

Chapter – 2

Concept and Meaning of State

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The concept of the State has figured as the central theme of traditional political theory. R.G. Gettel defined political science as ‘the science of the state’, while J.W. Garner claimed that ‘political science begins and ends with state’. In modern political theory, the significance of the concept of the state has been fluctuating. It is significant that though some sort of political organizations have existed since ancient times, such as, Greek City States and the Roman Empire, yet the concept of the ‘state’ as such is comparatively modern. Machiavelli expressed his idea as, “the power which has authority over man”. This was an important idea because it describes the nature of the State, not the end of the State. According to Weber, a famous German sociologist, “A State is a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory”.¹

The Greeks used the term polis or city to express their concept of the state. Their state was infact a city-state and the term was true enough, but the development of the country-state, as Sidgwick calls it, demands a more comprehensive term. The Romans used civitas, but they spoke also of *status reipublica* and *res publica* which carried with it the idea of public welfare. The modern term “State” was probably derived from *status* through the adoption of the term by Teutonic peoples. Machiavelli in *Il Principe* (1523) is credited with introducing the term into modern political science, and during the sixteenth and seventeenth centuries the term found its way in different forms into the languages of modern Europe.²

Similarly, R.M. MacIver and C.H. Page have pointed out: ‘The state is distinguished from all other associations by its exclusive investment with the final power of coercion’. R.M. MacIver points out that it embraces the whole of people in a specific territory and it has the special function of maintaining social order. Frederick M. Watkins defines the state as ‘a geographically delimited segment of human society united by common obedience to a single sovereign’. Geoffrey K. Roberts define the state as – a territorial area in which a population is governed by a set of political authorities, and which successfully claims the compliance of the citizenry for its laws, and is able to secure such compliance by its monopolistic control of legitimate force’.³ Men who live together in small groups under fairly primitive conditions of life may manage without any institution that it is appropriate to call a “State”; but as soon as human societies get beyond this stage “the State”; but as soon as human societies get beyond this stage “the State” emerges as an apparently necessary instrument for holding them together. There were “City States” in Ancient Greece and Medieval Italy and Germany: the Ancient Empires of Egypt, Persia and Babylon were based on “States” as much as the British empire is today. There have been “States” at every stage of civilization except the most rudimentary.⁴

Etymologically the term is an abstract one which has reference to that which is fixed or established. Thus one speaks of the “state” of a man’s health, of his mind, or of his economic condition. The etymological connotation does not therefore correspond to the meaning of the word as a term of political science. Unfortunately, like many other words of common usage in the literature of political science and law, it is used in various senses. Thus it is often employed as a synonym of nation, society, country, government etc.⁵ It is

very commonly employed also to express the idea of the collective action of the society, through the agency of the government. For example, when one talks about “state management”, “state regulation”, “state aid”, etc. one actually uses the word state for government.⁶ Again, in some countries having the federal system of the government, such as the United States (and the German Empire of 1871-1918), the term is used to designate both the federation as a whole and the component members constituting it. It is regrettable that neither the English, nor the German, nor the French language contains a suitable term by which the component members of federal unions may be appropriately designated. They are not, strictly speaking, “states” nor yet are they mere provinces or administrative districts, at least not in the American, Canadian, or Australian federal unions.⁷

Likewise the use of the terms “state” and “government” as if the two things were identical, has produced equal confusion and often misunderstanding. In fact they represent widely different concepts and upon the recognition of the distinction between them depends the true understanding of some of the most fundamental questions of political science. The state is the politically organized “person” or entity for the promotion of common ends and the satisfaction of common needs while the government is the collective name for the agency, magistracy, or organization through which the will of the state is formulated, expressed, and realized. The government is an essential organ or agency of the state, but it is no more the state itself than the board of directors of a corporation is itself the corporation.⁸

As used in political science, the word state means a community or society politically organized under one independent government within a

definite territory⁹ and subject to no outside control. There can be no community without the people to form one, and no common life without some definite piece of territory to live in. When people live a collective life, they fulfil the meaning of Aristotle's famous phrase, "Man is a social animal", and when they live a settled life on a definite territory to realize the purpose of collective living, they fulfil the meaning of Aristotle's second famous phrase, "Man is a political animal". The people are bound by rules of common behaviour and their violation is accompanied by punishment. That is the state. Society meets man's companionship, the state solves the problem created by such companionship. Therefore, the state is some form of association with some special characteristics, particularly that of its territorial connection and of its use of force. It is charged with the duty to maintain those conditions of life for which the state came into existence and for which it continues to exist.¹⁰

Therefore, the state is a natural, a necessary, and an universal institution. It is natural because it is rooted in the reality of human nature. It is necessary because, according to Aristotle, "The state comes into existence originating in the bare needs of life and continuing in existence for the sake of good life". Man needs the state to satisfy his diverse needs and to be what he desires to be. Without the state he cannot rise to the full stature of his personality. In fact, in the absence of such a controlling and regulating authority, society can not be held together and there will be disorder and anarchy. What food means to the human body the state means to man. Both are indispensable for his existence and development. The state has existed whenever and wherever man has lived in and organized society.¹¹

Empirical and Juridical sense of the word state :

The word state has both an empirical and a juridical sense, i.e., entities can be states either defacto or dejure or both. Empirically (de facto), an entity is a state if, as in Max Weber's influential definition, it is that organization that has a 'monopoly on legitimate violence' over a specific territory. Such an entity imposes its own legal order over a territory, even if it is not legally recognized as a state by other states (e.g., the Somali region of Somaliland).

Juridically (de jure), an entity is a state in international law if it is recognized as such by other states, even if it does not actually have a monopoly on the legitimate use of force over a territory. Only an entity juridically recognized as a state can enter into many kinds of international agreement and be represented in a variety of legal forums, such as the United Nations.¹²

Definition of the State

These have been many attempts to define "the state", and they have been based on widely different principles. At one extreme we have the view that "the state" is the whole community of its members regarded as an organized social unity. At the other extreme it is held that "the state is simply a piece of governmental machinery existing within a community, but to be distinguished sharply from the community. Between these two extremes there are many intermediate definitions; but there are also other definitions that are based upon quite different principles. For both the extremes so far mentioned and all the views that lie between them assume the existence of a community of men that is to be either identified with or distinguished from "the state". But there is also a school of thought that denies the very existence of this community, and hold that community is an aspiration still needing to be realized among men who are

at present divided into economic classes too antagonistic for any real community to exist between them. On this showing “the state” can neither be nor represent the community: it can only stand for the dominance of a particular economic class over other men. Under capitalism, say the communists, the workers have no country. “The State” to which they are subject is not their “State” but the “State” of those who exploit them, and accordingly it has to be defined not by its relationship to the community but simply as an organ of class domination.¹³

