collectivity supreme.

Technologies are changing and their social consequences are profound. Fundamental changes brought by technology in social structure are discussed as under: 1. Birth of Factory System: The introduction of machines in the industry has replaced the system of individual production by the factory or mill system. It has led to the creation of huge factories which employ thousands of people and where most of the work is performed automatically.

2. Urbanisation: The birth of gigantic factories led to urbanisation and big cities came into existence. Many labourers, who were out of employment in rural areas migrated to

the sites to work and settled around it. As the cities grew, so did the community of 'labourers and with it was felt the need for all civic amenities which are essential for society. Their needs were fulfilled by establishing market centers, schools, colleges, hospitals, and recreation clubs. The area further developed when new business came to it with the formation of large business houses.

3. Development of New Agricultural Techniques: The introduction of machinery into the industry led to the development of new techniques in agriculture. Agricultural production was increased due to the use of new chemical manure. The quality was also improved by the use of superior seeds. All these factors resulted in increase of production. In India, the effect of technology is most apparent in this direction because India is preeminently an agricultural country.

4. Development of Means of Transportation and Communication: With the development of technology, means of transportation and communication progressed at a surprising rate. These means led to the mutual exchanges between the various cultures. Newspapers, radios, televisions etc. helped to bring news from every corner of the world right into the household. The development of the car, rail, ship and aeroplane made transportation of commodities much easier. As a result national and international trade made unprecedented progress.

5. Evolution of New Classes: Industrialisation and urbanisation gave birth to the emergence of new classes in modern society. Class struggle arises due to division of society into classes having opposite-interests.

6. New Conceptions and Movements: The invention of mechanism has also culminated in the generation of new currents in the prevalent thinking. 'Trade Union' movements, 'Lockouts', 'Strikes", "Hartals', 'Processions', 'Pen down' became the stocks-in-trade of those who want to promote class interest. These concepts and movements become regular features of economic activity.

The effects of technology on major social institution may be summed up in the following manner:

Family: Technology has radically changed the family organisation and relation in several ways.

Firstly, small equalitarian nuclear family system based on love, equality, liberty and freedom is replacing the old, authoritarian joint family system. Due to invention of birth, control method, the size of family reduced.

Secondly, Industrialisation destroying the domestic system of production has brought women from home to the factories and office. The employment of women meant their independence from the bondage of man. If brought a change in their attitudes and ideas. It meant a new social life for women. It consequently affected every part of the family life.

Thirdly due to technology, marriage has lost its sanctity. It is now regarded as civil contract rather than a religious sacrament. Romantic marriage, inter-caste marriage and late marriages are the effects of technology. Instances of divorce, desertion, separation and broken families are increasing.

Lastly, though technology has elevated the status of women, it has also contributed to the stresses and strains in the relations between men and women at home. It has lessened the importance of family in the process of socialisation of its members.

Religion: Technology has effected wide range of changes in our religious life. Many religious practices and ceremonies which once marked the individual and social life, have now been abandoned by them. With the growth of scientific knowledge and modern education, the faith of the people in several old religious beliefs and activities have shaken. **Economic life:** The most striking change due to technological advance, is the change in economic organisation. Industry has been taken away from the household and new types of

economic organisation like factories, stores, banks, joint stock companies, stock- exchanges, and corporation have been setup. It has given birth to capitalism with all its attendant evils.

Division of labour, specialization of function, differentiation and integration all the products of technology. Though it has brought in higher standard of living, still then by creating much more middle classes, it has caused economic depression, unemployment, poverty, industrial disputes and infectious

diseases.

Effects on State: Technology has affected the State in several ways. The functions of the State has been widened. A large number of functions of family, such as educative, recreation, health functions have been transferred to the State.

The idea of social welfare State is an offshoot of technology. Transportation and communication are leading to a shift of functions from local Government to the Central Government. The modern Government which rule through the bureaucracy have further impersonalised the human relations.

Social life: Technological innovations have changed the whole gamut of social and cultural life. The technological conditions of the modern factory system tend to weaken the rigidity of the caste system and strengthen industrializations. It has changed the basis of social stratification from birth to wealth. Urbanization, a consequence of technological advance, produces greater emotional tension and mental strain, instability and economic insecurity.

There is masking of one's true feelings. Socially, the urbanites are poor in the midst of plenty. "They feel lonely in the crowd". On all sides, one is confronted with "human machines which possess motion but not sincerity, life but not emotion, heart but not feelings". Technology has grown the sense of individualism. It has substituted the 'handi work' with 'head work'.

It is clear from the above explanation that technology has profoundly altered our modes of life and also thought. It is capable of bringing about vast changes in

society. But is should not be considered as a sole factor of social change. Man is the master as well as a servant of the machine. He has the ability to alter the circumstances which have been the creation of his own inventions or technology.

Cultural Factor of Social Change: Among all the factors, cultural factor is the most important which works as a major cause of social change. Culture is not something static. It is always in flux. Culture is not merely responsive to changing techniques, but also it itself is a force directing social change.

Culture is the internal life forces of society. It creates itself and develops by itself. It is men who plan, strive and act. The social heritage is never a script that is followed slavishly by people. A culture gives cues and direction to social behaviour.

Technology and material inventions may influence social change but direction and degree of this depends upon the cultural situation as a whole. "Culture is the realm of final valuation". Men interpret the whole world. He is the master as well as the servant of his own inventions or technology.

When the cultural factor responds to technological change, it also reacts on it so as to influence the direction and character of social change.

It may be noted that culture not only influences our relationship and values but also influences the direction and character of technological change

Cultural Lag: The concept of 'cultural lag', has become a favourite one with sociologists, it is an expression that has a particular appeal in an age in which inventions discoveries and innovations of many kinds are constantly disturbing and threatening older ways of living. In this context, it will serve also to introduce the principle that cultural conditions are themselves important agencies in the process of social change.

RAJA RAM MOHAN ROY (1772-1833)

Raja Ram Mohan Roy stands in history as the living bridge over which India marches from her unmeasured past to her incalculable future. He was the arch which spanned the gulf that yawned between ancient caste and modern humanity, between superstition and science and between despotism and democracy. He was the first cosmopolitan religious thinker and father of modern India. Roy was deeply imbued with the culture of the west and East, and was a scholar and reformer. He was a nationalist but had profound contempt for narrow-minded nationalism. In religion, Ram Mohan pointed to a universal inner spiritual synthesis, far from the external forms School of Distance Education Modern Indian Social and Political Thought represented through meaningless practice. In pursuit of

these religious objectives, Ram Mohan thought of a concerted action by a band of true reformers. His crusade against Hindu modes of worship roused in the orthodox and fanatical reaction against the reformer. Reformist propaganda was initiated through books, tracts, articles and translations from the Upanishads. Jeremy Bentham saluted him as "an admired and beloved fellow worker in the cause of humanity." Ram Mohan Roy was born in 1774 in the district of Hoogly in Bengal. Born in a notable Brahmin family in an era of orthodoxy, he grew up amid social evils and religious prejudices. At the age of nine, he had to marry two times, and subsequently one more, because it was impossible for him to escape the privilege of Kulinism. As a grown-up man he saw the burning of his brother's wife a sati, a sight that shocked his conscience. A prisoner of society and religion, he nevertheless enjoyed certain advantages which even the Dark Age provided. Ram Mohan's predecessors had held high offices under the Nawabs of Bengal. Because of the family status, he was sent to Patna to study Persian and Arabic. From his knowledge of Persian and Arabic he understood the essence of the Koran Sufi Philosophy; from Sanskrit, the deeper philosophies of the Hindu Upanishads. The inner meaning of Hinduism and Islam drew him to monotheism and created an aversion in him towards idolatry. With profound knowledge of Sanskrit, Arabic, Persian and English, and with a deeper understanding of the philosophies of Hinduism, Islam, Budhism and Christianity he became a rare intellectual of his time. He was in search of rationalism and felt resentful towards the prevailing socio-religious customs around him. Ram Mohan's vision was broad enough to encompass various aspects of human life. His movement covered religious, social, economic, educational, political and national issues. A Brahmin himself, he peeped into the inner

substance of Brahminical Hinduism to discover the existence of one omnipotent being. The ideal of monotheism was itself a supreme force in Hinduism, as it was in Islam and Christianity. Roy was highly critical of the outer forms of Hinduism, notably, polytheism, worship of images, ritualistic ceremonies, and suspirations rites. Belief in one Almighty god is the fundamental principles of every religion, he said. He established his theories from the Vedanta, the Bible and Koran.

