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TWENTIETH CENTURY TRENDS IN ANTHROPOLOGICAL THOUGHT

by

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Department of Anthropology

At the beginning of this century the concept of evolution from "lower", and "animal-like" forms to "higher", and full-fledged human ones, dominated the field also of cultural and social anthropology. The implications of this adaptation of biological theory and experience to cultural developments fitted into the then prevailing optimistic attribution of absolute values to the achievements of industrial civilization in Western Europe. The no doubt existing differences of culture forms, much as those of racial types, were sought to be explained in terms of evolution, *i.e.* a passing from "lower" to "higher" human forms. This evolution was generally held to produce in every civilization one "natural" stage of culture after another, though at different times; — much in the way as one phylum of animal species after another evolved on the zoological family tree.

Two great English anthropologists had, however, prepared the ground for a turn in this development: Sir Edward Tylor introduced the concept of *culture* as an independent agent in human life and thus as an object of scientific observation, whilst Sir James Frazer's "The Golden Bough" drew attention to the presence of strikingly similar culture elements especially in the mythology and ritual of otherwise quite dissimilar civilizations. These as yet haphazardly accumulated data found deeper and more systematic consideration in the works of Elliot Smith and W. J. Parry, who tried to trace back similarities in different cultures to their diffusion from a common source. They thought to have found this common source in Egypt and in the megalithic culture movement, emanating from there. Similarly Edward Hahn in Germany stressed diffusion from ancient Mesopotamia. Diffusion of culture elements, civilizations and partly also migrating peoples, rather, than the nineteenth century theories, such as Bastian's *Elementar Gedanke* (parallel develop-

ment) and the evolutionary explanations of Morgan, Spencer, McLennan and others came into the focus of anthropological theory. The British diffusionist school, well represented by Professor Hutton, Census Commissioner of India, (1931), had its counterpart on the continent. Friedrich Ratzel in Germany had pointed to trans-oceanic and trans-continental distributions already in the beginning of this country. Techniques, ornaments and—in the case of nomadic pastoralists—a set of economico-sociological institutions attracted his interest. F. Graebner in Berlin studied simple cultures in Melanesia, Australia and Africa, thereby arriving at the conclusion that six basic types of primitive civilizations diffused in various combinations and recombinations all over the world, thus giving rise to later literate societies. He developed a systematic method of culture-history, applicable also to the study of pre-literate societies, thus widening the scope of historic research into the culture-historic horizon. This concept has been taken up by Father Wilhelm Schmidt and his later co-workers P. W. Koppers and R. Heine-Geldern in the Viennese *Kulturkreis-school*, based on the hypothesis of one primeval food-gathering civilization, from which three secondary food-producing civilizations emanated and later gave rise to literate societies and various combinations and recombinations. Leo Frobenius developed at that time his more statistical method in the establishment of culture areas, mainly in the African field;—an approach which had its parallels in the beginning of twentieth century American Anthropology, under the powerful influence of Kroeber, Boas, Sapir, Goldenweiser and others.

A new approach grew out of these studies especially in Ruth Benedict's application of the *Gestalt* principle (in the structural psychology sense of my father: Christian Ehrenfels), to culture pattern anthropology. In America the attempt has been made to combine environmental geographical and behaviouristic, psychological, psychoanalytic and historical (culture-analytic) methods of Anthropology.

Meanwhile another approach to these problems has been evolved by the structural and functionalistic methods under Radcliffe Brown's and Malinowski's inspiration during and after the first world war. They concentrated on the study of institutions, primarily social, but also religious and economic in nature, and their initial interrelations, influences and mutual dependance. Their

pupils and followers decried the usefulness of attempts at reconstructing the past or guessing about the future history of peoples and civilizations, as futile and conjectural, but stressed the necessity of detailed field-work. Evans-Pritchard, Fortes, Firth and Nadel evolved new techniques in detailed field-work.

The stress on small-community studies, also of literate societies, was first formulated by Professor R. Redfield and further emphasized by recent American developments. Herskovits took here a lead in the study of acculturation and Margaret Mead in the psychological interpretation of anthropological material.

Much as such detailed studies furthered accuracy, they also expressed a certain amount of pessimism *vis à vis* the long-cherished hope to achieve the main object of anthropology, *i.e.*, a comprehensive understanding of the culture-process as mankind's foremost activity.

It is difficult to predict future developments in the realm of anthropological research-trends. There is a certain anti-diffusionist bias among contemporary social anthropologists and the Viennese *Kulturkreise School*,—its most systematic representatives, have drastically weeded the flower-beds of their theory, which some would feel inclined to describe as hot beds of imaginative conjecture. Conversely the somewhat atomistic single studies of small communities, almost exclusively concerned with social institutions and their mutual interdependence only, are beginning to see values in the study of time-depth and also in that of religious concepts as values by themselves:—not only understood as reflections or co-functions of social institutions.

The allocation of the religious component in cultures, as an independent and creative factor, seems to be emerging also under the influence of psychology and of the comparative study of religions. The French René Guenon in Egypt, the Italian Evola in Austria, the German Ziegler and more recently Kaiser and Schwab in Switzerland, seem to evolve a new system of anthropological interpretation which the Austrian Professor W. Heinrich describes as *Die traditionelle Methode*.

Common to these inter-cultural studies mythology and religion is the attitude of taking seriously the contents and reality values, contained in the subject of their studies and the acknowledgement of different methods and likewise different effects of the diffusion of religious lore, thought and ritual as compared to the diffusion of techniques and social institutions. One single man, as missionary, poet, prophet or diviner may be instrumental in diffusing culture-movements over colossal distances.

Jensen in Frankfurt applied such methods to his study of myths among pre-literate civilizations, whilst I probed into a similar approach, when comparing similarities in the religion of food-gathering Kadar with societies very different from their own, (Khasi and plains people), without either suggesting direct culture-diffusion nor less so, integrated acculturation as possible explanations for such similarities.

SYMPTOMS OF EMOTIONAL INSTABILITY IN ADOLESCENT BOYS OF LOW SOCIO-ECONOMIC FAMILIES

by

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Department of Psychology

Introduction :

In the two papers published earlier, the present author has shown the importance of age fifteen and puberty as important factors from the point of view of emotional instability, by analysing the 'gross score' of the Personality Inventory from the boys from low socio-economic families. In this paper, the results of the analysis of the symptomatic responses for the individual questions of the Personality Inventory are reported. Analysis of the symptomatic responses for each of the hundred questions of the Inventory was done with a view to find out the symptoms and syndromes which characterise the emotional instability (1) in the fifteen age group by comparing it with 'other age groups'¹ which were found to be significantly different from the fifteen age group in having a low emotional instability score and (2) the puberty group with the non-puberty group.

Subjects :

The subjects were forty boys from the 15 age group and 120 boys belonging to 'other age groups'. In the puberty and non-puberty groups there were 124 and 96 boys respectively.

Procedure :

For each of the hundred questions in the Personality Inventory, the number of subjects who gave symptomatic responses was found out and this was converted into percentage. This procedure was followed for the different groups; the 15 age group and the 'other age groups' and the puberty and non-puberty groups. Then the significance of the difference between the frequency percentage

1. i.e., Age groups 13, 14, 16 and 17.

between two groups was found out. In order to find out the Standard Error (S.E.) of the difference between the two percentages, the following formula was used :

$$\sigma D\% = 100\sqrt{\frac{P_1q_1}{N_1} + \frac{P_2q_2}{N_2}}$$

where, P = proportion of times the given event occurs

$$q = 1 - P,$$

N : Number of cases, and

1 and 2 = Groups one and two respectively.

The critical ratio (C.R.) was found out by dividing the frequency difference between the two groups with the combined standard error

$$\text{i.e., C. R.} = \frac{\text{M. diff.}}{\sqrt{S.E_1^2 + S.E_2^2}}$$

and the significance was tested at 0.05 level of probability by referring to the tables in Garrett, p. 190.

After this, the questions in the Inventory were ranked, with questions getting highest frequency as 1 and lowest frequency as 100. On the basis of the ranks of the questions, correlation was worked out to see whether the questions which are symptomatic in one group is symptomatic in other group also. For this purpose, Spearman's Rank Difference correlation was used. The formula for the Rank difference correlation is as follows:

$$P = 1 - \frac{6\sum D^2}{N(N^2 - 1)}$$

where, $\sum D^2$ = Sum of the squared differences between ranks and N = Number of questions.

The significance of the obtained P was tested by comparing the t value obtained for the P with the t to be expected by chance at the 0.05 level of probability. The t for a given P was found from the following formula

$$t = \frac{r\sqrt{N-2}}{\sqrt{1-r^2}}$$

in which P = obtained coefficient and

N = the number of cases and the value of the t was read from the table in Garrett, 1944, p. 190.

After this, the questions in the Inventory were grouped to see what syndromes are important in the different groups. The syndromes considered in this paper are ten and they are as follows: Somesthenic tendencies; Socially Inactive; Neuresthenic Tendencies; Hypersensitivity; Depression; Anxiety; Excitability; Paranoid Tendencies; Orientation towards reality and Sleep Difficulties. It has to be admitted that bringing a particular question under a particular syndrome was arbitrary and the author was guided by his experience and knowledge of abnormal psychology. The titles of the syndromes are adopted from Darrow and Heath (1932).

The results are presented in the following tables. In the tables, the numbers of the questions alone are given, the questions themselves may be read off from the Personality Inventory which is given as an Appendix.

Table showing the frequency of symptomatic responses for the 15 age group and other age groups and also the significance of the frequency difference between the groups.

No. of Question.	Frequency %		Difference.	$\sqrt{S.E_1^2 + S.E_2^2}$	C.R.	Significance.	Rank	
	15 Age Group.	Other Age Groups.					15 Age Group.	Other Age Group
1	2	3	4	5	6	7	8	9
1	30.00	12.50	+17.50	3.74	4.68	Yes	63.25	88.33
2	12.50	4.17	+ 8.33	3.00	2.78	Yes	90.2	98.5
3	27.50	8.33	+19.17	4.12	4.65	Yes	67.14	93
4	60.00	55.00	+ 5.00	5.47	0.01	No	11.2	13.5
5	15.00	25.80	-10.83	4.35	2.49	Yes	86.5	70.33
6	52.50	41.67	+10.83	5.47	1.98	Yes	22.2	28.5
7	27.50	17.50	+ 5.00	4.35	1.15	No	76.2	81.5
8	90.00	77.50	+12.50	4.00	3.13	Yes	2	2
9	55.00	51.66	+ 3.34	5.56	0.60	No	19.33	17.33
10	57.50	47.50	+10.00	5.47	1.83	No	16.33	23.5

1	2	3	4	5	6	7	8	9
11	22.50	25.83	- 3.33	4.69	0.67	No	76.2	70.33
12	45.00	31.67	+13.33	5.29	2.52	Yes	33.25	54.25
13	27.50	30.83	- 3.33	5.00	0.67	No	67.14	58.25
14	45.00	32.50	+12.50	5.37	2.33	Yes	33.25	51.33
15	22.50	19.17	+ 3.33	4.47	0.74	No	76.2	78
16	27.50	32.50	- 5.00	4.47	1.12	No	67.14	51.33
17	30.00	29.17	+ 0.83	4.89	0.17	No	63.25	65.25
18	67.50	58.33	+ 8.17	5.29	1.54	No	6	9
19	10.06	15.00	- 5.00	3.60	1.39	No	95.25	84.5
20	75.00	61.66	+13.34	5.09	2.62	Yes	4	6
21	10.00	10.83	- 0.83	3.31	0.25	No	95.25	91.5
22	2.50	—	+ 2.50	—	—	—	99.5	100
23	42.50	40.83	+ 1.67	5.47	0.31	No	37.14	30
24	52.50	44.16	+ 8.34	5.47	1.52	No	22.2	25.5
25	62.50	44.16	+18.34	5.47	3.35	Yes	9.5	25.5
26	20.00	18.33	+ 1.67	4.35	0.38	No	81.33	79.5
27	27.5	33.33	- 5.83	5.09	1.15	No	67.14	47.25
28	12.5	10.83	+ 1.67	3.46	0.48	No	90.20	91.5
29	37.5	37.50	- 0.00	—	—	—	51.2	35.25
30	82.5	84.16	- 1.66	4.12	0.40	No	3.0	1
31	27.5	65.83	-38.33	5.09	7.53	Yes	67.14	4
32	37.5	35.00	+ 2.50	5.29	0.47	No	51.2	44.5
33	52.5	33.33	+19.17	5.00	3.83	Yes	22.2	47.25
34	2.5	4.17	- 1.67	2.00	0.84	No	99.5	98.5
35	52.5	42.5	+10.00	5.47	1.83	No	22.2	27
36	12.5	26.67	-14.17	4.35	3.26	Yes	90.20	69
37	32.5	30.83	+ 1.67	5.19	0.32	No	60.33	58.25
38	60.0	51.66	+ 8.34	5.47	1.52	No	11.20	17.33
39	10.0	6.67	+ 3.33	3.16	1.05	No	95.25	96.5
40	17.5	16.67	+ 0.83	4.12	0.20	No	84.5	83

1	2	3	4	5	6	7	8	9
41	62.5	55.83	+ 6.67	5.47	1.22	No	9.50	12
42	32.5	34.17	- 1.67	4.12	0.41	No	60.33	46
43	15.0	17.50	+ 7.50	3.40	2.21	Yes	86.5	94.5
44	20.0	20.83	- 0.83	4.47	0.19	No	81.33	77
45	60.0	39.17	+20.83	5.38	3.87	Yes	11.2	31
46	42.5	36.67	+ 5.83	5.38	1.08	No	37.14	39.5
47	50.0	33.32	+16.68	5.38	3.10	Yes	27.25	47.25
48	60.0	41.67	+18.33	5.47	3.35	Yes	11.20	28.5
49	13.5	29.17	-13.33	4.47	2.98	Yes	88.5	65.25
50	40.0	30.00	+10.00	5.29	1.89	Yes	44.14	62.33
51	52.5	37.5	+15.00	5.47	2.74	Yes	22.2	35.25
52	22.5	25.0	- 2.50	4.69	0.53	No	76.2	73
53	42.5	29.17	+12.33	5.29	2.33	Yes	37.14	65.25
54	50.0	66.66	-16.66	5.38	3.10	Yes	27.25	3
55	40.0	30.00	+10.00	5.29	1.89	No	44.14	61.33
56	72.5	57.5	+15.00	5.19	2.89	Yes	5.0	10.5
57	57.5	51.66	+ 5.84	5.47	1.67	No	16.33	17.33
58	12.50	6.67	+ 5.83	3.16	1.84	No	90.2	96.5
59	40.0	50.83	-10.83	5.47	1.98	No	44.14	20
60	5.0	7.50	- 2.50	2.64	0.95	No	27.25	94.5
61	40.0	31.67	+ 8.33	5.29	1.57	Yes	37.14	54.25
62	50.0	37.5	+12.50	5.47	2.29	Yes	56.25	35.25
63	42.5	50.0	- 7.50	5.47	1.37	No	81.33	21
64	35.0	55.0	-20.00	5.38	3.72	Yes	44.14	13.5
65	20.0	17.5	+ 2.50	4.47	0.56	No	51.2	81.5
66	40.0	45.83	- 5.83	5.47	1.07	No	44.14	65.25
67	37.5	25.83	+11.67	5.09	2.29	Yes	51.2	75.33
68	40.0	35.83	+ 4.17	5.38	0.78	No	41.14	41.33
69	65.0	60.83	+ 4.17	5.38	0.78	No	7.50	7.00
70	35.0	35.00	0.00	—	—	—	56.25	44.5

1	2	3	4	5	6	7	8	9
71	22.5	13.33	+ 9.17	4.24	2.16	Yes	76.20	86.5
72	40.0	38.33	+ 1.67	5.38	0.31	No	44.14	32.33
73	45.0	48.33	- 3.33	5.56	0.60	No	33.25	22
74	27.5	30.83	+ 3.33	5.00	0.60	No	67.14	58.25
75	17.5	18.33	- 0.83	4.24	0.20	No	34.50	79.5
76	30.0	23.33	+ 6.67	4.89	1.36	No	63.25	74.5
77	57.50	53.33	+ 3.17	5.47	0.58	No	16.33	15.5
78	42.50	22.50	+20.00	5.09	3.98	Yes	37.14	76
79	25.00	12.50	+12.50	4.24	2.95	Yes	74.5	88.33
80	55.0	33.33	+21.67	5.38	4.03	Yes	19.33	47.25
81	65.0	60.00	+ 5.00	5.38	0.93	No	7.50	8
82	35.0	36.67	- 1.67	5.29	0.32	No	56.25	39.5
83	50.0	30.83	+19.17	5.29	3.62	Yes	27.25	58.25
84	45.0	38.83	+ 6.67	5.47	1.23	No	33.25	32.33
85	37.5	32.50	+ 5.00	5.29	0.95	No	51.2	51.33
86	35.0	30.00	+ 5.00	5.19	0.96	No	56.25	62.33
87	92.5	63.33	+29.17	4.24	6.88	Yes	1.00	5.00
88	42.5	35.83	- 3.53	5.29	0.67	No	60.33	41.33
89	25.0	13.33	-11.67	4.24	2.75	Yes	74.50	86.5
90	16.0	12.50	+ 3.50	3.87	0.90	No	95.25	88.33
91	55.0	47.50	+ 7.50	5.56	1.35	No	19.33	23.5
92	60.0	53.33	+ 6.67	5.47	1.12	No	11.20	15.5
93	30.0	57.50	-27.50	5.29	5.20	Yes	63.25	10.5
94	27.5	31.67	- 4.17	5.00	0.83	No	67.14	54.25
95	42.5	35.83	+ 6.67	5.38	1.24	No	37.14	41.33
96	13.3	31.67	-18.37	4.47	4.11	Yes	88.50	54.25
97	47.5	38.33	+ 8.17	5.47	1.50	Yes	31.50	32.33
98	47.5	37.50	+10.00	5.47	1.83	No	31.5	35.25
99	42.5	23.33	+19.17	5.09	3.77	Yes	37.14	74.5
100	12.5	15.00	- 2.50	3.74	0.67	No	90.20	84.5

A study of the above table will show that in 28 questions the 15 age group differs significantly from the other age groups in having more number of subjects responding with symptomatic answers. For eight questions 'the other age groups' differ significantly from the 15 age group in having a high frequency of symptomatic responses. The questions for which the '15 age group' and the 'other age groups' have high symptomatic responses are given below:

Questions for which the 15 age group showed significantly greater frequency of symptomatic responses as compared with 'other age groups'.

1. As a child liked to play alone.
2. Relationship with mother not always pleasant.
3. Had the habit of stuttering.
6. Day Dreams about impossible occurrences.
8. Loves mother more than father.
12. There are many people whom he dislikes intensely.
14. Loses temper quickly.
20. Troubled with shyness.
25. Parents were partial to sisters and brothers.
33. Had strong desire to run away from home.
43. Has strong desire to set fire to something.
45. Day Dreams about unpleasant things.
47. Mind wanders badly.
48. Has sensation of falling while going to sleep.
50. Walks in sleep.
51. Has great fear of fire.
53. Has the habit of contradicting people.
55. Thinks he is regarded as queer.
62. Often in a state of excitement.
67. Bothered by vomiting.

71. When young, other children regarded him as queer.
 78. Gets tired of people quickly.
 79. Lacks self-confidence.
 80. At nights frequently bothered by the idea somebody is following.
 83. Often has a queer unpleasant feeling in some part of the body.
 87. Feels must do a thing several times before leaving it.
 89. Often has the feeling of suffocation.
 99. Regarded as indifferent to the opposite sex.

'Other age groups' had significantly higher frequency of symptomatic responses for the following questions:

5. Does not laugh easily.
 31. Relationship with father always not pleasant.
 36. Likes to be by himself a great deal.
 49. Eyes often pain.
 54. Parents not happily married.
 64. Cannot stand the sight of blood.
 93. Does not have good appetite.
 96. Family not always treated in right.

Correlation between the two groups on the basis of the ranks of the questions was worked out. It was found as +.78 which is highly significant (t value is 16.42 which is significant at 0.01 level of probability). We have to infer from this that symptoms which characterise emotional instability in the 15 age group are to a large extent same in the 'other age groups' also.

Table showing the Frequency of Symptomatic Responses for Puberty and Non-puberty Group and the Significance of the Difference between the Frequencies.

Question No.	Frequency %		Difference.	$\sqrt{S.E_1^2 + S.E_2^2}$	C. R.	Significance.	Rank	
	Puberty.	Non-Puberty.					Puberty	Non-Puberty
1	2	3	4	5	6	7	8	9
1	16.934	13.541	+ 3.39	3.31	1.02	No	89	79.17
2	6.451	5.208	+ 1.24	2.8	0.62	No	98.5	94.5
3	17.741	6.249	+11.49	3	3.83	Yes	88	93
4	51.61	64.579	+12.97	4.69	2.77	Yes	57.61	4
5	20.966	20.832	+ 0.13	3.87	0.03	No	81	69.5
6	47.578	39.581	+ 7.997	4.69	1.77	No	47.58	29.3
7	20.160	13.541	+ 6.619	2.23	2.97	Yes	82.33	79.17
8	81.446	66.662	+14.79	4.12	3.59	Yes	1.5	3
9	60.480	41.664	+18.816	4.58	4.12	Yes	9	25.33
10	52.416	38.539	+13.877	4.69	2.96	Yes	14.5	32.25
11	23.386	15.624	+ 7.76	3.74	2.08	Yes	78.33	74.5
12	33.869	26.04	+ 7.829	4.24	1.85	No	57.25	55.33
13	27.418	28.123	- 0.705	4.24	0.66	No	71.5	53.5
14	39.514	38.539	+ 0.975	4.58	0.22	No	45.25	32.25
15	23.386	13.541	+ 9.85	3.74	2.63	Yes	77.33	79.17
16	39.030	34.373	- 5.343	4.58	1.17	No	68.5	43.5
17	29.030	16.666	+12.364	3.87	3.19	Yes	68.5	72.5
18	66.125	55.205	+10.92	2.97	3.43	Yes	5.5	13.11
19	18.547	28.123	- 9.58	4	2.40	Yes	87	53.5
20	62.899	63.838	- 0.64	4.58	0.14	No	8	5.5
21	8.064	13.541	- 5.477	2.82	1.94	No	96	79.17
22	0.806	0	+ 0.81	—	—	—	100	100
23	52.416	11.458	+40.958	3.87	10.58	Yes	14.5	86

1	2	3	4	5	6	7	8	9
24	44.965	44.965	—	—	—	—	35.5	36.5
25	48.384	34.747	+ 4.64	4.69	0.99	No	26.2	23.5
26	23.386	15.624	+ 7.762	3.74	2.07	Yes	77.33	74.5
27	28.224	33.331	— 5.11	4.35	1.17	No	70	45.34
28	12.902	7.291	+ 5.61	2.82	1.99	Yes	93.5	89.25
29	36.288	40.622	— 4.334	4.58	1.06	No	51	28.5
30	81.446	88.536	— 4.09	3.3	1.14	Yes	1.5	1
31	48.384	59.371	—10.987	4.69	2.34	Yes	26.2	7
32	33.869	40.622	— 6.753	4.58	1.49	No	57.25	28.5
33	48.384	18.749	+29.635	4.54	6.99	Yes	26.2	71.0
34	14.515	4.166	+10.349	2.64	3.92	Yes	92	96.5
35	49.190	55.205	— 6.015	4.69	1.28	No	21.2	13.25
36	39.450	14.582	+24.7	4.47	5.56	—	64.5	76.33
37	35.482	33.331	+ 2.151	4.47	.48	No	52.25	45.33
38	49.997	57.288	— 7.791	4.69	1.55	No	17	8.33
39	19.354	4.166	+15.188	2.82	5.38	Yes	85.5	96.5
40	12.902	24.999	—12.097	3.60	3.36	Yes	93.5	58.14
41	54.029	37.498	+16.531	4.58	3.61	Yes	11.5	36.5
42	34.647	48.955	—14.279	4.58	3.12	Yes	56	21
43	26.611	2.083	+24.528	3.0	8.18	Yes	73.5	98
44	26.11	5.208	+21.403	5.21	4.11	Yes	73.5	94.5
45	49.997	41.664	+ 8.333	4.69	1.78	No	19.5	25.33
46	44.352	38.539	+ 5.813	4.58	1.27	No	37.5	32.25
47	49.190	14.582	+34.608	4.12	8.40	Yes	21.2	76.33
48	57.254	23.957	+33.297	4.35	7.65	Yes	10	65.5
49	33.062	29.165	+ 3.897	4.35	0.89	No	61.5	51.5
50	33.869	24.998	+ 8.871	4.24	2.09	Yes	59.25	58.1
51	47.578	36.456	+ 7.122	4.58	2.44	Yes	31.5	38.33
52	30.643	32.299	— 1.646	4.35	0.38	No	66.5	48.5
53	27.418	35.414	— 7.996	4.35	1.84	No	71.5	41.5

1	2	3	4	5	6	7	8	9
54	49.19	53.122	— 3.932	4.47	3.09	Yes	21.2	19
55	33.062	46.872	—13.810	4.58	3.02	Yes	61.5	22
56	66.125	39.581	+26.544	4.58	5.79	Yes	5.5	29.33
57	50.803	57.288	— 6.485	4.69	1.38	No	18	8.33
58	6.451	9.374	— 2.923	2.44	1.20	No	98.5	88
59	46.771	55.205	— 8.434	4.69	1.80	No	33.5	13.25
60	7.258	7.291	— 0.033	2.44	—	No	97	89.25
61	40.320	34.373	+ 5.947	4.58	1.29	No	41.25	43.5
62	46.771	39.581	+ 7.190	4.69	1.53	No	33.5	29.33
63	49.19	41.664	+ 7.526	4.47	1.68	No	21.2	25.33
64	44.352	57.288	—12.936	4.81	2.65	Yes	37.5	8.33
65	21.773	13.541	+ 8.232	3.6	2.39	Yes	80	79.17
66	38.707	32.289	+ 6.418	4.47	1.44	No	49	48.5
67	31.449	24.998	+ 6.451	4.24	1.52	No	64.5	58.14
68	39.514	33.331	— 6.183	4.46	1.39	No	45.2	45.33
69	65.318	56.246	+ 9.072	4.58	1.98	Yes	7	11.5
70	33.869	35.414	— 1.545	4.47	0.35	No	59.2	41.5
71	20.160	7.291	+12.869	3.16	4.07	Yes	82.33	89.25
72	43.546	24.998	+18.558	3.87	4.79	Yes	39.5	58.14
73	53.222	36.456	+16.766	4.59	3.63	Yes	13	38.33
74	35.482	23.957	+11.525	4.24	2.72	Yes	52.2	65.5
75	15.332	16.666	— 1.334	3.46	2.60	Yes	91	72.5
76	25.805	20.832	— 4.973	4.0	1.23	No	75.5	69.5
77	51.609	54.163	— 2.554	4.69	0.54	No	16.5	17.5
78	30.643	21.874	+ 0.769	4.12	2.13	No	66.5	67.5
79	16.128	14.582	+ 1.546	3.31	0.47	No	90	76.33
80	49.19	26.04	+23.150	4.47	5.26	Yes	21	55.33
81	69.939	55.205	+14.734	4.47	3.30	Yes	4	12.25
82	43.546	21.874	+21.672	4.24	5.12	Yes	39.5	64.5
83	37.094	49.997	—10.903	4.58	2.82	Yes	50	20

1	2	3	4	5	6	7	8	9
84	40.320	43.747	— 3.427	4.69	0.73	No	41.25	23.5
85	40.32	24.998	+15.322	4.37	3.51	Yes	41.25	58.14
86	40.32	24.998	+15.322	4.35	3.52	Yes	41.25	58.14
87	72.576	70.829	+ 1.75	4.24	0.41	No	3	2
88	35.482	29.165	+ 6.36	4.35	1.45	No	52.25	51.5
89	19.354	12.499	+ 6.855	3.46	1.98	No	85.5	85
90	11.289	10.416	+ 0.873	2.86	.304	No	95	87
91	45.965	56.268	—10.281	4.69	2.37	Yes	35.5	11.5
92	54.029	54.163	— 0.134	4.69	0.27	No	11.5	17.5
93	39.514	63.538	—24.024	4.58	5.25	Yes	45.25	5.5
94	32.256	24.998	+ 7.258	4.24	1.71	No	63.0	58.14
95	39.514	36.456	+ 3.058	4.58	0.67	No	45.25	38.33
96	35.482	13.541	+21.941	3.87	5.67	Yes	52.25	79.17
97	48.384	38.248	+17.136	4.69	2.16	Yes	26.2	50.0
98	48.384	38.549	+ 9.845	4.69	2.10	Yes	26.2	32.25
99	26.04	26.04	— 0.236	4.35	5.14	Yes	75.5	55.33
100	20.160	7.291	+12.859	3.16	4.07	Yes	82.25	89.25

Questions for which Puberty group showed greater frequency of symptomatic responses, as compared with non-puberty group.

Question No.

4. Loses head in dangerous situation
7. Often feels lonely even when with other people
8. Loves mother more than the father
9. Great many things frighten him
10. Ideas often run through the head so that he cannot sleep
11. Frequently bothered by indigestion
15. Mother's nature usually not cheerful
17. Talks in sleep
18. Feelings alternate between happiness and sadness without apparent reason

23. Often frightened in the middle of night
26. Had strong desire to commit suicide
28. Did not have happy childhood
33. Had strong desire to run away from home
34. Had convulsions
36. Likes to be to himself a great deal
39. Does not like to take responsibilities
41. Cannot stand criticism without feeling hurt
43. Had strong desire to set fire to something
44. Somebody in the family been epileptic, insane and feeble-minded
47. Mind wanders badly so that he loses track of what he is doing
48. Has sensation of falling when going to sleep
50. Walks in sleep
51. Has great fear of fire
56. Troubled with thoughts of death
65. Usually not in good spirits
69. Things go wrong for no fault of his
71. When young, other children regarded him as queer
72. Frequently bothered by indigestion
73. Does not usually feel well and strong
74. Normally does not sleep well
80. At night, frequently bothered by the idea that something or somebody is following
81. Thinks himself unlucky
82. Has sometimes shooting pains in the head
85. Afraid of crossing a bridge over a river
86. Frightened by lightning
96. Family has not treated him right
97. Wetted bed since five years old
98. Troubled with the fear of being crushed in a crowd
100. Cynical about the opposite sex.

Question for which non-puberscent group responded with symptomatic responses as compared with puberscent group.

Question No.

3. Had the habit of stuttering
19. Had an arm or a leg paralysed
30. Often says things at the spur of the moment and regrets for it
31. Relationship with father not pleasant
40. Feels somebody is hypnotising and making him act against his will
42. Has difficulties in making friends
54. Parents not happily married
55. Thinks he is regarded as queer
63. Crosses street to avoid meeting people
74. Does not normally sleep well
83. Has queer unpleasant feeling in any part of the body
91. Lets go when angry
93. Does not have good appetite
99. Regarded as indifferent to the opposite sex.

When the correlation between the puberty groups and the non-puberty groups was worked out, it was found as $+0.75$ with t value of 14.84 which was highly significant (significant at 0.01 level). Here also, we have to state that symptoms which characterise emotional instability in the puberty and non-puberty group are the same to a large extent.

As indicated earlier, the questions in the Inventory are grouped into syndromes to see what syndromes are important in different groups. The different syndromes are given below. In each syndrome, the substance of the questions only is given and the question itself may be read off from the Inventory.

I. SOMESTHENIC TENDENCIES

Question No.

11. Frequently bothered by indigestion
58. Has been blind or half blind or deaf or dumb for a time
61. Troubled by poor health
73. Does not usually feel well and strong

90. Has physical defects
93. Does not have good appetite.

II. SOCIALLY INACTIVE :

1. As a child liked to play alone
2. Relationship with mother always has not been pleasant
8. Loves mother more than father
15. Mother's nature usually not cheerful
20. Troubled with shyness
31. Relationship with father not always pleasant
39. Does not like to take responsibilities
36. Likes to be by himself
42. Has difficulties in making friends
63. Crosses street to avoid meeting somebody
78. Get tired of people quickly
99. Regarded as indifferent to the opposite sex
100. Cynical about the opposite sex

III. NEURESTHENIC TENDENCIES :

Question No.

29. Had spells of dizziness
32. Had great many headaches
48. Had sensation of falling when going to sleep
49. Eyes often pain him
67. Bothered by vomiting
82. Sometimes has shooting pains in the head
83. Often has queer unpleasant feeling in some part of the body
89. Often has the feeling of suffocation
92. Things get misty before his eyes
94. Lost memory for a time.

IV. HYPER-SENSITIVITY :

30. Says things at the spur of the moment and regrets for them
35. Cannot stand pain quickly
41. Cannot stand criticism without feeling hurt
77. Often feels self-conscious in the presence of superiors

- 79. Lacks self-confidence
- 88. Troubled with feelings of inferiority.

V. DEPRESSION :

- 5. Does not laugh easily
- 7. Feels lonely even with others
- 18. Feelings alternate between happiness and sadness
- 26. Had strong desire to commit suicide
- 30. Day Dreams about unpleasant things
- 46. Not happy with present life
- 65. Usually not in good spirits
- 76. Often has the feeling of loneliness
- 95. Home environment not happy

VI. ANXIETY :

Question No.

- 3. Had the habit of stuttering
- 9. Great many things frighten him
- 21. Afraid of going insane
- 23. Often frightened in the middle of night
- 38. Dreads the sight of snake
- 51. Has great fear of fire
- 56. Troubled with thoughts of death
- 59. Physically inferior to associates
- 72. Frequently troubled with nightmares
- 80. At nights frequently bothered by the idea of something or somebody is following
- 84. Afraid of getting any disease
- 85. Afraid of crossing a bridge over a river
- 97. Had the habit of wetting the bed since five years
- 98. Bothered by the fear of being crushed in a crowd

VII. EXCITABILITY :

Question No.

- 4. Loses head in dangerous situation
- 14. Loses temper quickly
- 37. Easily moved to tears

- 43. Had strong desire to set fire to something
- 62. Often in a state of excitement
- 64. Cannot stand the sight of blood
- 86. Frightened by lightning
- 91. Lets go when angry

VIII. PARANOID TENDENCIES :

- 12. There are many people whom he dislikes intensely
- 13. Does not usually trust people
- 24. Somebody trying to do harm
- 25. Parents partial to sisters or brothers
- 40. Feels somebody is hypnotising him and making him act against his will
- 52. Bothered by the feeling that people are reading his thoughts
- 55. Thinks others regard him as queer
- 57. Friends turned against him
- 66. Thinks that people have made a lot of fun
- 69. Things go wrong for no fault of his
- 71. When young, other children regarded him as queer
- 81. Thinks himself to be unlucky
- 96. Family always did not treat him well.

IX. ORIENTATION TOWARDS REALITY :

- 6. Day Dreams about impossible occurrences
- 22. Dislikes many people
- 27. Day dreams frequently
- 47. Mind wanders badly
- 53. Has the habit of contradicting people
- 70. Has the queer feeling that he is not the old self
- 87. Feels that he must do a thing several times.

X. SLEEP DIFFICULTIES :

- 10. Ideas run through the head and cannot sleep
- 50. Walks in sleep
- 74. Does not normally sleep well
- 17. Talks in sleep
- 18. Feels fatigued when he wakes up in the morning.

A Consolidated table giving the Mean Percentage Frequency for Syndromes for 15 age group and other age groups and the significance difference between the mean scores for the syndromes.

No.	Syndrome.	Mean Frequency %		Mean difference.	$\sqrt{S.E_1^2 + S.E_2^2}$	C.R.	Significance .05 level.
		15 Age groups.	Other age group.				
I.	Somesthenic tendencies	.. 27.67	30.50	-2.83	5.00	0.57	No
II.	Socially inactive	.. 35.18	32.50	+2.68	5.19	0.52	No
III.	Neuresthenic tendencies	.. 38.43	33.58	+4.85	5.29	0.92	No
IV.	Hypersensitivity	.. 52.08	47.36	+4.72	5.56	0.85	No
V.	Depression	.. 35.56	30.28	+4.28	5.19	0.82	No
VI.	Anxiety	.. 47.18	37.68	+9.50	5.47	1.74	No
VII.	Excitability	.. 33.33	36.02	-2.69	5.29	0.51	No
VIII.	Paranoid tendencies	.. 37.91	34.70	+3.21	5.29	0.60	No
IX.	Orientation towards reality	.. 43.20	34.88	+8.32	5.38	1.55	No
X.	Sleep Difficulties	.. 30.50	34.06	-3.56	5.19	0.69	No

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From the above table it will be clear that the differences between the mean percentage scores between the two groups for the ten syndromes are not significant. As such the percentage of subjects who are characterised by the different syndromes are same. Further analysis of the syndromes is done to see what are the syndromes which go together in the 15 age group and the other age groups. For this, the highest standard error (S.E.) for the syndromes in each group was taken and a critical difference was worked out at 0.05 level of probability.

In the 15 age group, syndromes of *Hyper-sensitivity*, *Anxiety*, *Orientation towards reality* and *Neuresthenic Tendencies* go together, since the difference between the mean frequencies of the syndromes are not significant. These syndromes differ significantly from other syndromes in having a higher mean frequency score. Therefore these may be considered as important syndromes of emotional instability in the 15 age group. All other syndromes, *Paranoid tendencies*, *Depression*, *Socially Inactive*, *Excitability*, *Sleep Difficulties* and *Somesthenic Tendencies* are of equal value since the difference between them are not significant.

In the 'other age groups', the syndrome of *Hypersensitivity* is different from all other syndromes in having a high mean frequency. This may be considered as the important syndrome in the 'other age group' in connection with the emotional instability found in this group. All other syndromes are of equal value since the difference between them are not significant.

Thus the 15 age group, which is characterised by greater emotional instability as compared with 'other age groups' has four syndromes of importance, whereas the 'other age groups' has only one syndrome which is common to 15 age group also.

In the table (on page 105) we find that the puberty group significantly differs from the non-puberty group in having greater number of subjects having syndromes of *Neuresthenic Tendencies* and *Sleep Difficulties*, as compared with non-puberty group. In all other syndromes, the differences between the groups are not significant.

As in the '15 age group' and 'other age group' further analysis of the syndromes was done to see what are the syndromes which go together in puberty and non-puberty groups.

Table showing the Syndromes in Rank Order for 15 age group and other age groups.

Rank.	Syndromes in 15 age group.	Mean %	Syndromes in other age groups.	Mean %
I.	Hypersensitivity	.. 52.08	Hypersensitivity	.. 47.36
II.	Anxiety	.. 47.18	Anxiety	.. 37.68
III.	Orientation towards reality	.. 43.20	Excitability	.. 36.02
IV.	Neuresthenic tendencies	.. 38.43	Orientation towards reality	.. 34.88
V.	Paranoid tendencies	.. 37.91	Paranoid tendencies	.. 34.70
VI.	Depression	.. 35.56	Sleep difficulties	.. 34.06
VII.	Socially inactive	.. 35.18	Neuresthenic tendencies	.. 33.58
VIII.	Excitability	.. 33.33	Socially inactive	.. 32.50
IX.	Sleep difficulties	.. 30.50	Somesthenic tendencies	.. 30.50
X.	Somesthenic tendencies	.. 27.67	Depression	.. 30.28
	Maximum S.E.	.. 7.87		.. 4.47
	Critical difference at 0.05 level	.. 15.90		.. 9.25

A Consolidated Table giving the Syndrome in the Puberty and Non-Puberty Groups.

No.	Syndromes.	Mean frequency %		Mean difference.	$\sqrt{SE_1^2 + SE_2^2}$	C.R.	Significance at .05 level.
		Puberty.	Non-puberty				
I.	Somesthenic tendencies	.. 29.03	28.29	+ .74	4.24	0.18	No
II.	Socially inactive	.. 37.20	29.98	+ 7.22	4.47	1.62	No
III.	Neuresthenic tendencies	.. 36.97	27.72	+ 9.25	4.35	2.13	Yes
IV.	Hyper-sensitivity	.. 47.98	46.52	+ 1.46	4.69	0.31	No
V.	Depression	.. 32.76	26.82	+ 5.94	3.16	1.88	No
VI.	Anxiety	.. 41.36	32.71	+ 8.65	4.58	1.89	No
VII.	Excitability	.. 38.44	37.47	+ 1.40	4.58	0.31	No
VIII.	Paranoid tendencies	.. 39.36	36.07	+ 1.39	4.58	0.30	No
IX.	Orientation towards reality	.. 40.17	34.47	+ 5.70	4.58	1.24	No
X.	Sleep difficulties	.. 40.59	29.16	+11.43	4.47	2.56	Yes

Table showing the Syndromes in the Puberty and Non-Puberty Groups in Rank Order.

Rank.	Syndromes in Puberty group.	Mean frequency %	Syndromes in non-puberty group.	Mean frequency %
I.	Hypersensitivity	.. 47.98	Hypersensitivity	.. 46.72
II.	Anxiety	.. 41.36	Excitability	.. 37.04
III.	Sleep difficulties	.. 40.59	Paranoid tendencies	.. 36.07
IV.	Orientation towards reality	.. 40.17	Orientation towards reality	.. 34.47
V.	Paranoid tendencies	.. 39.36	Anxiety	.. 32.71
VI.	Excitability	.. 38.44	Socially inactive	.. 29.98
VII.	Socially inactive	.. 37.20	Sleep difficulties	.. 29.16
VIII.	Neuresthenic	.. 36.97	Somesthenic tendencies	.. 28.29
IX.	Depression	.. 32.76	Neuresthenic tendencies	.. 27.72
X.	Somesthenic tendencies	.. 29.03	Depression	.. 26.82
	Max. S.E.	.. 4.47		.. 5.09
	Critical difference	.. 8.85		.. 10.13

A study of the above table will show that in the puberty group syndromes of *Hyper-sensitivity*, *Anxiety*, *Sleep Difficulties* and *Orientation Towards Reality* go together since there are no significant differences between the values under them; but the values under them significantly differ in having a higher mean frequencies from other syndromes. The values of the syndromes being higher than other syndromes these may be considered as very important from the point of view of emotional instability in the puberty group. Next come syndromes of *Paranoid Tendencies*, *Excitability*, *Socially Inactive*, *Neuresthenic Tendencies* and *Depression*. There is no significant difference between the values under these different syndromes. The last syndrome is *Somesthenic Tendencies* which is different from all other syndromes in having a low mean score.

In the non-puberty group, the syndromes *Hyper-sensitivity* and *Excitability* go together, since the difference between their mean frequencies are not significant. The values under these two syndromes differ significantly from values under other syndromes by being higher. Therefore these two syndromes may be considered as important from the point of view of emotional instability in non-puberty groups. Next come syndromes of *Paranoid Tendencies*, *Orientation towards Reality*, *Anxiety*, *Socially Inactive*, *Sleep Difficulties*, *Somesthenic Tendencies* and *Neuresthenic Tendencies*. The differences between the mean frequency of these syndromes are not significant. The syndrome of *Depression* comes last in having a low mean score. Thus, the syndromes which may be considered as important in puberty and non-puberty groups are as follows:

Puberty Group — *Hyper-sensitivity*, *Anxiety*, *Sleep Difficulties* and *Orientation Towards Reality*.

Non-Puberty Group — *Hyper-sensitivity* and *Excitability*.

The syndrome *Hyper-sensitivity* is common for both the groups, but *Anxiety*, *Sleep Difficulties* and *Orientation Towards Reality* are important in the non-puberty group. Similarly *Excitability* is important in the non-puberty group but not important in the Puberty group.

Summary of the Results and Conclusion :

In the earlier investigation, it has been found out that the 15 age group, as compared with 'other age groups' is characterised by greater emotional instability. Similarly puberty group was found

to be more emotionally instable than the non-puberty group. In this paper an attempt was made to find out the symptoms and syndromes present in the groups which are characterised by greater emotional instability, as compared with groups which are relatively characterised by less emotional instability. For this, symptomatic responses as obtained with the help of a Personality Inventory, devised by the present author, was analysed. The subjects in the 15 age group were 40 and in the 'other age groups' 120; In the puberty group the subjects were 124 and in the non-puberty group 96. The results are as follows :—

1. The fifteen age group had greater number of subjects responding symptomatically for 28 questions out of 100 questions, in the Inventory, whereas in the 'other age groups' greater number of subjects responded symptomatically only for eight questions. In the rest of the 64 questions there were no significant difference between the two groups.

2. There was no significant difference in the mean frequency of subjects in the different syndromes.

There were differences in the important syndromes which were found in the 15 age group and other age groups. In the 15 age group, *Hyper-sensitivity*, *Orientation towards Reality* and *Neuresthenic Tendencies* were important; whereas in the 'Other age groups' *Hyper-sensitivity* alone was important.

3. When the puberty and non-puberty groups were compared it was found out that the subjects in the puberty group had significantly greater number of subjects responding symptomatically for forty questions. The non-puberty groups had significantly greater number of subjects responding symptomatically for 15 questions. In the rest 45 questions there were no significant differences between the puberty and the non-puberty groups.

4. In the case of syndromes the puberty groups had significantly greater number of subjects in syndromes of *Neuresthenic tendencies* and *Sleep Difficulties* as compared with non-puberty groups.

5. When analysis was done to see the important syndromes in these two groups it was found *Hyper-sensitivity*, *Anxiety*, *Sleep Difficulties* and *Orientation towards Reality* were important in the puberty group, whereas *Hyper-sensitivity* and *Excitability* alone were important in the non-puberty group.

Four possible conclusions may be drawn from the results :

1. Since, the 15 age group and the puberty groups which were found to be characterised by greater emotional instability, had the syndrome *Hyper-sensitivity* in common with the 'other age groups' and the non-puberty group respectively, it may be said that syndrome *Hyper-sensitivity* is an important syndrome in the adolescent boys who were the subjects in this study.

2. 15 age group and puberty group, in addition to the syndrome of *Hyper-sensitivity*, had the syndromes of *Anxiety* and *Orientation towards Reality* as important. Since these two groups were characterised by greater emotional instability, these syndromes may be considered as characteristics of emotional instability. However, there is one difference between the 15 age group and the puberty group. In the 15 age group, we found, '*Neuresthenic tendencies*', as specially important, whereas in the puberty group it was '*Sleep Difficulties*' which was important.

The present study has revealed the syndromes of *Hyper-sensitivity*, *Anxiety*, *Orientation towards Reality*, *Sleep Difficulties* and *Neuresthenic Tendencies* as important in emotionally instable boys.

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APPENDIX

THE PERSONALITY INVENTORY

	Symptomatic response			
1. As a child did you like to play alone ? ..	Yes	No	?	Yes
2. Have your relationship with your mother always pleasant ? ..	Yes	No	?	No
3. Have you ever had the habit of stuttering ? ..	Yes	No	?	Yes
4. Do you lose your head in dangerous situations ? ..	Yes	No	?	Yes
5. Do you laugh easily ? ..	Yes	No	?	No
6. Are your day derams about impossible occurrences ? ..	Yes	No	?	Yes
7. Do you often feel lonely even when your are with other people ? ..	Yes	No	?	Yes
8. Do you love your mother more than your father ? ..	Yes	No	?	Yes
9. Do great many things frighten you ? ..	Yes	No	?	Yes
0. Do ideas often run through your head so that you cannot sleep ? ..	Yes	No	?	Yes
1. Are you frequently bothered by indigestion ? ..	Yes	No	?	Yes
2. Are there many people that you dislike intensely ? ..	Yes	No	?	Yes
3. Do you usually trust people ? ..	Yes	No	?	No
4. Do you lose your temper quickly ? ..	Yes	No	?	Yes
5. Is your mother's nature usually cheerful ? ..	Yes	No	?	No
6. Do you usually feel fatigued when you wake up in the morning ? ..	Yes	No	?	Yes
7. Do you ever talk in your sleep ? ..	Yes	No	?	Yes
8. Do your feelings alternate between happiness and sadness without apparent reason ? ..	Yes	No	?	Yes

Symptomatic
response

19. Have you ever had an arm or leg paralysed ? ..	Yes	No	?	Yes
20. Are you troubled with shyness ? ..	Yes	No	?	Yes
21. Have you ever been afraid of going insane ? ..	Yes	No	?	Yes
22. Have you ever seen a vision ? ..	Yes	No	?	Yes
23. Are you often frightened in the middle of the night ? ..	Yes	No	?	Yes
24. Do you know anybody who is trying to do you harm ? ..	Yes	No	?	Yes
25. Were your parents partial to any of your sisters or brothers ? ..	Yes	No	?	Yes
26. Did you have a strong desire to commit suicide ? ..	Yes	No	?	Yes
27. Do you day dream frequently ? ..	Yes	No	?	Yes
28. Did you have a happy childhood ? ..	Yes	No	?	Yes
29. Do you often say things at the spur of the moment and regret for them ? ..	Yes	No	?	Yes
30. Have you ever had spells of dizziness? ..	Yes	No	?	Yes
31. Have your relationship with your father been always pleasant ? ..	Yes	No	?	No
32. Do you have a great many headaches? ..	Yes	No	?	Yes
33. Did you ever had a strong desire to run away home ? ..	Yes	No	?	Yes
34. Did you ever have convulsion ? ..	Yes	No	?	Yes
35. Can you stand pain quietly ? ..	Yes	No	?	Yes
36. Do you like to be yourself a great deal ? ..	Yes	No	?	Yes
37. Are you easily moved to tears ? ..	Yes	No	?	Yes
38. Do you dread the sight of a snake ? ..	Yes	No	?	Yes
39. Do you like to take responsibilities ? ..	Yes	No	?	No
40. Have you ever felt that somebody is hypnotising you and making you act against your will ? ..	Yes	No	?	Yes

	Symptomatic response
41. Can you stand criticism without feeling hurt ? ..	Yes No ? No
42. Do you have difficulties in making friends ? ..	Yes No ? No
43. Have you ever had a strong desire to set fire to something ? ..	Yes No ? Yes
44. Has any of your family been epileptic, insane or feeble minded ? ..	Yes No ? Yes
45. Are your day dreams about unpleasant things ? ..	Yes No ? Yes
46. Are you happy with your present life ? ..	Yes No ? No
47. Does your mind wander badly so that you lose your track of what you are doing ? ..	Yes No ? Yes
48. Did you have sensation of falling when going to sleep ? ..	Yes No ? Yes
49. Do your eyes often pain you ? ..	Yes No ? Yes
50. Do you walk in your sleep ? ..	Yes No ? Yes
51. Do you have great fear of fire ? ..	Yes No ? Yes
52. Are you ever bothered by the feeling that people are reading your thoughts ? ..	Yes No ? Yes
53. Do you have the habit of contradicting people ? ..	Yes No ? Yes
54. Were your parents happily married ? ..	Yes No ? No
55. Do you think you are often regarded as queer ? ..	Yes No ? Yes
56. Are you troubled with thoughts of death ? ..	Yes No ? Yes
57. Have your friends ever turned against you ? ..	Yes No ? Yes
58. Have you ever been blind or half-blind or deaf or dumb for a time ? ..	Yes No ? Yes
59. Are you physically inferior to your Associates ? ..	Yes No ? Yes

	Symptomatic response
60. Has any of your family committed suicide ? ..	Yes No ? Yes
61. Are you troubled with poor health ? ..	Yes No ? Yes
62. Are you often in a state of excitement ? ..	Yes No ? Yes
63. Do you ever cross a street to avoid meeting somebody ? ..	Yes No ? Yes
64. Can you stand the sight of blood ? ..	Yes No ? No
65. Are you usually in good spirits ? ..	Yes No ? No
66. Do you think that people have made quite a lot of fun of you ? ..	Yes No ? Yes
67. Have you ever been bothered by vomiting ? ..	Yes No ? Yes
68. Is your mother dissatisfied with her lot in life ? ..	Yes No ? Yes
69. Do things go often wrong for no fault of your own ? ..	Yes No ? Yes
70. Do you ever have queer feeling that you are not your old self ? ..	Yes No ? Yes
71. When you were young did other children regard you as queer ? ..	Yes No ? Yes
72. Are you frequently troubled with nightmares ? ..	Yes No ? Yes
73. Do you usually feel well and strong ? ..	Yes No ? No
74. Do you normally sleep well ? ..	Yes No ? No
75. Have you ever had the habit of twitching your face, neck or shoulders ? ..	Yes No ? Yes
76. Do you often have the feeling of loneliness ? ..	Yes No ? Yes
77. Do you often feel self-conscious in the presence of your superiors ? ..	Yes No ? Yes
78. Do you get tired of people quickly ? ..	Yes No ? Yes
79. Do you lack self-confidence ? ..	Yes No ? Yes
80. At nights are you frequently bothered by the ideas that something or somebody is following you ? ..	Yes No ? Yes

		Symptomatic response			
81. Do you think you are usually unlucky ?	..	Yes	No	?	Yes
82. Do you sometimes have shooting pains in the head ?	..	Yes	No	?	Yes
83. Do you often have a queer unpleasant feeling in any part of the body ?	..	Yes	No	?	Yes
84. Are you afraid of getting any disease ?	..	Yes	No	?	Yes
85. Are you afraid of crossing a bridge over a river ?	..	Yes	No	?	Yes
86. Are you frightened by lightning ?	..	Yes	No	?	Yes
87. Do you feel that you must do a thing over several times before you leave it ?	..	Yes	No	?	Yes
88. Are you troubled with feelings of inferiority ?	..	Yes	No	?	Yes
89. Do you often have the feeling of suffocation ?	..	Yes	No	?	Yes
90. Have you any physical defects ?	..	Yes	No	?	Yes
91. Do you let yourself go when you are angry ?	..	Yes	No	?	Yes
92. Do things get misty before your eyes ?	..	Yes	No	?	Yes
93. Have you a good appetite ?	..	Yes	No	?	No
94. Have you ever lost your memory for a time ?	..	Yes	No	?	Yes
95. Is your home environment happy ?	..	Yes	No	?	No
96. Have your family always treated you right ?	..	Yes	No	?	No
97. Since you were five years old have you ever had the habit of wetting the bed ?	..	Yes	No	?	Yes
98. Are you frequently troubled with the fear of being crushed in a crowd ?	..	Yes	No	?	Yes
99. Are you generally regarded as in- different to the opposite sex ?	..	Yes	No	?	Yes
100. Are you cynical about the opposite sex ?	..	Yes	No	?	Yes

FOREIGN CAPITAL IN INDIA

by

D. BRIGHT SINGH

*Department of Economics**The Role of Foreign Capital in Economic Development*

Economic growth has been defined as a continuous process of capital formation. By real capital formation is meant the utilization for economic development of that part of current national product that is not spent on consumption. To ensure a steady growth of the national economy, the rate of investment or capital formation needed in an under-developed economy is estimated at 13% of the national income.¹ This is attained easily or surpassed in economically advanced countries like the U.S.A. or U.K. for the obvious reason that in such countries, as compared with under-developed or less developed ones, the level of per capita income is much higher and the propensity to consume relatively lower. In general, per capita income in under-developed countries is about 1/10 to 1/15 of that in countries which are economically well advanced, so that per capita savings in the former group average only 5% or less of those in the latter group.² Even this small amount of savings available in poor countries is not properly utilised in so far as, in the absence of proper financial institutions and programmes of planned development, a large part of the meagre savings tends to be attracted into unproductive uses, such as investment in real estate, gold jewellery and commodity hoards. Unless therefore in such countries very severe austerity measures are adopted by which consumption is cut to the bone, as was actually done in Russia and Japan in the second and third decades of the present century,³ there is no possibility for these countries

1. Methods of Financing Economic Development in Under-developed Countries, U.N. 1949, p. 61.

2. *Ibid.*, p. 72.

3. Thus in Russia in the late twenties of the present century savings constituted 20 to 30 per cent of national income, while in Japan between 1913 and 1919 it was more than half the national income (Report of the Fiscal Commission, 1949-50, Government of India, pp. 208-211).

to invest the required proportion of national income. In such a situation, an under-developed economy can be freed from the vicious circle of low income, low savings and low productivity only with the help of resources from outside. These resources are transferred fundamentally in the form of imports and constitute therefore a direct addition to the available real sources of the less developed country and thus help to accelerate economic development. In theory such a movement of resources represents a transfer of capital from where its marginal efficiency is low to where it is high and contributes in this way to a decrease in the inequality of living standards.⁴

The Nature and Types of Foreign Capital

As between long term and short term foreign capital, the former is by and large the more important in magnitude as well as in respect of its usefulness in the development of a nation's economy. Long-term foreign capital falls into two main categories: (a) Loans and grants from public authorities and international agencies such as the World Bank and the International Monetary Fund and (b) private capital or venture capital which flows out in the form of loans, i.e., portfolio investment, and also in the form of equity capital, i.e., direct investment mainly by way of subsidiaries to foreign concerns. Both these forms of capital have merits as well as defects and their movements have depended not only on the attitude of the foreign investors but also on the nature and stage of development of capital importing countries and their absorptive capacity. The most important and obvious merit of foreign private capital is its flexibility. Direct investment earns its income out of the profits it creates. There are no rigidly fixed service charges and the amount of income that is transferred to the investing countries directly varies with the earnings of such investment in the capital importing country. In other words, it does not impose a fixed burden of net payments on the borrowing country in times of declining activity and trade. Furthermore, to the extent that the private investors are keen on securing a reasonable amount of profit out of their investment, they bring with their capital the best of talents and skill to work. This combination of

4. J. Tinbergen: *International Economic Integration* (1954), p. 62.

capital, technology and managerial skill is one obvious advantage. The greater facility of expansion which foreign private capital affords through reinvestment and the chances it provides for varying degrees of participation with local capital are additional points in its favour. On the other hand, private capital is less amenable to control by the borrowing country and the large profits that are transferred in a period of prosperity bring into glaring relief the fact that such capital is invested more to the advantage of the lending country than to the borrowing country. This is its major drawback. To a large extent the aversion to foreign capital of this kind manifested in less developed countries is due to the fact that such flow of capital takes place without any great coordination with the actual development needs of the recipient countries but rather in response to the requirements of the investing areas—as in the case with petroleum investments in the immediate post-war years. At best, such investments contribute only indirectly to raising the standard of living in the under-developed countries.⁵ Besides, the flow of private foreign capital tends to vary directly with the level of business activity and the chances of profit making in the importing country and quite often inversely with the real needs of the latter. In periods of boom it flows unrestricted, while in periods of depression it tends to dry up—at the very time when its cessation does the greatest damage to the maintenance of world prosperity.⁶

On the other hand, the chief merit of loans from public authorities consists in the fact that they involve an effective system of detailed control, so that the flow of foreign capital of this type can be made to fit in with the national programmes of development. The importing country would have an important say in the administration and utilisation of such capital and it can be used for domestic economic development in accordance with a coherent overall programme. This is of vital significance to an underdeveloped economy which has the political freedom and the necessary drive to launch a programme of planned economic development suited to its needs and resources. When with such loans the receiving country develops her industries and raises her economic

5. *World Economic Report*, 1948, (United Nations), p. 236.

6. *National and International Measures for Full Employment*, 1949 (United Nations), p. 55.

standard, she is in a position to import private foreign capital for investment in her industries on more favourable terms.

To a developing economy, loans from public authorities have a special significance in so far as the capital needs for providing certain social and overhead facilities, which are an essential requisite for economic development, cannot be met out of foreign private capital. Development projects, such as irrigation, land reclamation, transportation, etc., are unattractive to private capital because of the large size of the investments needed and the smallness or uncertainty of direct returns. Such requirements can be met satisfactorily only by advances from international agencies like the World Bank.

However, in relation to the magnitude of the capital requirements of under-developed countries, the amount of advances which they have received from this source has been inadequate. The method of financing involved in foreign capital of this type is a rigid and costly one. The borrowing country has to set apart every year a part of its income for interest payments and finally for amortization. To secure the expertise necessary for putting these foreign resources into proper use additional expenditure has to be incurred by the capital importing country. There is also the possibility that such foreign loans would not necessarily lead to capital formation. In the absence of a proper administrative machinery and facilities for the absorption of these foreign resources and the definite earmarking of particular foreign loans for specific investment projects, there is the possibility of such foreign resources spilling over into consumption in the undeveloped countries.

This necessity for proper utilisation applies as much to international grants as to inter-governmental loans. International grants as a source of economic reconstruction in less developed countries of the world have assumed considerable significance in recent years. Foreign aid granted by the United Nations Relief and Rehabilitation Administration, Rehabilitation Aids in parts of the Far East and the assistance of the Economic Co-operation Administration to West Europe come under this category. Such grants are additions to resources from the outside which do not require repayment and do not impose upon the receiver any annual interest charges. They are of special importance and benefit to poorer

countries of the world who have not the economic capacity to finance some of the basic development projects such as highway construction, land clearing, irrigation and similar essential facilities out of borrowing from outside.

In view of the fact that loans from public authorities and international agencies as well as foreign private capital have advantages and defects, the national policy with regard to foreign capital in a country such as India should be one of discriminating admittance.⁷ In general, it may be said that resort to official sources or quasi-official institutions like the World Bank, the International Monetary Fund or the Export-Import Bank of U.S.A. should be had for financing basic development projects and also for paying for foreign machinery and equipment. On the other hand, where technical knowledge or experience is required in addition to capital resources, and where new lines of manufacture are to be started, the equity form of foreign investment would be more appropriate.⁸ This is the broad principle on which the policy of the Government of India with regard to foreign capital in recent years seems to have been based.

Foreign Capital and Planned Economic Development in India:

In the last few years India has met her foreign capital requirements from all the sources indicated above—from foreign governments in the form of loans and grants, from quasi-public institutions and also from private sources. But the nature of the utilization of foreign capital has undergone a significant change for two reasons. With the acquisition of political freedom, India has been in a position to better control and direct investment of foreign capital in accordance with her own needs. The room for suspicion of foreign capital and the fear of exploitation by the foreign investor do not exist now. Secondly, and this is more important, India has now a planned programme of development so that foreign capital will no longer be invested in a haphazard fashion but will be controlled and regulated in such manner as to fit in properly with her planned national development requirements. These two factors are to be clearly borne in mind in analysing the pattern of foreign capital utilisation in India in the last few years.

7. D. T. Lakdawala: *International Aspects of Indian Economic Development*, 1951, p. 42.

8. Report of the Fiscal Commission, 1949-50, Vol. I, p. 214.

The essence of economic planning is to replace haphazard investment by planned investment. As in the case of other under-developed countries, the rate of savings and investment in India has remained very low and in the post-war years seems to have fallen still lower. According to an estimate made by Dr. Colin Clark, the average annual investment in India in the inter-war period was Rs. 150 crores in 1919-23, Rs. 140 crores in 1924-28, Rs. 114 crores in 1929-33 and Rs. 139 crores in 1934-38. This works out to an annual rate of 7% of national income throughout the period 1919-1938.⁹ Estimates made by the *Eastern Economist* in 1948 suggest that in the post-war period there was a serious fall even in this low rate. According to this estimate, there was actually dissaving in 1946-47 and 1947-48 and a very negligible amount of saving of 1.4% of national income in 1948-49. Although these figures may not be quite accurate, yet they indicate an unmistakable tendency for savings to decline in the post-war years. India's First Five Year Plan therefore has aimed at increasing national income from Rs. 9000 crores in 1950-51 to Rs. 10,000 crores by 1955-56 and raising the annual rate of investment from 5% of the national income to 6.75%. The estimated foreign capital requirements in the plan amounted to Rs. 156 crores or 7½% of the total outlay. However, in view of the gap (Rs. 365 crores) between resources and expenditure, the plan provided for further resort to external assistance, or in the alternative, additional measures of internal taxation and borrowing and larger deficit financing. This total of Rs. 521 crores estimated to be covered by foreign capital or by deficit financing, additional taxation and borrowing, later increased to Rs. 701 crores when further additions were made to the overall investment pattern of the plan. Thus, according to the Plan, the minimum to be covered by foreign capital is 7½% and the maximum 17% of the total investment. However, the actual outlay in the period 1951-54 amounted to only Rs. 885 crores which is about 42% of the total expenditure envisaged. Over the period April 1951 to June 1954, the total external assistance authorised (including the undrawn portion of the loan sanctioned by the World Bank in the pre-plan period amounted to Rs. 234 crores.) The sources of this

9. Quoted in the Report of the Fiscal Commission (Government of India), 1950, p. 207.

assistance and the amount actually drawn and utilised are given in the following Table.