On the basis of this definition the “State” is conceived inevitably in terms of force. It is regarded as a coercive instrument devised and controlled by an exploiting class for the purpose of keeping other classes in subjection. It is accordingly thought of as consisting mainly of those instruments which have most plainly a coercive character. The law courts, the police and the armed forces are regarded as the typical embodiments of “State” authority, and even legislation is looked at rather from the standpoint of the sanctions which underlie it than of its administrative or service qualities. “The State” is thought of not as a body which provides common services for the use of its citizens, much less as a body in which the citizens combine in order to provide common services for themselves, but fundamentally as a body which imposes upon all those falling within its territory the discipline that is required in the interests of a dominant economic class. Thus communists regard the “states” of capitalist countries embodying the coercive institutions necessary for the maintenance of the capitalist system, and in founding a state of their own on the morrow of the Russian Revolution they created it deliberately as the instrument of the dictatorship of the proletariat, that is to say, the coercive authority of the new ruling class of Soviet Russia.¹⁴

Though the state is a necessary and a universal institution, but different writers have different opinion. There have been many different views about the nature of the state and hence its incompatible definition. Some writers define the state as essentially a class structure others regard it as the one organization that transcends class and stands for the whole community. Some explain it as a power system, others as a welfare system. Some view it entirely as a legal construction, either in the old Austinian sense which made it a relationship of governors and governed, or, in the language of modern jurisprudence, as a community 'organised for action under legal rules'. Some regard it as a mutual insurance society, others as the very texture of allout life. Gabriel Almond prefers to use the term "*political system*" for the state, as the latter is limited by legal and institutional meanings.¹⁵ This disagreement is primarily due to the fact that every writer has defined it from his own point of view. If the author is a sociologist like Oppenheimer or a philosopher like Hegel, or an economist, or a lawyer, there opinion will be different from each other.

Despite all these differences of opinion about the meaning and definition of the state which fairly represents some common aspects about the state. As preliminary definition of the state, we may therefore say that wherever there can be discovered in any community of men a supreme authority exercising a control over the social actions of individuals and groups of individuals, and itself subject to no such regulation, there we have a state. The definition given by *Holland* is that : "A state is a numerous assemblage of human beings generally occupying a certain territory amongst whom the will of the majority, or of an ascertainable class of persons, is by the strength of such a majority or class, made to prevail against any of their who oppose it". *Ihering* defines the state as "the form of a regulated and assured exercise of the compulsory force

of society". According to *Lasson*, "the state is a community of men which possesses an organized authority as the highest source of all force".¹⁶ *John W. Burgess* defines the state as a "particular portion of mankind viewed as an organized unit".¹⁷ *Hall* viewing the state primarily as a concept of international law, says, "The marks of an independent state are that the community constituting it is permanently established for a political end, that it possesses a defined territory, and that it is independent of external control". *Bluntschli* says, "The state is the politically organized people of a definite territory". *Esmein*, regarding it from the point of view of the jurist, defines the state as "the juridical personification of a nation". *Carre de Malberg* defines the state concretely as "a community of men fixed on a territory which is their own and possessing an organization from which results, for the group envisaged in its relations with its members, a superior power of action, of command, and of coercion."¹⁸

Shortly after the Civil War the Supreme Court of the United States in the case of *Texas vs. White* defined the state as a "political community of free citizens occupying a territory of defined boundaries, and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed". *Phillimore*, an authority on international law, considered the state to be, for his purposes "a people permanently occupying a fixed territory, bound together by common laws, habits and customs into one body politic, exercising through the medium of an organized government independent sovereignty and control over all persons and things within its boundaries, capable of making war and peace and entering into all international relations with the communities of the globe". *Garner* adds another definition of the state in the following terms: "The state as a concept of political science and

public law, is a community of persons more or less numerous, permanently occupying a definite portion of territory, independent or nearly so, of external control, and possessing an organized government to which the great body of inhabitants render habitual obedience". *W.W. Willoughby* considers it to be "a group of human individuals viewed as an organized corporate community over which exists a ruling authority which is recognized as the source of commands legally and, in general, ethically, binding upon the individuals composing the community".¹⁹ According to *Woodrow Wilson* "it is the people organized for law within a definite territory". *MacIver* defines state as "an association which, acting through law as promulgated by a government endowed to this end with coercive power maintains within a community territorially demarcated the universal external conditions of social order". According to *Gilchrist*, "the state is a concept of political science and a moral reality which exists where a number of people living on a definite territory, are unified under a government, which in internal matters is the organ for expressing their sovereignty and in external matters is independent of other Governments".²³

It may be summed up as "a state is a political association with effective dominion over a geographic area. It usually includes the set of institutions that claim the authority to make the rules that govern the people of the society in that territory, though its status as a state often in part on being recognized by a number of other states as having internal and external sovereignty over it. In sociology and political science, the state is normally identified with these institutions: in *Max Weber's* influential definition, it is that organization that has a "monopoly on the legitimate use of physical force within a given territory", which may include the armed forces, civil service or state bureaucracy, courts and police.

India is a union of states. India is committed to the ideals of the liberal-welfare state with the goal of establishing socio-economic and political justice. Indian state is committed to democracy and respects individual liberty, and India wants to give to all its citizens equality of status and opportunity thereby attempting to create a mighty brotherhood of Indian citizenship which would assist the sovereign, democratic, republic of India in reaching its proclaimed objectives.

Theories of the Origin of the State :

The Theory of Divine Origin : This theory holds that the state was created directly and deliberately by God. Man has not been the major factor in its creation, although the state has been made for man.²⁰ It was His will that men should live in the world in a state of political society and He sent His deputy to rule over them. The ruler is a divinely appointed agent and he is responsible for his actions to God alone. As the ruler is the deputy of God, obedience to him is held to be a religious duty and resistance a sin. The advocates of the Divine Origin theory place the ruler above the people as well law. Nothing on earth can limit his will and restrict his power. His word is law and his actions are always just and benevolent. The theory that the state and its authority has a divine origin and sanction finds unequivocal support in the scriptures of almost all religions in the world. In the Mahabharata, it is recounted that the people approached God and requested him to grant them a ruler who should save them from the anarchy and chaos prevailing in the state of nature.²¹ In the Bible it is stated: Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be are ordained of God". Thus, God is the source of royal powers. The ruler is the agent of God on earth.²²

The Force Theory : There is an old saying that ‘war begat the king’, and true to this maxim, the theory of force emphasizes the origin of the state in the subordination of the weak to the strong. The advocates of the theory argue that man, apart from being a social animal, is quarrelsome by nature. There is also lust for power in him. Both these desires prompt him to exhibit his strength.²³ Craving for power and desire for self assertion are, according to the exponents of this theory, the two primary instincts of man. In his behaviour and actions man is governed by these twin forces. The physically strong man attacked, captured and enslaved the weak. The successful man began to exercise his sway over a sizeable section and this led to the emergence of clans and tribes. Jenks, an exponent of this theory, says, “Historically speaking, there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare.”²⁴

Once the state came into existence, it was necessary to use force to hold down the power-impulses of men inside and of other states outside. The continued existence of the state, according to the advocates of this theory, demands permanent employment of force for maintaining internal order and external security. Hence force is the basis of the state. *Bosanquet* says, “The state is Necessarily force”.²⁵