AS A LIBERAL POLITICAL THINKER Like Rousseau, Voltaire and Montesquieu, Ram Mohan Roy had a passionate attachment to the concept of liberty. He urged the necessity of personal freedom. Liberty is a priceless possession of the human being and, hence, Ram Mohan was a champion of personal freedom. But liberty is also needed for the nation. Roy had a passion for liberty and equality, yet he showed his respect for property and believed in the freedom of contract. Indeed, he pleaded for state intervention in suppressing evil practices in society and held that it was the duty of the state to protect tenants against the oppression of the landlords; Like John Locke, Thomas Paine and Hugo Grotius, Roy accepted the immutable sanctity of natural rights. He believed not only in the natural rights of life, liberty, and pursuit of property, but also championed the moral rights of the individual. His theory of natural rights, however, was constructed in the prevailing Indian conditions. Thus although an exponent of the theory of Natural Rights and freedom, he also advocated state legislation for social reform and educational School of Distance Education Modern Indian Social and Political Thought Page 8 reconstruction. As a champion of freedom and democratic rights and a believer in parliamentary democracy, Roy whole-heartedly supported the reform Bill agitation in England. In his opinion, the struggle between the reformers and anti-reformers was nothing but a struggle between liberty and tyranny throughout the world, between justice and injustice and between right and wrong. It should be remembered that Ram Mohan Roy championed the struggle for freedom and democratic rights, not for Indians alone but for the entire human beings in the world. Ram Mohan Roy had a keen appreciation of the uncompromising freedom of the creative spirit. He wanted the people of India to develop a sense of self confidence, and was a crusader against unreason and superstition. He admired the English people who not only enjoyed civil and political liberty but was interested in promoting freedom, social happiness

and rationalism in the areas where their influence extended. Bipin Chandra Pal while assessing the

contribution of Raja Ram Mohan Roy to Indian freedom wrote: Raja was the first to deliver the message of political freedom to India. He so keenly felt the loss of this freedom by his people that even as a boy, yet within his teens, he left his country and travelled to Tibet, because he found it difficult to tolerate the domination of his country by another nation, though, subsequently, with close acquaintance with culture and character of the British people, who seemed to him to have been more intelligent more steady and moderate in their conduct ...' Similarly, Raja Ram Mohan Roy felt quite happy to hear the news of the introduction of constitutional government in Portugal. He supported the struggle for freedom of the Greeks against the Turks. Again, Roy was opposed to the British occupation of Ireland. He collected funds for the relief of the famine stricken people of Ireland.

FREEDOM OF THE PRESS Raja Ram Mohan Roy was one of the earliest champions of the freedom of the press. Like Milton and other scholars who fought for freedom of press, Roy championed the concept of freedom of written expression. Along with Dwarakanath Tagore, Harchandra Gosh, GouriCharan Banerjee, Ram Mohan had written a petition in 1823, addressed to the Supreme Court, for the freedom of the press. When the Petition was rejected, and appeal was made to the king in council. The appeal contained Ram Mohan's reflections on the governmental mechanism of the day. It stated men in power hostile to the liberty of the press, which is a disagreeable. Check upon their conduct, when unable to discover any real evil arising from its existence, have attempted to make the world imagine that it might, in some possible contingency afford the means of combination against the government, but not to mention that extraordinary emergencies would warrant measures which in ordinary times are totally unjustifiable.

Your majesty in well aware that a free press has never yet caused a revolution in any part of world, because, while men can early by represent their grievances arising from the conduct of the local authorities to the supreme Government.

He strongly believed that not only would the freedom of press provide a device for ventilation of grievances it would also enable the government to adopt steps for

their redressal before they caused damage to the administration. Roy recognised and appreciated British rule in India. Although he despised colonialism, he appeared to have endorsed the British rule presumably, because of its historical role in combating the prevalent feudal forces. Not only was the British rule superior to the erst-while feudal rulers, School of Distance Education Modern Indian Social and Political Thought Page 9 it would also contribute to different India by injecting the values it represented. The continued British rule, he further added, would eventually lead to the establishment of democratic institutions as in Great Britiain. Like any other liberals, Roy also felt that the uncritical acceptance of British liberal values was probably the best possible means of creating democratic institutions in India. He appreciated the British rule as a boon in disguise' because it would eventually transplant democratise governance in India. HUMANISM AND UNIVERSAL RELIGION Being a champion of freedom and rights, Ram Mohan was a great humanist and believed in co-operation, tolerance and fellowship. Roy established the ethical concept of universal love on the basis of the doctrine of ethical personality of God. He was also the exponent of cosmopolitanism and stood for brotherhood and independence. He had begun with the study of comparative religion but later come to visualise the necessity of a universal religion. Finally, he formulated the scheme of a fundamental spiritual synthesis stressing the unity of religious experience based on the worship of a monotheistic God. Thus he carried forward the traditions of social and spiritual synthesis stressed by Guru Nanak, Kabir and other saints. Roy believed in universalism and regarded humanity as one family with the different nations and tribes as its branches. In his famous letter written to the French Foreign Minister in 1832, he suggested the establishment of a 'Congress' for the settlement of commercial and political disputes. He was a humanitarian and universalist, and like David Hume he also subscribed to the doctrine of universal sympathy. Jeremy Bentham admired Ram Mohan's Universalism and humanitarianism, and in a letter to him, he said: Your works are made known to me by a book in which I

read a style which but for the name of the Hindoo I should certainly have as cribbed to the pen of a superiority educated and instructed English man., Ram Mohan Roy advocated liberal humanitarian nationalism. Emancipation of man from the bondage for ignorance, and social tyranny, his freedom of thought and conscience and his equality with other fellow men were considered as the fundamentals of liberalism. Such free and emancipated individuals, with feeling towards their mother land, could create national unity. It was through a spiritual and mental revival that Ram Mohan wanted to regenerate the Indian people and unite them into a national fraternity.

SOCIAL REFORMS Raja Ram Mohan Roy is regarded as the father of Modern India and Indian renaissance. He was a social reformer par excellence Most of the reform movements that have revolutionised Hindu society can be traced to his great son of India. He was himself the victim of social evils, and throughout his life he worked for the social and religious uplift of his community. His role in doing away with the evil practice of sati among the orthodox Brahmins was historical. By founding Brahma Samaj. Roy sought to articulate his belief in the Islamic notion of one God' In his conceptualisation, social reform should precede political reform, for the former laid the foundation for liberty in the political sense. Given his priority, Roy did not appear to have paid adequate attention to his political ideas. School of Distance Education Modern Indian Social and Political Thought Page 10 Abolition of sati and the formation of Brahma Samaj As a crusader against social evils and unscientific and unhealthy practices prevalent in the traditional caste ridden Hindu society, Mohan Roy formed a number of social organisations in North India. In 1816, he started a spiritual society known as 'Atmiya Sabha' for religious and social purposes which was later extended to other fields of activity. Atmiy Sabha was sort of discussion club for scholars of religion and philosophy at other fields of activity. In 1818, he began his celebrated crusade for the abolition of sati, and on December 4, 1829, Lord William Bentinck, the then Governor General of India made Sati illegal by Regulation XVII. Thus the year 1829 may be taken as an important landmark in the social history of India Ram Mohan Roy certainly won great renown by his crusade to free Hindu women from the dark practice of sati. It must however be noted that along with the European Sanskristi, H.H Wilson, Ram Mohan was opposed to any legal enactment for the immediate suppression of sati. He favoured that the practice 'might be suppressed quietly and unobserved by increasing the difficulties and by the indirect agency of the police. The most important event which brought fame to Ram Mohan Roy was the establishment of the Brahma Sabha on 20th August 1928 which became famous as the Brahmo Samaj in 1830. After the failure of the British India Unitarian

Association (1827), the followers of Ram Mohan felt the urgent necessity of establishing an institution solely devoted to Unitarian and monotheistic worship. Ram Mohan did not contemplate the Brahma Samaj as an institution of a new religious sect. He wanted the monotheists of all religions to use the premises of the Sabah as their own. He also wished this institution to be a meeting ground the people of all religious denominations who believed in one God, who is formless, eternal unsearchable and immutable. He told one of his friends that after his death the Hindus would claim as their own, the Muslims would do the same, and as also the Christians, but he belonged to no sect as he was the devotee of universal religion. The Samaj stood for the 'worship and adoration of the eternal unsearchable and Immutable Being- who is the author and preserver of the universe but not under or by any other designation or title peculiarly used for and applied to any particular Being or Beings by any man or set of men whatsoever'. It admitted' no graven image, statue or sculpture, carving, painting, picture, portrait or the likeness of everything'. It further stood for the promotion of charity, morality, piety, benevolence, virtue and the the strengthening of the bonds of union between men of all religious persuasions and creeds. Thus Ram Mohan began the first great religious movement of the 19 the century since religion was the dominating force in Indian society, reform of religion meant reform of society. The Brahma Samaj was thus a socio religious reform movement. Ram Mohan raised his voice against the social abuses which rendered in calculable harm to Indian society. The caste system appeared to him as the

