

# THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA (CONSTITUTION OF 1982)

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## CHAPTER I

### The Chinese Political Tradition

#### People's Republic

There is a saying in the People's Republic of China: "Tsou, tsou; ts'ou, ta'ou, kai kai" (Act, act you will make mistakes; correct them, correct them). Forty centuries of slow change lay behind China when the Communists took over the country in 1949 and brought to an end, as the Preamble to the 1954 Constitution of the People's Republic of China declared: "a long history of oppression and enslavement." The new Republic set before it the fundamental task of bringing about, step by step, the socialist industrialisation of the country and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and the capitalist industry and commerce. By 1954, it was claimed that the necessary condition had been created for planned economic construction and gradual transition to Socialism. On September 20, 1954, the First National People's Congress solemnly adopted at its first session, held in Peking, the Constitution of the People's Republic of China. The Constitution "consolidates the gains of the Chinese People's Revolution and the political and economic victories won since the founding of the People's Republic of China; and, however, it reflects the basic needs of the State in the period of transition, as well as the general desire of the people as a whole to build a socialist society."<sup>1</sup>

In a few years of the establishment of a People's Democratic Dictatorship, Chinese Communists surprised the world by their success in boosting industrial production, by extending strong and effective government throughout the

country, by building massive army, in fact, wholesale militarization, and by improving the living conditions of industrial workers. In the international affairs the Constitution pledged the People's Republic to a firm and consistent policy "for the noble cause of world peace and the progress of humanity." But within just three years of its career, China began itself indulging in expansionism. It pounced upon Tibet and subjugated it. After consolidating its conquest there, it penetrated in the Indian territory, repudiated the International frontier, the McMahon Line, and launched an undeclared war. The Constitution had unequivocally declared that China had already built an indestructible friendship "with the great Union of the Soviet Socialist Republics." But soon China's relations with Soviet Russia deteriorated verging on open hostility and ideological denunciation.

#### The People and the Country

China is the world's most populous country. The 1982 census counted 1,000 million people as compared with the 1972 census which counted a population of 723.07 million people. China has succeeded in its reducing birth rate by an impressive 34 per cent between 1965-70 and 1970-80. The Government has now introduced a system of incentives and disincentives to induce people to observe one-child family norm in order to achieve zero population growth rate by the turn of the century.

China's territorial boundary is spread over 3,800,000 square miles. On the north are Himalayan ranges and on the south and east is the

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1. Preamble to the *Constitution of the People's Republic of China*, 1954.



erstwhile Soviet Union. The People's Republic of China consists of provinces, autonomous regions and municipalities directly under the Central Government. The capital is Beijing.

Only a few million Chinese work in industry. Nearabout 70.3 per cent of the population is rural and essentially depend upon agriculture. There is too little good arable land in China to meet the needs of the population. Much of the country consists of desolate plains, barren mountains and winding paths, with paddy fields filling every inch of arable land. A bad season leaves millions hungry. No Government of China has yet been able to control the gods of weather. Malcolm MacDonald, who arrived in Hongkong on November 3, 1962, after a four-week tour of China, said, "The people and Government of China are confident but not complacent. They know and admit they are still inexperienced in modern affairs and the task of turning their colossal teeming country into a modern industrial and agricultural State is gigantic." MacDonald predicted it would take "a considerable number of years" for China to be "independent agriculturally" and "many more years than that before it achieved industrially." The position is not radically bright even today. Under the Sino-American agreement, China was committed to buy six million tons of foodgrains annually from 1981 to 1984. Such massive imports of foodgrains greatly worried the Chinese leadership, as the country was committed to attaining self-sufficiency in food under the four-point modernisation programme on which Deng Xiaoping and his associates, including the Premier, had staked their reputation and future. But this was too optimistic a hope due to the woeful shortage of arable land in China, coupled with vagaries of nature.

There is a good deal of empirical evidence to suggest that the average growth rate of Chinese economy during 1950-78 was nearly 6 per cent and in per capita terms 4 per cent. More significantly industrial production had grown at the rate of 9.5 per cent. With the help of the population and growth rate strategy, China was able, in a brief period of little more than two decades, to eradicate the worst form of poverty. There is no affluence but there is no destitution. It achieved a high literacy percentage and managed to provide adequate health facilities for the entire population. The economy of the country during recent

years has been restructured with clear incentive for private enterprise and invitation to foreign capital investment. Such a reorientation of economic policy is logical in the perspective of the four modernisation goals—modernisation of agriculture, industry, science and technology, set before the nation at the National People's Congress Session held in September 1980. The earlier Plan (1976-85) was consequently abandoned and the new formulated in the light of new economic policy and experience of the past few years.

China is inhabited by various races, but the Hans, that is the Chinese, constitute the vast majority, only six per cent of the total population is non-Chinese and there are 12 racial groups with over 100,000 persons each. Some of the important of such groups are the Chuang, Hui, Uighur, Tibetan, Korean, Thai, Mongolian and Manchu. Despite racial and other diversities, linguistic and cultural homogeneity makes Chinese a strong and united nation. Their literature, customs, traditions, beliefs and faiths have all been greatly influenced by Confucianism. Their language and common acceptance of ideas, customs, philosophies, as Winfield remarked, "created a basic unity and homogeneity which has been binding in spite of differences in topography, climate, even in spite of variations in spoken language brought about by the absorption of new racial groups,"<sup>2</sup>

The official language is Chinese, although there are more than 150 Chinese dialects and other languages. Before 1949, religion-wise break up of the people was : Taoist, Confucianist 75 per cent, Buddhist 16 per cent, Muslims 8 per cent and Christians 1 per cent. Although the Constitution guarantees freedom of conscience and religion, but it also provides that the people shall enjoy "freedom not to believe in religion and to propagate atheism." Like other Communist countries, China, too, promotes atheism and discredits all kinds of religion.

## HISTORY OF THE CONSTITUTION

### From the Ancient to Manchu Dynasty

The history of the development of the Chinese people covers different periods, the ancient period is older than the Greek and Roman civilisations. Till the emergence of the Tang dynasty (618-907) A.D.) several dynasties had ruled over the different parts of the country. The Tang dynasty was followed by several others till the rise

2. Winfield, G. F., *China—The Land and the People*, p. 7.



of Manchu dynasty towards the close of the sixteenth century. Twelve emperors of the Manchu dynasty ruled and during this period the empire was consolidated and it prospered and progressed.

The East India Company carried on its trade with China in 1664, and it destroyed the monopoly of the Portuguese that they had hitherto enjoyed. The British merchants were only concerned with the accumulation of huge profits to themselves and consequently they freely encouraged the trade in opium oblivious of its effect on the health and earning capacity of the Chinese. The trade in opium resulted into the First (1841) and Second (1858) opium wars. One of the important causes of the opium wars was the Government's opposition to the British carrying on trade with Chinese people in opium, which had been declared as a contraband. But the real fact leading to both the wars was the anxiety of the British to get special rights and privileges, including equality of status, in dealing with the Chinese Government in China. The War of 1841 ended with the treaty of Nanking which provided, *inter alia*, cession of the Island of Hongkong to Britain, payment of 15 million dollars to British merchants as compensation, opening of ports of Canton, Amoy, Foochow, Ningpo and Shanghai to British trade and residence. The treaty also guaranteed equality of status to the British. These terms were deemed essentially humiliating and there spread a wave of resentment throughout the country. The Chinese Government later on granted similar concessions to the Americans too.

The second opium war started on the British taking side of the Americans and French in their conflict with the Chinese over the abuses of extra-territoriality and also for the reason that the British merchants smuggled into Chinese territory contraband and other goods. The end of the Second War gave significant rights to foreigners in China, particularly to British and French. Later, similar rights were conceded to Americans also. All told, the total effects of both these wars were the political humiliation and economic bankruptcy of the Chinese. All this was attributed to the weakness of Manchu Government. The enlightened class of Chinese succeeded in making the people to rise against the Government at various places. The uprising was, no doubt, crushed with the help of foreigners, but it created an upsurge in the country which set the ball rolling for supplanting the Manchu dynasty. In

the meanwhile a war was fought between China and Japan over the Korean question. Japan insisted on the recognition of Korea as an independent State whereas China claimed Korea as its tributary. China was defeated and Korea was declared an independent State.