The Social Contract Theory : Whereas the theory of divine origin of the state postulates the deliberate creation of the state by God, the social contract theory holds that man deliberately created the state in the form of a social contract. Men got together and agreed upon a contract establishing the state. *Hobbes*, *Locke* and *Rousseau* are among those who discussed at length the social contract theory.²⁶

Thomas Hobbes, an English political thinker, in his attempt to justify the British Monarchy conceived of the state as originating in this manner. He described the period before states arose as a “state of nature” in which men lived like beasts in the jungle. In his word life in a state of nature was “solitary, poor, nasty, brutish and short”. Such a life was too precarious. With man set against man, with might making right and the strong are the only effective law, some sort of government, Hobbes said was a necessity. To make life bearable, man created government and ultimately the state. Men got together and contracted among themselves to vest in some sovereign, ruler or king the authority necessary to bring order out of the chaos in which they lived. According to Hobbes’s theory, the ruler to whom all authority was given was not a party to the contract. In a sense, the king was above the law.²⁷

John Locke also wrote about the state of nature, but in contrast to Hobbes he did not believe that men necessarily lived brutish live in this natural condition. Yet there was enough uncertainty to make life difficult and enough injustice to make it tragic. Thus again according to Locke, men decided to contract with one another to guarantee their rights more effectively.²⁸

Rousseau likewise did not look upon the state of nature as bad. In his view, natural man, unencumbered with the trappings of civilization and the accoutrements of government, lived in idyllic life. Although, life in a state of nature might be theoretically superior, nevertheless it eventually became obvious to man that government was necessary. Men are not equal in energy or intelligence. Inevitably any natural state, without the restraining influences of government, will change capriciously with the ambitions of the various strong men. Ultimately, life in such a state of nature proved to be inconvenient and trouble some. Thus, like Hobbes and Locke, Rousseau presumes that a general

contract evolving all men was made to establish government and the state for the advantage of all.²⁹

Sometimes the *Mayflower compact (1620)* is given as an example of a social contract. In the terms of the Mayflower compact the signers solemnly and mutually in the presence of God, and one of another, covenant and combining ourselves together into a civil body politick, for our better ordering and preservation and furtherance of the ends aforesaid; and by virtue hereof to enact, constitute and frame such just and equal laws, ordinances, acts, constitutions and offices, from time to time, as shall be thought most meete and convenient for the general good of the colonies, unto which we promise all due submission and obedience.,³⁰

The Evolutionary Theory : This theory considers the state neither as a divine institution nor as a deliberate human contrivance, it sees the state coming into existence as the result of natural evolution. ‘The proposition that the state is a product of history’, says *J.W. Burgess*, means that it is a gradual and continuous development of human society out of a grossly imperfect beginning through crude but improving forms of manifestation towards a perfect and universal organization of mankind.³¹

In the early society, kinship was the first and strongest bond; and government, as *W. Wilson* points out, must have begun in clearly defined family discipline. Such discipline would scarcely be possible among races in which blood-relationship was subject to profound confusion and in which family organization, therefore, had, no clear basis of authority on which to rest. Common worship was an other element in the welding together of families and tribes. This worship evolved for primitive animism to ancestor-worship. When ancestor-worship became the prevailing form of religion, religion was

inseparably linked with kinship for, at the family or the communal altar, the worshipper did homage to the great dead of his family or group and craved protection and guidance. War and migration were important influences in the origin of the state. The demands of constant warfare often led to the rise of permanent headship. When a tribe was threatened by danger or involved in war, it was driven by necessity to appoint a leader. The continuity of war conduced to the permanence of leadership. Further, war and conquest helped to give the mark of territoriality to the state. And, finally, political consciousness. As Wilson says, in origin government was spontaneous, natural, twin-born with man and the family; Aristotle was simply stating a fact when he said man is by nature a political animal' The need for order and security is an ever-present factor; man knows instinctively that he can develop the best of which he is capable only by some form of political organization.³²

States are of course today much bigger than they used to be, much stronger, certainly more complex. State also accept more responsibilities and thus affect the individual more markedly than did their earlier counterparts.

Functions of the State – Ancient and Medieval views –

One of the most difficult problems which is to be solved is that of determining 'what the state ought to take upon itself to direct by public wisdom, and what it ought to leave, with as little interference as possible, to individual freedom' (Edmund Burke). It had been mentioned by some philosophers that there is a distinction between state and society; this means that there are limits to state action. This, however, has not always been the view among the people of the world. Among the Greeks, for instance, according to *Bluntschli*, 'the state was all in all. The citizen was nothing except as a member of the state. His whole existence depended on and was subject to

the state. The ancient idea of the state embraced the entire life of man in the community, in religion and law, morals, art, culture and science. Well might Burke's description of the state be applied to it: 'a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. The state's end being the comprehensive one of securing a good life for all citizens, all forms of control calculated to secure that result were considered proper, and no line was drawn between matters, political, moral, religious, or economic. The state might control trade, prescribe occupations, regulate religion or amusements. To the ancient Greek, the city was at once a state, church and school. In other words, the Greeks made no difference between State and Society.³³

It is better to say, with *Barker*, that the individual was not regarded as having rights of his own, to be protected as against the state. The mark of the Greek state is rather a derive for the action of the state and an attempt to stretch the lines of its action than any definition or limitation of the scope of its interference. The Roman adopted the Greek conception of the state with some modifications. They 'left very much to social customs and to the religious nature of man. The Roman Family was more free as against the state'. This does not mean that the Roman state was less powerful in theory; no one could resist the state if it uttered its will; Rather, the Roman state limited itself; it restricted its own action. In the Middle ages, two new forces, the growth of Christianity and the rise of the Teutonic races, brought into prominence a different conception regarding the sphere of the state.³⁴

It took some time for the new idea to prevail; indeed, a struggle had to be waged by the Church against the State to get the idea accepted. The state was now only 'a community of law and politics, no longer also of religion and

worship'. Secondly, only with reluctance does the Teuton submit himself to the sovereignty of the whole body. He 'claims for himself an inborn right which the state must protect, but which it does not create, and for which he is ready to fight against the whole world, even against the authority of his own government. He rejects strenuously the old idea that the state is all in all. To him individual freedom is all important. The rights of the state are thus limited by the rights of the individual as well as by those of the Church. Thirdly, the Middle Ages were pervaded by the feudal conception. Men became sovereigns by virtue of owning land. The functions of government under such a system were simply the functions of proprietorship, of command and obedience. Government was for the most part divided out piecemeal among a thousand petty holders. The dispersal of governmental power among a considerable number of persons gradually gave rise to the idea of the rights of individuals against a central authority.³⁵

The Early Nineteenth Century –

About a hundred years ago the prevailing view about the functions of government was that it should confine itself to minimum – the maintenance of order. Any extension of the sphere of government meant, it was thought, a corresponding contraction of individual liberty. Every person was the best judge of his own interest. No government could know it better than he, and it was a most unnecessary attention' on the part of government to direct him to it. Laissez-faire must therefore, be the rule for government, each individual would then follow his own good, and the general good would be the result.³⁶