greatest obstacle to national unity. Ram Mohan proceeded even beyond the grontiers of caste. He adopted a Muslim boy and gave the most daring example of human equality. Besides caste, the traditional Hindu society suffered from other social evils, such as, polygamy, degradation of women, untouchability, and, above all, the horrible sati system. Ram Mohan's endeavour to rouse opinion against these customs marked the beginning of an era of social change. If ultimately the evil practice of sati system was abolished, it was as much due to Ram Mohan as to the Governor General William Bentick in whose time it was effected. School of Distance Education Modern Indian Social and Political Thought Page 11 The principles and ideas of Brahma Samaj gradually spread for beyond Bengal and created an atmosphere of liberalism, rationalism and modernity which greatly influenced Indian thought. As Max Muller has rightly pointed out, 'If there is ever to be a new religion in India, it
will, I believe, owe its very life-blood to the large heart of Ram Mohan Roy and his worthly disciples Debendranath Tagore and Keshab Chandra Sen.' But Max Muller's prophecy could not be fulfilled, because the condition attached to it- the emergence of a new religion in India was impossible of realisation. Hinduism proved strong enough to counteract the growing influence of Brahmanism as it had done in the case of Buddhism. The philosophy of Brahma Samaj left its decisive influence on the Indian thought. The death of Ram Mohan (1933) was no doubt a great tragedy for the Brahmo Samaj since he was the centre of the entire movement. But the mission of the master was taken up by other daring souls. From the beginning, the movement was confined to the intellectually advanced and educationally enlightened minds who believed in reforms. It was not their aim to make it a mass movement, though the purpose was to educate the masses. It is beyond dispute that the legacies of Ram Mohan could not die after him as they were in consonance with the requirements of the time. An assessment Ram Mohan Roy was a multifaceted personality with foresight and vision. He was bold, sincere and honest and had the courage to preach his convictions. He was interested in the emancipation and empowerment of women and was earliest feminist in modern India who revolted against the subjection of women and preached against the modern encroachments on the ancient rights of Hindu females. He was also a model social reformer who was highly a critical of the prevailing social evils in the traditional Hindu society. He was a prophet of universalism, a keen and ardent champion of liberty in all its phases and apolitical agitator for the freedom of the press and the right of the tenants. He has been called the father of modern India, the first earnest minded investigator of the science of comparative religion and the harbinger of the idea of universal humanism. He stands in history as the living bridge over which India marches from her unmeasured past to her incalculable future.

JYOTIBA PHULE: GLOBAL PHILOSOPHER AND MAKER OF MODERN INDIA

Jyotiba Phule (1827-1890) initiated social change in nineteenth century India especially in Maharashtra through his philosophy. The nineteenth century was an era of social criticism and transformation that focused on nationalism, caste and
gender. All major questions taken up by the reformers were connected with women's issues such as female infanticide, child marriage, ban on women's education, Sati, tonsuring of widows, ban on widow remarriage etc. At the same time, reformers concentrated more on reforming the social institutions of family & marriage with special emphasis on the status & rights of women. Jyotiba took up the issue of gender and caste. He revolted against the unjust caste-system under which millions of people had suffered for centuries. His revolt against the caste system integrated social and religious reform with equality. He emerged as the unchanged leader of the depressed classes in Maharashtra and was recognized as a leader of downtrodden class in allover India. He was influenced by American thinker Thomas Paine's ideas of Rights of Man. This paper is an attempt to discuss Jyotiba Phule as global philosopher in 19th century. He raised the problem of women's oppression and his thoughts on resolving women's oppression through their own efforts and autonomy makes him join the company of other nineteenth century Western Philosophers and male feminists like J.S. Mill and F. Engels.

In this small work I would like to focus on philosophical aspect of his thought will conclude with

remark on contemporary relevance of Jyotiba Phule's philosophy. Jyotiba Phule (1827-1890) one of the "Mahatmas' (Great Soul) of India, occupies a unique position among social reformers of Maharashtra in the nineteenth century India. He was first teacher of oppressed, critic of orthodoxy in the social system after Buddha and a revolutionary. The task of bringing concerning socio-religious reform in nineteenth century was not so simple. Social reformers had made tremendous effort for social and religious change in Indian society during this period. Phule played a remarkable role in this area. In order to remedy the problems of gender and caste oppression, he contributed with a constructive suggestion. This was by way of a new image of religion which was known as universal religion. He started reflecting critically about the ground realities of the huge majority of rural masses. He read broadly on American Democracy, the French revolution and was stuck by the logical way of thinking in Thomas Paine's "Rights of Man". Influenced by Thomas Paine's book on "Rights of Man", (1791), Phule developed a keen sense of social justice, becoming passionately critical of handicap caste system. Besides being a leader andorganizer of the underprivileged class movement, Phule was a philosopher in his own right with several books and
articles to his credit. Throughout his life, Jyotiba Phule fought for the emancipation of the downtrodden people and the struggle which he launched at a young age ended only when he died on 28th November 1890. He was a pioneer in many fields and among his contemporaries he stands out as one who never hesitated in his mission for truth and Justice. Exploitation of women and underprivileged class and protection of human rights all these issues and their rational humanist treatment was the agenda of the philosophy of Phule. I. Jyotiba Phule: A Contemporary Indian Philosopher Jyotiba Phule was one of the makers of modern India. He was the philosopher, leader and organizer of the oppressed castes. He always practiced what he preached. He fought for the rights of the untouchables and women and work for their emancipation. He identified and theorized the most important questions of his time. These include religion, the Varna system, ritualism, British rule, mythology, and the gender question, the condition of production in agriculture and the lot of the peasantry.

In 1848 Jyotiba began his work as a social reformer interested in education of lower caste boys and girls. He encouraged his young wife Savitribai to read and write. At home he began educating his wife Savitribai and opened a first girl's school on 15th May, 1848 in Pune. No female teacher was available to teach in the school. As not teacher dared to work in school in which untouchables were admitted as students Jyotiba asked his wife to teach in the school. The orthodox opponents of Jyotiba were furious and they started a vicious campaign against him. They refused to give up their noble endeavor and choose the interest of the larger society over their personal comfort. He also took keen interest in establishing a network of institution through which it would be possible to educate the masses. He opened two more schools for girls in 1851, he was honored by the Board of Education for the work he did for girl's education in 1852. By 1858, he gradually retired from the management of these schools and entered into a broader field of social reform. He turned his attention to other social evils. Jyotiba's activities were extended beyond the field of education. The drinking water tank in his house was thrown open to untouchables. This would be considered a brave act even today. In 1868, it was revolutionary. He believed that revolutionary thought has to be backed by revolutionary praxis.1 He analyzed the structure of Indian society and identified the Sudra-atishudra as the leading agency of social revolution. According to him,
the Sudra-atishudra will lead the revolution on behalf of the whole society, to liberate the entire people from restricts of Hindu tradition. Thus, Phule's ideas and work had relevance for all Indians. As cognition of his great work for the lower castes, he was felicitated with title "Mahatma' (Great Soul) by the people of the erstwhile Bombay in 1888. He belongs to the first generation of social reformers in the 19th century. Dhananjay Keer, his biographer, rightly described him as 'the father of Indian social revolution.'

Phule can be called as Modern Indian Philosopher as Descartes. Rene Descartes (1596-1650) was a

French Philosopher, has been called as 'the father of Modern Philosophy', and is often regarded as the first thinker emphasizes the use of reason to develop the natural sciences. For him the philosophy was a thinking system that embodied all knowledge. He employs the method called metaphysical doubt or methodological skepticism. He rejects the ideas that can be doubted and then reestablishes them in order to acquire a firm foundation for genuine knowledge. So like Descartes Phule can be known as 'Modern Philosopher'. Descartes spirit of questioning traditional claims to authority can be discerned in Phule. Like Descartes, Phule exercised his capacity from freedom for thinking freely to question obscure and violent social customs. The Cartesian spirit was extended by Phule from natural science to social science. II. Practical Aspect of Jyotiba Phule's Philosophy JyotibaPhule can be interpreted as an Indian philosopher who transformed traditional philosophy by turning to the practical and social problems of inequality and oppression. One can read him as a thinker who separated himself from the metaphysical roots of Indian systems of philosophy like Yoga, Vedanta and Buddhist Philosophy to give these systems social meaning from the point of view of the ordinary person. Yoga philosophy has a practical emphasis where it believes that mentalconcentration and control leads to individual transformation of the mind and body. Although Jyotiba's philosophy would not agree with some of the metaphysical assumptions in Yoga such as the satva, rajas and tamas, his philosophy has some similarities with Yoga. For Jyotiba mental concentration is replaced by social concentration on problems that distract society from its democratic ideals. He recommends the practice of values like Samata, Badhutava, and Svatantrya to transform the whole social structure. In yoga philosophy transformation is individual but in Jyotiba philosophy transformation is not for
individual but for all. Vedantic philosophy makes a distinction between maya and reality. Once again Jyotiba would reject its Brahminical otherworldly roots and outlook. However, there is a way in which he has transformed Vedanta as well. According to him Maya or illusion does not apply to the empirical social world. Rather in social relations there is the maya of caste and superstition that causes avidya or ignorance about social reality should remove from the mind of every individual. Once this avidya is replaced by true knowledge there will be ananda or pleasure of egalitarian social relations. As Buddha said 'suffering (Dukha) is ultimate truth and the cause of sufferings is ignorance about the reality, reality of our-self (I or ego). Once this ignorance remove through true knowledge person will get freedom from their sufferings, he or she will enjoy ultimate state of mind / peaceful state of mind or Nibana. SimilarlyJyotiba also believed that suffering is the central problem, however this suffering is not a historical. It is due to the social structure of Indian society. Demolishing this structure will lead to liberation and an affirmation of values such as freedom, equality and solidarity. Religion in eighteenth and nineteenth centuries faced two differences of opinions. One was the notion of God, Soul, Hell and Heaven, Vice and Virtue. These notions were all important in the building of a religious edifice, and yet, none of these could be proved to exist at the level of reasons. The meaning and purpose of life, the meaning of death are explained by most religions in terms of an omnipotent and omniscient God, whose will is the source and justification of human existence.2 The other difference of opinion that religion faced, was the existence of a multiplicity of faiths, a plurality of Gods, of concepts of virtue and vice, of what awaited man when he died. The path of the religious and dutiful man was carted differently by different religions, when they came to an analysis of the details of daily life, thought they might agree on some fundamentals. They differed in what they considered the appropriate Book to read in matters of religion, the appropriate prayers to say, the appropriate food to eat and the laws of personal morality to observe.3 Many years Jyotiba Phule spoke on religious and practical issues. Through debate he has removed illusions from the people's minds. He has written books and dedicated them to the people. He has discussed and continues to discuss these issues in newspapers. He has instructed the public through many poetic compositions. He has inculcated in people the habit of inquiring into the veracity and cause and effect of religious matters. He has demonstrated what is right and
what is wrong with respect to particular customs. He has disapproved the practice of idol worship and