China had to pay an indemnity to Japan also. But the most important sequel of China-Japanese war was a threat to the integrity of China. The Western Powers took advantage of the miseries of China and offered to lend her money freely to enable to pay the indemnity to Japan for concessions of trade. Russia, France and Germany made their own demands to obtain spheres of influence and each one succeeded in getting its own price. But in these concessions Britain saw a threat to her dominant position in China. As a result of the Spanish American War, 1898, the United States had annexed Philippines and she naturally became interested in the Western Pacific and in China itself. John Hay, the Secretary of State, then enunciated the "Open Door" policy, which should provide equal opportunity to all nations to trade with China. All these happenings aroused China's deep indignation and it gave birth to a new revolutionary nationalist movement pledged to free the country from foreign domination and to establish a republican government in the country after overthrowing the Manchu regime.

### New Chinese Nationalism

Sun Yat-Sen was the moving force of this movement. So zealously did he plunge himself in it that in 1895, he had to flee from China with a price on his head. Boxer uprising is the most important phase of the revolutionary movement. A secret society of the Boxers, outwardly started with the object of training youngmen in gymnastics and boxing, had its avowed object of overthrowing the Manchu dynasty, which they held responsible for the surrender of China to foreign powers. The Boxers, accordingly, directed their activities on attacking the foreign legations and Chinese Christians and glorified their existence by killing a few of foreign diplomats. The foreign powers combined together and raised forces to combat the Boxers, but they did not succeed beyond protecting their legations. It was at this stage that the United States came forward with its policy of "seeking a solution which may bring about permanent safety and peace to China, preserve Chinese territorial and administrative entity, protect all rights guaranteed to friendly pow-



ers by treaty or international law, and safeguard for the world the principle of equal and impartial trade with all parts of the Chinese empire." Russia did not accept the policy enunciated by the United States and occupied Manchuria. The Allied armies reached Peking for the relief of the foreign legations placing China entirely at their mercy. The outcome was the Boxer Protocol signed on September 7, 1901.

The Boxer protocol was not a treaty as it did not require ratification. In fact, its terms had been fulfilled by the Chinese Government even before it could be signed. The terms provided for repatriations for the assassinated, punishment for the authors of the crime, payment of indemnity of four hundred and fifty taels with interest at four per cent to be paid in thirty-nine years, occupation by allied troops of twelve specified places for keeping open communications between Peking and the Sen, improvement of commercial relations by amending the commercial treaties, etc. The Boxer movement though apparently suppressed, but the revolutionary spirit of the Chinese remained unabated and soon there emerged the Reformist Movement. The Reformist Movement, like its predecessor Boxer Movement, was anti-foreign and it aimed at overthrowing the Manchu dynasty. It also aimed to reform the entire life of the Chinese people by improving their social, economic and political lot. The young Chinese trained in western methods of education and institutions spearheaded the movement which soon spread even in the remotest parts of the country. Province after province revolted and the six-year-old Manchu Emperor abdicated paving the way for the establishment of a republic in 1911.

Sun Yat-Sen after his flight from China had directed the revolutionary movement from abroad. When the Manchu Emperor abdicated and the peace conference convened by various participants in the Reformist Movement was in session, he came back home and was elected the provisional President of the Republic of China. But the revolutionaries were divided amongst themselves in different parts of the country. In the South, Yuan Shih-Kai was declared President of another republic. Sun Yat-Sen was anxious to maintain the unity of the country and, accordingly, he resigned from the provisional Presidency in favour of Yuan. Trouble again brewed up when the most powerful group under Sun Yat-

Sen organised itself as Kuomintang, the National People's Party in 1912. Yuan obtained huge debts from England, France, Germany, Russia and Japan and declared himself Emperor in 1915. The Kuomintang revolted against Yuan who was obliged to postpone his coronation and eventually to restore the republic. But he soon died early in June 1916 and the former Vice President Li Yuan Hung became the President of the Republic, thus, establishing once again the unity of the country under the leadership of the Kuomintang.

The First World War dragged the Chinese Republic in new difficulties. China sought help from the United States to preserve neutrality. But when Japan entered the war on the side of the Allies she presented China with twenty-one demands. The Japanese demands were heavily tilted against China, but there was no way out and she was forced to concede fifteen out of twenty-one demands. Japan's position was, thus, inconceivably strengthened in the Far East. The Treaty of 1921, signed by nine powers<sup>3</sup> bound the signatory powers: (1) to respect the sovereignty, the independence and the territorial and administrative integrity of China; (2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government; (3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China; (4) to refrain from taking advantages of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly States, and from counteracting action inimical to the security of the State. By another treaty, China's right to enjoy tariff autonomy was also recognised.

The October Revolution in Russia and the establishment of the Soviet State in 1917, affected the politics of China too. A number of prominent Chinese nationalists thought that only a Socialist State of the Soviet pattern could remove the economic and political ills of China. The advocates of the Marxian thesis became the left-wing of the revolutionaries. The Kuomintang opposed the Communists, who were under the guidance of Joffe, the Russian Representative. But in 1923, Sun Yat-Sen entered into an alliance with the Communists. They were allowed to enter the Kuomintang while retaining their own party or-

3. Great Britain, France, Italy, Belgium, the Netherlands, Portugal, Japan, the United States and China.



ganisation. The Russians, keen to help them in establishing their national independence, sent Borodin to Canton to organise a new revolutionary republic in China and General Blucher to train the revolutionary army. Chiang Kai-shek, who had been in Russia as Sun's emissary, was placed at the head of the Whampa Military Academy, which produced the new leaders of the Chinese army. The intensive propaganda of the Communists and devoted indoctrinating of the youth created bright chances of China's becoming red. Sun Yat-sen died in 1925, and the Kuomintang acknowledged Chiang Kai-shek as their chief leader. But Sun's death had removed the unifying factor and soon open conflict arose between the Communists and the Kuomintang.

Chiang Kai-shek was an able military general and his military successes resulted in the new unification of China. The old Republic came to an end as also the Nanking Constitution under which it had worked. After establishing his leadership and influence of the Kuomintang, Chiang Kai-shek resigned his military post and under the law of October 25, 1928, established a new national government at Canton and put himself at its head. A National People's Convention adopted on May 12, 1931, a provisional Constitution which aimed to put into action Sun's three principles of People's Government, People's Livelihood, and People's Nationalism, that is, freedom from foreign control.

The events, then, followed are swift to some extent. In 1931, Japan occupied Manchuria and set up there a puppet government with a new name "Manchukuo." The League of Nations failed to prevent Japan from violating its covenant and the terms of the Nine Power Treaty of Washington in 1921, to which Japan herself was a signatory. Chiang Kai-shek was left smarting under humiliation. During the Second World War Japan threw her lot with the Axis powers and China seized the opportunity and joined the Allies. Japan had occupied some part of the territory of China during the War. With the active aid of the Allies, China succeeded in getting it back and strengthened its position to the extent that it was included amongst the five great powers to get a permanent seat in the Security Council. The American forces and money also helped Chiang to combat the Communists who had started a virulent propaganda against his government. But the Communists with Russia's unprecedented help were able to drive Chiang's Government in

the Island of Formosa in 1947. It was triumph for Communism and China became red. A People's Republic of China was established.

### The Provisional Constitution

When the Communists came to power they did not base their government on a formal constitution analysing the machinery of government. Nor did they attempt one for the first five years of their career. There existed alone the Chinese People's Political Consultative Conference, a numerous body of 662 delegates representing the various political parties including the Communist Party, the various regions, mass organisations, the People's Liberation Army and the overseas Chinese. It was a motley of delegates, but with a common programme set forth by Mao Tse-tung, which hinged upon his thesis of People's Democratic Dictatorship. It really served the provisional constitution for half a decade. The Organic Law consisting of 31 Articles was promulgated and it outlined the machinery of government which was to bring forth the fulfillment of the Common Programme and the basis for drafting of the constitution.