This theory is generally known as individualism or laissez-faire. The sole duty of the Government is to protect the individual from violence or fraud. That Government is best which governs least. According to this theory, the

following functions of government alone would be proper: I- to secure the individual the right of personal security including security of health and reputation, the right to private property together with the right of freely transferring property by gift, sale or bequest and the right to fulfillment of contracts freely entered into; and II – to protect the individual from foreign aggression. Briefly, the state was to be ‘negative’ or ‘police’ state.³⁷ Since the latter half of the 19th century, accordingly, the state has, in most countries, been extending its activities. It had never, indeed, confined itself to the bare ‘individualistic – minimum’; such matters as currency and communication, for example, had already been controlled by the state. But now it began to take more and more positive functions to itself. Modern state regulate and provide, education, they concern themselves with public health, they regulate conditions of work by means of Factory Acts; they seek to protect the worker against the results of accidents, or sickness, or old age; they maintain museums, parks etc; they foster research and discovery, and promote schemes of development. Nowadays it is generally believed that the state should whatever it can do. The salient feature of modern state is its positive and wholesale activity.³⁸

The Present Day –

More generally, it is agreed that it is the duty of the state to promote the greatest happiness of the greatest number. The state is an organization to promote social good on the largest possible scale. And in attempting to achieve this purpose, the tendency is for Governments to make themselves more and more conspicuous, especially by the planning of economic life.³⁹

The primary duty of the state is to create an atmosphere of security in which the individual can develop himself. But it would be a very poor view of the Modern State which would confine its activities to the maintenance of law

and order. The state has to strike a proper balance between the liberty of each and the liberty of all. The state is not responsible merely for security of the life and limb of its citizens. It is also responsible for their economic security. It is not sufficient that legal justice should be dispensed by the courts and the state should provide for the means of its enforcements. The state must do what the Courts can not do provide economic justice by its laws and administrative acts.⁴⁰

The state has to provide social justice among its citizens. It must redress the balance where the balance has been tilted by privilege or due to unfair competition. The state can never bring about complete equality because that is against the order of nature – men being so unequal in their capacities and aptitudes. But it can remove inequality where that prevents every citizen from realizing the full results of his own personality. It was said long ago that too much wealth on the one side and too much poverty on the other does great harm to a state. Even *Plato* in his *Laws* would not permit any citizen to possess more than four times what the poorest citizen possessed. Wealth is the main source of all inequalities. It does not make a man wiser or more intelligent or endow him with qualities which he does not possess. But in the struggle for existence it gives a flying start to the one who possess it and imposes an intolerable handicap upon these who do not possess it. The Welfare State has to remove this glaring inequality from our country. But the mere abolition of inequality and privilege is the negative aspect of the Modern State. Its positive aspect is to provide social security to every citizen. Every citizen has a right to a certain standard of living. He cannot obtain this by merely doing nothing. He must be prepared to work and indeed he has a right to work. But whatever the nature of his work he is entitled to be compensated in a manner which would

permit him to maintain the dignity of his human personality. All work is necessary for the welfare of society – and in whatever capacity a man may be working he is discharging his obligation to society.⁴¹

Social security always requires that a citizen should be supported in his old age and illness. Today many a worker is just thrown on the scrapheap when he is superannuated. He may receive a pension which may just be sufficient to put off starvation or he may even receive no pension at all. It is now recognized that it is the fundamental and inalienable right of a human being not merely to exist but to live with dignity. And it is for the Modern Welfare state to build the bridge which will enable the citizen to cross over from a state of degrading existence to a state of life which is ennobling and purposeful.⁴² Besides administering justice and protecting life and property, it is the plain duty of the state to see to it that the social and economic conditions under which the individual is compelled to live are such that he can develop his abilities, make the most of the faculties with which he is endowed by nature and thus realize fully the ends of his existence.⁴³

It is the duty of the state to enforce contracts, but it may also be its duty to prescribe the conditions under which contracts in certain cases shall be valid and entitled to the protection of the state, especially when one of the contracting parties is really not free. The state ought to regulate or supervise the conduct of industries which are natural monopolies; but it may also be the duty of the state to take a business out of the hands of private individuals and operate it itself as a means of protecting society from inefficient service. The state ought to preserve for society the obvious advantages of industrial competition; and if free competition becomes impossible through the policy of *Laissezfaire* the state ought to intervene and protect society against the evils of

private monopoly. And experience has abundantly shown that the policy of *Laissezfaire* will not secure industrial freedom nor insure equality of economic opportunity in the highly complex societies of the present day.⁴⁴

The function of the Modern Welfare State in th realm of education raises an important question. Education is as great a necessity for the people as bread and it is as much the duty of the State to see that the facilities are provided for education as it is to see that every citizen obtains the bare necessities of life. It is no longer open to a parent to say that he will deny his child the benefits of education and keep him in intellectual darkness. The state can and does exercise compulsion against the parent and rightly insists upon education being imparted to the child. But has the state the right to determined what is the nature of the education that the child shall receive? To concede this right to the state is to undermine the very basis of the liberty of the mind. By controlling education the state can indoctrinate the mind of the child, can instill into him a particular ideology and can regiment him into a particular pattern. Every totalitarian state – whether it be Hitler’s Germany or Lenin’s Russia builds up its strength by capturing the minds of the youth.⁴⁵

Is the state for man or man for the state? Basically, the state is for man, not man for the state. But this can not be said without qualification. The whole man is part of the state, but not by reason of all that is in him. Because he is a person, man transcends all temporal societies and is subordinate only to God; in this sense the state is for man. Because he is a low grade of person, poor in self-sufficiency, the individual man is dependent on his fellows for his temporal welfare and must sacrifice his personal good for the common good; in this sense man is for the state. The state itself, however is not for itself as a state, but for all its people.⁴⁶

Increased state Activity :

The most outstanding social result of the Industrial Revolution has been the introduction of large scale production in factories. This, in its turn, has brought about a fundamental change in world economy. For mass production has meant a distance between the employer and the employed, and between the company-promoter and the investor; the human element in all these relationships tends to be ignored. The possibilities of fraud and of exploitation are increased, necessitating increase state intervention to protect the weak and the exploited. Again, mass production necessitates wide and ever-expanding markets abroad; the interdependence between state and state in capital, market and labour becomes marked, and without the help of the state the industrialist is unable to make the maximum profit. Further, unemployment is implicit in a system where the production is dependent upon the anticipation of a demand which is affected by world factors; frequent crises are the result; the state has to attempt to mitigate the social evils of unemployment. The increased activity of the state in economically underdeveloped countries like India is also explained by the urge to raise the living standards of the people by making the optimum use of the country's resources – physical and human; it is felt that in an under developed economy, state action by planning economic life is essential to achieve the desired result. Few more reasons for increased state activity are the growth of monopolistic corporations, the failure of *laissez-faire*, the political enfranchisement of the working classes, the great wars of 1914-18 and 1939-45 and lastly different political theories etc.⁴⁷