TABLE I

<i>External Assistance Authorised and Received, 1951-54</i>						
		(in crores of Rs.)				
		Utilised 1st April to 30th March.				
	Authorised	1951-54	1951-52	1952-53	1953-54	
Loans:						
U.S.A. Government Wheat Loan ..	90.4	90.2	58.0	32.2	—	
International Bank—undrawn balance of loans extended in the pre-plan period ..	7.1	5.5	1.1	3.0	1.5	
Steel Project Loan (December 1952) ..	15.0	—	—	—	—	
Loans for Damodar Valley Project, January 1953 ..	5.0	—	—	—	—	
Total ..	117.5	95.7	59.1	35.1	1.5	
Grants						
U.S.A. Govt. (Technical Co-operative Assistance) ..	81.6	21.1	—	5.0	16.1	
Grants under Colombo Plan: From Canada ..	26.4	9.2	4.2	2.6	1.9	
From Australia ..	5.7	4.1	3.7	—	0.4	
From New Zealand ..	0.3	0.3	0.3	—	—	
Ford Foundation ..	2.4	1.5	0.3	1.0	0.2	
Norwegian Government (Indo-Norwegian Programme) ..	0.3	—	—	—	—	
Total ..	116.7	36.2	9.1	8.6	18.6	
Total Loans and Grants ..	234.2	131.9	68.2	43.7	20.1	

Source: Five Year Plan Progress Report for 1953-54, pp. 25, 26.

Thus in the first three years of the First Five Year Plan period, the total external assistance authorised constituted 11.3% and the amount actually utilised 6.4% of the total estimated outlay. But external assistance utilised in the three years formed about 15% of the total amount actually spent on the Plan in the same period.

The slow utilisation of external assistance during 1951-54 as indicated by the wide divergence between the authorised amount and actual utilization has been accounted for by delays in the formulation of programmes; the failure to get readily equipments of a complex nature required for the execution of the earlier stages of certain projects; and also administrative difficulties involved in procuring materials from the contributing countries.¹⁰ However, the pace of absorption of foreign capital available from governments and quasi-public institutions increased considerably in the last and in the current year. The inflow of foreign capital of this type in the current financial year has been estimated at about Rs. 70.9 crores.¹¹ This together with the amount received in the last year 1954-55 brings up the total amount of external assistance utilised over the Five Year Plan period to about Rs. 250 or Rs. 260 crores.¹²

Foreign public investment in India in recent years has been in the form of dollar loans to the government from the International Bank as well as from the United States Government. The amount received from these sources are about twice the amount of private investment received from foreign countries. The World Bank provides finance in the form of foreign exchange only for projects of a basic nature without which industrial expansion would be impossible. Although this condition ensures the proper utilisation of the funds, so that these resources result in real capital formation in the country, yet it causes a less free flow of foreign capital through this channel than would have been desired by under-developed countries like India. The rates of interest charged by the International Bank have also been fairly high and show a rather steady up trend. It varies from 3½% on the 10 million \$ loan sanctioned about the last quarter of 1949 for purposes of agricultural development, to 4½% on the loan of \$19.5 million granted to the D. V. C.

10. Five Year Plan Progress Report for 1953-54, p. 26.

11. *Commerce*, 10th September 1955, p. 493.

12. Second Five Year Plan: The Framework (Government of India), p. 111. Recently the Finance Minister estimated this amount as Rs. 260 crores. See *Hindu*, November 17, 1955.

project early in 1953.¹³ With the recent two loans of \$16.2 million and \$10 million to Tatas for their Thermal Project at Trombay and to the Industrial Credit and Investment Corporation of India respectively, the total loans from the Bank to India have reached \$126.7 million or more than Rs. 60 crores. Of the loans advanced by the World Bank, only two—the loan granted to Tatas recently and another of \$31.5 million granted to the Indian Iron and Steel Co., Ltd., at the close of 1952—have been made to a company belonging to private enterprise. All the others have been advanced to the Government.

As in the matter of loans, grants also have been received mostly in dollars. By far the most important donor has been the U.S.A. In the period 1948 to March 1955, India received by way of grants Rs. 40.48 crores from the U.S.A. and Rs. 6.2 lakhs from the United Kingdom. Grants from the U.S.A. have been based on the Indo-American Technical Co-operation Programme Agreement which was made between the two countries in January 1952. The total aid authorised by the U. S. Government under the programme between 1952 and 1954-55 amounts to Rs. 116 crores.¹⁴ However, the Government of India has been rather chary of taking foreign aid of this type. Out of the outright grants authorised by the U.S.A., the total utilised during the first three years of the plan period was only Rs. 22.6 crores including the money allocated by the Ford Foundation schemes. In this three year period, the total outright grants from all sources utilised by the Government of India amounted to only Rs. 36 crores or 4% of the total expenditure on the plan incurred till the end of March 1954.

Making an allowance for the Wheat Loan from the U. S. A. of \$190 million (Rs. 90.25 crores), nearly the entire remaining amount of Rs. 150 or Rs. 160 crores of the external assistance received in the Five Year Plan period from public authorities or quasi-public institutions may be said to have been added to the capital formation in the country. The utilisation of foreign funds for consumption purposes in the early years of the plan period was necessitated by the unfavourable conditions of the times.

Trends in the International Flow of Private Capital:

Compared to the generation before 1914, there has been a significant decline in the international flow of private capital since the

13. These include the one per cent commission which under the Bank's Articles of Agreement is collected and paid into the Special Reserve Fund.

14. *Commerce*, 24th September 1955, p. 618.

close of the Second World War. In the seven years 1946 to 1952, the net outflow of private long term capital from the industrialized countries who are the capital exporters, amounted to about \$11 billion, which works out to an average of \$1.5 billion annually. Although in the mid-1920's the outflow of private capital from the capital exporting countries has been estimated at no more than \$2 billion per year, these two figures are not comparable in so far as the latter figure excludes a portion of the reinvestment of undistributed profits, and also in view of the fact that the dollar prices of goods have considerably increased since the 1920's. Thus in real terms the decline in the size of the outflow of private capital since 1945 is much greater than what the figures would indicate. Further, since population in both the capital exporting and importing countries has increased much in the last few decades, the decline in the capital movement per capita has been still greater.¹⁵

This decline has been more serious in the case of portfolio investment than in that of direct or entrepreneurial investment. Private buying of foreign government bonds has virtually ceased now and the floating of shares and debentures of business enterprises and trade in outstanding securities common in the 1920's has also sunk to minor importance. This decline in private portfolio lending has to be attributed mostly to the unsettled state of international political and economic affairs. Much of the outflow of private capital thus takes the form of direct investment in undertakings which are effectively controlled in the capital exporting countries and represent investment in subsidiaries or branches of firms established in such countries.¹⁶ Although this is not a new phenomenon in under-developed countries, yet their growth in relative importance as well as in absolute terms in recent years is an altogether new development.

Among the capital exporting countries of the post-war period, the U. S. A., occupies a position of outstanding importance. During the seven years 1946-1952, the recorded outflow of U. S. A., private investment capital was \$9.2 billion of which direct investment accounted for \$8.2 billion and portfolio investment \$1 billion.¹⁷ Of the total private investment capital that has moved out of countries like the U. S. A., U. K., Switzerland, France and Belgium in

15. The International Flow of Private Capital, 1946-52 (U.N.), p. 10.

16. Measures for the Economic Development of Under-developed Countries (U.N.), 1951, p. 80.

17. The International Flow of Private Capital, 1946-52 (U.N.), p. 10.

this period, U.S.A., capital formed more than 80%. On the other hand, overseas business investment of British private capital declined from £1513 million at the end of 1945 to £1216 million at the end of 1951. A considerable proportion of the capital that has moved out in the post-war years has been absorbed by economically developed countries, such as Australia and Canada. Also large investments have been made in areas with petroleum resources—Venezuela, Saudi Arabia and Iraq. Among under-developed countries, U. S. A. capital has moved into Latin America and the Philippines. On the other hand, during the immediate post-war years, there was a tendency for foreign private capital to move out of over-populated but less developed regions, like Ceylon, India, Indonesia and Egypt. These countries succeeded in liquidating a large part of the equity investment out of the sterling balances which they had earned during the war. In general, private capital tended to be attracted to countries with plentiful natural resources rather than to countries with abundant manpower.

*Foreign Business Investments in India: 1948 and 1953—
A Comparison:*

The findings of the Surveys conducted by the Reserve Bank of India constitute the main source of information about the influx of foreign private capital into India in the post-war years. The 1948 returns of the Reserve Bank relate mainly to the pre-Independence investment situation in which British capital played by far the most important role. Since then there has been a certain amount of disinvestment of foreign capital, but its exact size has not been computed. Disinvestment of foreign private capital tended to increase rapidly after the end of the war in 1945 and reached its peak in 1949; since then the rate seems to have declined. At the same time, expansion of quite a large number of foreign enterprises, especially British, has been brought about by reinvestment of profit. Foreign private capital has also flowed into the many joint ventures in the country which have become very common in recent times. Such joint ventures with private capital from foreign countries, like the U. S. A., U. K. and Germany, have been organized in a variety of manufacturing enterprises ranging from consumer goods, such as cigarettes and sewing thread, bicycles, electric lamps, motor cars, pharmaceuticals, rubber manufactures and glassware to textile machinery, trucks, tractors and other heavy machinery. But adequate and up-to-date statistical information relating to these is not available.

The recent survey of India's foreign liabilities and assets published by the Reserve Bank of India brings the information relating to the size and nature of foreign investments in India upto the end of 1953. A comparison of the data available in this survey with that of the earlier one throws light on the trend in foreign investments in India in the post-Independence period. According to this survey, the country's total foreign liabilities at the end of 1953 amounted to Rs. 1123 crores, of which the official sector owed Rs. 646 crores and the private sector Rs. 477 crores. Of the total gross increase in foreign business investments during this period (Rs. 175 to 180 crores), capital received in cash has been estimated at Rs. 30 to 35 crores, reinvested or retained profits at Rs. 60 to 70 crores and receipts in the form of goods and machinery at Rs. 75 to 80 crores. The net increase in foreign investments in businesses in India amounted to Rs. 132 crores made up of an increase of Rs. 137 crores and Rs. 13 crores respectively from the U.K. and U.S.A. and decrease of Rs. 19 crores from the other countries. The following Table presents some of the findings of the recent survey and that of 1950 together:—

TABLE II
Foreign Liabilities of India: 1948 and 1953.

		(in lakhs of Rs.)		
		1948	1953	Decrease (—) Increase (+)
1. Total foreign liabilities	..	86204	112276	+26072
2. Official short-term liabilities	..	6960	6370	—590
3. Official long-term liabilities	..	46630	58245	+11615
4. Total official liabilities	..	53590	64615	+11025
5. Non-official short-term liabilities	..	3840	3540	—300
6. Non-official long-term liabilities	..	28774	44121	+15347
7. Total non-official liabilities	..	32614	47661	+15047
8. Foreign business investments	..	28757	41932	+13175
9. Direct	..	23716	34928	+11212
10. Proportion of 9 to 8	..	83%	83%	—
11. Portfolio	..	5041	7004	+1963
12. Proportion of 11 to 8	..	17%	17%	—
13. Distribution of foreign business investment among countries:				
From U.K.	..	20995	34706	+13711
From U.S.A.	..	1796	3091	+1295
From other countries	..	5966	4135	—1831

		(in lakhs of Rs.)		
		1948	1953	Decrease (—) Increase (+)
14. Distribution of foreign business investment among industries:				
Manufacturing	..	7195	13572	+6377
Trading	..	6435	9478	+3043
Plantations	..	5225	7216	+1991
Utilities	..	1861	3730	+1869
Financial	..	3861	3090	—771
Transport	..	1262	1324	+62
Mining	..	1146	838	—308
Miscellaneous	..	1772	2684	+912
Total	..	28757	41932	+13175

Source: Survey of India's Foreign Liabilities and Assets (Reserve Bank of India, 1955). The figures for 1948 show some minor variations from that given in the "Census of India's Foreign Liabilities and Assets in 1948" (published 1950) since these have been modified to ensure strict comparability with the data for 1953, the sources and coverage of which are slightly different from that of the earlier survey. See pp. 52-53.

It may be seen from the above Table that the proportion of the controlled part of foreign investment to total investment does not show any change. As for distribution of foreign investment among different industries, it is noteworthy that investment in manufacturing enterprise has increased considerably, while that under trading shows a moderate rise. Investment in mining and transport has declined, but that in plantations has risen. The premier position of the United Kingdom as the chief exporter of private capital to India still continues. It is also found that the flow of new capital from the U.S.A. was confined largely to the trading sector, but investment from the U.K. went to different sectors—Rs. 56 crores for manufacturing, Rs. 21 crores for plantations, Rs. 20 crores for trading and Rs. 19 crores for utilities.

Since 1953 there have been substantial additions to private foreign investments in India, as for example, about Rs. 40 crores in the oil refineries. In all it may roughly be estimated that net investment of foreign private capital since 1948 is about Rs. 180 crores.

Some important features of foreign private capital investment in India in the post-Independence period may be briefly indicated. In the first place, as compared to the inflow of foreign capital of this type in the early years of the present century, there has been a serious decline in its volume in recent times. Secondly, although the amount of private capital from the U.K. has fallen considerably

(from about Rs. 20 crores per annum at the turn of this century to about Rs. 3 crores in recent years), still that country even now is by far the most important source of this type of investment. Thus of the total foreign private investment of Rs. 1.63 crores in the 15 months April 1953 to June 1954, the United Kingdom accounted for as much as Rs. 1.38 crores or 85%, Switzerland Rs. 22.15 lakhs, the U.S.A. Rs. 1.90 lakhs, France Rs. 39,000, Ceylon Rs. 27,000 and Denmark Rs. 30,000.¹⁸ Thirdly, while formerly foreign private capital tended to flow mostly in extractive industries, at present there is a wider distribution of investment with large increases in manufacturing industries like dyes, drugs, hydrogen peroxide, clinical thermometers, gold gilded glass beads, food essence, abrasives, cycle parts, lifts and water meters. Fourthly, it is observed that foreign private capital tends to come more in the shape of subsidiaries of foreign concerns or with a minor share to Indian capital than as a minority interest in Indian controlled enterprises. Yet conditions for the investment of foreign capital of this type have become more rigorous and such investments are made to fit in with the overall pattern of Indian industrial development.

The fall in the inflow of private capital into India reflects only a world trend. The decline is marked especially in the influx of foreign private capital into the economically backward countries of the world as against those which are relatively better developed. Various factors, social, political and economic, have helped in this tendency. Private loans to governments have declined partly because of the reduced importance of the individual saver as a supplier of funds for long term loans (which itself is due to the high rates of taxation and the tendency to divert individual savings into corporate and institutional investment) and partly because of the fear of the foreign investor of losses resulting from defaults and rise in prices in the borrowing country. Venture capital normally tends to gravitate in the direction of the most attractive offer. In this respect many of the under-developed countries have lost their attraction for private capital from outside. The marginal efficiency of capital in U.S.A., which is the largest capital exporting country today, as indicated by the returns on capital, is higher than in many other countries, so that capital is reluctant to move out of that country. One of the causes for the decline of foreign investment even in the extractive industries in less developed countries is that

18. *Commerce*, 9th October 1954, p. 682.

the rate of expansion in the markets in Western countries for raw materials has considerably fallen. This has been due to the emergence of many synthetic substitutes in Western markets and also due to the general slowing down of the pace of industrial expansion. Foreign investment in public utilities, which formed a large proportion of the total outflow of foreign private capital in the latter half of the 19th century and in the early years of the 20th, has also sunk to minor importance because of low earnings of such investments especially in railways in under-developed countries and also because of the growing tendency in such countries which have attained political independence, to reserve the establishment of new projects for national government enterprise. In the matter of the exploitation of exhaustible natural resources also, governments have taken up a more stringent attitude towards foreign investors out of increased concern about the conservation of these resources. This attitude is reflected in the demand for a larger share of the profits by the capital importing country and in the restriction or removal of tax concessions, etc. Investments in manufacturing industries in under-developed countries is unattractive to most of the foreign owners of capital in view of the fact that domestic markets in these countries are not sufficiently expansive enough to absorb the products of the manufacturing industry. Furthermore, to the extent development of industries and rise in the standard of life in the capital importing countries necessitate larger imports of materials and other goods from outside, there would be the possibility of balance of payments problem which would make it difficult for the foreign investor to transfer to his country the earnings of his foreign investment. Such a situation necessitates the adoption of various forms of exchange controls and other restrictive practices which obstruct the remittance not only of income and the repatriation of capital if necessary, but also the payment for imports required in connection with the operations of the enterprise in which foreign capital is invested. Exchange controls today, however, are adopted both by developed as well as by under-developed countries and they are only a manifestation of the general international economic disequilibrium which has become a persistent feature of international economy. The division of the countries of the world in currency areas, balance of payments difficulties between groups of countries, in convertibility of currencies, all these tend to reduce the volume of private capital exported for investment purposes and considerably narrow down the area within which each capital exporting coun-

try can invest with advantage. Differences in outlook between countries, lack of knowledge and faith, social and political circumstances, fear of default, nationalization and expropriation—all these add to the obstacles in the way of a free transfer of private capital from countries where it can be spared to countries which need it.

Most of these factors are as much true of India as of any other country of her standard of economic development and political status. Nevertheless, there are certain additional difficulties which are somewhat of a special nature in this country. The points raised in the publications of the United States Commerce Department relating to investment opportunities in India may be taken as illustrative of the obstacles which advanced countries in general have to face in investing their private capital in India. One of the main difficulties cited by representatives of foreign businesses is the absence of adequate overhead facilities in the form of transportation and communications and credit and capital institutions. The absence of supporting industries in particular fields and the susceptibility of the economy to certain types of fluctuations present new problems to the foreign investor and discourage fresh investment. It has been mentioned that the deficiencies of the capital institutions are quite a serious impediment to the inflow of private capital from outside in so far as foreign investors, who would like to raise part of the capital for their enterprise in this country and also who would wish to sell all or part of the share of their investment in the Indian market when once the enterprise is well established, would find it difficult to do so. Apart from this, the policy of the Government of India in the matter of admitting foreign private capital has also come in for much criticism. It is pointed out that the margin of profit considered reasonable by the Government of India for any foreign investment (viz. 3½%) is too low to attract any foreign capital, especially in view of the fact that the average returns on domestic investment in capital exporting countries, such as the U.S.A., are much higher. The screening by the Government of India of the proposals for foreign private investment is also cited as a factor discouraging such investment because of the time and money involved in the process. Personal income-taxes are supposed to be very high in India and this combined with the necessity for the payment of certain allowances makes it very costly for individual foreign firms to send their technicians to India. The absence of any provision for double taxation relief and the conditions laid down by the

Government of India for foreign investment, such as the employment and training of Indian personnel wherever practical, the admission of domestic capital into participation in the enterprise and the willingness and preparedness on the part of the foreign firm to increase the manufacturing operations carried out in India, are also said to have a restrictive effect on the inflow of private foreign capital.

Some of the fears of the foreign investors are exaggerated and a few quite unwarranted. To the extent there is the need for channelling resources, both foreign and domestic, into those lines of investment which are in conformity with the pattern of development envisaged in the Plan, it is but proper that the government is admitting foreign capital into the country only after some scrutiny. The policy of the government in this matter is made quite explicit. It is the view of the government that in so far as "the investment of foreign capital necessitates the utilisation of indigenous resources and also that the best use of foreign capital is as a catalytic agent for drawing forth larger resources for domestic investment, it is desirable that such investment should be channelled into fields of high priority. The broad principle to be followed is that foreign investment should be permitted in spheres where new lines of production are to be developed or where special types of experience and technical skill are required or where the volume of domestic production is small in relation to demand and there is no reasonable expectation that the indigenous industry can expand at a sufficiently rapid pace".¹⁹ In conformity with this basic principle, four important points are considered by the government before approval is given to foreign investment. Firstly, there must be a genuine programme of manufacture. Secondly, the investment would be in a field where there is deficiency of indigenous capital and lack of technical knowledge. Thirdly, the investment would result in a saving of foreign exchange, and fourthly, the project would lead to increased productivity. The emphasis is on the second and third points and in general when proposals by foreign firms are made for investment in India, preference is given to those projects which cannot be developed in this country with domestic resources and which would bring into the country specialised knowledge and technical skill. This is illustrated by the ready approval to the investment of foreign capital of about Rs. 40 crores in two petroleum refineries in India

19. The First Five Year Plan, p. 438.

and also in the manufacture of such things as storage batteries, house meters, card clothing, synthetic stones, etc. By importing crude oil of the value of about Rs. 26 to 27 crores, the two oil refineries would manufacture about Rs. 44 crores worth of oil and thereby bring about a net saving in foreign exchange of Rs. 17 to 18 crores per year.²⁰ But while foreign capital is allowed by the government in such fields where domestic capital is also functioning provided such foreign investment leads to greater competition among producers and benefit to consumers in the form of larger supply and lower prices, government is very wary of giving approval to mere trading concerns. Sanction granted to many joint ventures, like the manufacture of cycles, tinned foods, assembly of automobiles, textile machinery, drugs, electric motors, radios electric lamps, razor blades, sewing thread, etc., is illustrative of this principle. When once admitted, foreign enterprises are given equal treatment with Indian enterprises except in the matter of borrowing in the country for long term uses, for which the foreign controlled concerns have to get the permission of the Reserve Bank. This limitation is imposed for reasons of exchange control. In the same manner, the policy of screening of foreign capital, which has been made much of by foreign investors, is designed to see that external investment is directed into those industries only, which would bring about a saving of foreign exchange either directly or indirectly through increased production of erstwhile imported commodities. To the extent that such a restriction strengthens the foreign exchange resources of the country, it only safeguards the interests of the outside investor. In the absence of such a regulation, foreign capital would flow into those industries which would bring in large profits to the investor immediately, but which would be of little help in the economic development of the country. Besides, in order to allay the fears of foreign investors about nationalization or expropriation, government has been giving definite contracts regarding investment. Thus in the case of the Standard Vacuum and other oil companies, assurance is given by the government that these will not be taken over for a period of at least 25 years after operations are commenced, and after that period if they are taken over, adequate and reasonable compensation would be made and necessary facilities would be provided for transferring the amount invested in the business.

From what has been stated above, it would be clear that excepting certain gaps such as the lack of an adequate provision for

20. *Commerce*, 24th April, 1954, p. 811.

double taxation relief, many of the criticisms regarding governments' policy or lack of policy in respect of foreign capital are baseless. It should however be mentioned that government has so far done little to allay the fear of foreign investors arising from the unwelcome and sometimes hostile attitude of private businessmen in this country towards foreign capital. The latter are afraid of the strength of foreign competition based on superior technical knowledge and administrative efficiency in certain fields of enterprise which they consider as their own domain. But the best way of meeting that competition is for these businessmen to apply their energy and resources to increasing the supply of their products and raising their quality than to carrying on a malicious propaganda against the foreign enterprises some of which have been long established in this country and have been contributing to the good of the consumers.

The Second Five Year Plan and the Future of Foreign Capital

Whatever may be the attitude of businessmen towards foreign capital, the fact cannot be denied that over the second five year plan period and for long, India will have to depend to a substantial extent on foreign resources. The relative significance of the sources of supply and the type of investment to which foreign capital will be put may change, but the amount of the resources required at least for a considerable period of time would not decline but would, on the other hand, increase. It is the aim of the government to rely more and more on domestic resources for development purposes with each succeeding plan. But this objective is not likely to be attained in the foreseeable future. For it is a fact that as development proceeds and the standard of life of the people is raised, the rate of savings would go up, but at the same time the capital requirements of the country would also increase together with an expansion in its capacity to absorb fresh investment. The expenditure envisaged for the second Five Year Plan is much larger than for the first and therefore it is safe to assume that foreign resources required during the next plan period will almost correspondingly be greater.

As indicated in the Draft Plan Frame, the total net investment in the second five year plan period will be of the order of Rs. 5600 crores. Of this Rs. 3400 crores²¹ will be in the public sector and Rs. 2200 crores in the private sector. Thus investment in the public sector will be double the amount estimated in the first Plan

21. This requires an outlay of Rs. 4300 crores on the public sector.

and that in the private sector will be 40% higher. It is hoped that investment of this magnitude will increase national income by about 25% and raise the annual rate of capital formation from about 7% of the national income at present to about 11%. This overall estimate is however likely to be raised further. Thus in a recent statement, the Union Finance Minister has indicated that the size of the Second Five Year Plan in the public sector would be about Rs. 4800 crores. He said that even with additional taxation, the resources available would be only Rs. 3500 crores under the present assumptions regarding internal borrowing, foreign aid and deficit financing. The foreign exchange content of this scale of investment is estimated at about Rs. 1500 crores. Of this amount, about Rs. 700 crores would be made up by way of foreign trade balances and about Rs. 400 crores by way of foreign assistance, including loans from the International Bank. Foreign capital available in the private sector is estimated at Rs. 100 crores. In all, the total requirements of foreign capital, according to the proposals now made, would be of the order of Rs. 500 crores. But to the extent that other resources available fall short of expectations, it is likely that requirements of foreign resources would be greater than indicated by the above figure.

Considering the amount of foreign capital actually utilised in the first plan, the sum of Rs. 500 crores may be an under-estimate. It is now becoming clear that the total actual outlay on the first plan will be about Rs. 2000 crores. Of this, foreign capital accounts for Rs. 260 crores and deficit financing Rs. 500 crores. The original estimates however were Rs. 290 crores deficit financing and Rs. 156 crores external assistance. In other words, while according to the plan external assistance was to constitute $7\frac{1}{2}\%$ of total outlay and deficit financing 14%, in actual fact at the end of the first plan period, the first would have amounted to 13% and the second to 25%. It is thus quite likely that the present estimated foreign capital requirements for the second plan may prove inadequate unless further resort is had to deficit financing, which would necessarily involve considerable strain on the economy.

It is assumed that the external assistance necessary for the public sector in the second five year plan period would be about Rs. 400 crores. When viewed against the amount of foreign capital actually utilised in the public sector in the first plan period, this estimate of Rs. 400 crores for the next five years seems to be quite correct. It appears now quite possible for the country to get this much of foreign capital from the usual sources in the form of loans

and grants from foreign governments and also loans from International institutions like the World Bank. On the other hand, the amount of foreign capital that is now supposed to be required for the private sector seems to be very much of an under-estimate. This is especially so because of the fact that in a growing economy, the need and the scope for greater investment will be increasing and if a proper balance is maintained in the development of both the public sector and the private sector, the capacity to absorb resources for investment in the private sector will be expanding *pari passu* with the rate of general economic development. Besides, it is not possible to over-emphasise the fact that in an independent sovereign country, developing along planned lines, there is no justification of fear about the exploitation by foreign capital. The type of foreign capital that flows into a country and the nature and distribution of its investment reflect broadly the standard of economic development and the political status of the country. In a very backward economy with no political freedom, foreign capital flows mostly into extractive export industries and also to some extent into public utilities like transport and communications, which facilitate proper exploitation of such industries. India in the pre-Independence era was in this position. Next, when a country becomes politically free and is in a position to shape her own economic policy, foreign capital would be invited and made to flow into those channels which would ensure a stable rate of economic growth. Here there is greater control of foreign capital the investment of which is made to fit in with the overall national requirements of the country. At this stage, foreign resources from governments and international institutions have precedence over private capital in so far as the former are more amenable to control and can be made to flow in those very lines of investment requisite for the country's planned progress. The third stage is reached when as a result of the investment of foreign capital made available through governments and quasi-public institutions, the economy is developed, industries are started, national income goes up and the domestic market is expanded. When such a stage is reached, the country provides opportunities for the investment of foreign capital in manufacturing industries. Private capital from abroad is now attracted to manufacturing industries in the borrowing country because of the expansion of domestic market and the availability of the requisite overhead facilities which ensure larger returns on investment. Countries like Canada and Australia have attained this stage. The considerable industrial development that has taken place in India in the

last few years, the rise in national income and the tendency for the proportion of the foreign investment on manufacturing concerns to increase, indicate that India is now in a transitional stage and that with succeeding plans there will be greater and greater need as well as scope for investment of foreign private capital in manufacturing and consumer goods enterprises.

But if private foreign capital of the magnitude necessary for development purposes is to move out from the economically advanced countries to the less developed and under-developed ones, some sort of a preparing of the ground is to be done both by the capital importing and capital exporting countries. The willingness and desire on the part of capital exporting countries to encourage an outflow of private capital is unmistakably indicated by certain recent measures taken by them. In the U.S.A., the office of Economic Affairs in the Bureau of Foreign Commerce provides U.S. businessmen with detailed information on foreign investment conditions and foreign laws and regulations and practices affecting investments. The supply of such information has been further facilitated by the setting up of the office of Foreign Investment in April 1955, which serves as a clearing house of information in investment opportunities overseas. Besides, since 1948, the U.S. Government has had in operation an Investment Guarantee Programme which provides by means of inter-governmental agreements insurance protection to U.S. foreign investors against the risks of inconvertibility of foreign currency receipts and loss through expropriation or confiscation. In England, the Commonwealth Development Finance Company was set up in March 1953 with a share capital of £15 million (of which the Bank of England contributed £6.75 million and private capital £8.25 million) with a view primarily to finance schemes of developing resources in any part of the Commonwealth undertaken by private enterprise. A similar organisation is the Trans Oceanic Development Corporation which has been formed by a large number of banks and investment houses in the United States, Canada and Western Europe. In addition to these, there are government as well as private organisations which give loans or advance credits to importers of equipment from their countries. The Export Import Bank of the U.S. Government, the Export Import Bank of Japan, the Export Credit Guarantee Department of the United Kingdom, the American Overseas Finance Corporation and the Ausfuhr Kredit A.G. of Germany are such institutions. Besides the above institutions, the recently formed International Finance Corporation

with share capital of \$100 million (to which India would be contributing by shares of the value of Rs. 2.11 crores) which is expected to start function shortly will make longterm loans to commercial enterprises in the under-developed countries without the governmental guarantees now required by the World Bank for granting such loans. This is of special benefit to businessmen who do not require very large amounts of foreign capital. Apart from advancing the loan, the Corporation would also help the borrower to get into touch with sources of private finance in other countries. Most of the national and international institutions above mentioned, serve the twin purpose of mobilising domestic resources and helping in their transfer for international investment.

On the part of capital importing countries, it is necessary that they create an atmosphere that is congenial to the investment of foreign private capital. This can be done by the abolition of discriminatory taxes, by minimising import restrictions, ending redtapism and by removing ambiguities of tax law where they exist. What is more important than these is the need to create confidence among the businessmen in the importing countries themselves by making it clear that the influx of foreign capital is not fraught with any economic or political danger.

As for India, many of the obstacles to the inflow of private capital do not exist. On the other hand, such factors as the political stability in the country, an able and efficient system of administration, adequate credit structure and an effective monetary policy which has been followed in the last few years, should help to allay undue fear on the part of prospective foreign investors. Of late, more positive measures have been taken to help Indian businessmen to avail themselves of foreign assistance. It was for this purpose that the Industrial Credit and Investment Corporation was set up recently with substantial aid from the World Bank. This institution not only advances credit directly but also serves as an agency to facilitate the flow of foreign private investment into India and helps Indian businessmen in need of foreign capital to get into touch with foreign lending sources. It also now seems certain that the Government of India would join the American Investment Guarantee Scheme. Nevertheless, it appears that private investors from the capital exporting countries would like to get a more definite statement about government's policy with regard to nationalisation. Commercial treaties with foreign countries offering assurance or guarantee of rights to the investors or legal enactments for the same purpose, as have recently been done in 1954 in Egypt and

Turkey, and measures to provide double taxation relief are also further means to create faith in the foreign investors.

The growing economic strength of India and the considerable measure of success attained in the line of planned development should by themselves constitute a source of assurance to interested overseas investors. For ultimately the preparedness on the part of the foreigners to stake his money in foreign investment depends not only on the political stability of the country where investment is made and the political faith of its people, but also on the economic strength of the country and its capacity to bear the burden of foreign capital. In essence this means the ability of the country to pay for the servicing of the foreign loan and also for the transfer of earnings and repatriation. This obviously is bound up with the balance of payments position of the country. And this has been quite stable in India in the last fifteen years. In the fiscal year 1938-39, the net transfer of investment income abroad together with amortization and other contractual payments worked up to 20% of the export proceeds of India. This percentage came down to 3.5 in the calendar year 1951 and to 2.3 in 1952.²² The declining ratio of payments for investment income to total export proceeds of the country indicates that the real burden of these transfers is less than it was in the pre-war years. This change was due largely to the reduction in India's gross foreign indebtedness during the war. With the development of her industries and agriculture and expansion of foreign trade, this ratio is bound to come down further. This would indicate in general that the economy of the country is capable of bearing the burden of much larger foreign investments. The fact that the proportion of India's longterm foreign liabilities to national income has remained constant in spite of an absolute increase in the amount of these liabilities by about Rs. 260 crores between 1948 and 1953 lends further support to this thesis.

²². Economic Development with Stability: Government of India, 1954, p. 82.

REALIZING FACTS—SELF-REALIZATION THROUGH ANTHROPOLOGY

by

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I

What is Anthropology? Anthropology is the science of man. It is difficult to rest contented with this definition of the term. Anthropology as I know it today is not a mere science of man, but is a voice of the life of man that is lived from day to day all over the globe which finds an analysis and interpretation by the trials and ordeals of intellectually well disciplined truth searchers. Anthropology is not a lonely science. A study of it naturally takes one to a study of prehistoric archaeology, psychology, sociology and economics, comparative religions and comparative linguistics, human biology and physical anthropology.

Man perennially and sometimes quite involuntarily strives to transmit his knowledge and tradition, his beliefs and attitudes, his institutions and laws to the succeeding generation. It is this personality of man in his totality, in his completeness which an anthropologist sees face to face while conducting his investigations among a group of people he has chosen for his study. In a way this can be explained further. An anthropologist working amongst a tribal group gets possession of an ornament of beads and shells. His heart gets filled with joy and he discovers that this simple ornament has a story of facts to tell. Sometimes the whole culture of a group is studied by starting with such simple observations. By observing every moment of life as it is lived, the anthropologist is benefited by a vision of the soul. This *ātma-darśan* may be different from that of a mystic's experience but the anthropologist's norm is *man and god through man*.

II

What does field mean to an anthropologist? Any geographical region, any group of people, any area within a political or social

system the people of which have an unique culture and traditions may serve as the sphere or field of study for an anthropologist. To illustrate by an example: say an anthropologist goes to study a tribe somewhere in the Himalayās. The first difficulty he has to experience is with regard to language. If he doesn't know the language of the group, his observations are not bound to be correct. Therefore, either this social scientist spends a few months in learning the language of the group or looks for an interpreter who knows the language of the anthropologist or any other common language, say as English, in addition to his proficiency in the tribal language. The interpreter, unless he be a well-informed person in the ways and customs of the chosen tribe, is of no use. The anthropologist also must decide what exactly he proposes to study. For example, whether it is a society or a community that is the centre of his investigations or whether it is the functioning of a culture system that he intends to study and analyse. Field researches help to reconstruct the past history of the tribe and also to find the particular functions which the institutions in a society perform.

In the beginning, everyone whom he meets the anthropologist thinks has something to tell him; and he observes every ritual, every folk or urban custom, and hears what all are told to him. He has to be a very detached observer of the flow of life through the functioning socio-cultural and religious institutions of the group he has taken up to study.

He comes into contact with many types of men and women. He hears different versions of a custom or ritual or festival he has observed from different sources. He must have no pre-conceived notions; nor must he make attempts to interpret the facts in the light of some vague hypothesis, if any he has formulated; the anthropologist has to live like a creative artist, but to the former the field is the objective world of facts and realities, while to the latter mostly it is one of imagination patterned on a world of realities.

The anthropologist evolves his theories by the use of his creative imagination working on the facts before him in his field-notes which may contain thousands of observations. His works are not always mere descriptive, ethnographic records of primeval peoples, but give us unfading pictures of men and objects.

III

The anthropologist becomes aware by virtue of his specific approach to human problems of the fact that, "so many opposing principles struggle in man that a harmonious co-ordination of them is quite impossible. . . . The soul of man is far too complex a combination for all the voices shouting in it to become united into one harmonious choir. All the kingdoms of nature live in man. Man is a little universe. . . ."¹ It is for him to see those culture elements which shape the personality of the group; and the personality of an individual within the group may to a large extent be influenced by the personality of the group as a whole.

The anthropologist has to study the individual as a whole. In a family each member is an unique character, and it is this uniqueness that differentiates individual from individual. Besides, I see that each family in a given society or community or group is an unique unit by itself. To learn how the uniqueness of an individual may be studied, I wish to point to the character and personality of Vāzhavan in Dr. Ehrenfels' monograph on a food-gathering tribe.²

Each society has its own philosophy of life. How this philosophy works in practice is for the social scientist's discerning eyes to see. This may be an unifying force of the society.³

An individual is not a mere product of society and environment. He is also a symbol of the culture of his society. No two societies may have the same culture in all its elements. And no two individuals belonging to the same society educated under the same culture may have an identical personality. It is the anthropologist's task to discover these and many other peculiarities. A bamboo-comb with artistic patterns, a picture of Altamira bison, a Venus statuette of Willendorf, a Nayar taravad, an animal sacrifice, a costume of a priest, a role of an aged man in a family and numberless material objects, social and religious institutions and economic ways attract the attention of an anthropologist and indirectly present before him the many-sided soul of man.

An anthropologist may study either the social structure of a community or of a village or of a tribe; or he may study the social

1. Ouspensky (1938).

2. Ehrenfels (1952).

3. Kluckhohn (1949).

changes coming over a community or a village or a tribe. He may study even the cultural structure and the cultural changes happening in the unit of his investigations. Culture and society are purely interdependent and to study one is also to study the other. Julian Huxley defines culture thus:—"Culture, if I understand it aright, is a shared or shareable body of material, mental and social constructions ("artifacts, mentifacts, and socifacts") created by human individuals living in a society, but with characteristics not simply explicable or directly deducible from a knowledge of the general psychological or physiological properties of human individuals, any more than the characteristics of life are simply explicable or directly deducible from a knowledge of the general chemical and physical properties of inorganic matter, or those of mind from a knowledge of the properties of neurons. Culture has a material basis, in the shape of resources of food, raw materials, and energy; but though the quantity and quality of material resources available will influence or condition the character and development of a culture, they do not determine it in detail, so that differences between cultures are no more explicable or deducible from a knowledge of their material basis than from that of their psychological basis in the minds of individuals."⁴

IV

In the very act of studying social or cultural systems, the anthropologist observes also processes of change which take place in the different institutions and habits of society. It is for him to get at the causes of these changes, the factors which bring about these changes and the effects of these changes on the institutions and the different members of the society.

A change may be a result of an innovation, a need of the society as a whole. A society may change by effecting some changes in its natural environment. A society may change by its contacts with a neighbouring society. A culture element may be borrowed; or may get diffused over from one centre to another. To take an example: The Cherumās whom I had the opportunity to meet showed some traces of borrowals in their method of foretelling the coming events. They have their own astrologers and methods of predicting the future. But I found that they have a knowledge of the twelve signs of the zodiac. The twelve houses

4. Wenner-Gren Year Book of Anthropology (1955).

in the Cherumā system of astrology is occupied by animals and trees; he is aware of the monthly movements of the sun, but not of the other planets. His predictions are based on the character of the animals and trees and he has his own ways of calculation. This system of prediction means to the anthropologist not a mere method of astrology, but a culture feature united with innumerable other socio-religious elements of that community.

A society or community may change by coming into contacts with an urban population. The urbanized way of life may be at last finding its way into the different cultural elements of that society with the result it becomes a "changed" society. It is man again who initiates these changes and it is his own personality that gets affected by these changes. Then arises for man the problem of adjustment to changed situations in which he must find his role and status defined.

V

Thus we find that in all ways the anthropologist studies man as an individual, as a member of a society, as a representative of a culture, as a citizen of a state, and finally as a being creating cultures and civilizations through the myriad changes in his own psyche. In studying man and his works, the anthropologist searches for his own self outside himself in everything only to discover at last that the veil of the psyche can never be lifted; but still he has an awareness of the presence of the soul in every spoken word and every observed deed.

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PRINCIPAL MILLER ENDOWMENT LECTURES—1954-55

HUMAN PROGRESS
ITS REALITY AND MEANING

BY

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(Principal Miller Endowment Lectures 1954-55)

HUMAN PROGRESS—ITS REALITY AND MEANING

by

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I

I am deeply grateful to the Vice-Chancellor Dr. A. Lakshmanaswami Mudaliar, and the Syndicate of the University of Madras for their kindness in inviting me to deliver the lectures under this foundation this year.

For more than a quarter of a century these lectures have been delivered by very erudite and eminent scholars on the several phases of this most intriguing problem posed by the donor of this Endowment. The most arresting words (some one said 'catch-words') of the modern world are *Evolution* and *Progress*, and everything is being considered under this speculum so to speak. Nothing is capable of being considered scientific or modern enough unless it is approached from these two standpoints. The Principal Miller Endowment in conformity with this climate of the times has charged the lecturers with the task of elucidating, if not discovering, the 'inner meaning of human history as disclosing one increasing purpose'—(may be more than one but the monism is assumed). It shows that to the mind of the donor there is one increasing purpose in human history, and it is something that has to be discovered since it is not quite patent to the surface consciousness. It may not be entirely elusive to the human mind but it is something that we have to discover as more and more clearly coming to the surface or increasing in its intensity and extensity of action and influence. In any case it is clear that we have to discover this purpose in human affairs and history stretching for thousands of years and that this prime purpose is being more and more realised.

There have been many thinkers who have held that these assumptions are not only not self-evident but positively untrue and unwarranted. Progress has not been proved. Evolution has not occurred. Adaptations and modifications have neither been steady nor continuous. There have been periods of change, and every forward movement has been succeeded by a rearward and backward movement. Progress and regress have alternated. Biological speculations and theories are not quite satisfactory as they prove nothing about man. Nothing has basically changed in man. Again and again he has slipped back into his primitive nature, at the earliest opportunity. There is no doubt that something in him lifts him up to the levels of culture and civilized existence that cultivate peace and harmony and co-operation. The thousands of years of civilized life, that have elapsed between the savage and the saint, have not really made saintliness the common heritage of man in his dealings with all beings. Every great effort has only made the failure greater still. Despite the veneer of civilization which covers rather thinly his animality and sensuality, the psychological development of man has hardly undergone change. He might have and indeed has changed the technique of survival but not the means or the ends for which he seeks to live. He is yet a biological being conditioned by his fighting and pugnacious instincts to which all his life is dedicated and attuned. Force is the arbiter of his fate. Clever weapons alone have been substituted for the teeth and claw of the brute and the javelins and arrows of the primitive savage. Therefore all these trappings of civilization are illusory covers, and man's progress is illusory.

This is not to deny that efforts have not been made by exceptional souls like Viśvāmitra, Buddha and Mahāvīra and the great Upanihsadic seers to seek an alteration of the attitudes of man to Nature and higher realities within him. Such modifications in attitudes have certainly influenced some individuals for all time, but not all people for all time, but only for sometime. Revolutions in history have not been infrequent. Indian History does record both political and social as well as religious revolutions, which were in fact with bitterness and sorrow attended. We may not today appreciate the genuine fears and equally intense and genuine hopes that engineered them. But even such revolutions after the fitful fever of struggle and victory had been won, settled back to the original condition which they had so much fought against making mankind fit for the new vision. Sometimes the results hoped for turned paradoxical. Out of good cometh evil and out of evil cometh good.

There seems to be no intelligible result predictable. All seem to be irrational. Ideals and actualities belong to two orders of being. An irreconcilable dualism seems to be opposing any marriage; at least a permanent one is impossible. Divorce seems to be inevitable. All modern dialectical thought, in the fields of economics; and politics, seems to be in this predicament, neither ready for a divorce nor for a co-operative understanding that rises above the struggle of these contradictories. War settles nothing, indeed it probably raises more formidable problems. Mankind at least has come to learn something of this. This too is indeed a progress in our thought, but hardly have we formulated this, we are almost made to forget this and return to our old patterns of behaviour. We have come to believe that the generality of man—the common man—is incurably a paradox. The exceptional beings of the world are either messengers from a higher sphere or Heaven or unrealistic idealists. But to them every one turns in distress; they seem to give authentic advice and efficient guidance. The splendid uniformity of that advice is that man cannot progress on the route of matter and the world of time and space. He really belongs in his depths to a higher world and into that world must man awake. This world is riddled with illusion and sorrow. Transcendence over Time and space, and causality is necessary and possible.

This transcendental view of Reality has been one of the most important forces in History. It is that which has been kept bright and shining by scores of saints who have kept on a relay race as it were, as witnesses to a great possibility. They have undoubtedly shown that there is One transcendental Reality which man has to achieve if he were to escape from the material snares and illusions of pleasure and achievement and conquest. All that man makes he mars with imperfection and unreality and transience. It may not be that they give us a sense of progress to the perfection here on this place of transitory things, but they assuredly give us a presence of the eternal light which ought to be known. Only the knowledge of the transcendent Being, Timeless Reality, can save us from world-weariness and sorrow and the cycle of illusory experience. It is that which has to be known and entered into, for that alone can rescue us from toil and tears, struggle and sorrow, frustration and failure. There can be no reality in the ways of the world, which is bondage to time and space and environment.

A radical dualism cannot but be the result of this transcendental view. The world in which we find ourselves with all its sensate

values is a world of illusion; to pursue ends suitable to life in it would result in the annihilation of all that we know and experience as spiritual and of ourselves. It could only lead us into more and more ignorance and darkness. The world of Reality is not amenable to the senses or the mind which partake of the material world. By pure intellect we might realise that world which confers perfection and changeless Being. 'Reality and Perfection are one and the same thing' said Spinoza. Imperfection and unreality are synonymous terms. The world of Perfection and Reality is what a man should strive to know. That is true living not the life lived in this world of sensate values. Man's journey in this world would be meaningless and a cyclical merry go-round; his journey should be directed to going out of this world to the Eternal and the Immortal. This is the characteristic of other-worldliness or this-world negation which is a dominant note of all transcendentalism. A flight away to that, a withdrawal from this, are both entailed by this conception.

Accordingly in this first lecture my problem is whether progress is Real at all? Once we are enabled to answer this question we might be in a position to answer the second question as to its meaning for us. The two problems however are closely linked up. We cannot divorce the meaning from reality for they are about one and the same thing, even like the word and the meaning (*vāk* and *artha* about which the eternal poet Kālidāsa speaks).

Is Progress a fact that we observe in the world's History? If progress means that we have moved from a particular point in the scale to another point far above the scale then we have to fix the standard or the scale itself. Things do move constantly, imperceptibly. Nothing remains stationary. We have been moving and changing, adapting ourselves to the environment. Are we better off than when humanity started on its unknown career? Materially, physically, economically and hedonistically one could see that man has been struggling to improve his lot. Surely men have changed much, pretty much from their early beginnings. Our clothing, our dwellings and our foods also have become refined and many industries have developed all over the world. Discoveries of science have been steady, and our knowledge of the external world has extended to envelop the whole globe. During the past two hundred years there has been quite a quickening of the pace. No longer is the world divided into two hemispheres of known and unknown continents, dark and illumined places, but men move from one to the other. The human being has certainly

increased his knowledge of the world, through scientific discoveries of inestimable value for his survival and comfort. It is not merely good to survive but to live well and comfortably. Plan after plan has been framed to make man safe from penury and disease and poverty. Surely we have progressed. We have recognized that we can improve our lot and the lot of all of us, through co-operation and planning for the future. We cannot perhaps have been so very sanguine of this possibility but for the advantages of co-operation and exchange in the fields of knowledge as we have had in the fields of commerce between different peoples. The latter was vitiated at the beginning by cupidity which led to mistrust and later to struggle and selfishness and separatism. But we seem to have discovered that trust and standards of conduct are not really alien to ordinary life but necessary and inevitable to good life or a life of happiness and freedom from fear. We have advanced much. Space-and-Time-saving devices have come in hundreds and thousands of ways. Health seems to be better now than in those days when one was precariously at the mercy of every epidemic, and they were by no means infrequent. The West has every reason to be proud of its achievements. It has sought the path of conquest of the world to human needs, to harness earth's forces to his better and richer life. Undoubtedly qualities of courage, persistence and perseverance and rationality have been actively co-operating to make the modern world. Even in the field of Politics and Social life, there have been continuous attempts to replace the competitive with the co-operative attitude. More and more, superstition has been replaced by science and statistics. Surely there has been wonderful progress, spectacular and splendid. No one in the presence of this tremendous surge of human intelligence, creative and matter of fact, can deny that we ought to be convinced of the fact of progress. This is the picture of the modern world. It is real indeed and cannot be dismissed.

But what do we feel or rather those who have been watching this great procession of scientific progress feel about all this? In India surely there was at the dawn of her history a wonderful set of people, seers by spiritual eminence and sight, who have been indeed fathers of all seers in other parts of the World perhaps, who saw clearly world's progress in this manner in a different light. The age of perfect Knowledge and light was becoming less perfect—gradually the imperfection would be swallowing up three-fourths of the light. The world was under eclipse—the age of *satya* has regressed to the age of *treta* (three-fourths dharma) and

that to *dvāpara* (two-fourths or half dharma) and is ending with a quarter (*kali*) of dharma. The age of the enlightened knowers of Brahman (the Vedic seers) who practised dharma integrally and fully in all the four planes of life, of wealth, or happiness, of dharma (sacrifices and duties) and mokṣa (liberation), rich in every sense was followed by the age of sacrifice of mokṣa as the ultimate end here and the dharma ruled the fields of government and commerce and labour, individual and social welfare. And so on we have regressed to a government of desire and hedonistic enterprise, greatest happiness being the one aim whether it was individual or social. Liberty one wanted, not to follow the law or the Right but to pursue ends of pleasure and carnal satisfaction. It has become a right—the fundamental right to err being included under the right to righteousness. And thus today we witness the entire dharma-fabric, so sedulously taught and practised earlier, under the disintegrating influence of a new interpretation. Even so, the religious movements during this vast period have proved not at all the preservers of the Vedic tradition but its most tireless critics who had brought with them the norms of a different age. No one who really studies the Vedic and the Buddhist and the Jaina works can really resist the conclusion that there has happened a shift in standards. The old norms have been thrown away and new norms have been accepted. What is this but the adaptation of man to new demands of life? Why have the old failed, which claimed to be eternal and immutable truths of a Divine life, and about which we even today cannot but feel thrilled as we listen and ponder over them in the silence of our hearts? 'The old order changeth yielding place to new'—but it does not follow,—and it was definitely assumed not to follow,—that it was better or truer. We might only say with patience at the degeneracy, that such a truth is incompatible with the changing 'time'—a phenomenon to which no body has been able to give an adequate answer other than that it is the law of all things on earth and subject to Time and its triple states of birth, growth, decadence and death finally. Indian History shows how the independent people of this country have been enslaved consecutively or overrun by different races from outside in all kinds of ways. The pessimism that overcomes minds contemplating these events that have come to pass despite heroic efforts to bring back the power and the plenitude and the wisdom of the ancients is something profoundly actual. It would not do to dismiss all this as the play of a terrible and tragic illusion of time. Time seemed almost to follow the law of regression in this. Sanātana values

have tended to wither and undergo changes and adaptations to the new conditions. Spiritual values and standards are no longer the norms of life. Sacrifices to the Gods, and the practice of sainthood are not really commendable things. Economic welfare is the one thing to which all have to be subordinated. In an earlier age reason was subordinate to revelation, which was claimed to be the 'all-sublator', but today the tables are turned; reason, economic reason, sublates all spiritual revelations. This is the zeit-geist in reverse.

As the West advances with science and envelops the Eastern mind, the Eastern spirituality withers and whines so to speak before this onslaught. In some sequestered place there may yet go on—as it will—the path of silent spirituality, lighting its inner fires, keeping and tending the flame of eternal Knowledge, steady and unruffled by the passage of time and the ages that succeed each other swallowing up the past ruthlessly. Progress in one part is simultaneously present with the regression in another part. The dualism in reverse-process is clear. They have always been in active existence, in man and in society and everywhere. The human being is bi-partite, a soul and a body he has, a soul that belongs to the transcendental spirit universal but enclosed in the temporal changing material, and a body essentially a temporal event and congeries of elements, but ensouled by the transcendental Spirit. The progress of one towards its destiny seems to be a regress for the other. Does what protects and feeds the Soul also feed the body? Or is it otherwise? A great saint (Śaṭhakopa) was asked what was that by which he lived and where did he reside? He answered that he was eating the Spirit and there he always abided. It was not different from the statement of another great lover of God (Spinoza, in the West) who said that he lived and moved and had his being in God alone. The transcendental is not an inaccessible Being but a truly accessible thing to the soul though it must be said that it is verily distant to the body and by which the body lives. Could the body be made to live by the soul or not? Again it is a fact, without this spiritual soul, the body becomes a corpse;—death results not merely because the body is not able to get the food it wants from the world of matter but when the soul departs from the body. This view raises far-reaching problems for science and religion. The picture of the modern man who affirms that the body must be maintained by means of food and comfort and clothing and dwelling and work and not otherwise really is in contrast with the view that the body can and does live by the Self and soul alone. Is it a matter of

loss of faith or is it a feature again of the deterioration in historical life?

Progress is not universal. Nor is there an increasing purpose seen on the face of this process. Nature moves by frenzies and oscillations. There is the ever recurrent process or cycle of the same trends—individuals may arise for some time to pass away leaving behind unfulfilled the ideals of an eternal progress or even the convertibility of man to anything higher. The standards or norms of human life seem to reverse themselves by a process of self-regulation, and man is in a terrific world of contradiction and confusion. History, universal History, presents no single tendency or unilinear progress in a particular direction.

It has been therefore concluded that perfection is not possible in the space-time-material world which is infected by the dialectic. The so-called dialectical form of evolution seething with inner contradiction proposed by philosophers, promises but cannot achieve the realisation that belongs to another plane of being.

The idealists have come to the conclusion that progress is illusory. The question that yet agitates them is of what is it the illusory form? There must be the substance of reality of which it is an illusion. No adequate answer could probably be given by saying that it is the temporal version of the Eternal that is being presented and as such it is the Eternal that is thus 'objectified', that is to say presented in the spatio-temporal-causal nexus as the History of the Spirit. Viewed in this light, it almost seems that there is an inevitable dynamism in the Spirit itself which makes it objectify itself—and thus the illusion gets the sanction of an appearance. But the main problem would yet remain. How could we know that the appearance is the appearance of the Absolute, unless we could perceive both¹ the poises of the Absolute as Subjective and as Objective—an impossible situation for the human being? This double poise of the Eternal is inescapable whether we think of them as the two modes or attributes of the Eternal (Spinoza) or as two statuses (Hegel), or pāramārthika and vyavahārika (Śaṅkara). It is the 'normativeness' of the Absolute that determines the illusoriness of the temporal presentation or representation. It is a valuational term.

1. The criticism against representationalist theory of Truth would be valid here. But if there is, as it is affirmed there is, the experience of these as successive, then there is a possibility of valuation.

Progress axiologically considered (and it cannot be otherwise) demands the definition of the standard of reference. When it has been stated that men have lost faith in Human Progress, thanks to the occurrence of Two Major World Wars within a generation, is it not because they have failed to come upto the standard of human conduct assumed earlier by the people to which all hoped to conform more and more? Peace and plenty for all—and freedom for all, these had been the norms of the earlier generation; liberty, equality, fraternity had been held to be the ideals of man and they tended to go ill together. The set-back to human progress due to this rude shock to the human conscience and the general theory of Spengler who spoke about the inevitability of the decline of civilization combined to enhance the illusoriness of Progress. But we know that there should be progress towards perfection. We do see that mankind has been learning and growing from the experiences that had been challenging its survival. Human creativity has never been wanting. Evolution has been a fact demonstrated by the scientists. Continuity of evolution has been acclaimed as one of the major discoveries. Man himself owes his being to the hoary past. His biological and even psychological nature has traces of that ascent. It is in Art truly that man has the power to create the Eternal in the canvass of the temporal. Creative art struggles to portray the sense of the Eternal in material media, marble and stone, painting and music or poetry. It may not attain the perfect Idea or the Eternal Form, which is incommunicable fully, but it does suggest it, and there are degrees of suggestive perfection. The human mind does attempt different ways of representing in the context of the temporal and perishing material the universal Truth. To say however, as some thinkers do, that it is the Eternal that is conveyed in the temporal would be but right; it at least shows that there is some possibility of representation of the Eternal in the temporal; the temporal is not absolutely opposed to the Eternal. A flight away from the temporal is not the only way towards the perfection; evolution itself shows how the eternal is sought to be held and made fugitive in the temporal but in the process also to become the mirror of the Eternal. This creative evolution (no doubt different from Bergson's) shows the infinite possibility of the temporal. We may not agree with the view that the temporal is the Eternal in process and the Eternal is the temporal in static perfection. Some have tried to show that quality is the summation or concentration of quantity and the reverse process would restore quantity from quality. Thus the temporal is said to be the quantification of

quality and the Eternal is the intensive summation of the temporal (quantity). This undoubtedly is an analogy.

We have yet to explain the process which seems to be real and seems to reveal evolutionary character. It is certainly characterised by the preservation of the past in terms of biological memory.

Sri Aurobindo challenges the view that nothing changes or progresses in Nature. There can be an illusion of permanence in Nature. As very pertinently pointed out by Sri Aurobindo, Nature (in her temporal processes) "has still more subtle and disguised movements in her dealings with men by which she leads them to change without their knowing that they have changed. It is because she has employed chiefly this method in the vast masses of the East that the conservative habit of mind is so much stronger there than in the West. It is able to nourish the illusion that it has not changed, that it is immovable faithful to the ideas of the remote forefathers to their religion, their tradition, their institutions, their social ideals, that it has preserved either divine or animal immobility both in thought and in the routine of life, and has been free from the human laws of mutation by which man and his social organisation must either progress or degenerate but can in no case maintain themselves unchanged against the attack of them.... It is only when we look close that we see the magnitude of the illusion. Buddha has gone out of India indeed, but Buddhism remains; it has stamped its impress on the spirit of the national religion leaving the forms to be determined by the tantricism with which it had made alliance and same sort of fusion in its middle growth. *What it destroyed no man has been able to restore; what it left no man has been able to destroy.* As a matter of fact the double cycle which India has described from the early Vedic times to India of Buddha and the philosophers, and again from Buddha to the time of European Iruption was in its own way as vast a change, religious, social, cultural, and even political and administrative as the double cycle of Europe" (italics mine: *Ideals and Progress*: p. 47-8). It is this conservation of net gains which has been the hall mark of Evolutionary Progress. There is thus a law of conservation of statuses, even as there are laws of conservation of matter, energy and ideas. The principle that a certain advance is always maintained and sustained in progress is the crux of the situation. Considered in this light our progress would be a spiral movement always ascending though there may appear to be recurrence of the same events. It is also to be

remembered that the processes that happen in one place or country may be repeated in another at a later date, so much so, as Professor Hayek said, one may be enabled to go through the same experiences more or less in one's lifetime. This however does not mean that there is absolute recurrence but only appearance of recurrence—something very similar to the experience of octaves or harmonics in Music. We might even in this spiral adventure perceive ourselves as moving forward or retrograde and yet since the mechanical conception of the movement would be with us we might delude ourselves into thinking that all movement is cyclical rather than spiral ascent.

These conceptions about progress would show that progress is a continuous process though it might appear to be temporary and transient. But we should not forget to note that all progress like life might appear to be under a sentence of death or reversal. Historical progress seems to be discontinuous, happening by spurts of splendid activity followed up by quite a period of stagnation. Differences in geography and culture do not reveal a different conclusion. The whole creation reveals the law of birth, growth, maturation, stagnation, decadence and final annihilation, and this series is implicit in the repetition seen in the lives of generations of different cultures, both Eastern and Western. Whatever is preserved is the 'form',—the individuals (or groups) come and pass. Birth-cycle or *samsāra* reveals that nothing else abides. An illusion of progress always sustains us: we hope to be better than the past; we hope to improve on it; we feel that we have lot more of wisdom than the past only to be reminded painfully that our wisdom has less chance of helping us to survive than it did our ancestors. Wisdom lies in tradition which shows that one should discover as they did a different attitude of being than what we are in. We ought to discover that in order to survive. It is in the discovery of values and in the consistent pursuit of such values that help the enlargement of man's consciousness and welfare that we can perceive the norm by which to judge the process.

The study of human culture in a sense is the study of the growth of these values. The earliest preoccupation of man has been to discover these values. Ages of culture have been those when these values or rather the pursuit of these values had been cultivated by the large mass of the people; and ages of barbarism have been precisely those when these values had no longer been held worth pursuing.

What is that which makes the values of one age less valuable or even valueless in another? Are there eternal values, values which could be distinguished as more essential than other values? Do values change in their definition or alter in any way according to different situations and modify themselves to suit different individuals? Though these questions may look ethical in their scope yet we should recognize that they are not simply ethical. Every normative system recognizes that adaptation or conformation to the norm means better life and yet we might make this even a question of 'survival-value'. Ethical progress is ultimately one of the tests of culture. There was a time when ethics and economics were not considered apart, and we may well ask whether the separation of these two at the present time is not a sign of regression, though positivistically speaking it may be claimed to be an advance in so far as economics is removed from its dependence on ethics and is restored to autonomy. The problems we have proposed would be intractable unless we broadly recognize certain types of values to be dependent on particular conditions, and certain others to be independent, in the sense that they would have to be pursued under all conditions. Modern ethics unfortunately has rejected the latter as too formal and abstract for conduct-valuation or choice, and as having hardly 'survival-value'. But perhaps there is much more truth in these 'allegedly formal' norms than we know. Indian thought has held *artha* and *kāma* to be relative concepts, and further that they are instrumental values rather than values in themselves. That is to say *artha* or wealth is a means to an end, even as *kāma* is, though *kāma* appears to be more an end than a means. But *kāma* is dependent upon wants or lacks, and looks forward to goods or things of satisfaction of certain biological and physical needs. Properly speaking we can see that as our cultural life has progressed we have been enabled to distinguish more and more between ultimate values or ends and those that are but instrumental, if at all, to those ends. The essential nature of things has to be distinguished from the unessential. That does not mean that the unessential are not capable of being in a very important sense instrumentally useful or valuable. But there is a sense in which such instrumental values tend to occupy much more of man's attention and as such are obstructive to the attainment of the intrinsic. Thus the scientific discoveries and inventions have this characteristic of being obstructive to human progress in so far as they tend to be used against the higher values of survival and enhancement of knowledge. The instrumental values tend to become ends in

themselves, thanks to human cupidity, as the history of hedonism has clearly shewn. This preoccupation with means rather than ends is the cause of much purblindness. This is equally true of the history of logic and aesthetics and politics.

The ultimate ends however are not arrived at by the inductive process. On the other hand they are perceived through inspiration and intuition. They are so self-evident to the inner consciousness of man that they derive their strength from this inner will — so interpreted as Good Will. These ends have the imperative character and demand to be realised by the soul. These are the ends which man finds have been fixed for him, and the race as well, to realise, and unless he moves towards them, there is no real progress at all. These can be realised and 'ought to be realised.' If they cannot be realised either because they are not capable of being ends on the plane of human life or because they are receding tantalising ideals, they could well be called illusions. Though it is claimed that the pursuit of ideals is much more exhilarating than the attaining of them, yet it would certainly be conceded that an end that cannot be attained will leave the individual without any meaning in his pursuit. But this precisely is the predicament of a man who is afraid of completing his job as no work would remain to be done. In such a case the only interesting job is to undo by night what one does by day like Penelope in the Greek Myth. Whatever may be the truth of this hypothesis it does not make progress a reality, and the problem is by-passed. Life is certainly not a process of winding and unwinding, weaving and unweaving, life and death, light and night, though these do occur. Values of life are not seen in the perspective of human evolution. Men do seek the Eternal, for the Eternal is seen to have value, indeed the only valuable thing, more valuable than life itself.