### Drafting of the Constitution

A Committee to draft the constitution for the People's Republic of China was appointed in January 1953, under the Chairmanship of Mao Tse-tung. The draft of the constitution was made available to the Conference, which accepted it in March 1954. Like the Stalin Constitution, and in order to give it the complexion of the constitution ordained by the people themselves, it was submitted for discussion to the selected people representing different democratic parties and groups, and people's organizations of all sections of society. The discussions lasted for two months and certain amendments were also suggested thereto. The draft of the constitution thus amended was published and circulated amongst the people for general discussion. It was estimated that about 150,000 million persons participated in the public discussions for over two months. Here, too, the procedure was identical to the one adopted in Russia in 1936. The draft of the constitution was further amended in the light of suggestions emerging from these public discussions, which were formally adopted by the Central People's Government Council on September 9, 1954. The final draft was, then, reported to the First National People's Congress at its first session on September 20, 1954. In pursuance of this Constitution new governmental or-



ganisation was set up on November 4, 1954.

### The 1954 Constitution

The 1954 Constitution of the People's Republic of China summed up the struggle of the Chinese people to overthrow colonialism, feudalism and capitalism and proclaimed that the newly formed State was a single-multi-national State wherein all nationalities in China were united in one family of free and equal nations. The Constitution, accordingly, guaranteed equal status to all nationalities, prohibited discrimination or oppression against any nationality and acts which undermined the unity of the nation. All nationalities enjoyed freedom to use and foster the use of their spoken and written languages, and to preserve and reform their own customs or ways of life. The Constitution also guaranteed regional autonomy to all those national minorities whose people lived in compact communities. National autonomous areas were the inalienable parts of the People's Republic of China.

The Constitution established a democratic State led by the working class and based on the alliance of workers and peasants. It established a people's democratic dictatorship in order to build a prosperous and happy socialist society. But the establishment of the People's Republic of China would not usher in all at once a socialist society. Till the socialist society was built, the fundamental task of the State, during the transition period, was step by step, to bring about the socialist industrialisation of the country, and, step by step, to accomplish the socialist transformation of agriculture, handicrafts and capitalist industry and commerce.

The Constitution contained a separate Chapter on Fundamental Rights and Duties of citizens. It recognised seven basic freedoms, inviolability of home and privacy of correspondence. Women enjoyed and exercised equal rights with men in all spheres of political, economic, cultural and domestic life and the State protected marriage, the family, the mother and child. The right to elect and stand for election was extended to all citizens who had reached the age of eighteen years. The duties of the citizens were more or less the same as prescribed in the Soviet Constitution of 1936. The Constitution granted the right to asylum to any foreign national for supporting a just cause, for taking part in the peace movement or for engaging in scientific activity.

The 1954 Constitution was a brief docu-

ment. It was really a transitional instrument. The National People's Congress was the highest organ of State authority and the sole legislative instrument in the Republic. It was a unicameral legislature elected for a term of four years. If for some exceptional circumstances new elections could not be held, the term of the sitting members was prolonged until the first session of the succeeding Congress. The Constitution required that the Congress should be convened once a year by its Standing Committee. Elections to the Second and Third Congress were held in accordance with the provisions of the Constitution and their sessions were annually convened. But no elections to the Congress were held from 1964 to 1974 and not a single session of the Congress was convened during this span of a decade.

The Standing Committee was the highest functioning organ of State authority which acted on behalf of the Congress between its sessions. Even this body did not meet after 1966 without amending the Constitution. The work of the Government was carried on by the extra-constitutional authority of the Chinese Communist Party hierarchy. The Constitution did not contain any provision relating to the role of the Communist Party, except for a perfunctory reference to "democratic Centralism" in Article 2. Both the Preamble to the Constitution and Article 19 simply acclaimed the Party that led the people of China to finally achieve their great victory in the people's revolution against imperialism, feudalism and bureaucratic capitalism. But the Party itself was paralyzed as its highest organs were replaced by the "proletarian headquarters" of Mao Tse-tung, which consisted of a small group of functionaries loyal personally to Mao. The "proletarian headquarters" was proclaimed the "sole leading organ of the entire Party, the entire Army and the entire Country.

### Constitution of 1975

On 18 January 1975, the official communique announced that the session of the Fourth People's Congress was held from 13 to 17 January and passed a resolution expressing the conviction that China could be built into a powerful modern socialist country in another twenty years or so. Nothing was said about the revision of the Constitution in the official communique, but in the news trickling out through diplomatic sources and the Soviet Press it was revealed that the New Constitution had been passed. The first authoritative comment on the new Constitution appeared



in *Pravda* on February 5, 1975 and it was reproduced in the *Soviet Review*.

The 1975 Constitution, it was pointed out, enhanced the role of the people and legalised the structure of the State set-up that functioned during the last decade. The Chairman of the Chinese Communist Party was to be the Commander-in-Chief of the Armed Forces, including the Militia, and that many State, Party and military posts could be simultaneously held by the same persons. The "revolutionary committees" were put on a constitutional basis and were invested with the functions of the common organs of the local people's assemblies. They were also given power to appoint the chairmen of courts and relieve them of their posts.

The Preamble to the Constitution of 1975 embodied the philosophy of the Constitution. It explicitly affirmed the principle of direct Party rule which had been paralysed during the Cultural Revolution and the following years. It clearly defined the existing social order and made explicit its ideological principles. In the end, it appealed to the people of all nationalities "to unite to win still greater victories."

The 1975 Constitution itself recognised the leading role of the Communist Party and stated with unmistakable clarity that the Communist Party of China was the "core of the leadership of the whole Chinese people". The Constitution also declared that the working class "exercised leadership over the State through its vanguard, the Communist Party of China"; the National People's Congress was "the highest organ of State power under the leadership of the Communist Party, the National People's Congress appointed and removed the Premier of the State Council and the members of the State Council on the proposal of the Central Committee of the Communist Party of China. Thus, the 1975 Constitution explicitly affirmed the principle of centralised and direct Party rule over the Government and the Armed Forces which included Militia as well. The Constitution abolished the office of the Chairman of the Republic.

The striking feature of the Fundamental Rights incorporated in Chapter IV was that the Constitution conceded to the people the freedom of procession and the freedom of strike. The Constitution also omitted certain duties earlier prescribed by the 1954 Constitution, for example, to uphold the discipline at work, to keep public order and to respect social ethics.

## The Constitution of 1978

Within three years of the existence of 1975 Constitution the National People's Congress was presented on March 1, 1978 with the draft of the revised Constitution which made provision of China's ambitious modernization plans. The draft Constitution also called for "consolidating the socialist economic base", and "developing the production forces at high speed". This process, it was claimed, necessitated changes in the Articles of the 1975 Constitution covering State organs and personnel, and in order to give full play to socialist democracy to arouse the "socialist enthusiasms of the people of all the nationalities to strive for the fulfilment of the central task for the new period."

The fifth National People's Congress adopted on 3 March, 1978, the new Constitution. The Preamble to the Constitution was a thesis in Mao Tse-tung's leadership and his achievements. The 1978 Constitution for the first time highlighted the role of the Army by providing (Article 19) that the Chinese Liberation Army "is the workers' and peasants' own armed force led by the Communist Party of China". It was "the pillar of the dictatorship of the proletariat" commanded by the Chairman of the Central Committee of the Communist Party. The State devoted major efforts to the revolutionization and modernization of the Chinese Liberation Army, and strengthening the building of militia. Article 58 imposed "The lofty duty" of every citizen to defend the Motherland and resist aggression. The fundamental task of the armed forces was to safeguard the socialist revolution and socialist construction, to defend the sovereignty, territorial integrity and security of the State and to guard against subversion and aggression "by social imperialism, imperialists and their lackeys."

The Bill of Rights embodied in the Constitution was impressive as it embraced the political, social, cultural and economic life of the citizens. The Constitution expressed these Rights in absolute and unqualified terms. But the real position was different. All the Chinese people did not enjoy all the freedoms enshrined in the Constitution. There were categories of people who were "non-people. This point was elaborated by Mao Tse-tung himself. He declared that there were certain categories of people, such as "the henchmen of imperialism, the landlord class, the bureaucratic capitalists as well as the reactionary



clique of the Kuomintang" who were 'non-people'. The law clearly prohibited the imperialists, the feudalists and the bureaucrats to exercise the right to vote and stand for election.