Growth of State

The state is neither the result of an artificial creation nor can it be said to have originated at a particular period of time. It is, on the other hand, the

product of growth, a slow and steady evolution extending over a long period of time and embracing many elements in its development, prominent among which are kinship, religion, property and the need for self defence from within and without. However, the starting point is the family and the germs of governmental organization are found in the family discipline. The transition from the family to the state must have been long and chequered. The first distinctively political unit was the tribe. In the days of nomadic habit the organization of the tribe was sufficient to satisfy its needs. But when their travelling days were over, a settled life created new needs of organization. Once the population was territorially integrated with fixed abodes, their common interests developed and the original kinship tie gave way to a new territorial tie. In fact, the original kinship never disappeared. What actually occurred was a fusion of the two principles, kinship and common interests emerging out of the life of togetherness in the shape of territorial kinship on a common land. But the process of the evolution of the state has not been uniform. Natural, environmental and temperamental differences of the people spread over different areas of the universe presented different conditions under which the state emerged at different times and places. As a result of these differences very different types of States, with various forms and patterns have co-exist and co-exist even now. It is, however, instructive to mark the following stages through which the state have evolved.⁴⁸

Totalitarian State :

Contradistinguished from the model of a liberal democratic state, a totalitarian state is one where the authority of government is total and absolute claiming jurisdiction over the whole of a man's life. That is, no part of man's life is outside the detailed supervision and control of the state which means that

the state becomes absolute, permanent and super naturally sanctioned institution. It represents, what *Hegel* said, that state is the march of God on earth, and as his disciple *Trietschke* commanded that man should fall down and worship the state. The Foreign Policy Association of America defined it as: "For the pluralism of the modern democratic state, where the government is only one of several groups which have the individual's allegiance, fascism has substituted the totalitarian state which embraces all the activities, of individuals and subordinates them to national ends." In a totalitarian state political authority is monopolized in the hands of a single person or his group (Party). *Finer* defines it as : "It is therefore the veritable contradictory of the liberal-democratic type of government. The scope and authority of government is not limited, but just the reverse is total."⁴⁹

Known by any name, whether Bonapartism in France, Fascism in Italy, Nazism in Germany and Communism in Russia, totalitarianism "is solidly opposed to any institutional division of power". It stands for the monopolistic and hierarchical organization of a single group or junta (Partly) having both the defacto and de jure authority to control and run the machinery of administration according to the official creed, partly through its monopoly of the mass media and partly through the use of brutal force to establish its reign of terror. That is the reason to identify this type of government with one having extra-legal authority, or to sum up as *Mussolini* said : "All within the state, none outside the state, none against the state".⁵⁰

Many consider the first totalitarian regime to have begun in the 20th century, which include the communist regime of Soviet Union, as well as right-wing totalitarianism of Nazi Germany, Fascist Italy, Spain under Franco, Portugal under Salazar as well as others. However some argue that

totalitarianism has existed centuries prior, such as in ancient China under the political leadership of Prime Minister Li Si who helped the Qin dynasty unify China. Li Si adopted the political philosophy of legalism as the ruling philosophical thought of China and restricted political activities and destroyed all literature and killed scholars who did not support Legalism. Totalitarianism was also used by the Spartan state in Ancient Greece.⁵¹

The totalitarian state has certain peculiar qualities also. First it is dictatorial in character and, as such, it is opposed to the norms of liberalism and parliamentary democracy. Whether it is a single leader or a group or a political party, the ruling power controls administrative apparatus at all levels permitting the members of this apparatus no latitude or discretion. Secondly, totalitarianism imposes its official ideology or myth over its people by the iron law of despotism. All means of communication are in the hands of the men in power and they are used for propaganda purposes. Secret and security police and intelligence forces are organised for the manhunt of the dissidents and their eventual persecution to establish reign of terror. Official glorification of the leader, the party and the race is ruthlessly imposed upon the people. The regime uses both persuasion and force of deterrence to inculcate the official myth and secure its general acceptance to nullify and suppress opinions of the possible dissidents Third, totalitarianism in the hands of a single party means absence of difference between the party and its government. Both are identified as a result of which secret party mechanism becomes more important than open constitutional framework. The constitutional law of the land specifically outlaws opposition and thereby imposes a ban on the existence of another political party. As *Finer* holds, “The government is to the party what the glove is to the hand. The central institution of such totalitarian state is the party. It is

the party which wields all these powers; the powers of persuasion, the deference, of the licensing and control of expressed opinion, of the control of elections.⁵²

All those features make it clear that a totalitarian state presents an anti-thesis of a liberal democratic model. While the process of decision-making is dispersed in a liberal democratic model, it is concentrated in a totalitarian state; while the former strives for the maximization of political participation in a 'sincere' way to secure the title of legitimacy, the latter wants minimization of the same for the sake of consolidating its 'illegitimate' foundations.

The Greek City State :

Greek city states developed after 1000 BC in Greece. The Greek city states were the first communities to have given conscious thought to 'politics'. Although the Greek political institutions were probably not unique, yet they presented the most fully developed instance of a way of life and government.

With the Greek City States two ideas were integral. Each city was a politically organized state independent of others and proud of its independence. The Greeks never thought, and perhaps it was foreign to their nature, to merge their identity in any other city and to make a large unit of political administration. Secondly, the Greek City State was deliberately limited in size and population. According to Greek political Philosophy, the concentration of political, social and intellectual life at one central city was possible only when the state was small. Aristotle put definite limitations on the population and size of the state. He held that neither ten nor a hundred thousand could make a good state, because both these numbers were extremes. He laid down the general principle that the number should be neither too large nor too small. It should be large enough to be self-sufficing and small enough to be well governed.

The Greek city-state developed to the stage of a conscious effort directed to the realization of liberty and equal laws. It was a great experiment not only in the art of self government, but also in quest of virtue. To be a citizen of the state did not merely imply, in the Greek view, the payment of taxes and the casting of a vote. It implied a direct and active co-operation in all the functions of civil and military life. A citizen was normally a soldier, a judge and a member of the governing assembly; and all his public duties he performed not through a deputy but in person; the gods of the city were his gods, and he must attend festivals. The state was, thus, identified with society. The Greek city was at once a state, church and school and it embraced the whole life of man. Since the object of the state was to secure a good life for all citizens, all forms of state control calculated to secure that end were considered proper and justified, and no line was drawn between matters political, moral, religious and economic. The city states of Greece were typical examples of direct democracy in the modern sense of the term. All citizens were directly associated with the governance of the state and it really meant the power of the people. But forms of government, according to Greek philosophers, were subject to cyclic changes. Monarchy was the first and in time it gave way to aristocracy. Aristocracy was succeeded by oligarchy. Then came polity and, finally democracy. Democracy was held to be rule by the mob, an intolerable confusion which was succeeded, again, by monarchy and, thus, ran the course of cyclical political changes.⁵³

The Roman World Empire :

After the downfall of the Greek city-states, the main line of political development passed westward to Rome.⁵⁴ Rome was originally just one of the

numerous little states which had been born in Italy. But after 500 B.C. the Italian City States were united, with Rome at the head.