The Eternal is the ultimate value and it is what one chooses whenever crises develop in human life. Life in fact is a series of crises of physical, moral and spiritual nature which demand the choice of that which grants to man the sense of reality and freedom. It is true that these crises are not as common to communities as a whole as they are to individuals. No doubt we are confronted with this peculiar crises of communities and races today, thanks to the physical nearness achieved by Science. The choice of certain ends in preference to certain others does not depend on the so-called psychological conditions of strength, intensity, attractiveness or pleasure-end but on certain spiritual laws. It is the choice of the ethical and the spiritual values as against the economic and

hedonistic that ultimately is made by men. The reason is not far to seek; deep down in the conscience of mankind there is a core of discrimination which asserts itself in crises which are really points of intersection between two scales of values. The fact of choice in the life of a nation or community or individual is an inestimable index of the progress made towards the ultimate end. It is that which grants the immeasurable sense of eternal existence or perfection. The glimpse of this eternal existence is verily the beginning of an Ideal which is real and it is that which renders progress to it possible, for it is something implicit already in the vision of it. The emotional quality as well as the direction so definitely developed show that the end is already immanent in the process of attaining it. This is very much like the creative artist whose vision of the Form is being steadily realised in the execution of it in the context of the material. The whole thing becomes a single transcending act of creation and representation. The division of ends and means ceases, for the end is dynamically sustaining the attainment by becoming more and more realised. It is in this sense perhaps we could speak of the Timelessness of the Eternal. The ancient thinkers spoke of the unity of *upāya* and *upēya*, in Brahman, even as they spoke of the *upādāna* (material) and *nimitta* (efficient) *kāraṇas* to be Brahman.

In the History of Mankind then there has always been the effort to fix the hierarchy of values, since this evolution of life seems to demand the double satisfaction of the soul or the spiritual being through the Eternal Values and of the body which is a spatio-temporal form constantly undergoing the processes of growth and decay. In India the values have been arranged in a fourfold order of *dharma*, *artha* and *kāma* and *mokṣa*. *Artha* and *Kāma* are mainly for the preservation and perpetuation of the body and its series, whereas *dharma* or duty is that which regulates them so that they may be amenable and instrumental to the spiritual value of *mokṣa* (transcendence over body-values). Body itself is a means to the realisation of duty and freedom — *śarīramādyam khalu dharmasāadhanam* — and it has been considered primarily to be of instrumental value.

As we have progressed it has become more and more clear that there is a more fundamental need in man, much more than wealth and welfare and pleasure or even the lawful use of these, for it seems to be that which makes all these less worthy in comparison, and in a very important sense it is that which makes attainment of these even possible. That is freedom. Without

freedom these other goods of the world seem to be unattainable. Life itself becomes meaningful as an opportunity for freedom, and valueless when it is not to be had. Bondage had never inspired anybody. Regimented pleasures or pleasures that have been prescribed have always been unhappy in their consequences. The business of law is to grant freedom from interference in things that concern one's personality and its development. But once law becomes unmitigably oppressive, that is to say incapable of securing this personal freedom, then it is something that has to be shaken off. Then disobedience becomes a right. Revolt or resistance in the non-violent sense becomes duty.

The business of man is to realise his spiritual nature which is based on the twin principles of freedom and truth. The search for food and property, for partner and pleasure, for law and duty, are really attempts to free oneself from the precariousness of life dependent on such things and conditions and persons. The search for society also is included in the collective security that one is seeking in the world. All these grant freedom from fear; and yet the very transiency of these objects and goods and persons creates greater fears. We have undoubtedly built up, even like the organism, institutions which would be more stable and permanent than individuals for the sake of the security of individuals, but all of them are to be tested by this norm of freedom of the individual. The growth of these institutions, even like the organisms, is regulated indeed by the one principle of increasing freedom for its members and not merely for the purpose of security of itself. There have been thinkers who have pleaded for the preservation of the organism, and were willing to pay more attention to it than to the functional freedom which the organism has come into being to serve. Thus the periodic relapses into the lower sets of values are rendered possible by threats to the organism or the institutional structures.

Progress is to be measured in a social or individual context by both the quality and quantity of freedom. The scale of values then should be considered not as two different and irreconcilable sets but indeed as one continuous set because of the increasing freedom that is granted and supported by the organism or the institutions. When such freedom is either not availed of or rendered impossible, the body or the institution disintegrates. Civilizations are such institutions, and when the spiritual quality of freedom is no longer effective within it, it becomes a victim to the disintegrative process. When its real *dharma* of freedom decays

then it perishes. It is freedom that builds and organizes life and form in the temporal world in the image of the Eternal. Man is born in such a context of bodies and social institutions. To recognize the law of freedom in the institutions is one of the basic needs of education. The Hegelian writers were right in so far as they pointed out that institutions are objective freedom. But it is necessary that each individual should experience that freedom in performing duty as he finds when he pursues wealth or pleasure. This particular experience of course is of a different quality. Cultured progress is measured by the quantity of freedom that one has. Today we speak of more freedoms than we ever did before. This certainly does not mean that all these freedoms are of equal value or worth or that they are ultimate. The process through which these freedoms have been recognized is a long and weary one, but each one of them was recognized objectively as well as subjectively only after a long struggle with the forces of reaction.

The fourfold ends of man (*caturvidha-puruṣārtha*) taught by the Ancient Indian thinkers provides an integral approach to the problem of life provided we know how to integrate them rather than divide them into two competing sets of value.

Today this integral view is being more and more entertained. The bifurcation of existence had led mankind no where. It only led to renunciation of the lower set of values (of *artha* and *kāma*) as mundane and inferior and as belonging to the sphere of ignorance. They have been said to be the source of all misery. *Kāminī* and *Kāñcana* have been the two fundamental abominations of the spiritual man. Great thinkers and seers like Gautama Buddha, Mahavira and Śankara, and the Seers of the Upanishads (even like Socrates, Plato, Spinoza and Kant) had counselled the renunciation of the sensate values of life (not indeed either *artha* or *kama* objects as such) — for that is the precise condition of spiritual awareness. It is this that leads to spiritual intuition and experience of the Transcendent. Not until one gives up fear of insecurity and renounces security in order to prove it, does one ever become of the spiritual, which is always and eternally available to him. *Sannyāsa* is the characteristic of *mumukṣutva* (seeking real freedom) and means the renunciation of all types of security, physical, social, vital and mental to the Divine which alone is the abode of freedom and real security. The frames and institutions and logic made by men have to be renounced as limitations on the human spiritual freedom. That is why in the fundamental discus-

sions on *Sannyāsa*, the concept of *nyāsa* or surrender or total unreserved offering of oneself to the Highest Reality conceived as God or the Transcendent Personality is important. *Vairāgya* is concomitant of *viveka*; discrimination and detachment go together. A higher level of understanding arises out of a devotion to the highest values. By living in this highest, one develops the integral view which does not divide Reality, though for arriving at the higher poise of life and understanding the withdrawal of oneself from the lower sets of values is necessary. When the return does happen in so far as the lower values are seen to be non-antagonistic to the higher, the lower would have themselves undergone fundamental changes both in direction and in quality. They would have undergone transformation. This spiritualisation of all values, is the basic conception of the supramental evolution. It is also at the back of the conception of the sacramental universe.

But we are witnessing a going back in the world in which religion seems to have been the cause of great conflicts. Science has spirited away superstition; it has striven to give answers to problems from the experimental and rational standpoint. Things which cannot be proved by experimentation are not accepted by science. This attitude has paid high dividends. The remarkable developments in almost every field it had touched have registered a glorious chapter of progress. The success of the inductive and experimental methods shows that truth must be of this rational perceptual order alone. This conclusion of course is by no means certain. Today the only prophets we heed are the miracle-working scientists. Religion has not been equally successful, for its appeal is to the suprasensible reality. Secularism or the attempt to abolish all theoretical unverifiable explanations coupled with the deification of activity connected with the world-values has begun to dominate. It is the note of modern progress: whatever increases comfort, saves human effort, and secures worldly goods for all is typically the goal of humanism. It does not deny the higher values, but it does hold that the higher values can come in only after the satisfaction in full of the lower has taken place. Secularism and Science help the humanistic criterion of good life—that man is the measure of all things. But the appeal of humanism is essentially shortsighted; and though the secular view of life may be scientific, it is not truly scientific in as much as it restricts the growing freedom of the individual, and the search for truth which is its real urge. All-sided truth or integral truth ought to be the real goal of science, and this is being more and more realised by scien-

tists themselves, who are appalled by the lack of real humanism in scientific men, a lack of care for the values of life, truth, goodness and transcendence.

Even scientific men are appalled by the moral nihilism which has led to the disintegration of the humanistic ideal itself. Earlier ages would have prevented the making of the A-bombs, and the makers of such bombs would have been imprisoned or put out of action. But the secularistic tendency, by a paradox as it were, has led to political, economic and ethical nihilism, and it "has set up a chain-reaction in the human mind: by a succession of bombardments our last inhibitions" have been removed. We are not amazed at the extent of the modern barbarism. It is seen clearly that "moral nihilism is the counterpart of the atomic bomb." Moral sensitiveness has gone. This surely is a degenerate state of affairs. But even as this current of the tide has been flowing counter-currents have been set up. We are standing up to the ideal of real progress in terms of moral rearmament and growth of the ethical and spiritual personality. Disintegration it was prophesied would overcome integration but we are confronting the disintegration in its acutest form. It is because this has progressed to alarming proportions, the entire conscience of mankind is stirred to meet this threat. Progress indeed is being achieved slowly through the attempts at integration of values in the real manner. It is the clamour of values in helter-skelter that has led up to the modern pandemonium of '-isms' in this world: the organisation of them in a hierarchy is the necessity. A new spirituality or movement of spirit is imminent and it will help enlightenment and progress of the new age.

The tendency of progress today is not unilinear but multilinear lacking integration of the several lines that have so far developed to extremes so as to present a most conflicting and confusing array of developments. The organic fusion of these under the guiding spirituality or psychic integral being is the necessity. Our history has presented to our minds three fundamental mystical values of liberty, equality and fraternity, for being integrated in our social and spiritual life as well. Unless this integration has taken place within the individual, it may well be difficult to realise it in the social context. The history of Indian Religious thought reveals several attempts to apply the spiritual concept of 'Equality' radically to the social set-up. The several Vaiṣṇava and Śaiva Āgama seers tried to make all social organizations expressions of the Spiritual transcendental Reality. Equality in the eyes of God was

first (in the Vedic period itself) shown to result in the equality of all in the eyes of the Law (*Rtam* or *karma*). It was shown that not merely seers should see all equally (*samadarśana*) but that any true religious practice must mean the practice of *samadarśana*. For man must do such as God would approve. That is the reason why caste was never considered to permit inequality in respect of the fundamental spiritual quality. The splendid experience open to the seer of the Eternal was sought to be the yoga so to speak for the ordinary man. That of course entailed the conflict with the social established orders based on *adhikāras* (fitnesses) of all kinds. Surely this adoption of the spiritual standard for ordinary life may be considered to be an advance or progress; but the same has been considered to be a misapplication of truths of one sphere to another and lower sphere and consequent distortion of the law of equality. This is a distortion and degeneracy according to the purists and fundamentalists. The standards of reference have shifted—a different standard has been devised. The invasions of Islamic and Christian rulers and the consequent enforcement of their standards of spiritual values, (which did not so much as emphasise the *adhikāribheda*—differences of fitnesses for the Experience of the Transcendental) led to the greater progress of the already adopted āgamaic version of secular equality because of the possible spiritual equality. The spiritual has been incorporated in the secular, however precariously and even wrongly; the secular has adopted the spiritual and is, whether the secularists and materialists like it or not, on the way to be spiritualised. The grounds of progress have undoubtedly been laid—our modern legislations are well based on the secular possibility of Spirituality, and the spiritual possibilities of the Secular life. It is perhaps too soon to say one way or the other whether this attempt is going to be successful or otherwise. There is undoubtedly hope for the success of this experiment. Progress to the complete realisation or perfection of the spiritual consciousness in the temporal scheme in the lives of all human beings may take long, may be attended by many vicissitudes and reverse movements and spirals of ascent, but will be achieved. The very influx of great seers of the Eternal who promise us the Eternal experience here and now, perfection in the yonder transcendent, and show us also that the Transcendent is eternally near in the heart of every one, which could be realised through *tapas*, *brahmacharya*, and *satya* and other practices, shows that the temporal world of change and movement can yet behold in their personalities the junction of

the Eternal and the Temporal in perfection. Their appearance is not an illusion but a great and fundamental reality. They indeed show us the human possibility to be a reality and not an illusion. But the generality of mankind and humanity itself is in the context of evolution and growth and integration of values, striving to attain the Spiritual in the context of the material space-time conditions. Man may refuse to be a bridge to the higher species, for he may discover in his heart the Divine Transcendent. Nor may he like to be the step for the future race of man or superman and suffer for the sake of those men who may profit by his sufferings, and reap what he sows. But we are both the posterity to the past and paternity to the future. We are not exhausted by either, for there is also the individual uniqueness which prepares for the revelation of Truth within and gives us the sense of Reality here and now. Individual Realisation is neither arrested by the progress of the human race to the higher level nor refuted. There is an inevitable complexity of both being realised and enhanced and integrated. This is the continuing delight of real evolution. Man is both the step and the status necessary for the fuller experience here and now of the Eternal but he serves the Eternal and the Temporal by progressing towards their unity in creative Existence, either as an ascent into the Eternal or as the search for the integration of the Eternal in the temporal. This is achieved in the historical process of human personalities firstly, and then in the communities through the peculiar and purposeful creative universal activities of those personalities. The process of the temporal is not capable of repudiating the 'ingression' of the eternal values, though it is only through personalities that it is made to admit it. Evolution is the process of this activity; it has been going on; and the human being whether he is willing or not is participating in the great evolutionary progress which is inevitably underway.

The Eternal Truth is One and It manifests itself in manifold ways: but not in the manner interpreted by the mind but in an integral manner for it is indivisible. That it acts in different ways at different levels must also be conceded, but the different levels are not to be considered as divided but united in division and diversity. The meaning of this divided unity and united division or diversity would be a formulation in actual progress of the Spirit that has been and will be at the back of the temporal process.

The temporal process is neither a challenge nor a meaningless thing to Spirit. Nor is Spirit the mere transcendent spectator, *somehow* supporting this illusion of movement and recurrence and

samsāra. It is not merely a contrast and a contradiction to the Spirit, revelling in the negation of the Eternal and the Immortal and the Changeless. The call to the Vision of the Eternal means nothing more and nothing less than what it is. It alone can grant meaning to the process and the process would reveal the purpose and the progress that is being made in the History of mankind. A study of universal History, though it may be depressing may yet reveal that an eternal purpose urges man to move more and more to the sense of the Eternal and the Immortal and grant an abiding hope about the future of man and the world in which he dwells.

II

"The true law of our development and the entire object of our social existence can only become clear to us when we have discovered not only, like modern science, what man has been in his past physical and vital evolution, but his future mental and spiritual destiny and his place in the cycles of Nature" said Sri Aurobindo. The meaning of our progress would thus become more and more clear as mankind advances, though this advance may be in terms of the cyclic process of Nature itself. It is not a fundamental bondage to Nature that has to be broken as an opportunity for the higher evolution. A mechanical conception of reality has always infected not merely scientific and materialistic thinkers but also the spiritual. Just as our metaphors and similes have this sensory nature, and the higher spiritual processes are expressed and explained in terms of similes of the mechanical and materialistic order, so also our interpretations of progress and purpose are considered to be intelligible only when they are done in terms of the lower planes of experience. The view that the higher levels of experiences should be explained in terms of lower forms of reaction, that higher mental faculties have to be explained in terms of neurology and reflexes belongs to this scientifico-materialist explanation of consciousness or planes of consciousness. It is only now that it is being recognized that the true meaning of the lower forms of matter and even life are to be seen only when interpreted in terms of consciousness and mental processes. This surely is not a version of animism or reversion to it. We have however to see clearly that when we think of human progress as a whole, that the entire world in which we are is a 'mentalised' world, interpreted in terms of 'Mental' processes which are incorrigibly human.

The organic events in a sense then are different from the mechanical, and the mental events are different from the merely organic. The events assume complexities. Yet they are all governed by laws of each level of experience. The environment assumes more and more complexities as the evolution of the organic and mental categories or planes of being emerge. The activities of the organic order are purposive or hormistic. Such hormism is directed towards the preservation of the organism, and in certain others in the preservation of the type of organism itself through 'social' or collective or gregarious preservation and perpetuation. We may see also that the growth of organisms from the single cell displays a collective hormism so to speak, analogically repeated at the level of the collective hormism of the race and community and tribe. This collective preservation is, of course, more than the preservative instinct of a single organism; and it is not merely a sum or aggregate of such instincts but a definite configuration or pattern of behaviour as a unity of units.

When Field Marshall Smuts explained the evolutionary process as not merely conditioned by the instincts or drives self-preservation and perpetuation through the struggle that leads to fitness to survive, but also by an evolution of 'organic wholes' (organisms) which become units of larger and larger wholes in increasing measure, he was of course making it very clear that there is an hormism in Nature which organizes a hierarchy of wholes. This by itself may not mean very much, for it is only to keep the collective unity much more permanent, as the individual units are bound to pass out of it sooner or later. The feature of our organism is that the katabolic and anabolic processes are not successive but constantly and simultaneously going on. The life-processes go on at the same time as the death-processes, which shows that the hormic tendency however unclear to itself has discovered a unification of birth and death within the organism for maintaining it.¹ Taken at surface it would be meaningless. But when we see this integration or union of mutual adjustment of processes to be the cause of preserving the whole organism, it becomes a meaningful disunity.

The death of certain organisms of a particular kind goes along with the production of organisms of the same kind for keeping the

1. Even death is only an instrument for reunification, regrouping, recreating for a new life.

race-type or species-type going. (There are of course extraordinary cases when whole species have been wiped out). In the same way the human race has been perpetuated. The institutions in a sense have been hormically determined units for the preservation and continuation of particular unities. Indeed it has become clear that what at the beginning appeared to subserve a single end has been later on seen to subserve multiple ends as well. This is one of the important developments in our cultural life down the ages. Social traditions which form the hard core of our unity in society have been in fact the running thread of unity of all the members of a society, and this despite the several attempts to brush them aside. At the human level the meaning of evolution is certainly different. There have been many superstitions about our life and our activities. The cyclical theory of the inevitability of better times because we are going through bad times—that every night must be succeeded by the day,—has certainly suffered severe shocks in modern times, so much so the better time seems to be more and more thrust away to the post-death period. So also the nineteenth century optimism about the inevitability of progress and its interminable ascent received the greatest of shocks when some men had shown that they could put the clock back ironically or cynically in the name of progress, human progress of course.

The whole conception of the inevitability of progress came under the most fierce fire and all those who claimed inevitability for any theory whether materialistic or idealistic were shown to be crypto-mechanists. But the whole question of progress was raised to the ethical level—'Evolution happened in the animal, but it has to be willed in the human!' said Dr. Radhakrishnan. This willing of progress is not inevitable but based on choice and also on the manner of progress that we can will. This responsibility certainly is humanity's. It is being exercised undoubtedly too by the advanced minds, souls so intensely aware of the destination of man, as to keep the transcendent purpose of existence before mankind in every age. The fact that man had a rich past (which Modern Archeology is discovering) had led certain persons to wonder whether we have progressed at all. But the human personality has been adjusting to certain fundamental dimensions and direction of its nature through the ages, and a little care and close inspection might well lay bare the directions of its progress and the advantages that it has gained over his hoary past. The march of humanity has been slow, but thanks to the inspiring geniuses of

former ages, the flame of hope of a great future, not merely yonder and beyond the terrestrial scheme but even in the temporal, has been lighting the path.

The ideal has been therefore fixed, as the eternal goal of all mankind. One may deny that we are being urged forward to this pre-determined goal. But the fact is there whether mankind has fixed it or a divinely inspired spirit has opened up that horizon for it. To that attainment mankind is heading, struggling through a myriad hurdles, but yet steadily jumping over them and ascending. The goal has of course all the indefiniteness for the seeker. It is not because it is something that is of a higher plane of experience. The very insularity of the individual, his preoccupation with his own daily practical needs, makes it impossible for him to catch a clear idea of that. Yet even as it was remarked, if one but does his duty and goes on doing it, one would have travelled towards one's goal without knowing it. We are urged to move forward because we cannot stagnate; caught up in the cosmic movement, he who merely stands, is really moving, and this certainly is inevitable to the process of Nature within which man finds himself.

From the primitive men, of whom we do have standing traces in all continents, who have just refused to move forward but who by an irony of fate are forced to move forward thanks to their being discovered and pooled into general humanity, to the modern man who is cocksure about his own superiority over the former (but who alas discovers that his many psychological distempers are due to his close psychic affinities with the primitive), we have undoubtedly traversed a long distance. Our idea of man is certainly much more accurate and thanks to our openness of mind, is likely to regain and reinterpret the past knowledge for the purposes of integration of all our knowledge, East or West physical or psychical. No longer are we prepared to create oppositions between Eastern and Western Philosophies, or cultures or religions, or even secularism and spirituality or the sciences. This surely is progress in attitudes.

Dropping the extraordinary interpretations of a cyclical repetitive mechanism of the process, we could see that mankind has been steadily moving towards a harmonious synthesis through assimilation by conquest or interpenetration, and has almost arrived at an 'organic conception of the world'. We are not of course thinking of interpretations based on idealism or realism. The

theory of correspondences between planes of existence is now more and more coming to be accepted. This linking of planes and philosophies through correspondential identity though poetical at first, has been seriously studied in different fields by those who have had the vision of the 'one Universe'.

All this vast knowledge of the several planes of life and being has been necessary for understanding the play of purpose and progress in this process of Time. More and more it must be clear that there is a Divine Purpose that is the meaning of the process of time, to achieve which the human being has been in travail. The future of that purpose is certainly in the hands of human beings, who have been equipped for the perception of that Divine End both as immediate and as remote but not impossible of attainment by the entire race. This vast world would be seen to be one of interconnected and interwoven nature building up in such a way as to lay bare the truth that all things in this world are both ends and means to the Highest Perfection, God. That is why the usual charge that men are being made means to the making of Gods or supermen in any theory of evolution loses much of its point. Everything in its plane of being is an end in itself but in respect of other planes especially of the higher planes it is a means. It would be wrong to make anything merely a means or rather only a means or only an end. By way of analogy from the metaphysical field, the Sāmkhya darśana considers that all evolutes are both prakrtis and vikrtis, causes as well as effects; the last of the categories become pure effects, whereas the first remains only the cause being not an effect of anything else. It is when we perceive the interrelatedness of categories that it becomes a meaningful process of causes and effects. Ethically considered we can see that the higher are more ends than means to the lower, lower ones are more means than ends. The individuals in this world are to be treated as ends surely in so far as their existence and moral goodness and growth are considered, but they are also means to the good of the State. When individuals are to be treated merely as ends, individualism results, setting up a conflict with the society; if they are treated as mere means only to the welfare of the State, it leads to totalitarianisms. It is only now after the terrible conflicts between the two great Wars we are realising the dual role of each individual as well as the State, and are trying to reconcile them. It is in this context also we should see that the human individual *homo sapiens* in evolution whilst being an *end* to moral existence is a *means* to universal Divine Nature, for it is he who

is the subject of divine evolution. He is a means to the birth of the greater type of men of infinite compassion. The Superman is the 'natural' goal of man, and it should not be thought that is the annihilation of man.

It is the individual who is sought to be transformed and there is no possibility of his being annihilated. It is also clear that just as individuals cannot be abolished but only eclipsed for a time, so also nations too cannot be abolished. The smaller nations, having their own unique cultural patterns and linguistic unities have also refused to be cavalierly treated by imperialisms. They refuse to be means to the imperialistic ends. For imperialism is certainly not the end of the progress of Humanity. That should have become quite clear from the long history of humanity both in the East and in latest demonstrations of the West. The experiments in Imperialism have been as thorough as possible. They had served their purpose however negative the results might have been. Today humanity is yet presented the choice of living together through the knowledge of a deeper unity of End that is transcendent to the present but which will become immanent in the future.

The unity to which the world is moving is not particularly capable of being interpreted in terms of the logic of the pluralist or the finite mind. It is necessary to arrive at a unity that clearly exhibits not merely the oneness of the many or the manyness of the One but also the 'ingression' of the values of the many in their higher form as well as the enriched values of the One in terms of the many. That is what we actually find even in the lower rungs of the evolutionary ladder. This enrichment in meaning and action of the higher in terms of the lower is a continuous process. The meaning of the unity of all life so fundamentally assumed by the ethical religions of Buddha and Mahāvīra is not only a case of sympathy but also of the realisation of the realm of ends. And the progress that each living cell or animal or insect or man demands from its own nature is to become more and more than what it is, for there is an aspiration to grow vaster and vaster. Not merely is it a question of imitation on the human level but to realise the infinite in the finite. The meaning of its life is not then in itself and being for itself but for the Infinite that it more or less consciously feels within. The progress thus becomes seized with a frenzy so to speak of becoming more and more what it feels. This is the search for the Immortal, the Infinite. The history of philosophical or mystical or religious search would never have been anything but true because of this

search for the Infinite which one feels one cannot but know. The progress of mankind would never have been dreamt of even in the little measures of a materialistic hedonism, temporary ameliorations and alleviations of human suffering and pain, but for the more and more clear indications of the unity that one is recognizing with the entire universe.

Many formulations of the nature of the world we live in have again and again, almost with regularity been advanced both in the East and the West, and we may not think of more than six or seven such views. In between these theories of reality and theories of knowledge we have many intermediate eclectisims. This shows that the Infinite is never going to be comprehended through compromises and adjustments and combinations. It has to be known directly and by a method which transcends the human logical method. The Revelatory and intuitive character of the higher knowledge has been acknowledged but we have been striving to render it intelligible to the rational mind. All philosophy has been at pains to do this bringing down or rather 'stepping down' the unintelligible to the level of the intelligible. This is surely progress of a kind, for in the process we are undoubtedly raising and lifting the rational to the higher levels. The symbolic movement of thought and the apprehensions of analogical and the correspondent knowledge, have undoubtedly facilitated the growth of our knowledge which is wider than and overflowing the rational intellect with its neat set of formulas of intelligibility.

But the problems of mysticism are greater than those of philosophy which does duty to the transformation of the intellect. Its aim is not precisely Vision as such, though it is the fundamental necessity of that consciousness which seeks the Infinite to be comprehended or touched. This Vision is what Yoga had taught to be the goal of existence of all living beings; it is that which the Upanishad says one must have when one is living here: If not, there is great fear—*ihacet avedīn mahato viṇaṣṭhiḥ*—(Kena Up). The process of evolution is facilitated by the Yoga or union with the Infinite which could be known dimly at first but more and more clearly as one grows into that Infinite Nature, though perhaps by definition full and complete comprehension is impossible. But the identity that one achieves in increasing measure makes for the perfect attunement and union with that Infinite. That is why perfection of union is the first step on the progressive march towards ultimate perfection. The most important feature of the mystic concept of the Perfect (pūrṇa) lies in the fact that

the interpenetrative fusion and correspondence (which is sought to be explained in terms of the principle of musical harmonics by certain modern mystic writers like Ouspensky) is seen in the experience when one moves towards the integral perception of the Unity of all in the Divine Oneness. The glory of this development is not on the plane of imperfections and the grades of imperfections, or degrees of unreality and degrees of imperfection but on the scale of degrees of Perfection in the sense of microcosmic and macrocosmic manifestations. That is, the human individual who attains to the transcendental awareness of Reality begins more and more to live in that and less and less in this private and lower levels of Nature. This becomes a spontaneous event and not an effortful one, though perhaps the first attempt to transcend the human and the temporal is attended by all those psychological states of being wrenched away from the known levels. The transitions from the lower to higher planes always have been attended with great pressure from within, known as aspiration and continuous meditation or contemplation or preparation of the body, vitality and mind, described as *yama* and *niyama* and the other stages of yoga. Yoga does at the human level what evolutionary nîsus had done at the lower levels. The incidence or incarnation of the higher level or the breaking in of the highest Truth-consciousness or God is a perpetual miracle, not necessarily to be expected only at certain historical periods. The 'inbreaking of the highest consciousness' or the Godhead into the scheme of the world was claimed by the Russian theologian Nicolas Berdyaev to have a single possibility alone in Jesus, the Christ, (for the truly single or the significant alone is universal) and that it must always be a catastrophic one for the life of the world of terrestrial values and the inbreaking consciousness too. But a more realistic and at the same time the acceptable historical fact is that this inbreaking of the major type is usually a descent of the Highest for the purposes of the restoration of the progress that has been arrested half-way, and this is a continuous process in so far as the souls which have acted as prophets of mankind have this same characteristic of keeping the ascent of mankind going. The incarnational theory is in fact the fundamental truth behind occasionalism of the Melebranche—school of thinkers. Even as the extraordinary occasion of world disorder and chaos of moral purposes needs the restoration of the equilibrium of the moral world, the spiritual nîsus in the world needs the dual forces of the immanent ascending character and the descending uplifting nature.

The organic evolution seems to be the fulfilment of this spiritual action on the temporal. It is a very long story. The fact that the organism is a psycho-physical unity arrived at by the so-called struggle between matter and spirit should show that the spiritual triumph at the lowest level is to be presumed to have meaning for the rest of the vast process. Call it hormism or holism or Divine Evolutionism, the same progress, with different paces, has been kept up. The body is not a meaningless thing but the realisation of the unity that actualises the two truths or infinite truths (modes) of the One Transcendent-immanent Reality or Omnipervasive Reality.

The body has not only realised the unity in dynamic double action but exists for the purposes of the Divine Manifestation and Experience. That certainly is not exhausted by human evolution alone. It is as Sri Rāmānuja pointed out that man exists for God and that includes God's Lîlā as well. Man is a means to God but surely not the *only* means. Man's imperfection urges him on to become a perfect instrument of God through surrender to the ideal of being a perfect instrument, willing and free. The freedom that he seeks is really the freedom of transcendence of limitations; as to what these limitations are is a matter of great dispute. That he manages to transcend most of the conditions of material and physical and spatio-temporal nature and has a sense of freedom in the modern world, has not exhausted his possibility of fuller freedom. Ultimately the higher freedom from even the so-called necessities of life seems to have been sought individually by some of the yogins of old. But it did not entail a search or desire for a life divested of the organic form of life. That shows how experimenting on the ultimate foundations of life the Rishi (of the Taittiriya, Varuṇa) gradually unfolded that not food, not breath, not mind, not anything else but the Self of Delight is that by which everything in fact lives. This transcendence over the ordinary and well-known needs of the organic life is one of the amazing discoveries of the Vedic seer. So also in the wonderful episode of Maitreyi-Yājñavalkya, Yājñavalkya shows that everything is dear not for itself but for the Self incarnate in it (or capable of so incarnating—*vāśyam*). The denial of organic life as such is not entailed by this transcendental awareness of realisation. On the other hand the progress of mankind would reach its ultimate culmination when the realisation of the Self would be sufficient for organic being itself. Not even Time or Fate (the superior law of the transcendent Nature) called '*daiva*,' are limiting conditions, except to the ignorant nature, for the trans-

cent life of the Jivanmukta stands above these conditions unaffected by them. This realisation was in fact achieved subjectively in particular individuals. But the evolutionary possibility of making these limitations themselves conditions of a perfect manifestation or meaningful, rather than meaningless impositions, has not been worked out either in the individuals or in communities. The fullest possibility of organic evolution has not been worked out. The organic has not yet been shown to have exhausted itself nor its possibility of being the abode and instrument and manifestation of the Transcendent perfection.

The Buddha-ideal, so similar to the Jivan-mukta, and the Jina-ideal² have once for all laid down the promise of a living *here* with transcendent awareness and perfection. It was also shown by similar thinkers. The Vedic Ṛṣis Ṛbhus are said to have attained the status of godhead (*devatva*). The story of Triśanku shows how physical immortality and ascent into higher levels was held up as an ideal but incapable of being achieved by mere sacrifices. The goal was visualised and never abandoned. The achievement of transcendent awareness and perfection, though denied to ordinary mortals, was shown to be the fact about the descents of the Supreme Consciousness into the temporal field of human history or creation itself.

The descent of the Divine produces serenity and freedom, and it is a transforming serenity. It transforms the mental and the organic; it purifies and illumines it. It makes the organic radiant—*suddha-sattva*, and *brahma-bhūta*. The dross is removed leaving pure matter divinised. The entire body responds to the divine touch; it is said to get a universal resonance: it is no longer an instrument of a private or fugitive ego but the radiant organ of a divinised universal consciousness or transcendent power and personality. The experience of the Transcendent as Transcendent may mean the withdrawal to the state of the non-organic and a-temporal state, but the experience by itself is not such as to exclude the organic life itself, though the organism itself would not necessarily mean the human type. It would perhaps change and modify itself to suit the superior and transcendental functions that it might be called upon to perform.

2. The Buddha and Jina became ideals for the individuals and the race.

The Divine is not the Yonder Self alone but also the inward secret Self of all, seated in the hearts of all creatures, moving and sustaining and transforming them without remainder. This experience set in motion during the past millenium by such giant Vedāntic teachers like Rāmānuja and Śankara in two different ways was largely anticipated by the Upaniṣadic seers and Ālvārs, Nāyanmārs, Siddhayogis and Bhāgavatas. The indwelling experience of the Transcendent firstly in oneself showed the remarkable incarnation within of the Divine. It was a precursor to the great transformation in evolution itself of a higher type of men. It was itself a miracle of Grace, and it resulted in that splendid transcendent state of '*tanmayatva*' (Godfilledness). It was indeed the supreme manner by which Tradition that had lost itself in the morass of ritual and objectification and interpretations of scholastic scholars could be restored and given an authentic verification in and through the divinised personalities. It was indeed this recovery of inner tradition, which did not contradict the ancient authentic Veda, that was to show the way for the great movements of living spirituality that flowed from these two great men at the beginning of this millenium.

This may appear to be a resiling from the height of abstract thought to the emotional and sentimental life of devotion and duty, which have been said to be fit for the lower rungs of humanity alone. This was shown to be altogether a wrong notion. The three levels of consciousness in man are integral and form one unity. In the individual as well as in humanity as a whole this oneness exists and moves men. Events show this to be the case. The heart governs sometimes wiser than the head. Even the history of the past hundred years has its own points to offer. The purely socio-political and intellectual approach of the Ram Mohan Roy School gradually demanded the devotional element—the appeal to the heart—the religious. The study of the texts of the Upaniṣads (said to appeal to the head *alone*!) gradually led to the deeper instruction of awakening the heart and the control of the senses and the motor organs also: the Gītā provided inspirations for a further development. All this is clear to those who have studied the lives of Sri Ramakrishna and Sri Ramana; Balgangadhar Tilak and Mahatma Gandhi.

Thus Men-like-Gods or God-men have been one of the earliest dreams of mankind. To become immortal and infinite and utterly blissful has been the ideal, for they seemed to be the meaning of one's existence, the content of one's perfection. Whether this immortality could ever be physical and temporal endlessness or death-

lessness had been discussed by many and rejected on grounds of impossibility, or incompatibility with the otherness of the Spirit or because it meant an attachment to perishable nature. Some great souls rejected this physical transformation because it savoured of illusory attachment or it prevented the Transcendent from disposing them as He in His infinite mercy might. The soul being the instrument of God and His body cannot set limits to God. Extreme non-attachment was the test of supreme surrender to the Transcendent's Will. Even so was *vairāgya* or renunciation of the world and all its promises of pleasure. It was a result of the knowledge of the Divine as the One goal of one's being, and as the Self of all things. But this was a transitory phase of the integral movement or adjustment to the Divine Purpose, whatever that might be seen to be. Sri Aurobindo shews that this goal is destined by the very nature of the Divine. It is true that the Nature of the Divine is not to be construed in the same sense as we construe ours. His nature is *Saccidānanda* which is expressed and maintained through Freedom and determined, paradoxically by that freedom. Sri Aurobindo sees in this creative history of evolution, the integral purpose being maintained through the play of Oneness that is eternal and the manyness which is also eternal—and its culmination or finale must be inevitably the working out of the Eternal in the Temporal forms, though the interpretation of the external-temporal forms would very much be different from our own. The expression 'inevitable' in respect of the destiny is again not to be construed as something mechanically determined or dialectically logically determined but by the self-determination in freedom of that eternal Oneness in eternal manyness. There is nothing repugnant in Nature nor in the individual manynesses to the Divine Spiritual Nature. We could proceed with either of the alternatives proposed: that matter and souls are different from Spirit but that they are dependent on Spirit for being what they are: this view may be designated dualism or theory of difference; or that matter and souls are but self-formations of the Divine in temporal series, projections so to speak of the Supreme Spirit which had framed the several planes of existence, extending from its own Supreme transcendence (Timeless Being) down to the unconscious matter—spirit wrapped in its self-concentration and manyness. This continuous formation of the several planes of knowledge where oneness dominates over multiplicity and the planes of Ignorance (where multiplicity dominates over oneness) are all of One Spirit-Brahman. This is the significant meaning of the Upaniṣadic Mantra

—*sarvam khalv idam Brahma*. These two dismiss the illusory view or rather render it as an axiological valuation but not a metaphysical one. Evolution is the process by which the integration of all the planes is achieved in the Organism—which is the pattern of the Unity-dominated multiplicity. The transition from stage to stage of the evolutionary ascent involves the descent of a higher level into the lower. This may be analogous to the mutation theory,³ or Bergsonian impulse⁴ to break through to the freedom of the higher planes which of course immediately makes one aware of the laws and determinations of that plane. The development of the organism has arrived at a point in human evolution that it has already been possible for the advance guards of Humanity to probe and break through the barriers that divide the human and the divine. *Mokṣa* would mean the attainment of the higher level and would yet not be the ultimate. The gradual process of evolution would demand not merely a breaking the barriers that divide the human and the divine worlds, but a bringing down or rather opening a pathway for the Divine world to break through with its light into the human for the large mass of mankind in trevail. This process is not all onesided, that is, from the human side alone, which does not know the yonder world and its status and conditions and laws. The inevitability of 'progress' is not because there is an inner law of the human level which must record advance in human terms of perfection, but because the Divine order is included in the order of Nature and is organic to the human. Human beings seem to be aware of the choice that would determine a better future for mankind—paradise or death—even as Earl Russell only last month declared. If mankind could choose, if its leaders could weigh and decide, if it is left to them alone to have the final word, then this critical choice would have to be made, and mankind is free enough to make it. The future then would be unpredictable and not inevitable. The human being is aware that it is not left alone to decide to move forward to secure 'peace', the will of mankind as a whole has to decide so. We are in the world seized with haunting fears and it looks as though the powers that be today are also aware of the fate of mankind if it should choose to put the clock back by a billion years either by preparing a hell on earth or complete devastation which would make all life impossible and by a process

3. Unconscious adaptative variation not based on any ideal is mutation really.

4. Bergson denied an objective presupposed ideal but not an immanent urge.

of cosmic *nivṛtti*—return to the original causal condition, and achieve an ironic *niṣprapañcikaṇa* (dissolution of the world-process) or *pralaya*.

It is not because the contemplation of such a fate is painful that we have to conjure up a vision of an utopia in the future or the Beyond; it is not because we are distressed over the tragedy of human good being caused by some of the diabolic forces that mankind yet harbours and worships and rationalises, that we think about an inevitable progress which would by a miracle of divine intervention save mankind and progress; but because the human world is not separate from the higher world to which it is indeed subordinate in the plane of values and in the pursuit of which human life itself is worth sacrificing. It is this spirit of worship and sacrifice of the human life and its life-values for the eternal values that marks the inevitability of the decision in human affairs. These qualities come to the fore only when the critical situation develops in human affairs. Both the forces of evil and that of Good emerge under such conditions and the human mind is faced with the decision to choose the Divine. For it is the sense of freedom that is the truth of real force, spontaneity or play (*līlā* interpreted as *avalīlā*) that is incipient in the choice of the higher world for action.

The concept of sin has been one of the most important factors which had given rise to the theory of regression or fall. This world was considered to be the field of sin or results of sin, a sort of purgatory or a valley of shadow of death. Progress in human affairs is said to be rendered impossible because human nature is prone to sin against nature and God and men. What precisely this is due to has not been explained except as a disobedience to the Divine Order, or due to the positive egoism that erects itself against God's commands or the divine order and seeks to rule by itself and for itself. Ego thus is said to be the real difficulty whether it is conceived as the sum of the resistant forces and formations (*skandhas*) or as a private soul habituated to the lower values of life which it seeks to hold on to and 'enjoy' with tenacity.

The world-catastrophes are said to be due to this perverse action of a single or a collective ego and the sins produce the reactive results which break up the unity and put the evolutionary ascent back. The freedom to sin is undoubtedly emphasized by some thinkers as the very content of freedom, but it must be clear that such freedom known as license, only helps the soul to discover

for itself the tragedy of its private seekings or selfish aspirations. Nor is the collective sin less dangerous for the collective or the group (as in our own day the Nordic sin) can exhibit recessive characteristics which smite at the evolutionary ascent of man. But the transformation of man arises only through the actual (only in advanced souls in conceptual imagination) awareness of this regression. Nations decay because they lose sight of the goal of mankind. Civilizations too get destroyed because they lose sight of their destiny and can no longer move forward or get arrested. But these facts do not at all go to show that real progress is not taking place, in the sense of the integration of this human world with the world of Divine values. This is the meaning of the process. To be blind to the constant brooding presence of the Eternal always reproduces some of those peculiar ameliorative humanisms which emphasise the value of man as if he were an end in himself. But that is just half-way house to the atheism which denies God or the transcendent world or planes of consciousness. Humanistic progress is a short-sighted vision of the progress that has been going on but its value lies in its showing up the great responsibility of human beings to reflect the divine possibility in their own ordinary lives. This of course does not remove the other responsibility nor could it arrest the incentive to move higher to the levels of consciousness which would give us the Vision of Harmony of the diverse planes of being so far removed from the human consciousness.

It is becoming increasingly clear that man requires for his perception of the world as a unity in and amidst all differences a new consciousness—*vijñāna*—super-mentality. This is possible and this does not lie out of the line of Evolution. Nor does it deny the constant realisation of the Transcendental as the immediate possibility of any individual or even group, for it is because of this constant impact and ingress of the transcendental inspiration and vision and power (for as Sri Aurobindo affirmed this Transcendental is *Sac-cidānanda*—Reality-Conscious-Power-Delight) that the progress is rendered possible and inevitable in the spiritual sense of raising the human beings to the status of being fully and truly organic with the Divine.

Therefore to deny progress or speak of it as alien to the perfection of the Transcendental Experience would be just to miss the alchemical miracle of transformation that is constantly at work in the free process of Evolution. The only sin of man is his being more open to the lower levels and its pressure of the Ignorance

and the Unconscious. It is against this that he has to insulate himself from being influenced, and it is to the higher that he has to adapt himself by being open to it and to it alone. It is necessary in this process that one should seek this emergence of the Transcendent from within, that is to say as an inner revelation at the heart so that it may be more and more realised as an organic self-development of the Divine. This inner praxis is the Yoga of union with the Divine.

In no other country has this Yoga been developed *all-sidedly* as in India. It is the supreme merit of these Yogins in India that though there are several schools of Yoga, each claiming to achieve the highest state, they have all realised that the goal is transcendence of the human state of ignorance. The liberation from ignorance is more primary than the liberation from the cycle of transmigration and rebirths, for it has been discovered that ignorance and egoism, its nucleus, are the real causes of disintegration of the Organic harmony.

One more level of progress in the conception of Yoga which we can clearly visualise is that the individual Yoga has to be also followed up by the social or collective Yoga of a people. For the universal is the truth behind the individual and the collective consciousness and one is organic to the other. The Cosmic Yoga of the Divine is thus a double process of the individual transformation and collective transformation. The great developments in the world today show that the collective Yoga is as much important and the surrender of the collective egoism or selfishness for the purposes of the Divine Descent is the necessity. The modern racial movements and conflicts are indeed the disharmonious projections which emphasise the need for racial and national Yoga. The integration of the several parts of one's being is rendered possible by the Yoga of unification of states of consciousness (Māndukya Upaniṣad) and the modes of consciousness or personality (Bhagavad Gītā). This has to be carried to the levels of the collective or social and racial units as well which also suffer from the division of their unity and suffer from the extraordinary disruptions which give rise to untold suffering to the individuals comprising the groups. The modern world suffers from too many of these disruptions within its individual and collective units.

But already the extraordinary activities of religious leaders and mystics, seized with the will to save mankind by the divine values of integration, show that progress has been made. The

claims of peace in the world are indeed the claims for harmonious co-existence at the beginning in the hope that organic integration could be achieved and the distrust and fear that characterise human and national relationships could be abolished. This hope is undoubtedly too sanguine but then all hopes are so. It is not possible to achieve the integration of all levels of consciousness by merely co-existing: it is necessary to be inspired by a larger awareness of life, and the values of life are certainly not exhausted by peaceful co-existence or mere peace. The premature counsels of peace at any cost almost try to make peace a fundamental value, something very much like and on a par with the values of Truth, Beauty and Knowledge or Delight. Peace is necessary for the rational understanding of the harmony that is behind reality and is dynamically sustaining it. Peace, like Silence in Yoga, is a necessary step but peace at any price is neither welcome nor valuable.⁵ Progress and peace are not linked up except in the sense that they are not contradictory; progress may happen in peace as well as in conflict. It is therefore necessary clearly to understand the kind of peace that we need and the kind of conflict that cannot but be forced on any one. We have to see that the meaning of progress is an ascent to a higher and fundamentally different kind of consciousness than what today mankind has: it is not possible to have it till we quench the fires of psychological conflict and greed and selfishness and envy: this quenching is the silence and the peace that one must develop within. We cannot make it the end, for it is fundamentally a means to an end, much richer than any that we know of, for it is the starting point of real creation, universal, and true Līlā.

Peace however in the Divine Sense is a genuine principle of harmony. The ancient thinkers felt that Śānti is not to be merely a suspension of activities like sleep or death, but the creative harmony of blessedness. It is that which is the quality of integral living, the *turya* (fourth state). In that experience of *turya*, everything has the sanction of the Infinite, everything that is and will be has 'sufficient reason' as Leibniz put it. The very process of Time⁶ (*kāla*) is seen to be most luminous with infinite meaning and not

5. A human peace is an impossible ideal. The best will of the human world abstracted from the Divine World or God can never confer Peace, an integral indivisible Peace. The only Peace to be sought is the Divine Peace which includes and supports the human and other worlds.

6. Time — *kāla* = from *kaḷa* — 'divisibility' or 'partitioned' bit.

as field of chance. It is impossible to consider that blind chance decides the occurrence of events or the 'compossibles' and that out of thousand and one ways of meeting a particular situation only one materialises under the impulsion of chance, and that this arbitrary choice of fate is constantly repeating itself every moment of life. The whole of history may be seen to be a refutation of the 'Ifs' of history. There is behind all the possibilities of the universe the freedom of the Universal Intelligence or God or Spirit (or all these), for we perceive the meaningfulness of all events after the events have occurred.

To see this needs human effort of the will to change the manner of looking at Time itself or the process itself. We have to see time itself through the speculum of Eternity. This undoubtedly has been explained as the 'principle of Grace.' This inner revolution from within through the influx of the transcendent Grace, by itself produces the real feeling of immortality, Jīvanmukti, freedom from the bonds of ignorance, and perfection here and now, as something immediate; it has been the aim of all spiritual leaders of mankind to produce this inner revolution. It is something quite different from the regressive revolution engineered by or rather planned by politico-socialist thinkers of all times. Though there is always a danger of spiritual truths being used as catchwords by the socialists and meliorists, yet under the guidance of spiritual leaders these have less opportunity for being so misused.

Non-violent satyāgraha under the leadership of Mahatma Gandhi has this inner revolutionary quality. But no sooner than that presence and personality had been withdrawn the socio-political scene seems to have changed somewhat. It is for this purpose that the permanent inner revolution which cannot lose its power and force or resile to the lower level of spiritual life, must be achieved. It cannot be achieved unless a higher supramental consciousness which cannot return to the lower levels of our fragmenting practical mind is made the permanent feature of human life itself. This is not merely an ideal; it is that alone which can make perfection immediate. This is the progress that mankind has been trying to make. The time is more opportune for this attainment by mankind now than at any other time. It is not merely an optimism of the intellect. Nor is it merely an imaginative speculation. It is the inevitable realisation demanded by the very nature of Freedom that mankind has been attaining both in evolution and in cultures and civilisations. This is the cosmic purpose which is

more and more becoming clear to mankind to pursue and realise. It is true that we do not know and cannot perhaps even dream of knowing the ultimate pattern of the Līlā of the Divine but it may not be said that that we hardly know anything about it. It is also true as already pointed out that we have enlarged our ideas and patterns of thinking not merely in the fields of economics and enjoyment but also thanks to the complexity of forces of all kinds that impinge on them, in the fields of cosmic welfare and peace and psychology. Regressive manifestations, reprehensible though they have been and producing a sense of melancholy and pessimism, have helped mankind to see clearly the dangers to progress. Spiritual values are more and more recognized as necessary for practical life. Secularism (this-worldliness) and Spiritualism (other-worldliness) have met only to realise that they are not except to a dichotomising intellect opposites, but complementary and interpenetrative to the sacramental conception of reality. This is the universal intuition of the world's leading spiritual men, in all ages, and it burns brightest today than ever.

asato mā sat gamaya tamaso mā jyotir gamaya
mṛtyo mā amṛtam gamaya

would not have been spoken by the Vedic Seer if progress to that transcendental state was not possible to mankind. It is not a false hope but the most tested revelation of all times.

THE SUNDARAM IYER - KRISHNASWAMI IYER
ENDOWMENT LECTURES

THE LAW OF EMERGENCY

AS DECLARED IN

(a) CONSTITUTIONAL PROVISIONS

(b) LEGISLATION

(c) JUDICIAL DECISIONS—A COMPARATIVE
STUDY

BY

C. S. SUBRAMANIA IYER, B.A., B.L.

PART I

THE LAW OF EMERGENCY, ITS RELATION TO SEPARATION OF POWERS, AND THE RULE OF LAW.

EMERGENCY IN ROME AND GERMANY

I cannot adequately thank the Syndicate of the Madras University for having given me this golden opportunity for addressing this distinguished audience on the topic of the Law of Emergency under the Sundaram Iyer-Krishnaswami Iyer Endowment which was created by one of the most distinguished lawyers of India and the chief architect of the Constitution of our Sovereign Indian Democratic Republic, the late Dr. Alladi Krishnaswami Iyer, in honour of the memory of two of the celebrated jurists of the State of Madras.

The Law of Emergency, as a subject of Comparative Law, has begun to occupy the foremost attention of students of Politics and Constitutional Law, besides that of politicians and administrators, owing to the great stress and strain of a series of international conflicts and the consequent problems in the political, social, and economic fields, that have come in the wake of continued tension and turmoil that have become the order of the day and leading to the apprehension of an atomic war, which, if not prevented in right time, might engulf the whole world and destroy not only civilisation but the entire human race. Thanks to the valuable efforts of our esteemed Prime Minister Pandit Jawaharlal Nehru, the tension in the international situation appears at present to have eased. The New Atomic Age compels nations to live in interdependence, and hence the reported deadlock in the recent Geneva Conference can only be a temporary phase in working out lasting peace.

As remarked by Mr. Guttridge at page 36 of "Comparative Law", the study of Comparative Law is necessary for every politician, student as well as administrator, as new rules have to be devised to meet new situations created by novel concepts of rights and duties appertaining to the political, social and economic spheres. Mr. Guttridge says "But new concepts of rights and duties are coming into existence, owing to far-reaching changes in the political and economic sector of society. The legislator cannot always rely on existing rules of law to meet the situation thus

created. New rules must be devised, and the vast streams of legislation during the last two decades is largely directed to this end". The above observations of the learned author are wholly applicable to the subject on hand "The Law of Emergency" which has developed out of executive and delegated legislation in almost all countries of the world.

Prof. M. A. Sieghhart in page 111 of "Government By Decree" says in regard to the growth of delegated legislation, that the real cause for their growth, are (1) First the utilitarian conception of the rational state is in the process of being replaced by the collectivist conception of the Social State, a fact which implies a further tremendous expansion of the tasks of the administration. (2) Secondly, the conception of emergency has greatly increased in scope, not only because of the repeated occurrence of a state of national emergency which requires the concentration of all state activities on one definite aim, but also because the conflicting aims of individualistic and collectivist state conceptions create tensions in the social and economic field which make immediate state intervention more and more necessary.

A comparative study of the subject of Emergency Law is useful not merely to appreciate the differences between the different types and systems of Emergency Law and their administration, in the numerous countries of the world, but also to find out methods of reform of the law, and sometimes a reform of the very basic and organic law of the country which is its Constitution. Further, such a study of the Emergency Law of important constitutions of the world, which are based on different and conflicting ideologies, will lead essentially to a sharing of our intellectual interests with other nations, and thus in turn create an atmosphere of friendliness, that will dispel many of our political and economic differences, and thereby pave the way for mutual trust and confidence among the countries of the world.

In the words of Lord Macmillan (at page 8 of The Journal of Comparative Legislation, 3rd series, Volume 18, 1936) "There is no anchorites' cell or hermitage for a nation in which it can isolate itself from other countries — nations have to live together, and the best method of overcoming distress and want of confidence and of breaking down the walls and barriers lies in the promotion of means of sharing our intellectual interests with other nations. If this were done, many political and economic differences would tend to disappear in an atmosphere of friendliness and trust. You

are not likely to quarrel with a person if you share with him his intellectual interests, and there is no better foundation than this, for other and perhaps more material intercourse."

The term "emergency" is defined by the Oxford Dictionary as (a) the sudden or unexpected occurrence of a state of things and (b) a juncture that arises or crops up, a sudden occasion". In short emergency means an unexpected contingency requiring immediate action. This term has in practice undergone a wider connotation so as to include contingencies of all character, whether temporary or permanent, national or international, social, political and economical, and as we shall have occasion to study hereunder, the conception of emergency has varied throughout the ages. As Sieghhart says at page 77 "Government By Decree" "For many centuries the chief aims of the State were confined mainly to providing the means to combat the enemies without or within, to wage war and to administer justice. An emergency therefore, usually took the form of war or threat of invasion. But as the duties imposed upon Governments widened, the conception of an emergency widened with them, until in modern times it is undergoing a complete change. The exceptional is rapidly becoming the habitual, though the Powers called upon to deal with it are still extraordinary powers. But they are no longer claimed solely in the name of emergency. A new conception has arisen which tends to supplant emergency as the main reason for an "unfettered" Government — its name is Efficiency."

Every right-thinking man will concede, that the object of any Government is good government, and that the grand objective of good government is the maximum of individual freedom consistent first, with a like freedom for every other individual, and secondly with a stable, yet a progressive society. As early as 2500 years ago, Heraclitus of Ephesus stated thus "The major problem of human society is to combine that degree of liberty without which law is tyranny with that degree of law without which liberty becomes license". In applying this golden maxim, it will be evident that every Government will be in need of certain extraordinary powers for meeting certain unexpected contingencies, or anticipated contingencies, with a view to preserving a balance between private right and social justice, and the same may be concentrated in some individual or office with power to delegate it to whomsoever that man directs, with a view to achieve the objective in the interest of efficiency. The question is, how far, consistent with democratic privileges and the civil liberties of the individual, free

enterprise, constitutionalism, government by debate and compromise, such an emergency power may be used for the good of the State. The occasions for the use of this emergency power may be war, rebellion, economic depression, financial loss or crisis, flood, earthquake or other damage of a permanent character including famine, pestilence or mass poverty and unemployment of so serious a nature as likely to undermine the foundations and stability of the State.

The complex system of Government of the Democratic Constitutional State is essentially designed to function under normal peaceful conditions, and is often unable and ill-equipped to meet the exigencies of a great national crisis. In time of crisis, a democratic government needs to be temporarily altered to whatever degree is necessary to overcome the peril and restore normal conditions, and sometimes the emergency is one of a permanent nature when the overhauling of the State constitutional machinery in order to meet the new situation may be necessary. Such a transformation may lead to granting of more power to government, and the people fewer rights, and such a government may oftentimes border on dictatorship.

This strong government, bordering on dictatorship has no other purpose than the preservation of the independence of the State, the maintenance of the existing constitutional order and the defence of the political and social liberties of the people. In fact the economic troubles which plagued the various democracies of the world in the thirties of the century resulted in the introduction of governmental measures of an unquestionably dictatorial character. The Government has to meet such crises by invoking more powers and its justification lies in its lawful aim of restoring the *status quo ante bellum*. The democracies have been fighting fire with fire, destroying autocracy with autocracy, and crushing the dictators with dictatorship.

In regard to this aspect of the matter, the following observations of Mr. S. Srinivasa Iyengar, "Problems of Democracy in India" at page 15 are in point. "The acceptance of dictatorships by large populations in all parts of the world does not however mean that enlightened man has foresworn the ideal of democracy nor is it due to a strange new affection for despotism and slavery. These dictatorships can at best be only transitional structures erected, with much sacrifice and suffering, either by the people themselves or with their acquiescence, in order to meet the gravest of perils, to avert chaos in the State and to emerge with renewed

vigour from the depths of national humiliation". In fighting such contingencies like war, rebellion, riot or insurrection, emergency action of an executive nature and emergency action of a legislative nature have both been adopted and in fighting economic troubles, executive laws of an emergency nature have been used.

Constitutional dictatorship of an executive nature is adopted by the promulgation of Martial Rule in the event of crises resulting by invasion or by rebellion. Other forms of crises of an economic nature are dealt with by emergency laws which are enacted by the executive branch of the government.

In case of invasion or rebellion, the crisis is got over by declaration of Martial Rule, which is an extension of Military Government to the civilian population, the substitution of the will of the Military Commander for the will of the people's elected government. By declaring Martial Rule, all powers of effective government are transferred from the civil authorities to the military authorities. In the event of a rebellion, the declaration of Martial Law amounts to a governmental declaration of war on the citizens who are in insurrection against the State. It virtually means government by the army, Court's Martial, suspension of civil liberties and all kinds of dictatorial action of an executive nature. There is declaration of Martial Law both in the British Empire as well as in The United States, and what is well known as a state of siege in civil law of continental Europe.

In the process of declaration of Martial Law, there is delegation of legislative power to the executive, from the nation's law-making authority like the Nation's Representative Assembly to its executive. The delegation of power may be of short duration and intended to cover a particular crisis or it may be intended to cover a future crisis and therefore more permanent in character. Permanent delegations of executive power have been made in two ways. Some countries have provided in their constitution itself for the grant of a provisional power to the executive branch to issue emergency ordinances having the force of law, while in others, the national legislatures of those states enact statutes delegating the emergency power i.e., by ordinary legislation. In cases of a more comprehensive delegation of emergency power to the executive to cover a multitude of state problems, such delegation is known and undertaken as an Enabling Act. Both Martial Rule as well as executive law-making invade the political and economic liberties of the subjects with a view to the preservation of the state and the permanence of the freedom of the citizens.

Emergency institutions take various forms like (a) Cabinet Dictatorship, (b) Presidential Dictatorship, (c) War-time Expansion of Administration, (d) Peace-time Emergency Planning Agencies as in Russia and India and under Article 15 of the Constitution of the Peoples Republic of China, and to some extent copied also in England, America and some of the continental states, (e) the War Cabinet, (f) Congressional Investigating Committees, (g) Executive Dominance of The Legislative Process, etc.

As Rossiter writes at page 11, "Constitutional Dictatorship", "The fact remains that there have been instances in the history of every free state when its Rulers were forced by the intolerable exigencies of some grave national crisis to proceed to emergency actions for which there was no sanction in law, constitution or custom, and which indeed were directly contrary to all three of these foundations of democracy."

The famous Abraham Lincoln boldly went ahead for the sake of preserving the Union in spite of the fact that the Constitution forbade him to raise the limits of the army and navy, pay moneys to persons unauthorised to receive it by law, or contract a public debt for the United States.

In interpreting the sanctity of the oath of office, that the President shall "preserve, protect and defend the Constitution to the best of my ability", Abraham Lincoln in partial defence of his suspension of the Writ of Habeas Corpus without obtaining Congressional authorisation delivered the following message on July 1861 "Are all laws but one to go unexecuted, and the Government itself go to pieces lest that one be violated? Even in such a case would not the official oath be broken if the Government should be overthrown when it was believed that disregarding the single law would tend to preserve it?" (Vide page 7 of Corwin "The President, Office and Powers").

On a similar occasion, Abraham Lincoln is said to have expressed "Every man thinks he has a right to live and every government thinks it has a right to live. Every man when driven to the wall by a murderous assailant will override all laws to protect himself, and this is called the great right of self-defence. So, every Government when driven to the wall by a rebellion, will trample down a constitution before it will allow itself to be destroyed. This may not be constitutional law, but it is a fact". Rossiter says, "that there is no denying the fact that responsible statesmen in every free country have broken the law in order to protect the

nation in time of serious national emergency, and responsible statesmen will do it again, and the nation was always pretty solidly behind them."

Now it is the primary function of Prime Ministers as well as Presidents of any Constitution, to wield these emergency powers of crisis government, and particularly in countries governed by written constitution like America, where there has been a separation of powers, between the executive, the legislative and the judiciary, the primary question of the validity and legitimacy of such invasion of the principle of division of power, by the encroachment of executive arbitrariness arises foremost for our consideration. In countries governed by the Parliamentary system of government and the Rule of law, a Government governed by custom and usage, the question arises whether cabinet dictatorship is consistent with the Rule of Law. In this lecture I shall take you to a consideration of the former subject and I shall deal with the latter subject in the course of my second and third lectures.

Emergency and Separation of Powers

Mr. John Willis in his book "The Parliamentary Powers of English Government Departments" at page 7 remarks about the separation of powers in England and America "Separation of Powers is of course fully recognised in England as a political doctrine, and just as in the United States, is as much honoured in the breach as in the observance. In the United States the power of the judges over executive and legislative branches, alike elementary in American Constitutional Law, gives the lie to the very doctrine which those judges are zealous to enforce, while in England, a Supreme Parliament which constitutionally might tomorrow abolish the office of Judge, and has in fact reversed judicial decisions, which controls the actions of a department by criticism of the departmental head, himself an important initiator of legislation, illustrates with what striking reservations the doctrine must be understood. It is interesting to notice that although a Supreme Parliament in England and a Supreme Judiciary in the United States have both been directed to the same end, that of restricting the scope of the executive, the outcome has been very different. In England today a theoretically supreme parliament is practically swayed by the will of the cabinet, itself profoundly influenced by the Permanent Civil Service, while in the United States the judiciary has gathered into their hands the power to direct the fields of legislation, to regulate

rates, to make and unmake combinations of capital, to say to what extent and in what manner a workman may constitutionally defend himself against his employer. So much for the separation of powers, which has done much to retard the intelligent development of governmental methods."

But the division of power into legislative, executive and judicial has, right up from the time of Locke, Montesquiae and Blackstone, been advocated on the principle of achieving good government for the people of a State as distinct from arbitrary government. Montesquiae wrote "In every government there are three sorts of power, the legislative, the executive in respect of things dependent on the law of nations:—and executive in regard to matters that depend on civil law. When the legislative and executive powers are united in the same person, or in the same Body of Magistrates, there can be no liberty:—because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, and execute them in a tyrannical manner. Again there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be legislator. Were it joined with the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body, whether of the Nobles or the people, to exercise those three powers, that of executing laws, that of executing the public resolutions, and of trying the causes of individuals."