Another striking feature of the Constitution was that citizens enjoyed freedom of procession, demonstration and the freedom to strike, and had the right to "speak out freely, air their views fully, hold great debates and write high-character posters." But neither of these freedoms could be exercised against the constitutionally established ideology of the socialist State based upon Marxism-Leninism-Maoism thought.

The Constitution precisely defined the ideological basis by upholding the leading position of the Marxism-Leninism-Mao Tse-tung thought in all spheres of ideology and cultures. Art and culture, the Constitution prescribed, must be socialist culture-oriented based upon Marxism-Leninism-Mao Tse-tung thought.

All organs of State were required to maintain close contact with the masses of the people, rely upon them, heed their opinions, be concerned with their weal and woe, streamline administration, practise economy, raise efficiency and combat bureaucracy. Article 16 of the Constitution set the norms, and prescribed that the personnel of organs of State should earnestly study Marxism-Leninism-Mao Tse-tung thought wholeheartedly; serve the people; endeavour to perfect their professional competence, take an active part in collective productive labour; accept supervision by the masses; be models in observing the Constitution and law; correctly implement the policies of the State; seek the truth from facts and must not have recourse to seek personal gain.

The National People's Congress was the highest organ of State power and all authority emanated from it. It was both a legislative and

Constituent Assembly; supervised the enforcement of the Constitution and Laws; decided on the choice of the Premier on the recommendation of the Central Committee of the Communist Party and on the choice of members of the State Council on the recommendation of the Premier; elected the President of the Supreme Court and Chief Procurator; examined and approved the economic plans, the State budget and the final state accounts; decided the question of war and peace and exercised such other functions as the National People's Congress deemed necessary.

Since the Congress met in session only once in a year, the Constitution provided for a Standing Committee to act and function on its behalf. It was the permanent acting body of the Congress. The Chairman of the Standing Committee performed all those functions which prior to 1975 belonged to the Chairman of the Republic; the office since abolished. The State Council composed of the Premier, the Vice-Premiers, the Ministers and the Ministers heading the Commissions, was the organ of state power. It was the highest organ of State administration entrusted with the duty to see the proper implementation of the policy decisions it determined through the administrative departments and agencies into which the central administration was divided.

The role of the judiciary was given minor significance and it took only three Articles to describe it including the People's procuratorates. For the whole Republic there was the Supreme People's Procuratorate entrusted with the duty of exercising procuratorial authority to ensure observance of the Constitution and law by all departments under the State Council, the local organs of the State at various levels, the personnel of the organs of the State and the citizens.

#### SUGGESTED READINGS

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## CHAPTER II

# The Constitution of 1982

### Change of Policy

The Third Session of the Fifth National People's Congress that concluded its deliberations in the first week of December 1980 was momentous as a process to streamline and strengthen the institutional framework that had begun after Mao's death. It strongly reflected the deep-felt concern of the present leadership to ensure that China would not in future be rocked by political eruptions of the kind that occurred under Mao, with disastrous consequences to the country's development and the Party's morals. Retreat from the Cultural Revolution of the sixties was presented to the outside world in soft and undazzling language, although by then mopping up of the movement was common knowledge and shifts in policies emerging from the deliberations of the Fifth National Congress were the culmination of that process.

The Central Committee of the Communist Party headed by Hua Guofeng, who was also the Prime Minister, determined "new political norms and principles," four in number: to separate Government and Party posts and thereby to end the concentration of too much power to individual leaders; to consolidate the concept of collective leadership; to induct relatively younger men into responsible positions to pave the way for orderly transition in future; and to end the practice of life-long political vocation for ageing leaders. In conformity with these norms and principles Hua announced in the National People's Congress his own resignation from the post of the Prime Minister along with seven Vice-Premiers. He retained his Party post as its Chairman and the Chief of the Party's Military Commission. The seven Vice-Premiers, who too had resigned also retained their Party posts.

The emphasis on decentralisation and liberalisation of the economy was also evident in the deliberations of the National People's Con-

gress. This was again an unmistakable departure from the past line. The pragmatic acceptance of the realities of commodity economy and "responding to the needs of the market" in Hua's speech would have been unthinkable in Mao's time. Two changes in this respect were significant. The first was the introduction of a systematic taxation scheme which covered not only joint ventures started with Chinese and foreign investment in the process of modernization, but also the individual citizens. The second was the new citizenship law which banned dual nationality, except in cases where (as in Vietnam) a person was forced to adopt foreign nationality. This change ran counter to the basic Chinese understanding of the status of those born to Chinese parents irrespective of the place of birth. Every overseas Chinese was entitled so far to keep Chinese nationality in addition to his local status.

China's new socialist economy was to have a big place for the private sector. This was indicated by Xue Muqiao, adviser to the State Planning Commission and Director of the Economic Research Institute. He said at a seminar attended by businessmen and diplomats from several countries that China needed "a multi-faceted economy which includes a private sector" and "joint-socialist-private enterprise in which public stock would be owned by workers." The private sector's role had so far been confined largely to small individual enterprises mostly ethnic overseas Chinese. Xue Muqiao explained that private capital should "cover the holes" in the socialist systems. He did not spell out the "holes," but it was made amply clear that large and small private sector and joint enterprises would help to spur China's modernisation.

In this process of modernization the problem of population figured prominently and in order to restrict its growth, the National People's Congress in 1980, passed a new marriage law raising the age of marriage to 22 for males and



20 for females from 20 and 18 respectively, and also made it a duty for the married to practise family planning. The law, however, was not binding on the minorities, and much younger marriages.

### Draft of the 1982 Constitution

The National Constitutional Revision Committee adopted a new draft of the Constitution of the People's Republic of China on April 21, 1982. The Revision Committee, presided over by Peng Zhen, Vice-Chairman of the Committee, reviewed, for ten days, article by article a revised draft of the Constitution submitted by the Committee's Secretariat, held discussion and made changes therein. The session of the Committee adopted a proposal that the draft be submitted to the Standing Committee of the National People's Congress for deliberations and approval before it was made public for nationwide discussion.

The Standing Committee at its 23rd Session that opened on April 22, 1982 considered the revised draft of the Constitution consisting of a preamble and four chapters containing 140 articles. The greatest change in the draft constitution was the reinstatement of a Chairman of the People's Republic and the establishment of a Central Military Council of the People's Republic to lead the armed forces of the country. The draft constitution as approved by the Standing Committee was made public for nationwide discussion, a usual practice both in China and U.S.S.R. One cannot possibly say with certainty the extent of amendments to the draft constitution emerging out of the nationwide discussion and the number and nature of the suggested amendments that were finally accepted by the National People's Congress.

### The New Constitution

The draft constitution was adopted on December 4, 1982 by the Fifth National People's Congress at its Fifth session. It is fourth in the series; three in 1954, 1975 and 1978 preceding it. With the lone exception of Thailand, China has had more Constitutions than any other Asian country. The 1954 Constitution wore a transitional outlook and was to be basically amended once China had fully moved from the period of people's democracy to socialism. China had not moved to socialism both in 1975 and 1978 when it had new Constitutions. Nor has the fourth

adopted in 1982. It acknowledges its achievement. It firmly pronounces that in some respects China has to continue within the framework of people's democracy and cannot hastily advance on the socialist path. The Preamble made this important aspect amply clear. It stated that under the leadership of the Communist Party and the guidance of Marxism-Leninism and Mao Zedong thought, the people of all nationalities will adhere to the people's democratic dictatorship and follow the socialist road, "steadily improve socialist institutions, develop socialist democracy, and improve, socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defence and science and technology step by step to turn China into a socialist country with a high level of culture and democracy."

This is a sharp break with the Constitution of 1975 which had spelled out a radical framework for the socialist development. In fact, it is denunciation of Maoism as is evident from the speech of Peng Zhen, Vice-Chairman of the Constitutional Revision Committee that he made at the 23rd Session of the Standing Committee of the National People's Congress. While explaining the principal points of the revised drafts he said, "since the founding of the People's Republic, China has had three Constitutions: the 1954 document was comprehensive in content, while 1975 and 1978 documents, restricted by the historical conditions at that time, were undesirable."<sup>1</sup>

### Constitution as a Document

The 1982 Constitution, unlike its predecessor constitutions, is quite comprehensive and contains 138 Articles. The Constitution of 1954 contained 106 Articles though it was a transitional constitution. The Constitution of 1975 was the briefest in the series with 30 Articles in all. The 1978 Constitution contained 60 Articles, besides a lengthy Preamble. The pattern of the 1982 document differs from its predecessors in another respect and it is important to mark a break with the past. The Chapter on Fundamental Rights and Duties of Citizens constituted the penultimate chapter in the Constitutions of 1954, 1975 and 1978 whereas in the 1982 Constitution it gets a place of precedence as Chapter Two, before Chapter Three, describing the structure of the State and it is in consonance with the practice in the Western democratic countries.