There are certain periods which mark the growth of the Roman State. First there was the monarchic city-state. The royal period lasted from the foundation of Rome about 753 B.C. to 510 B.C. At the head of the state was the king who was at once the hereditary and patriarchal chief of the people, the chief priest of the community, and the elected ruler of the state. On the death of the King, the sovereignty of the state reverted to the Council of Elders. During the monarchical period only the nobility, called the patricians, had a share in political authority. The landless, propertyless common people known as the plebians, had no share in the governance of the country and they enjoyed no political rights. The plebians were subject to political, economic and social disabilities. They could not hold any public office. The patricians had entire control of the administration of law. The public land and pastures were allotted only to them.⁵⁵

The Roman Empire at one stage extended over England, France, Germany, Spain, Austria, the Balkans, Greece, Asia minor, the whole of Mediterranean coast and its hinterland. The Governors sent to rule the distant parts of the Empire enjoyed wide discretionary powers and were practically independent of the Home Government. The only check on their authority was the possibility of impeachment at home on retirement. But it was just a nominal check. The Romans held fast to authority, in the family and in the state. At the same time, they were ready to concede rights to all kinds of subject persons by extending to them the right of full Roman citizenship. While they were reducing one country after another to subjection and order, they were also developing their law on rational principles. But the Roman Empire could not

endure long. Among the causes which led to her decline and downfall “were the sacrifice of individual liberty for the sake of securing unity, the soulless efficiency which characterized her administration, the moral depravity of the upper classes, devastating pestilence, the unsound economic basis of the empire, failure to make rules for the succession of emperors, religious disintegration, and the invasion of barbarian hordes.

Nation State : The origin and early history of nation-state are disputed. A major theoretical issue is : “which came first the nation or the nation-state. For nationalists themselves, the answer is that the nation existed first, nationalist movements arose to present its legitimate demand for sovereignty, and the nation-state met that demand. Some ‘modernisation theories’ of nationalism see the national identity largely as a product of government policy, to unify and modernize an already existing state. Most theories see the nation-state as a 19th century European phenomenon, facilitated by developments such as mass literacy and the early mass media.⁵⁶

The nation-states began their carriers as absolute monarchies. When Papal authority was set aside, and feudal rights were giving way, it was natural for the people to cling to the central institution in which their political life was embodied. The growing national consciousness of the people had made them realize the need for consolidation. But consolidation demanded concentration of authority. Protestantism, too, while limiting the authority to a territorial state, placed the spiritual and civil authority in the hands of the king. But the absolute authority of the kings could not remain unchallenged for long. The next stage in the development of nation-state was the conflict between the king and the people. The people demanded their rights and privileges. They began to realize that power was ultimately theirs, if they wished to wield it. It was the

rise of democracy and the aspirations for a representative system of government. Democracy brought with it three main principles; equality, popular sovereignty and nationality.

The modern state is a nation-state and it has become the basic pattern throughout the world. It actualizes the principle of self-determination or the right to each nation to govern itself. Therefore, loyalty in the nation state is expressed to the nation or in other words, to the people. A nation-state, accordingly places emphasis on the ethnic, if possible, and geographic unit of the people. It adopts all means at its disposal to preserve the integrity of its natural frontiers and tries to maintain a homogeneous and united people.

Liberal State : The philosophy of the liberal state is the free individual who has not yet become a member of a society and the political community which developed into a state. Liberal philosophers believe that the state is an artificial body created by the free wills of individuals and therefore its most fundamental objective is to promote the interest of individuals in terms of individual rights. The liberal state is an organization in which the state is regarded as a means to realize an end, but is not an end in itself. Therefore, the state cannot be absolute or unlimited in its powers. The power of state or sovereignty is subject to basic limitations.

The first and foremost limitation on the power of the state is the primary objective for which it is claimed to have been created by individuals. In the liberal theory, this objective is the promotion of security, life, liberty and property of the individuals. The liberal theory maintains that the state should confine itself to the minimal functions of enforcing law and order, defense from external aggression, and some limited regulatory powers in the socio-

economic and cultural fields. In short, the essence of the liberal state was to hold together the laissez-faire and a democratic state.⁵⁷

When one defines the liberal state to be politically democratic, one should understand that it refers not only to the electoral process, but also to other important aspects. The first is the granting of individual rights: the right to freedom of expression and right to property. The second important principle associated with the liberal state is the rule of law. The rule of law implies that all citizens are equal before law, and that nobody, individual or institution, including the governmental ones, exercise state power except according to the existing law. In a liberal system without any written constitution such as the U.K., this means the law enacted by the parliament or bodies authorized to do so by the parliament, is supreme. In those liberal systems with written constitutions, such as in the U.S.A. or India, this means the rule of constitutional law. All laws must operate according to the provisions of the constitutions. The earlier classical liberal theory defined the state as a minimal state, and excluded from its jurisdiction large areas of life, in the individual and the economic field. Towards the close of the 19th century and early part of the 20th century, liberalism was forced to revise this position, and to accommodate extensive regulatory functions in the field of economic activities. This has led to what is known as the welfare state. The increasing democratization of the liberal state through the extension of adult franchise compelled the state to initiate policies of significant intervention in the economy. It also meant transferring resources from the more wealthy to the less wealthy through the means of taxation and state subsidy. Unlike the minimal state, which was the original form of the liberal state, the welfare state was called upon to make public welfare as one of its concerns.⁵⁸

The Marxist State : The Marxian idea about the state is diametrically opposite to the classical Greek view. To the Greeks the state is a natural and necessary institution. It is natural as it is rooted in the primary instincts of man; it is necessary as it continues in existence for the good life. Contrarily, the Marxian view commonly known as the exploitation theory defines the state as an artificial construction based on force. The state, in Marxian Theory, is a product of society at a certain stage of development. "The state" as Engels wrote "has not existed from all eternity. There have been societies that did without it, that had no conception of the state and state power. At a certain stage of economic development, which was necessarily bound up with the cleavage of society into classes, the state became a necessity owing to cleavage". The state, therefore, has no high moral purpose to serve. It is merely a deliberately created organization of the possessing class for its protection against the non possessing.

Rights

The doctrine of rights or natural rights is itself an offshoot of the doctrine of natural law. Since natural law consists of rules founded on the primary instincts of man as modified by his inborn perception of what is right or wrong, it follows that natural rights constitute the primary rights and obligations of men to one another as soon as they begin to live in a society, i.e., in association with others. And since the rules of natural law are of universal application, natural rights also inhere in every human being, in all ages and in all climes.