The separation of powers is intended to preserve the liberty of the individual and right up from Washington, John Adams, Jefferson and Madison, the concentration of all power in one man has been said to be the very definition of tyranny. There are people in America as well as in England who condemn this division of powers and exalt the doctrine of "administrative process" i.e., concentration of powers with a view to the efficiency of departments. Mr. C. K. Allen in his foreword to "Government By Decree" by Sieghart analyses the notion of a few who suppose that the elaborate system of law which aimed at preserving a balance of governmental powers and at protecting the citizen against administrative usurpations, acts as an intolerable clog on executive efficiency and on the fulfilment of social policy and who condemn our impartial High Court Judges, as the natural enemies of social welfare, and Mr. Allen rejects the entire sophistry of the above argument on the ground that judicial control will not hamper social progress and

has not in fact hampered social progress as proved particularly by the latter history of France. He says "There, in a single sentence, is the lesson which we most need to learn from the French system. Our administration has, or has had, a high reputation both for efficiency and for probity. Let it do, but let it do within the law, and let the law be such that it cannot do whatever it likes."

The belief in the sanctity of separation of powers and its efficacy in leading to the true liberty of the individuals was sponsored by many people like Holdsworth who admired the separation of powers of the different organs of government in the British Constitution. But there are constitutions like the Soviet Constitution that has distinctly given the go by to the doctrine of separation of powers.

Andrew Vyshinsky in his book "Law of the Soviet State" at page 318 says "From top to bottom the Soviet Social order is penetrated by the single general spirit of the *oneness* of the authority of the toiler." The programme of the All Union Communist Party of Bolsheviks rejects the Burgeois principle of the separation of powers. We do not have the separation of powers but the distribution of functions. There is nothing in common with the Montesque doctrine (Gsovski Soviet Constitutional Law). In fact the history of the capitalist world does not know any actual separation of powers. Separation of powers has never existed (Vyshinsky Soviet Constitution Law page 296). Delimitation of their functions, given out as the separation of powers, is nothing more than the hegemony of the executive power over the legislative, a limitation of the rights of parliaments (The Law of the Soviet State page 314).

No authoritarian regime can tolerate the limitation on its powers that are implied in the doctrine of the separation of powers, and the Soviet courts are influenced by the policies of the Communist Party and therefore are not guided by precedents. Gsovski says, that the Supreme Soviet is the highest organ of state power with exclusive legislative powers. The Presidium exercises legislative power, and the Council of Ministers does likewise. Gsovski says, "Visualising the foundation of the Soviet Government as the dictatorship of the Proletariat exercised in its name by the Communist Party, the authors of the Soviet theory of Government drew two conclusions. The Communist party must have a monopoly on political activities, and the power of the government may not be restricted. Therefore the methods of the Western Democracy designed to restrict the power of the government, such as the separation of

powers, the doctrine of checks and balances, the principle of government by law, are denied by them."

Thus the doctrine of division of powers in theory is intended to exclude arbitrariness, absolutism and dictatorship of government, though many writers say that in actual practice, the said separation has not been as a rule always observed in England and America. Many States, through democratic, may have to forget in emergencies the separation of powers and act quickly in the interests of the protection of the larger interests of society and the permanence of the Constitution, while some States whose emergency due to economic difficulties is of a more permanent character, may have to adopt the gospel of the welfare state and the Socialist pattern of society and overlook the division of powers for the purpose of securing the liberty of the individual considered as part of the social whole. In such states, their constitutions themselves provide for such contingencies either in their original frame or by subsequent amendments. The economy of such states is a planned economy, whereby the party, state, plan and law are all welded together and combined to produce maximum efficiency. (Refer "Justice in Russia" by Harold J. Berman).

In the Indian Constitution, provisions have been inserted to overcome the rigidity of the constitution which may arise by the possible attempt at a demarcation of powers. In fact there has not been any clear cut demarcation under the Indian Constitution, though there has been allocation of powers to respective departments particularly between legislative and judicial powers as in America though the Indian Constitution under Art. 53(1) vests the executive power in the President. There are also various provisions in the Indian Constitution which enable the Union Government to enact legislation in national interest, and in emergencies forgetting the division of legislative heads into Union, State and Concurrent, for the purpose of redrawing the boundaries of States, for suspending the constitutional machinery in order to meet emergencies of a political or economic nature, without amending the Constitution. We shall discuss them in detail at the end of the lecture.

The flexibility of the constitution to adjust itself to emergency requirements is preserved in the German Weimar constitution, where constitutional provision has been made under Art. 48 instead of by ordinary legislation. Art. 48 runs thus: "If the public safety and order in the German Reich are seriously disturbed or endanger-

ed, the national President may take the measures necessary for the restoration of public safety and order, and may intervene if necessary with the assistance of the armed forces. For this purpose, he may temporarily set aside in whole or in part the fundamental rights established in Articles 114, 115, 117 118, 123, 124 and 153. The national President must immediately inform the Reichstag of all measures taken in conformity with para. 1 or para. 2 of this Article. The measures are to be revoked upon the demand of the Reichstag."

The principle of separation of powers was only nominally preserved in the German Constitution, through the independent separate election of the President and the bestowal of his chief functions by the constitution itself other than by legislation. The check on illicit use of his power was made by the provision for the requirements of ministerial counter signature to his acts under Articles 50, 53, and 54 of the Constitution.

The acts and edicts of the President were unrestrained, and they covered all kinds of legislation and not merely executive acts. Judgments of courts invariably recognised his power of legislation under Art. 48, and the President was the sole judge of the existence of an emergency. The courts had no authority to adjudge about the existence of the emergency apart from the President's judgment. Hitler made use of these powers to gain a majority in the Reichstag by curtailing the right of the opposition to assemble by restricting the Press, by outlawing the Communist Party a few days before the election, and by directing the Police to ignore his terroristic campaigns. He invoked Art. 48 to arrest almost all the Communist members of the Reichstag in order to obtain the required two-third votes to pass an Enabling Act. Hitler succeeded in passing the Enabling Act "Law for the relief of the people and the Reich," under which the National Socialist Cabinet derived power for four years without the necessity of reporting to the Reichstag or of revoking Acts on its demand as prescribed by Art. 48. Hitler thus established the third Reich, and eliminated the Labour Unions both social-democrats and other parties excepting the National Socialist Party. On January 30, 1934, Hitler obtained a passing of a second Enabling Act "The Law for the Reconstruction of the Reich" which put an end to all remnants of federalism by giving the Cabinet the unquestioned right of "determining new constitutional law." Thus full absolute government was established in Germany on 30th January 1934.

The German Constitution of 1949 wanted to get rid of these defects and provided for a clearer separation of powers in this way:

(1) The Federal Republic of Germany is a democratic and social federal State; (2) All state authority emanates from the people. It shall be exercised by the people in elections and plebiscites and by means of separate legislative, executive and judicial organs; (3) Legislation shall be limited by the Constitution, the executive and administration of justice by legislation and the law.

Art. 81 of the Constitution contains emergency provisions but they do not admit of the excesses as could be made under Art. 48 of the Weimar Constitution.

The French people have also attached much weight to the doctrine of separation of powers. In French law judicial functions are, and always remained, distinct from administrative functions, and judges do not interfere with administrative bodies and their functions. Nor do they summon administrators before them in connection with the exercise of their functions. A French citizen could have no access to courts if he is aggrieved with the action of his government. In the early stages of the matter, he can only petition the government for redress of his grievances but that procedure was found to be unsatisfactory. The Council of State which was first started as an administrative body, later on evolved into a court and the judicial section developed the qualities of the court. In France thus there arose two distinct sets of Courts, one for dealing with controversies between private individuals and the other for considering disputes with government.

In French law, the French administration is endowed with inherent authority to promulgate regulations unlike in England where it is only promulgated by delegated authority. The French Prime Minister is the head of the executive branch of Government and he has an unlimited rule-making power inherent in him covering matter considered necessary to protect public interest, and the other ministers have power to issue rules without statutory authority. Parliamentary legislation no doubt can control this rule-making power in France. Though the French Parliament cannot delegate its legislative powers, yet in practice the legislature by passing the Decree Laws has empowered the administration virtually to alter statutes. The power delegated, may be, notwithstanding any law to the contrary, for imposing new taxes or increasing old ones. In France there is no review power for the courts as in the American Constitution, and thus lacking

judicial review which alone can enforce a constitutional right, the French system contains more dictatorial powers than the American.

In 1946, the French Constitution was amended by expressly prohibiting the delegation of powers but the French Courts were not enabled to review legislation and therefore once again attempts were made to delegate powers by Decrees in order to meet the national economic emergency.

Arthur T. Vanderbilt, Chief Justice, New Jersey Supreme Court, in his informative book "The Doctrine of the Separation of Powers and its present day significance" (1953) Edn. says at page 28 "The granting of extraordinary powers to the executive for the purpose of dealing with emergencies affects the utility of the doctrine of the separation of powers unless the declaration of the emergency is left to the legislative branch and unless the courts have the power and exercise it—to enjoin the executive from acting in the absence of such a declaration and from taking action not reasonably necessary to cope with a declared emergency. Any nation must be capable of dealing with special conditions that present a threat to its very existence, but in providing the executive with necessary executive powers, effective checks and restraints must be available, else the remedy in the long run may prove more dangerous than the disease."

The Growing Problems of Centralisation

In the case of Written Constitutions like America as well as those governed by common law, convention and usage, as the British Constitution, the historical trend of events that have developed due to various factors like the Industrial Revolution, Famines, Rebellions and Succeeding Wars, has been towards the growth of centralism, which means the concentration and accumulation of powers in the hands of a few persons who are in charge of the administration. This problem is the inevitable result of government's assuming new functions in response to popular demands.

The pattern is usually uniform and it has been customary for each state or country to pass similar legislation to tackle problems as they arise and this uniformity necessitates an increase in the activity of the central government whose professional officials have necessarily to accept and work delegated legislative autho-

ity as it is impossible to provide for all contingencies and problems of a social and economic nature in advance.

The world depression of 1930 developed considerably the growth of concentration of power in the Federal sphere. Likewise the great wars of the 18th and 19th century called for national defence and national leadership and the financial burdens arising from this leadership have in America resulted in the Federal Government taking over from State Governments many functions requiring grants-in-aid, and in America, the courts have been unwilling to pronounce what expenditure is or is not for general welfare, and what is in strict propriety and validity (*Vide Massachusetts Vs. Mellon*, 262 U.S. 447 (1923) concerning opinion of Justice Brandis in *Ashwander Vs. Tennessee Valley Authority*, (297 U.S. 288). 346 to 348 (1936). The Federal employment, Federal Revenue and Expense have all outstripped state-budget and state revenue and expense. Federal expenditure on education, social services, public health etc. has increased. In America the Federal government has become the nation's biggest landowner. It holds vast areas of real estate. America had to fight two great wars in the 20th century and Congress delegated power to the President principally by the first War Powers Act. (55 Stat. 838 (1941), in prosecuting the second war. The President became the Chief executive agency, and as emergencies increased, the President delegated his power to various bodies and individuals to meet them. While in the case of the delegation of power in nations governed by common law and the Parliamentary system of Government, the emergency agencies were organised under ministers responsible to Parliament, in case of America, they were responsible only to the President and his agents. They were neither correlated and integrated in a responsible manner. The scope of power given to them was vague and disputes arose in interpreting their powers. Most of the officials were overburdened with work and reduplication of work weighed heavily on their shoulders. The unwillingness of the President to delegate definite authority in concrete and unmistakable terms was also responsible for many failures.

(1) Congress realised its necessity to define the scope and amplitude of the President's powers and as a first step, a time limit was imposed on some of the powers granted to him as instances of this control, the Emergency Price Control Act of 1942 as amended in 1946, the Stabilisation Act of 1942, the Second War Powers Act of 1942 (as amended in 1946), The Commodity Credit Corpo-

ration Act (as amended in 1946 etc.) may be mentioned. (2) The second device was by providing by legislation, that Congress might terminate the power delegated to the President by a concurrent resolution of both Houses, seeking thereby to avoid the danger of a presidential veto of any legislation curtailing his powers. (See the various War Powers Acts 1941 to 1946 etc.) (3) In some instances, the president was enjoined to submit periodical reports to Congress as in the matter of the Lend Lease Act. (4) Congress in some cases prohibited payment of government funds to designated individuals without previous approval of the Senate. But in almost all cases the above checks were ineffective.

Congress became used to delegating power to the President in peace time, a habit accelerated by the war periods which preceded it. This habit could not be checked and when the time for reconversion to peace came, the Congress found it very difficult to get back all the powers that it had granted.

The administrative machinery broke down as a result of World War II and President Roosevelt constituted the Committee on Administrative Management as a result of the passing of the Lodge Brown Act of 1947 calling for a survey to induce "economy, efficiency and improved service in the transaction of public business." In pursuance of the Lodge Brown Act, President Truman appointed the Hoover Commission consisting of 12 persons with the former President Hoover as Chairman, who were entrusted with the task of investigating every agency in the executive arm of government with a view to finding out the facts and making recommendations for bringing government on modern and up-to-date lines. The Hoover Commission made various recommendations to bring down the cost of administration keeping up at the same time efficiency of the departments.

The concentration of power which is found in administration was equally found in the legislative field also. From simple law making proclamation to the vast powers in foreign affairs regarding both war and peace, the range of the President's powers are unparallalled. In initiating legislation, in expediting its progress through Congress and in vetoing legislation, the President's powers are enormous. In the matter of introduction of legislation the President occupies the place of the British Prime Minister, without the corresponding responsibility to the legislative branch as required in English practice. In expediting legislation through the Congress, the President has the combined power of party leader-

ship as well as the power of patronage resulting from his power to appoint a host of officials. His veto power is very important too. The President was delegated large powers by the Congress. The President was permitted to pass on simple facts requiring no discretion (*Vide The Brig Aurora Vs. United States*, 11 U. S. 382 (1830) — Then on more complicated facts requiring discretion (*Field Vs. Clark*, 143 U. S. 649 (1892) and then on more complicated facts that he could arrive at only with expert administrative assistance (*I. W. Hamton Jr. & Company Vs. United States* 276 U. S. 394 (1928). The later products are the delegation of power in the Inter-state Commerce Commission in 1887 and The National Industrial Recovery Act of 1933. The Supreme Court questioned the reasonableness of the vast delegation of powers under the Industrial Recovery Act in *Schechter Vs. United States* 205 U. S. 495 at 553 (1935) and also *Panama Refining Company Vs. Ryan* (293 U. S. 388 (1935). These cases will be considered by me in my last lecture also.

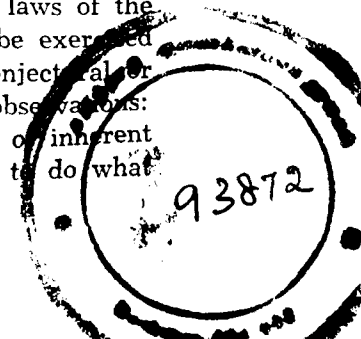
The widest delegation of emergency power was sustained by the Supreme Court in *Yakus Vs. United States* 321 U. S. 414 (1944) and *Bowles Vs. Willingham*, 321 U. S. 503 (1944) where the office of the price administration in the Second World War was authorised to control price by regulations rather than by adjudication before the agency. The right to judicial review was never questioned however in *Bituminous Coal Commission*, and *Bituminous Coal Conservation Act* was declared unconstitutional in *Carter Vs. Carter Coal Company*, 298 U. S. 328 (1936). The Commission was re-created by the *Bituminous Coal Act* of 1937 and this later Act was upheld by the Supreme Court in *Sunshine Anthracite Company Vs. Atkins*, 310 U. S. 381 (1940). (Refer 'Charles Evan Hughes and the Supreme Court' by Hendel).

The powers of the Acts were very wide. The agency enforced its regulations by injunction proceedings or by criminal proceedings and the individual was precluded from resorting to regular law courts in order to question the validity of the regulation, before he exhausted his remedy in the agency. The Administrator was not required to make any findings or hearings and to conduct the enquiry as far as practicable; and he was not bound to provide for a regular hearing to the party. The party might anyhow protest against the regulations by affidavits or written evidence. The Emergency Court of Appeals was prohibited from issuing any temporary restraining order or Interlocutory Decree staying or restraining in whole or in part the effectiveness of any regulation.

The effectiveness of a judgment pronounced under this regulation can be postponed till the expiration of 30 days. The Emergency Price Control Act was considered in *Yakus Vs. United States*, 321 U. S. 414 (1944) and the Supreme Court held that no court except the Emergency Court of Appeals, and on appeal, the Supreme Court, had jurisdiction or power to consider the validity of price regulation and therefore the defendant was precluded from setting up the invalidity of such a regulation as a defence to a criminal prosecution under the Act. The Federal Administrative Procedure Act of 1946 was passed to protect the individual citizen from the hazards of uncertain and slipshod administrative procedures resulting in unfair and arbitrary action.

As mentioned by me earlier, this concentration of power operated to destroy the balance of power between State and Federal Government. It has affected the labour management relations with the result that under broad interpretations of the commerce clause of the Constitution, the Congress entered the field of labour relations and thereby reduced the power of the States (*Bus Employees Vs. Wisconsin Board*, 340 U. S. 383, *Norris Grant Company Vs. Nordas*, 174 A.L.R. 1057.) Thus the judiciary was powerless to protect the parties. (See *The Norris Law Guardian Act* in 1932).

This undue growth of central federal power has ousted the jurisdiction of court and a great conflict arose between President Lincoln and the Supreme Court over the extent of the chief executive power of the President as Commander-in-Chief. President Truman instructed the Secretary of Commerce to disregard the decisions of the courts directing the return of the Dollar Line to its owners. (Refer *Land Vs. Dollar*, 341 U. S. 737). The President's Emergency Ordinance under the Taft Hartley Act under which he seized the Steel Mills in a labour dispute was declared unconstitutional in *Youngstown Sheet Tube Company Vs. Sawyer*, (103 F. S. 569). Thus the doctrine of inherent power residing in the President which was laid down by the decision of the Supreme Court in *Myers Vs. United States* (1926) 272 U. S. 52, was modified and it was laid down that executive power must be traced to some specific grant whether by the constitution or by the laws of the Congress. Powers implied by such grant may also be exercised but the implication must be real and not merely conjectural or imaginary. Mr. Justice Jackson made the following observations: "The appeal however, that we declare the existence of inherent powers exnecessitate to meet an emergency, asks us to do what



many think would be wise, although it is something the forefathers omitted. They knew what emergencies were, knew the pressures they engender for authoritative action, knew too, how they afford a ready pretext for usurpation. We may also suspect that they suspected that emergency powers would tend to kindle emergencies. Aside from suspension of the privilege of a Writ of Habeas Corpus in time of rebellion or invasion, when the public safety may require it (U.S. Constitution Art. 1 Sec. 9, clause 2), they made no express provision for exercise of extraordinary authority because of a crisis. I do not think we rightfully may so amend their work, and if we could, I am not convinced it would be wise to do so the essence of our free Government is "leave to live by no man's leave, underneath the law to be governed by those impersonal forces which we call law. Our Government is fashioned to fulfil this concept so far as humanly possible. With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that executive be under the law and that the law be made by Parliamentary deliberations."

In regard to judicial review and limitations, the Ashwander case (Ashwander Vs. Tennessee Valley Authority, 297 U.S. 288 to 346 at p. 348, 1936) has imposed several limitations. In Massachusetts Vs. Mellon (262 U. S. 447) (1923), the theory of judicial deference was further advanced "By an act of self imposed judicial deference the court has rendered immune from attack the flood of legislative appropriations that has created an imbalance between the state and federal government never dreamt of by the founding fathers or judges who spoke of indestructible union composed of indestructible States" (Vanderbuilt "The Doctrine of Separation of Powers and its present day significance").

It appears to me that this doctrine of judicial deference, e.g., Justice Southerland's observation "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. The question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiceable issue, is made to rest upon such an act" should be revisited in the light of the later decisions on Welfare State like Alabama Power Co. Vs. Ickes, 302 U. S. 464 (1938); Helverin Vs. Davis, 301 U.S. 619 vide Justice Cardozo's judgment "When money is spent to promote general welfare, the concept of welfare or the opposite is shaped by Congress, not State. So the concept be not arbitrary, the locality must yield." Steward Machine Co. Vs. Davis 301 U.S. 548. United States Vs. Butler 297 U. S. 1; Sunshine Coal Co. Vs.

Atkins 310 U.S. 381. Tennessee Power Vs. T. V. A., 306 U.S. 118. Now in view of the various pronouncements contained in these judgments, it should be remarked that the Supreme Court should make its pronouncements much more categorical and clear in regard to consideration of the aspect of a case whether it is for the general welfare, or not for the general welfare.

In regard to the separation of powers between the executive and the judiciary, Robson in "Justice and Administrative Law" at page 35 says "Neither the Executive nor the Judiciary has immutable 'right' to a particular province. It is merely a matter of expediency what powers are allotted to either of them at any particular time and the social welfare is only valid test of what is desirable".

Sir John Marriot in his book "Mechanism of the Modern State" says "In regard to separation of powers such a rigid separation of Governmental functions has, it is admitted, proved impracticable".

We had above a discussion of the relevancy of the principle of division of powers to the question of emergency law, and how it is connected with the doctrine of the welfare state, and how the courts have refrained from taking a technical and abstract view of the problem in the interest of social welfare. We have also studied the problem of how a strong central executive authority has begun to replace local autonomy in the interest of the general welfare. Let us now try to make a comparative study of the various constitutions of the world which have enacted constitutional provisions for enforcing emergency laws.

Emergency in the Roman Empire

To begin with, it is old Republican Rome that has first tried the bold experiment. It was in Rome that provision specifically was made for the institution of a Dictator who will be chosen by the people to meet particular emergencies, and he was temporarily granted absolute power to save the State from imminent danger. One Larcaus Flacus was named in 500 B.C. as the first Dictator. He was a king for all practical purposes, as he was clothed with all absolute powers. The Dictatorship was part of the Roman Constitution. Side by side, the Consuls exercised power, and their powers were curbed by mutual veto power. The Senate controlled the powers of the Magistracy and its advice was rarely disregarded. Whenever the Republic was involved in grievous wars of serious

unrest, this complex power and function was to be united in one man. The substitution of two consuls for one king was really to the Roman progress towards constitutional Government. The Senate initiated a proposal that the Consuls should appoint a Dictator in times of grave danger to the public. Approval of the Senate was condition precedent to the appointment of Dictator. According to Cicero, the nomination of the Dictator rested on the will of the Senate. The Dictator had his "Imperium", his sacred and absolute power. The procedure had a speciality and installation ceremony took 2 or 3 days. The man appointed was usually a well known public figure having successful career and possessing character.

There were two kinds of Dictators, the one for getting things done and the other for suppressing civil insurrection. The Dictator *Rei Gerundae Causa* (for suppressing insurrection) was a military Dictator whose imperium, his authority in power, extended throughout the whole city and his function was to prevent internal strifes. This power was used by the Patricians to oppress the Plebians. There were four occasions when this power was used. A new class of Dictatorship for the purpose of freeing the city from pestilence was instituted, and it was called Dictator *Civil Figendi Causa*. From now on, the power was used to cover various matters other than crisis or emergency. Dictators for conducting elections, religious festivals etc. for games, for special trials etc. The Dictator had an absolute power once appointed. His term expired after six months. His duty was to maintain the constitutional order and not to alter or subvert it. The Dictator was dependant on the Senate for financial matters and he could withdraw money from public Treasury only on consent of the Senate. He had no civil jurisdiction as a Judge. He is not accountable for moneys at his disposal. Whatever had to be done by him to repel the enemies from Rome or abate the bitter strife of Patrician and Plebian fell within the scope of his supervision. The Dictator had power to conscript an army, and held unquestioned military authority. He could convoke any of the assemblies and preside over them and his jurisdiction in criminal cases was supreme.

The Dictator could execute summarily without any appeal from his orders and he could fine people. He had the power of arrest and coinage, and the right of free disposal of booty. He could not legislate, but his decrees were for the period of his office as good as laws and were so published. The Roman Republic was

converted by him into a Military Dictatorship. The Dictator could select a lieutenant who could act for him. The power became unused after 217 A.D., as the right of appeal was established over his actions and his powers were used for other purposes than military crisis.

Antony abolished the office of Dictator which was last held by Sullan Caesar. The powers of the Dictator were later on used by Consuls. "The lessons that Rome has taught the world" says Rossiter at page 28 of his book "Constitutional Dictatorship", "have been many and significant, but none is more of present consequence than the pregnant truth imparted by the history of famed dictatorship: that in a free state blessed by a high constitutional morality, and led by men of good sense and goodwill the forms of despotism can be successfully used in time of crisis to preserve and advance the cause of liberty".

Emergency in the German Constitution

The Roman example of providing in the constitution itself for emergency Government has been followed by Germany which excelled many other governments in the matter of crisis institutions. Art. 48 of the German Constitution to which I have referred in my book "Planning The Indian Welfare State" at page 7 recites thus: "If a State does not fulfil the duties incumbent upon it under the national constitution or laws, the President of the Reich may compel it to do so with the aid of the armed forces."

"If the public safety and order in the German Reich are seriously disturbed or endangered, the President of the Reich may take the measures necessary to the restoration of the public safety, and order, and may, if necessary, intervene with the armed forces. To this end he may temporarily suspend in whole or part the fundamental rights established in Art. 114 (Inviolability of person), 115 (Inviolability of domicile), 117 (Secrecy of communication), 118 (Freedom of opinion and expression thereof), 123 (Freedom of assembly) 124, (Freedom of association) and 153 (Inviolability of property).

"The President of the Reich must immediately inform the Reichstag of all measures taken in conformity with Section 1 or 2 of this Article. The measures are to be revoked upon the demand of the Reichstag."

"On the demand of the Reichstag in cases where delay would be dangerous, the State Government may take for its territory

temporary measures of the nature described in Section 2. The measures are to be revoked upon the demand of the President of the Reich or the Reichstag. A national law shall prescribe the details."

This last sentence was never acted upon, but resort was made only to the main provisions of Article 48. This became an inexhaustible reservoir of executive power widely used for fighting insurrection, war or economic depression.

Article 50 required the ministerial counter signature of "All Ordinances and orders" of the President of the Reich. The President was made more absolute in power by Article 48 as without his consent the Cabinet had no means of using the Article. Under Article 54, the Chancellor of the Reich and the Ministers, require for the conduct of their offices the confidence of the Reichstag. This Article was used for more than 250 occasions in Germany for 13 and odd years. This power rose out of the necessities of the time, particularly the stage of war of 1919 with England, and it is interesting to note that a democratic Weimar Assembly inserted this Article in the German Constitution. Germany was threatened with internal rebellion and anarchy which justified the use of this Article. Different problems like the establishment of local and state governments, inflation caused by the Allied Blockade, Unemployment of a great scale due to the closure of the War Industries, necessitated the granting of emergency powers to the President and the German National Assembly met in Weimar on February 6, 1919 and created the office of the President equipped with such emergency powers. The desire for a strong executive, coupled with the need to meet adequately emergencies, resulted in Germany resorting to Article 48, which is a repetition of the institution of Imperial Germany called 'The Kriegeszustand or state of war' by which civil rights were suspended and military courts were established, and a transfer of executive power from civil to military authorities was effected.

In Weimar Germany, the State of War of Imperial Germany became a Civil and Republican Institution. It was used more than 130 times during the period. Government of Germany was able to suppress civil discord, and was able to suppress widespread Communist outbreaks in 1920. Fundamental rights were suspended including the right of free speech, assembly and public meeting, and special courts were installed for the trial of certain crimes. It was the use of constitutional power to wage war on the citizens

of rebellious Germany. In certain States, Commissioners were appointed with the powers of the President to put down insurrection, and when a state was at war with the Republic, Federal Commissioners were appointed to deal with the situation. And they had extensive military and administrative powers for the purpose of restoring public order.

The use of Article 48 as an Enabling Act is found in early economic crisis in Germany besides its use for suppressing insurrection which is to be noted. The Decree of October 12, 1922 was used to forbid speculations in foreign currencies on the pretext that "public safety and order" demanded it. Emergency Economic Decrees with authority of law were to be regarded as a necessary means to meet economic crises. Several court decisions in Germany recognised the validity of Article 48 as an Economic Emergency Article. In the World War I, economic problems of a serious nature asserted themselves and it was found necessary to combat them. Any measure, which though merely legislative in character but which contributed to the maintenance of public order and the prosecution of the war effort was sanctioned by the courts, as being valid power within the ambit of authority functioning under the state of war. Several decrees came into existence. The Decrees of President Ebert are noteworthy. In the economic crisis between 1930 to 1933, the Cabinet issued economic Decrees on the basis of Article 48. The economic decrees of 1923, 1924, were supported by Enabling Acts, through which the Reichstag expressly authorised the executive to issue Ordinances having the force of regular laws. The Enabling Act was used to meet the new problems of the German economic structure, which was threatened by the crisis of reparations, inflation and unemployment. For passing the Enabling Act two-third of the members of the Reichstag had to agree. The occasion was due to the occupation of Germany's Industrial Centre by the French Troops in January 1923. Article 48 could have provided for the situation but in the interest of the unanimity of the nation, the Cabinet wanted to take the consent of the national legislature for its action. The Enabling Act thus became another form of emergency device.

Chancellor Gustavstreßman issued Emergency Decrees to meet the financial crisis of Germany and he got the Enabling Act of October 1923 passed by the Reichstag, which ran thus "Government of the Reich is authorised to adopt those measures which it considers to be absolutely necessary in the financial, economic and social realms. Fundamental rights guaranteed in the Weimar

Constitution may be disregarded in the process. This authorisation does not extend to regulations affecting hours of labour, nor to the reduction of pensions, social insurance or unemployment insurance. Decrees on this basis are to be reported at once to the Reichstag and to the Reichsrat. They are to be revoked at once upon the demand of the Reichstag. This law goes into effect on the day of promulgation. It shall cease to operate at the very latest on March 31, 1924 and shall lapse even before their time in case of any change in the party composition of the present Government".

Many ordinances grounded on the President's prerogative under Article 48 were passed from October 13 to November 2, by the Stresemann Government in order to meet economic crisis, arising on the fall of the Mark. Again, on December 8, the Government of the Reich was delegated authority to pass ordinances from the Reichstag by means of a New Enabling Act but provision was made to preserve fundamental liberties. Many legislative decrees were passed in the wake of this Enabling Act, covering taxation, finance and currency.

The first Enabling Act authorised the issue of economic decrees suspending fundamental rights, and the Cabinet, while acting under Article 48 also could forget fundamental civil liberties. In this sense, German Emergency power under Article 48 and the Enabling Act, was more radical than emergency power under other constitutions, as we shall have occasion to consider later on, in the course of the lectures. The Ordinance ordering the seizure of foreign securities on September 7, 1923 is an example of Dictatorship. The Stresemann—Marx Government by Emergency Decree put Germany on the road to recovery. Out of 150 and odd legislative measures published between October 13, 1923 and February 15, 1924 about 110 were issued by the Cabinet by virtue of the two Enabling Acts and nearly 17 on the basis of Article 48. It must be said to the credit of the Stresemann government that the economic situation in Germany improved by the issue of this extraordinary governmental measures and very soon normal parliamentary system revived.

From the year 1925 to 1929 problems of Germany were somewhat peaceful as the threat of inflation and civil insurrection had somewhat settled down and the reparations problem had been also somewhat settled. The new decrees that were passed were for revoking the earlier decrees. There was a proposal to abolish

Article 48 itself, but nothing was done to do it, as suddenly differences arose in the Cabinet with regard to the amount of money to be raised for the purpose of meeting the deficit due to unemployment Insurance and the new economic situation again called for the use of Article 48.

The Brüning government which stepped into the shoes of Chancellor Müller and the other Socialists, decided on extraordinary action and they passed two emergency decrees comprising the Brüning Tax and budget programme under Article 48. The Chancellor resorted to this extreme measure to save Germany from economic prostration and parliamentary irresponsibility. But the Reichstag election proved unfavourable to Democrats, and Brüning remained in power due to the support of the Social Democrats, and within 20 months, Brüning fell back on Article 48 alone to save Germany as the Reichstag practically became *functus officio*, with the development of party strife. The decrees in this period of about 60 in number were all under Article 48, almost all intended to meet the entire economic and social needs of the stricken Reich. Finances, taxes, customs, justice, governmental organisations and commerce were all encroached upon by Article 48. On four occasions the government decrees were for preventing the collapse of public and private enterprise. Measures intended to relieve the serious economic plight of the German Municipalities, such as the reduction of wage and salaries to keep up with the subsistence level, increase of new taxes and duties reduction of war pensions and unemployment benefits etc. were all undertaken with speed. The 4th ordinance issued on December 8, 1931 completely reduced wages, rents, interest rates and commodity prices and taxation was increased. It is no exaggeration to say that the Government of the Reich was entirely carried on under Article 48. Industrial disputes were to be settled under Article 48, the guarantee to depositors of the Darmstadter Bank under liquidation, amendment of Bankruptcy laws, amendment of the law of March 1931 which helped Prussian agriculturists to throw off their debt, the modification of property, inheritance and land purchase taxes etc. were all done under Article 48.

Mr. Rossiter remarks about this development of Article 48 at page 53 of his book "Constitutional Dictatorship" as follows:—"National economy, social welfare, private business—all were sustained in these black days by this incredible programme of executive law making. Much of the New Deal Legislation of 1933 to 1936 finds its counter part in these measures. Americans who

think their Congress was blacked out in early days of the Roosevelt regime should throw a cursory glance at this German experience, and see a real example of the term 'executive legislation'. The vacuum left by the abdication of Germany's irresponsible Reichstag was filled completely by Article 48.

Germany was threatened by civil war, between Nazis, and Communists, and Article 48 was invoked to combat this new situation of internicine war between 1929 to 1932. Article 48 was made use of for the Presidential executive government by Paul Von Hindenburg who refused to consent to use Article 48, when the Chancellor Brüning wanted to carry through his programme of economic rehabilitation of Germany by interfering with vested rights, i.e., by dividing certain bankruptcy estates to aid the unemployed. As Brüning resigned due to hitch with President Hindenburg, Hindenburg ruled Germany as absolute President who was advised by a non-party cabinet responsible only to him and not to the Reichstag. Thus Article 48 was used to destroy parliamentary government, and Hindenburg proposed to rule the country by a Presidential Cabinet responsible only to himself. Thus Hindenburg transferred powers to himself to destroy the constitution.

The rape of Prussia was committed by two decrees on July 20, 1932 by Von Papen in the name of President Hindenburg, by which all the seven fundamental rights contained in the constitution were suspended in Berlin and Brandenburg, transferring the executive and police power in the area to the Reich Minister of Defence, the other appointing Chancellor Von Papen himself as Reich Commissioner for Prussia endowed with all the powers of the Prussian Government, with the avowed purpose of putting down insurrection and civil violence in the great industrial cities of Prussia. Papen intervened in Prussia and ousted Prussian Ministers by Decrees. A special Delegation was sent to Prussia and the ousted Prussian Ministers challenged this action in the Staatsgerichtshof against the Government of the Reich but the court refused to declare the whole of the Decree of the 20th July as beyond the competence of the President, but held that the Reich government was within its powers in supplanting the Brüning cabinet with a Commissioner, but held on the former question that the Reich Commissioner exercising state authority in place of the normal government had no jurisdiction to oust permanently the regularly constituted ministry by substituting for it a new delegation in the Reichstrat.

Adolf Hitler came to power on January 30, 1933 and dissolved the Reichstag and issued his Decrees on the basis of Article 48 and the New Reichstag passed the Enabling Act on March 24, 1933 making Hitler absolute in his powers.

Legal and Constitutional Aspects of Article 48

Article 48 was considered by the German people as a fourth power to be held in suspension till occasions arose and on occasions it was used combining it with other arms of state power. The area of operations for the Dictator covered the entire field of administration by the suspension of the seven fundamental rights.

The Emergency power of the Dictator was written in the Constitution itself. It was merely presidential prerogative. The ministerial counter signature of all orders and ordinances of the President was an essential feature for the exercise of emergency power. The Chancellor and the cabinet had to join with the President to employ Article 48. The positive disapproval of the Reichstag could prevent the exercise of the power.

The states could, on their own initiative, exercise dictatorial powers, as they are not agents of or subordinate to the President though Article 13 of the Constitution provided that the President might issue an emergency order suspending the state order. The states had only temporary powers for emergency. The states had to revoke their order, once the President's order entered the field. Article 48 was sparingly used by the States, but it was always successful.

The President had all the necessary powers to pass the 'necessary measures' and this was legally recognised by the German Supreme Court. The Supreme Court held that terms of the constitution alone were the limitations of the President's powers. The necessity for counter signature by the cabinet, the duty to inform under Section B the Reichstag of all the measures taken in conformity with this Article and the duty to revoke the measures upon the demand of the Reichstag were all limitations on the use of Article 48. Decrees passed by the President have been annulled or altered by the Reichstag statutes. The President could not misuse Article 48 as he could be removed by popular votes on the proposal of 2/3rd of the Reichstag, and impeached before the Staatsgerichtshof by 2/3rd of the Reichstag, for having culpably violated the Constitution or a law of the Reich, and he could be prosecuted criminally with the consent of the Reich.

The nature of the Presidential dictatorship was conditioned by its purpose of reestablishing public safety and order. The order itself was limited in regard to its duration, and in point of time, and the President was bound by his oath to observe and defend the Constitution but nevertheless the President had the power, short of altering the Constitution, to suspend temporarily a large part of it. In actual practice several articles of the constitution were transgressed by Presidential decrees. Special courts forbidden by the constitution under Article 108 were established and the independence of the judges guaranteed under Article 102 was transgressed. Several Articles of the Constitution were in effect contravened. The judgments of the German Courts upheld the constitutionality of these decrees. The President by his power of dissolution of the Reichstag virtually defeated the control of his powers.

Thus Article 48 established presidential prerogative in Germany unprecedented in history and unmatched by any political and constitutional provision in the world.

PART II

LAW OF EMERGENCY IN FRANCE AND ENGLAND

In this Lecture we shall study the emergency provisions of the two great democracies of the world — France and England.

The French emergency provisions, called the 'state of siege' have been methodically provided for in detail in the laws of the French Parliament. The state of siege historically has a military origin, as it was analogous to the situation where the Commander of a besieged fortress is conferred full powers of government. This theory was by fiction transferred to occasions of a political nature, in cases where a civil area is menaced by invasion or rebellion. The French Revolution gave birth to the doctrine of the State of Siege. The law of July 10, 1791 gave impetus to the transfer of this principle to civil and political occasions. In case of an attack by enemy troops, it was provided, that all the authority with which the civil officers are clothed by the Constitution for the maintenance of order—will pass to the Military Commanders. The law of the year August 27, 1797 declared that rebellion as well as foreign invasion could equally justify the establishment of the state of siege. The Constitution of November 4, 1849 contained the Article 106 "A law will fix the occasions in which the state of siege can be declared, and will regulate the forms and effects of this measure."

The Law of August 9, 1849 followed this, and became the foundation of constitutional dictatorship in France. Napoleon the III made use of this provision, and it was widely used during the Franco-Russian War. A new law of 1878 perfected this weapon. The two statutes may be briefly mentioned hereunder:

(1) *The law of 1878:* The state of siege can only be declared in the event of imminent danger resulting from a foreign war or an armed insurrection. Only a law can declare a state of siege. This law will designate the crimes, and departments to which it is to apply. It will fix the period of its duration. At the expiration of the period, the state of siege ceases automatically, unless a new law shall prolong its effects.

(2) In the event the chambers are adjourned, the President of the Republic can declare the state of siege, on the advice of the

Council of Ministers, but then the chambers meet automatically two days later.

(3) In the event the Chamber of Deputies is dissolved, and until elections shall have been entirely completed, the state of siege can provisionally be declared by the President of the Republic.

Nevertheless in the event of a foreign war, the President, on the advice of the Council of Ministers, can declare the state of siege in the territories invaded by the enemy, on the condition that he convoke the electoral colleges and reassemble the Chambers with the shortest possible delay.

(4) In the event that connections with Algeria are interrupted, the Governor can declare all or part of Algeria in a state of siege, under the conditions of this law.

(5) In the occasions foreseen by Articles 2 and 3, the Chambers as soon as they shall have re-assembled shall maintain or lift the state of siege. In the event of a disagreement between them, the state of siege is lifted automatically.

(6) Articles 4 and 5 of the law of August 9, 1849 are hereby maintained, as well as the provisions of its other articles not contrary to the present law.

The provisions of the Law of 1849

(7) As soon as the state of siege has been declared the powers of the Police and those others with which the civil authority has been clothed for the maintenance of order pass in their entirety to the military authority. The civil authority continues nevertheless to exercise those of its powers of which it has been dispossessed by the military authority.

(8) The military courts may take jurisdiction over crimes and offences against the safety of the Republic, against the Constitution, against public peace and order, whatever be the status of the principal perpetrators and their accomplices.

(9) The Military authority has the power (i) to conduct searches in the homes of the citizens by day or night, (ii) to deport liberated convicts and persons who do not have residence in the areas placed in the state siege, (iii) to direct the surrender of arms and munitions, and to proceed to search for and remove

them, (iv) to forbid publications and meetings which it judges to be of a nature to incite or sustain disorder.

(10) Despite the state of siege, citizens continue to exercise the rights guaranteed by the Constitution whose enjoyment is not suspended by the preceding Articles.

(11) Following the lifting of the state of siege, the military courts continue to recognise crimes and offences over which they have already assumed jurisdiction.

Thus as mentioned by Sieghart "The promise contained in Article 106 of the Constitution of 1848 was implemented by the law of August 9, 1849, which together with the laws of April 3, 1878 and April 27, 1916 forms the basis of the State of siege in Modern France."

Thus the state of siege can be declared only in the event of an imminent danger of war or internal disturbance and *Parliament* alone has authority to declare it. The President can declare the state of siege when it is proposed by the ministry and Parliament is not in session, but Parliament, without summoning by the President, must in its own right meet within two days and decide whether it is to be continued or not. Any lack of agreement between the Houses on the question will end the stage of siege. There must be a time limit for the state of siege, which, if not extended, lapses on the due date. During this period, constitutional guarantees of individual rights are suspended, submitting the civilian population to military law. In later sieges, the time limit in modern times has not been observed as on August 2, 1914, the Presidential decree contained no time limit.

The state of siege is much more restricted in character than Article 48, and there is no provision in the state of siege when there is an armed rebellion at the time of the dissolution of the Chambers.

The state of siege by Article 7 delegates police powers to the army. The military arm is given liberty to infringe fundamental rights of French citizens. Thirdly the military courts are authorised to assume jurisdiction over all crimes and other offences against the security of the republic, the constitution, and the public safety and order. An ordinary citizen committing a public crime comes under the jurisdiction of a court martial, in areas covered by the state of siege. The cabinet is given extraordinary

powers of superintendence and decree. Otherwise the legislative competence of Parliament is unaffected.

The state of siege must be initiated by Parliament and is subject to the approval of Parliament. The law of 1878 defined the direction as well as the space within which it should be exercised. The responsibility of the Cabinet to Parliament continues, and acts as a deterrent upon arbitrary executive action. Parliament has always the right to formulate the state of siege. By convention, the Chambers are to remain in session during the state of siege. The courts of law (civil) do not provide any remedy for the state of siege, and being treated as a political question, is not subject to judicial review. The subject can question only, and that not quite successfully in the *cour de cessation* or *conseil d'etat* which might cancel any measure beyond the competence of the official.

The stage of siege comes to an end at the end of the term, unless extended by Parliament, or previously terminated by Parliament. The President has no power to terminate the siege by decree, once declared, even if Parliament is not in Session, and the President cannot dissolve or prorogue Parliament at the time of operation of the state of siege. Parliament can delegate the power to end the siege to the President.

The state of siege was made use of in the First World War between 1914-1918. President Poincare of the French Republic placed the country on August 2, 1914 in a state of siege. The whole country was covered by the state of siege, there was no time limit, there was provision for Presidential suspension and re-establishment, all provisions entirely different from those of 1878. This continued till October 12, 1919 in all its reality until normal conditions were restored by the ministries of Interior and War, restoring normal police powers to the Prefects and Mayors. In actual civil administration, there was a collaboration between the civil and military authorities. Paris was completely under military rule in September 1914. The Prefector Government got back its power only on the retreat of the Germans, and the return of the national government from Bordeaux.

Military courts came to function on the outbreak of war. Summary procedure and penalties suitable to the emergency was instituted. Army courts were established in each district and special courts too were constituted. The *Conseils de Revision*

was a court of appeal from this court. And to the extent that the military tribunals exercised jurisdiction, the power of the Army courts was excluded. The decrees of August 10, and September 8, 1914 extended the siege to the whole of the country. And the procedure of Court Martial (Summary procedure) was extended throughout. The French legislature reconsidered the situation after the retreat of the Germans. Two decrees on 17th December 1915 and April 18, 1916 restricted the scope of the military power to crimes strictly within their jurisdiction. The decree of April 22, 1917 defined the crimes so as to include all crimes or offences interfering with national defence like espionage, treasons, communication with the enemy etc. The siege ended with a decree of December 24, 1918.

The French state of siege was used with great caution, in that civil liberties were not invaded excepting in cases of direct necessity, and the higher authorities always kept a close watch on the situation. But the courts had really no power to review their actions. Only in a few cases the *Conseil d'Etat* or the *Cour de cessation* declared the activities of the military as being in excess of power. (Vide 'Executive Discretion and Judicial Control' by C. J. Hanson.)

The privacy of the dwelling house (domicile) was invaded by the special summary search and seizure. Freedom of assembly and the press were prohibited. Freedom of person and trade were also restricted, by curfew hours, rationing of food and other articles and business hours. Rights of labour like the right of strikes were also restricted.

Among the great belligerent states, it was France which passed through the crisis, while remaining more faithful to its traditions and its constitutional principles. The French Parliament not only was not affected, but played a vital role in the war effort.

The first six months of war witnessed the abdication of parliament, and granting of Decree powers to the cabinet to rule the country for the period of the crisis. The President prorogued Parliament, though a violation of the constitution on Sep. 7, and until January, there was no sessions of parliament. Parliament asserted its position, and determined to carry on the rest of the war in a more constitutional manner. The French parliament accelerated its legislative activities, without surrendering its ascendancy in the field, or its right to debate thoroughly any vital subject.

Powerful committees, on the budget, navy, army and foreign affairs exercised control on the ministry. Parliamentary control of government activities was duly strengthened. The law of April 27, 1916 controlled the military courts, the instructions of September 1915 restored powers of police to the civil authorities in the Interior. Military plans were subjected to civil control.

The history of the relations between cabinet and parliament during the war, shows, that for the first six months the cabinet governed the country without any parliament, and later parliament asserted itself over the cabinet. A powerful minister like Clemenceau asserted his position.

The cabinet working the state of siege, was clothed with all legal authority as regards its executive act and was conferred in many cases express grant of powers of emergency legislation by Parliament. Only particular delegation of power intended to meet special situations was given, and in no case was a general delegation of power to enact all measures required by national defence granted by parliament. The cabinet was authorised to facilitate the performance or suspend the effect of, commercial or civil obligation i.e., to order a moratorium in general interest, as well as to sanction loans for the purpose of national defence, by decrees validated by the Conseil d'Etat. The price-fixation of important commodities was one form of delegated legislation. The cabinet was empowered by a statute of Feb. 10, 1919 to regulate by decrees during the war and the six months following the cessation of hostilities, the production, transport and sale of produce serving as food for men and armies and decrees under these statutes were to be ratified by Parliament within one month.

During the non-parliamentary period in 1914, the number of decrees passed by the cabinet actually invaded parliamentary sovereignty, and competence to enact legislation, and the cabinet passed emergency legislation contravening the Constitution and the law. Several instances could be enumerated, and unconstitutional illegal decrees were later on ratified by parliament on the ground that parliament itself would have enacted them for the purpose of emergency if it had been in session, and some of these decrees were vacated by courts. It illustrates that the French executive in the absence of parliament and in the days of the French Republic, forgot the law and the constitution for the purpose of meeting the emergency.

The military in France despite this, was always available to control by the parliament and the cabinet. The whole of French economy was placed under an emergency Socialistic control of production and distribution, in regard to industries.

The state of siege was not declared between 1919 and outbreak of the Second World War (1939). The state of siege was not adapted to uses in economic crisis as was Germany's Flexible Art. 48.

Between 1919 and 1939, emergency legislation was handled by the cabinet by delegation from parliament. France took to the Enabling Act to remedy the economic ills following the cessation of hostilities, just like Germany, who took to Art. 48. Cabinet was substituted to Parliament for the period, in actual practice, and delegation of legislative authority to the cabinet was done by simple statute. The two Chambers had to pass the Enabling Act. The Enabling Act was dedicated to a single purpose with a time limit. Usually it was laid before Parliament and approved, but in actual practice it was a mere formality though positive refusal to ratify voided the decree and all acts taken under it remained valid. These decrees could alter existing law, but could not themselves be altered or repealed, except by the express vote of parliament. They were subject to review by Conseil d'Etat but rarely they were upset as courts held them to be political in nature. Parliament by thus delegating its power to the cabinet acted as authorising its agent to legislate in its place, but it has always the authority to withdraw such delegation. Only coalition cabinets, national in character, wielded the power.

In 1924 France was seething with economic distress, due to collapse of the Franc, and Poincare was immediately concerned with the solvency of the State. The law of Poincare on Jan. 17, invested the cabinet with power to issue decrees having the force of law with a liability to submit them to parliamentary approval within six months. The Bill first opposed, was finally passed. But there was no occasion to use it due to the reservation of Poincare ministry.

The succeeding Ministry wanted to prevent economic crisis worsening, due to the fall of the Franc, and requested for emergency powers, and not being able to achieve it, resigned, and once again gave place to Poincare, whose Enabling Acts of August 3, 1926 authorised his government to introduce radical administrative reforms in the interest of national economy and these changes were to be ratified by parliament. In fact none of them were ratified

(We are reminded of the absolute powers used in regard to Art. 48 in Germany where similar legislation was not passed ratifying Art. 48). The law of Feb. 28, 1934 gave the Government the power to take all measures necessary to balance the budget. The method adopted was one of deflation to attack the depression. The law of June 8, 1935 authorised the new Laval ministry to avoid monetary devaluation, and issue decrees having the force of law, designed to prevent speculation, and to defend the Franc. Laval government issued more than 500 decrees under the above head. Reduction of public salaries and pensions, reduction of interest on Government securities, rents and utility rates were fixed. There was opposition all round to Laval's measures and the next ministry repealed them. But soon the economic situation worsened, and the Blum ministry asked for an Enabling Act to devalue the Franc and raise taxes. Thus the Enabling Act became a permanent source of emergency device. The law of June 30, 1937 gave the Government power to take all measures to suppress the weakening of public credit, to fight speculation, to advance economic recovery, price control, budget balancing etc., and Blum again resigned.

Daladier's Government got complete power to supplant Parliament with decree power vested in themselves in order to fight the totalitarian states, and the normal proceedings of parliamentary government were suspended. The Daladier cabinet was authorised to adopt all measures necessary to both national defence and economic recovery. The cabinet virtually assumed all parliamentary powers to regulate public utilities, local finances, co-ordination of transportation, customs duties, housing, agriculture, and the actual defence effort. The Daladier decrees regulated labour hours in industries, and government resorted to decrees as emergency measure.

The German War necessitated the passing of the law of March 1939 to take all measures necessary for the defence of the country. The Fourth Enabling Act was passed after the war broke out in December 8th, 1939. The Government was authorised to take by decrees, considered and approved in the council of ministers, measures enjoined by the emergencies of national defence, which have to be ratified within one month or at the first meeting of the Chambers. Thus a permanence of delegated emergency power was written into the French Constitution.

On July 10, 1940 the two houses of French Parliament sitting as a National Assembly passed an amendment to the constitution of

1895 which conferred unlimited powers on the government of the Republic for the purpose of making a new constitution. As Sieghart says at page 193 "The principle of delegation of legislative powers which, as we shall presently see, have been widely used in the field of ordinary legislation, was now applied in order to transfer the constituent power from the National Assembly to the Head and Government of the State. By passing this law, the French Parliament performed in fact an act of abdication and created a dictatorship of the executive by constitutional means. But the Assembly, in order to satisfy the fundamental requirement of popular sovereignty, attempted to put one restriction on the exercise of these otherwise unlimited powers. It prescribed a ratification of the new constitution by popular votes. By disregarding this provision the Government of Vichy broke the last link which attached it to the Constitution of the 3rd Republic and turned itself from a *de jure* into a *de facto* government."

Marshal Petain issued decrees based on the law of July 10, 1940 though no new constitution was evolved, by which the two offices of President of the Republic and the President of the Council of Ministers were united into one, and the head of the State enjoyed executive, legislative and judicial powers, with regard to ministers and high state dignitaries. The President-Prime Minister was assisted by a Consultative Assembly appointed by Marshal Petain.

In 1942 the two offices were split asunder, and the National Council was reorganised to give it a more representative character but this was never carried out. After the liberation of France, the provisional government of the Republic succeeded the Vichy Government, and on August 9, 1944 declared by an ordinance that all legislative acts of Marshal Petain were null and void.

On October 21, 1945, the French people were called upon to elect a new representative assembly, and the electors by an overwhelming majority, decided to have a constituent assembly, and the first constitution being rejected, a second constituent assembly came into being, and enacted the constitution of Oct. 27, 1946, which is the 4th Republic. The Prime Minister has the prerogatives of the President from which he has been deprived. The Prime Minister exercises the ordaining power, appoints the military and civil functionaries and disposes the armed forces. He as well as the members of parliament, have the right of initiating legislation. The Constitution also empowers him to delegate all or a part of his functions to another ministry. The Constitution is dictatorial, but

the National Assembly predominates as it has the legislative and constituent power. The transfer of the ordaining power from the Head of the State to the Prime Minister is apt to strengthen the Prime Minister's position, though any delegation is expressly forbidden by the Constitution. The predominance of the assembly over the Government is, the starting-point of a new venture in constitutional government in France.

The Law of Emergency in Great Britain

The history of Parliamentary Government in England is one of peaceful evolutions, unhampered by frequent aggressions and rebellions, depressions and periods of anarchy, and that accounts for a lack of regular institutions of emergency governments like the state of siege in the continent or Art. 48 of the German Republic. The British Cabinet had internal strength to meet any situation.

"The clue to the slow constitutional evolution of Britain lies in the permanence of the Crown, which as the text books insist, never dies."

The above words of Stannard in his Book "The Two Constitutions" at page 6, are followed up by what he calls as the development of precedents as an essential nature of English Parliamentary system, and as all government centres in the Crown, it is impossible for the Crown to discharge all its business itself, but has perforce to entrust it to one of its servants, and this policy required the Crown to be consistent with its delegation. This "entrustment" was followed by certain customs which guaranteed the subjects against oppression by the state, and came to be called the rule of law. The process of transfer of power from the Crown to its servants has been gradual, a matter of usage hardening into a rule, and this came to be called convention which regulates the operation of the constitution. The Crown gradually lost its veto power over legislation as a result of the constitutional struggles of the 17th century which transferred power from the Crown to Parliament and from Parliament, to Government by Ministers responsible to Parliament.

In the last 30 years of the 17th century, the situation was realised that the King could not administer public affairs with their growing complexity, without the daily assistance of a Body of Councillors and, that the administrative work of those Councillors required the confidence of Parliament if it should be effective. There should be unanimity of views among the Councillors, and they should not mutually fight. They should be responsible to

Parliament and the Crown. This was achieved by making the Crown appoint ministers from the largest party in the House of Commons who commanded its confidence, and make the ministers resign as a body when they forfeited the confidence of the House. Thus ministerial responsibility was achieved.

Thus Representative Government which is also responsible to Parliament, and thereby responsible to the people, was achieved by the development of the Cabinet system founded on the party system. The Bill of Rights put an end to the suspending and dispensing power of the King, and the ordaining power of the Crown whether by statute or by prerogative was prescribed by law, and bound by law, and recognised as a sort of subordinate legislation. The King in Council became subordinate to the King in Parliament. The King could no longer levy any taxes or suspend laws without the consent of Parliament. The Long Parliament abolished the Court of Star Chamber and all other prerogative courts. The Act of Settlement went a step further, and enacted that the judges should hold their office during good behaviour instead of during the pleasure of the king, and that they should be removable upon an address of both Houses of Parliament only. It thus provided security to the Judges so that they can be independent in their judgments.

The 18th century thus contributed to the development of the rule of law, as expounded by Dicey in his book "The Law of the Constitution." Dicey says that the British constitution rests on two pillars, the sovereignty of Parliament and the Rule of Law and this question is relevant to the present question of the power of the executive to issue ordinances in emergencies.

The principle of Parliamentary Sovereignty is stated by Dicey thus:—Any act of Parliament or any part of an Act of Parliament, which makes a new law or repeals or modifies an existing law, will be obeyed by the courts. The same principle looked at from its negative side may be thus stated. There is no person or body of persons who can under the English Constitution, make rules which override or derogate from an Act of Parliament, or which (to express the same thing in other words) will be enforced by the courts in contravention of an Act of Parliament.

Thus absolute parliamentary sovereignty, subordinates Ordinance which is non-parliamentary. This principle subordinates executive to the legislature and ordinance to statute. An Ordinance is valid only so long as it does not contravene a statute. The Ordinance is either creature of statute law or prerogative. Created

by statute, it is delegated legislation. The Prerogative Ordinance is based directly on the Constitution, and is direct legislation but is subordinate to Parliament in the same way as common law is subordinate to statute law. The Prerogative right of Ordinance, though at one time claimed as equal to statute law, has now been kept on a weak position, and is liable to be overruled by Parliamentary statute. This has brought the executive to the position of subordination to the legislature.

As a result of the Revolution of 1868 and the Bill of Rights and Act of settlement, the prerogative powers of the King were severely restricted. Parliament has established their right of assuming central control. The link between the prerogative rights of the King and the Sovereignty of Parliament emerged in the form of cabinet government. The development of Party System and Joint responsibility among the ministers added control to prerogative powers. The Ministers are in control of the King's prerogative. In the 18th century, Parliament kept control of both local and central administration. The State was concerned only with the responsibility of defending the country against internal and external enemies. Questions of defence, administration of Justice and Police protection etc., were the main objects of administration, but in the modern State the conception has changed, and the State now regulates the economic factors of the daily life of every citizen, and perforce it must have more powers to deal with crucial questions of the day, and therefore the Cabinet gradually has begun to control Parliament.

Dicey's Rule of Law is opposed to the rule by prerogative Ordinance. According to him, the Rule has three meanings:

(1) "In the first place, it means the absolute supremacy or predominance of regular as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the Government. English men are ruled by the law and by the law alone, a man may, with us, be punished for breach of the law, but he can be punished for nothing else.

(2) "It means again, equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts;- The 'Rule of Law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals:—There can be with us nothing really corresponding to the administrative law (*Droit*

Administratif) or the administrative tribunals of France. The notion which lies at the bottom of the administrative law known to foreign countries, is that affairs or disputes in which the Government or its servants are concerned are beyond the sphere of the civil courts, and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs.

(3) "The 'Rule of Law' lastly may be used as a formula for expressing the fact, that with us, the law of the constitution, the Rules which in foreign countries naturally form part of the constitutional code, are not the source, but the consequence of the rights of individuals, as defined and enforced by the courts, that in short, the principles of private law, have with us been, by the action of the courts and parliament, so extended as to determine the position of the Crown and of its servants." Thus the Constitution is the result of the ordinary law of the land. While Dicey's dictum is partially true, he fails to see the other side of the picture, and the exceptions to his rule developed by necessities of the time.

The absence of prerogative rights, and the prevalence of ordinary law have prevented arbitrary acts, but whenever urgent necessity of the state makes immediate government action imperative, such action in England has been recognised from times immemorial as capable of overcoming constitutional limitations. The capacity of the State to meet emergencies is a principal necessity for survival of any constitution. In England, the right of the King to make the Statute of Proclamations was based on emergency. The right of the king to levy ship money was based on emergency, by the judges who decided the case. Cromwell proceeded to govern on emergency powers granted by the Instrument of Government.

The conception of emergency has varied throughout the ages. The medieval state was concerned only to maintaining peace, combating enemies and administering justice, when the emergency was either, rebellion, war or invasion, but the duties of the modern state have widened, and the role of the administrator to cope up with emergencies has also widened.

It became the duty of the cabinet to take appropriate action in times of emergency, and then to defend the measures undertaken before Parliament, which will pass an Act of Indemnity ratifying ordinances or actions even though illegal. The first duty of the

Government is to act and protect the interest of the people in the case of emergency.

The 19th century witnessed the rise of Benthamism and preachings of John Stewart Mill, by which democracy reached a wider conception. The three Reform Acts had one by one widened the representative element of democracy and the initial problems of the Industrial Revolution gave rise to a clamour for social justice. Thus Democracy which was most sought after as a method of creating the social order, itself underwent a widening of content, when equality was put in the forefront of the democratic ideal. Protagonists of the ideal of the New Democracy were least concerned with the manner by which equality was to be achieved, i.e., whether it is by peaceful means or by revolution, and this New Democracy was styled as the Dictatorship of the Proletariate, which is a synonym for an emergently devised political mechanism, intended to subserve economic ends with a view to achieve social justice or equality. The collectivist theories of the state transplanted themselves in fields governed by private enterprise, as a result of the re-orientation of the democratic ideals. The doctrine of private right lost its value, and in its place the functional approach to property was recognised. The State thus had to undertake the heavy task of assuming ultimate responsibility for social welfare. As Edward Corwin in his book "Constitution of Powers in a Secular State" at page 2 says "In general terms our system has lost resiliency, and what was once wanted as a constitution of rights, both state and private, has been replaced by a constitution of powers."

The above observation of Corwin in regard to the American Constitution applies also to the English Constitution governed by Parliamentary Sovereignty.

The Atlantic Charter and Articles of The United Nations, regarding human rights etc., are products of the new theory of state responsibility and paternalism. Dicey himself has noted the connection between Benthamism and Collectivism. "The more there is of the more, the less there is of the less"—a Spanish proverb repeated by Dicey, and intended to signify, that greater the intervention of Government, the less becomes the freedom of the individual.

As a result of the new theories of welfare state and state socialism, government had to delegate various functions to various

bodies, and various ad hoc administrative bodies came into existence, like Commissioners of Sewers, Turnpike Trusts, Improvement Commissioners, Statutory Corporations for the administration of the Poor Law and various Acts were passed in relation to the Poor Law (1834), the Public Health Act of 1848 which is noteworthy. The Local Government Board took over in 1871 the functions of the Poor Law, and The Public Health Act of 1875 took general control of all local activities. The Factory Legislation of 1848 to 1850 marked the beginning of state interference to improve the living standards of workmen in an industrialised society. England had thus a highly centralised administration by the end of the 19th century. But England sought the cooperative methods and not the method of regimentation, command or compulsion of the Collectivist States.

The Public Corporations to which the operation of public utility services, the management of nationalised basic industries and the running of social services, have been entrusted, are a new type of statutory authorities which have been successful from the end of the 19th century. The Port of London authority, the Central Electricity Board, The British Broadcasting Corporation and the London Passenger Transport Board are all examples. These public Corporations have developed in efficiency and they have begun to regulate important sections of the economic, industrial and social life of England in the 20th century. Public Corporations have the initiative of private enterprise while abolishing the motive of private profit. They are managed by the Minister. There has been increase in departments of Central Health, Education, Public Health, etc. New appointments under The Crown Emergency Appointment Act of 1939 have also been made.