The 1982 Constitution aimed at righting the

1. Preamble to the Constitution of the People's Republic of China, 1954, p. 134.



wrongs of the Cultural Revolution (1966-1976), setting the country on the path of stability and modernization, and granting the Chinese citizens extensive freedoms and rights which are positive in essence and favourably compare with the Bill of Rights in Western democracies. The Constitution legitimises the guidelines and principles formulated since 1978 to develop a socialist democracy and legal system and reverses the effect of the Cultural Revolution which was characterised by social turbulence, economic decline and violation of people's "democratic rights." The provisions of the Constitution promote an active, stable and unified political system. Peng Zhen, Vice Chairman of the Constitutional Revision Committee, in a report to the National People's Congress, which adopted the document on December 4, 1982, said that the new Constitution "sums up the historical experience of China's socialist development, reflects the common will and fundamental interests of all nationalities in the country, conforms to the situation in China and meets the needs of socialist modernization."

The needs of social modernization are stated in the Preamble to the Constitution: "The basic task of the nation in the years to come is to concentrate its efforts on socialist modernization." The Chinese People, the Preamble adds, are determined to work hard and self-reliantly to modernize industry, agriculture, national defence, and science and technology "step by step to turn China into a socialist country with a high level of culture and democracy."

The Preamble also stresses that China follows an independent foreign policy based on mutual respect and territorial integrity, mutual non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful co-existence through developing diplomatic relations and economic and cultural exchanges. "China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress."

### General Principles

Following the introductory section, constituting the Preamble, is the first chapter—"General Principles"—whose Articles cover the

stipulations on the nature of the State.

The first Article in the Constitution states: "The People's Republic of China is a socialist State under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants." A people's democratic dictatorship, Peng Zhen explained, "means that the State practises democracy among the greatest number of people while narrowing the target of dictatorship to just a handful of people (forces and elements which are hostile to, and try to undermine the socialist system). Article 1, therefore, contains the provision that the socialist system is the basic system of the People's Republic of China and "sabotage of the socialist system by any organization or individual is prohibited."

Here is a break between the earlier Constitutions and the Constitution of 1982. The precise definition of the Chinese State had varied in each Constitution. All had included the phrase that the system was "led by the working class and based on the alliance of the peasants and workers," but in the 1954 Constitution the State was a "people's democratic State" and in the 1975 and 1978 Constitutions it was "the dictatorship of the proletariat." Another significant departure from the 1978 Constitution is on the role of the Communist Party of China. Article 2 of the 1978 Constitution stated: "The Communist Party is the core of leadership of the whole Chinese people. The working class exercises leadership over the State through its vanguard, the Communist Party." The 1982 Constitution omitted this provision altogether and there is no mention of the Party in the Constitution except in the Preamble.

Article 3 of the 1982 Constitution introduces a new element that did not exist in the earlier Constitutions. It provides that the National People's Congress and the local congresses at different levels are instituted through democratic election. They are responsible to people and subject to their supervision. All administrative, judicial and procuratorial organs are created by the people's Congresses to which they are responsible and under whose supervision they operate. The division of functions and powers between the central and local organs is guided by the principle of giving full play to the initiative and enthusiasm of the local authorities under the unified leadership of the Central authorities.

The People's Republic of China is a single multinational State. There are 56 nationalities and Article 4 declares that all nationalities are equal.



Discrimination against and oppression of any nationality are prohibited. Any acts that undermine the unity of the nationalities or instigate their secession are legally banned. The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to reform their "own ways and customs."

On the reunification of China, the Chapter on General Principles contains an Article (31), stating: "The State may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions." The Preamble to the Constitution enjoins a "lofty duty of the entire Chinese people including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland." After reunification with the mainland, according to Peng Zhen, Taiwan can enjoy a high degree of self-government as a special administrative region. "This power of self-government means, among other things, that the present social and economic system in Taiwan, its way of life and its economic and cultural relations with foreign countries will remain unchanged."

The General Principles also codify the new economic policies formulated and practised since 1978 to promote socialist modernization. The Constitution re-affirms public ownership of the means of production as the basis of China's socialist economic system, and calls for the development of diverse economic forms—state, collective and individual—while upholding the authority of the state sector. Though the socialist ownership is stressed, the Constitution also allows for the coordinated growth of the national economy through a comprehensive balancing of a planned economy with the supplementary role played by market supply and demand. In view of the past excessive and rigid control over planning and administration, the Constitution sets forth varying decision-making powers to state and collective owned enterprises in operation and management.

In order to accelerate the process of modernization and consistent with the new socialist economy as stated by Xue Muqiao, Adviser to the State Planning Commission, private sector is to have a big place now. "We need," he declared "a multi-faceted economy which includes a private sector," and "joint-socialist-private enterprise in which public stock would be owned by

workers." Article 18 of the General Principles provides that China permits foreign enterprises, other foreign economic organisations and individual foreigners to invest in China and to enter into various forms of economic co-operation with Chinese enterprises and other economic organisations in accordance with the law of China. All such foreign economic enterprises as well as joint ventures with Chinese and foreign investment located in China, shall abide the law of China and, at the same time, their lawful rights and interests shall be duly protected.

On the philosophical side, a salient feature of the 1982 Constitution, is the increase in Articles on "socialist spiritual civilization," which according to Peng Zhen, is manifested in higher education, scientific and cultural level, and in higher ideological, political and moral standards. Article 24 specifies: "The State strengthens the building of socialist civilization through spreading education in higher ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas."

This Article stipulates that the State advocates the civic virtues of love of the motherland and it educates the people in patriotism, collectivism, internationalism and communism and in dialectical and historical materialism. The Article also stipulates opposition to "capitalism, feudalism and other decadent ideas."

Included, as well, in the Chapter on General Principles, is a section in Article 2 which stipulates that all power in China belongs to the people, and that the people will administer State affairs and manage economic, cultural and social affairs in accordance with the law. In the aftermath of the Cultural Revolution and in the light of experience, China has restored to the Constitution not only what was relevant on the fundamental rights of citizens in the 1954 Constitution (rights omitted in the next two constitutions of 1975 and 1978) but made these provisions more specific and comprehensive.

During the Cultural Revolution people were arrested at will, placed on secret trial and given arbitrary sentences. Since 1976 after Mao's death, and especially since 1978, China has formulated new criminal and procedural laws and regulations to develop democratic processes and improve the legal system. All such measures are



now enshrined in the Constitution and dignity of the Constitution and law is required to be preserved at all levels. No organisation or individual does enjoy the privilege of being above the Constitution and law. Article 5 states: "All State organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. "All acts in violation of the Constitution and the law must be looked into."

Article 9 of the 1978 Constitution provided that the State protected the right of citizens to own lawfully earned income, savings, houses and other means of livelihood. The 1982 Constitution inserts a new provision in the right to property. Article 13 guarantees "by law the right of citizens

to inherit private property." Inheritance of property does not fit into the Marxian concept of socialism, but the People's Republic of China also permits existence of capitalist enterprises, and invites investment of foreign capital and protects both by law.

The Chinese constitution of 1982 established the supremacy of Dengist concept of governance. It retains the primacy of the Communist Party at the state level but sheds the ideological assumption of a command economy. Mao as a person is still revered but his ideological legacy has been largely repudiated. China today has constructed an edifice of Capitalism within the framework of a communist party-led state structure, still dominated by the Chinese Communist Party.