The political implication of the theory of rights is that these rights, being inherent in man, existed prior to the birth of the state itself, and therefore can not be violated by the state. However, the growth of the State itself necessarily

put limitations on the natural rights of every individual in the interests of their collective existence. In a 'state of nature', the earliest state of society envisaged by political thinkers, such as *Hobbes* or *Rousseau*, right was co-related with might, in the sense that every man had a right to do everything within his power. The growth of political society narrowed down the ambit of such rights insofar as social existence postulates that the rights of each individual should be limited by the collective interests of the society in which he lives.⁶⁰

Though there has been an unending controversy as to whether rights are anterior to political society or, are created by the latter, scholars agree on the point that there are certain basic rights and inalienable rights which are inherent in free and civilized human beings. A political society is necessary not to create them but to secure them. For example, a right to *habeas corpus* in England was not created by the habeas corpus act, but existed even prior to the enactment of those statutes. Civilized men derive such rights from a higher law which was called 'natural law' at the dawn of civilization, and which latter came to be embodied in the form of a written instrument or instruments constituting the 'fundamental law' of the land.⁶¹

The doctrine of natural rights received further impetus at the hands of the great protagonists of the theory of social contract in the 17th and the 18th century, particularly *Locke* and *Rousseau*, who sought to trace the genesis of political society and government in an agreement into which individuals entered to form a collective society to ensure their general interests and objects, but at the same time without interfering with their 'natural rights' which already belonged to them as human beings. John Locke made the most systematic contribution. His two *Treatises of Government* wielded a great

influence on the American colonists in preparing the Declaration of Independence and the written constitutions. Locke's theory was that, in the original state of nature, man was governed by the law of nature, but for the sake of better safety, he joined in a political society by means of a 'social compact' for the mutual preservation of life, liberty and property. The government, so set up by the compact, was naturally one of limited powers and was bound to the community by the guarantee that people's natural rights would be preserved. Thus, the legislature was limited by natural law; and a law made by the legislature contrary to the law of nature or violative of the natural rights of the individual was invalid. Some of these natural rights, for example, were 'equality' "men being by nature all free, equal and independent", liberty and property. The distinct contribution of Locke to the philosophy of Rights was that he did not rest with the assertion of the natural rights against royal arbitrariness; he held them as against the Legislature as well, even though the 'supreme power in the commonwealth' might belong to the Legislature.⁶²

But it was Rousseau who gave a kinetic impetus to the doctrine by emphasizing that the sole justification of the State, which derives its authority from the people, was to guarantee the natural rights of man, of freedom and equality. These were 'natural' rights in as much as they inhered in man in the 'state of nature' : "Man is born free and everywhere he is in chains".

In a nutshell, rights consist in claims of individuals which seek to restrict arbitrary power of the state and which are required to be secured through legal and constitutional mechanisms. In addition, these may include some benefits which the state may extend to its citizens to improve the quality of their life.⁶³

Meaning of Right : The English word right has two main meanings, as illustrated in the following sentence: “It is right (morally good) for us to demand our rights (things owed us)”. The two meanings stem out of the same root idea, the ethical concept of oughtness: how I ought to act, and how others ought to act towards me. Hence we have :

- I. Right as opposed to wrong
- II. Right as correlative to duty

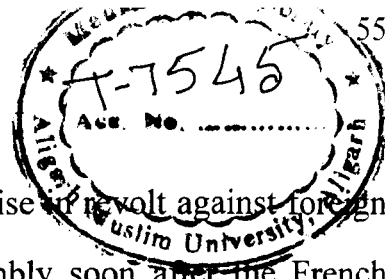
Rights originally means something that is straight, not crooked, in opposition to wrong, which is wrung or twisted from the straight. Right is something which squares with a rule or norm, as a right line or a right angle. In ethics right means that which squares with the norm of morality, and so is morally good. In this sense it is equivalent to latin *rectus* from which we derive such words as rectify, rectitude, erect, direct, correct. Right is also used as the equivalent of the Latin *jus*, from which we derive such words as just, justice, justify, jurist, juridical, injure, perjure. In this sense right means that which is just; a just law, just deed, just debt, just claim. This is right as correlative to duty.⁶⁴ Rights are sum total of those opportunities which ensure enrichment of individual personality. As *Laski* observes, “Rights, in fact, are those conditions of social life without which no man can seek, in general, to be himself at his best.”⁶⁵ But right in any full sense of the word are never rights unless they are recognized as such by the state. While the moral personality of man is the ultimate source of the rights, the state is the immediate source. Hence, rights are the basic conditions of man’s good life which are recognised as such by the legal code of the state.⁶⁶

Theories of Rights :

Theory of Natural Rights :The theory of natural rights was very popular in 17th and 18th century. It treats the rights of man as a 'self-evident truth'. In other words, these rights are not granted by the state, but they come from the very nature of man, his own intrinsic being.

The contractualists contemplate the existence of natural rights in the state of nature, a pre-civil condition of mankind. These rights are considered to be independent of organized society, as they are the possession of man in the state of nature. Hence, natural rights are not legally sanctioned privileges enjoyed by man in a politically organized society. The concept is basically non-juristic. Secondly, the natural rights are "pre-suppositions of society". The adequate understanding of their intrinsic value, and of the necessity for permanently preserving them, prompts men to build up an organised society. *Hobbes, Locke and Rousseau*, the three prominent contractualists, agree that men possess rights in the state of nature, and society is organized to guarantee their realization. But while Hobbes believes that with the formation of society man loses his natural rights, Locke thinks that these rights continue to exist and the society's function is to maintain them. In Rousseau's view, the transition from state of nature to civil society is followed by complete submergence of individual wills in the general will.⁶⁷ *Rousseau* says, "what man loses by the social contract is his natural liberty and an unlimited right to anything that tempts him which he can obtain; what he gains is civil liberty and the ownership of all he possesses."⁶⁸

The theory of natural rights exercised great influence on the American and French revolutions. The desire to vindicate natural rights grounded in



natural equality of men inspired the Americans to rise up in revolt against foreign domination. Similarly, the French National Assembly soon after the French Revolution, resolved “to state in solemn declaration the natural, inalienable and the sacred rights of man”. The theory of natural rights has been subjected to searching criticisms. *Bentham* denies the existence of pre-civil rights. Rights can only exist in an organized society possessing the adequate legal frame to guarantee their enjoyment. Hence, the concept of rights prevailing in the state of nature is, legally viewed, a myth. Secondly, the contractualists conceive of natural rights as an unchanging bundle of privileges, but as *Laski* observes, “no permanent and unchanging catalogue of rights can be compiled”. The conception of rights is essentially dynamic, changing in tune with social changes. Thirdly, *Hobbes* and *Rousseau* offer a conception of state absolutism which makes a mockery of rights. Rights or liberties can only prevail in a society where political authority is controlled, responsible and limited. *Hobbes* and *Rousseau*, however, endow the state with total and absolute authority.⁶⁹

Theory of Legal Rights : The theory of legal rights holds that all rights of man depend on the state for their existence. There can be no right in the proper sense of the term unless it is so recognized by the state. According to this theory, no rights are absolute, nor are any rights inherent in the nature of man as such. Rights are relative to the law of the land; hence they vary with time and space. Rights have no substance until they are guaranteed by the state.⁷⁰