In England the new dogma of the Social Service State and the problems arising in the wake of the two World Wars have been responsible for increase of administrative authorities, the consequent increase of delegated legislation and the need for planning. We shall discuss in detail, towards the end of this lecture, the aspects mentioned above; but one thing might be remarked in passing, that it should be remembered, that planning implies the assumption by the State of responsibility for the organisation of all labours of society, in order to direct them towards an ultimate social end. Planning implies the necessity to determine in advance the means as well as the end of social justice and thereby has to control both production and distribution. Priorities have to be determined in planning and it may not be possible to provide for

all contingencies at the same time. Economic legislation as a result of planning implies therefore decision between competing and conflicting interests and this can be achieved only by giving absolute authority to a few people who have to vary and adjust the plan according to emergencies. Thus planning which is resorted to in an emergency to save the nation's economic structure and thereby its political stability, transfers powers from a democratic legislature to an absolute executive but the planning executive may become responsible to Parliament if they are assisted by committees chosen from non-official experts and organisations not based on any party predilection, and whose decisions if necessary may be subject to negative and affirmative Resolution procedures as are followed in England. Planning as such, is an economic national necessity of modern times and instead of condemning it, it should be the policy of all States to encourage it and regulate its being carried out under Parliamentary safeguards.

Thus England of the 20th century, as a result of the two Great Wars and the economic depressions of the thirties of this century has resorted to emergency measures of both temporary as well as of a permanent nature, and we shall consider hereunder in detail the various forms of emergency measures legally adopted by her.

Despite the hatred of the English people towards institutions of Constitutional Dictatorship like the state of siege of France as evidenced by Dicey's ridicule of French Institutions, the postwar problems in England led to the passing of emergency statutes like the Emergency Powers Act of 1920. John Locke in his book on civil government characterises this emergency power as "the power to act according to discretion for the public good without the prescription of the law and sometimes even against it." The administrator bases his actions either on royal prerogative or on the common law. Any illegal action taken for an emergency is usually ratified subsequently by Parliamentary Act of Indemnity.

Forms of Emergency Power.

The administrator bases his action either on Royal Prerogative or the Common Law when he acts in an emergency. Any illegal action taken for an emergency is usually ratified subsequently by Parliamentary Act of Indemnity. An example of such action arose due to acute food shortage in England in 1776 when the King on the advice of Pitt and his ministers consented to the promulgation of a Royal Proclamation laying an embargo on ships laden with wheat and flour, in contravention of existing law. Paramount

necessity justified this illegal act which was later validated by Act of Parliament.

Statutes authorising emergency action were undertaken in the latter part of the 19th century like The Telegraphic Act of 1863, Wireless Telegraph Act of 1904, giving the government power for controlling means of communications and take them over, the Regulation of the Forces Act of 1871 authorising the nationalisation of the railroads, the Bank Holidays Act of 1871 regarding the closing of Banks, the Customs Laws Consolidation Act of 1876 regarding importation of goods, Customs in Inland Revenue Act of 1879 and The Exportation of Arms Act 1900 to forbid exports.

In the case of invasion or insurrection, the usual thing was to declare Martial Law by which civil rights are suspended, Military courts are established for civilian crimes, and Police rule is substituted by Military Rule. Martial Law anyhow has not been in vogue for the last 20 years in England though it is recognised as one of the forms of emergency power.

Procedure of Martial Law

Martial Law is defined by many writers as a common law right of repelling force by force in case of invasion or insurrection and it justifies acts of illegality to encounter and repel invasion or rebellion, and subsequently an Act of Indemnity is passed to condone actions taken in exercise of Martial Law which might be illegal and condemned by courts.

The Government may wield arbitrary powers of police to quell disorders, arrest and detain without trial citizens taking part, suspend the Writ of Habeas Corpus, punish them, institute searches and seizures without warrant, forbid public assemblies, institute summary trials in the same way as a General governs a besieged fortress.- do everything sanctioned by the emergency. The Officer acting in pursuance of Martial Law is bound to carry out all such acts. Otherwise he will be liable for criminal prosecution for failing to do all that is reasonably expected from a man of ordinary prudence under the circumstances. Under Martial Law, the Special Courts like the Courts Martial will ordinarily be instituted. They are really not courts but administrative organs helping the restoration of order. The authorities might choose to punish and execute without any trial. They may instead choose to entrust the trial to Special Courts. The procedure is discretionary, and they are expected to act in accordance with the principles of

justice, honour, humanity and the laws and usages of the war. They cease to function as soon as order is restored in the country. The Petition of Right requires the handing over of citizens after the rebellion is quelled, to the civil authorities. Martial Law may be resorted to only in great emergencies in England in future like an atomic war. Ordinarily the institution of Martial Law has gone out of use in England.

War and Delegated Legislation

The history of English liberty during the two great Wars is one of infinite elasticity of cabinet government, and the aptitude of the English people to adjust themselves to any crisis. England made use of every method of emergency power including Royal Prerogative. The Postponement of Payments Act, by which a month's moratorium was passed in payment of Bills of Exchange, and Trading with the Enemy Act are instances. In 1918, August 4, a Royal Proclamation was given to the people of England in which the fidelity and obedience and aid of the people was sought for. Of the innumerable acts passed by Parliament during the War, the renowned Defence of the Realm Act of August 8, 1914 is a noted example. Government was given broad delegated powers of legislation. The Defence of the Realm Act virtually established a state of siege. The main provisions of the Act are :—

(1) His Majesty-in-Council has power during the continuance of the present War to issue regulations for securing the public safety and the defence of the Realm, and may by such regulations authorise the trial by Courts Martial or in the case of minor offences by courts of summary jurisdiction, and punishment of persons committing offences against the regulations.

(2) It shall be lawful for the Admirals, Army General or Colonel or the Member of Munitions—

(a) to require that there shall be placed at their disposal the whole or any part of the output of any factory;

(b) to take possession of and use for the purpose of His Majesty's Naval or Military or Air Force service any factory;

(c) to regulate or restrict the carrying on of any work in any factory or to regulate and control the supply of metals and materials that may be required for any articles for use in war and regulations under this Act may be made accordingly.

(3) For the purpose of the trial of a person for an offence under the Regulations by Court Martial and the punishment thereof, the person may be proceeded against and dealt with as if he were a person subject to military law; provided that when it is proved that the offence is committed with the intention of assisting the enemy, a person convicted of an offence by Courts Martial shall be liable to suffer death.

(4) For the purpose of the trial of a person for an offence under the Regulations by a Court of ordinary jurisdiction the maximum penalty which may be inflicted shall be imprisonment—for a term of six months or a fine of 100 pounds or both—, but any aggrieved by a conviction of a Court of Summary Jurisdiction may appeal in England to a Court of Quarter Sessions."

The two Wars have seen the growth of Cabinet legislation instead of Parliamentary legislation as there was the need of seeking the confidence of the people by vote to many ordinances passed by them. Both Mr. Asquith as well as Mr. Lloyd George in 1916 enjoyed the absolute confidence of the people. The D O R A regulations are omnipotent. The regulations authorised derogations from existing law with all impunity. It was in the leading case of *The Attorney General Vs. De Keyser's Hotel* (1920) Ac. 508 it was decided that the D O R A gave absolute authority on the strength of delegation under the Act and the powers of emergency were not governed by Crown's existing prerogative. "His Majesty-in-Council has power during the continuance of the present War to issue regulations for securing the public safety and the defence of the realm" and the Crown was empowered to do almost anything for the prosecution of war except spending and tax. Parliament always agreed to give Government the power to spend and tax. The defence regulations are enormous and we need not go into all of them. The D O R A is the basis for all kinds of administrative decrees. Famous authors like C. T. Carr and Anson have considered the validity of these regulations. C. T. Carr in his lectures on Administrative Law published in 1941 advocates certain safeguards to be observed in the matter of these regulations :—

- (1) The delegation should be to a trustworthy authority commanding the national confidence;
- (2) There should be a definite limit imposed on the field of delegated legislation and the courts should scrutinise it;
- (3) There must be a prior consultation of interests affected by such delegation.

- (4) There must be strict publicity given to the rules made under statutory power, defining also the object and scope of such delegation.

In times of emergencies, further limitations and safeguards to the exercise of power ought to be imposed. Mr. M. C. Setalvad, the Attorney-General of India and Chairman of the Indian Law Commission in his book "War and Civil Liberties" at page 77 considers the above points and remarks thus:—

"If it is intended that the authority to whom a delegation is made should be competent to make a further delegation of its function, the legislative authority should specify the bodies or officers to whom such sub-delegation could be made, taking care to see that they are bodies or officers in whom trust could be reposed."

Secondly conditions should be imposed on the exercise of the delegative powers and these conditions may in appropriate cases be objective, so that the power is to be exercised only in the event of certain facts being ascertained."

Mr. Setalvad is of opinion that in real emergency the conditions may well be subjective. The authority in whom delegation is to be made should be worthy of confidence to be reposed in him and all proposals for bylaws and regulations should be submitted to the legislative body for approval, and in the case of emergencies of a serious nature, the legislation or regulation may lie on the table of the House for a certain number of days and in the absence of disapproval, should take effect on the lapse of a fixed number of days. A Special Committee to scrutinise these regulations from time to time may also be appointed as recommended by the Committee on Ministers' powers. Legislation on matters of principle should ordinarily be made by the legislature. It is only the details to be worked out that must be left to the executive.

In some cases, there has been not merely delegation of power to legislate on principle, but also the power to legislate having the effect of abrogating existing law, and the executive in the exercise of this power have trampled down freedom of person and property of the subject and recourse has been made to the provision of ousting the jurisdiction of court in respect of his claims to liberty of person or property.

Delegation of judicial functions or quasi judicial functions has been attended with great injury to the freedom of the individual. In such cases, conditions must be imposed on the exercise of the

power and the person to whom authority is delegated should be a competent man who can command the confidence of the public and provision should be made to control the judicial power of the executive authority by associating him with lawyers or retired judges who by their training could view things dispassionately. There should also be a regular code of procedure as in the Administrative law of France, with rights of appeal, fixing the conditions of the hearing and application of the principles of natural justice to such disputes, giving the liberty to the individual to be heard with the advice and assistance of Counsel and with liberty to produce witnesses and documents in support of his defence. The executive authority should give valid reasons in his judgment showing the method of his reaching particular conclusions. In the case of emergency legislation particularly, the executive authority must be made finally to submit his decision to an appellate authority consisting of competent men of character and experience before final action is taken on the matter.

Emergency Delegation

John Willis in his book 'The Parliamentary Powers of The English Government Departments' at page 5 says:

"A long period of imperceptible growth, a quickening to meet the felt needs of the New Social State, a sudden flowering during the War, and after the war the full fruition—Such is the history of delegation in England, not difficult to trace out after the event, but except for a voice here and there crying in the wilderness, disregarded in its making by Lawyer and Statesman alike."

In England the delegation of power to the executive to meet emergencies is known as early as 1710 when the Queen was authorised by an Act to make Rules and Orders and Directions about Quarantine and notify them by Proclamation. It was the plague in the Balkans that prompted this measure. In 1832 an Act gave power to the Privy Council to make Regulations for preventing cholera epidemic. The Diseases of Animals Acts and The Public Health Acts of 1875 to 1936 are examples.

The Defence of The Realm Acts and Defence of The Realm Consolidation Acts of 1914 provide for extraordinary powers during the emergency and have been continued for three years after the war. Some of the Regulations have been challenged by the Courts as in *Chester Vs. Bateson* (1920) 1 K.B. 829; *New Castle Breweries Vs. King* (120) 1 K.B. 854. The leading case upholding the regula-

tions issued under DORA is *King Vs. Halliday* (1917 A.C. 260). The order in Council issued under DORA were as little subject to judicial review as ordinary laws of Parliament.

The War Cabinet of Lloyd George took stringent measures for the prosecution of the War. The collective responsibility of the ministry was given the go-by, though the War Cabinet as such was collectively responsible.

England patiently submitted to the most dictatorial abridgement of liberty. Regulation No. 55 empowered "any person authorised for the purpose by the Competent Naval or of military authority to arrest without warrant any person whose behaviour is of such a nature as to give reasonable ground for suspecting that he is acting or has acted or is about to act in a manner prejudicial to public safety or defence of the Realm" or 14 B permitting the Government a somewhat circumscribed power of detention of persons of "hostile origins or associations". Public assemblies were controlled by the military. The right of seizure and search invaded the sanctity of domicile. No warrant was necessary for seizure or search. Freedom of speech and the Press were equally controlled. The right conferred by the Magna Carta, the Petition of Right, and the Bill of Rights were relegated to the background. Trial by Jury was given up, and trial by Courts martial, or in minor offences by courts of summary jurisdiction, became the regular feature of the administration. Death sentences were awarded by the Defence of Realm Act of November 27, 1914 to those offences committed with the intention of assisting the enemy. Habeas Corpus was suspended, but in as much as Regulation I of DORA provided that ordinary civil offences will be dealt with by the civil Tribunals in the ordinary course of law, the regular civil courts adjudicated disputes which were not flagrant offences against the State. An amendment to the DORA on March 16, 1915 gave the accused the benefit of trial by Jury. The labour were denied the right to strike and the Labour Unions co-operated in the task.

The result of this extraordinary emergency Government resulted in the vigorous control and management of privately governed and operated industries and the new role of State intervention in Railways, Coal, Mining, Steel, Munitions, and other industries paved the way for British Socialism. Food, Textiles, Transport, Mines, Munitions etc. became the chief domain of State Control.

The declaration of peace did not alter very much the psychological as well as economic factors of the country which required the conferment of emergency powers on the executive, in time, for passing the emergency powers. This Act empowered the Crown to declare by Proclamation a state of emergency whenever it appears to His Majesty that any action has been taken or is immediately threatened by any person or body of persons of such a nature and on such extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel or light or with the means of locomotion to deprive the community or any substantial portion of the community of the essentials of life (Section 1) the Crown is given the right to issue regulations for securing the essentials of life to the community on the declaration of emergency and the Crown can delegate these powers to Government departments and other competent persons (Section 2 (1)). The duration of the emergency is one month till it is extended. The regulations should be laid before Parliament as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are laid unless a resolution is passed by both Houses providing for the continuance thereof. (Section 2 (2)). Provisions are also made for the meeting urgently of Parliament at the time of emergency. The regulations should be considered as if enacted in this Act, and have the force of law. They do not come under the provisions of Section 1 of the Rules Publication Act of 1893. They may be altered or revoked either by a resolution of both Houses or by a new regulation. Section 2 (4).

The Rules Publication Act of 1893 required that 40 days notice of the proposal to make the rule and of the place where copies of the draft rule may be obtained, should be given antecedent publicity in the London Gazette. Section 2 of the same Act provided that due to urgency or any special reason, the authority has a power to issue that the Rule should come into effect immediately and may also provide that the rule may be treated as a provisional rule, and continue in force till a rule has been made in accordance with the provisions of Section 1. Provisional Rules were thus exempt from the requirements of Section 1 of the Rules Publication Act, and issued to meet an emergency for a limited period. As a fixed time limit has not been inserted, some of these rules existed for more than two years (Vide 'Control of Delegated Legislation' by Hewitt).

The Statutory Instruments Act has now repealed the Rules Publication Act and thus abolished the provision for provisional rules under Section 2 of the Act. The Emergency powers Act was passed on October 29, 1920 on the request of Lloyd George's Government on the pretext of an impending strike in the Coal Mines.

The Emergency Powers Act of 1920 is a more reasonable and democratic measure than Article 48 of Germany. In view of the fact that the time limit is only one month and is applicable practically only to strikes, the necessity for reasonableness of Parliament to consider the Act and ratify it, the fixing of maximum penalty under the Act—All these are undoubtedly better terms from the standpoint of the liberty of the citizen when compared to Article 48. There is no industrial or military conscription contemplated under the Act. Prevention of Strikes of magnitude in industries really necessitated a permanent measure of that kind. The subsequent industrial strike of 1924 and the Coal Strike of 1926 and the well known London Transport Strike required emergency proclamations, but in all these cases they were subsequently revoked. These ordinances issued as Orders-in-Council facilitated the maintenance and supply of public essentials, as they gave power to requisition property and necessities of life as well as to fix prices.

Emergency of Economic Depression

The post-war economic depression of 1930 was the next landmark in the history of emergency legislation. It looked as though national economy was collapsing. Parliament was asked to delegate large powers by Orders-in-Council for tackling the crisis, and the national government of Ramsay Macdonald was granted temporary powers of executive law-making by five separate statutes. The Gold Standard Amendment Act of September 21, 1931 and The National Economy Act of September 30, 1931, The Food Stuff Prevention of Exploitation Act of October 7, 1931, The Abnormal Importation (Customs Duties) Act of November 20, 1931, and The Horticultural Products (Emergency Customs Act) of Section 11, 1931, are all examples.

The Gold Standard Amendment Act suspended the gold standard in England and empowered the Treasury to meet difficulties in connection with suspension of gold Standard, The National Economics Act effected drastic reductions of salaries of Government servants and the members of the Army, The Food Stuff

prevention of Exploitation Act prevented or remedied shortages, in, or unreasonable increases in the prices of any article of food or drink or general consumption, The Abnormal Importation (Customs Duties) Act authorised the levy of Custom duties up to 100% on certain imported manufactured articles and The Horticultural Act gave the minister power in regard to certain food products.

While this economic crisis in England was met effectively by the above measures, the Second World War broke out by Hitler's invasion of Czechoslovakia in March 1939. The Crown called upon the people for obedience and sacrifice, and the British Cabinet resorted to its old emergency measures. The Emergency Powers Defence Act of 1939 was enacted by the Government of Chamberlain and Winston Churchill, and a host of War Statutes followed this enactment:

(1) Subject to the provisions of this Section, His Majesty may by Order-in-Council make such a regulation as appear to him to be necessary or expedient for securing the public safety, the defence of the Realm, the maintenance of public order, and the efficient prosecution of any war in which His Majesty may be engaged, and for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by the preceding sub-section, Defence Regulations may (a) make provision for the apprehension, trial and punishment of persons offending against the Regulations, and for the detention of persons whose detention appears to the Secretary of State to be expedient in the interest of the public safety or the Defence of the Realm; (b) authorise (1) the taking of possession or control on behalf of His Majesty of any property or undertaking (2) the acquisition on behalf of His Majesty of any property other than land, (c) authorise entering and searching of any premises and (d) provide for amending any enactment and suspending the operation of any enactment, and for applying any enactment with or without modification.

Provision was made for sub-delegation and despite derogating from existing law, all these regulations were valid. All the Orders-in-Council under the Regulations have to be submitted to Parliament which might by a resolution within 28 days annul them. Military or Industrial conscription was precluded under the Act. So also Court Martial for the civilian population was precluded.

The Act was only to be for one year, subject to extension for one more year by a joint address of both Houses. The Crown had to declare termination of the emergency. Hundreds of amendment and orders under these Acts were made.

In May 1940 another Emergency Powers Defence Act was passed which extended the powers of the first Act to "make provision for requiring persons to place themselves, their services and their property at the disposal of His Majesty "for the same general purposes as were enumerated in the first Act Section 1 (1)". The Second Act extended the term to two years. The Second Act made sweeping provisions that there were no limitations to the power of the Crown.

As Hewitt says in his book "Control of Delegated Legislations" at page 27, these regulations could be used only for defence purposes but the decision as to whether such a purpose existed was left to the discretion of the Government "His Majesty may, by Order-in-Council, make such regulations as appear to him to be necessary or expedient, whereas the D.O.R.A. seem to have admitted an objective criterion. It could therefore be said that the powers conferred by the two Acts were dictatorial powers, the exercise of which was not likely to be successfully challenged in a court of law". These Acts remained in force till 24th February 1946.

The 1940 Act permitted both Industrial conscription as well as Military conscription unlike National Service Act. The National Service Act of 1941 declared that all persons of either sex for the time being in Great Britain are liable to national service whether under the Crown or not and whether in the Armed Services of the Crown, in Civil Defence, in industry or likewise. The War Government had all powers excepting borrowing money or levying taxes or acquiring land for which Parliamentary legislation is necessary.

In regard to the nature of parliamentary legislation and the Cabinet Ordinances, Prof. Robson in his article on Administrative Law in England in the book; "British Government since 1919" mentions thus: "In recent years Parliament has passed much Legislation which states that where a Minister is satisfied that certain facts exist, or where it appears to him that something has occurred or is required, he can thereupon exercise the powers specified in the Enactment. There are several examples of this in the Agricultural Act, 1947. Thus by Section 12 (1) where the

Minister of Agriculture and Fisheries is satisfied that the owner of agricultural land is not fulfilling his responsibilities to manage the land in accordance with the rule of good management, or that the occupier of an agricultural unit is not fulfilling his responsibilities to manage the land in accordance with the rule of good management, or that the occupier of an agricultural unit is not fulfilling his responsibilities to farm the unit in accordance with the rules of good husbandry, the Minister may make an order placing the owner or occupier as the case may be under his supervision as regards the management of his land in the former instance, or the farming of the unit in the latter. While a supervision order is in force the Minister has extensive powers of direction and dispossession conferred by Part II of the Act (See also Section 84 (1) of the Agricultural Act, 1947, also Town and Country Planning Act, 1947 Section 39 (1)—".

The Coal Industry Nationalisation Act, 1946 declares that the National Coal Board shall have power to do anything and to enter into transactions which "in their opinion" is calculated to facilitate the proper discharge of their statutory duties—these enabling powers formulated in subjective terms have been conferred on the New Public Corporations established to operate Socialised Industries in England.

The most radical invasion of liberty lay in the great restriction imposed on freedom of person authorised by The Defence Regulation 18 (b). This Regulation in effect empowered the Home Secretary to suspend the Writ of Habeas Corpus and detain indefinitely any person in England if he had 'reasonable cause' to believe that such person was (a) of hostile origin or association, (b) had recently been concerned in acts prejudicial to the Public safety, (c) was a member of an organisation "subject to foreign influence or control" or in sympathy with "the system of government of any power with which His Majesty is at War or (d) had done anything or said things "expressing sympathy with the enemy" in any area specified by the Home Secretary. The Secretary was not bound by the Advisory Committee set up to recommend the disposition of detention cases. 80% of the recommendations of the Committee were accepted.

This Section 18 (b) was vigorously attacked inside and outside Parliament but the courts decreed in its favour as will be evidenced in the famous case of *Liversidge Vs. Anderson* in 1942 A.C. 206. The two cases of vital significance of the doctrine of immutability

of executive discretion are in regard to The Town and Country Planning Act of 1947, The Robinson's case, 1947, 63 P.L.R. 374 and in regard to 18 (b), *Liversidge Vs. Anderson* 1942 A.C. 206.

The question in *Liversidge Vs. Anderson* was whether the Home Secretary's discretion was a subjective discretion or an objective discretion. Lord Macmillan analysed the two points of view. A majority of the Law Lords declared that it was for the Home Secretary alone to decide whether he had reasonable cause to believe that the conditions under Regulation 18 (b) have been satisfied, and no court could consider whether the administrative discretion vested in the Home Secretary had been properly exercised. Lord Atkin gave a powerful dissenting judgment espousing the doctrine of The Rule of Law.

In point of the Defence Regulation authorising the taking control of an undertaking if it appears to the competent authority that it was necessary to do so, the Court in the "*Point of Ayr Colliery Ltd. Vs. Lloyd George* (1943) A.E.R. 546 at 547 and also in *Carltona Ltd. Vs. Commissioners of Works and others* (1943) 2 A.E.R. 560 at 563 decided that the principle of the *Liversidge* decision should apply, and the Minister's discretion could not be questioned in a court of law. "In my opinion" said Lord Green The Master of Rolls, "the appellant's evidence does not establish any circumstances which gives this court power to interfere with what is admittedly the bona fide decision of the Minister. We cannot investigate into the adequacy of the reasons. We cannot investigate the rapidity or the lack of investigation, if it existed, with which he acted. We cannot investigate any of those things because Parliament, by its decision, has withdrawn these matters from the courts, and has entrusted them to the ministers concerned, the constitutional safeguard being, as I have said, the supervision of Ministers exercised by Parliament, that being so, there is an end of the case."

These above quoted cases deal with emergency legislation, but the principle of these cases has been followed also in cases of a more peaceful sphere of activity on the ground that they had similar attributes of urgency for the economic welfare of the community.

In the famous *Stevenage* case (*Franklin and others Vs. Minister of Town and Country Planning*, (1947), 68 T.L.R. 185 C.A. 63 T.L.R. 446 H.L.), it was laid down that the Minister being an agent

of Parliament, can decide upon the construction of towns in a particular area. His act is not a quasi-judicial act subject to judicial review but purely administrative.

In the matter of judicial control of many of the administrative Tribunals where administrative discretion is reviewed, Sir Alfred Denning in his book "*Freedom under the Law*" at page 94 says "It should be clearly understood that although the High Court has some degree of control over the Tribunals it is not such as to enable it to correct many of the faults or injustices which may arise unless the statute gives an appeal. The High Court proceeds on the footing that if Parliament has thought fit to entrust jurisdiction on all these new Tribunals without any appeals from them, then so long as these tribunals do not exceed or abuse their jurisdiction, the High Court should not interfere with them. If a Tribunal should come to a wrong conclusion on the facts, or indeed, if there is no evidence on which it could have come to this conclusion, the High Court cannot interfere, nor, if the tribunal comes to a wrong conclusion in point of law, can the High Court interfere. So long as the Tribunal keeps within its jurisdiction, and is not guilty of any flagrantly unjust procedure, its decision is final both in facts and in law. If Parliament has chosen to make the administrative tribunal the final judge of the matters before them and to give no right of appeal, the court cannot interfere (*R. Vs. Ludlow and P. Barnely Corporation* 1947 K.B. 639. *Race Course Betting Control Board Vs. Secretary of State for Air*, (1944) 60 T.L.R. 147."

This view of Lord Denning has not been approved by Prof. Sieghart as we shall show lower down.

Till 1945 The Supplies and Services (Transitional Powers) Act empowered the Crown by Order in Council (1).

(1) To extend the validity of any existing defence Regulation contained in Parts III and IV of the Defence (General Regulation 1939 for the following purposes (a) to secure a sufficiency of the essentials of life or their equitable distribution or their availability at fair prices, (b) to facilitate demobilisation and resettlement, (c) to facilitate the readjustment of industry and commerce to the requirements of the community in times of peace, (d) to assist the relief of suffering and the restriction and distribution of essential supplies and services in any part of His Majesty's Dominions or in foreign countries Section 1 (1).

(2) To make Defence Regulations for controlling prices and charges for services Section 2.

Orders-in-Council applying the Act to any defence regulation under Section 2 (Control of Prices and charges for services) are to be laid before Parliament as soon as may be after they are made and are subject to annulment within 40 days. These provisions applied also to orders and other instruments made under powers conferred by the Defence Regulations if they were statutory Rules within the meaning of The Rules Publication Act 1893 Section 4 (1). This meant an extension of Parliamentary control as compared with the relevant Section of the Emergency Powers (Defence Act 1939), which provided for the annulment of a Defence Regulation within 28 sitting days and contained no provisions with regard to orders made under Defence Regulations. The powers conferred by The Supplies and Services (Transitional) Powers Act were to be in force for a period of five years and might then be extended yearly upon an address of both Houses. Section 8.

In 1947 the Supplies and Services (Extended Purposes) Act had further extended the powers conferred by the Supplies and Services (Transitional) Powers Act, 1945 by making them applicable to the following purposes:—

(a) for promoting the productivity of industry, commerce, and agriculture,

(b) for fostering and directing exports and reducing exports or imports of any class, from all or any countries and for redressing the balance of trade and

(c) Generally for ensuring that the whole resources of the community are available for use, and are used in a manner best calculated to serve the interests of the community. Section 1 (1).

The limitation imposed by this Act is the provision that nothing in this Act shall be held to authorise the suppression or suspension of any newspaper, periodical, book or publication.

The Emergency Laws (Transitional Provisions) Act 1946 provided:—

(a) for the temporary continuation of 51 Defence (General) Regulations or parts of them and of provisions of 28 other Defence Regulations until December 31, 1947;

(b) for the prolongation of the duration of certain statutes;

(c) for making permanent certain amendments of the law made by Defence Regulations;

(d) for the repeal of three Acts of Parliament in whole or in part.

In December 1947 a new law (Emergency Laws Miscellaneous Provisions Act 1947) was passed which further extended the life of roughly half of the defence regulations contained in the First Act. Some are continued for one year. Section 1(1) (b). Others are made permanent by embodying them in the statute Section 2 (1). It is further provided that each Defence Regulation can be prolonged for one more year upon an address of both Houses. (Section 7).

As Hewitt mentions in his book "Control of Delegated Legislation", "the first two of the four Acts placed for a period of four years the country's economy under emergency powers, for purposes which were wide enough to cover the introduction of fundamental economic changes, and they did so without making any changes with regard to judicial control. The Second Supplies and Services Act did not limit its provisions to defence purposes only, but was wide enough to include any contingency".

The reconversion of the country from war to peace was a difficult task, as England had to face a huge economic crisis. It was this reason that accounted for the perpetuation of such powers of delegation that defeated the doctrine of vires.

Safeguards against Abuse of Emergency Power

But the safeguards against abuse of emergency legislation which have been pointed out by many, inside and outside Parliament, are a few, and they might be worth mentioning. Parliamentary and judicial control of Decree Laws may be made by Parliament, prescribing that they shall be subject to their scrutiny, confirmation or annulment by simple resolution of both Houses, besides public opinion which might act as an effective check on the abuse of these powers.

Parliament has the right of scrutiny by insisting that rules made under the statute may provide that they should be laid before the House or have to be laid as soon as may be. Section 4 of the Statutory Instruments Act, 1946 enacts that in future any statutory instrument which has to be laid before Parliament after being made, "shall be so laid before the instrument comes into operation."

This clause, as the Solicitor General explained in the House of Commons is not intended to make laying the instrument before Parliament imperative and as a condition precedent to its coming into effect. Not laying it will not invalidate the instrument. Provision can be made for the instrument coming into effect though not laid before a specified period has elapsed.

It may be provided that the Order shall be laid in draft for a specified period, say for 40 days, provided no action is taken by Parliament to the contrary. This provision applies to orders made in exercise of a power conferred by statute made either before or after the passing of the Statutory Instruments Act, 1946. In the case of orders made on statutes enacted before the commencement of this Act which are of an exceptional nature, they can by orders in council either be excepted from these provisions or be subjected to modified provisions. Section 9 (c) (2).

A statute may provide for the annulment by resolution or prayer for a specified period when laid before parliament. This is called the subject of negative resolution. A statute may provide for the necessity of approval of the same by a resolution by parliament within a specified period or that it shall be laid in draft in parliament and not made by a resolution within a specified period or shall be laid before parliament and come to operation at once, but shall lapse unless approved by a resolution within a specified period. (This is known as affirmative resolution procedure).

These parliamentary controls of scrutiny and procedure of affirmative and negative resolution were found to be inadequate to cope up with the task and evil, of rapid delegation of powers. The procedure in the House of Parliament has been found to be dilatory and is not conducive to efficient check as Parliament is overburdened with the task of delegated legislation, and cannot find time to scrutinise effectively the large volume of orders and rules.

The work of delegated legislation was scrutinised by a committee called the Donoughmore Committee. Lord Hewart's "New Despotism" and C. K. Allen's "Bureaucracy Triumphant" draw a vivid picture of all the evils of Delegated legislation in England before the outbreak of the Second World War. Lord Sankey who set up the Committee had directed that the committee was appointed to 'consider the powers exercised by ministers of the Crown by way of delegated legislation—and to report what safeguards are desirable or necessary to secure the constitutional principles of the

sovereignty of Parliament and the supremacy of the law'. The committee in submitting its recommendations see in delegated legislation 'definite advantage', provided that the statutory powers are exercised and the statutory functions performed in the right way (Page 4 of the Report) and concludes at page 5 thus "But in truth whether good or bad the development of the practice is inevitable. It is a natural reflection, in the sphere of constitutional law, of changes in our ideas of government which have resulted from changes in political, social and economic ideas, and of changes in the circumstances of our laws which have resulted from scientific discoveries. But in truth whether good or bad, the development of the practice is inevitable."

The Committee on Ministers' Powers was followed by a Select Committee of Parliament in 1944 which wanted to exercise scrutiny over all rules and orders laid before the House, and to draw the attention of the House to the following important points affecting the orders passed under statute.

- (a) That the order imposes a charge on the revenue;
- (b) that the statute on which the order is based excludes it.
- (c) that the power conferred by statute has been used in an unusual or unexpected way.
- (d) that there seems to have been unjustifiable delay in the publication of the order or in the laying of it before Parliament.
- (e) that the form of or purpose of the order calls for elucidation.

Hewitt suggests that the following reforms should be made for enforcing stricter control by parliament.

- (a) Total prohibition of the power to negative a statute by regulation or the power of the Crown to make a Regulation to negative a statute;
- (b) the right of appeal to the courts should in all cases be assured and Prof. Sieghart also says that the Rule of Law can properly function only in a court and without a court to enforce it there can be no Rule of Law.
- (c) The scope of the power of delegation should be fixed by Parliament—that is to say the authority to make regulations should be specific and not general;

- (d) a specially constituted Tribunal of high authority should be given power to suspend temporarily an application by an aggrieved party to the operation of a clause in a Regulation, if its enforcement might lead to consequences manifestly unjust which the legislature could never have contemplated.

We have already indicated C. T. Carr's opinion regarding safeguards against abuse of delegated legislation as mentioned in his book "Delegated Legislation", (1921) and "Concerning Administrative Law in 1941" in the early part of our lecture.

Necessity for Scientific System of Administrative Law

Suggestions other than those mentioned above made by distinguished men in England, are the following:—Mr. C. K. Allen in his work "Law in the making" at page 362 advises Constitutions and Governments to adapt themselves to this change, as the tendency towards decentralisation is irresistible and he advocates a scientific system of administrative law for regulating control of delegated legislation. He warns Englishmen that it will be a calamity if in a mood of intransigent conservatism, they should make no effort to fit them into their constitutional system. He says, "It is no longer possible to regard Parliament as the sole and Supreme Governor of England, or to adhere with any semblance of truth to unqualified doctrines of the separation of powers, of the Rule of Law and of the Royal Prerogative. We are not obliged to regard the Rule of Law or at least that aspect of it which insists on a single system of judicature of all kinds of suits—as a revealed truth, when the whole tendency of legislation make it more and more a Shibboleth" and he advocates the necessity for the introduction of new principles and methods in English public law. "If they do not take the form of an explicit system of administrative law, they will assuredly take that of bureaucratic law—a sore affliction for any community which has to live under it. The process of decentralisation must therefore be regulated by a modified conception of legal sovereignty and an adaptation of constitutional principles, which far from destroying the authority of the State, will lend it greater efficiency by giving it greater poise".

Thus, in his opinion, there must be a scientific system of administrative law in England regulating the executive. Mr. C. K. Allen in his book 'Bureaucracy Triumphant' at p. 98 advocates the necessity for the regularisation and development of administrative

law as part of the ordinary legal system and that it will tend only to preserve The Rule of Law, and he says that the only alternative to the development of a wholesale body of administrative law in harmony with the traditional principles of the general legal system, is the admission of the movement of the centre of gravity of the constitution from the legislature to the executive, and to submit to irresponsible executive legislation.

Prof. Robson has given evidence in the Committee on Ministers' powers that the constitution of a separate Administrative Appeal Court distinct from the existing law courts and grafted on to the Privy Council, analagous to the Judicial Committee, and composed of high administrative officers, (who might include ex-Government Lawyers, and perhaps former Ministers, Colonial Administrators, ex-members of Parliament and other eminent persons with experience of public life like Retired Judges).

Robson wants that when a new social improvement is to be carried out by the central executive or local governing authorities of a kind which involved interference with private rights of property or personal freedom, it is desirable in the interest of the administrative efficiency and social progress that judicial functions occurring in connection therewith should be dealt with by an Administrative Tribunal, and that the rule applies to controversies arising through the obstructive resistance offered by vested interests in the execution of the scheme. A typical example of a service, according to him, falling under this heading is Town and Country Planning. Mr. Robson advocates that in all cases where the subject matter of the dispute is important, a right of appeal should normally be to a superior administrative appellate tribunal, whose decisions should be final.

Prof. Sieghart analyses the above suggestions of Robson and she finds that the administrative tribunals in the country or a majority of them are concerned only with the administrative policy which cannot be a substitute for the Rule of Law or the General Rules of Justice, and that to deprive the individual of taking recourse to law courts in appeal from the decisions of the administration, will lead to an absolute state or positive state. According to her the authority making the policy decision should be separated from the authority reviewing the administrative decision. Prof. Robson thinks that the ordinary law courts are unfit to exercise administrative control. In considering this, Mrs. Sieghart suggests, that if Robson is correct in his observation, then some other insti-

tution must be substituted to this method, and she therefore recommends the French Council of State as an example. There must be a separate administrative court of appeal. In manning this court, Sieghart wants a combination of judges with a special training in constitution and administrative law, in the composition of the administrative appellate court. The right of appeal is an important right, and it is worth noting that the American Administrative Procedure Act, 1946 by Section 10 (a) has enacted that "any person suffering legal wrong because of any agency action or adversely affected or aggrieved by such action, within the meaning of any relevant statute, shall be entitled to judicial review thereof.

The Special Administrative Court of Appeal according to Sieghart should control administrative discretion. Though executive powers have in the past not been subject to judicial review so long as they kept within legal limitations, the judge should be free to review the motives also of executive discretion, which actuated the decision, and to declare it ultra vires if these motives do not comply with the accepted moral code, whose existence is paramount, and whose duty should be the upholding of the rights of man against the power of the State. Executive discretion must be guided by such standards and regulated by administrative law. Prof. Sieghart thinks that if justice according to policy is not strictly controlled by justice according to law, it will be the first step on the road which leads to justice dispensed by the peoples' courts in the interests of the people. Evidently she is thinking of Soviet Courts, actuated by Communistic Principles. She thinks that if effective controls are not established to executive discretion, it will lead Britain which is now still at the cross roads, to the road of serfdom.

Another famous author Prof. Hayks in his book "Road to Serfdom" reiterates some of the arguments of Prof. Sieghart. Both Prof. Hayks and Sieghart do not speak encouragingly about Planning. Prof. Sieghart at page 310 of "Government by Decree" says that the new freedom is thus not a freedom from want but a freedom through state interference. "The Planner who can no longer be restricted by checks and balances—for that would destroy the unity of the plan—is destined not only to map out the sphere of freedom but also to guarantee it by self-imposed limitations—there is no other way out of this dilemma than to concede that in a planned society, there is no room for effective control and therefore, for individual liberties guaranteed by a system of checks

and balances, because the conception of planning presupposes a sovereign executive which implies negation of all controls, whether parliamentary or judicial." She says that the Rule of law is an objective test and not merely subjective test of individual discretion and the need to preserve a balance of powers, if not a separation, is equally important in a socialised society so long as human beings with their imperfections rule human beings, unless the Rules of Law and with it, the rights of man, are to disappear completely.

Her conclusion is that planning, as also any form of executive discretion, must subject itself to administrative appellate courts filled in by experts of public law and constitutional law. There is no way according to her as an alternative to prescribing judicial control of some form or other. Prof. Sieghart advocates the adoption of the suggestion of the Donoughmore committee on Minister's powers, to submit the judicial and quasi judicial activities of the administration to the appellate jurisdiction of the High Court, thus making the High Court in exercising these functions an administrative court of appeal. That according to her would have meant an important step towards stabilising general administrative jurisdiction without any change in the existing balance of powers.

Lord Denning differs entirely from her views as mentioned earlier, and wants to give the administration a longer rope.

Exclusion of Judicial Review

One of the important results in the economic sphere as a result of the second great war, is the rapid increase in the organisation of specialised agencies and the development of public corporations dealing with England's socialised Industries. Consequently, new government departments have been created with greater powers, and the problem of delegated legislation has also increased.

It has become customary for parliament with a view to avoid the dilatory process and procedure of law courts, and in order to save time, to introduce legislation ousting the jurisdiction of courts. It has usually used two methods for such purpose "The conclusive evidence clause in Statutes" is an example of legislation intended to oust the jurisdiction of courts. "The Minister may confirm the order and the confirmation shall be conclusive evidence that the requirements of this act have been complied with, and that the order has been duly made and is within the powers of this Act." By following the above method of legislation, Parliament

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 has made both the form and content of the order unchallengeable in courts. A minister may be empowered to do anything which appears to him necessary or expedient to bring an act into operation and who may even for this purpose, modify the provisions of the parent statute, and the Minister thus becomes in fact the main legislator for this specific purpose. Emergency legislation of this sort excludes judicial review (*Liversidge Vs. Anderson*, 1942 A.C. 206).

The doctrine of ultra vires has been abandoned not only for the emergency type of legislation, but certain types of Defence Regulations kept in force for five years and more, after the war was terminated by peace, continued the emergency type (4 Post War Acts).

I. Provisions in clauses "As if enacted in the Act" relate to regulations provided for under statute and they have excluded the regulations from judicial review (*Vide In Institute of Patent Agents Vs. Lockwood*, 1894 A.C. 347). This principle has been extended, but in a later case *R. Vs. Minister of Health* *ex parte Yaffe* (1931 A.C. 1924) in regard to Housing Schemes, expressed doubts and declared that House of Lords were not prevented from ascertaining whether a delegated enactment conflicts with the parent statute, and if so declare it ultra vires. The law as to the meaning of the phrase 'as if enacted in this Act' is still unsettled.

II. The Henry the VIII Clause. The appropriate minister is given the power to alter the parent Act and usually any other Act in order to bring the parent Act into operation, in 8 statutes of recent origin (*The Rating and Valuation Act of 1925*; *The local Government Act of 1851*; *National Insurance Act of 1911*, *Local Government Act of 1929*). (*Vide Ghoses' Tagore Law Lectures on Administrative Law*, and 'Administrative Law in Madras' by K. Chandrasekharan).

These powers are absolute and dictatorial, and according to the Committee on Minister's powers should only be occasionally used as it is a political instrument. (*Vide Willis on "Parliamentary Powers of English Departments"*, at page 182).

The need for the development of administrative law and administrative appellate court is all the more important today. Prof. Sieghart's remarks are provocative of thought to all persons interested in democracy, and the Rule of Law.

The True Perspective about Planning and Democracy

The mistake that politicians and constitutional writers like Sieghart commit, is in their outlook on the interpretation of 'democracy' and 'liberty', with the jaundice eyes of the mid-Victorian age, while forgetting that both these terms have undergone a revolutionary change in their concept and content. It was really as a result of the emergencies created by the two great wars and the economic depression which intervened between the two, and now followed by a serious economic crisis unprecedented in the history of the world through which all countries in the world are passing, viz, post-war inflation, and subsequent deflation,—these terms have begun to mean 'The Democracy of the common man' and 'The liberty of the common man' and not the privilege of a few. (*Vide Problems of Economic Planning* by E. F. M. Durbin with a foreword by Rt. Hon'ble Clements Atlee).

As Mr. Carwin says at page 182 of his book 'Liberty against Government', "Democracy and liberty have been shorn of all privileges begotten by birth, descent or acquisition". Equality has taken the uppermost of peoples' mind and both democracy and liberty are interpreted only and considered only in relation to equality, political, economic and social, and not merely in Dicey's way of achieving "equality before the law".

As remarked also by Mr. M. Patanjali Sastriar, Retired Chief Justice of the Supreme Court of India who was a delegate to Milan Conference (International) on the Future of Freedom, at Geneva in September 1955, at the Conference Session on the concluding day, there should be a reconciliation, as far as possible of conflicting ideologies in order to promote a climate of peace. Such a reconciliation, was in his view demanded by 'The Geneva spirit'. After all, the concept of freedom must change with the changing time and place and perhaps the concept of freedom in future would have to be largely qualified by the concept of "Social Justice" (*The Hindu*, dated 27-9-55).

This re-oriented interpretation of the two terms is in perfect unison with the conception of liberty in the atomic age, that has now dawned, when national sovereignty has to be interpreted in terms of national inter-dependence, with the need for the development of the super state or the world state, and individual rights have been circumscribed by national and international obligations,—due to this new emergency—the supreme need for nations of the world to prevent an atomic war, which will destroy

this human race, and the need to establish world peace. The constitution of the United Nations Organisation itself is a measure adopted for such emergencies.

Under such conditions, there is need for world planning, in a world welfare state, to socialise world resources, with a view to equitable distribution among the nations of the world and its peoples, and not merely national planning which is equally necessary as a measure of emergency to prevent poverty, starvation and death, and to raise the level of living standard among the peoples of the world.

The United Nations Organisation itself constituted the Human Rights Commission for preparing a universal declaration of human rights, and these rights were passed unanimously by the General Assembly of the United Nations in December 1948 at Paris. The Charter of the United Nations, which is intended to prevent war in future, and establish world peace, and the Articles of the International Labour Organisation, Philadelphia, reassure social rights and socialism of material resources to all nations. The Principles of the Atlantic Charter of August 14, 1941 assured the world economic collaboration, upon which the United Nations Organisation has been built up. (Vide 'Planning the Indian Welfare State' by C. S. Subramania Iyer).

Constitutional Writers like Sieghart will certainly appreciate that in fact Constitutional and Administrative Law of the middle of the twentieth century have become types of Emergency law by the dawn and progress of the new Atomic age. This fact has been appreciated by writers in America as well.

Mr. Daniel Cheever and Field Haveland of the Harvard University in their book "American Foreign Policy and the Separation of Powers" at page 3 say under the heading "Why Inter-branch collaboration is essential", "Today the task of legislative executive co-operation is extraordinarily different from anything we have known before, for several reasons." "The first point to be emphasised is, that the conflict between the Soviet and the Free World, which is the major threat to International peace, is a war that is neither hot nor cold but something in between. The distinction between "War" and "peace" have been all but obliterated. Nor does this struggle show any signs of subsiding in the near future. This situation has thrown the Constitution out of joint by upsetting the traditional balance between the two branches. The Executive branch must continue to wield on a more or less permanent basis

many emergency powers which in the past have been considered to be of a temporary nature. To do this, however, the President clearly needs the full and continuing support of the Congress".

Thus national sovereignty, in order that it should have strength to withstand international dangers, political, social and economic, has resorted to problem of planning, that tend to stabilise its internal structure, though by doing so the autonomy of states and of private right may to some extent have to be invaded. Planning thus is a reaction to world economic factors that affect the lives of private individuals, but preserves individual liberty in a larger and remoter sense. Unless each nation adopts planning, the economic strength of the country will collapse, and will bring down international concord and amity.

That writers like Sieghart, have failed to note the new concept of democracy and liberty, and have rested themselves in basing their ideas on the old concepts of democracy and private right, which in its turn is based on the sanctity of national sovereignty, only shows, that they are forgetting the new spirit that has dawned in the world, the spirit of world citizenship, and with it of world or universal brotherhood, and world co-operation, that the United Nations, though slowly, have begun to discover.

An eminent writer on constitutional law as Edward S. Corwin writes at page 41 of his book "A Constitution of Powers in a Secular State".

"The idea of a world state is an ancient one, but the immediate cause of its revival was the bomb that levelled Hiroshima. The ashes of the devoted city had not ceased to smoulder when hostilities came to an abrupt close, and the view spread that the coming peace must culminate in a world Government to which all nations would transfer their rights. That only thus could the bomb be answered, that less would not be worth attempting".

In concluding this Lecture can I take the opportunity of recording the world's appreciation of our esteemed Prime Minister Pandit Jawaharlal Nehru and Mr. V. K. Krishna Menon and Mr. C. Rajagopalachari for their great efforts in preventing an atomic war, and may I also take this opportunity of reminding you all of the frequent utterances of our Prime Minister to consider the doctrine of private rights in the context of the new atomic age, which requires to be controlled by a Central World Organisation.

PART III

LAW OF EMERGENCY IN THE UNITED STATES OF AMERICA, DOMINIONS AND INDIA

Before I deal with Emergency Law of the foremost Written Constitution of the World, The United States of America, let me tell you a word about the Charter of The United Nations, San Francisco, 1945, signed by Representatives of Fifty Nations including the United States of America and India.

The Charter of the United Nations is built up on the famous Eight Points of The Atlantic Charter, confirmed by the Moscow Declaration of October 1943 and the subsequent Dumbarton Oaks Conference in 1944 which was endorsed with some modifications at the Stalin-Roosevelt-Churchill Meeting at Yalta in Crimea in February 1945 and presented and published on 27-2-1945 containing a preamble, and 111 Articles in 19 Chapters.

The preamble of the Charter breathes the spirit of the urgency and emergency of concluding a lasting peace for the world, and for building up a World Organisation intended to achieve that object. The preamble reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and of nations, large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of International Law can be maintained, and to promote social progress and better standards of life in larger freedom, and for these ends, to practise tolerance, and live together in peace with one another as good neighbours, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and institution of methods, that armed force shall not be used, save in common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples.

In considering the words employed in the Charter, I would respectfully add that it will be perfectly in consonance with the principle of *PANCHSEELA* expounded by our beloved Prime Minister, that an amendment should be made to the Charter so as to make it categorically clear that armed forces will be used only *in an emergency*, the procedure of peaceful and non-violent methods of negotiation being generally resorted to on ordinary occasions.

The clause may be recast in this way "*That armed forces shall not be used save in an emergency in the common interest.*" I trust that our national Government will move in the matter of suggesting an amendment of this type to the Charter, now that the time has come for a consideration of amendments to the Charter, as announced recently in the Press.

Coming back to the consideration of the Emergency law of the foremost progressive constitution of the world, the United States of America, let me deal with the problem of interpretation of democracy and liberty in terms of equality, a principle deeply imbedded in the United States Declaration of Independence "All men are created equal and are endowed by their Creator with certain inalienable rights" and the wonder of wonders, is that these great principles of democracy have been achieved in America by granting in certain respects absolute powers to the President.

Harold J. Laski in concluding his remarks in his book "The American Presidency" at page 277 says, "Power no doubt, is always a dangerous thing, and the temptation to its abuse, as no generation has learned, more surely than our own, is a subtlest poison to which a man may succumb. Yet, power is also opportunity, and to face danger with confidence, is the price of its fulfilment. That is why I end with emphasis, that the President of the United States must be given the power commensurate to the function he has to perform. It must be given democratically, but if he is to be a great President, let us be clear that it must be given with all its risks; its conference is the condition upon which the American adventure may continue in that form of which its supreme exponents have most greatly dreamed. To withhold it, or to frustrate its simple operation, is to jeopardise that adventure. For great power alone makes great leadership possible. It provides the *unique chance of restoring America to its people.*"

Thus Dictatorship is the price of liberty, and in a true sense the American Constitution and in a modified form The Indian Constitution also provide for Emergency powers of the President, and the Prime Minister. The Hon'ble Sri. K. M. Munshi, Governor of U. P. who delivered the Rt. Hon'ble Srivasa Sastri Memorial Lectures under the auspices of the Madras University, last July on Politics and Public Administration, referred to the location of the Sovereignty of the Indian Constitution and that it rests ultimately in a few persons who wield by dint of their position in administration, as well as by dint of their ultimate command of the confidence

of the party in power and parliament, absolute power. What exactly His Excellency must have meant, appears to me, is, that the Sovereignty of the Indian Constitution really resided in Cabinet dictatorship. That theory of His Excellency, is not wholly unfounded, for the process of evolution of modern parliamentary sovereignty is in every country found to end by Cabinet dictatorship, as that alone can supply the really strong central executive authority necessary to mete out social justice.

The American Constitution, itself, was born of emergency and the provisions of the American Constitution breathe this spirit. In a sense, the entire text of the constitution anticipates crisis government, and should be interpreted as providing for emergencies, as indeed it has been so uniquely interpreted by the masterly judgments of the American Supreme Court from time to time, not bound down as they are with the principle of "Stare Decisis." "The American Constitution", said James Bryce in 1888, "has been changed, is being changed, will continue to be changed by interpretation and usage. It is not what it was even thirty years ago. Who can say what it will be thirty years hence?" (James Bryce, "The American Commonwealth, 1888) 1406. This shows that the Constitution is based on emergency and its interpretation too is to suit emergencies.

Mr. C. Perry Patterson in his book "Presidential Government in the United States" at page 38 says that this means politics and not the constitution will determine the destiny of the nations in as much as in the words of Bryce, the American Supreme Court is influenced by public opinion. Mr. Patterson at page 142 says, "A highly regulated and socialised type of society forces concentration and requires an executive type of government for its administration. It cannot be operated on any other basis.

This concentration of power is a result of the provision for Emergency which has been embedded in the Constitution of America as mentioned by Chief Justice Hughes.

Chief Justice Hughes in "Home Building Loan Association Vs. Blaisdell (1934). 290 U. S. 398" says "It is manifest, that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual right and public welfare. The settlement and consequent contraction of the public domain, the pressure of a constantly increasing density of population, the inter-relation of the activities of our people, and the complexity of our economic interest, have inevitably

led to an increased use of the organisation of society in order to protect the very bases of individual opportunity—with a growing recognition of public needs and the relation of individual right to public security, the Court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the State to protect the fundamental interest—the principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts."

Again the economic interest of the State may justify the exercise of its continuing the dominant protective power notwithstanding interference with contracts—this power, which in its various manifestations is known as Police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contract within individuals.

Again it cannot be maintained that the Constitutional provisions should be so construed as to prevent limited and temporary interpositions with respect to the enforcement of contracts if made necessary by a great public calamity such as fire, flood or earthquake. The reservation of State power appropriate to such extraordinary occasions may be deemed to be as much a part of our contract, as is the reservation of State power to protect the public interest in the other situations which we have referred. And if State power exists, to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earth-quake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes.

Again "Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the State were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our Constitutional System.

"While emergency does not create power, emergency may furnish the occasion for the exercise of power—the constitutional ques-

tion presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions."

The majority of the courts held in this case, that clauses of the Minnesota Moratorium Law Articles 1 to 10 which postponed the enforcement of mortgage foreclosure due to economic depression, were valid as a measure of emergency and *intra vires* the contract clause of the American Constitution.

Despite the extra-ordinary occasions, when the Supreme Court has strained its powers of interpretation to reflect public opinion in its judgments, as Bryce would put it, it must be said that usually and ordinarily the conception of emergency dictatorship is wholly alien to American way of thinking which was guided by three factors which essentially prevented the installation of a permanent dictatorship. The Bill of Rights, Federalism, and Doctrine of separation of powers of the American Constitution are the three factors which have diluted dictatorship in America. Nevertheless the Constitution itself provides for emergency powers and so courts are inclined to adjudge the validity of dictatorial powers wielded by the Central Executive Government so long as these powers are not exceeded and the country is enabled to switch back to normal working, once the emergency is passed over.

The crisis provisions of the American Constitution are:—*Preamble.* We the people of the United States, in order to insure domestic tranquillity, provide for the common defence—Art. 1.8. The Congress shall have power—to declare war—to raise and support armies, to provide and maintain navy, to make rules for the government and regulation of the land and naval forces—to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions—to *make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the constitution in the Government of the United States in any department or officer thereof.*

Art. 9. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. Art. 2. The executive power shall be vested in a President of the United States of America. Before he enter on the execution of his office, he shall take the following oath or affirmation. "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and

will to the best of my ability, preserve, protect and defend the constitution of the United States.

(ii) The President shall be commander-in-chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States.

(iii) He shall from time to time give the Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient, he may on extraordinary occasions, convene both Houses or either of them. *He shall take care that the laws be faithfully executed.*

Art. 4 (iv). The United States shall guarantee to every State in the Union a Republican form of government, and shall protect each of them against invasion, and on the application of the legislature or of the executive (when the legislature cannot be convened) against domestic violence.

The statutes empowering the President to "Call forth the militia of any or all the States and to employ such parts of the land or naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States" are found as early as 1792. The President employed Federal Troops during the civil war to keep the peace. President Washington himself marched with troops to quell the Whisky Rebellion in 1794. The development of Martial Law Rule therefore has an ancient history behind it.

As Commander-in-Chief and executor of the laws, the President has a power to declare Martial law. Justice Holmes of the U. S. Supreme Court has given judicial recognition of Martial law to prevent civil war in *Moyer Vs. Peabody* (212 U. S. 78) (See also *Sterling Vs. Constantin* (287 U. S. 387)). The President is virtually the focus of crisis government in the United States. He has been equipped with constitutional initiative and he falls back on Article 2 of the Constitution in emergencies. His powers defy definition. The Stewardship theory of Theodore Roosevelt empowered him to proceed in whatever manner he chose on grounds of national necessity, so long as there were no specific prohibitions in the constitution or by duly enacted Congress Laws. Congress itself recognised the need to vest this executive authority and initiative in the President in order to properly exercise emergency powers. It has delegated power to meet special emergencies for their duration, and in many cases in advance, to meet future emergencies, and the President is the sole authority to declare

and meet the emergency. Abraham Lincoln, Wilson and Roosevelt were the three famous Presidents who used emergency powers to the utmost extent.

The use of emergency powers, requires the close cooperation of the legislature and executive branches of government. Messrs. Daniel S. Chever of the Harvard University and Field Haviland in their book "American Foreign Policy and the Legislation of Powers" say at page 222, "Firstly the United States cannot be a leader in World affairs without the closest possible collaboration between our executive and legislative branches. Secondly, it is at this very point, because of present attitudes towards separation of powers, because of poor discipline within both branches, and because of a feeble party system, that our foreign policy making process is most vulnerable. Finally the inter-branch friction to which we have become accustomed, in the domestic sphere, cannot be tolerated any longer in foreign affairs. What is needed is the development of a far stronger spirit of mutual trust between these two branches, reinforced by the organisational adjustments suggested above. If the development of such a spirit seems utopian, let us remember that we have approached such an attitude during great emergencies in the past, and that the emergency today is perhaps as any we have faced. We cannot be slaves to traditional attitudes. While governmental procedures have been adjusting to the temper of the times, rough spots remain to be smoothened off. Ambassador Kennan has told "A nation which excuses its own failures by the sacred untouchableness of its habits can excuse itself into complete disaster." The disaster may be nothing less than the loss of those areas of freedom that remained on this planet.

Mr. Rossiter in his book "Constitutional Dictatorship" at page 20 refers to the conflict between the legislative and executive branches of the American Government. "The natural difficulty (or even frustration) that Presidential Governments experience in securing the necessary harmony of executive and legislature in time of crisis finds one of the most striking examples in the government of the United States. The Constitutional system conspires to set Congress and President apart from one another with no guarantee that the unity of purpose indispensable to many types of national emergency will be forthcoming—one of the most pressing problems in any crisis in this country has been and remains the selection and use of techniques whereby the constitutional separation of the executive and legislative branches may be

effectively bridged. It was to this problem that Wilson and Franklin Roosevelt in particular devoted their attention and personalities". Until the outbreak of the civil war of 1861 to 65 practically there was no necessity for wide emergency powers and Presidents one after another got over crisis easily. It was the civil war that really brought home to the American people the necessity for the chief executive to wield dictatorial powers. It was Abraham Lincoln who wielded masterful powers to get over the countrywide crisis. Lincoln was determined to preserve the Union and prevent secession by military force. He fell back on Article II of the Constitution and issued his Proclamation dated 15th April 1851 for calling forth the militia of the several states of the Union to suppress the insurrection, and called for a special session of the Congress to concert measures to meet the emergency.

Lincoln proclaimed a blockade of the ports of the seceded States which could be constitutionally ordered only in case of war with a foreign enemy, and the navy and army were strengthened beyond the constitutional requirements, though this action was intended subsequently to be ratified by Congress. He directed unappropriated money to be paid to private citizens wholly unauthorised to receive them, to be used by them in meeting such requisitions as should be directly consequent upon the military and naval measures necessary for the defence and support of the government in disregard of the constitutional provisions requiring the necessity for appropriation for drawing money from the treasury. He raised a temporary loan pledging the credit of the United States. He ordered the suspension of Habeas Corpus in military lines between Philadelphia and Washington in spite of the constitutional requirement that Congress alone can do it. Censorship of the Post and Telegrams to prevent treasonable correspondence was steadily enforced. Special civil and military agencies arrested suspected person and detained them in military custody. He asserted the inherent military powers of the President by a special message to Congress on July 4th and justified it by the need for self-preservation for any constitutional government, a need satisfied with the necessary power vested in the President.

Lincoln contended, that in the absence of Congress and the presence of an emergency, the President's duty was to act, though illegally, and subsequently get the ratification of congress. He believed in the paramount necessity of authorising illegal and unconstitutional methods to save the Union.

Congress ratified all the Proclamations, Acts and Orders of the President, the Supreme Court ratified and approved his decision in the Prize cases (2 Black. 635 at 670) to such an extent, as to hold, that even subsequent ratification by Congress was unnecessary and that he had complete discretion in the matter. He had right to treat the rebels as belligerents in a war and as foreign enemies and crush them. Lincoln's 11 weeks dictatorship was acquiesced by Congress. Corwin at page 26 of his book "President, Office and Powers", describes thus "Lincoln came to regard Congress as a more or less necessary nuisance and the Cabinet as a usually unnecessary one.—Lincoln turned to the 'Commander-in-Chief clause', from which, read in conjunction with the 'Shall take care' clause, he drew the conclusion that 'the war power' was 'his'".

In *Luther Vs. Borden* (7 Wall 700 to 730) Their Lordships recalled the judgment of the Chief Justice Chase in *Texas Vs. White* in 1869 where His Lordships decided as follows:—'Whether the action when taken was in all respects, warranted by the Constitution, it is not now necessary to determine. The power exercised by the President was supposed, doubtless to be derived from his constitutional functions, as Commander-in-chief, and so long as the war continued, it cannot be denied that he might institute temporary government within insurgent Districts, occupied by the national forces, or take measures in any State for the restoration of State government faithful to the Union, employing however in such efforts, only such means and agents as were authorised by the constitutional laws but the power to carry into effect the clause of the guarantee is primarily a legislative power and resides in Congress and we think that the principles sanctioned by it may be applied, with even more propriety, to the case of a state deprived of all rightful government, by revolutionary violence. The action of the President must therefore be considered as provisional, and in that light it seems to have been regarded by Congress.'

That the President could not legislate but could only execute the laws and obey them, that he can suppress rebellion by arms and leave political rebellion to Congress, was the opinion of many people in America, but Johnson who followed Lincoln wholly overturned this view, and his behaviour made him so very unpopular that he escaped impeachment barely by one vote. The Supreme Court in *Johnson's* time confessed its inability in *Mississippi Vs. Johnson* (4 Wall 475 (1867)) to enjoin a President from exceeding his constitutional powers or to order him to perform his constitu-

tional duties. Men like Lockwood, agitated for abolishing the Presidency, and substituting the Switz model of "Executive Council" in the President's place. President Woodrow Wilson in his book "Congressional Government" bemoans the loss of prestige of the President's office due to lack of men of dignity and character for occupying the same, and the consequent growing power of the congress. Bryce in his "American Commonwealth" refers to Wilson's remarks but prophesies the rising of Presidential dignity of office in the background of a weak Congress and the tendency in America to concentrate power in one man.

Wilson in his "Congressional Government in United States" in 1908 refers to Roosevelt's first victorious role as President, and remarks that the President is at liberty, both in law and in conscience, to be as big a man as he can. Legislative leadership was revived during Wilson's time and during the term of the two Roosevelts, the stewardship theory of the first Roosevelt and the power of the Commander-in-chief wielded by the second Roosevelt was again resorted to.

As remarked earlier, Lincoln made use of his war power to issuing the Emancipation Proclamation of September 22, 1862, called by Henry Ford in his book "The Rise and Growth of American Politics" "as absolute an exercise of power as the ukase of Czar of Russia which freed the sons of Russia." The freeing of slaves in rebel territory greatly enhanced his support to put down insurrection. He ordered conscription under Militia Act of 1862 in the place of Congress which under the Constitution is empowered to make rules for the government and regulation of the land and naval forces," set up government both military and permanent, in the conquered territories.

Lincoln assumed not merely executive, legislative and constituent power but also judicial power. His cancellation of the Writ of Habeas Corpus on September 24, 1862 was effected without previous sanction or approval of Congress. Congress ratified his actions on March 3, 1863. Men were imprisoned and released without ever facing any charges or the courts. He set up the principle of preventive or precautionary detention, which is neither punitive or vindictive. But on no occasions was freedom of the Press controlled, despite the severe criticism levelled by the Press against Abraham Lincoln's actions. The President took over the Rail roads and Telegraphic lines on the basis of Congress authorisation.