## CHAPTER III

# Fundamental Rights and Duties of Citizens

The 1982 Constitution incorporates in Chapter Two an impressive list of Fundamental Rights and quite a few of them do not exist even in the Constitutions of some democratic countries of the West. The Chapter on Fundamental Rights also presents a discernible difference from the previous Constitutions. Fundamental Rights, in the earlier Constitutions, were relegated to a secondary position and were incorporated in the penultimate Chapter. They were also scanty in their content. The number of Articles in the Chapter on Fundamental Rights and Duties in the 1982 Constitution is 24 as compared to 16 in the 1978 Constitution. The newly-added contents which stress citizens' fundamental rights include: all citizens are equal before the law; personal dignity of citizens is inviolable. Insult or slander against any form is prohibited; extra-legal detention of citizens, or extra-legal deprivation or restrictions of citizens' freedom of persons by other means, is prohibited; and the freedom and privacy of correspondence of citizens are protected by law.

For the first time, rights of citizens are constitutionally rendered inseparable from their duties. Every citizen enjoys the rights guaranteed by the Constitution and law and simultaneously it is his duty to abide by the Constitution and law and respect the rights of his fellow citizen. Another innovation included in the fundamental rights is the duty of the State and society to ensure the livelihood of the retired personnel. The State and society also help to make arrangements for the work, livelihood and education of the blind, deaf-mutes, and other handicapped persons. Marriage, the family and child are protected by the State. Both husband and wife have the duty to practise family planning. Whereas it is the duty of parents to rear and educate their children likewise it is the duty of children to support and assist their parents. Violation of the freedom of marriage is prohibited. Maltreatment of old people,

women and children is also prohibited.

### Right to Equality

Article 33 defines citizenship. All persons holding the nationality of the People's Republic of China are citizens of China and they are equal before the law without any discrimination of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence. Equally, all citizens who enjoy rights must perform the duties prescribed by the Constitution and the law. Rights and duties are, therefore, inseparable and they go together for all citizens of the People's Republic of China.

### Political Rights

All citizens who have reached the age of 18 have the right to vote and seek election to any office of a State organ, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status or length of residence except persons deprived of political rights according to law. Article 18 of the 1978 Constitution specifically deprived of political rights, as prescribed by law, those landlords, rich peasants and reactionary capitalists who had not yet been reformed. Article 35 of the 1982 Constitution does not specify ineligibility of a particular category of persons. It is to be determined by law. A similar provision existed in Article 85 of the 1954 Constitution.

In addition to the basic freedoms deemed as the pillars of democracy, the 1978 Constitution conferred on the citizens the freedom "to strike" and "have the right to speak out freely, air their views fully, hold great debates and write big-character-posters". The Constitution of 1982 went a little ahead conferred on the citizens the freedom of speech, of the press, of assembly of the association and also the right to procession and demonstration.<sup>1</sup>

1. Article 87 of the 1954 Constitution also conferred the right to freedom of procession and freedom of demonstration.



But all these freedoms are not absolute, although there is no specific provision in Article 35 itself that may restrict the enjoyment of the basic freedoms. Article 51 of the Constitution, itself a fundamental right, however, imposes broad limitations on the enjoyment of all kinds of rights irrespective of their contents. It stipulates: "The exercise by citizens of the People's Republic of China of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens." If the provisions of Article 51 are coupled with Article 28 of Chapter one—the General Principles—the precise position with respect to enjoyment of basic rights and freedom becomes self-evident. It states: "The state maintains public order and suppresses treasonable and other counter-revolutionary activities; it penalizes actions that endanger public security and disrupt the socialist economy and other criminal activities, and punishes and reforms criminals." The phrase "criminal activities" is all-embracing and may take cognisance of any activity which may be deemed criminal in the context of expediency of circumstances. And when the State undertakes to reform criminals, they are essentially the persons who are deemed criminals according to the prevailing political climate in the country.

Nothing can, therefore, be said, spoken or demonstrated against the socialist state under the people's democratic dictatorship. The Preamble enjoins on the Chinese people of all nationalities that under the leadership of the Communist Party and the guidance of Marxism-Leninism and Mao Zedong Thought to continue to adhere to the people's democratic dictatorship and follow the socialist road. The Preamble ends by exhorting "The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country" to "take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation."

There was a democratic ferment in China when widespread students' demonstrations swept the country in the first week of December 1986. The students demanded more democratisation and more reforms. Deng Xiaoping regime was certainly more democratic than its predecessor and there was an awareness on the part of Chinese leadership of the need for democratisa-

tion. But the Chinese leadership was in no mood to accept and launch another revolutionary movement at that juncture when Deng's economic reforms had met with severe criticism from the conservative elements in the Communist Party of China. The Government, therefore, promulgated stringent regulations, banning 'inter alia' unannounced demonstrations and the putting up of unsigned posters in public places. The penalty for violation of the ban was a stiff five-year imprisonment. But the students not only succeeded in defying the ban, they also secured the release of demonstrators who were arrested. What made the movement significant was the fact that the students agitating for democracy and freedom, had succeeded in securing support from a section of the Chinese bureaucracy.

### Freedom of Religious Belief

Citizens of China enjoy freedom of religious belief. No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any religion. Nor may they discriminate against citizens who believe in, or do not believe in, any religion. The State protects normal religious activities of all denominations. But no one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination.

There is enough available evidence now that freedom of religious belief in China was sufficiently curtailed till recently. The wholesale persecution of Chinese Muslims evoked widespread resentment among Muslims of the world. Christians and Buddhists (or Lamaists), too had been subjected to more or less the same treatment. The campaign against counter-revolutionaries was linked in 1951 with an intensive programme to subordinate religion to the State. In March 1951 a ruthless drive against Taoist societies and Christian missionaries was launched. Since 1979, however, various religions have gained a measure of toleration for their religious practices. Temples and mosques have been re-opened after being closed since the start of the Cultural Revolution. The ethnic upheaval and simultaneous rise of fundamentalism culminating into the disintegration of the Soviet Socialist Republics has made a sea-change in the policy and attitude of the Chinese Communist rulers towards ethnic minorities, their religion and culture.



### **Inviolability of Person and Home**

Articles 37 and 39 deal with the inviolability of the person and home of a citizen, Article 37 guarantees the freedom "of person of citizens." No citizen may be arrested except with the approval or by decision of a people's procuratorate, which is responsible for legal supervision, or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation of citizens' freedom of person by detention or other means is prohibited as also the unlawful search of the person of citizens. This extra-legal detention of citizens, or extra legal deprivation or restriction of citizens' freedom of person by other means is an improvement on Article 47 of the 1978 Constitution. It did not also provide for prohibition of unlawful search of the person of citizen.

Article 39 guarantees the inviolability of the home of citizens. Unlawful search of, or intrusion into, a citizen's home is prohibited.

### **Personal Dignity of Citizens**

Another newly added Article in the Chapter on Fundamental Rights is the personal dignity of citizens. Article 38 makes the personal dignity of citizens inviolable and prohibits insult, libel, false charge or "frame-up" directed against citizens by any means or form.

### **Privacy of Correspondence**

The freedom and privacy of correspondence of citizens are protected and it is another newly added provision that did not exist in the earlier Constitutions. Article 40 provides that the freedom and privacy of correspondence of citizens are protected by law. No organisation or individual may, on any ground, infringe upon the freedom and privacy of citizens' correspondence. But this right is not absolute. It is provided that public security or procuratorial organs are permitted to censor correspondence, in accordance with procedures prescribed by law, in order to meet the needs of State security or of investigation into criminal offences.

### **Right to Criticise**

Citizens have the right to criticise and make suggestions to any State organs or functionary. They have also the right to make to relevant State organs complaints and charges against, or exposures of, any State organ or functionary for violation of the law or dereliction of duty. But fabrication or distortion of facts for the purpose of libel or frame-up is prohibited.

The State organ concerned must deal with complaints, charges or exposures made by citizens "in a responsible manner after ascertaining the facts." No one may suppress such complaints, charges and exposures or retaliate against the citizens making them. Citizens who have suffered losses through infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law.

### **Right to Work**

Article 48 of the 1978 Constitution provided that citizens had the right to work and to ensure that they enjoyed this right. The State would provide employment in accordance with the principle of overall consideration, and, on the basis of increased production, the State would gradually increase payment for labour, improve working conditions, strengthen labour protection and expand collective welfare. The 1982 Constitution renders work both the right as well as the duty. It places more emphasis on duty and holds work as "the glorious duty of every able bodied citizen." All working people in State enterprises and in urban and rural economic collectives are enjoined to perform their tasks with an attitude consonant with their status "as masters of the country." The State promotes socialist labour emulation, and commends and rewards model and advanced workers. The State also encourages citizens to take part in voluntary labour in order to inculcate in them the spirit of patriotism and dedication to the motherland.