upholder monotheism. He has refuted beliefs that would cause harassment to people in matters of religion, duty and everyday activities. A false religion, idol worship and the caste system have together created destruction in India; this has been well described in his book Sarvajanik Satya Dharma. Gail Omvedt mentions in her book "Culture Revolt in a Colonial Society", that Phule's thought represented the fulfillment of the renaissance desire for social transformation along revolutionary lines. In sociological terms it makes good sense that he, rather than later and more widely known elite thinkers, should be seen as the primary renaissance figure. Any culture, after than later and more widely known elite thinkers should be seen as the primary renaissance figure. Any culture after all, rests upon the class society and the dominance of a particular class. Hence the total transformation of culture requires the destruction of this dominance. In terms of India, Hindu culture and the caste system rested upon Brahmanism. Hence Phule, who aimed for the complete destruction of caste, superstition and inequality, linked thought with a movement of opposition to the Brahmin elite. Non- Brahmanism in India, therefore, represents not simply communalism or a result of British divide and rule policies; it traces its origin to the Indian renaissance and represents the first expression of social revolution in India.4 The life of Jyotiba Phule has become a new source of learning and a new source of inspiration for modern generation. His life provided an example and an inspiration to the oppressed masses of humanity, supreme courage, sincerity, selfless sacrifice.

III. Phule's Social Reform Movement

The history of nineteenth century is the story of the impetus for social reform in which the introduction and spread of modern education was an important element. Schools which taught English language were opened not so much to educate the masses but to groom Indian people to run the British government. Christian missionaries opened a Marathi school in Pune for the public. During this transitional phase, even though education was open to masses, the common person was not aware of its importance. Jyotiba has worked for the masses and made them aware of education as a vehicle for social change. 19th Century was a period of social problems like Varnasystem, mythology, caste-system, ignorance about human rights etc. In oppressed castes greatgrandparents and grand-parents did their
community work which involved hard menial labour. They were not permitted social mobility other permissible for them. They were not even aware of their rights; illiteracy was very high in the society. Jyotiba shows the light of hope, to free from these problems of society. He revolted against the unjust caste-system and upheld the cause of education of women and lower castes. He started primary education and higher education and fought for their rights. Thus, he ushered in primary education as a tool in perceiving the work of the oppressed castes as dignified labour that was exploited by society. In 20th Century people belongs to oppressed castes their parents had opportunity to get undergraduate education which they could also impart to their children. This was a period when oppressed castes struggled to enter institutions and make their presence visible in the context of nation-building. It was also a period when they had an understanding of their rights and responsibilities. In the late 20th century and the beginning of 21st Century oppressed castes to an extent have entered into institutions of higher learning and have started producing knowledge that questions inequality and reconstructs identity from the theoretical point of view. They are ready to face the challenges of their time. We can see the growth of education from 19th to 21st century India. 19th century the focus on primary to higher education, then in 20th century system focused on Undergraduate level education, and now in 21stcentry high level research on social sciences is available for the generation. The present position is better because of education which has given them self respect, made them aware of their rights, organizations to voice their feelings. IV. Phule's Feminist Thought Comparable to J.S. Mill and F. Engels Jyotiba was global philosopher in 19th century; he raised the problem of women's oppression. Jyotiba did not spell out a theory of patriarchy or a fundamentally inequality between man- woman like John Stuart Mill (1806-1873)5 or Friedrich Engels (1820 –1895) 6 . But his thoughts on resolving women's oppression through their own efforts and autonomy makes him join the company of other nineteenth century male feminists

like Mill and Engels. Phule differed from other Indian male reformers who were his contemporaries in that he did not see women's oppression as an excuse to objectify them under the control of male norms. Rather, he believed that women have to, through their own struggles, evolve ways of living with dignity. In this, education played a very big role for Phule.

MODERNISATION

Modernisation and the aspirations to modernity are probably the most overwhelming theme which has engaged the attention of sociologists, political scientists, economists and many others. In recent years the term 'Modernisation' has come to be used with starting frequency to characterise the urge for change.

Modernisation theories are not merely academic exercise only. These approaches provided the matrix for policies adopted by advanced capitalist countries for modernising underdeveloped now called developing societies. All the modernisation theories aim at the explanation of the global process by which traditional societies are modernising or have modernised.

Modernisation theories were originally formulated in response to the new world leadership role that the United States took on after World War II. As such they had important policy implications.First, as says D.C Tipps, modernisation theories help to provide an implicit justification for the symmetrical power relationship between 'traditional' and 'mode.' societies. Since the United States is modern and advanced and the Third World is traditional and backward, the latter should look to the former for guidance. Second, modernisation theories identify the threat of communism in the Third World as a modernisation problem. If Third World countries are to modernise, they should move along the path that the United States has travelled, and thus should move away from communism. To help accomplish this goal, modernisation theories suggest economic development, the replacement of traditional values, and the institutionalisation of democratic procedures. Third, Third World countries need to attain a Western style of economic development According to modernisation researches, Western countries represent the future of the Third World countries, and they assume that the Third World countries will move towards the Western model of development.

Meaning of Modernisation:

The process of modernization is viewed as a onetime historical process which was started by the Industrial Revolution in England and the Political Revolution in France. It created a gap between these new societies and the other back ward societies. Modernisation is a historical inescapable process of social change.

Modernisation first occurred in the West through the twin processes of commercialization and industrialisation. The social consequences of these processes were the application of technologies in competitive market situation, the growth of lending and fiscal devices and the need to support the modern armies etc. The modernity in West attacked religion, superstitions, family and church. Early in the twentieth century, Japan was the firstAsian Country that joined the race for industrialization. Later the U.S.S.R. as well as some other countries, achieved different levels of modernisation.

The process of modernisation as it has obtained, is global in character. But the response to this process has been different in different countries of the world depending upon their historical, socio-cultural patterns and political systems.

The heterogeneous meanings which have been attached to the concept of modernisation have been due to a wide range of interests, level of abstraction and degrees of attentiveness to definitional problems. Careful examination of the

concept reveals that the attributes and indicators of modernisation as have been conceived are the products of diverse influence and are interdisciplinary in nature. Economists, psychologists, political scientists and sociologists have reacted to the challenges of the contemporary times in their own way, depending on their academic persuasion and training. Inspite of heterogeneity in conceptualisations of modernisation, the modernisation theorists have credibility in bringing similarities which are readily apparent among various conceptualisations.

There is general agreement that, modernisation is a type of social change which is both transformational in its impact and progressive in its effects. It is also as extensive in its scope. As a multifaceted process, it touches virtually every institution of society.

According to Neil J. Smelser, the term modernisation "refers to the fact that technical, economic and ecological change ramify through the whole social and cultural fabric".

'Modernising' means simply giving, up old ways and traditions to recent or most recent ones. The general features of a developed society are abstracted as an ideal type and so a society is called 'Modern' to the extent it exhibits modern attributes. The general configuration to highly modernised societies may be judged from the high column of indicators of economic development and social mobilisation. In some respects, these advanced societies may appear to have completed the process of change. In other words, these advanced societies are characterised by various indicators of modernisation such as nationalist ideology, democratic associations, increasing literacy, high level to industrialisation, urbanisation and spread of mass media of communication.

Conceptual Formulations:

In the process of the conceptualisation, different scholars have adopted different approaches to comprehend the nature and dimension of it. These formulations can be broadly classified into four categories

The psychological formulations link this process with a set of motivational attributes or orientations of individuals which are said to the mobile, activist and innovational in nature Daniel Lerner calls it "Psychic mobility", McClelland characterises it as achievement orientation, whereas Banfield calls it "commitment to consensual ethos.

The normative formulation of modernisation consists of such values as rationalism, individualism, humanism and commitment to liberal tradition, civic culture and secular values it differs from the psychological, specially in the extent to which primacy is laid down on a set of norms or values which form a pattern and enjoy relative autonomy over individual motivations and consciousness.