Lincoln thus raised the prestige of his office. Important cases in the matter of Martial Law are the following and may be noted:— (1) *Luther Vs. Borden*, 7 Wall 700 to 729, (2) Prize cases, 4 Wall 127, (3) *In exparte Milligan*, 4 Moyer Vs. Peabody, 212 U. S. 78; (5) *Sterling Vs. Constantin*, 287 U. S. 378; (6) *Hawaian Martial Law Cases* 327 U. S. 304 (1947). Reference may be made for the development of the Martial Law powers to Corwin's "President, Office and Powers", pages (172-182).

Emergency Powers used during First World War

As Justice Miller declared in the case of *In Re Neagle*, 135 U. S. 1 in 1890, the President's duty is not limited to the enforcement of the Acts of the Congress or of Treaties of the United States according to their express terms "but embraces also the rights, duties and obligations growing out of the constitution itself; our international relations, and all the protection implied by the nature of the government under the constitution." He further cited the Act of Congress which clothes Marshalls of the United States with the same power in each State "in executing the laws of the United States, as its Sheriff's have in executing the laws of the United States" and asserting "that there is a peace of the United States which was violated by the assault on one of the judges, he held Neagle was as much entitled to protect the peace as a California Sheriff would have been in an analogous circumstance to protect the local peace."

Thus Neagle was said to have been authorised by the law of the United States to shoot down Terry, though there was no statutory authority on which his action could be based. This broad doctrine of Emergency power was a precedent for the despatch of Federal troops by President Cleveland to put down Pullman Strike of 1894.

Five years later in 1895 the case of "*In re Debs*" was decided closely on parallel lines to the Neagle's case, in which the despatch of troops was made by Cleveland as mentioned above to Chicago to put down Pullman Strike. Debs was jailed for contempt of court for violation of the injunction obtained by the United States District Attorney acting upon orders from Washington for forbidding the strike, which interfered with mails and inter-state commerce. The Supreme Court, while holding that though there was no statutory basis for the injunction, yet sustained it on the ground

that the Government was thus entitled to his property in the mail, and as the court put it, to preserve the general peace in the States, which in its common welfare, it is its duty to preserve. Despite these minor strikes and lockouts, there was complete peace in America between 1865 and 1917. The First World War did create an emergency, though not as sensational as in England which is nearer the theatre of war against Germany than America. America had not the necessity to take so many measures like the English D.O.R.A., but it had only to expand its administrative agencies to fight the war. It was President Wilson's chief task to organise the government effectively in order to fight the war and Woodrow Wilson assumed so many responsibilities and wielded dictatorial power over the economic field.

Unlike Lincoln who fell back on the Constitution for the grant of power and proceeded on the footing that the Constitution contained expressly and impliedly all powers for him to act under the emergency, and did act in spite of Congress, Wilson based his authority on a group of statutes authorised by congress, and thus co-operated with the Congress. The Delegated statutory authority was thus his device to fight the war by raising large armies overseas. He did use also his power as Commander-in-chief under the Constitution.

Woodrow Wilson was one of the strongest critics of Congressional Government that America ever produced and wanted to assert himself. He condemned the mode of looking at the President's position as merely the executive of the sovereign legislative will, and having no power of action independently of the conscience of the Senate. He proposed to give the heads of executive departments—the members of the cabinet—seats in the Congress vested with the powers of initiative in legislation and the privileges of the standing committees. He advised Cleveland to become the Prime Minister and seize power and he advised better relationship with the Congress. Wilson was thinking of Cabinet Government and the assumption by the President of the role of the Prime Minister. He began the theory of the President becoming the leader of his Party and he said that the President was at liberty, in law and in conscience, to be as big a man as he can, and that his capacity will set the limits to his power, and he wanted the President to become the Prime Minister as much concerned with the initiative and guidance in legislation as with the just and orderly execution of the law, and he delegated his powers as a constitutional executive to his subordinates. He twice threatened to resign if people

did not vote for him. He insisted on the repeal of the Panama Canal Tolls on American vessels, as they were according to him, restrictions on freedom of contract, and he threatened to resign in the alternative. He attended the Peace Conference at Paris, and his legislative enactment was conspicuous by being called "The New Freedom", which is said to pave the way for the "New Deal". The passing of the Underwood Simmons Tariff Act of 1913, the Federal Reserve Act, the Clayton Anti Trust Act of 1914, the constitution of the Federal Trade Commission to enforce it, the constitution of the Federal Power Commission to conserve the power resources of the country,—are all his achievements. He wanted to restore the freedom of economic enterprise for 'The man with only a little capital' and repudiated the theory of public ownership espoused by Socialists and proclaimed that he was for big business and not for Trusts.

He set up his War Industries Board, created the Committee on public information, established cable censorships, dealt in an arbitrary manner with German nationals and Firms, and set up several emergency agencies. The statutory delegations of power to him were numerous. Congress passed Acts empowering him to take over and operate the railroads, and water systems, to regulate and commandeer all ship-building facilities in the United States, to regulate and prohibit exports, to raise armies by conscription, to allocate priorities in transportation, to take over and operate the Telegraph and Telephone systems, to redistribute functions among the executive agencies of the government, to control foreign and local Press and censor them.

The Liver Act of 1919 empowered the President to establish and regulate the importation, manufacture, storage, mining and transportation of necessities, to regulate foods, fuels and other articles necessary for any public use connected with national defence, to purchase, store and sell certain foods, to fix a reasonable and guaranteed price of wheat based on the statutory minimum, to take over and operate factories, mines, packing houses, pipe lines and industrial institutions important for national defence, to fix the price of coal and coke and regulate and prohibit the use of food materials in the manufacture of intoxicants. His book "Constitutional Government in the United States" reflected his political opinions, which he not only adumbrated in theory but largely practised. In the control of war measures, Wilson was successful in maintaining influence and position, in spite of vigorous opposition in the Senate and Congress.

The Social Aspect of Modern War

The war had the effect of bringing private enterprise of all kinds under government control and in many cases under government management. Many industries were under governmental regulations.—The railroads, telegraph, and telephone came under government management. The War Industries Board regulated many industries. They had to conform to certain standards of efficient management. Fuel and Food administration regulated the respective subjects and there were a number of licensing, price fixing and priority regulations.—The President had the sole executive authority, constitutional and delegated, and the whole national economy was controlled by him. New Boards, Commissions etc., were all under his supervision and control and appointment to these Boards was done by him. The Overman Act gave him full authority over the administration to prosecute the war with efficiency.

Presidential Justice

Since there is no judicial control upon the delegation of power by the Congress to administrative agents, and Congress is having little power over day-to-day administration, the President and the Courts alone have the control required. This question has been discussed by Patterson in his book "Presidential Government in the United States." Mr. Patterson says that since the decision in *Myers Vs. United States* 272 U. S. 52 (1926) it has become habitual in America to speak of executive and Presidential justice. The President is in complete charge of appointment and removal. Power of removal gives him limitless control. The President's discretion to remove the commission or the officer under him on grounds of inefficiency, neglect of duty, malfeasance or any other ground defined by statute will not be enquired into by Courts.

The decision in *Humphreys Vs. United States* (1935) precluded President's judicial power in cases which are judicial, quasi-judicial and quasi-legislative and it was held that the President could not remove a Member of the Federal Trade Commission on grounds of difference of policy between the two. The Supreme Court has held that article 3 of the Constitution debars Constitutional Courts from reviewing issues of facts even in controversies of a judicial nature, if such issues were heard and determined in the first instance by an administrative agency. The judgment is based on the ground that administrative judgment or executive judgments are outside

judicial review by the doctrine of separation of powers, unless they involve questions of law. (Refer the following cases: Southern Pacific Vs. Darnell Lumber Co., 245 U. S. 531 (1918) Grand Northern Railway Company Vs. Merchants Elevator Company 259 U. S. 255 (1922); Baer Brothers Mercantile Company Vs. Denver and Rio Grand Railway Company, 233 U. S. 479 (1914); United States Vs. Burleson 255 U. S. 407 (1921); United States Vs. Durell, 172 U. S. 576 (1899).

The Courts have always claimed a right to review decisions of administrative tribunals on questions of law. Dicey's dictum of 1885 is still followed in America both in regard to substantial and procedural law. If the Party has been deprived of his constitutional right, be they substantive or procedural, then the courts have always the right to review the evidence in order to see if there is anything legally supporting the administrative decision. Judicial investigation in the procedural 'Due process' has been widened by the two Supreme Court decisions, Morgan Vs. United States, (298 U. S. 486 (1936) decided that 'full hearing' is an intergral part of 'Due Process' and rules of appraisalment of evidence and the reading of the argument on behalf of the aggrieved party must be complied with. The Ohio Bell Telephone Co., Public Utility Commission (1936) restricts the right of the Commission to decide a controversy on facts known to them from their special and technical experience and requires such facts to be adduced in evidence of the commission at the time of the hearing. Thus, of necessity, the administration will facilitate the parties by giving them the essentials of fair hearing to which they are constitutionally entitled. Government must give the full charges, the person deciding the administrative issue must give his reasons and arguments in detail, and all evidence relevant to the matter should be adduced.

Thus administrative justice has been secured in administrative courts, but when it comes to the question of judicial review of administrative facts, American courts are not quite clear. The power of the Administrative Bodies in America to make findings of fact to be treated as conclusive, is a power of great consequence and is likely to be misused by arbitrary and despotic administrative agents and except in a few cases, generally, there is no review in any event, or the statute generally provides that no review lies, and makes the administrative judgment final.

But this general principle is subject to two limitations, Firstly in cases 'of constitutional facts' i.e., in cases where the interpreta-

tion of certain facts will lead to a constitutional right, the determination of the administration as to the interpretation, cannot be final, and therefore judicial review will lie in such cases as decided by Ohio Valley Water Company Vs. Ben Avon Borough (1920) and St. Joseph Stockyard Co. Vs. United States (1936). Finding of maximum future rates by Public Service Commission for utility rates has been held to be a legislative process subject to a judicial review.

Thus Presidential delegation of power gave rise to many problems of interpretation by courts in regard to administrative judgments following various administrative Acts of emergency.

War and Controls

The controls set up by the administration were numerous and Wilson's Decrees of December 8, 119, Sep. 16, 18 and 19, 1919 under the Liver Act are worth perusing. The result was taxation was comprehensive and heavy, though labour was not controlled too much and some of the strikes were settled. A National Labour Board was established. Liberty of Press, and freedom of speech were controlled. There was no suspension of Habeas Corpus as in the civil war but Congress passed the Espionage Act of June 15, 1917 and The Sedition Acts.

The Selective Service Act was upheld by the Supreme Court in Arthur Vs. United States (245 U.S. 366). The Supreme Court considered a number of pieces of Emergency legislation like Rent control and upheld all of them. Hamilton Vs. Kentucky Distilleries (25 U.S. 146), Schneck Vs. U.S. (249 U.S. 47); Abrams Vs. U.S. (250 U.S. 616); Block Vs. Hirsch (256 U.S. 135). In Chastelton Corporation Vs. Sinclair (264 U.S. 543) continuance of controls was objected to as the emergency has lapsed.

Economic Depression and the New Deal

The economic depression of the early thirties of this century dealt a staggering blow to American economy and resulted in worldwide unemployment, Industrial stagnation, and social unrest. People in America had already become infected with the western continental ideas of socialism and welfare state, and the economic problems arising out of the war combined with questions emerging out of the war depression to induce people to resort to the gospel of the positive state.

Roosevelt was determined to route out the economic effects of the depression by stern measures, and restore the balance of trade, industry, commerce and agriculture. President Hoover had enacted several emergency measures like The Re-Construction Finance Act and The Emergency Relief and Reconstruction Act, and Franklin Roosevelt simply followed the footsteps of Abraham Lincoln and Wilson in asserting his powers with a view to save the country from a national disaster—'an emergency greater than war', as the late President described it. The economic depression resulted in the closing of many Banks and it looked as if American economy was shattered. Agriculture, industry, finance — everything was affected by the depression. His Proclamation on March 6, 1933 referred to the existence of a national emergency and decreed a Bank holiday, forbade the export of gold and silver and prohibited transactions in Foreign Exchange. He maintained his action on the basis of Sec. 5(b) of The Trading with the Enemy Act of Oct. 6, 1917, empowering the President to investigate, regulate or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, and export, hoarding, melting or earmarking of gold or silver coin or bullion or currency." The Proclamation was subsequently validated by The Emergency Banking Act of March 9, passed by the Congress. The Trading with the Enemy Act was also suitably amended. Foundations were thus laid for Presidential initiative of a wide character.

As Harold Laski says in the 'American Presidency' at page 160, "In a crisis, to put it shortly, public opinion compels the abrogation of powers. There is really only one will in effective operations, and that is the will of the President. He is as powerful, while the emergency has a psychological hold of the country, as the British Prime Minister at a moment of national emergency."

Franklin suggested a complete and detailed programme of emergency legislation to the Congress and his legislative leadership was acknowledged by all. Roosevelt's celebrated 100 days of Congressional activities was intended to 'wage war against emergency', to which ideal he has sworn. The emergency measures were the following:—(1) The Emergency Banking Act of March 9; (2) The Economy Act, March 20th; (3) Unemployment Relief Act of March 31; (4) The Agricultural Adjustment Act of May 12th; (5) The Thomas Inflation Amendment of May 12; (6) The Emergency Farm Mortgage Act of May 12; (7) The Federal Emergency Relief Act of May 12; (8) The Home Owners' Loan Act of

June 13; (9) The Farm Credit Act of June 16; (10) The Emergency Railroad Transportation Act of June 16; and (11) The National Industrial Recovery Act of June 16.

The President was delegated authority under these Acts to deal with these respective subjects covered by the emergency. The President was given plenary powers to prescribe the trade practices and labour policies of the entire field of American industry. Thousands of Rules and orders have been passed under these statutes. Though the President was not actually making laws, but only filling up details, yet in effect the Presidential Decree was all-embracing.

The Economy Act empowered the President to make reductions in salaries of public servants and pensions, and to reorganise and abolish, if necessary, many administrative agencies, subject to Congress disapproval within 60 days. The President was delegated authority to spend 3 billion dollars under the National Recovery Act for emergency public administration. In comparing it with French and German emergency powers, it must be said that there was no suppression of civil liberty as such in America nor a demoralised paralysing of the legislative process. The Emergency measures adopted were far superior, from the point of view of individual liberty than Art. 48 of Germany or the State of Siege of France requiring enabling Acts. It compares well with the emergency measures adopted in England.

The Supreme Court except in the Milligan case in 1866 cited earlier, refused to declare ultra vires the extraordinary legislative and executive Acts taken during the period of the New Deal and thus there was a permanent alteration of governmental power, but during the latter half of the New Deal, the Supreme Court refused to accede to some of the later Acts of the New Deal, on the ground that they affected the separation of powers and the Federal principle. The New Deal effected permanent alterations in the Constitutional structure and the Agricultural Adjustment Act (AAA) was declared unconstitutional in *United States Vs. Butler* (297 U.S. (1936) 1) on the ground that it was opposed to the federal principle and the National Recovery Act was adjudged as offending the separation of powers in the case of *Panama Refining Co. Vs. Ryan* (293 U.S. 388 (1938)) and it was declared completely ultra vires in *Schechter Poultry Company Vs. U.S.* (205 U.S. 495).

Justice Robert in his judgment in the *United States Vs. Butler* says, "We are not now required to ascertain that the scope of the

phrase 'General Welfare of the United States' or to determine whether an appropriation in aid of agriculture falls within it. Wholly apart from that question, another principle embedded in our Constitution prohibits the enforcement of the Agricultural Adjustment Act. The Act invades the reserved rights of the State. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriations of the funds raised, and directions for their disbursements, are but parts of the plan. They are but means to an unconstitutional end. From the accepted doctrine that the United States is a government of delegated powers, it follows that those not expressly granted, or reasonably to be implied from such as are conferred, are reserved to the states or to the people. To forestall any suggestion to the contrary, the tenth amendment was adopted. The same proposition, otherwise stated, is that powers not granted are prohibited. None to regulate agricultural production is given, and therefore legislation by Congress for that purpose is forbidden.' Three judges dissented from the view.

Chief Justice Hughes delivered the judgment of the Court in *Schechter Poultry Company Vs. United States*, 295 U.S. 495 (1935) "Here in the case before us in an attempted delegation not confined to any single act nor to any class or group of acts identified or described by reference to a standard. Here in effect is a roving commission to enquire into evils and upon discovery to correct." The court refused to consider the Act as valid on the ground that the delegation of power to the President to promulgate fair codes of competition for industrial groups was an arbitrary and sweeping power setting no standard, definite or even approximate to which, legislation may conform.

Crisis Government in the Second World War

American Government stuck to its emergency methods adopted during the First War in 1914 to 1919, the Presidency became still more powerful. Roosevelt issued two Emergency Proclamations, one limited emergency on Sep. 8, 1939 and another on ground of unlimited emergency on Dec. 7, 1941. The following are a few of his important achievements during the course of the war: (1) He called for action under the Lend Lease Act; (2) He occupied Iceland; (3) He was responsible for the famous Atlantic Charter; (4) Initiation of the American Convoys; (5) Shoot at Sight Order of Sep. 1941; (6) The Destroyer Deal of 1940 which was debated as

a violation of American neutrality and as against the provision that Congress shall have power to dispose of property belonging to United States (Article 4 (3) Cl. (2)). Roosevelt based his powers on the Stewardship theory and his message to Congress on Sep. 7, 1942 calling for a repeal of certain provisions of the Emergency Price Control Act shows, as remarked by Corwin, at page 304 "President, Office and Powers." "In a word the President said to Congress 'unless you repeal a certain statutory provision forthwith, I shall nevertheless treat it as a repeal.'

Corwin in considering the above thing says "The message of September 7 can only be interpreted as claim of power on the part of the President to suspend the Constitution in a situation deemed by him to make such a step necessary. But Mr. Roosevelt was proposing to set aside, not a particular clause of the Constitution, but its most fundamental characteristic, its division of power between Congress and President, and thereby gather into his hands the combined power of both. He was suggesting, if not threatening, a virtually complete suspension of the Constitution."

Rossiter makes his comments thus:—"The President who is to take care that the laws be faithfully executed" announced to the makers of one of those laws a law which he himself had approved, that he was about to act in direct disregard of its terms if they did not repeal it.

The following Acts of an emergency nature were passed:—

- (a) The Lend Lease Act of March 4, 1941; (b) The First and Second War Powers Act of December 18, 1941; and March 27, 1942;
- (c) The Emergency Price Control Act of January 30, 1942;

The Office of emergency management set up under the President's executive order of September 18, 1939, approved by Congress, gave rise to several departments of an emergency type for emergency administration, and economic regulations enforced by them were enormous. Several departments of war administration owe their existence to this Order.

Emergency and Civil Liberty

Unlike the previous wars, civil liberty was not so much controlled as in the last war, due to the fact that public opinion was behind the government in a larger measure in this war than in the first one. The Espionage Act of 1917 and Alien Registration Act of June 1940 are notable instances of legislation to control in-

subordination in the fighting services, with a view to overthrowing the government.

In two decisions, *Hartzell Vs. United States*, 322 U.S. 680 and *Hannegin Vs. Esquire* (327 U.S. 146), the Supreme Court rejected the convictions of persons charged for printing and mailing defamatory publications and suppression of objectionable mail containing seditious correspondence by the Post Master. The censorship was rigorous and an Advisory Board was constituted for the purpose. The National War Labour Board dealt with war-time industrial dispute set up in 1942 January. Strike bound plants were seized and operated and pay scales were increased with retrospective effects. Price-fixing, rationing and government control of industry became the order of the day. Freedom of contract was pushed to the background. As we have seen already the Price Control Act was upheld in *Yakus Vs. United States*, 321 U.S. 414. The Rent Control provisions of the Price Control Act were upheld in *Bowles Vs. Willingham* (321 U.S. 503). The Second War Powers Act, Title 3 gave the President power to issue an Order on April 7, 1942 for rationing under Emergency Price Control Act of January 20, 1942 and the O.P.A. was constituted to regulate the prices of commodities. The decision in *Yakus Vs. United States* as also the decision in *Stewart & Co. Vs. Bowles* upheld the O.P.A. (322 U.S. 398).

In the war prohibition cases (*Hamilton, Collector Vs. Dissils & Warehouse Company* 251 U.S. 146 (1919) *Jacob Rupert Vs. Caffery Ltd.* (ibid.) 264 (1920), *Northern Pacific Railway Co. Vs. N. O. Dak* (250 U.S. 135 (1919)), Congress is said to have been endowed with an indefinite legislative competence in the promotion of war efficiency. In the Espionage Act cases, it was held, that War empowers the State to abridge freedom of speech in Press at the discretion of the legislature (*Shenneck Vs. U.S.* 247 U.S. 47 (1919); *Abrahams etc. Vs. U.S.* (250 U.S. 616 (1919)). In the selective draft cases (245 U.S. 366 (1918)), government was empowered to raise armies and conscript people for foreign service. In the emergency rent cases (*Block Vs. Hirsh*) 256 U.S. 135, *Marcus Brown Company Vs. Fieldman* (ibid) 170 (1921), it was held that public emergency required the practical suspension of the just compensation clause of the 5th amendment and to tide over 'a passing trouble'. The Courts did not hint at all, on any possible invalidity of such legislation as transgressing delegation of legislative power. *Charlston Corporation Vs. Sinclair* (264 U.S. 543 (1924) is another case of this category. "A law depending on

the existence of the emergency or other state of affairs to uphold, may cease to operate, if the emergency ceases or the facts changed even though valid when passed—In our opinion it is open to enquire whether the emergency still existed upon which the continued operation of the law depended" and the court declared that the facts showed that the emergency had ceased to exist. This case was differentiated later in *East New York Savings Bank Vs. Hahn* 326 U.S. 230 (1945) by which the Court sustained the New York statute of 1943, extending for one further 12 months term the 1933 Moratorium law of the State (Vide Strong's "Constitutional Law" page 212).

Corwin considers the legal effect of these war powers on the Due Process clause of the 14th amendment and generally The Bill of Rights, in his book "Constitution and What it means today" at page 65 to 70. He cites the instance of the measures taken by the National Government in the recent war respecting Japanese Residents on the West Coast (Nearly 112000 Japanese were transplanted to another place) *Hirabayashi Vs. United States* 320 U.S. 181 (1943). *Korematsu Vs. U.S.*, 323 U.S. 214 (1944) upheld this action. This was the result of the danger apprehended by the Japanese espionage and infiltration after the Pearl Harbour. In *ex parte Endo* it was decided that a Japanese American of proven loyalty was entitled to an unconditional relief from the Indent Camp to which he had been sent. In *Duncan Vs. Khanamoku*, and also *White Vs. Ster*, 327 U.S. 304, the Supreme Court in 1944 reasserted the constitutional right of judicial review of Martial Law power—that military courts have no jurisdiction over civilians in areas where no imminent danger threatens, and the regular courts are able to discharge their duties, which was once asserted in the *ex parte Milligan* case—was reasserted and the Supreme Court held the invalidity of the prison sentences by military tribunals upon civilians for civilian crimes.

Nevertheless Corwin thinks, that the war may in cases of an atomic attack require the suspension of the Constitution. He says the circumstances of atomic warfare would not improbably, bring about the total supplantation for an indefinite period of the forms of constitutional government by the drastic procedures of military government."

The necessity for a strong and absolute government in the atomic age does not mean that democracy is to perish, but it means that strong government can also be democratic government, and that dictatorship can be constitutional if worked under safeguards.

Comparison of Constitutional Powers of Emergency

Stannard in "The two constitutions", at page 184 says that no constitutional arrangements, whether written or unwritten, can provide for all emergencies and there must be somewhere a *reserve power* capable of dealing with crises when they occur. He attributes the fall of the third French Republic in France for lack of such a power, and the success of the English parliamentary system to the reserve power which resides still in the Crown, and he cites various instances like the breakdown of the British Parliament over the Irish question and the rejection of the Parliament Bill 1910 which created deadlock during King George V's regime—in both of which cases the crown's personal intervention saved the situation. The Irish Home Rule Bill precipitated a third crisis in 1914, and it was the Conference mooted by the king that prevented the clash. A stable coalition established in 1931 by the intervention of the king saved England from economic depression.

This reserve power is more effective in a constitutional monarchy, than in a federal system. In the case of Canada the clause in the British North America Act giving the Dominion government power to legislate for the peace, order and good government of the country saved the situation in several cases. In Australia, the reserve powers for emergencies are extended by the agreement between state legislatures or alternatively by a referendum. Stannard says that in the United States, the Constitution itself is an emergency device, giving an effective control for government, besides its provision for constitutional amendment, and the American President who fell back on his reserve power (Jafferson) to carry through the Louisiana purchase, and emancipation proclamations (Lincoln) is no doubt an emergency symbol.

Emergency Legislation in the Dominions

Mr. Varcoe in his book "Distribution of Legislative powers in Canada" page 60 says—the doctrine of emergency arose in the case of *Russel Vs. Queen*, 7 A.C.C. 829 at 842 and points to the observation of Lord Watson at page 348 *Local prohibition case*, (1896 A.C.)—"Their Lordships do not doubt that some matters in their origin, local and personal, might attain such dimensions as to affect the body politic of the Union, and to justify the Canadian Parliament in passing laws for their regulation or abolition in the interest of the Dominion. In *A.G. for Canada Vs. A.G. for Alberta* (1916) 1 A.C. 588, it was laid down that Parliament had authority

to enact legislation under the general power to legislate for the peace, order and good government of Canada.

In *Fort France's Pulp and Power Company Vs. Manitoba Free Press* (1923 A.C. 685), Viscount Haldane in the Privy Council, while holding the War Measure Act (1914) *intra vires* Section 91 of British North America Act, refers to the War emergency in the following terms:—"The general control of property and civil rights for normal purposes remains with the Provincial legislatures. But questions may arise by reason of the special circumstances of the national emergency, which concern nothing short of the peace, order and good government of Canada as a whole. The power to legislate in exceptional circumstances is said to be based upon an implied, rather than an 'express power' and it is available to Parliament for temporary purposes only."

The powers granted to the Governor-General in Council were to be used only during the war. In 1939 Mobilisation Act was passed, which was called 'The everything and everybody Act' which in many respects far outweighed the English Acts which had to be laid before Parliament, being subject as they are to annulment within the period specified. Larger powers have been delegated to the executive in Canada than in England (For details see the Report of the Committee on Civil Liberties in the Canadian Bar Review). Practically no safeguards to all kinds of judicial and executive legislative powers which were jumbled together and granted to the executive could be found in the Canadian legislation. No right of appeal either to the courts of law or to judicial bodies independent of the executive have been provided for. Provision for delegation and sub-delegation of legislative powers to executive has been provided for. Canadian War legislation is pure dictatorship when compared to English and American enactments.

Regulation 21 of the Defence of Canada Regulation is a counter part of Regulation 18 of England, and if the Minister of Justice is satisfied that a particular person is to be detained or imprisoned in the interest of public safety, he can direct him to be detained, under such conditions as he may from time to time determine. The Minister is to be advised by Committee to whom all information except those to be kept confidential in public interest, is to be conveyed by the Minister, and the person charged is to be supplied with such particulars of the reasons of the order as the Chairman of the Committee might choose to disclose, and there is no legal formal criminal procedure with regard to the trial of such offences.

As the Report of the Committee on Civil Liberties discloses, "Under different Acts and Orders, federal and provincial, citizens are sometimes arrested without warrant, or subjected to examination as to their guilt, and forced to speak against themselves, and their evidence may be filed by the Crown at trial against all rules of common law. In many cases, under either civil or criminal law, prerogative Writs have been abolished." Quite contrary to the presumption of the innocence of the accused until proved to be a criminal, the Regulations presume a man to be guilty and throws a duty on him to prove his innocence.

Attempt was made to impugn this legislation that the Canadian Parliament being subordinate to the British Parliament, it was a subordinate body not possessing the power of delegating and sub-delegating its powers under the British North America Act. Such delegation was virtual abdication of the powers of legislation to another legislative body and reliance was placed on the leading case of "In re: The Initiative and Referendum Act" 1919 A.C. page 935. The answer to this was that there was no such abdication of power of legislation to the Governor-general in council, as it was only a limited power given for the purpose of regulation re 'the security, defence, peace, order and welfare of Canada' and it was held that the Canadian Parliament had equal rights as the British Parliament to delegate functions to subordinate bodies. (In Reference, The Regulations Vs. Chemicals, 1943 S.C.R. page 1). In *Toronto Electric Commissioners Vs. Snider* (1925 A.C. 396) Viscount Haldane compared the national emergency arising from intemperance to 'a menace to the national life of Canada so serious and pressing that the National Parliament was called on to intervene to protect the nation from disaster' and he compared it to an epidemic or pestilence.

In the case of *In re: The Regulation and control of Aeronautics* (1932 A.C. 54) Lord Sankey referred to the *Fort Frances* case and said at page 73 "It is obvious therefore that there may be cases where the Dominion is entitled to speak for the whole, and this not because of any judicial interpretation of Section 91 and 92, but by reason of the plain terms of Section 132, where Canada as a whole having taken an obligation, is given the power necessary and proper for performing that obligation."

Lord Atkin refused to apply the Emergency Doctrine to an object whose operation was intended to be permanent in the case of 'In re: Employment and Social Insurance Act, 1937 A.C. 355'.

Viscount Simon rejected the Emergency Doctrine but held that it was the nature of the legislation and not the existence of the emergency that must determine the validity of the legislation in *A.G. for Ontario Vs. Canada Temperance Federation* (1946 A.C. 193). Viscount Simon based his decisions upon the express power to legislate for the peace, order and good government of Canada, and rejected the implied emergency power invented by Viscount Haldane.

Thus Canadian interpretation proceeded on different grounds from the American doctrine of implied power or Presidential initiative and prerogative. It must be distinguished also from the exercise of emergency power under English Parliamentary sovereignty. The Canadian legislation is more arbitrary than the Indian Prevention of Detention Act and Defence Regulations in India as we shall see lower down.

Emergency Legislation in India

It is common knowledge that India, before it achieved its independence in 1947, was governed by a bureaucracy that was not responsible to the people of India but only to the British Parliament and there was no harmony of interest between the people of India and the foreign government. Freedom and civil liberty were entirely at the sufferance and mercy of a foreign power and the citizen of India was allowed in ordinary times his civil liberties by the executive only so long as, and to that extent to which, such enjoyment did not involve in the opinion of the British executive, danger to the existence and the carrying on of what in India has been called as 'Government established by Law'. The citizens' rights therefore were entirely precarious even in ordinary times. An emergency would only tend to diminish the citizens' powers instead of enlarging them, and any threat to the independence of the country would be attendant with an internal crisis, and the foreign government will naturally arm itself with extraordinary powers to meet this double crisis. It is no exaggeration to say that British Government had been treating Indians exactly as it would treat a foreign foe during times of emergency.

In spite of the grant and enjoyment of Provincial autonomy by the Government of India Act of 1935, the Provincial Legislatures did not function properly due to the agitation by the people of India for responsible Government, and the Central Legislature was not a popular legislature and both governments, central and pro-

vincial, were not responsible to the people. The moment the popular element was lacking, the bureaucracy wielded all its power and used it in utter disregard of the civil liberties of the people. The executive wielded all the emergency powers enacted by themselves and used them to stifle the legitimate aspirations of the people for self expression.

Section 102 of the Government of India Act was used by the Governor-General for declaring the existence of a grave emergency in India which threatened its security, and all legislative power over the Centre and Provinces was merged in the Governor-General. The Governor-General issued Ordinances under Section 72 in the Ninth Schedule of the 1935 Government of India Act on grounds of emergency. The entire emergency legislation in India at the time of the Second World War was enacted by him without consulting the Central and Provincial legislature and thereby cut down the citizens' liberty to the very minimum. The Defence of India Ordinance of 1939 (Ordinance No. 5 of 1939) was enacted by him and was passed by the Central Legislature and enacted as the Defence of India Act 1939 (Act XXXV of 1939), intended to be in force for the period of the War and six months thereafter.

Section 2(1) of the Act empowered the Central Government to make such rules as appear to be necessary or expedient for securing the defence of India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community. Sub-Section 2 of Section 2 provided that without prejudice to the generality of the powers conferred by Sub-Section 1, the rules may provide for, or may empower any authority to make orders providing for 'all or any of the matters enumerated in the sub-section' when various heads are enumerated. Sub-Section 3 of Section 2 conferred power on the Central Government to make rules conferring powers on the central government or its officers and upon the provincial government and its officers. Sub-Section 4 and 5 authorise the central and provincial governments to delegate their powers to subordinate bodies, and provision was made by Section 3 to validate any order made under Section 2 which may be inconsistent with any enactment other than the Defence of India Act. Section 14 provided that save as otherwise expressly provided by or under this Act, the ordinary criminal and civil courts shall continue to exercise jurisdiction. Thus the civil and criminal courts were deprived of their jurisdiction in effect. Section 16 (1) ousted

the jurisdiction in courts in regard to any order passed under the Act. Section 17 barred prosecution or the legal proceedings against any person who in good faith does an act in pursuance of the Act. Rule 81 (2) was an important order by which all supplies essential to the life of the community were controlled, in use, disposition and prices etc. including the publication or withholding of sale of specified articles. Rule 16 of the Rules empowered the Central and Provincial governments to detain any person and impose restraints on him if it is satisfied that with a view to preventing him from acting in any manner prejudicial to the defence of India, public safety and maintenance of public order. There was no provision to lay the notifications and rules before the legislature. Neither was there any appearance of formal legislative form and the many rules and orders made thereby were high handed. Thousands of persons were detained under Rule 26 without showing any cause. The persons detained were really detained for political reasons and not on the ground of preventing the war effort. The words used were a reproduction of the English Emergency Powers (Defence Act of 1939).

The Indian legislature was a subordinate legislature and there was no item in the list styled 'Defence of India' and therefore it was contended that the Acts and Rules made thereunder were ultra vires. But the Federal Court in *Keshav Talpade Vs. Emperor* (6 F.L.J. p. 28 at p. 36 to 37) held that the Acts and Rules were valid because there were entries in the lists which could be found to justify legislation of most matters enumerated under Section 2(1) of the Defence of India Act, and the provisions of Sub-Section 2. In the *Keshav Talpade's* case cited above, Habeas Corpus proceedings were started by a petition writer of the Bombay High Court against an order detaining him under the Act. The High Court refused to interfere upon which he appealed to the Federal Court. The Federal Court held that Rule 26 was ultra vires of the Rule making power mentioned in Sub-Clause 2 of Section 2 in as much as the rule-making power spoke of detention of a person who was 'reasonably suspected' which meant an objective reasonableness and not subjective reasonableness, and Art. 26 as framed spoke of enabling the Government to detain a person if it is satisfied, i.e. subjectively satisfied or in its own view satisfied.

The Crown also tried to base its case on the wider Rule-making power contained in Sub-Clause 1 of Section 2 but the Federal Court rejected that contention also as it held that it was not permissible to bring in aid the more general words in that

Sub-Section in order to justify a rule which overstepped the limits of the specific power granted in Sub-Section 2. The Federal court condemned the arbitrariness of the Rule-making power, as in many cases the persons in whom this grave power is vested may have had no opportunity of applying their minds to the facts of every case before them. The Court refused to follow *Liversidge Vs. Anderson* but proceeded relying on the observations contained in Lord Atkin's dissenting judgment. (Sir Maurice Guyer, C. J., Varadachariar and Zafrulla Khan, J.J.)

But this judgment was overruled by the Privy Council (*Emperor Vs. Shibnath Banerji and others*) (1945) 8, F.L.J. 222.

Soon the defect in the rule was remedied by the issue of a fresh Ordinance enacted by the Governor-General on the plea that an emergency had arisen due to the judgment of the Federal Court, and it kept the illegally detained persons further in detention by this amended Ordinance. Law and its administration by Courts suffered humiliation in the eyes of the Indian public by the attempt of the executive to over-reach the Rule of Law.

The Validated Ordinance was again attacked in the Courts. The Federal Court in *King Emperor Vs. Shibnath Banerji and others* (1943) 6, F.L.J. p. 151 released some of the detenues on the ground that Rule 26 required that the executive should have applied their minds to the cases beforehand. It was contended that a general police order of detention will not do and on appeal by the Crown to the Privy Council, the Federal Court's decision was upheld. *King Emperor Vs. Shibnath Banerji and others*. (1945) 8 F.L.J. 222.

The executive soon improved on the Validated Ordinance and a new Ordinance called 'Restriction and Detention Ordinance' was passed by which powers contained in Rule 26 were left intact but provision was made that the executive should furnish grounds for detention and the detainee should have the opportunity of representations to them so as to defend himself. This was merely eye-wash as no real justice and no real opportunity to state his case was given. Neither a full charge-sheet was made of the offence, and the detainee had no opportunity to have recourse to legal advice. The Ordinance deprived the detainee of the right of Habeas Corpus enjoyed by him under Section 491 of the Cr.P.C. Thousands were thus kept in detention for no reason and they were kept for months after the termination of the War.

Constitution of Special Courts

Instead of constituting special tribunals for the purpose of trying offences as laid down in the Defence of India Act, an Ordinance called 'The Special Criminal Courts Ordinance' (II of 1942) was passed making provision for the trial of offences by Special Courts, and the Provincial Government was given the power to decide the existence of an emergency for the trial by Special Courts, and the Provincial Government was left to decide what class of cases was to be tried by the Special Courts which were governed by a special procedure, and the relief by way of appeal was attenuated.

By Sec. 26 of the Ordinance, all authority in High Courts to revise an order of sentence, or transfer any case, or to make an order under Sec. 491 Cr. P. C. were excluded so far as the proceedings of the special courts were concerned. The supervisory jurisdiction of the High Court under certain provisions, over subordinate courts, arising from the Criminal Procedure Code, was put an end to. This Ordinance struck the last nail on the citizens' rights to get relief,—the right of appeal, revision and trial by Jury, right to a trial by a court commanding status, all those were pushed to the background. The Calcutta High Court in a Full Bench condemned this delegation of power to the executive to decide what cases can be considered by them, as highly improper and declared the Ordinance ultra vires, and the Federal Court confirmed this decision in the case of *Emperor Vs. Benoari Lal Sharma and others*. (1943) (6 F.L.J. 79). The Federal Court made the following observation:—"In England even the emergency legislation is parliamentary legislation passed by Orders-in-Council passed under the authority of Parliamentary statute and it is always subject to Parliamentary control, including in the last resort the right to insist on the annulment or modification of the order-in-council or even the repeal or the modification of the statute itself. Under the Indian Constitution, the legislature has no share in or control over the making of an Ordinance or the exercise of powers thereunder, nor has it any voice in asking for its repeal or modification. Again anything like a serious excess in the use of special emergency powers will, under the English practice, be a matter which Parliament can take note of, when the time comes for passing the usual Indemnity Acts on the termination of the Emergency. (See Dicey's 'Law of the Constitution', page 236 and Carr's 'Administrative Law', page 69 and 70). That is not the position here, as the Indemnity can be provided

by an Ordinance. As against all this, the only safeguard provided in the Indian Constitution, is that the matter rests entirely upon the responsibility of the Governor-General. This only confirms the argument against delegation of such a responsibility at least without laying down in clear and definite terms the limits and conditions governing the exercise by executive officers of powers conferred upon them by the Ordinance." (C. J. Varadachariar's observations at page 117).

The practice that the Executive was given complete liberty to withdraw cases from ordinary courts and give it to special courts without defining the policy or conditions on which that power is exercised, was condemned by the Federal Court, as the practice has extended to all offences and the choice of the forum for litigation has been entrusted to any servant of the Crown who may be authorised by the Provincial Government. The Federal Court said that it was not criticising the Policy of the legislature but the fault was that the law had laid down no policy or principle to guide, and control, the exercise of the undefined powers entrusted to the executive authorities by Sec. 5, 10 and 16 of the Ordinance.

As a result of this judgment, the Special Courts Ordinance was repealed and provision was made that the special court's orders should be reviewed. Thus the ordinary courts got seized of jurisdiction to try persons who were not tried by the special courts.

The Bureaucracy appealed to the Privy Council, in spite of the repeal of the Special Courts' Ordinance as against the judgment of the Federal Court, and the Privy Council overruled the Federal Court's judgment on a literal and technical construction of the working of the Ordinance. (Vide *King Emperor Vs. Benarilal Sharma and others*. (1945) 8, F.L.J.P. 1.

This judgment of the Privy Council has been resented to widely in the country as a judgment decided on political considerations.

The arguments in the Privy Council proceeded entirely on political grounds, and this raised a storm of protest from all sections of the public in India, and from that time onwards, the Special Courts have not been appreciated in the country as they have not afforded proper justice. Ordinances which provide that no action

taken under them can be called in question in a court of law or that no suits should be instituted against or anything done in good faith or intended to be done, in some cases for 'anything done' are very arbitrary and opposed to the Rule of Law.

Emergency and Property Rights

Freedom of Trade and Right of Property have been equally affected by Emergency legislation in India. The Bombay High Court has held that requisition of property, immovable property under the Defence Regulations was ultra vires of the Central legislature, while the Calcutta High Court has held that requisition of movable property was valid under Rule 75 A (4) of the Defence of India Rules. The compensation given by Government was nominal and it was not the market value in any case as in England, where just compensation was provided under the Defence Regulations and movable property under Rule 75 A is entitled to such compensation as the Government may determine (The recent amendment to Article 31 A of the Indian Constitution is analogous to this provision and applies to all cases of property, movable and immovable).

Mr. M. C. Setalvad, the Attorney-General of India, in his book "War and Civil Liberties", from which I have been able to derive much useful information on the topic in relation to pre-independent India, at page 71 says about Rule 75 A (4) in regard to compensation for movable property, "No method or standard for assessment of the compensation has been provided. The claimant is in the matter of compensation entirely at the mercy of the particular government official or department entrusted with the duty of fixing compensation. This duty is generally assigned to individual officers subject no doubt to the direction of the superiors. Movable property of various kinds has been acquired all over the country, and there being no standard laid down for the assessment of compensation payable, amounts, sometimes absurdly low and sometimes fantastically high, have been awarded as and by way of compensation. The manner in which the legislature has left the matter to be worked out has also left the door open for corruption. The owner being not of right entitled to the fair market value of the property, is apt to use very undesirable methods for obtaining as high an amount for his property as he could persuade the officer to fix".

Licenses could be revoked at the sweet will and pleasure of the executive without any compensation. That was the state of affairs in regard to the working of emergency legislation during war time, and when India achieved Independence on 15th August, 1947.

*Constitutional Powers for Emergency in 1935.
Government of India Act.*

The Government of India Act of 1935 contains three Articles, Sec. 57, 93 and 102 in regard to emergencies, of which Art. 93 relates to breakdown of constitutional machinery. In regard to Sec. 57, Mr. N. Rajagopala Iyengar (now the Hon'ble Mr. Justice Rajagopala Iyengar of the Madras High Court) in his commentaries on the Government of India Act of 1935 mentions thus: "The Section provides that if a Provincial Governor considers that there is a threat to peace and tranquillity, he can declare an emergency. In the case of a violent attempt to overthrow the Government he can take upon himself the whole responsibility of dealing with the situation. After he has declared the state of Emergency, he can delegate to some official who is not a member of the legislature, power to take part in the proceedings of the legislature without the power to vote. In such a situation, the transfer of Law and Order to the control of the Ministers which is normally in force is suspended and the departments become, so to speak, 'reserved departments'.

"Under Section 93 the Governor on proclamation of breakdown of the constitutional machinery may assume whole or part of the powers exercised by any provincial body or authority. Section 102 deals with a proclamation of emergency when the security of India is threatened and provides for all emergencies consequent on an impending war and invests the Governor-General with power to invade the legislative field allotted to the provinces. The Hon'ble Mr. Justice Rajagopala Iyengar says at page 121 "The proclamation of emergency is mainly intended to clothe the Governor-General personally with power to invade the subjects in the Provincial field by legislation under Secs. 43 and 44 as a quantum of the Governor-General's personal legislative power is co-extensive with that of the Federal Legislature. The effect of the proclamation of emergency, is, so to speak, to transfer the subjects contained in the Provincial List to Concurrent List and

principles similar to those contained in Sec. 100 (2) and Sec. (107) are made applicable to such subjects. Sub. Sec. (2)."

*Constitutional Provisions of Emergency under the Constitution
of India of 26th November, 1949*

India achieved her Independence on August 15, 1947, not by violence but by proceeding on the principles of non-violent non-co-operation under the leadership of Mahatma Gandhi, the Father of the Indian Nation. Right up from the Salt Satyagraha Movement initiated by Mahatmaji, India has stuck up to the gospel of non-violent non-co-operation which is achieved by Satyagraha as a defensive emergency measure against a foreign government, and by sticking on to that method, India has been able to stir up all the spiritual forces of the world in moulding public opinion against the foreign British Bureaucracy, with the result, that Truth triumphed in the end, and the Britishers left the shores of India without firing a single shot. That India has demonstrated to the world the value of Satyagraha as an emergency defensive weapon, and though there is no provision in the Indian Constitution, which has been framed later, for the adoption of the method of Satyagraha in the event of a future danger to the security of India from any foreign power, may be even an atomic war, will be an eye opener to the rest of the world and to India herself in particular, to adopt similar measures of Satyagraha in the event of a foreign invasion. Our Prime Minister has been repeatedly stressing on the principles of non-violence and Satyagraha in many of his speeches.

Coming now to the actual Constitution of India framed on 26th November 1949 by the Constituent Assembly, let me give you some ideas about it from the words of the Chief Architect of the Constitution, Dr. Alladi Krishnaswami Aiyar who in his "Srinivasa Sastri Memorial lectures on the Constitution and Fundamental Rights" at page 22 and 23 says as follows:—

"The Constitution contains within itself the necessary elements of growth, flexibility and expansion. While it is not committed to any particular economic reorganisation of society, the people are free to adjust and mould the economic conditions for their betterment in any manner they choose". "A democratic government at the present day, it is acknowledged on all hands,

functions not merely to protect the individual rights of person and property of a citizen but to foster the well-being of the community as a whole. We have travelled far away from the Laissez Faire politics and from the traditional liberalism of the 19th century. The freedom of the individual cannot be dissociated from the functions of a modern welfare state, but will have to be correlated to them".

As Dr. Alladi Krishnaswami Iyer says, The Indian Constitution is not based on any particular ideology but is flexible enough to adapt itself to any changes necessary for achieving economic and social reform.

In analysing the powers of the Indian Government which makes it flexible enough to wield emergency powers in order to achieve social justice, we have necessarily to study the executive power of the Indian Constitution. The Indian Constitution, by Article 53 vested the executive power in the President under Sub-Section 1 and the Supreme Command of the Defence Forces of the Union, whose exercise thereof shall be regulated by law (Sub-Sec. 2). And the Parliament can under Sub-Section 1 to Article 2 confer by law functions on authorities other than the President, and the President, and every person acting as President, or discharging functions of the President, shall subscribe to an oath that he will faithfully execute the office of the President or discharge the functions of the President of India and will, to the best of his ability, preserve, protect and defend the Constitution and the Law, and that he will devote himself to the service and well-being of the people of India. (Article 60).

The President in the discharge of his functions, is to be aided and advised by a Council of Ministers with the Prime Minister at the head, who will hold office at the pleasure of the President, and who will be collectively responsible to the House of the People under Article 75. Executive actions of the Government of India is to be taken in the name of the President and orders and Instruments executed in the name of the President shall be authenticated in a manner as may be specified by the rules made by the President. Though there is collective responsibility of the Ministry, yet the fact, whether and what advice was given to the President by the Ministry cannot be enquired into in any Court. That

is to say, the President only by virtue of a convention is to be guided by the advice of the Ministry. But the legal and constitutional responsibility of the Government, including the responsibility of being impeached for the violation of the Constitution under Article 61, rests on the President. This virtually means, in a conflict between the responsibility of the President who has sworn to preserve, protect and defend the constitution and the law, and the advice tendered by the Ministry, who hold office during the pleasure of the President, who have to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals of legislation, to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for and who have to submit to the President for consideration of the Council of Ministers any matter on which a decision has been taken by the Minister but which has not been considered by the Council, i.e., to ensure joint consultation, and thereby collective responsibility,—in such a conflict as the above, the President has only the option of dismissing the Ministry, or dissolving Parliament, which he can address under Article 86 and to which he can send messages which the Parliament is bound to consider. In other words the President can appeal to Parliament to reconsider their opinion in the light of a decision that he is taking against the wishes or advice of the Ministry. Mr. Allen Gledhill in his book "The Republic of India" is of this view, i.e., he considers the President as the really masterful personality who can, *on occasions of emergency*, act on his own initiative even disregarding the advice of the Council of Ministers especially, since unlike the German Constitution, the counter signature of the Council of Ministers is not required for the President's orders or Ordinances. The President forms part of Parliament under Article 79 and therefore his executive authority is co-extensive with his legislative authority under Article 73, and it is to be used in accordance with the Constitution. (Art. 53).

The President has the power to promulgate Ordinances when the Houses of Parliament are not in session provided he is satisfied under Article 123 (1) that circumstances exist which render it necessary for him to take immediate action, i.e., for emergencies. And the Ordinance promulgated under this Article shall have the same effect as an act of Parliament but every such Ordinance, (2) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of

Parliament or if, before the expiration of that period, resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions and (b) may be withdrawn at any time by the President. (Explanation:—Where the Houses of Parliament are summoned to re-assemble on different days, the period of six weeks shall be reckoned from the latter of those days for the purpose of this clause. (3) If, and so far as an Ordinance under this Article makes any provision which Parliament would not, under this Constitution, be competent to enact, it shall be void.

Regarding the exercise of the Ordinance-making power of the President, Dr. Alladi Krishnaswami Aiyer in his speech in the Constituent Assembly about the Draft Constitution of India (Vide Constituent Assembly Debate Volume 7, pages 334 to 337), says, that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' stands for the fabric responsible to the legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. Thus the Ordinance-making power in an emergency, according to him, is only to be used on the advice of the Ministry and not on the President's initiative. He differs from Allen Gledhill. But can we adopt this convention of ministerial practice wholly in the face of a written constitutional responsibility of the President? Will it be an answer to the President to say when he is impeached for violation of the Constitution, that he has no responsibility in the matter in view of the Constitutional practice of acting on the advice of his Ministers? In other words, is the President to have vicarious responsibility of facing an impeachment for an advice tendered by the Ministry to which he has carelessly adhered, and which has the result of violating the Constitution? Does it cast a duty on him to dismiss the Ministry the moment he is apprehensive of the violation of the Constitution by the Ministry? If, in such a case, the Ministry is backed up by the majority of the members of Parliament, has the President no option but to resign? Does it mean then that the Constitution provides for a cabinet dictatorship even though the Constitution and Law are violated? Does it mean further that there is no violation of the Constitution under Article 61, so long as there is a two-third majority of Parliament backing the Ministry? Is violation of the Constitution and the Law an objective offence or a subjective offence when it is enquired into by the Tribunal or authority appointed for the purpose?

One may answer these questions in either way, i.e., in favour of the supervening power of the President over the Ministry, or that of the Ministry over the President. In any case, there is likely to be a dictatorship. But a powerful President will only dismiss the Ministry and, if necessary, dissolve Parliament and try to appeal to the people, i.e., from the legal to the political sovereign and in case of rebellion or revolt quell the same with the aid of the armed forces at his command, unless Parliament frames a different rule.

We have to consider this aspect of the question from the point of view of determining the real executive authority and the nature of his powers, for the purpose of acting in emergencies. In that connection the nature of the tenure of the President's office, whether it is permanent or removable by a constitutional amendment, without the consent of the President to that course of action, appears also to be material.

That the President's office is a permanent one is seen from his power of veto of ordinary legislation in the first instance, where he has to declare whether he agrees to a piece of legislation or not and his power of veto to a constitutional amendment "upon such assent being given to the Bill" in Clause 368, where he has no duty to declare whether he assents or not to the amendment but may simply keep quiet for any length of time without assenting to the constitutional amendment, i.e., he may not assent to an amendment of the constitution depriving him of his powers of office or abolishing the office. The President also forms part of the Parliament as we said earlier.

All these point to one thing, that the President's reserve powers or prerogative powers, which are implied in the Constitution and which inhere in his office as Chief Executive authority and Commander-in-Chief give him dictatorial powers to meet emergencies of war, rebellion or insurrection, while normally the President will be guided by the Council of Ministers. To put it shortly, in my opinion, the President has got a right of differing from the advice of the Ministry in case of emergencies though ordinarily he will be bound by the advice of the Ministry as a matter of convention. The functions which Parliament can hand over to other authorities under Article 53 by ordinary legislation, can only be those powers, other than those necessary to preserve, protect and defend the Constitution and The Law, by Article 60, as they are the President's individual responsibility.

The latest pronouncement on the point by the Supreme Court in *Ram Jawaya Kapur Vs. The State of Punjab* (1955 S.C.J. page 511) does not consider all the aspects of the question and, therefore, in my view, cannot be said to be conclusive in regard to matters of emergency.

The Hon'ble Chief Justice Mukherji in the above case establishes three propositions: (1) That the Indian Constitution has not indeed recognised the doctrine of the separation of powers in its absolute rigidity, but the functions of the different parts of the branches of the government have been sufficiently differentiated, and consequently it can very well be said that our Constitution does not contemplate assumption by one organ or part of the State, of functions that essentially belong to another. The executive can in deed exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also when so empowered exercise judicial functions in a limited way. (2) Our Constitution though federal in its structure is modelled on the British Parliamentary system where the executive is deemed to have the primary responsibility for the formulation of governmental policy and its transmission into law though the condition precedent to the exercise of responsibility is its retaining the confidence of the legislative branch of the State. The executive function comprises both the determination of the policy as well as carrying it into execution. This evidently includes, the initiation of legislation, the maintenance of order, the promotion of social and economic welfare, the direction of foreign policy, in fact the carrying on or the supervision of the general administration of the State. In India as in England the executive is in fact subject to the control of the legislature. Under Article 53(1) of our Constitution the executive power of the Union is vested in the President but Under Article 75 there is to be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. The President has thus been made a formal or constitutional Head of the executive and real executive powers are vested in the ministers or the Cabinet. The same provisions obtain in regard to the government of the states. The Governor or the Rajapramukh as the case may be occupies the position of the head of the executive in the State; but it is virtually the Council of Ministers in each State that carries on the executive government—The cabinet enjoying as it does a majority in the legislature concentrates in itself the virtual control of both legislative and executive powers. (3) It cannot be

said that it is always necessary that there must be specific legislation legalising state trade activities before Government could embark on a trade or business in furtherance of a particular policy formulated by the executive Government. If the trade or business involves expenditure of funds, it is certainly required that the Parliament should authorise such expenditure either directly or under the provisions of the statute. As soon as the Appropriation Act is passed, the expenditure made under the heads covered by it would be deemed to be properly authorised by law under Article 266 (3) of the Constitution.

So long as the Trade activities are carried on in pursuance of a policy which the executive government has formulated with the tacit support of the majority of the legislature, no objection on the score of their not being sanctioned by specific legislative provision can possibly be raised. Objections could be raised only in regard to the expenditure of public funds for carrying on the trade or business, and to these, the Appropriation Act would afford a complete answer.

Specific legislation may indeed be necessary if the government requires certain powers in addition to what they possess under ordinary law in order to carry on the particular trade or business. Thus when it is necessary to encroach upon private rights in order to enable the government to carry on their business, a specific legislation sanctioning such a course would have to be passed.

In regard to the aspect of introducing social legislation like the nationalisation of Industries, Dr. Alladi Krishnaswami Iyer in the "Srinivasa Sastri Lectures" on "The Indian Constitution and Fundamental Rights" says that neither the recognition of individual property or the right to carry on a business under Article 19, can stand in the way of socialisation of industry or business as was made clear by the recent amendment to Article 19. (Vide The Article on the Second Five Year Plan and Nationalisation by me in the Madras Law Journal, September 1955).

Despite the above observations of the Supreme Court and the opinions of a distinguished Lawyer like Dr. Alladi Krishnaswami Iyer, it appears to me with great respect to the above distinguished persons, that the analogy of the President's Powers under the Indian Constitution with that of the British Crown is not wholly applicable in matters of emergency, as the language of the provisions of the Indian Constitution do not bear them out completely,

particularly the provisions regarding the oath of office of the President under Article 60, his likelihood of being impeached under Article 61 for violation of the Constitution and the Law, his powers of veto of ordinary legislation and constitutional amendment, and the fact that he forms part of Parliament, thereby possessing executive authority co-equal to his legislative authority.

Both the Supreme Court and Dr. Alladi Krishnaswami Iyer in my humble opinion, are right so far as ordinary situations and conditions are concerned, but in matters of emergency the position seems to me to be a little different. No doubt conventions in India have to grow in order that the observations of the Supreme Court may be fully justified, and it is too early in the day when emergencies have not tested the constitutional powers of the President, to say with precision, that the President of India or the Governor of a State is wholly a constitutional Head. Time alone can make the President's office either a quasi-American type of office or a British type of constitutional head, in as much as the written words of the Indian Constitution, even according to Dr. Alladi Krishnaswami Iyer, which we quoted above, are flexible enough to assume any shape that future events may make them.

I may be pardoned for making a humble suggestion that if it has been the intention of Parliament and the people of India to make the President's Office one of a mere constitutional Head as in England, the provisions regarding the oath of office of the President under Article 60 and his impeachment under Article 61 must be so amended as not to make him liable vicariously for the advice tendered by the Ministry which leads to a violation of the Constitution. What exactly the responsibility of the ministry in such a case should be, must also be constitutionally framed as an amendment. Article 74 (2) may also have to be amended so as to let in evidence as to who is responsible for the violation of the Constitution. These problems are not likely to happen for the present, as we are having a highly constitutional President assisted by an equally eminent and god-fearing and constitutional Prime Minister at the head of the Cabinet. But should we not make provisions for a distant future?

We have seen above, that normally the constitutional head of the State acts on the advice of the Ministry and exercises his executive power including the power to issue Ordinances, in the case of the Union under Article 53 and Art. 74 and in the case of the States under Articles 154 and 163. The power of the Governor in matters left to his discretion is a subjective power, and no con-

trol of objective test in a court of law is provided for. Can it be the Governor of the State has some discretion beyond the control of the courts, but that the President of India either in the matter of internal administration or in the matter of foreign relations, has absolutely no discretion but is to be a mere constitutional head?

The only answer to this conflict of powers arising by conflict of interpretation, is to assume that the President is the constitutional Head who strictly follows by convention the advice of the Ministry, but he has got prerogative or inherent powers by virtue of the provisions of the Constitution to act on his own initiative in emergencies. In the words of Roosevelt, the President is vigorous when necessary, but weak when possible (Vide 'Planning The Indian Welfare State', page 36).

Now having considered the powers of the executive vested in the President, let us consider the powers of the Union Parliament to act on emergencies. The Union Parliament has been given the power under Article 249 to legislate with respect to a matter in the State List in the national interest i.e., such matters of national as distinct from local or state importance which the emergency might require that it should be legislated upon. The procedure is by resolution by two-third majority in the Council of States. (For details Vide the Article 249 of the Constitution).

The Indian constitution differs from the American Constitution in this respect since in the American and Australian Constitutions transfer of power from the State to the Union can be achieved only by constitutional amendment, in relation to matters allotted to the state list. In Canada alone as mentioned above has this transfer been possible by constitutional interpretation by the Privy Council.

Under Article 250, Parliament has power to make laws with respect to any matter in the state list if a proclamation of emergency is in operation. (Vide the Article for details).

Emergency has been responsible for the practical suspension of the division of powers though the permanent separation remains in Federal Constitutions, and courts have helped the construction of the emergency power. I am not dealing with the leading cases on the point once again.

Under Article 251, inconsistencies between Articles 249 and 250, and laws made by the State are provided for by giving

Parliamentary legislation under Article 249 and 250 precedence over state legislation, during the period of emergency. State power revives and the Federal power is suspended after the emergency is over.

Article 253 provides for legislation by Parliament for giving effect to International Treaty obligations of all kinds. Under Article 256, the executive power of the Union shall extend to the giving of such directions to the State as may appear to the Government of India necessary for the purpose. Article 257 effectuates the control of Union Executive over the States. All these powers are useful for, emergency executive action in coordinated effort between Union and States.

Articles 352 to 360 deal with emergencies, political, social and economic by which the President, on being satisfied that a grave emergency (as distinguished from an ordinary emergency) exists whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may by Proclamation make a declaration to that effect. This proclamation may be made even in anticipation of the emergency and it has to be laid before Parliament, and its normal period is two months (For details Vide Articles).

Article 353 provides for the power of the Union executive to give directions to any State as to the manner in which the executive power is to be exercised, when a proclamation of emergency is in operation and confers powers on Parliament for making laws with respect to conferring powers and imposing duties etc. on the Union or officers and authorities of the Union respecting matters which is enumerated in the state list though not included in the Union List as well.

Article 354(1) enables the President, while a proclamation of emergency is in operation, to order for application of provisions relating to the distribution of revenues contained in Articles 268 to 279.

Article 355 casts a duty on the Union to protect every state against external aggression and internal disturbance and to ensure that the government of every state is carried on in accordance with the provisions of the Constitution.

Article 358 enables the suspension of Article 19 of Part III of the Constitution (Fundamental Rights) while a proclamation of emergency is in operation.

Article 359 enables the President during the proclamation of emergency to order the suspension of the enforcement of the rights conferred by Part III of the Constitution. (For details Vide Article).

Article 360 provides for financial emergencies of India which may be made by Proclamation under Article 352(2), (for details Vide the Article) There is provision for reduction of salaries and allowances of all classes of persons and for reservation of money bills etc. for the consideration of President.

Article 356 relates to Failure of constitutional machinery, and it has no parallel in any federal constitution. The American Constitution contemplates that the national government may visit it with forces to maintain "The Indissoluble Union" if there is a resistance to the execution of the federal laws or to the authority of the federal government by a State government. This article provides for the suspension of the state constitutional machinery in whole or in part and its assumption by the Union. The Article is to be used only as a measure of the last resort when even after giving directions, warnings, fresh elections etc., the State Government is found to be unable to cope up with the administration on efficient lines (For details Vide Article 356).

Article 357 confers powers of legislation on the President under Proclamation issued under Article 356 including powers of delegation, imposing duties, authorising drawings on consolidated funds, etc.—Period of Proclamation 6 months unless extended to a further period of six months. When the state legislature is suspended, the Union Parliament takes up all its powers. Legislative powers can be delegated by Parliament under this clause. (For details Vide. Art. 357).

Article 83(2) enables the extension of Parliament by the President during the proclamation of emergency for a period of one year and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

The above "Grave emergency proclamations" as also "emergency proclamations" naturally will be issued by the President on the advice of the Ministers, and they cannot be questioned in a court of law. But ordinances and orders that do not come under that category but which are emergent but not of so serious a nature, must under the constitution satisfy the requirements of the Fundamental Rights Chapter of the Constitution and may be attacked under Art. 32 and Art. 226 of the Constitution. Social

legislation invading contracts, which come under 'property' under Article 19 as decided by chief Justice Mahajan in *Dwarakdas Srinivas Vs. Sholapur Spinning Co., Ltd.* (1954 SCJ) 175 should conform to the standard of 'reasonableness' laid down under Article 19. Certain exceptions to this rule will arise by the recent IVth Amendment to Article 31 of the Constitution. Temporary suspensions of contracts can be reasonable for a public purpose (*Santhanakrishna Odaiyar Vs. Vaithyalingam*, 1953 2 M.L.J. 332). Three important points connected with the law of emergency in the Indian Constitution relate to the rule regarding the delegation of legislative power to the executive, the constitution of administrative tribunals, and the rules as to reasonable restriction under Art. 19 and equality of law and equal protection of law under Art. 14 of the Indian Constitution. An elaborate treatment of those subjects cannot possibly be made within the course of these lectures but nevertheless I shall briefly summarise the main principles of the law indicating the leading cases.