This view has three implications. (1) The state defines and lays down the bill of rights. Rights are not prior or anterior to the state, because the state is the source of all rights. (2) The state lays down a legal framework which guarantees rights. It is the state which, through its instrumentality of law,

enforces the enjoyment of rights. (3) As law creates and sustains rights, so whenever the content of law changes, the substance of right also changes.⁷¹

But the legal view of rights does not take cognizance of the fact that rights flow not only from the membership of the state, but also from membership of other multiple associations to which an individual both by instinct and necessity is deeply attached. As *Laski* says, to limit his rights to the single category which membership of the state involves is to destroy his personality and not to preserve it. Next, the material source of rights is the community's conception of justice and not the law of the state. The prevalent notions of justice in the society profoundly influence the character of rights. Yet the legal theory embodies some truth. The state, as *Barker* says, is the immediate source of rights, and rights in any full sense of the word are never rights unless they proceed immediately from that source. But the theory errs in magnifying one source into the sole source of rights. Rights are both legal and moral.⁷²

Social Welfare Theory of Rights : Social welfare theory of rights postulates that rights are, in essence, conditions of social welfare. The state should set aside all other considerations and recognize only such rights as are designed to promote social welfare. The Utilitarian school of the 19th century, led by *Bentham*, postulated the 'greatest happiness of the greatest number' as the sole criterion of legislation and recognition of rights. Among the contemporary advocates of social-welfare theory, *Roscoe Pound* and *Chafee* are the most outstanding.⁷³

Social-welfare theory seems to be quite reasonable because no theory of rights can be held valid until it serves the cause of social justice. This theory

eliminates the subjective, ambiguous, dogmatic and static criteria. But, again, this theory presents practical difficulties. The question is – who will define social welfare for social expediency? At best, social welfare theory of rights is a relative theory, and its merit is dependent on the condition that the oppressed sections themselves hold the power and get the opportunity to define social welfare for determining the scheme of rights in a given society.⁷⁴

Correlation of State with Individual

The question of exactly what particular rights individuals have is a complex one. For *Locke* and *Nozick* each has rights to life, liberty and property. The U.S. Declaration of Independence recognizes inalienable rights to life, liberty and pursuit of happiness. A number of philosophers, *Rawls* and *Dworkin* amongst them, would include a right to at least adequate resources, such as income and health care. The United Nations, in their Universal Declaration of Human Rights, outlined the basic rights any one should be entitled to have respected. The U.N. also went on to adopt several specific conventions regarding, amongst other things, rights against torture and genocide as well as covenants detailing civil and political rights and economic, social and cultural rights.

The state, by guaranteeing the rights of a citizen, assist him in the development of his personality. Without this legal sanction rights become mere unenforceable claims. The citizen, if he has to enjoy the rights, must also discharge some specific duties to the state. Rights and duties are correlative. In the constitution of U.S.S.R. the duties of citizens are expressly stated. In the democratic constitutions of U.S.A. and India they are left to the civic sense of the people. Some of the major duties are as follows⁷⁵ :

It is the duty of every citizen to stand by the state in the hour of its crisis. It is the duty of every citizen to assist the state in maintaining its territorial sovereignty from external aggression and in preserving internal peace and order. This duty implies a moral responsibility of every citizen to defend the state even at the price of his life. To enforce this duty, in some states military service for the citizens has been made compulsory. In representative democracy of today laws are made generally in conformity with the prevalent opinion of the community, and they aim at common social welfare. It is the duty of every citizen to obey the laws of his state. Violation of laws produces a condition of anarchy which reduces good living to a marginal experience. But if the law of a state fails to represent justice should the citizen exercise his right to resistance? *Laskis* considered opinion on this issue is that a citizen has the right to resist a law which is devoid of moral adequacy. Barker also admits the right to resistance in a situation in which law is not based on the general scheme of justice on which the state and society are based. The chances of resistance can be substantially reduced if the laws are endowed with the content of justice. Only then the will to obey which is the basis of political obligation will spontaneously emerge.

Similarly, it is the duty of the citizens to serve as jurymen or to act as assessors, whenever called upon to do so. Citizens, also, owe a duty to the state to render service as members of public committees, organizations, local bodies, representative assemblies, etc., when required. Finally every citizen should develop the 'social conscience' and 'public spirit'. He should place public good above private interests and render social service, whenever the occasion arises, as a willing worker.⁷⁶

Man shivers in isolation. The physical and physic needs of human life impel man to crave for group life. He seeks to realize these needs through concerted and associated actions. Human beings, as separate entities, are transformed into associative personalities. Groups emerge spontaneously in order to fulfil the diverse needs of human life. The much needed sense of solidarity, which is necessary for the development of human personality, is provided by the growth of groups among which the state occupies the pride of place. It is in the nature of group organization that it “embodies the principle of reciprocity. He who gives, takes, and he who takes, gives.”⁷⁷ Thus one of the principal consequences of the emergence of group life has been the interweaving of rights and duties with state.

The enjoyment of rights involves fulfillment of certain obligations; while enjoying rights one must perform some duties. Rights, guaranteed by state are correlative with duties. This has led to the formulation of what is known as the functional theory of rights. By this theory “is meant that we are given powers that we may so act as to add to the richness of our social heritage. We have rights, not that we may receive, but that we may do”.⁷⁸ This conception of correlation is implicit in the very nature of social existence although it has not been made articulate in most countries through constitutional recognition.

The relation between individual, state and rights/duties may be discussed in its different aspects. Firstly, it is the imperative duty of a citizen to use his rights in such a way as to contribute to social richness. The right to education, for instance, is recognized in most of the advanced democratic states. But it correspondingly imposes an obligation on the citizen to cultivate the high civic virtues in the absence of which democracy can not successfully

operate. Secondly, the fact of social interdependence devolves on each individual the obligation to respect the rights of others. A citizen of India, for instance, possesses the right to free movement. At the same time it is paramount duty not to interfere with the enjoyment of similar rights conferred upon him by the state, by some other citizen. Unless the citizens mutually respect their rights, state will be thrown into the condition of disorder where rights will become a meaningless bundle of empty principles. Thirdly, an individual is under obligation to perform certain duties to the state. *Barker* observes, the state is the immediate source of rights, and rights in any full sense of the word, are never rights unless they proceed immediately from the source. An individual owes a debt of gratitude to the state for the bestowal upon him of certain privileges which are indispensable for the development of his personality. Hence, he is under obligation to perform some necessary duties to the state.⁷⁹

The coming together of men in society involves their willingness to settle down to some abiding rules of social ethics. Social existence demands a certain measure of rational conduct of man, an intelligent awareness of the fact of social interdependence. This results in inter locking of rights and duties of the individual with the state. Rights are as *Hobhouse* observes “what we may expect from others, and others from us, and all genuine rights are conditions of social welfare. Thus the rights any one may claim are partly those which are essential to every man in order to be a rational human person, and partly those which are necessary for the fulfillment of the function that society expects from him. They are conditioned by, correlative to, his social responsibilities.”

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