The structural formulation of modernisation links this process with ingredients such as rational administration, democratic power systems, more integrating and consensual basis of economic and cultural organisation, attachment to universalistic norms in social roles and democratic associations. These, according to Talcott Parsons, are the structural prerequisites of a modern society. Deutsch uses an inclusive phrase -social mobilisation to connote some important structural adaptations in society which form parts of the process of modernisation.

"Modernisation as a complex process of "systematic transformation manifests

itself in certain socio-demographic' features termed as social mobilisation' and structural changes", says Eisenstadt.

Relativity of Modernisation and Tradition:

There are social scientists who have classified modernisation theories as 'Critical Variable' theories, in the sense that they equate modernisation with single type of social change and the 'dichotomous' theories Huntington in the sense that modernisation is defined in such manner that, it will serve to conceptualise the process whereby traditional societies acquire the attributes of modernity.

Max Weber to define modernisation in terms of the expansion of man's rational control over his physical and social environment.

Another example of a 'critical variable' approach of the concept of modernisation comes from Wilbert Moore who argues that for most purposes modernisation may be equated with industrialisation. According to this approach, modernity does not necessarily weaken the tradition. The relations between the traditional and the modern do not necessarily involve displacement, conflict or exclusiveness.

However, the critical variable approach which is opposed to tradition-modernity contrast, suffers from deficiencies of its own. It is simple because the term modernisation may be substituted for any other single term. When defined in relation to a single variable which is already identified by its own unique term, the term 'modernisation" functions not as a theoretical term but simply as a synonym says Tipps. Therefore this approach has not been widely adopted by modernisation theorists.

Modernisation then, becomes a transition, or rather a series of transitions from primitive, subsistence economies to technology, intensive, industrialised economies, from subject to participant political cultures, from closed ascriptive status systems to open achievement oriented systems and so on Modernisation is generally viewed as extensive in scope, as a 'multifaceted process' which not only touches at one time or another virtually every institution of society, but does so in a manner such that transformations of one institutional sphere tend to produce complementary transformations in the other.

Characteristics/Attributes of Modernisation:

The scholars of modernisation have given new labelling and added new terminologies. Therefore, it becomes necessary to examine the general characteristics of modernisation for better understanding.

The modern society is characterised by 'differentiation' and 'social mobilisation'. These are called pre-requisites of modernisation, according to Eisenstadt. As social systems modernise, new social structures emerge to fulfill the functions of those that are no longer performing adequately.

Differentiation refers to the development of functionally specialised societal structures. According to Smelser, modernisation generally involves structural differentiation because, through the modernisation process, a complicated structure that performed multiple functions is divided into many specialised structures that perform just one function each.

'Social mobilisation implies the process in which major clusters of old social, economic and psychological commitments are eroded and broken and people become available for new patterns of socialisation and behaviour, says Eisenstadt. It is a process by which the old social, economic and psychological elements are transformed and new social values of human conduct are set up.

At a minimum, components of modernisation include: industrialisation, urbanisation, secularisation, media expansion, increasing literacy and education. Thus modern society is characterised by mass communications, literacy and education. In contrast to traditional society, modern society also evolves much better health, longer life expectancy and higher rate of occupational and geographical mobility. Socially, the family and other primary groups having diffused roles are supplanted or supplemented in modern society by consciously organized secondary associations having more specific functions. Modernisation also involves a shift from the use of human and animal power to inanimate power, from tool to machine as the basis of production in terms of growth of wealth, technical diversification, differentiation and specialization leading to a novel type of division of labour, industrialisation and urbanisation.There are also general characteristics of modernisation in different spheres likeeconomic, political, educational and socio-cultural.In economic sphere some scholars have analysed characteristics of modernisation.

Robert Ward highlights ten characteristics of economic modernisation. Thesecharacteristics include the intense application of scientific technology andinanimate sources of energy high specialization of labour and interdependence ofimpersonal market, large- scale financing and concentration of economic decision-making and rising levels of material well-being etc. Self-sustaining economicgrowth and an endeavour to institutionalise the control of economic growththrough planning have been emphasized by Cornell.

There are two crucial aspects of modernisation: One, the institutional or organizational aspect and the other, cultural aspect. Whereas the first aspect of approach stresses ways of organizing and doing, the second assigns primacy to ways of thinking and feeling. The one approach is narrowly sociological and political, the second more sociological and psychological. We will now consider the cultural aspects of modernisation.

POSTMODERNIZATION

A short summary of a few of the ideas of postmodernism is provided in this section. Smart notes that social theory is a part of modernity. We noted this at the beginning of the semester, that it was the separation of society from nature that led to the social theories that analyzed this process. The social theorists from the Enlightenment to the structuralists were generally committed to the idea that the modern represented progress, that reason could be used to develop knowledge and understand society, that social theory could be used to improve society, and that knowledge and theory were somewhat universal in nature – able to contribute to an understanding of societies across history and around the globe. Many of these theorists were also critical of this same modernity, but even the critical theorists were strongly committed to the idea of progress, even if they considered it difficult or impossible to achieve it.

In contrast, postmodern writers argue that there are "limits and limitations of modern reason" (p. 397) that are inherent in the forms and types of reasoning and social analysis that has characterized society and the modern. Further, these writers question whether this form of reason and rationality can be equated with "progress in respect of 'justive, virtue, equality, freedom, and happiness'" (p. 397). As a result "the practical consequences of modernity seem to have been persistently at odds with its programmatic promise" (p. 498). The problems of the contemporary social world, the rapid change, and the new forms of media and culture are all reference points for the postmodern critique and analysis.

Some of the differences in approach are illustrated in the following table (based on quote from Bauman, p. 398).
In postmodern approaches, individual (or even group) identity is not clearly and unambiguously defined, rather it shifts over time and is generally considered unstable. In addition, it is primarily local circumstances and experiences of individuals, rather than larger structural conditions or positions and locations, that are important in shaping these identities. This means that social classes, ethnic groups, or status groups may not exist in the manner described in social theory, and analysis of these does not provide a useful way of understanding the contemporary social world. That is, the shared circumstances or common situations of class, race, or ethnicity may not exist, and may be purely a theoretical construct that theorists attempt to impose of the social world.

Politics- The political implication of this is that it may be difficult to imagine collective action, social movements, and social change toward some specific goal. For extreme postmodernists, there may be no goals or plans that people can or should attempt to strive for or achieve. Some postmodernists argue that identities and localized situations are all that we should be concerned with; others argue that political action can still be a useful means of improving society. Some may not take a particular point of view on important social questions, arguing that all identities, statements, and texts are equally valid, and while these can be interpreted or read, no judgments on the validity or invalidity of these is possible or desirable.

Differences-A feature that is common among postmodernists is to reject grand theoretical approaches or "metanarratives" entirely. Rather than searching for a theoretical approach that explains all aspects of society, postmodernism is more concerned with examining the variety of experiences of individuals and groups and it emphasizes differences over similarities and common experiences. In the view of many postmodernists, the modern world is "fragmented, disrupted, disordered, interrupted" and unstable – and may not be understandable on a large scale (Rosenau, p. 170). A large part of this approach is to critique the grand theoretical approaches and "deconstruct texts" (Ritzer, pp. 632-636). This requires the reader to interpret texts, but not impose on others the reader's interpretation of texts (Rosenau, p. 170).

LIBERALIZATION

Liberalization is a very broad term that usually refers to fewer government regulations and restrictions in the economy. Liberalization refers to the relaxation of the previous government restriction usually in area of social and economic policies. When government liberalized trade , it means it has removed the tariff ,subsidies and other restriction on the flow of goods and services between the countries.

The Path of liberalization

- Relief for foreign investors
- Devaluation of Indian rupees
- New industrial Policy
- New trade policy
- Removal of import Restrictions
- Liberalization of NRI remittances
- Freedom to import technology

• Encouraging foreign tie-ups
• MRTP relaxation
• Privatization of public sector

Advantages of liberalization

• Industrial licensing
• Increase the foreign investment.
• Increase the foreign exchange reserve.
• Increase in consumption and Control over price.
• Check on corruption.
• Reduction in dependence on external commercial borrowings

Disadvantages of Liberalization

• Increase in unemployment.
• Loss to domestic units.
• Increase dependence on foreign nations
• Unbalanced development

Globalization

Globalization implies integration of the economy of the country with the rest of the world economy and opening up of the economy for foreign direct investment by liberalizing the rules and regulations and by creating favorable socio-economic and political climate for global business.