In India, unlike in England, it has been held that where the Legislature has performed its duty of laying down the policy of the enactment, it can not only delegate the function of subordinate legislation but also authorise the delegates to re-delegate that function provided the sub-delegates are specified by the legislature itself. This has been laid down by the Supreme Court in *Harisaker Vs. State of M.P.* (1954 S.C. CrI. P. No. 7 of 1953). *Mulchand Vs. The State* (1952. 56 C.W.N. 789).

The rule or regulation should not violate the constitution, e.g. if it is an unreasonable restriction on Art. 19, it will be void (Subject to exceptions by the IVth Amendment). Where the statute itself violates some provision of the constitution or is tainted with the voice of delegated legislation, (i.e.), where instead of delegating the power of making subordinate rules or regulations, the legislature parts with the essential power of law-making which the Constitution has entrusted to the legislature, the law itself will fail (*In re: Delhi Laws Act, (1912) 1951 S.R.C. P. 14*) and with it, the rules and regulations made under that Act.

The principle that power to delegate is inherent in every legislature, laid down by the *Seager's* case has been differed from, by the Supreme Court, and therefore it would follow that power to repeal or modify or the power to create an offence which are subordinate legislative powers can neither be delegated or be authorised by it. (See Article 245).

The Supreme Court in *Harlal Vs. State of Rajasthan* (1952 S.C.S. 110 (1950-51) S.C. 379, have laid down publicity as essential to delegated legislation in India on grounds of natural justice.

The Supreme Court has in many cases observed that the Ordinances whether of the President or the Governor must be a reasonable restriction on Article 19. (Subject to exceptions by IVth Amendment). In *Raghubir Singh Vs. Court of Wards*, 1953 S.C.R. 1049, the Supreme Court observed that where a law deprives a person of possession of property for an indefinite period of time merely on the subjective satisfaction of an executive officer, such a law can on no construction of the word 'reasonable' be described as coming within that expression, because it completely negatives the fundamental rights by making its enjoyment dependent on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil court.

In *Chintaman Rao Vs. State of Madhya Pradesh*, (A.I.R. 1951) S.C. at page 119, Chief Justice Mahajan observed as follows:—
"The phrase 'reasonable restriction' connotes that the limitation imposed upon a person in enjoyment of the right, should not be arbitrary or of an excessive nature, beyond what is required in the interest of the public. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness."

In the case of *Arumugam P. V. Vs. The State of Madras*, the Hon'ble Chief Justice Rajamannar and Venkatarama Iyer J. held that the expression 'reasonable' is so wide and elastic that a court should not ordinarily strike down any restrictive provision as void as not being reasonable, unless it appears to the court that a different view could not be taken with any justification.

What is reasonable, no doubt, very largely depends on the facts of each case, but restrictions imposed by popularly elected legislature must be presumed to be reasonable unless the restrictions imposed are on the very face of it arbitrary, excessive, alien or repugnant to the subject matter of the legislation, as decided in *Saghir Ahmed Vs. The State of U.P.* (1955, S.C.R. 707) the principles of which are in accord with the principles laid down in the judgment of the Madras High Court mentioned above.

In the same way, as it has been the practice in England to oust the jurisdiction of courts in the matter of judicial review of legislation, and the constitution of Administrative Tribunals for the pur-

pose, in India also, the practice has come into vogue. The Administrative Tribunals are not bound by the ordinary rules of procedure unless bound by the statutory provisions. In this view, they cannot be said to observe the Rule of Law (i.e.), uniformity of law and procedure for everybody or equality of law. This aspect of the matter was considered in England in The Committee of Ministers' Powers who were against institution of separate Administrative Tribunals as in France, but who advised that the power of the High Court to issue prerogative Writs for vindicating the Rule of Law and reviewing the orders of the Administrative Tribunals have to be retained. Appeals on points of law, according to them, should be provided over the orders of the Administrative Tribunals. They should be brought within the jurisdiction of the ordinary courts, if they transgress essential principles of justice.

In matters, where there is excess of jurisdiction, refusal to exercise jurisdiction, error on the records, where their actions are contrary to rules of natural justice etc.—in all these above matters, courts must be given power to interfere.

Many statutes in India have provided for quasi-judicial powers in administrative authorities like (a) Custodian of Evacuee Property under the administration of Evacuee Property Act 1950 (b), Transport authorities under the Motor Vehicles Act (c) The Transport Board authorities, (d) The Rent Controller under the State Rent Control Acts. Special Tribunals like The Industrial Tribunals and Road Transport Authority have been invested with quasi-judicial powers.

The Indian Constitution makes provision for bringing these under control of Writs (a) the directions or orders or Writs enumerated in Art. 32 (2), (3); Art 226 (1) (b), and brings them under the superintendence of the High Courts under Art. 227 (1). An appeal is also provided against their orders by special leave (Art. 136 (c) (1)). There is also the right for the litigant to proceed by way of ordinary suit against the above authorities.

Judicial Control of Exercise of Ordinance-making Power

The power to issue an ordinance for an emergency and its limitations under the Constitution has been considered in the First Sholapur case, Chirajitlal Vs. Union of India reported in 1950 S.C.R. 869 where the validity of the Sholapur Spinning and Weaving Company Emergency Provisions Act (1950) was challenged on the ground, that it offended Art. 14 of the Constitution, but it was held by the Supreme Court, that it was valid legislation, even though

the classification related to one person or body-corporate, and the burden was upon the plaintiff to prove that the legislature had acted on unreasonable and arbitrary grounds.

In the second Sholapur case (1954 S.C.J. 175), Dwarakadas Srinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd., and others, it was held by the Supreme Court, distinguishing the first Sholapur case, that the Sholapur Spinning and Weaving Co., Emergency Ordinance (II of 1950) authorises in effect a deprivation of property of the Company within the meaning of Article 31, without compensation, and is not covered by the exception in clause 5 (b) (ii) of that Article, and that the Ordinance violates the fundamental rights of the Company under Art. 31 (2) and a preference share holder of the company who is called upon to pay the moneys, unpaid on his shares, is entitled to impugn the constitutionality of the Ordinance.

The discretion given to the State to classify arbitrarily cases, classes of cases, or offences, or classes of offences under Art. 14 of the Constitution, and allot their trial in accordance with the procedure laid down by the West Bengal Special Courts Act, was ruled out by the Supreme Court, as naked arbitrariness, and invalid on that ground, and especially because, judicial review was barred (The State of West Bengal Vs. Anwar Ali Sarkar, 1952 S.C.R. 284).

This case was distinguished by the Supreme Court in Kathi Raming Rawat Vs. The State of Sourashtra (1952 S.C.R. 435). Their Lordships held the Sourashtra State Public Safety Measures Ordinance as valid on the grounds of the difference in the words of the two preambles.

Mr. Basu in his Commentaries on the Indian Constitution remarks about this judgment "If however, the legislative policy is clear and definite, and as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officials to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. This discretion conferred on such special agencies is not an unguided discretion."

Dr. Alladi Krishnaswami Iyer, in reviewing these two cases, is of the opinion, that the earlier decisions must be taken to have been overruled by the later decisions as the distinction attempted

to be drawn by the judges do not seem to be substantial. These two cases were reviewed in *Kedarnath Bajoria Vs. The State of West Bengal* (1954 S.C.R. 30) where the two decisions are said to be complementary to each other and not in any way antagonistic in principle.

Emergency social legislation is adopted in our country with regard to land reform, rent control, and Moratorium under Indebted Agriculturists Temporary Relief Act like the Madras legislation of (Act V of 1954). In regard to land reform, the Tanjore Pannayals' Protection Act (Madras Act XIV of 1952) is a noted example, which was considered and upheld by the classic decision of the Madras High Court in *Santanakrishna Odayar Vs. Vithilingam* (1953 (2) M.L.J. 325). The Madras Agriculturists Indebted (Temporary Relief Act V of 1954) which was intended to relieve debtors who are agriculturists from the pressure of creditors (for a time) by prohibiting the institution of suits and executions, was considered by me in my article in the Madras Law Journal. The above Act has been re-enacted in a modified form providing for part payments in execution.

Preventive Detention, which has been resorted to in Western countries, as an emergency measure, has been provided in the Indian Constitution, under Articles 20 to 22 as a permanent measure, and as Mr. M. K. Nambiar says in his introduction to "The Law of Preventive Detention" by V. G. Ramachandra Iyer, owes its origin largely to the First World War. We have enumerated its history in England while dealing with emergency in English Law.

In 1950 Parliament passed the Preventive Detention Act of 1950 "empowering detention on the subjective satisfaction, as Mr. Nambiar puts it, of the government or of the prescribed authorities for preventing from acting in any way prejudicial (a) to the defence or security of India, or relations of India with foreign powers or (b) the security of the State or maintenance of Public Order or (c) the maintenance of Supplies and Services essential to the life of the Community." The Supreme Court held that Section 14 of the Act was ultra vires of the Constitution in *A. K. Gopalan's case* (1950 S.C.R. 174). The two later Acts extended the duration of the principal Act up to 31st December 1954.

Mr. M. K. Nambiar makes the following observations about the enactment:—"Freedom of person is the most precious of all freedoms. Nevertheless it is a sad fact that while freedom of property is secured by two separate provisions (Art. 19 and 31) by the Constitution of India, freedom of person against legislative in-

vasion has completely vanished under the judicial interpretation of Article 21, and of The Preventive Detention Act. The liberty of person in the Indian Union at present is thus precarious in the extreme, dependent as it is on the arbitrary will of the executive. If the Government in power is so satisfied as provided for in the Preventive Detention Act, however erroneous and baseless the satisfaction may be, any citizen may be thrown into prison without any remedy or relief, and courts cannot interfere, except in those instances when the grounds are vague or inadequate or the order is vitiated by malafides or informality—to confer on a State absolute dominion over all that man holds dear is to confer arbitrary power on those who are its masters for the time being. And despotism in the march of time creates a country of slaves."

Whatever might be the charge against the Sections of The Preventive Detention Acts or Rules made under them, it cannot be denied that there is sufficient justification for the Government to control by these Acts the activities of political organisations which intend to overthrow constitutional government, and substitute in its place a worse form of proletariat dictatorship by violent means. This has been also the opinion of Dr. Alladi Krishnaswami Aiyar when he defended Preventive Detention in Constituent Assembly and supported its enactment. He observed "Even the most enthusiastic advocate of liberty says there are people in this land at the present day who are determined to undermine the Constitution and State, and if we are to flourish and if liberty of person and property is to be secured, unless that particular evil is removed or the State is invested with sufficient power to guard against that evil, there will be no guarantee even for that individual liberty of which we are all desirous."

Anyhow it will be clear to you all that many emergency provisions have come to stay as part of the Permanent Constitution of India, in the context of World Movements, and which is indicative of the many problems that India has to face in its transition to a full-fledged welfare state, and that liberty has come to mean the dignity of man freed from all privilege and exploitation. The Recent Fourth Amendment to Article 31 of the Indian Constitution facilitates emergency legislation to remove economic distress in the country. (Vide the Articles for details).

Emergency under the Five-Year-Plan of India

As a last word, I have to mention to you that the Five-Year Plan of India has itself to be looked upon as an emergency measure,

a measure intended to wage war against poverty, which is more serious than war, rebellion or insurrection.

Mr. V. T. Krishnamachari, the Deputy Chairman of the Planning Commission in his recent broadcast talk in the All India Radio on "Some aspects of the Second Plan" on November 9, 1955, says "What were the conditions of the country when planning began?—The Indian economy has been in a state of stagnation for many decades. The development of the country's resources had not kept pace with the population. Such progress as was reflected in the growth of Industry and Commerce and in the development of Towns was counter-balanced by increase of under-employment in village and of unemployment in towns, especially among the educated, and by the failure of the economy to absorb even the new working force added from year to year. Immediately after attaining freedom, the country had to face the political and economic consequences of partition, and the migration of millions of displaced persons. The solution of these problems was rendered more difficult by the running down, during the war of the Transport System and of the capital equipment of industry. Further the inflationary pressures of the post-war years and the shortages of food and raw materials introduced elements of instability into the economy."

While emphasising 'the emergency' on which the Five-Year Plan was started, he gives us the common objective to which we have to struggle. "The elimination of unemployment, the raising of standards of living, reduction of disparities of wealth and income and the largest possible increase in national income" (Vide The 'Hindu' dated November 10, 1955).

Well, Gentlemen, the country needs such wise direction from our leaders, as the objective of our Republic is the Welfare State and the Socialist Pattern of Society, and the wisdom of the path, lies in cohesion and co-operation, between varying communities, castes and groups in India to tackle this grave emergency—the emergency of driving the Wolf from the National Door.

I am much indebted to you, Gentlemen, for the patience with which you have listened to my lectures.

OM SHANTY

SYNTHETIC VEDĀNTA

by

PROFESSOR P. N. SRINIVASACHARI, M.A.,

Aspects of Advaita.

The rich and varied literature that we have on Advaita offers immense scope for a critical and comprehensive study of its philosophy and religion in all its aspects. All the schools agree that Advaita is non-dualistic or monistic experience which transcends *tripuṭī* or relational thought and the limitations of philosophy and religion. Pure Advaita as such is *ajāta*, *sui generis* and alogical and *māyā-avidyā* is really non-existent. But the moment the alogical becomes the logical, Advaita tends towards Dvaita or duality and is engulfed in dualism. Monism has to accommodate itself to the needs of realistic thinking and becomes a compromise. Advaitins differ temperamentally and in their outlook or insight and likewise in their techniques, and their views vary with the stress they lay on reason, revelation and intuition though ultimately Advaita is one. The various schools are only philosophical devices by which thought seeks to transcend itself. The method adopted in this study consists in the distinction between Pure Advaita and Practical Advaita or metaphysics and religion on the analogy of the three Critiques of Kant. Pure Advaita is a metaphysical enquiry into the self or *ātmavicāra* freed from the defects of theology or scholasticism as well as rationalism. Practical Advaita expounds the self-expansion of consciousness from the moral and religious level of *karma* and *upāsana* to the transcendental level of *jñāna*. In between the two comes Pure - Practical Advaita which relies both on *Śāstra* and reason and it distinguishes between the absolute which is one and the relative which is many in terms of the Reflection, Limitation and Phenomenon theories based on the *upādhis* of *māyā-avidyā*. The psychology of the four *sādhana*s of Śaṅkara determines the type of the Advaitins with advaitic *vāsanā* in the light of their respective predisposition and the training of the intellect, feeling and outlook. The *vivekī* as a critic may be an intellectualist with a critical acumen for self-analysis; *vairāgya* may induce the feeling of self-renouncement and *śānti*, the same series may stress the moral influence like self-control; but all the three are aspirations for *mukti*. Strictly speaking, Advaita is identity-consciousness which says that what is is, and it ever is and is not attained by any *sādhana* and there can be only Advaita as experience.

The first systematic exponent of Pure or rationalistic Advaita was Gauḍapāda, *paramaguru* of Śaṅkara (788-820 A.D.), and it is

noteworthy that he wrote his *kārikā* or gloss with its four chapters on the *Māṇḍūkya Upaniṣad*, which, of all the *Upaniṣads*, is said to be least influenced by theological faith. They all prove that duality is illusory like a magical elephant and that non-duality is real. Gauḍapāda's refutation of the category of causality as self-contradictory and non-existent, his psychological analysis of the three states of consciousness, his *ajātivāda* which says that being is and non-being is not, and *advaya yoga* and the ontology of 'one' bring out the self-evident truth of Advaita. Being is and non-being is not. But it gave rise to different versions of the philosophy of pure consciousness of *alāta-sānti*. The metaphysical *dr̥k* or the subject beyond the subject-object relation as experienced by Maṇḍana, the idealism of *Yoga-Vāsiṣṭha* and the subjectivism of *ekajīvanavāda* agree in the conclusion that pure consciousness is fulness of being in *turīya* or the fourth state. *Brahmajñāna* is *jñāna* that is Brahman and not of Brahman. Pure consciousness is contentless and is beyond relational thought. It is *turīya* but it is not mere quest or bare *nirvāṇa* or nothingness but is Brahman-nirvāṇa full and perfect.

The *sādhana* consists in turning the mind inwards till pure consciousness returns to itself and there is peace which passeth all understanding. If Advaita is pure experience, it is *ajāta* like the son of a barren woman and no philosophical explanation of the state is adequate or admissible. What is and what is not is naught. Brahman is and *Māyā* is not. But philosophising is, however, essential and inevitable till thought transcends the thinking process. Negation negates itself and what is is bare affirmation. The familiar *Māṇḍūkya* analysis of *avasthātraya* with a view to transcending it has the merit of rationality justifying the supra-rational state of *turīya*, by logical methods. It is mere Sat or being beyond becoming. *Prajñānavāda*, *dr̥k-dr̥śya-viveka*, *dr̥ṣṭi-sr̥ṣṭivāda* and *ekajīvanavāda* are different methods adopted by rationalistic monists or *jñānis* who followed Śaṅkara to realise the self-identity of *ātman*. *Dr̥k* shines by itself and does not require any object to illuminate it. The metaphysical *dr̥k* is true and the psychological 'me' or *dr̥śya* or *ahankāra* is false; the subject is beyond the subject-object relation. *Dr̥ṣṭi-sr̥ṣṭivāda* holds that the world exists only when I perceive it and it is, strictly speaking, no theory of knowledge at all as faith is self-positing. *Ekajīvanavāda* is idealism carried to its logical conclusion and all idealism ends in subjectivism. According to it, there is only one *jīva*, the super-jīva or cosmic *jīva* as it is called,

and the so-called other *jīvas* are its imaginings or dreams. When the illusion vanishes, the *jīva* is known to be identical with *cinmātra* or pure consciousness; the method is subjective, but the conclusion is not subjectivism. There is only one 'I' and the other egos are its objects. The philosopher or the doubter cannot be doubted.

The different expositions of Pure Advaita stress the idealistic view of experience as *puruṣa* and some like *Yoga-Vāsiṣṭha* are said to have a close affinity with *viññānavāda* and the *śūnyavāda* of Buddhism. Buddhism and Pure Advaita seem to be the negative and the positive aspect of the same truth. Buddhism denies *buddhi* but Buddha is enthroned in its place.

The need for supplementing subjective philosophy by objective philosophy is supplied by Pure Practical Advaita. Pure Practical Advaita marks the transition from the logical and the psychological side of Advaita to the cosmological side. Its scope is not confined to self-analysis and *ātma-jñāna*, but extends to *Brahmajijñāsā* as developed by Śaṅkara in his *bhāṣya* on the *Brahma-Sūtras*. It deals with the relation between Brahman and *Māyā* and *Īśvara* and *jīva* and the nature of Nirguṇa Brahman as *Sat-cit-ānanda*, *vivartavāda* and *jīvanmukti*. It adopts the principle that what is true of the macrocosm or *aṇḍa* is likewise true of the microcosm or *pinḍa* and says that while Brahman reflected in *māyā* or cosmic illusion in its *sāttvic* aspect is *Īśvara*, Brahman reflected in *avidyā*, the inner veiling principle is *jīva*, and the essence of *Upaniṣadic* teaching is contained in the equation that *ātman*, the self of man, is Brahman, the self of the universe or "Thou art that". Self-identity of Brahman is experienced when the false is sublated or negated and the True is affirmed. There are different ways in which the relation between *jīva* and *Īśvara* is expounded, namely, the *bimba-pratibimbavāda* (the reflection theory), *avacchedavāda* (the limitation theory) and the phenomenal theory, and *Īśvara* is the illusory Highest. The illusion theory is upheld by the Vivarna school and defended by Deussen. The *jīvas* are like the images of the Sun in tub-water. The limitation theory is defended by Vācaspati and has more positive content; the *jīva* is like ether enclosed in a jar. The phenomenon theory is more realistic and it lays bare the self-contradictions of life in the manner of Bradley and is defended by some modern Advaitins. Even God is self-contradictory as finite-infinite and is only an appearance of Reality. The ideas of *adhyāsa* and *apavāda* are

employed to prove that the *jīva* is Brahman veiled by *māyā*, *mukti* is disillusionment. The *avaccheda* theory defines *mukti* as the expansive consciousness of *akhaṇḍa* Brahman, while the phenomenon theory calls it non-contradiction and *apavāda*. In all cases *māyā* or *avidyā* may be regarded as an indeterminable somewhat or *anirvacanīya*, removable by *jñāna*.

The status of *Īśvara* in Pure Practical Advaita varies from the True Infinite to the finite-infinite or the bad infinite which is apparent or false. But in none of these cases is there much scope for the religious consciousness of *Īśvara* or the Cosmic Ruler and the need for '*Īśvaraprasāda*' or Divine Grace.

The religious aspect is recognised and brought out in Practical Advaita which rules out subjectivism and insists on the need for the realistic ethico-religious approach to Advaita or the consciousness of non-difference of the absolute. It concedes the distinction between Nirguṇa Brahman and Saguṇa Brahman, between *vivartavāda* and *pariṇāmavāda* and between *jīvanmukti* and *krama mukti*. Śaṅkara follows the authority of the Upaniṣads and employs the *mīmāṃsā* rules of interpretation and reasoning to prove that Advaita is the only system of Vedānta that is consistent with Upaniṣadic teaching. The study of the Veda admits of three stages as detailed in the *Karma Kāṇḍa*, *Upāsana Kāṇḍa* and *Jñāna Kāṇḍa*, and it is the last alone that initiates the *mumukṣu* into the truth of Advaita contained in the *mahāvākyas*. Among the modern expositions of the realistic view is the *advaitavāda* of authors like Kokilesvara Sastri who affirm that *ajñāna* breeds the sense of separateness and *jñāna* is the intuition of the inseparability of Brahman from the world and it is not much different from the Viśiṣṭādvaitic idea of *avibhāga*. Advaita is the denial of dualistic consciousness and not the affirmation of the self-identity of the absolute. According to Śaṅkara, *Karmayoga*, *Bhaktiyoga* and *Jñānayoga* lead a man gradually from degrees of consciousness to *Advaitajñāna* and they are complementary and not contradictory.

The aim of *Karmayoga* is *citta-śuddhi* or self-purification which consists in knowing that the utility of *karma* is its futility and in the awakening of the desire for non-dual consciousness. The path of *Upāsana* or *Bhaktiyoga* is meditation on Brahman as Personal God and its chief aim is resignation to the grace of God by practising the truth 'Not I, but thou, O lord'. It leads to *aparokṣajñāna* or the intuition of Brahman the secondless *Sat*.

Even *aparokṣajñāna* has stages of perfection of which the last is *Brahmavid-variṣṭa* and *turīyātīta*. The *mumukṣu* changes into a *jīvanmukta* and when the body is dissolved, all duality is destroyed in *videhamukti*. This may be called the ladder theory of Advaita in which there is a real passage from truth to more truth till at last consciousness transcends itself. Then the intellect is fulfilled in intuition.

The supreme value of the spiritual experiences of Sri Ramakrishna Paramahansa consists in his harmonising different Vedāntic teachings. He avoids the extremes of the idealistic monism of Totapuri and the *bhakti* teachings of Bhairavi Brahmani. Sri Ramakrishna says that God is both personal and impersonal, that *bhakti* and *jñāna* alike lead to the same goal and that it is by divine grace that *samādhi* can be attained and spiritually communicated to others. In *bhakti* as *parābhakti* and *jñāna* as self-transcendence attained by divine grace, there are more points of convergence than divergence between Advaita and Viśiṣṭādvaita.

As a *siddhānta* arrived at by the refutation of rival theories, Practical Advaita is different from the systems of Śivādvaita and Viśiṣṭādvaita. While Advaita affirms the *svarūpa aikya* or pure identity between the *jīva* and *Īśvara*, the other two stress *viśiṣṭa aikya* and mystic union and insist on the distinction between the two, though they are inseparable like the consonant and the vowel and the body and the soul.

From the point of view of *Brahmānubhava* the three systems are not very different as they insist on *viveka*, *vairāgya* and yearning for *mukti* as the essential qualifications of the *mumukṣu*.

The Practical Advaitins, who are said to belong to the right wing or the tender-minded type, are, on the whole, inclined to prefer the term co-ordination to compromise in the explanation of the two *vidyās*, two Brahman and two *muktis*, when they say that the absolute of the logical intellect is the God of the *bhakta*, that *bhakti* and *jñāna* have equal efficacy in securing *mukti* and in the eventual attainment of *mukti*. Śaṅkara turns into the tender-minded type when he worships Govinda in his '*Bhaja Govindam*'. The distinction between the Advaitic non-duality and the unitive consciousness of Viśiṣṭādvaita and Śaivasiddhānta is too subtle for practical purposes. The unitive state is the highest state of *Brahmānubhava* as long as the cosmic order or *vyāvahārika satya* lasts and it is significant that Madhusudana Sarasvati, fol-

lowing Sridhara, seeks the solace of Sri Krishna's grace and love when he assures us that there is no *tattva* higher than the supremely beautiful and blissful Sri Krishna. Sadasiva Brahmen-dra muses on Sri Krishna as the Cosmic Lord who enchants humanity with His flute and peacock feather. The synthetic understanding of Practical Advaita and Viśiṣṭādvaita in its Śaivite and Vaiṣṇavite aspects satisfies the highest logical, ethical and aesthetical ideals of truth, goodness and beauty, and meets the demands of Vedāntic universalism and inter-Vedāntic understanding which is so essential to the consolidation of Hinduism as the harmony of religions. The wisdom of the Upaniṣads is a philosophy of religion which satisfies the three *pramāṇas* in their integrity, equates the absolute of metaphysics with the God of religion, recognises the value of all the four *yogas* namely, Karma, Rāja, Jñāna and Bhakti, and the unity of the contemplative and the active and the aesthetic ideals of truth, goodness and beauty, and points to *mukti* as the direct realisation of Brahman in the transcendental and immanent aspects of *Brahmānubhava* and the Brahmanisation of all *jīvas* in the twin aspects of spirituality and service.

The Philosophy of Bhedābheda

This is a comparative and critical exposition of the philosophy of *Bhedābheda* in its relation to other systems and it is divided into three sections. The first deals with the system of Bhāskara in its aspects of metaphysics, psychology, ethics and religion. It proves that Brahman, the ground of metaphysics, is the goal of religion. The second sums up the views of the other schools of *Bhedābheda* like those of Yādava, Bhartṛprapañca, Nimbārka and the Śāktas and traces the transition from idealism to realism. The third part discusses the criticism of *Bhedābheda* by Advaita, and Viśiṣṭādvaita and is a study of Western parallels like the systems of the Neoplatonists, of Spinoza and of the Hegelians. It concludes with an attempt to discover the inter-relation of Vedāntic schools from the synthetic standpoint.

Vedānta is the essence of Hinduism and it consists of the Schools of Advaita, Bhedābheda, Viśiṣṭādvaita and Dvaita. Bhedābheda is chronologically and logically midway between the systems of Śāṅkara and Rāmānuja and makes a transition from Advaita to Viśiṣṭādvaita. The main object of Bhāskara's philosophy from the negative point of view was its condemnation of Māyāvāda as a version of the Nihilism of Mahāyānika Buddhism. Bhāskara's

positive teaching insists on the law of identity in difference, the reality of Brahman possessing attributes (Saguṇa Brahman), the acceptance of the principle of God evolving into the world (*Pariṇāmavāda*), the recognition of the means of attaining salvation or *mukti* as a co-ordination of both knowledge and action (*jñāna-karma samuccaya*) and the possibility of attaining release or *mukti* only after death.

The metaphysics of Bhedābheda, according to Bhāskara, is divided into the epistemological, the ontological and the cosmological aspects and is dealt with in chapters II, III and IV. The first discusses the nature of truth and accepts the authority of the *Śruti* as satisfying all human values; the second as the philosophy of Being defines Brahman as the *Sat* without a second that is immanent in all experience and the third as the philosophy of nature explains the reality of the cosmic evolution in terms of immanence, emanation or evolution or *pariṇāma śakti*. Bhāskara's psychology, ethics and religion are explained in chapters VI, VII and VIII, and they deal with the nature of the *jīva*, the *sādhana*s and *mukti*.

Reality or Brahman is an identity that is immanent in differences and constitutes them. That the infinite finitises itself is a fact and not a fiction. The absolute is not out of all relation to the finite but is the ground of all relations external and internal and their logical prius and presupposition. The two aspects of identity and difference are distinguishable but not divisible.

The theory of causality is, to Bhāskara, what the theory of *avidyā* is to Śāṅkara and that of *karma* to Rāmānuja. Causality is a real identity in difference; it is a *vikāra* and not a *vivarta*; it is phenomenal but not fictitious. Bhedābheda asserts the reality of the causal relation in which Brahman exists as the unconditioned one and the conditioned many and integrates idealistic logic with the logic of realism.

There is no distinction between the absolute of metaphysics and the God of religion. Both express the same reality which is realisable by intuition alone. Brahman is both intelligent and intelligible and can be apprehended and attained by the *jīva* freed from its conditionateness.

Brahma-pariṇāmavāda strikes the key-note of the cosmological theory of Bhāskara. *Pariṇāma* is the principle of the self-differentiation of Brahman in which the one becomes the many. He posits a two-fold *śakti* in Brahman known as *jīva pariṇāma* and

acetana pariṇāma. Brahman wills to be the manifold and becomes the manifold by His own infinite power of *pariṇāma*. Creation follows *pralaya* like day following night and this process is an infinite series and its drift is to relieve the *jīvas* from their self-imposed limitations.

It is the nature of the Infinite to become the finite and infinitise it. The self-differentiation of the absolute is not tainted by the imperfections of the finite. Bhāskara's account of the origin and nature of the universe in terms of Bhedābheda seeks to avoid the perils of pan-cosmism, creationism, pan-illusionism and subjectivism. Religion reconciles the finite-infinite conflict by regarding the universe as grounded in the divine nature.

Psychology is deduced from metaphysical and religious insight. The *jīva* as an *amśa* is a self-limitation of reality and is therefore neither absolutely different from God nor absolutely identical with Him. While the *amśa* or the divided self is caught up in the meshes of *samsāra*, Brahman, the *Amśin*, is absolutely free from all imperfections. The spiritual is essentially infinite and unconditioned; but owing to the *upādhis* or the psycho-physical conditions, it is spatialised and thus becomes limited by *karma*. The *jīva* has the qualities of cognition, conation and feeling. The Lord creates the cosmic order, but not the psychic self.

The ethics of Bhāskara deals with the moral and spiritual methods by which the *jīva* frees itself from the trammels of the ethics is the co-ordination of knowledge and duty or *jñāna-karma* ethics is the co-ordination of knowledge and duty or *jñāna-karma samuccaya*. The aim of moral and spiritual endeavour lies in knowing Brahman, who is the supreme ground of all existence and the goal of all experience. The finite self overcomes and transcends the limitation of finitude and expands into the infinite. The *śāstra* consists of *Karma Kāṇḍa* and *Jñāna Kāṇḍa* and the two are organically connected with each other as a single whole. Morality is the dynamic element of the divine life and *jñāna* furnishes the comprehensive insight into the wholeness of things.

The supreme end of life is the realisation of our one-ness with Brahman by the renunciation of the *upādhis* or the pluralising tendency. *Mukti* consists in retracing the steps and returning to the absolute. Philosophic thinking and moral endeavour get merged in the mystic yearning for the fulness and freedom of this divine one-ness in which the sense of separateness is dissolved in the bliss of infinite expanse.

Uplifted by the Inner Self, the liberated ego passes gloriously through the luminous regions to its pre-established Home and is one with Brahman and attains *ekībhāva*. When the soul is thus swallowed up in the absolute, there is no annihilation of its essence. It is transfigured, deified and lost in God who is the ocean of peace or *śānti*.

The second book deals with the other schools of Bhedābheda like those of Yādava and Nimbārka and is also a comparative study of Western parallels like the systems of Neo-Platonism, Spinoza and Hegelianism. It concludes with a criticism of Bhedābheda and its contribution to Vedānta. Chapter I expounds the system of Yādava and its relation to that of Bhāskara. Both Bhāskara and Yādava repudiate the theory of Nirguṇa Brahman and pan-illusion. The infinite and finite as *acit* express the eternal cosmic necessity of the absolute. The infinite enters into and becomes the pluralistic universe and yet it is identical with itself and is not affected by its imperfection. In their philosophy of spirit both reject the solicitations of sense and lay stress on the dual discipline of *jñāna-karma samuccaya*. Yādava, like Bhāskara, traces the evil of *samsāra* to the erroneous perception of difference and false identity with the body but defines *mukti* as the realisation of the *bhedābheda* consciousness in which the finite self becomes an eternal moment or member of the infinite but is not oned with it. According to Nimbārka also, reality, both within *prapañca* and outside it, is both *bheda* and *abheda*. Brahman, the *śakta*, is the very stuff and substance of the universe of mind and matter known as its *śakti* in a *bhedābheda* relation. As a *prapanna* the *jīva* recognises the All-Self as the only saviour without a second and realises its own unworthiness and helplessness and surrenders absolutely to His grace. Divinity reveals his *dvaita-advaita* nature to him and frees him from the sorrows of *samsāra*. The Nimbārka school of Bhedābheda appears to have greater affinities to the system of Rāmānuja than to the schools of Bhāskara and Yādava.

In the attempt to strike a middle path between Advaita and Viśiṣṭādvaita, Bhedābheda has antagonised both the systems. Rāmānuja and his followers subject the theories of Bhedābheda to a severe criticism with a view to proving their utter falsity and futility. The principle of Bhedābheda is a contradiction in terms and the relation between the finite and the infinite is that of *prakāra* and *prakāri* and not *bhinna* and *abhinna* as expounded by Rāmānuja in his "Idea of the Finite Self" and described in my

work. The theory of Yādavaprakāśa that Īśvara is less than pure being or the absolute is wild and vicious. But it is the ethics of Bhedābheda that betrays its most vulnerable spot. When the absolute finitises itself, it ultimately becomes responsible for the imperfections of life and the origin of evil. Bhedābheda is between the horns of a dilemma. If the *abheda* aspect is emphasised, Advaita is the only logical conclusion of Bhedābheda. If the *bheda* aspect is stressed as is done by Madhva and Nimbārka, then Viśiṣṭādvaita alone is the inevitable conclusion.

The critical study of Bhedābheda and its varieties compels comparison with parallel lines of thought in Western philosophy. While in Western absolutism there is a fusion of theistic, pantheistic and monistic motives leading more often to confusion of thought than to clarification, the Eastern systems have a well-defined individuality of their own due largely to their method of formulating a theory by the criticism of the rival theories. There, are, however, striking parallels between the schools of Bhedābheda and the absolutisms of Plotinus, Spinoza and Hegelianism which bring out the relation between Eastern and Western thought. Plotinus says that the 'One' is alone beyond the many, absorbed in the ecstasy of the 'one' like the *ekūbhāva* of Bhāskara. There is said to be an inner contradiction in the philosophy of Spinoza owing to the conflict between the ontological method like that of Śaṅkara and the concrete methods of ethics dealing with substance and modes in the manner of Yādava. The philosophy of Hegel is closely related to Bhedābheda and not to Viśiṣṭādvaita as some modern philosophers think. To Hegel reality is a unity of opposites in which both identity and difference are one-many. In some notable modern expositions of Indian thought a kinship is traced between the logical highest of Rāmānuja and of Hegel and this view is contrasted with the intuitional highest of Śaṅkara. Hegel's theory of the identity of opposites bears more affinity to Bhedābheda than to the Viśiṣṭādvaita and calls for similar criticism. The logical view of the one-many lands us in vicious intellectualism.

In estimating the value and place of Bhedābheda as a school of Vedānta, it is essential to consider its merits and defects as a philosophy of religion. It attempts a reconciliation of the extremes of Advaita and Dvaita, though, in so doing it falls between two stools.

All the systems may agree in the view that the problem of the one and the many does not arise in *praḷaya* where there is no

differentiation of name and form (*nāma-rūpa*). While Advaita and Bhedābheda attribute imperfections to Brahman, Viśiṣṭādvaita predicates them to *cit* and *acit* which are its *prakāras* and defines Brahman as pure and perfect or *amala*.

The Philosophy of Viśiṣṭādvaita

The philosophy of Viśiṣṭādvaita reconciles the extremes of Advaita and Dvaita by its insight into the essentials of truth, goodness and beauty which are the eternal values of Reality and it is at once a synthetic philosophy and religion of love. It is more a synoptic vision than a *siddhānta* based on the rejection of rival theories. Viśiṣṭādvaita as a philosophy of religion reconciles the conflict between philosophy and faith in the five different levels of matter, life, sensation, reason and intuition, or *anna*, *prāṇa*, *manas*, *viñāna* and *ānanda*. It defines it as a true philosophy of religion avoiding the extremes of rationalism and scholasticism. Viśiṣṭādvaita is at once metaphysical (*tattva*), moral (*hita*) and mystic (*puruṣārtha*). It assigns a place sectionally to each but rejects materialism, vitalism, sensationalism, rationalism and subjectivism.

Brahman, the ground of existence (*tattva*), is also the goal of religious experience (*puruṣārtha*) and the philosophy of religion goes to the heart of logic and the logic of the heart. The theory of knowledge and *pramāṇas* co-ordinates the five factors of knowledge, the object as matter, the sense-organs, *manas*, *ātman* and *Paramātman*. It reconciles pragmatism, realism and idealism in terms of relevant organic relations as opposed to external relation. The subject of every kind of knowledge is ultimately Brahman, the whole or soul of Reality.

Brahman is both apprehended as the "That" or Reality and comprehended as the "What" or idea. Viśiṣṭādvaita is not pantheism, qualified monism or the adjectival theory of the absolute but is pan-organismal monism or theistic monism. The Absolute of philosophy as the all-inclusive Reality is the Personal God of religion as He has *Svarūpa* and *rūpa* with metaphysical moral and aesthetic perfections. Metaphysically He is *ādhāra* or *satyam*, *jñānan* and *anantam*, the Life of our life, the Real of the reals (*satyasya satyam*), the Light of lights (*jyotiṣām jyotis*) and the Infinite as the ground and meaning of the finite. Morally, He is *niyantā*, the chief factor in the five-fold factors of moral experience, the Inner Ruler Immortal or *antaryāmin*. He is the endeavour and the end, *upāya* and *upeya*. As *Seṣī* Brahman has five forms in the interests of redemption and soul-making. The absolute, the infinite,

the soul inner and outer of the body and the incarnation are historical and permanent. *Karma* and *kṛpā* are reconciled as the organic law of Love. As *Seṣī* and *Svāmī*, He is the supreme good of life and every *jīva* is in Him and for Him. He is beautiful aesthetically and spiritually enchanting (*Sundara* and *mohana*). Krishna *līlā* is the *līlā* of love and it is *Brahmarasa* or infinitely blissful. The metaphysical, moral and aesthetic nature of Brahman as *ādhāra*, *niyantā* and *seṣī* is summed up in one word, namely, *śarīrin*, which connotes not the body nor the spiritual entity but the inner self of both and the relation refers to the organic intimacy between Brahman as the *śarīrin* or the whole or Soul in the spiritual sense and *cit* and *acit* as the *śarīra*; they are distinguishable but not divisible. The ideal of the Divine *līlā* of love is the nearest analogical way of expressing the intimacy between the *ātman* and *Paramātman* as the spiritual and the supernatural. It affords synthetic insight into the nature of the unity of Reality and mystic union in the light of the experience of a Vyāsa, Śuka or a Nammālvār.

In *śṛṣṭi*, *prakṛti* emanates into the 23 categories and *praḷaya* is the opposite process of involution; they reveal the redemptive purpose and love of Brahman. The process of nature is dynamic but uniform; the process of the soul is morally free and the purpose of God is the making of souls and the three functions are integral and one.

The negative and positive definition of the *ātman* is that it is not spirit, soul or self or *dehī* made of *prakṛti* and its three *guṇas*, namely *sattva* as clear and distinct knowledge, *rajas* or restless activity and *tamas* or inertness and delusion. It is the eternal spiritual entity or *ātman* with its *jñāna* having the three functions of knowing, willing and feeling. It is finite-infinite as monad and mode of Brahman; monadic or infinitesimal in substance and infinite as attribute. The *jīva* is the mode or *prakāra* of Brahman, logical, ethical, and aesthetic; it lives and moves in Him and exists for His satisfaction and it can be Brahmanised (*vide* my work "Ramanuja's Idea of the Finite Self").

Mumukṣutva is the aspiration of the *jīva* to free itself from the false bodily feeling, resulting in the cycle of *samsāra* due to *avidyā*, *kāma* and *karma* and to attain the bliss of Brahman. There is no *sādhya* or end without the *sādhana* or endeavour. The *sādhana* is the spiritual ascent to the Absolute by the *yogas* of *karma*, *jñāna* and *bhakti-prapatti* by transcending sensuality and

even spirituality. Karma yoga is the practice of *niṣkāmya karma* or duty for duty's sake without any inner inclination or *rāga* and, without caring or attachment for the consequences of *karma*. It avoids the extremes of the hedonism of the *mīmāṃsaka*, and the stoicism of the Sāṅkhya and it is the doing of *svadharma* due to one's station in life without the doer mentality. Such self-renouncement leads to introspection or *jñāna yoga* and marks the transition from the moral 'ought' to the deeper spiritual 'is' by the practice of *viveka* or discrimination and *vairāgya* or self-renouncement. It promotes *śānti* or serenity and *śamatva* or the sense of social equality and spiritual service to others who are also spiritual by nature. This attitude reconciles egoism and altruism by the removal of *ahaṅkāra* and communalism. It leads to self-realisation, *ātmānubhava* and *kaivalya* or the state of spiritual aloneness; but it is only a step to godliness or the theocentric standpoint. Ascent from self-realisation or *ātmānubhava* to God-realisation or *Brahmānubhava* is thus a higher step and it is the transition from *jñāna yoga* to *bhakti* which is the chief means to *mukti*. *Bhakti* is the continuous meditation or *upāsana* on Brahman in the light of any of the 32 *Brahmavidyās* mentioned in the Upaniṣads. *Upāsana* deepens into *bhakti* and grows into intense intellectual love; it is the heart of logic and the logic of the heart. Continuous practice of the presence of the Inner Self or God contemplation is at first mediate and it changes into immediate intuition of God. Love becomes an irresistible longing or *paramabhakti* or hunger for God. *Bhakti* is an elaborate discipline and any pitfall is really a fall from God. *Prapatti* is the spontaneous self-gift to God, the Self or *śarīrin*: it has ease, naturalness, immediate efficacy and universal applicability to all *jīvas*. God is both endeavour and end. He is Lord and Śrī, Law and Love linked into one organically as grit and grace. The two schools of Śrī Vaiṣṇavism, namely, the Vāḍakalai and the Tenkalai are in essence complementary and not self-contradictory as Divine Love is more than logic whether grace is co-operative or operative. *Karma* is self-gift to God, the giver of all gifts and He is Himself the giver and the gift. The Nazarene and Nammālvār are interpreted supernaturally, historically and mystically but the last interpretation is shown to be more relevant and comprehensive than the first two as love exceeds, both the miraculous and the practical.

The unity and continuity of the mystic experiences of the ṛṣis enshrined in Sanskrit and of the Ālvārs as enshrined in Tamil are synthesised in the two *prasthānas* and *Ubhaya Vedānta*. Both the Ṛṣis and the Ālvārs seek God and see Him directly. To

both Vyāsa and Nammālvār Brahman is *tattva* and *anubhava*, metaphysics and mysticism as one. The logic of Ubhaya Vedānta shows that spiritual life is universal though the Veda is the word of God and the *Prabandha* is the word of man. Its universality exceeds the limits of language and the logical intellect.

The descent of Brahman with His soul-hunger into the mystic life and the yogic ascent of the *jīva* with its God-hunger to Brahman meet in the unitive stage of *Brahmānubhava*. The soul is enchanted by the ravishing Beauty or *Bhuvanasundara* and seduced by His devouring love. Its self-love is swallowed up in the Bliss of union; it is the loss not of personality but loss in personality. The sense of duality expires in enjoyment. *Mukti* is freedom from and not in embodiment. The freed *ātman* is Brahmanised but is not Brahman. The *ātman* is distinct but not separate. In *mukti* self-consciousness is infinitised; will as *kainkarya* is in tune with the saving will of God, and there is the bliss of unitive consciousness. In *Paramapada*, matter is without mutability, truth, goodness and beauty are eternalised. Time is the eternal now and all eternal values are conserved in the absolute.

The Upaniṣads, the Sūtras, the Gītā, the Itihāsas, the Purāṇas and *Divya Prabandha* form a continuous and increasing purpose of Divine redemptive Love. Nāthamuni and Aḷavandār as exponents of Śrī Vaiṣṇavism democratise the traditional religion of love. Among the post-Rāmānuja Ācāryas, the chief are Pillai Lokācārya, the chief of the Tenkalai school, and Vedānta Deśika, the chief of the Vaḍakalai school. Thus the philosophy of Viśiṣṭādvaita is now popular as the religion of Śrī Vaiṣṇavism; it is a religion of love in which Lord and Śrī are one as Śrīyāpati or Law and Love. The differences between the two schools are merely doctrinal and not basic. Divine grace exceeds the logic of *hetu* or causality and godliness and goodness coexist.

Śrī Vaiṣṇavism as dynamic Hinduism with its monotheistic faith in Śrī Nārāyaṇa as the Lord of universal Love and with *bhakti* as the birthright of every *jīva* as the chief means to *mukti* has overcome the proselytism of Islam and Christianity. It has democratised Hinduism on the basis of universal redemption and the spiritual equality of all *jīvas* with God as their Indwelling Love. The influence of Rāmānuja in the North due to the propagation of the religion by Rāmānanda, an ardent follower of Rāmānuja who went from the South, is intensified by Vallabha Śrī Chaitanya, Guru Nanak, the Mahratta saints with Nāma-

deva and Tulasidas, Arya Samaj, Brahma Samaj and the Vaiṣṇavism of Śrī Ramakrishna and Mahatma Gandhi. The influence is synthetic and democratic and not dogmatic and coercive. *Bhakti* is one now though the *bhaktas* influenced by endowment, environment and education are varied.

The central truth of Viśiṣṭādvaita is thus the refutation of the main charges against it on the principle that it is a synthetic religion of love. Its chief merits are: (1) It is more a synthetic philosophy than a *siddhānta* as it mediates between Advaita and Dvaita aspects and mediates between thought and will. It is unity in diversity as opposed to uniformity. (2) The chief proof of Brahman as *tattva* or Reality is the experience of Brahman or *anubhava*. Theology and rationalism meet in realisation. Every one can seek Him and see Him mystically. (3) Brahman is both beyond *prakṛti* and *puruṣa* and at the same time immanent in them as their Indwelling Self as Light and Love. He is in all faiths, founders and their followers as their Inner Self as the universal Self and Saviour. (4) All *jīvas* are spiritually equal as they are all one as *ātman* beyond the body made of *prakṛti*, in whom *Paramātman* resides as Vāsudeva or Indwelling Love in the interest of soul-making or divinisation. (5) Owing to soul-hunger He descends into humanity and owing to God-hunger man goes up and the two are mystically united; in that state distinction remains but separateness goes. When *ahaṅkāra* goes away, *aham* goes to its *Aham* which is Brahman. (6) The twin truths of Vedānta are Brahmanisation which is vertical and universal benevolence which is horizontal; spirituality and service are one as Brahman is both beyond man and in man. (7) This truth brings out the universality of Vedānta and its innate hospitality and catholicity and makes for the fellowship of men, fraternity of faiths and universal peace or *śānti*.

The Wisdom of the Upaniṣads

The Vedāntic problem of knowledge is stated in many ways in the Upaniṣads, but the most important may be stated as follows in the words of Uddālaka, "What is that by knowing which everything is known." Naciketas asks Yama to teach him the way of deathlessness. Maitreyi asks her husband Yājñavalkya to teach her the way of immortality. Bhṛgu learns from his father, Varuṇa, the nature of eternal bliss. The seeker after *parāvidyā* or supreme wisdom is known as *mumukṣu* and while the scientist seeks to know a part of reality and the philosopher speculates on it intellectually,

the *mumukṣu* seeks to know Reality or Brahman as the ground of all existence and the goal of all experience. A true Vedāntic theory of knowledge depends on the validity of the *pramāṇas* and the nature of the evidence of revelation and reason or *śāstra* and *yukti*. Vedānta avoids the extremes of dogmatism and intellectualism by defining *śāstra* as a body of truths spiritually verified by the *anubhava* of *ṛṣis* and verifiable by all and such realisation is the meeting ground of revelation and reason. Such mystic realisation or intuition, as it is commonly called, may be subjective but not subjectivism. The three, namely, *śruti*, *yukti* and *anubhava* are complementary and mutually corrective. Vyāsa, the expounder of the Sūtras, was at once a *ṛṣi* and a synoptic thinker *par excellence*. The three *pramāṇas* enable us to know Reality or Brahman and such knowledge is called *Brahmavidyā* or *Vedānta*.

The theory of knowledge leads to the theory of the knowledge of Brahman, the Supreme Reality, which is the central teaching of the Upaniṣads or Vedānta. It rejects the materialism of the Cārvāka, the vitalism of the Prānaist, the phenomenalism and rationalism of the Buddhist, the ritualism of the Mīmāṃsakas and the atheism of the Jains and the Sāṅkhyas. But there is no unity amongst the Vedāntins as regards the nature of Brahman, whether He is *saguṇa* or *nirguṇa*, *sākāra* or *nirākāra*, determinate or indeterminate, personal or impersonal. Śaṅkara adopts a dual standpoint and distinguishes between Nirguṇa Brahman, the *Sat* without a second devoid of content, and Saguṇa Brahman, the same absolute spatialised and limited by *māyā* as a concession to the *avidyā*-ridden dualist. But Bhāskara, Rāmānuja and the other Vedāntins object to this condescending division and reject it totally as unwarranted by the *pramāṇas*. Negation is positive and it denies not the finite but the finitude of Brahman. He can be apprehended as the *Sat* or "That" and comprehended as the "what." Brahman is *satyasya satya*, the Real of Reals, the life of our life and its true meaning. It is the ultimate subject of experience and predication is its revelation and not its perversion. It is *jñānam* and *ānandam* and is the Light of lights (*jyotiṣām jyotis*) and Supreme Bliss. But there is one aspect of Advaita as practical Advaita which is ethico-religious and it is allied to theistic monism. Brahman is *ānanda-maya*, absolutely blissful, and while sense-pleasures are trivial and transient and while even *svarga* is not abiding, Brahmanānanda is eternal and ineffable. Brahman as *sat-cit-ānanda* is not the absolute devoid of form and character but is and has *satyam*, *jñānam* and *ānandam* to Brahmanise the finite self. Divinity rea-

lises itself by divinising the nature of the self, soul-making is its one increasing immanent purpose.

Upaniṣadic cosmology describes the cosmic process and traces how the cosmos emerges from Brahman and merges into Him. It is outlined in the Taittirīya mnemonic word '*Tajjalān*' which means that the universe has its origin, sustenance and dissolution in Brahman. It is a ceaseless becoming without beginning or end and is cyclic as it alternates between *śṛṣṭi* and *praḷaya*. To the pure Advaitins, *jagat* is false like dreams and its process is illusory or *vivarta* and not real or *pariṇāma*. Becoming is a show superimposed on being just as the snake idea is superimposed on the rope. Bhedābheda explains it as Brahmapariṇāma or emanation of Brahman but makes Him responsible for the imperfections of life. Dvaitavāda insists on external relation and makes *Īśvara* extra-cosmic as the instrumental cause of creation. Rāmānuja with his organic theory of Brahman as the *śarīrī* or the soul of the universe expounds *cit* and *acit* or soul and matter as eternally real but not external to Brahman. This view insists on the intimacy of immanence and also ultimacy and ethical eminence. The process of creation starts with the energising of *prakṛti* due to the immanent will of *Īśvara* and the *karma* of each *jīva*. Evolution is from the subtle to the gross as in the Sāṅkhyan scheme and *prakṛti* evolves into *pṛthivī*, the 24th element, the solid form of earth. In involution, the order is reversed and it leads to *praḷaya*. The purpose of the whole process is soul-making or the Brahmanising of the *ātman* as an *aṃśa* of Brahman.

Upaniṣadic psychology has a philosophical and spiritual background and is metaphysical. The *ṛṣi* with his *ātma-jñāna* knows that the self is not the body made of *prakṛti* and imparts his knowledge to others. The teaching is both negative and positive. The materialist, the vitalist, the psycho-analyst and the rationalist fail to explain the priority and primacy of the self-consciousness of the self and their view is not tenable. The *ātman* is an eternal self-conscious entity having thinking, willing and feeling as its functions. It is monadic and yet a mode of Brahman. While Advaita denies finite personality as a mere reflection of Brahman in *avidyā* Rāmānuja affirms its reality by appeal to the experience of *ātmānubhava* or *kaivalya*. The *ātman* has free will and it can attain autonomy by subduing the senses and the moral causality of *karma*. It is also blissful by nature and can attain freedom from *avidyā-karma* and *kāma* and the three *guṇas* of *karma*, viz., *sattva*, *rajas* and *tamas*, and the three *avasthās*, viz., the waking state, dreams

and sleep. Abnormal states like illusion and hallucination are mere accidents caused by *karma* and they can be subdued ethically. Ethics deals with conduct as it ought to be and not as it is psycho-physically.

The ethics of the Upaniṣads deals with the ideal involved in conduct and it is the removal of the triple false views of life, namely, *avidyā*, *kāma* and *karma*, and the realisation of the supreme good of life or Brahmanhood. Owing to *avidyā*, the *atman* forgets its Divine nature and identifies itself with the body, *kāma* is the desire for the pleasures of the senses arising from ancient *avidyā*, and *karma* is stored up in the subtle body as psycho-physical activity. All Vedāntins agree that *karma* can be subdued by the practice of *niṣkāma karma* or duty without caring for the inner inclination of *rāga* and the outer consequences of pleasure and pain. But they differ in the estimate of the place they assign to ethics. To Śaṅkara *jñāna* and *karma* are opposed to each other as light and darkness. *Karma* arises from *avidyā* or the innate obscuration of pure consciousness, somehow innate, though it can be dispelled by *jñāna*. To Bhāskara *avidyā* is not a fiction but a real limiting adjunct or *upādhi* of Brahman which makes the infinite finite and implicates it in *samsāra*. Rāmānuja traces *avidyā* to the moral responsibility of the *jīva* and makes it accountable to the evils of bondage. Madhva also explains *avidyā* in the same way though he makes a radical distinction between good and evil. *Karma* includes good and evil, pleasure and pain and the ethical man prefers *śreyas* or the good to the *preyas* or the pleasant and the supreme good is self-realisation by giving up self-love. Goodness and godliness go together, since Puruṣottama God is the soul of goodness. He is supramoral and perfect and at the same time absolute as He is beyond the ethical distinctions due to *karma*. Ethics thus transcends itself and is fulfilled in religious aspirations based on the practice of *sādhana*s.

The *sādhana*s are the means to *Brahmajñāna* or the knowledge of Brahman by meditating on His nature or by *upāsanā* and the Upaniṣads prescribe 32 *sādhana*s or *brahmavidyās* to attain the end. Though they differ in method, the goal is the same and option is given to the *mumukṣu* to choose his own *vidyā*. They all insist on the triple process of *śravaṇa*, *manana* and *nididhyāsana*, on the need for initiation by the *guru* who has realised Brahman and on the practice of introspection and meditation or *dhyāna*. The *Sad vidyā*, for example, insists on the meditation on Brahman as

the Sat without a second and is interpreted by each Vedāntic system in its own way.

Śaṅkara prescribes four *sādhana*s or requisites for meditation on Nirguṇa Brahman and the *mahāvākya* 'tatvamasi' ("Thou art that"). The first is *viveka* or discrimination between Brahman that is real and the world that is false. The second, namely, *vairāgya*, follows from the first and it is self-renouncement and renunciation. The third is moral discipline like self-control and is purificatory and the last is *mumukṣutva*, or the yearning for *mukti*. By meditation on the *mahāvākya*, 'Tatvamasi' the *mumukṣu* realises the identity between *jīva* and *Īśvara* by the removal of *avidyā* and *māyā* which envelop Brahman subjectively and objectively and becomes a *mukta*. But really there is no endeavour or end as identity ever is and does not become. Brahman is and *māyā* is naught. Bhedābheda insists on the co-ordination of *jñāna* and *karma* or their *samuccaya* as means to *mukti* as spiritual insight and moral endeavour go together. Rāmānūja relies on the reality of moral, spiritual and religious disciplines or *karma yoga*, *jñāna yoga* and *bhakti yoga* and builds a ladder as it were, from wordliness to godliness by the three stages of self-renouncement by *karma yoga*, self-realisation or *ātma-jñāna* and God-realisation or *Brahmajñāna*. He elaborates seven *sādhana*s *sādhana saptas* or requisites like *viveka* and *vimoka* by the triple discipline of thought, feeling and will leading to *mumukṣutva* or God-hunger. The *bhakta* who practises the presence of Vāsudeva as the All-Self that is the ever-shining blissful Reality ripens into the mystic yearning for union with Him who is equally soul-hungry and then the two are 'oned' and *bhakti* is fulfilled in *mukti*.

The chapter on *mukti* reviews its various meanings, *āstika* and *nāstika*, before it arrives at the comprehensive meaning. If *mukti* is the dissolution of the body as the Cārvāka says, every one that dies is a *mukta*. The Buddhist view of *nirvāṇa* as the cessation of psychic becoming is negative and may lapse into nothingness. The Jaina theory of progression to perfection without attaining it is futile as becoming implies being as well. Sāṅkhyan *kaivalya* or aloneness is empty of content. To the *Naiyāyika* *mukti* is the abolition of consciousness and it is stone like inertia. The Mīmāṃsaka defines *dharma* as Brahman and it alone is his deity. The Vedāntin alone insists on the knowledge of Brahman as the meaning of *mukti*. Advaita defines it as *jīvanmukti* or freedom in and not from embodiedness as it ever is and not newly attained. *Mukti* as ascent

to the world of Brahman refers only to the lower or Saguna Brahman, the illusory Highest, and it is called *Krama mukti*. The other Vedāntins, including Bhāskara and Yādaṇḍa, reject the distinction and define *mukti* as both the apprehension of Brahman and the attainment of His world beyond. *Jīvanmukti* is self-contradictory as freedom and embodiment cannot co-exist. Besides, it excludes *nānājīva* and *sarva mukti*. Bhāskara defines *mukti* as *ekībhāva* or unitive consciousness in which the *jīva* is absorbed in Brahman. Yādaṇḍa and Nimbārka affirm the eternity of the *jīvas* and the *bhedābheda* relation or co-existence of identity and difference in which the *jīva* is one with Brahman and also different from Him. To Rāmānuja *mukti* is freedom from the world of space-time-cause and from *karma* and the attainment of *ānandaloka* or eternal bliss. It is well-described by the Kauṣītiki Upaniṣad as a spiritual state or *sāyujya* and it includes ascent to Paramapada and its attainment. In *mukti*, the *ṛṣi* is *Brahmanised* and he transmits his experience to others and such *ṛṣi*-making is the chief vocation of the Upaniṣadic seers.

The analytic study of the Upaniṣads outlined in the foregoing pages is the elaboration of their central theme enshrined in the text '*Brahmavid āpnoti param*' (he who knows Brahman attains the highest). Analysis and synthesis go together and are complementary as the former stresses variety and the latter, unity, and the truth of unity in variety forms the first principle of Upaniṣadic wisdom. The wisdom of the Upaniṣads is fully appreciated only by the vidvāns or Vedāntins who have specialised in *Brahmajñāna*. But the Vedāntic philosophers disagree in their exposition of the Upaniṣads and a comparative study of each *siddhānta* is of absorbing interest to the student who seeks to discern the common features of the systems and the points of convergence. Each system has its own individuality, claims the sanctity of immemorial tradition or *sampradāya* and also the merit of satisfying the *pramāṇas* of *śruti*, *yukti* and *anubhava*, perceptual; rational and intuitional. Vedānta has a genius for synoptic and coherent thinking and for discerning the unity that is behind difference and discord and it is the faith in this principle that furnishes the motive for the subsequent study. The synthetic study of Vedānta presupposes certain requisites which are universal and constructive. They are (1) the possession of sympathetic insight into the soul of each system for which no rules can be given; (2) a clear and comprehensive grasp of each *darśana* as a speculative system based on a direct intuition of Brahman making a transition from the metaphysical enquiry into Reality to its spiritual realisation; (3) an

insistence on each system satisfying the highest values of truth, goodness and beauty; (4) the cultivation of a sense of proportion or perspective which consists in assigning to each philosophy its rightful place in the synthetic scheme of Vedānta as a whole; (5) insight into the meaning and value of each system as expounded by its best *ācāryas* and illuminated by the lives of its highest exemplars. As aids to such an understanding the following principles of constructive criticism are employed: (1) textual consistency or integral units, (2) the historic method, (3) the psychological and pragmatic methods, (4) the evolutionary method, (5) modern synthetic views and (6) the method of immanent criticism. The first method insists on faith in the trust-worthiness of the traditional method followed by all Vedāntic teachers. This method postulates or posits the truth that the three *prasthānas*, the Upaniṣads, the *Gītā* and the *Sūtras*, form an integral unity and that they do not maintain divergent views. They provide ample scope to each *ācārya* to select the relevant texts and deduce his own system in the light of texts. Though every school establishes its own *siddhānta*, by a criticism of rival theories, it claims to follow the synthetic method of the *Sūtras* and arrive at a comprehensive view which reconciles the apparently conflicting texts. Vyāsa who collected the Vedas and co-ordinated the teaching of the Upaniṣads in the *Brahma Sūtras* is the very incarnation of the synthetic wisdom contained in Hinduism and he came to fulfil and not to destroy. Secondly, in true history, there is an increasing purpose of spiritual life that runs through the ages. It does not mete out justice, but simply justifies by assigning persons and events in proper relation to their environment. In the light of this method every Vedāntic school is justified, because it is a fact of history. Each system is a reflection of the age that produced it. But the historic view fails to distinguish between 'what is' and 'what ought to be' and we cannot say that 'what has occurred' is consequently true and good. Thirdly, the psychological method of synthesis consists in accounting for the merit of each *darśana* by analysing the mentality of its expositors. *Matabheda* is invariably determined by *matibheda*. What a man meditates on, that he becomes. The starting points of intellectual, volitional and emotional men may differ, but their goal is the same. The four *yogas* known as *Karma Yoga*, *Jñāna Yoga*, *Rāja Yoga* and *Bhakti Yoga* are devised in accordance with the psychological principles based on the aptitude and the nature of the *adhikārin*. But the value of the system is intrinsic and not determined *ab extra* by psychologically analysing its origin. Vedāntic experience is tran-

scendental and it cannot be described in terms of empirical psychology. Advaita, for example, explains the varieties of Vedāntic systems as preparatory stages in the progressive realisation of Nirguṇa Brahman. Each *darsāna* has a place in the hierarchical scheme but is not wholly true or good. Dvaita and Viśiṣṭādvaita are only on the road to Advaita which is absolute. Advaita is the only highest stage in Vedāntic progress and is perfect. But the evolutionary method as such has no fixity or finality and *Brahmajñāna* cannot be attained by mere *karma*, *jñāna* and *bhakti*. Fifthly, the synthetic method adopted by the Neo-Vedāntins is said to be the method of philosophic criticism unfettered by the rules of textual exposition. A new synthesis of Vedānta in the light of philosophic criticism is attempted by modern Indian philosophers. For example, the ladder theory is employed to prove that Dvaita is on the level of common-sense. Viśiṣṭādvaita is a higher stage and Advaita is the completion of Vedāntic knowledge. But this attitude betrays self-complacency, lack of sympathetic insight into non-Advaitic systems and refusal to accept their terms of peace. The traditional Vedāntic method avoids all extremes and is a *siddhānta* as well as a synthesis. It is a middle course between institutional religion and mysticism. The mystic with his instinct for the infinite yearns for direct realisation and has an intuition of Brahman. When philosophy is purely deductive, it becomes a theology with its fixed dogmas, myths and rituals and gradually external coercion takes the place of personal conviction. It is so compelling and coercive that, if it is not accepted logically, it has to be forced on the unbeliever by the use of the big stick, or brute force. Mysticism offers a corrective to such bigotry by its insistence on personal experience as the only test of truth. The Upaniṣads avoid the extremes of institutionalism and mysticism and follow the middle course. They define spiritual truths as objective revelation which can be verified by personal experiments and experiences. This view guarantees the stability of *sāstraic* faith as well as the spontaneity of religious experiences. The Upaniṣadic seers or ṛṣis follow the deductive or the *a priori* method in their transmission of truth. But their disciples seek Brahman by a process of spiritual induction and personal verification and finally realise Him. Thus the deductive and inductive methods of the Upaniṣads are complementary and not self-contradictory. Sixthly and lastly the method of immanent criticism is based on the Vedāntic truth that Brahman resides in all *jīvas* as their inner life, light and love and that every seeker after *mukti* gravitates towards God and attains security and stability by attain-

ing Him. The content of *mukti* is so rich and varied that it cannot be defined and described and the only definition that can be given is the experience definition or *Brahmānubhava*. Whether *mukti* is *svarūpa aikya*, *viśiṣṭa aikya* or service to God, it is the Brahmanised state of the self by the attainment of the unitive consciousness in *sāyujya*. The more spiritual a man is the more helpful he is to humanity. Brahman not only resides in the hearts of all *jīvas* but is also immanent in all faiths. The *Gītā*, as the cream and crown of the Upaniṣads, guarantees *Brahmānubhava* to all persons and proclaims the spiritual hospitality of Hinduism in the ever-ringing words 'Whoso worships me in whatsoever form ultimately reaches me'. *Sat* is one, sages call it variously.