In order to ensure the enjoyment of the right to work, the State provides necessary vocational training to citizens before they are employed and using various channels creates conditions for employment, strengthens labour protection, improves working conditions and, on the basis of expanded production, increases remuneration for work and social benefits.

The concept of socialist emulation was borrowed from the erstwhile USSR Constitution and it means the mass movement of working people for higher productivity. A socialist society, it is explained, cannot achieve the desired results unless labour is imbued with socialist ideas and a socialist mind. The workers must exhibit a sense of duty in their work and, therefore, it contradicts the right to procession and demonstration as provided in Article 35.

### **Right to Rest**

Closely allied to the right and duty to work is the right to rest which is concomitant to social-



ist labour discipline and achievement of high productivity. The State, accordingly, provides and expands facilities for rest and recuperation of working people, and prescribes working hours and vacations for workers and staff.

#### **Right to Retirement**

The State prescribes by law the system of retirement for workers and staff in enterprises and undertakings and for functionaries of organs of State. The livelihood of retired personnel is ensured by the State and society. Earlier Constitutions did not provide for retirement and a guaranteed livelihood for retired personnel.

#### **Right to Material Assistance**

Citizens have the right to material assistance from the State and society when they are old, ill or disabled. The State develops the social insurance, social relief and medical and health services that are required to enable citizens to enjoy the right to material assistance. The State and society ensure the livelihood of disabled members of the armed forces, provide pensions to the families of martyrs and give preferential treatment to the families of military personnel. Article 50 of the 1978 Constitution did not provide for the preferential treatment to families of military personnel. Similarly, it only ensured the livelihood for the families of martyrs. Article 45 of the 1982 Constitution provides for pensions to such families.

This Article also provides that the State and society help in making arrangements for the work, livelihood and education of the blind, deaf-mutes and other handicapped citizens. There was no similar provision in the earlier Constitutions.

#### **Right to Education and Research**

Citizens have the duty as well as the right to receive education and the State promotes the all-round moral, intellectual and physical development of children and young people. Article 51 of the 1978 Constitution simply provided that the citizen had the right to education and did not prescribe it a duty as well. Duty to receive education implies that parents must compulsorily send their children to schools to receive education.

Citizens also enjoy the freedom to engage themselves in scientific research, literary and artistic creation and other cultural pursuits. The State encourages and assists creative endeavour conducive to the interests of the people that are made by citizens engaged in education, science,

technology, literature, art and other cultural work.

#### **Equality of Women**

Women in the People's Republic of China enjoy equal rights with men in all spheres of life, political, economic, cultural and social, including family life. The State protects the rights and interests of women, applies the principle of equal pay for equal work for men and women alike and trains and selects cadres from among women.

#### **Protection of Marriage and Family**

Marriage, the family and mother and child are protected by the State. Both husband and wife have the duty to practise family planning. Article 53 of the Constitution of 1978, provided that the State advocates and encourages family planning. The 1982 Constitution makes it a constitutional duty both for husband and wife to practise family planning.

Parents have the duty to rear and educate their minor children, and children who have come of age have the duty to support and assist their parents. This guaranteed duty of parents and children is more or less identical to the provisions of the 1977 Constitution of the USSR. Citizens in Soviet Russia are obliged to concern themselves with the upbringing of children, to train them for socially useful work, and to raise them as worthy members of a socialist society. Likewise, it is the duty of children to care for their parents and help them.

Another innovation provided by Article 49 of the 1982 Constitution of the People's Republic of China is that it prohibits violation of freedom of marriage and maltreatment of old people, women and children. Even the 1977 Constitution of the USSR did not provide for prohibiting the maltreatment of old people, women and children.

#### **Rights of Chinese Nationals**

Article 50 protects the legitimate rights and interests of Chinese nationals living abroad and lawful rights and interests of returned overseas Chinese and of the family members of Chinese nationals residing abroad. The protection of the lawful rights and interests of returned overseas Chinese is in pursuance of the new citizenship law (1980) which bans dual nationality, except in cases where (as in Vietnam) a person is forced to adopt foreign nationality.

#### **Interests of the State**

The exercise by citizens of their freedoms and rights may not infringe upon the interests of the State, of society and of collective, or upon the



lawful freedoms and rights of other citizens. Such categorical prohibition did not exist in the earlier Constitutions.

### FUNDAMENTAL DUTIES

Every right has a corresponding obligation or duty. Without duties there can be no rights. A valid claim is both a right and duty. Harold Laski aptly said, "He that will not perform functions cannot enjoy rights any more than he who will not work ought to enjoy work." Without corresponding obligations the whole concept of rights becomes meaningless. As the State, acting through the government, maintains and coordinates rights, it is the duty of every citizen to help the government in realizing the purpose of the State for which it exists. This means that a citizen owes a duty to the State as organised in government. That is the theory of rights.

The 1982 Constitution of the People's Republic of China constitutionalised the basic principle of rights by providing in Article 33 that every "citizen enjoys the rights and at the same time must perform the duties...." The earlier Constitutions simply carried a list of duties incorporated in the Chapter on the Fundamental Rights and Duties of Citizens but neither of them categorically spelt out that rights and duties are inseparable and that a citizen enjoys the rights and at the same time performs the duties.

Apart from the Articles relating to fundamental rights where duties are specifically stated along with a particular right—Article 42 (the right as well as the duty to work), Article 46 (duty as well as the right to receive education), Article 49 (the duty to practise family planning), and Article 51 (in the exercise of rights a citizen may not infringe upon the interests of the State, of society and of the collective, or upon the lawful freedoms and rights of other citizens)—the Constitution prescribes the following duties for citizens.

#### Unity of the Country

The foremost duty of every Chinese citizen is to safeguard the unity of the country and the unity of all its nationalities. The People's Republic of China is a multi-national State comprising fifty-six nationalities with their own distinct customs, beliefs, languages and mode of life. The

people of all nationalities in China, says the Preamble to the Constitution, have jointly created "a splendid culture and have a glorious revolutionary tradition." Both the victory of China's new-democratic revolution and the success of its socialist cause have been achieved by the Chinese people of all nationalities. In the struggle to safeguard the unity of the nationalities and as such of the country, "it is necessary," the Preamble adds, "to combat big-nation chauvinism, mainly Han chauvinism, and also necessary to combat local-national chauvinism." Discrimination against and oppression of any nationality and acts that undermine the unity of the nationalities or instigate their secession are prohibited<sup>2</sup>. The State, accordingly, suppresses treasonable and other counter-revolutionary activities, penalises actions that endanger public security and disrupt the socialist system.<sup>3</sup>

#### To Abide by the Constitution

Article 53 enjoins on all citizens to abide by the Constitution and the law, keep State secrets, protect public property and observe labour discipline and public order and respect social ethics. China is a socialist State under the people's democratic dictatorship and it is the basic system of the country as manifested in the Constitution. Sabotage of the socialist system by any organisation or individual is prohibited.<sup>4</sup> All State organs, the armed forces, all political parties and public organisations and all enterprises and undertakings must abide by the Constitution. No organisation or individual is above the Constitution and the law.<sup>5</sup> The Constitution is the fundamental law of the State and it commands supreme legal authority. The citizens have, therefore, as the Preamble says, "the duty to uphold the dignity of the Constitution and ensure its implementation."

#### To Safeguard the Honour of China

It is the duty of citizens of China to safeguard the security, honour and interests of the motherland. They must not commit acts detrimental to the security, honour and interests of the Motherland. The Preamble exhorts the Chinese people to fight against all forces and elements, both at home and abroad, that are hostile to China's socialist system and try to undermine it.

2. Article 4.

3. Article 28.

4. Article 1.

5. Article 5.



**Defence of the Motherland**

It is the sacred duty of every citizen of the People's Republic of China to defend the Motherland and resist aggression. It is the honourable duty of all citizens to perform military service and join the militia in accordance with the law. All able-bodied persons who are young and within the range of specified age limit, as prescribed by law, have the constitutional duty to perform military service both during peace and war time in order to keep the country prepared to meet ag-

gression of any kind.