Features of Globalization

• Opening and planning to expand business throughout the world.
• Erasing the difference between domestic market and foreign market.
• Buying and selling goods and services from/to any countries in the world.
• Locating the production and other physical facilities on a consideration of the global business dynamics ,irrespective of national consideration
Basing product development and production planning on the global market consideration.
• Global sourcing of factor of production i.e. raw-material, components , machinery,technology,finance etc. are obtained from the best source anywhere in the world.
• Global orientation of organizational structure .and management culture
Commodities at lower price with high quality. Increase in production and consumption. Balanced development of world economies. Spread of production facilities throughout the globe. Increase in industrialization. Free flow of technology. Free flow of capital and increase in the total capital employed. Pros and Cons of Globalisation

Liberalization & Globalization have several benefits ,these are: -

1. Liberalisation and globalisation both in industrial and developing countries have been cumulative and uneven processes extending over many years. However, at a practical level, there can be deemed to have been more or less free trade with respect to manufactures and free capital movements between leading industrial countries in the last ten to fifteen years. This is especially so, not only in comparison with the developing countries, but also, more significantly, in comparison with the situation in these economies themselves in the 1950s and 1960s. During these earlier decades most countries not only enforced international capital controls under the Bretton Woods regime, but also their domestic product, capital and labour markets.

2. The liberal regime in advanced industrial countries over the last fifteen years with respect to trade and capital movements provides an important vantage point for assessing the expectations of current conventional wisdom that liberalisation will lead to improved economic performance and prospects. These expectations are not justified by the evidence: the liberal economy has failed to deliver in many important respects.

3. The period since the 1980s in industrial economies has been characterised by slow and fluctuating economic growth, mass unemployment and consequent social disintegration. The trend rate of growth of output and productivity has been only half of what these countries experienced during the 1950s and 1960s. The more dynamic period in industrial countries was therefore prior to deregulation of internal and external markets.

4. The mass unemployment characterising European countries in the post-1980 period is an extremely important failure of the liberal economy. Unemployment at high levels, with the associated poverty and social degradation and marginalization, threatens the continuation of the liberal order itself, by fuelling demands for protection. Thus, it is not so much that liberalisation and globalisation lead to faster economic growth, but rather that higher rates of economic growth and employment are necessary for such a regime to be sustained.

5. In view of this poor record of industrial countries in the last 15 years, a degree of scepticism and caution with respect to liberalisation and globalisation would appear to be appropriate. The euphoria, even herd instinct, among analysts and policy-makers emphasises the positive aspects and shuts a blind eye to evidence on the negative side which may overwhelm the positive benefits.

6. The failings of the post-1980 OECD economies cannot be attributed to exogenous factors such as technology. The important question, therefore, is why the actual outcomes under a liberal regime have been so different from the theoretical expectations? The main conclusion is that freely functioning capital and financial markets have harmed the growth and economic prospects of advanced industrial countries through two distinct but inter-related channels. First, the volatility of markets has raised the cost of capital and discouraged investment (both directly and indirectly through the large increase in real rates of interest). Secondly, the financial markets have in general obliged governments to follow low growth or even deflationary policies.

7. Under a liberal economic regime, these countries are unlikely to be able to raise their trend rate of growth using current policies based on labour market flexibility. This approach is not only unlikely to be helpful in terms of economic growth and employment; it is also likely to be divisive for workers within industrial countries. In addition, it will further exacerbate strife between industrial country and developing country workers.

8. The paper argues that it is not the case that labour market flexibility is the only feasible strategy currently available to industrial countries, but that there is indeed an alternative strategy, based on rather different principles, which is superior both for people in industrial and in the poor countries. This alternative strategy for demand growth is based on co-operation between

countries, and between employers, workers and governments within countries. This contractual approach involves institutional renewal and the building of fresh institutions, both at the national and at the international level.

9. Turning to the developing economies, both liberalisation and globalisation have occurred at a slower pace in these countries as compared with advanced countries. However, the pace quickened in the 1980s, often under the structural adjustment programme of the multilateral financial institutions. Despite the widespread implementation of trade policy reforms in developing countries since 1980, it is significant that the extent of liberalisation implemented by these countries is still quite limited. Liberalisation of capital flows in developing countries has proceeded further than trade policy reform, largely in order to attract foreign direct investment and so-called "non debt-creating" equity flows.

10.The policies of liberalisation and globalisation, market ascendancy and diminished role of the state (policies similar to those which have been unsuccessful in industrial countries in the recent period) are recommended by the multilateral financial institutions for developing countries. It isclaimed that such policies have proved highly successful in East Asian economies (including post-1945 Japan) and in post-Mao China.

11.This claim unfortunately is also not valid. The experience of Japan and South Korea shows that these countries have adopted policies during their periods of industrialisation and fast economic growth which are quite the opposite of those recommended by the multilateral financial organisations. For example, in the relevant periods, the two countries have implemented wide-spread import controls, discouraged foreign investment and followed a vigorous state-directed industrial policy. Yet they have achieved extensive structural change and raised the standard of living of their peoples to European levels.

12.Instead of close and unfettered integration with the world economy, these countries only integrated to the extent and in directions in which it was beneficial for them to do so, pursuing what, in the paper, has been termed "strategic integration". Further, it is noted that the potential benefits of trade liberalisation go much beyond traditional comparative advantage and opportunities for exchange. However to derive the maximum potential benefit for the country, the government needs to play a leading role.

13.The spectacular economic performance of China in the post-Mao period provides no support for the World Bank's developmental paradigm that privatisation and free and flexible competitive markets are essential for achieving fast economic growth. Although there has been a large-scale introduction of markets into China, these markets are far from being either flexible or competitive. Moreover, in many important areas (labour, capital and land) such markets can hardly be seen to exist at all. None of these market deficits have prevented the Chinese economy from recording extraordinary economic growth over the past fifteen years.

14.The question of why Latin American economic growth collapsed in the 1980s, resulting in the "lost decade", while the Asian countries continued to prosper is a controversial subject. The international financial institutions (the

World Bank) and other orthodox economists attribute Latin American failure to, among other things, insufficient integration of the Latin American countries with the international economy and too pervasive a role of the state in these economies. Thus they ascribe Latin American poor performance inthe 1980s to mainly internally determined factors rather than to external factors -- economic shocks over which they had no control. The World Bank theses on this subject have been seriously questioned by independent economists who argue that, although the Latin American governments made mistakes, the main reason for their economic failure was the debt crisis. This, they suggest, was caused largely by major changes in the world economy and by external forces over which these countries had no control. The Latin American countries were particularly hard hit by the capital supply shock which is either ignored or not properly examined in the mainstream analyses.

With respect to the question of openness, the Bank's critics point out, the Latin American countries were in fact much more open to the international economy, at least on one important dimension, than the Asian economies. The former generally had larger degrees of currency convertibility and practised a far greater degree of financial openness than the latter. Most Asian countries had fairly strict exchange controls. An analysis of economic structures of countries in the two regions provides very little evidence in support of the World Bank's hypothesis.

15.As for the role of the state, governments have been no less interventionist in East Asia than in Latin America, although for historical reasons the governments in Latin American countries such as Mexico and Brazil have not had as much "autonomy" as the East Asian governments did. The long-term development record of the former over the post-war period until the debt crisis of the 1980s, has overall been a highly creditable one.

16.It is argued, in conclusion, that the neo-liberal policies adopted by Latin American governments under the tutelage of the Bretton Woods institutions in the last decade are not necessarily the best ones. Such policies have invariably involved further financial liberalisation and often of international competition even when large segments of the national industry are in a weak state, due to protracted insufficient investment as a consequence of the debt crisis. The net long-term economic outcome of this strategy for Latin American countries may therefore unfortunately be negative rather than positive.

17.With respect to the African economies, the conventional story is that they have suffered from being marginalized from the international economy and therefore need to rectify the situation. The implied suggestion is that this marginalization of African countries is their own fault and the burden of correction lies with them. However, the observed marginalization is due to their poor economic performance, despite being more integrated into the world economy than they were previously. These countries have been subjected to severe external shocks as a result of rising interest rates and a catastrophic fall in real terms of commodity prices during the 1980s. African countries in this situation, it is suggested, may do better by more considered

integration into the world economy.
18.The present international economic environment is much less favourable for developing countries than the situation in 1964 when the G77 was formed. Mass unemployment in industrial countries could lead to protectionist pressures. The demise of the Soviet Union has meant that, in the post-Cold War era, industrial countries no longer have to provide competitive aid to keep developing countries in the western camp.
Instead, in the current policy climate, all developing countries, irrespective of individual circumstances, are told to liberalise and to integrate as quickly and fully as possible into the world economy, in order to achieve what aid and other policies have ostensibly failed to do. Indeed developing countries are told that they are privileged to be given the opportunity to do so.
19.This paper argues that, in this post-Cold War economic environment, the need for collective action by the South to meet the evolving challenges are more important than ever. No individual developing country on its own, no matter how large and relatively developed, can expect to be able to influence the new rules of the evolving world economic order. Collectively, however, they have some chance of doing so.
20.Moreover, the foregoing analysis suggests that, irrespective of their level of development and degree of integration into the world economy, almost all developing countries in all regions have a number of broad common interests in relation to global economic matters and to the issues of liberalisation and globalisation. Together, they provide a strong negotiating platform for developing countries. The elements of such negotiations :
a) Independent assessment of world economic conditions
b) A forum for global policy dialogue
c) Globalisation and development strategies
d) "First-best" policies and other options
e) Uruguay Round: monitoring and "adaptation"
f) Foreign investment
g) Competition policy
h) Regionalism, multilateralism and developing countries
i) Preparations for multilateral negotiations and agreements
j) Providing technical advice

MCDONALDIZATION

One of the most well-known sociological theories is George Ritzer's idea of McDonaldization. This idea initially leads many to think of the company McDonald's for which the term is properly coined after. McDonaldization defined by the sociologist George Ritzer is "The process by which the principles of the fast-food restaurant are coming to dominate more and more sectors of American society as well as the rest of the world" (Gordon). Ritzer's based his idea's on sociologist Max Weber's work, that capitalism and industrialization were fueling a world in which our individual freedoms are being eroded.
By adapting Weber's concerns to a more contemporary setting Ritzer saw that the fast food industry, in particular, is a great factor in how society is being effected today. The way that fast food industries prepare food for consumers is a prime example of Max Weber's theory of the rationalization of the modern world. For

instance, these companies use methods of scientific management for the improvement of economic efficiency (Wikipedia) and Fordism, which is the process of standardizing mass production (Wikipedia). These methods can guarantee, efficiency, calculability, predictability, and control to customers. Due to such practices, McDonald's and other fast food companies included are having a negative effect over many other social institutions. Methods in the fast food industries continue to invade other aspects of our lives; health care, education, andeven the media are impacted by McDonaldization's expansion and acceptance in today's society.