The Ethical Philosophy of the Gītā

The ethical philosophy of the *Gītā* is the cream of the *Brahma Sūtras* and the quintessence of Upaniṣadic wisdom and owing to its universal appeal and spiritual hospitality it may be regarded as the light of the universe radiating the metaphysics, morals and mysticism of Vedānta and solving its triple problem by the affirmation that Brahman is the ultimate ground of existence and the supreme good and goal of life. The *Gītā* is the heart and soul of Vedānta as it furnishes the insight into the way of attaining *mukti* by its philosophy of conduct which is more synthetic than analytic. Its analysis of conduct into the five factors of the body, life, consciousness, self-consciousness and divinity, is comprehensive and perfect as it assigns a place to physics, biology, psychology, ethics and religion by the teaching that Brahman is immanent in life and yet eminent and that endeavour and end or *upāya* and *upeya* are one. It reinterprets Vedic hedonism and Sāṅkhyan rationalism and asceticism by its theory of *niṣkāma karma* or the life of detachment in attachment, and duty for duty's sake.

Gītā ethics, metaphysics and religion are rooted in its psychology and it is essential to know the nature of the empirical or embodied self or the *jīva* as distinct from the *ātman*, the eternal spiritual entity. Owing to ancient *avidyā*, *karma* which cannot be causally accounted for, it has identified itself with the body made of *prakṛti* with its 23 categories and subjected itself to the stream of births and deaths. *Prakṛti* is a fleeting psycho-physical flux and the body is made of *ahaṅkāra*, *buddhi*, *manas*, *citta*, the five *prāṇas*, the five cognitive and conative sense-organs constituting the subtle body and the five elements composing the gross body.

This view is more comprehensive and philosophical than the western theory which has allied itself with the experimental sciences like physics and biology and has become purely empirical. Its ethical nature is evident in the analysis of conduct and character. When the *jīva* contacts the sense-objects, it is attracted by them. The frustration of *kāma* results in anger, anger causes mental confusion and loss of memory resulting in the destruction of reason and moral collapse. Deliberation follows when there is a conflict of desires, and it results in decision and decision is translated into deed. The repetition of this experience creates a causal series or character or the conservation of *karma* and leads to its conservation in the subtle body. It survives the gross body which is subject to birth and death. In this way *kāma* and *karma* cause pleasure and pain, birth and death and the cycle of *samsāra*. The mind has the three functions—cognition, conation and feeling and the *Gītā* traces the mental and moral adventures of the *jīva* to the inter-action of the three *guṇas*, namely, *sattva*, *rajas* and *tamas*. *Sattva* makes for clearness and distinctness and enduring joy and harmony; *rajas* leads to restlessness and *tamas* causes ignorance, slothfulness and misery. The *jīvas* are classified into the celestials, the humans and the sub-humans according to the preponderance of the three *guṇas*, *sattva*, *rajas* and *tamas* respectively. Moral training consists in the development of *sattva guṇa*.

The *Gītā* deals with the metaphysics of morals and is a transition from the psychology of *kāmya karma* to the ethics of *niṣkāma karma* or the categorical imperative of duty for duty's sake like the later Kantian method. The Kantian serves as a good introduction to the study of *Gītā* morals though it fails to bridge the gulf between feeling, reason and faith and it is the *Gītā* alone that furnishes a perfect solution of the problem. The ethics of sensibility or *viśaya kāma* is naturalistic and it favours only the animal nature of man with its blind sixfold instincts like *kāma* and *krodha* or sex and anger. It is reason alone that is superior to passion and has sway over it. Pleasure for pleasure's sake is particular and perishing and makes man the slave of sensibility. The moral feeling is stabilised by *buddhi* and sensibility grows into spirituality, then develops into *niṣkāma karma*. The ethics of *niṣkāma karma* consists in the performance of *karma* without caring for inner inclination or *kāma* and the fruits of action or utility. It thus bridges the gulf between activism and asceticism, between the Vedic hedonism of the *Mīmāṃsakas* who deify *karma* by doing the Vedic imperatives to please the gods and enjoy hedonistic

pleasures here and in *svarga* and the stoic equanimity of the Sāṅkhya who seeks detachment from *prakṛti* and *karma* by stilling sense desire. Abandonment of *karma* is impossible, but it is possible to give up the desire for its fruits. *Niṣkāma karma* is thus the moral 'ought' which is inner detachment or desirelessness and outer conformity to the duty. By means of *viveka* the *karma yogi* knows that it is *prakṛti* and its *guṇas* that impel him to action and that as *puruṣa* or *ātman* he is free from *karma* and its opposites of *rāga* and *dveṣa* and pleasure and pain. By *vairāgya* he renounces both the inclination and its utility. *Viveka* or reason insists on the 'ought' and the will obeys it and this is the imperative of duty as *niṣkāma karma*. The ideal inspires the actual and the actual stabilises the ideal. The doer mentality alone is given up and not the deed. Even the ṛṣis and *Īśvara* work for the welfare of the world which is righteous action or *dharma*, not mere pleasure. *Sāṅkhya* and *yoga* together as the theory and practice of conduct constitute its contemplative and active side. Every man ought to do his *svadharma* or the duty of his station in life. In the *Gītā* context Arjuna is asked to do his duty of righteous warfare without caring for the end. The *karma yogin* is like the lotus that floats in water but is not wetted by it. He has inner worth and attains self-sovereignty or true *svarājya*. It is moral autonomy gained by subduing sense-desire. Reason has sway over passion.

The ethics of *niṣkāma karma* is only a negative account of duty as it is *karma* without *kāma* and has to be reinterpreted in terms of the philosophy of spirit or *jñāna yoga*. *Jñāna* expounds the method by which the *ātman* tries to free itself from the confusions of *avidyā* and the distractions of *kāma* and *karma* by self-knowledge and self-purification. The obstacles to *jñāna yoga* are traceable to the complex of *avidyā* and *kāma-karma*. *Avidyā* makes the *jīva* forget its spiritual nature and it clouds its self-effulgence. It leads to *deha abhimāna* arising from the false identification of the *ātman* with *prakṛti*. Practising *niṣkāma karma*, the *yogin* transfigures *viśayakāma* into *ātmakāma*. This yogic endeavour admits of four definite and progressive stages like *yatamāna samjñā* and *vasikāra samjñā*, involving the gradual withdrawal of the self from the outgoing tendencies by inner control and the abolition of the original propensities to evil. The *ātman* then shines in its own effulgence and has intrinsic joy. It is no longer *prakṛti* matter, life and mind and reason, but is a spiritual entity or *puruṣa* illumined from within. *Jñāna* has its fruition in *ātma-jñāna*. *Jñāna yoga* culminates in the consciousness of unity

among the infinite variety of living beings, in their sub-human, human and celestial embodiments as all *jīvas* have *ātmajñāna* and are similar in their *guṇas*. The *Gītā* analyses four stages of soul-culture in the ascending order of their valuation like *sarvatra samadarśana* or the intuition of the similarity of all *ātmans*. To a man with *ātma dr̥ṣṭi* or spiritual consciousness all *jīvas* are alike. He knows that God is in the heart of all *jīvas* as their *antaryāmin* and that the pure *ātman* and *jīvas* are in God as *Vāsudeva*. The practice of *jñāna yoga* presupposes a scheme of physical and mental discipline which is expounded in the sixth chapter of the *Gītā*. It involves eight stages of *yogas* starting with *yama* and ending with *samādhi*; it ends in the direct realisation of the *ātman* and the consummation of moral and spiritual endeavour. It is *Brahma nirvāṇa*, the attainment of *kaivalya* or spiritual self-realisation. The *jñāna* yogin delights in benevolence to all beings (*sarva bhūta hite rataḥ*). The quiet of *kaivalya*, however, often leads to quietism. The *kevalin* then grows into a true *jñānī*, hungers for God and attains the bliss of immortal communion with Him.

The first six chapters of the *Gītā* deal with the rationalisation and spiritualisation of conduct as the means to the goal of religious consciousness which is treated in the next six chapters. The *yogī* or the *jñānī*, who seeks *Paramapuruṣa*, the Self that abides in all beings, is no longer ego-centric, but shifts his centre to God and becomes theo-centric. The Absolute of philosophy or Brahman is the Supra-personal God of religion or *Puruṣottama* and is logically the Highest, ethically the Best and aesthetically the most Beautiful. The All-Self or *Vāsudeva*—is immanent in the world and at the same time eminent. Brahman is the *śarīrin* that sustains the *jīva*, rules it from within and makes it a means to His satisfaction. He is closer to life than breathing and is yet transcendently holy. The Lord of righteousness as Redeemer incarnates into the world with a view to punishing the evil-doer, redeeming him from his career of wickedness and re-establishing the reign of righteousness. The theory of incarnation is opposed to anthropomorphism, the evolutionistic view and illusionism. It is the invasion of God's redemptive grace into humanity with a view to reclaiming the sinner from his career of sinfulness. But the most inspiring account is given by mysticism, when it reveals the soul-hunger of God. The supreme secret of the *avatāra* is the down-pour of divine love into the heart of humanity and the yearning of the Lord of love to commune with the *jñānī* as His very self and thus satisfy His soul-hunger. Though Brahman is beyond *prakṛti*

and *puruṣa* and is *nirguṇa* and *niravayava*, He, as *Bhagavān Śrī Krishna*, assumes by his *māyā* a transcendental form of beauty with a view to captivating humanity and ravishing the seeker out of his fleshly feeling and transmuting the *jīva* into His blissful nature. The formula of duty from the religious standpoint is restated as follows: "Regard all your actions as determined by *Bhagavān* or God as the ultimate subject or *kartā*." When the *jīva* as *mumukṣu* realises its true nature, it sheds its *ahankāra* and offers the true *aham* to the inner Self or Inner I. It is the *jñānī* that seeks God as the Life of his life and Love of his love and yearns for communion and union with Him. God is dear to the *jñānī* and the *jñānī* is dear to God; he realises the truth that *Vāsudeva* is the Self of all and he is a *mahātmā*. The self cannot be gained by *karma tyāga* or even by philosophic reflection. In the words of the *Muṇḍaka Upaniṣad*, whom the self chooses, by him He is attained; to him the Self reveals His being.

The *Gītā* is a treatise of synoptic philosophy *par excellence* as it thinks things in their togetherness, correlates the truths of science, ethics and religion and presents them in a clear, distinct and comprehensive way. Chapters 13 and 15 deal with *kṣetra*, *kṣetrajñā* and *Puruṣottama* or the Supreme Self, the scientific view of the process of nature or *prakṛti*, the ethical and spiritual idea of the progress of man or *puruṣa*, and the religious teaching of the divine plan and purpose of soul-making extolled as the most sacred *yoga*. *Prakṛti*, *Puruṣa* and *Puruṣottama* are entities that are eternal but not external to one another. Soul-making is the plan of creation and the endless procession of natural events serves as a field for moral and spiritual progress till the *jīva* is *Brahmanised* and attains the divine nature. The *Gītā* shifts the centre of reference from *Puruṣa* to *Puruṣottama*, from *adhyātma vidyā* to *Brahma Vidyā*. The main purpose of *Paramapuruṣa* as the first cause and the final cause of the world order and as the *upāya* and the *upeya* is the redemption of all *jīvas* from the triple imperfections of ignorance, evil and ugliness, by freeing them from their career of sinfulness and self-alienation from God. This *Brahma vidyā* may be called supra-personal absolutism and is the most sacred of all *vidyās*.

The propensities to evil in the individual caused by *avidyā-karma* taint the will and stain the soul itself. The problem may be formulated in terms of *karma*, evil and sin. The theory of *karma* may be expounded by distinguishing its three aspects, namely, the psychological, the ethical and the religious, implying causality, freedom and *kainkarya* respectively. The problem of evil may be

analysed into the physical, the moral and the metaphysical, or suffering, violation of duty and vice. The problem of sin is essentially religious as it is the violation of duty as a Divine law. Though *avidyākarma* is *anādi* or beginningless in the sense that its origin cannot be logically explained, it has an end. Ethical religion reconciles the claims of good and evil by the synthetic view that righteousness is consummated in redemption. Mercy is the heart of justice and is not something new that is super-added to it. It is morality exalted into the religion of redemption. The *mumukṣu* has absolute faith in Bhagavān as *upāya* and the *upeya*, the way and the goal, and as the Saviour of all *jīvas*. The sinner seeks God and is saved and God seeks the sinner and is satisfied. Ultimately, He alone is the *prāpaka* and the *prāpya* and means and the end of attainment. The relation between *karma* and *kṛpā* is ultimately not the external view of causality, but the intrinsic and organic view of mystic experience and in the relation of love, it is difficult to estimate how much comes from God and how much comes from man. The problem cannot be solved logically and morally. It is dissolved in mystic experience. The Krishna of the Gītā, who is the Inner Ruler of all beings, is identical with the Krishna of the Bhāgavata, who, by His entrancing beauty, allures all beings and ravishes them out of their fleshly affiliations. When love becomes irrepressible, the game of love is finished and the thought of separateness is dissolved in the enjoyment of union.

Ethical religion has to consider the problem of evil from its social or universal, as well as from its individual standpoint. *Karma* has a social side dealt with in cosmic ethics and is a powerful factor in shaping the moral progress of humanity. The evolutionary process of nature and the moral progress of humanity bring to light the truth of the unity of nature and the kinship of humanity as one single family or community. The *summum bonum* of life is not merely the attainment of spirituality and *mukti* for oneself but service to all *jīvas* so that they may also enjoy the bliss of divine life. The aching problem of universal religion is the removal of the dualism between the individual and society in spiritual life and the reconciliation of the claims of self-culture and altruism, and of individual salvation and *sarva mukti*. The utilitarian view is founded only on enlightened self-love. Positivism ignores the dignity of personality. Humanism is purely secular and resembles Buddhistic benevolence of *jīvakāruṇya*, and the *ahimsā* of Jainism. The western theist who seeks to help God in the evolution of His redemptive purpose suffers from the idea of self-importance and

forgets the divine quality of omnipotence. It is the Gītā alone that furnishes the highest ethical motive for service to others and the religious motive for God-realisation as expounded by the Vedāntic teachers like Śaṅkara, Rāmānuja and Madhva. But a new orientation to this teaching is given by some eminent modern Indian thinkers due probably to the influence of socialism and humanitarianism, and a brief review of this interpretation may be a fitting introduction to the critical study of the classical expositions. The so-called ethics of *satyāgraha* of the Gītā is that of passive resistance in which the *satyāgrahi* interposes himself between the aggressive evil-doer and the victim, by self-suffering and even by death and lets the evil-doer do his worst and gradually realise the futility and folly of his wicked ways. The passive resister hates evil but loves the evil-doer and by his active love and non-violence in thought, word and deed converts the wrong-doer and redeems him from his career of wickedness. Violence is the lawless law of the animal man, which begins with blind fury and deepens into hatred and vindictiveness. But evil is sterile and self-destructive and topples down by its very weight. *Ahimsā* is not an act, but an inner attitude of self-purification. It is not a passive state of acquiescing in evil and submitting to it or the negative virtue of harmlessness, but is the weapon of the strong man who combats vice in a spirit of dauntless courage but without any malice in his heart for the wicked man. The practice of *ahimsā* is not merely individualistic, but has a social side in economic, educational and political life and it can be universalised. The approach to the millennium is commensurate with the degree of its universalisation. The *satyāgrahi* is a *karma yogin*, who with a humble and contrite heart, seeks salvation by ceaseless service to humanity, and reliance on God who is Eternal Truth and Love. The Tilak theory emphasises righteous warfare and it is built on the will to serve humanity. *Karma yoga* is an indirect means of spiritual service in which the *yogi* sees the Self in all beings and all beings in the Self and works for world-welfare. The supra-mental idealism of all-round perfection of Aurobindo Ghosh insists on the integral unity of mind-body and their immortality. The traditional views of the Vedāntic philosophies of Śaṅkara, Bhāskara, Madhva and others still hold the field. The theory of theistic or organismal monism brings out the intimacy between Brahman and the *ātman* arising from the idea of immanence of God in all *jīvas* and the equality of all *jīvas* and affords the most inspiring motive for social and spiritual service. Spirituality and service go together in which *bhakti* as the vertical way of *Brahmānubhava*

furnishes the motive for the horizontal method of benevolence. God above is God in man and nature and He is realised as Vāśudeva in all jīvas and spirituality and service go together. Every work is a worship of God. The supreme value of the Gītā as the Divine Song is the note of harmony that it strikes in dealing with the fundamental problems of the philosophy of nature, spirit and God. It is thus free from the defects of naturalism, monadism and absolutism. The Gītā integrates human experience in all its levels and satisfies the logical test of coherence and all-comprehensiveness and the ethical and spiritual needs of human personality. The Gītā idea of Puruṣottama as the supreme end of moral and spiritual endeavour is progressively realised by the three-fold *sādhana*s of Karma Yoga, Jñāna Yoga and Bhakti Yoga. The first section or *śaṭka* of the Gītā defines the nature of Karma Yoga and Jñāna Yoga as the two wings of the *ātman* and points to self-realisation as the means to God-realisation. The middle *śaṭka* extols *bhakti* as the supreme way to the knowledge of Brahman and the last describes the philosophy of the unity of *prakṛti*, *puruṣa* and *Puruṣottama* and insists on absolute self-surrender to the Lord as the only way of redemption. The Gītā as the essence of Hinduism proclaims the truths of the immanence of the God of Love in all beings and in all faiths, the spiritual kinship of all jīvas including those in the sub-human kingdom and the perfectibility of every jīva in the process of Brahmanisation. Individuals and communities have moral freedom to grow in their own way, but the evils of individualism and communalism should go. The Gītā summons humanity to shed its ignorance and sinfulness and enjoy the hospitality of divine life and love. In the immortal words of Bhagavān, "Whoever with true devotion worships any deity, in him I deepen that devotion and he ultimately reaches me". "Even those who worship other divinities worship me".

The Philosophy of the Beautiful

Aesthetics as a philosophy of religion defines Reality as eternal beauty and describes the attainment of bliss or Brahmanānda as the goal of God-realisation. In the history of Western aesthetic thought, each thinker has his own partial or sectional views. The physicist traces it to mechanical laws like proportion. The biologist relates it to the vital function, the play impulse and the sexual instinct. Some say that beauty arises from the sense of utility. The psychologist thinks that it is its 'feel' or agreeableness as pleasure and it is due to the law of association. The rationalist

analyses it and traces it to rational satisfactoriness. Kant insists on its autonomous nature and refers to four moments which distinguish it from sensationalism and intellectualism, from science and ethics and metaphysics. Beauty is an intuition which is the fulfilment of the intellect. It reconciles the head and the heart, matter and spirit and bridges earth with heaven. Though tastes differ, there is a universal standard of evaluation and criticism. The critic avoids the extremes of dogmatism and subjectivism and he is disinterested but sympathetic. The realist in art imitates nature and has fidelity to it and is a naturalist. But in copying nature he selects the relevant and thus exceeds the realism by creative imagination. To the idealist, art is a kind of creative imagination. It invests even airy nothings with soul and form. It is a Divine vision; and its poetic rhythm is a magic of words. The true artist blends realism and idealism and is both critical and creative.

Rasa is the soul of poesy. There are ten *rasas* with their own feeling of which the chief are *adbhuta* or the marvellous, *karuṇā* or pathos, *śṛṅgāra* or love, *śānta* or peace and *vātsalya* or tender feeling. *Śṛṅgāra rasa* is the queen of *rasas* with its idealisation of the joys and sorrows of lovers in their *samsleṣa* and *visleṣa* or thoughts of union and separation. The *Saṅkalpa Sūryodaya* of Vedānta Deśika brings out the spiritual *rasa* of *śānta*. *Adbhuta rasa* is the sentiment of sublimity and grandeur inspired by contemplation on the infinite stretch of space and the sweep of time as the quantitative infinite.

Music captivates the mind and is the food of love and *bhakti*. The South Indian *rāga* touches the very heart of music or *Nāda Brahman* by its spiritual expansiveness and overflowing spontaneity. In *bhakti* fed by music the self goes pleasingly out of sight and is lost in rapture. In the dance of *rāsa līlā* the Dancing Deity with each *gopī* is the very acme of revelry and ravishment beyond sensualism, sound and form.

While the Western theories of the Beautiful are on the whole secular and sensuous, the Vedāntic view spiritualises Beauty. While Kant recognised the autonomy of Beauty, Schelling made it the only organic philosophy and was next to Plato. The middle ages did not favour aesthetics owing to their ascetic tendency. Hegel merges art into philosophy. Bradley makes it an appearance of the Absolute. Schelling identifies art with Beauty and his view is allied to that of the Hindu.

The Vedantic View of the Beautiful

The Vedāntic view of the beautiful spiritualises aesthetics and as a philosophy of religion it elevates Beauty to the level of the Absolute. Beauty is infinite and transcendental but it expresses itself through the medium of the finite. The beauties of nature and human beauty are partial manifestations of absolute Beauty in and beyond them. This view avoids the extremes of materialism and subjectivism and steers a middle course between realism and idealism. It affirms the objectivity of revelation and the spontaneity of intuition. The Vedāntic view is not secular and speculative like Western theories but it has the supreme merit of recognising the innate reality and value of Beauty as the *svarūpa* and *rūpa* of Brahman and it has a special appeal to the mystic. To the Vedāntin mystic poetry is more suggestive than descriptive and it points to the intuition of Beauty which 'never was on sea or land' and which is in the soul within. Music soars beyond 'sensation and soul' and even *Nāda Brahman* and leads to the 'bliss beyond the spheres' of space and time. The study of the Philosophy of Brahman as the Beautiful has therefore a unique attractiveness to the mystic who seeks Him.

That Reality is beautiful and blissful is the living faith of Vedāntic aesthetics. It is grounded in the Upaniṣads and the Bhāgavata, the homeland of mysticism, and verified by ṛṣis and the Ālvārs of the Tamil land. What was verified in the past is also verifiable now and in the future by all who seek Divine Beauty. Viśiṣṭādvaita more than any other philosophy has specialised in the idea of Brahman as Beauty or Bhuvana Sundara and its essential features may be studied in the light of the well-known method of *tattva*, *hita* and *puruṣārtha* applied to the truth, namely, he who knows Brahman as Beauty attains the supreme bliss of Brahman. *Tattva* is the metaphysical knowledge of Brahman as Beauty. *Hita* is the means of attaining Him and *puruṣārtha* is the supreme goal of realising *Brahmānanda*. The three-fold method is ultimately one. *Tattva* is *anubhava* and *Brahmajñāna* leads to *Brahmānanda*. Beauty is attractive and leads to the bliss of union.

Vedāntic *tattva* establishes the truth that Brahman is beauty and is beautiful by appeal to revelation and reasoning. It is the special merit of Vedānta as it defines Him as Beauty linking the logical and the ethical views. It is suprasensual and suprarational and is eternally-self-luminous. He is the Upaniṣadic Golden Person in the Sun and the Sleeping Beauty in the milky ocean enjoying

the inter-play of *sṛṣṭi* and *pralaya*. *Sṛṣṭi* is due to the creative urge of *līlā* and is the self-differentiation of the *Sat* without a second into the cosmic manifold and *pralaya* is alternative *līlā* when what is manifest once again becomes unmanifest. This cosmic process is the *līlā* of love or the recreative art of soul-making. The sleeping beauty is the inner beauty in the lotus of the heart. The comparison by a monist of God's lotus-like eyes with the posterior of a monkey is obnoxious to Rāmānuja. The enchanting Beauty of Sri Rāma and Sri Krishna enshrined in the Rāmāyaṇa and the Bhāgavata refers to the historic incarnations of redemptive Divinity who came down to humanity to raise it to divinity. It was the special mission of the Ālvārs to bring out the permanent incarnation of Divine Beauty in *arcā* and demonstrate that *arcā* is the living Beauty of God and that He can be directly contacted and communed with.

The interpretation of Divine Beauty by Śaṅkara with his two-fold standpoints of the Upaniṣads offers a direct contrast to the above integral view. He thinks that beauty belongs to the world of *nāma-rūpa* and duality and is a limiting concept based on misconception and the cosmic illusion of *māyā*. It is only Saguṇa Brahman that is God the Beautiful and being only a reflection in *māyā*, He is only the illusory Highest fit for worship by the *avidyā* ridden *jīva* given to anthropomorphism. But Nirguṇa Brahman is pure consciousness devoid of duality and distinction and is realised by the wise man in *jīvanmukti*. But Rāmānuja refutes this two-fold distinction by tracing the theory of compromise to the spirit of condescension and showing the untenability of going from error to truth or from relativity to the contentless absolute. Rāmānuja thus establishes that Brahman is one and though its *svarūpa* is *satyam*, *jñānam* and *ānandam* or Life, Light and Love absolute, it becomes the Personal God of Beauty to attract the *ātman* and deify it. Brahman beyond space-time-cause becomes the sleeping cosmic Beauty, the Inner Shining Beauty in the *jīva*, the enchanting Beauty as the *avatāras* of Rāma and Krishna and is the living Beauty in *arcā* in order to dispel the ugliness of *avidyā-kāma* and beautifies the *ātman*.

Divine beauty is attractive and *bhakti* is the chief means of attaining His Bliss. Just as iron is drawn by the magnet, the *bhakta* or the mystic is enchanted by cosmic Beauty or Bhuvana Sundara, his inner love, and longs for union with Him. The classical statement of *bhakti* is made in the Upaniṣad where Yājñavalkya tells

Maitreyi, his wife, who seeks only immortal bliss and declines all earthly wealth, "Verily the husband is not dear that you may love the husband but that you may love the Self and in this way all human attractions are dear that you may love the Self." Brahman alone is eternal Bliss. Human love is only a fraction of the infinite love of Brahman but it is not an illusion or make-believe. The supreme end of life is *mokṣa* or *Brahmānanda* and even the secular pleasures of *prakṛti* or *preyas* may be spiritualised as means to that *śreyas*. The *Bhāgavata*, the gospel of mystic love or *bhakti*, proclaims universal salvation to all by the assurance that "those that ceaselessly direct to Him by the act of sublimation their sexual feeling (*kāma*), hatred (*krodha*), fear (*bhaya*), jealousy (*mātsarya*), friendship (*sneha*) and love (*bhakti*) become one with Him (*tanmaya*) and gain *sāyujya* or *mukti*." This view reverses that of modern psychology when it says that the animal and human instincts like fear, anger and sex are not basic instincts but are only a fall or lapse from the instinct for the Infinite or God who is our Home. They can be sublimated and spiritualised by directing them Godward. The animal instinct or *viśayakāma* can be humanised by culture and changed into *ātmakāma* and spiritualised by *ātmañāna* and turned *bhagavat kāma* by *bhakti*. Sex or *kāma* is a natural instinct and it has its origin in the Divine creative urge for self-division as male and female. Lust is alchemised into love when it is solemnised by marriage and marriage is turned into spiritual marriage in the process of bridal mysticism as was practised by the Ālvārs like Tirumaṅgai Ālvār and Namaḷvār and Āṇḍāl, the super-mystic, and it is immortalised as Radhakrishna love by Sri Chaitanya and Vallabha. The *līlā* was perfected in *Rāsa līlā* in Brṇḍāvan when the Divine Enchanter played on the flute and drew the Gopis born for His love to the scene of the Divine *līlā* and made them mad by playing hide and seek. In the magic circle of *Rāsa līlā* there was a Gopala who danced with every Gopi. All fleshly feeling was ravished out of her and she was lost in immortal bliss. Krishna *līlā* is enacted in every one's heart though a few alone are gifted to realise it. Every mystic is ensouled by the Enchanter who with His immortal *Gītā* enraptures the heart and makes it *tanmaya* or *krishnamaya*. While Brṇḍāvana enchants the soul, Kurukshetra makes it surrender to His saving grace. The Divine Teacher of the *Gītā* initiates Arjuna into the spiritual secrets of the four *yogas* and becomes his Saviour by freeing him from all sins. In every *nara*'s heart there dwells Nārāyaṇa, the universal Saviour, who initiates him into the Divine secret and guarantees *mukti* to him. What is chiefly required of the *mumukṣu*

or the seeker after *mukti* is infinite longing for the Infinite and the Infinite satisfies it.

Puruṣārtha as the Bliss of Brahman

Tattva as Beauty is attractive and leads to *hita* as love and both culminate in *puruṣārtha* as the bliss of Union. The metaphysical knowledge of Brahman as Supreme cosmic beauty or *Bhuvana Sundara* enables the mystic to practise love or *premā* as the means to attain Him and both have their fruition in the attainment of the supreme bliss of union with Brahman. Like the rivers drawn to the sea, and like the bee attracted by honey, the mystic is enchanted by Divine Beauty and is lost in the bliss of union with Him. While philosophy ascertains the nature of Beauty as the one *Sat* without a second, *Bhūman* or Infinite Bliss, and *Bhāmanī*, the shining cosmic self, religion as mysticism describes the bliss of ineffable union with Brahman. Brahman is *madhu* or Divine nectar or *ānandamaya*. The Upaniṣad institutes a calculus of pleasures, human or hedonistic sense-pleasures which are perishing and trivial, happiness of the mind which is more stable, spiritual joy or *ātmānubhava* which is permanent and *Brahmānanda* or the bliss of Brahman which is eternal, incomparable and absolute. Śaṅkara thinks that *ānandamaya* connotes spatialised or *Saguṇa* Brahman conditioned or veiled by *māyā* and it is maximised *ānanda* and not bliss or absolute *Nirguṇa* Brahman beyond relational thought and two-sided love. The other Vedāntins refute this distinction on the ground that what is contentless is meaningless and bare negation is only a void.

Brahman has positive content and is both bliss and blissful and the Upaniṣad really adopts a scale of values and the bliss of Brahman does not sublate the lower values as there is a ladder, as it were, from the empirical to the absolute. The Upaniṣad gives a classical statement of *Brahmānanda* as follows: "Aa a man embraced by his beloved wife knows nothing without or within, the self embraced by the intelligent self knows nothing without or within. The enjoyment of *Brahmānanda* is called *Brahmarasa* or mystic ecstasy. This joy is different from that of the deistic experience of the extra-cosmic Ruler or Father in Heaven and that of the monistic intuition of the self-identity of *Nirguṇa* Brahman. Theistic monism mediates between the extremes when it says that in the experience of union as '*avibhāga*' the *ātman* is distinct as a self but not separate from its inner self. In bliss, there is self-loss but not loss of the self. In the Gopi-Gopāla experience of *Rāsa līlā*,

there is one Krishna for every Gopi and the Gopis forget their self-existence when they are freed from *kāma* and commune with the Ravisher of souls. A Śuka is gifted with the insight into such *līlā* and his poetry is overflowing of the beatific bliss. The *jīva* weighted with worldliness or *prakṛti*-feeling cannot enjoy the *ānanda* here and now in this world and so he longs to attain his eternal Home beyond in the Absolute. When the *mumukṣu* becomes a *mukta* at death he soars by the straight and shining path of *Devayāna* and attains His eternal Home yonder. He is then freed from *avidyā-karma*, enjoys *Brahmarūpa*, *Brahma-rasa* and *Brahmagandha* in *sāyujya* and is Brahmanised for ever. The *mukta* may enjoy the bliss of Brahman or serve Him in the way of *Brahmanising* others. The philosophy of the Beautiful thus brings out the nature of Brahman as Beauty, the means of knowing Him as *premā* or Love and the end as *Brahmānanda* which is the very acme of *Brahmānubhava*.

The Idea of Personality

According to the Indian materialist or Cārvāka, personality is the product of the four elements, earth, water, fire and air. Materialism has its logical conclusion in agnosticism and atheism and it sterilizes social stability. Biology is more competent to explain personality than materialism and vitalism explains personality as *prāṇamaya* or a living organism. According to sensationalism, personality is a cluster of sense-impressions. It is an association of ideas or *manomaya*. But the self is more than the senses. Rationalism explains personality in terms of reason: *vijñāna* is more than matter, life and consciousness. But personality is *puruṣa* different from *prakṛti* and its 23 categories and reason. *Prakṛti* is called *kṣetra* as it is the field for the spiritual development of the *jīva* or the soul called *kṣetrajñā*. *Puruṣa* is dressed in the garb of *prakṛti* due to *avidyā* and when it is unveiled or removed by *jñāna* it reveals itself as a true *ātman*. The person who seeks to know his self should equip himself by yoga. As the result of this practice which includes the disciplines of will, thought and feeling or *karma*, *jñāna* and *bhakti*, personality or *puruṣa* is intuited as the *ātman* different from *prakṛti*. The experience is not inferred by *tarka* but is immediately intuited as *tatvānubhava*. The terms individuality, soul, spirit and self do not bring out the full implications of personality as *puruṣa* or *ātman*. This intuition should not lapse into the defect of intuition-

ism or subjectivism. Self-consciousness is the essential quality of the self. While the self is infinitesimal or *anu*, its self-consciousness is infinite. Metaphysics, as different from psychology, postulates the truth of personal identity and it assumes that the more dissipated and divided the self, the more coherent and harmonized it really is and the highest personality is the most unified and integrated. When *puruṣa* realizes his nature as different from *prakṛti*, he knows that he is self-luminous and eternal.

The growth of personality is the ideal of rational life. Personality is not a mere substance that has qualities. Personality is not the mere subject of knowledge as different from the object of knowledge. Personality is not the mere agent that is the doer of an action. The idea of personality is an *ideal* and it is the ideal which can be actualized. We idealize and essentialize and seek to know the very essence of personality as *ātman*, as personal idealists and yet, as empirical realists, we try to know psychologically what personality is and does. In empirical life it is often identified with the mind-body. It is conditioned by the three determining factors, *viz.*, endowment, environment and education. *Vidyā* or culture deepens into *vinaya* or sweet reasonableness, the chief end of culture, and is the result of self-renouncement, inwardness and sweet, mellowed reasonableness. In this way it is found that a person is mostly moulded by these internal and external circumstances.

The Gītā view of the psychology of conduct is more comprehensive than that of Western thinkers. It takes into account his *svabhāva* as the moods due to the *guṇas* of *prakṛti*, namely, *satva*, *rajas* and *tamas*. *Satva* is *prakāśa* or serenity. *Rajas* is *pravṛtti* or restless activity and *tamas* is *ālasya* or inertia. The Gītā applies this psychology to every aspect of a man's life. The general conclusion is helpful in the soul-making process. By means of *viveka* and *vairāgya* or inwardness and self-renouncement the person frees himself from the limitations of matter or *prakṛti* and attains his true personality (*ātmānubhava*). Personality is a *vivekī* or *jñānī*, when life is idealised and personalised. Existence and value go together and values are feelings of approval by persons and they are intrinsic. The science of values recognizes the worth of personality and there are judgments of values, *viz.*, the cognitive, conative and affective or thinking, willing and feeling and the fundamental kinds, *viz.*, truth, goodness and beauty are specifically dealt with by the three normative sciences, logic, ethics and aesthetics. These values are intrinsic, objective, eternal and spiritual

and they satisfy the highest aspirations of personality. In a well-rounded and integrated personality, the three are fused together and form a unity in trinity. It is the special province of the philosopher or *jñānī* to collate the different values into a system fully unified. It is the ethical personality that brings out the inner worth and dignity of man more than the logical and the aesthetic. Personality is different from the self of sensibility and reason. By *viveka* or discrimination he knows that he should not be the victim of *viśaya rāga* or sensual desire. Moral autonomy consists in the self-conquest of sensibility. Art has more attractiveness than logic and ethics on account of its appeal to the heart more than to the head. Beauty cannot be mapped out or measured quantitatively, nor analysed by the logical intellect. To the mystic poet with a beatific vision, the boundary line between the finite and the infinite disappears and he intuits the unity of life in all its beauty. Man is now a dual personality, the bodily and the spiritual. It is possible for him to renounce the pseudo-self or *ahankāra* and realize his own nature or *aham*. When he intuits himself as *ātman*, he attains the integral knowledge of truth, goodness and beauty.

But the *ātman* does not consist in mere solitary, self-knowledge and self-contentment emptied of social sympathy. Mutualness is more valuable than mere meritoriousness and it is the fundamental axiom of sociology. It shows rapprochement between psychology and ethics. Ethics stresses the need for mutual co-operation in cultivating the social self. Sociology studies persons in their togetherness and not as exclusive atomistic individuals who live perpetually in mutual hostility and drift towards anarchy. A true society is therefore a realm of ends in which each man is a person or *ātman* and treats others as persons or *ātmanas*. Self-hood and otherness are co-relative and not self-contradictory and otherness is an axiom of social philosophy contributing to the spiritual solidarity of society. In the relation between personality and community a distinction may be drawn between individuality and personality. Communities may grow but communalism should go as it is a disease that deeply affects the social organism. It is the family that is the foundation of *dharma* or righteousness, as it alone stresses the sense of dutifulness as opposed to the egoistic tendency of the assertion of individual personal rights. While the assertion of rights drifts towards competition and conflict, the practice of duties fosters the sense of righteousness and promotes the spirit of co-operation and *dharma*.

Education is not a trade union or industry whose object is the mass production of graduates. Life is more valuable than livelihood. Education aims at soul-making or the moulding of the social personality and is obligatory and appreciation is the soul of culture. As the *Gītā* says, it is the aim of *vidyā* or education to promote *vinaya* and knowledge should grow into wisdom and culture. Economics as the science of wealth and welfare deals with the material well-being of man as a means to spiritual well-being. Individualism is based on cut-throat competition and hatred. The evils of property should be avoided not by abolishing property but by abolishing the property feeling which consists in wanting to want. Every want increases with satisfaction and it is only by minimising wants that true satisfaction results and it is by ethics and not by economics that this satisfaction can be brought about.

Man is called a political animal who insists on the promotion of law and order for social well-being and the attainment of liberty and justice. But it is the moral view of man as a person and not a thing that furnishes the highest ideal of the state and it is based on soul-power as in *Janaka-rājya*. The true politician as a wise man like Janaka relies not on brute force or opportunism but on *ātma śakti* or soul-power and it should manifest itself in righteousness and loving kindness to all and punishment itself should aim at the reformation of the individual. The spiritual side of social life seeks to reconcile egoism and altruism and it exceeds the realistic, the historic, the pragmatic and the idealistic views and approaches personalism. To the personalist, the universe is friendly to man and not hostile to him and in all levels of life. Love should take the place of cooperation, competition and conflict. The ideal of social personality solves the conflict between individualism and collectivism. Society is a community of social selves or persons seeking perfection in which each man lives for others by giving up self-love. Standardization or regimentation by social legislation consists in abolishing all distinctions; it may be desirable politically but it is not psychologically possible. Unity in variety is a better social idea than uniformity. The social problem is a problem of value and not power and the chief value is cementing society by loving fellowship and it is achieved by removing the ills of social life from each and by social and spiritual service to humanity. It is the religious faith in God as the supra-personal or *puruṣottama* that is the consummation or fulfilment of the ideals of logic, ethics and aesthetics in their individual and social aspects. Personality has its full meaning and value only in God, the supra-personal, as the ground of existence and the home of the eternal

values, truth, goodness, beauty and love. There is no contradiction between finite and infinite personality due to any collision. Personality is enriched by the more of itself when it is realized in social service. *Puruṣa* is an eternal spiritual entity different from *prakṛti* and all *puruṣas* are alike on account of their common spiritual consciousness. Love to God stresses the vertical side when man mounts from the finite to the infinite and attains Him. The horizontal side promotes the social love between one *jīva* and another. Thus spirituality and service go together as the spiritual-social aspect of the same *Brahmajñāna* or God-realization. In this body or *kṣetra* or *puruṣa* there shines the ever-luminous and blissful super-person to divinise him. *Puruṣa* and *Puruṣottama* become one and *puruṣa* manifests his inner divinity and is deified or Brahmanized. God-realization and social service go together and the self is one with God, its inner self, vertically and one with all the *jīvas* horizontally. It has its completion in the unitive state of mysticism in which the self is united with God without losing its distinctiveness. It then sees God in all persons and all persons in God.

Supra-personalism corrects the partial views of naturalism, vitalism and psychism and completes them from a higher standpoint in which science and religion are harmonized and existence and value become one. Naturalism gives a physico-chemical view of life and treats consciousness as a by-product of matter. Naturalism is met by super-naturalism or the faith in myths and miracles which dispense with the natural law of causation by tracing every event to super-natural causes like Gods. When the biologist explains reality in terms of *elan vital* he becomes a vitalist philosopher. Animism is the counterpart of vitalism on the religious side and it is the faith in the working of *prāṇa* and it attributes life and divinity to nature and leads to ancestor worship and fetishism. Animism prepares the way for sensationalism or mentalism and anthropomorphism. When the empirical psychologist explains reality in terms of sensations, he may be called *Indriyātma vādin*. Religion reacts against this mentalism and is called anthropomorphism. Anthropomorphism is the faith in God on the analogy of human experience.

In the next higher stage reason or *viññāna* supersedes matter, life and sensation and reality is explained in terms of rationalism and its counterpart, namely, theology. When sequence is interpreted as consequence, reality becomes rational or *viññānamaya*. Religion or theology rejects rationalism and accepts faith in scrip-

ture or *Veda* as the only *pramāṇa* or proof for the existence of God. But faith in scripture is often blind and leads to dogmatism. In the higher state of supra-personalism, the self or *ātman*, is recognised as the presupposition of all finite experiences and therefore as the basis of philosophy and religion. The self is its own evidence and is intuitively experienced as the result of self-renouncement and introversion.

In super-personalism, philosophy and religion shed sectional view-points and become united as a philosophy of religion or Vedānta. In the philosophy of religion, religion deals with the direct realisation of God and philosophy justifies the verities of life as verifiable experiences. Revelation and reason are therefore reconciled in the direct realisation of the mystics. Absolute Idealism has the merit of explaining the lower by the higher by a process of evolution, emanation or *pariṇāma*. But it is open to the charge of predicating imperfections to Reality or the Absolute in terms of *māyā*, or the *upādhis*. But super-personalism makes the finite self accountable for the ills and evils of life and it defines Paramātman as ever pure and perfect. Valuation is more important than genesis and the attainment of Brahman is more relevant to the spiritual man than the natural history of its origin and growth. When God is attained, the cosmic problem is dissolved. Supra-personalism seeks to discover and determine the exact relation between the finite self and the infinite. The idea of the self as a monad and mode of God satisfies the tests of scriptural validity as well as logical proof. The theistic monism of Vedānta provides for the monistic needs for model unity and the theistic need for monadic distinctions and reconciles the apparent discord between the self as a mode of the Absolute and the self as a distinct monad or entity. The monad has open windows and can mirror the universe and become a mode. *Paramātman* and *jīvātman* are distinguishable but not divisible. They are one in connotation but are two in denotation. Paramātman is logically immanent in the *jīvas* as the monad of monads but is ethically transcendent in their mystic union; their separateness disappears but not distinctness.

Vedāntic experiences form a unity in variety; they are varied in extent but unified in intent. The logical self enquires into the nature of the Paramātman as the supreme ground of all beings in the light of the *Sadvidyā* of the *Chāndogyaopaniṣad*. The nature of the ethical self and its relation to *ātman* is expounded in the second chapter of the *Sūtras* dealing with the nature of personality. The aesthetic view of God as the Beautiful and the Blissful is de-

veloped in *Taittirīya Upaniṣad*, the *Gītā* and the *Bhāgavata*. The integral relation between *Paramātman* and the *jīva* is dealt with in the Upaniṣadic definition of Brahman as *satyam*, *jñānam*, *ānandam* and *anantam* as revealed in the intuitional experiences of the *ṛṣis*. Brahman is supra-personal and the *ātman* is personal and in the unitive experience of the two, Brahman and the *ātman* are two as *tattvas* or existents but are one in experience.

Brahman is the secondless *Sat* and is the unity of composition and self-manifestation in *pralaya* and *sṛṣṭi*. The One is in the many and therefore the One becomes the many. By knowing Brahman as the One, we also know the many as the pluralistic universe. Brahman is *Sat* and the world is therefore *satya* or *Brahmamaya* and not *Brahma-māyā*. As the Upaniṣad says *Īśa* is in all beings as their self but *Īśa* is not all beings as false pantheism explains it. In the grammar of religion, every term or word ultimately refers according to the principle of co-ordination only to one word or *śabda*, that is God or Brahman. Spiritually the 'I' is the *ātman*, but mystically, it is *Paramātman*, the divine 'I'. The *jīva* is finite (*anu*). It exists eternally as an entity but is not external to Brahman. Though its consciousness is now cribbed and cabined by ignorance it can expand into infinity in *mukti*. The infinitesimal and the infinite are one as *amśa* and *amśin*.

As the ethical self, it has its moral freedom and eternity and spiritual relation to *Paramātman*. The supreme good is God, the moral ruler of the universe; duty has its meaning only in the Deity; the Deity is the ultimate subject of every moral judgment. The *aham* belongs to God, its true *Aham*; but owing to its false bodily feeling it has lapsed into *ahaṅkāra* or egoity. Self-will leads a man downward and lands him in the ills of *samsāra*. But if selfishness is conquered by subjugating the will to Divine will, the self shakes off the shackles of sensibility and attunes itself to God. Goodness merits grace and is fulfilled in it owing to the organic relation between the two. No sin is so sinful as not to merit the mercy of the Redeemer and He redeems him from all his sins and offers him the security of salvation. The Divine rule of righteousness is rigorous and relentless and provides hope of or scope for *mukti*, but the Ruler is really the Redeemer. God is in the *jīva* as its Inner Ruler in order that the *jīva* may grow into His likeness and become godly. Every *jīva* merits mercy and mercy removes evil and changes goodness into godliness. God alone is the endeavour and the end, the *upāya* and the *upeya*.

The unitive aspect of monotheism is fully brought out in the idea of God as Lord, Master or *Svāmin*. The *jīva* makes a gift of itself to God, its real owner. But even such self-gift should not smack of *svatantra* due to egoism as He is the giver and the gift. Thus the highest end of human personality is to realize that our wills are ours to make them His, as means to His satisfaction. The aesthetic view combines immanence and transcendence by describing *Paramātman* as Beauty, Love and Bliss. The Beauty of God transcends the beauties of nature and the *ātman* and it is revealed as exhaustive shining cosmic light or *Paramjyoti* in mystic experience. He has a bewitching form of Beauty with a view to removing the ugliness of *kāma* and the lusts of the flesh and divinise the *jīva*. Each *ātman* is like a note in the divine flute and it pulsates with creative or recreative joy. Owing to the Indwelling Beauty in the lotus-heart of the soul, the body itself becomes a living temple or *Brahmapuri* without the ugliness of sensuality or *viśayakāma*.

Divine beauty is ineffably entrancing. God is Himself Love and love is for love's sake and not a means to an end. The *bhakta* does not seek attunement with the will of God but longs for atonement with Him. The communion that follows the finite—infinite contact is known as *Unio-mystico* or *aikya* in mystic experience and it is shared by mystics of all ages, cults and countries, especially by *Viśiṣṭādvaitic* seers.

In mystic union there is self-loss in the sense that self dies to live; its egoistic conceit perishes, but the ego remains. Its sense of separateness or aloneness goes, but it exists as a distinct entity. In this dual-non-dual state, the finite self is Brahmanized by a process of Divine alchemy. The philosophic unity of absolutism or supra-personalism is a kind of theistic monism which avoids the extremes of theism, deism and monism. Every *ātman* lives, moves and has its being in *Paramātman* as its real self. The bliss that results from the unitive state is beyond definition and it cannot be clothed in sensuous language and symbolic imagery. It is *Brahmānanda* as absolute bliss. The philosophy of cosmic personalism furnishes an inspiring motive for universal love. Mystic love to God and social love to the *jīvas* are not different as love destroys all barriers that divide one *jīva* from another and the *jīvas* from God, their *jīva-jīva*. Brahmanization and benevolence go together as the mystic and social aspects of the same experience are enshrined in Superpersonalism.

Pan-ātmanism solves the problem of personality by reconciling the extremes of theism and monism. It is even preferable to the term suprapersonalism and theistic monism used in Western philosophy owing to the self-contradictions of the personal and the impersonal. *Paramātman* is the life of the *jīvātman* and is its ultimate meaning and value. Personality in its highest aspect is expansive and not exclusive, modal and not monadic and in its all-inclusive love it avoids all barriers and frontiers vertically and horizontally. The self can shed its egoistic outlook, realise its unity with all beings as a spiritual community with common but not identical contents. Human personality or *ātman* is then fully enriched by becoming one with humanity and divinity. This view of pan-ātmanism is the surest basis for the practice of universal benevolence to all *jīvas* for the realisation of Brahman in and beyond the *jīvas* and for the fraternity of faiths. It affords the highest inspiration for inter-caste, inter-communal and international unity. In its essence it is seeing Vāsudeva, the All-Self, in all beings and all beings in Vāsudeva and as the *Gītā* concludes, the seer who intuits Vāsudeva in all is a real *mahātmā* and a rarity.

A Synthetic view of Vedānta

India is the symbol of eternal soul-power and *śānti*. It is her genius even today to realise the unity of life embodied in beauty, love, truth and godliness. Unity of life is discerned by a Bose in the plant, the animal and man. A Tagore intuits the unity of creative beauty in the stars above and the soul within. The body is a temple of God who is the Life of our life. A Gandhi typifies the Indian moral genius as a *satyāgrahi*; it is the return of good for the evil and the reform of redeeming the evil-doer. The cow is a poem of pity and by tending it, the whole sub-human species is tended. Swami Vivekānanda is the apostle of Vedāntic hospitality and universality. Each *yoga*, *karma*, *jñāna* and *bhakti* is a means to *mukti*, and spirituality and service go together. Aurobindo Ghosh insists on the integral unity of souls. Matter can be spiritualised and spirit divinized and the soul of India is a cosmic whole. Śrī Rāmakrishna is the symbol of the unity of sects and systems. God is both personal and impersonal, and *jñāna* and *bhakti* are one. India thus stands for synthetic unity through science, art, ethics, philosophy, religion and for the solidarity of man.

The primary need of religion is *vairāgya* or self-renouncement; it is the result of reflecting on the values of perishing sense life which avoid ascetic self-repression. Reflection as opposed to

ethical inner spirituality first breeds sick-mindedness with life; it is sour-grape *sannyāsa* as the first step in *mumukṣutva* which is desire for freedom from the ills of *samsāra*. It leads to the shifting of the centre from the ego to God, its Inner Life. By *Niṣkāma karma* the *mumukṣu* realizes the *ātman* but rejects it as godless state of *kaivalya* and turns to *bhakti* and longs for union with God and God alone seeks Him as His self; the two then are united. *Mumukṣutva* is interpreted by Śaṅkara in terms of *jñāna* by the removal or sublation of *avidyā*. It results according to him from *viveka*, *vairāgya* and self-discipline and leads to *jīvanmukti* and the *Nirguṇa Brahman*. Brahman is and *māyā* is naught. But Rāmānuja's way of *parama bhakti* leads to the bliss of Brahman and true *jñāna* leads to the *jñāna* that is of Brahman and not Brahman. Brahman is both *jñāna* and *ānanda*. *Mumukṣutva* is infinite longing for the Infinite and both Śaṅkara and Rāmānuja insist on it as the chief condition for *mukti*. The grace of God as Giver of *mukti* is equally needed by both.

As an instance of synthetic mysticism may be cited the story of Satyakāma, a *mumukṣu*, in search of a *guru*, who ascended the rock fort of Trichy, as an ideal place for meditation. He was drawn to a ṛṣi-like man in *samādhi* and sought him as his *guru*. The *guru* led him step by step inductively. He first said "Go back and pray to the gods for boons." He practised polytheism but was not satisfied with the boon of *svarga*. He went back to his *guru*; he then said "Practise the Vedic *dharma*". Vedic *dharma* cleanses the mind but is formal and external. He went back to the *guru* and the *guru* said "Practise righteousness". Moral life has intrinsic value but it is negative and he was not drawn to it. He was then asked to philosophize, but philosophy does not solve the riddles of life. He was then asked to worship God, as the Father in heaven, but He is extra-cosmic. He was then directed to know the self or *jīvātman*. He was lost in *samādhi* or *kaivalya* but *kaivalya* is godless as a state of spiritual 'aloneness'. The final teaching was 'Intuit Brahman' as Life, Light and Love by shedding egoity. The *guru* thus by the method of elimination enabled the disciple to know that God is not polytheistic, external or philosophic. Then *guru* and *śiṣya* were drawn to Śrī Ranganātha and were lost in eternal bliss.

Philosophy in India permeates life as it thinks all things together and integrates all branches of knowledge by discovering unity in diversity. (1) It first deals with the ways of knowing truth or the *pramāṇas* as a means of knowing truth or *prameya* and thus gives

the primary place to epistemology. Reality is knowable. Neo-realism and neo-idealism avoid the extremes of externality and internality. Matter is real but materialism is false. Nature serves human purpose but is not purposive. (2) As psychology it mediates between naturalism and absolutism, it is the science of the self or *ātman* different from mind-body, has its own intrinsic worth. (3) Philosophy is the theory of reality whether it is one or the many or many in the One. The synthetic view of the All-Self denies separateness but not distinctness. (4) The various theories of evolution like natural selection, emergence and absolutism deny the self or the *ātman*. The synthetic true theory deals with the process of nature, the progress of man and the purpose of God, as soul-making. Indian philosophy as Vedānta is speculative and spiritual. Vedānta in the popular sense consists of Advaita and its aspects which regard reality or Brahman as the one without the many. Dvaita insists on eternal difference between the *jīva* and *Īśvara* and their externality. Viśiṣṭādvaita describes the Absolute of metaphysics as the Personal God of religion, the *jīva* as monad and mode of God and the goal as mystic union with God. *Karma* has three meanings: the scientific view of moral causality, the ethical view of freedom and the religious view of consecrated service to God as the real actor in life. The natural instincts like sex, anger and jealousy can be spiritualised as the instinct for the Infinite or God. The mystic seeks God as his Inner Self, and sees Him spiritually and is deified. Existence and value are one and the eternal values of *mukti* like truth, goodness and beauty are the attributes of the Absolute. India's philosophical mission is the gift of spirituality to humanity.

The decline of religion today is due to the growth of scientific materialism, communism and godless secularism. The remedy lies in stressing the essentials of religion which are not rituals, mythology and dogmatism but the inner life of spirituality. The false historical view of Hinduism as a growth from fetishism to absolutism is to be rejected. The view that the Absolute as Nirguṇa is for the wise and that the Personal God is for the ignorant is to be given up. The true view is as follows: (1) Revelation and realization are one and reason is satisfied by verification. The existence of God is proved by directly experiencing Him. (2) The deductive view based on scripture leads to *siddhānta* and induction as spiritual experimentation and verification has no stability; both are complementary. (3) Realism may lead to materialism and idealism to subjectivism. Each is a

corrective to the other. The All-Self is in nature as its self and also beyond. (4) Mysticism refers to the direct intuition of God by the mystic. It may end in subjectivism. Institutionalism is organized religion based on uniform faith; it leads to ritualism, proselytization. Each is a corrective to the other leading to a league of faiths. (5) The psychological method stresses the personal experience of God as subjective; the historic method is objective. Each corrects the other. (6) Uniformity as standardized religion is compelling and coercive but unity is unity in variety. Each corrects the other. The true view is then the method of immanent criticism. Brahman is in all religions as Inner Life and Love and beyond them as Infinite Light and this view harmonizes all sects and systems and makes for universality.

The warfare between reason and faith is five-fold, namely, (1) mechanised philosophy *versus* supernaturalism; (2) vitalism *versus* animism; (3) pan-psychism *versus* anthropomorphism; (4) rationalism *versus* dogmatism and (5) intuitionism *versus* fundamentalism. The philosophy of religion reconciles them by avoiding secularism and dogmatism and following Vedāntic mysticism. Synthetic philosophy harmonises metaphysics (*tattva*) and mysticism (*anubhava*). The Upaniṣadic saying "He who knows Brahman attains the highest" strikes the keynote of Vedānta. It is summed up in the *Sūtras* in the light of reason in the form of *tattva*, *hita* and *puruṣārtha*. Brahman is the metaphysical ground of all existents and the mystic goal of experience. Every section of it reveals the whole as the unity of the *tattva* and *anubhava*. Brahman is the *Sat*, the Being of beings; *cit*, the Light of lights, and *Ananda*, the joy of joys. The *ātman* as a mode of Brahman lives and has its being in Brahman and is Brahmanized. All the 32 *vidyās* emphasize the same truth. *Sat* is one, seers describe it in different ways.

Vedānta is one but the Vedāntic schools vary; Advaita, Viśiṣṭādvaita and Dvaita differ in their views and ways. The schools of Bhedābheda mediate between the extremes. Bhāskara, Yādava and Nimbārka mark the transition from Śaṅkara to Rāmānuja, Advaita itself has two aspects, pure and practical. The former tends towards illusionism and the latter tends towards Viśiṣṭādvaita. Viśiṣṭādvaita has a theistic and mystic aspect. As Śrī Vaiṣṇavism it is theistic; but as Viśiṣṭādvaita it is mystic. Dvaita is purely theistic and its philosophy is more satisfactory than semitic religion. In mystic unionism or theistic monism, all Vedāntic schools meet. Reality is realized by all. Everyone can seek Brah-

man and see Him, and share his experience with others. *Acintya Bhedābheda* has theistic learnings—*Suddhādvaita* is dual-non-dual love. Advaita as philosophy is pure and practical. Pure Advaita as pure consciousness is by itself and exceeds philosophy as a deduction from *turiya* and *jīvanmukti* is based on *māyā* and *avidyā* and admits of degrees of truth and compromise. The latter is ethico-religious and is allied to Viśiṣṭādvaita. Śrī Vaiṣṇavism as the religion of Viśiṣṭādvaita leans towards theism in which God as Ruler and Love are one and *prapatti* is open to all. Viśiṣṭādvaita philosophy or ontology stresses Brahman's *svarūpa* as life, light and love or *satyam*, *jñānam* and *ānandam*. Cosmology has a secondary value as the mystic seeks the God of the Cosmos and not the cosmos itself with its origin and motions. As mysticism it expounds more the God-hunger of the soul leading to union or *avibhāga*. The synthetic view is thus more valuable than the *siddhāntic*. Viśiṣṭādvaita is midway between theism and monism as a philosophy of religion or theistic monism and is synthetic; the soul is distinct from God but not separate from God and they are organically connected.

The synthetic religious experiences of Śrī Rāmakrishna afford an inspiring example in modern times of the harmony of religions and of Hinduism as a universal religion. He had an organic craving for God or Brahman and it was satisfied by His grace. To Śrī Rāmakrishna, religion is the direct realisation of God and not mere philosophy. Renunciation of sensuality like sex and spirituality were one to him. He eagerly sought the Holy Mother and experienced Her love face to face. He yearned for the vision of Rāma and Sītā and he was blessed by Rāma and Sītā. His practice of the *bhāvas* of *bhakti* detailed by Sri Chaitanya culminated in the *mahābhāva* of Rādhakrishna and the experience of love for love's sake. His practice of *Rājayoga* and the *tantric sādhanās* ended in the *kuṇḍalinī śakti* reaching *sahasrāra* but he had an aversion for *siddhis* or supernatural powers.

He was initiated into Advaita by his Guru Totapuri and he then experienced pure Brahmajñāna. He had direct Islamic and Christian experiences. His spiritual hunger was thus spiritually satisfied. In all his *sādhanās*, the saint practised the mystic way of self-renouncement, inwardness and the unitive way. His God-consciousness led him to the communication of godliness to others. His contribution to Vedānta is the unity of Brahman, Saguṇa and Nirguṇa, of *bhakti* and *jñāna* and of varied spirituality and universal service. His mystic unionism is in the line of Tāyumanavar

SYNTHETIC VEDĀNTA

and Nammālvār, the super-mystics respectively of Śaivism and Śrī Vaiṣṇavism and it fits in with universalism.

The Vedāntic *pramāṇas* bring out the unity of revelation, reason and realisation and justify the synthetic view. They are logically satisfactory and spiritually satisfying. The final chapter analyses the conditions of study and then fulfilment. Brahmanization should end in benevolence. There are three Vedāntic schools, each comprising more or less seven varieties of experience. The varieties of Dvaita or theistic experience deal with the external personal relations of the *jīva* with God which are spiritual and not anthropomorphic. Advaita as identity—consciousness or *aikya* admits of several aspects. As philosophy, it is pure Advaita as objective and subjective based on *māyā* and *avidyā* and also practical Advaita, as an ethico-religious method. The chief varieties of Viśiṣṭādvaita experience deal with the *jīva* as a mode of Brahman; the *jīva* denotes itself but connotes God. It includes two southern schools, the northern and southern varieties and *Saiva Siddhānta* in the mystic sense and Christian and Sufi mysticism. God or Brahman is immanent in all selves, their systems, and sects and this view is justified by history, psychology and evolution. Systems and sects may vary but the God of systems and sects is one. In mystic unionism all faiths and philosophies have their common ground.

In modern life, there is fatal conflict in every field of activity, economic, political, social, philosophic and religious but India stands for synthetic unity. She has infinite capacity to create ṛṣis or sages working for cosmic unity. In Hinduism, especially in Vedānta, synthesis is more important than *siddhānta*. Philosophy and religion are one in their central aim of God-realization. Brahman satisfies the qualities of will, cognition and feeling. Dvaita stresses will, Advaita cognition and Viśiṣṭādvaita, feeling. The absolute of metaphysics is the God of religion. The *Sādhanās* differ only in the starting points but they have the same end. Brahmanization and benevolence co-exist as the subjective and objective aspects of religion. *Ahaṅkāra* is to be rooted out and *aham* rooted in Brahman. In Advaita, *ahaṅkāra* as *jīva* goes; in Viśiṣṭādvaita the *ahaṅkāra* of the *jīva* goes. Even in theism, *ahaṅkāra* has no place. Religion is thus the realization of Brahman beyond space, time, cause of *prakṛti-puruṣa*. The synthetic view restates every philosophic method. Synthesis in philosophy is love in religion. Śrī Krishna's call of love to the whole of humanity has a universal appeal.

Economic life betrays the fight between capital and labour. Autocracy and democracy are the opposing forces in politics. It is wanting to want and creates manifold conflict and there is no solution. The antagonism between the classes and the masses is never-ending in social matters. The dualism between realism and idealism is an ancient feud in philosophy. Religion suffers from the extremes of blind faith and free will. In spite of all this discord there is increasing concord, especially in India due to her spirituality and synthetic genius.

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