These four main dimensions of McDonaldization are achieved by taking rationalization to the extreme. In sociology, rationalization is simply defined as the way to replace logical rules for illogical ones (McDonaldization.com). By doing this, almost every task is simplified to its greatest possibility and results in an efficient, logical sequence of methods that can complete the task the exact way every time with the same precise desired outcome.

Having the ability to have controlled, consistent, and measurable outcomes are what any business works for. Seeing how these goals are rewarding for businesses and consumers, how might it be seen as a problem? As we all know, fast food is not the healthiest choice out there. It is high in fat, salt, and low in nutritional value. With obesity, heart disease, diabetes, and other health problems on the rise,

it simply makes little sense for us to continue eating such products. This has non-Americans stumped as to why the norm is accepted when all the negative side

effects of fast food are understood and yet we have no problem continuing to indulge in it. Once over the culture shock of our dependency on fast food, foreigners lose the ethnocentrism they once had and they themselves fall into our material culture.

Just like our craving for fast food, our educational system is seeking a more efficient model for our future generations. Standardized test and using inventions like social media have drawbacks (Bruenderman). Thanks to a rationalized model of education, teachers simply fill the students like boxes for the sole purpose of passing the next test. This process is efficient and means that the students have the best chance of graduation. Consequently, if all you learned in school were dates and facts, where would the personal interactions we all learned from go? As a result, what was once an intellectual exchange of knowledge between professor and student now results in nothing more than a business transaction. The students today are seen as consumers with the ideal that they need to go to college to get a job which in the past was looked at as a way to further a persons education rather than increasing their future salary. Regrettably, the restructuring of education from McDonaldization not only is occurring in schools but the media as well.Today's media, like the USA Today for example, has changed the way local newspapers present the news (Bruenderman) . Look at how headlines today are presented. Stories are shorter, contain only the needed information and infrequently do they continue to a second page. This lets the reader or viewer learn about many stories in a short amount of time without having to turn the page or flip channels. Media has also become brighter in the sense that journalists and reporters include brighter colors to grab attention. These tactics have lead to greater profits

for news media outlets around the world. However, contemporary news is now more about entertaining the readers instead of informing them. Subsequently, the McDonaldization of the news does not accurately educate readers or let them form their own opinions on issues that are being reported about.
Taking the time to look at how much this country has shifted from quality to quantity shows how greatly the well being, learning, and our media insight have become McDonalized. Thanks to rationalization, people across these parts of society have become hypnotized into believing "more is better." I believe it would be highly beneficial to combat this growing problem if we look closely at all the different ways our lives are affected by McDonaldization, first starting with its effects on LansingCommunity College. Looking at how our daily observations and interactions in which we spend almost half the year could lead to a greater understanding of the negative effects McDonaldization has on our daily lives. In doing this, maybe we will find a way to reverse the effects this McDonaldized society has on us.

UNIT 4: SOCIAL CONTROL

Society is a collectivity of groups and individuals. It exists for the welfare and advancement of the whole. The mutuality, on which it depends, is possible to sustain by adjustment of varied and contradictory interests. The structure pattern continues to exist because of its inbuilt mechanism and sanction system.
Social control which implies the social intercourse is regulated in accordance with established and recognised standards, is comprehensive, omnipotent and effective to stimulate order, discipline and mutuality; and to discourage, and if need be, to punish the deviance..

Meaning of Social Control:

Generally speaking, social control is nothing but control of the society over individuals. In order to maintain the organisation and the order of the society, man has to be kept under some sort of control. This control is necessary in order to have desired behaviour from the individual and enable him to develop social qualities. Society in order to exist and progress has to exercise a certain control over its members since any marked deviation from the established ways is considered a threat to its welfare. Such control has been termed by sociologists as social control. Social control is the term sociologists apply to those mechanisms by which any society maintains a normative social system. It refers to all the ways and means by which society enforces conformity to its norms. The individual internalises social norms and these become part of his personality. In the process of socialisation the growing child learns the values of his own groups as well as of the larger society and the ways of doing and thinking that are deemed to be right and proper.
Hence, there is some deviations from group norms in every group. But any deviation beyond a certain degree of tolerance is met with resistance, for any marked deviation from the accepted norms is considered a threat to the welfare of the group.
Hence sanctions – the rewards or punishments- are applied to control the behaviour of the individual and to bring the nonconformists into line. All these efforts by the

group are called social control, which is concerned with the failures in socialisation. Social control, as says Lapiere, is thus a corrective for inadequate socialisation.

Ogburn and Nimkoff have said that social control refers to the patterns of pressure which society exerts to maintain order and established rules"..

Need of Social Control:

Social control is necessary for an orderly social life. The society has to regulate and pattern individual behaviour to maintain normative social order. Without social control the organisation of the society is about to get disturbed. If the individual is effectively socialised, he confirms to the accepted ways from force of habit as well as from his desire of being accepted and approved by other persons.

Various social thinkers have expressed their views in different ways about the need of social control which are discussed as under:

1. Reestablishing the Od Social System
2. Regulation of Individual Social Behaviour
3. Obedience to Social Decisions
4. To Establish Social Unity
5. To bring Solidarity& Conformity in Society
7. To Provide Social Sanction
8. To Check Cultural Maladjustment

Types or Forms of Social Control:

(a) Direct social control,

(b) Indirect social control.

(a) Direct social control:

That type of social control which directly regulates and controls the behaviour of the individual is called Direct Social Control. This type of control is to be found in family, neighbourhood, play-groups and other types of primary groups. In these institutions, parents, neighbours, teachers, classmates etc., keep control over the behaviour of the individuals.(b) Indirect social control:

In this type of social control distant factors keep control over the behaviour of the individual. Such a type of control is exercised by secondary groups through customs; traditions, rationalisedbehaviour etc. and public opinion are important forms of indirect social control.

Well-known social thinker Kimball Young has categorised social control under the following two heads:

(a) Positive social control, (b) Negative social control

(a) Positive social control:

In this type of social control positive steps such as reward, the policy of appreciation etc. are used for keeping the person under control. As a result of these steps man tries to behave in the best possible manner in the society.

(b) Negative social control:

This is just reverse of the positive form of social control. In this form of social control individual on the fear of punishment and derecognition by the society is made to behave in conformity with the values of the society.

(4) Hayes's classification of social control:

He has classified social control under the following two heads:

(a) Control by sanction, (b) Control by socialisation and education.

(a) Control by sanction:

In this type of social control, those who act according to the values of the' society are rewarded, while to those who act against the norms of the society are punished.

(b) Control by socialisation and education:
Through education and socialisation, the child is taught to act according to the norms of the society.
(6) Forms of social control according to Cooley:
According to Cooley there are two forms of social control:

(a) Conscious. (b) Unconscious.
General views about forms of social control:
Generally social control is classified under the following two forms:
(a) Formal social control, (b) Informal social control
(a) Formal social control:
This type of social control is exercised by known and deliberate agencies of social control, such as law, punishment, army, Constitution etc. Man is forced to accept these forms of social control. Generally these forms are exercised by secondary groups.
(b) Informal social control:
These agencies of Social Control have grown according to the needs of the society. Folk ways, mores, customs, social norms etc. fall under this category of social control. Generally primary institutions exercise this type of social control.
Informal means of Social Control:
1. Norms:
Norms are rooted in the institution. They provide the standard of behaviour and are regulatory in character. The choice of individual for striving towards the cultural goal is limited by institutional norms. These provide the guideline for action. The norms give cohesion to the society.
2. Value:
It consists of culturally defined goals. It is held out as a legitimate object of realisation for all or for diversely located members of the society. It involves various degrees of "sentiments and significance
3. Folk Ways:
Folk are a people with a community sense. They have a uniform and a common way of living. This constitutes the folkway.
4. Mores:
Mores are such folkways as are based on value judgement and are deeply rooted in the community life
5. Custom:
Custom is "a rule or norm of action." It is the result of some social expediency. It is followed as it involves sentiment based on some rational element.
6. Belief System:
Belief system has deeply influenced man's behaviour. It has provided the sanction to the social norms and conditioned the growth of culture. It has worked as a means of informal social control. Some of the beliefs hold a significant place in the social system.
7. Ideology:
Social determination of thinking is ideology. Social thinking has always been influenced by ideology. Our social thinking has remained influenced by Varnashrama Dharma, Punarjanam and Dhamma..
8. Social Suggestions:

Social suggestions and ideas are an important method of social control. Through these suggestions and ideologies, the society controls the behaviour of its members. Society generally controls and regulates the behaviour of its members through many several ways such as through books, writings and spoken words inculcation of ideas etc.

9. Religion:

It includes those customs, rituals, prohibitions, standard of conduct and roles primarily concerned with or justified in terms of the supernatural and the sacred. Religion is powerful agency of social control. It controls man's relations to the forces of his physical and social environment

Control by Law:

Law is the most powerful formal means of social control in the modern society. Laws appear only in societies with a political organisation that is a government. The term 'Law' has been defined in various ways. J.S. Roucek opines that "Laws are a form of social rule emanating from political agencies". Roscoe Pound says that "law is an authoritative canon of value laid down by the force of politically organised society".

The main characteristics of law are:

(1) Laws are the general conditions of human activity prescribed by the state for its members.

(2) Law is called law, only if enacted by a proper lawmaking authority. It is a product of conscious thought, deliberate attempts and careful planning.

(3) Law is definite, clear and precise.

(4) Law applies equally to all without exception in identical circumstances.

(5) Violation of law is followed by penalties and punishments determined by the authority of the state.

(6) Laws are always written down and recorded in some fashion. Hence they cannot appear in non-literate society.

(7) Laws are not the result of voluntary consent of persons against whom they are directed.

Law is derived from various sources. As J.S. Roucek has pointed out, "All social rules including political rules, or laws, originated first in custom or folkways of long standing and are based upon existing conceptions of justice and right in a given community".

It is true that "in all societies law is based upon moral notions". Laws are made and legislations are enacted on the basis of social doctrines, ideals and mores. It does not mean that the domains of law and morals are co-extensive.

Still it can be said that the maintenance of legal order depends upon the moral climate of a society". (Bottomore). The effectiveness of legal regulation never rests solely upon the threat of physical sanctions. It very much depends upon a general attitude of respect for law, and for a particular legal order. This attitude itself is determined by moral approval of law as containing social justice.

Law requires enforcing agencies. Laws are enforced with the help of the police, the court, and sometimes the armed forces. Administrative machinery of the state is the main law-enforcing agency.

Increasing complexity of the modern industrial society has necessitated enormous growth of administrative agencies. Law is, in fact the control of administrative power which is vested in the government officials.

Law as an instrument of control performs two functions: (i) It eliminates and suppresses the homicidal activities of individuals, (ii) Law persuades individuals to pay attention to the rights of others as well as to act in co-operation with others. In this way law tries to protect the individuals and society and promotes social welfare.

It is almost impossible now-a-days to conceive of a society of any degree of complexity in which social behaviour would be completely regulated by moral sanctions. Law has thus become inevitably a pervasive phenomenon.

Contemporary international relations would reveal the importance of law in social control. It may be true that the moral unity of the mankind is now greater than ever before. But moral sentiments alone are not enough today to regulate relations. They are by necessity supplemented by the law.

Control by the Public Opinion:

Public Opinion is an important agency of social control

As K. Young has said,

"Public Opinion consists of the opinion held by a public at a certain time ".

According to V. V. Akolkar, "Public opinion simply refers to that mass of ideas which people have to express on a given issue". Public opinion may be said to be the collective opinion of majority of members of a group.

Public opinion is of great significance especially indemocratic societies. Through public opinion the knowledge of the needs, ideas, beliefs, and values of people can be ascertained. It influences the social behaviour of people. Behaviour of the people is influenced by ideas, attitudes and desires which are reflected by public opinion.

People get recognition and respectability when they behave according to accepted social expectations. Public opinion helps us to know what type of behaviour is acceptable and what is not.

There are various agencies for the formulation and expression of public opinion. The press, radio, movies and legislatures are the main controlling agencies of public opinion.

The 'press' includes newspapers, magazines and journals of various kinds. The newspaper provides the stuff of opinion for it covers everyday events and policies. Many decisions of the people are influenced by information available through the press.

As an agency of social control the press seeks to influence the tastes, ideas, attitudes and preferences of the readers. It affects their ideology also. It enforces morality by exposing the moral lapses of the leaders.

Radio is another agency of public opinion that influences behaviour. It influences our language, customs and institutions. It is through the radio that human voice can reach millions of people at the same time. It can dramatise and popularise events and ideas. In the same way, television has also been influencing people's behaviour.

Movies or motion pictures exert great influence on public opinion. They have effectively changed the attitudes and behaviour of the people. Movie-goers are relaxed and unaware of the fact that they are being affected by ideas and values. They identify themselves with the leading characters and unconsciously accept the attitudes, values, etc., implicit in the role. Some emotionally disturbed people often search solutions for their problems through, movies. Through films it is possible to

improve people's tastes, ideas and attitudes to some extent.
Legislature at present is the most effective agency for the formulation and expression of public opinion. The debates in the legislatures influence public opinion particularly in democratic system. It makes laws that control people's life and activities. It should be noted that legislature itself is subject to the influence of the people.

CUSTOMS

A custom is a traditional and widely accepted way of behaving or an action that is specific to a particular society. Using our opening little story, saying 'God bless you' after someone sneezes is an English-speaking custom. There are no laws that dictate we must; it's just something we're expected to do. In many ways, customs are very similar to norms, rules or standards that regulate behavior.
When speaking of customs, many social scientists assert that customs are used to support the social bonds and structure of society. When speaking of supporting bonds, think of the custom of families spending the holidays together. Even if families can't hardly stand each other throughout much of the year, many still get together at Thanksgiving. In short, this custom serves to support the family structure.
Jumping across the ocean, many Asian societies carry the custom of elderly parents living with their children until death. No, there's no written law that states they must; however, it's simply expected.
It's customary, and like many customs, not doing it can carry shame, ridicule, or even ostracism. In other words, even though they're not written in stone, customs are very effective social controls. If you want to test this, just show up to a wedding wearing all black with a veil over your head or to a funeral wearing a short, tight, hot pink dress.

The MEDIA is an agent for social control

The Media is an agent for social control, the ideology was occupied very big part of it. It is key concept in media studies.
Media as a form of social control tools and instruments, mainly through the guidance of public opinion and public opinion supervision, establishment and consolidation of beliefs, social cues and education to achieve its social control function. Positive function of both social control of mass media, there are also negative function. Social control of the negative function of the mass media will have a negative impact, this impact is reflected in: the excessive intervention of social policy would undermine the formal control forces, affect the control effect of the uncertainty of the direction of public opinion, unreasonable social cues easily mislead a member of the public mass media over-reliance on the improvement of the quality of the members of society and social relationships harmonious. Understanding of the social control function and its mechanism of action of the mass media, face the negative function of the mass media to the negative impact of social control, to contribute to a better realization of social control, help to promote the harmonious development of society. With the continuous development of information networks and communication technologies, mass media is the social life of the people play and a growing important effect.
Legislative control and public opinion control the external control areas, which are

mainly mandatory social forces as the basis of its role. Therefore, they cannot control the hidden part of the members of society life, not by making people avoid tainted with evil intention to control the people. It can be used to shape the typical control public personal ideals. Revolutionary character and good deeds through the film, television, newspapers and news and other forms of communication, advocacy, advocate of the public to establish a good social ideals, Encouraging innovation through the propaganda of advanced characters and deeds. Then through the training and indoctrination of ideology to guide the formation of common values. Ideological control is the key to social control, the ruling class and the ruling party of any country in order to maintain and consolidate the existing political order, cannot give up the right to speak of ideology. The consolidation of ideological positions is often achieved through the media. Through repeated communication to the public and instill on behalf of the ideology of the ruling group and the ruling party interests, the media in depicting affect people's cognitive structure so as to maintain and consolidate the existing social order. With the continuous advancement of communication technologies and means of communication and constantly enrich the mass media has become an important carrier of education. It greatly expanded the scope of the educated, and to promote the innovation of education, such as distance education and multimedia learning. Broader participation in the process of public education, it also bears the function of social control. As a cultural product, the mass media works, especially film and television work to show to people is an ideal scene. First of all, the mass media through the spread of the existing system support political culture, political socialization through realize to the social members of political control. The one hand, the mass media culture through political education of individual political participation, enthusiasm and ability. on the other hand, the mass media and political education to develop public recognition of the existing political system and political values, loyalty and responsibility.

TV media control by authoritarian governments, mainly for government service. Media news reports, in a totalitarian society is often misinterpreted as “propaganda”, mainly reflecting the government's voice, rather than the voice of the people, so the TV is gradually reduced to a second media. The Internet is gradually increased as the first media, and its benefits are reflected in the pluralism.