**To Pay Taxes**

It is the duty of citizens of the People's Republic of China to pay taxes in accordance with the law. Tax is a compulsory contribution by citizens to meet the expenditure of the State and there is no *quid pro quo* in it. It is the duty of every citizen to pay taxes, national and local, punctually and regularly to enable the government to perform its functions adequately, efficiently and effectively.

**SUGGESTED READINGS**

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Waller, Derek J. *The Government and Policies of the People's Republic of China.*



## CHAPTER IV

# The National People's Congress

### Highest Organ of State power

The National People's Congress is the highest organ of State power<sup>1</sup> and all authority of the People's Republic of China flows from it. Till 1982, it was the sole legislative authority of the country and now, according to the Constitution of 1982, it is exercised both by the National People's Congress and its Standing Committee<sup>2</sup> which is a permanently acting body. It amends the Constitution and supervises its implementation, elects the President and Vice-President of the Republic and recalls or removes them from office; decides on the choice of the Premier, Vice-Premiers, State Councillors, Ministers and the Auditor-General and Secretary-General of the State Council and recalls or removes them from office; elects the Chairman of the Military Commission and decides on the choice of other members of the Military Commission, elects the President of the Supreme Court, Procurator-General and recalls or removes from office all these incumbents; examines and approves national plans; examines and approves the State budget; alters or annuls improper decisions of the Standing Committee; approves the establishment of provinces, autonomous regions and municipalities directly under the Central Government; decides on the questions of war and peace, and exercises such other functions and powers as the highest organ of State power should exercise.<sup>3</sup> The Constitution, thus, confers on the National People's Congress unlimited powers and authority.

### A Unicameral Legislature

The National People's Congress is a uni-

cameral legislature in a unitary multinational State. It is composed of deputies elected by provinces, autonomous regions and municipalities directly under the Central Government, and by the armed forces. All citizens of China who have reached the age of 18 years have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence except persons deprived of political rights according to law. The number of deputies and the manner of their election are prescribed by law.<sup>4</sup> All the minority nationalities are entitled to appropriate representation.<sup>5</sup> The total number of Deputies to the Fifth National People's Congress in 1983 approximated 3,300. In 1988 the membership approximated 2,700.<sup>6</sup>

Election of deputies is conducted by the Standing Committee of the National People's Congress for a term of five years. Two months before the expiration of the term of the Congress, the Standing Committee is required by the Constitution to ensure that the election of deputies to the succeeding National People's Congress is completed. Should exceptional circumstances prevent elections to the succeeding Congress, it may be postponed by a decision of more than two-thirds majority vote of the number of members of the Standing Committee of the current People's Congress and its term extended. But elections to the succeeding National People's Congress must be completed within one year after the termination of such exceptional circumstances. The Constitution is silent on the nature of those exceptional circumstances.<sup>7</sup>

The National People's Congress meets

1. Article 57.
2. Article 58.
3. Articles 62 and 63.
4. Article 34.
5. Article 59.
6. The Fourth Congress had a total membership of 2,835 deputies.
7. Article 60.



once in a year and is convened by its Standing Committee. A session may be convened at any time the Standing Committee deems this necessary, or when more than one-fifth of the deputies so propose.<sup>8</sup> There is no provision in the 1982 Constitution, as it was in the earlier Constitutions, for advancement or postponement of a session.<sup>9</sup> It means that session of the Congress must now be convened once every year. When the Congress meets, it elects a Presidium. The organisation and working procedure of the Congress and its Standing Committee are prescribed by law.

### Privileges and Duties of Deputies

No deputy may be arrested or placed on criminal trial without the consent of the Presidium of the current session of the National People's Congress or, when the Congress is not in session, with out the consent of its Standing Committee. Deputies may not be called to legal account for their speeches or votes at meeting of the People's National Congress.<sup>10</sup>

Article 76 provides that Deputies must play an exemplary role in abiding by the Constitution and the law and keeping State secrets and, in production and other work and their public activities, assist in the enforcement of the Constitution and the law. Deputies should maintain close contact with the units which selected them and with the people, listen to and convey to the appropriate organs the opinions and demands of the people and work hard to serve them. They are subject to the supervision of the units which elected them. The electoral units have the powers, through procedures prescribed by law, to recall deputies.

### Functions and Powers

The National People's Congress exercises the following functions and powers:

(1) The Constitution amending power rests with the National People's Congress. Amendments to the Constitution may be proposed either by the Standing Committee of the National People's Congress or by more than one-fifth of the Deputies to the Congress. If the proposed amendment or amendments are adopted by two-thirds majority of all the Deputies, the Constitution stands amended.

The process of amendment has varied with each Constitution in the series. The Constitution

of 1954 provided that a majority of two-thirds vote of all the Deputies was necessary for adopting a constitutional amendment. The 1975 Constitution substituted the two-thirds majority vote to a simple majority of the Deputies and the Constitution of 1978 even dropped this. It only provided that the Constitution would be amended by the National People's Congress. The 1982 Constitution restored the original majority of two-thirds as it existed in the 1954 Constitution.

The National People's Congress supervises the enforcement of the Constitution. The duty of upholding the dignity of the Constitution is so vital that the Constitution makes every organ of State authority to ensure its implementation. All acts in violation of the Constitution "must be looked into." The Constitution defines the "basic system and basic tasks of the state in legal form", it is, accordingly, the fundamental law of the State and has supreme legal authority.

(2) The National People's Congress enacts and amends basic statutes relating to criminal offences, civil affairs, the State organs and other matters on which the Congress may deem necessary and expedient to legislate. The power to legislate on subjects other than those mentioned above is exercised by the Standing Committee of the Congress. In the earlier Constitutions the National People's Congress possessed the sole authority to enact statutes. The law-making process consequently suffered enormously, particularly since 1965. The National People's Congress, because of its huge number of members and a brief session once in the year, and that, too, often postponed, gave just formal approval to the bills already formulated and as a result the Standing Committee had been performing the real act of legislation. This process has been legitimised under the 1982 Constitution. Enactment of statutes, with the exception of those which should be enacted by the National People's Congress, has been transferred to the Standing Committee of the Congress.

(3) The National People's Congress elects the President and the Vice-President of the Republic for a term of five years each. The offices of the President and the Vice-President were abolished by the 1975 Constitution. The 1982 Constitution restored both these offices which had existed under the 1954 Constitution.<sup>1</sup>

8. The earlier Constitutions had no such provision.

9. Under the 1954 Constitution no session of the Congress was convened from 1964 to 1974.

10. Article 74.



(4) The Congress decides on the choice of the President of the Republic, and also decides on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions. It has also the power to recall or remove from office all the aforesaid incumbents. The Standing Committee, however, decides, when the National People's Congress is not in session, on the choice of Ministers in charge of Ministries or Commissions upon nomination by the Premier.

(5) It elects the Chairman of the Central Military Commission and, upon the nomination by the Chairman, other members of the Commission. The Congress also recalls or removes from office all such incumbents. It also elects the President of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate and may recall or remove them from office.

(6) The Congress examines and approves the plan for the national and social development, and the State Budget, and the reports on their respective implementation. It alters or annuls inappropriate decisions of the Standing Committee of the Congress. The Congress also approves the establishment of provinces, autonomous regions, and municipalities directly under the Central Government, and decides on the establishment of special administrative regions and the systems to be instituted there.

(7) Decisions on questions of war and peace are taken by the National People's Congress. But when the Congress is not in session the Standing Committee decides on the proclamation of state of war into the event of an armed attack on the country or in fulfillment of international treaty obligations concerning defence against aggression.

(8) Finally, there is a general provision vesting the National People's Congress with authority "to exercise such other functions and powers as the highest organ of state power should exercise." This power of the Congress is not bound by any limitation and may embrace any subject or matter.

Deputies to the National People's Congress have the right, in accordance with procedure prescribed by law, to submit bills and proposals within the scope of its functions and powers. The Deputies have also the right to address questions,

in accordance with procedure prescribed by law, during the sessions of the Congress to the State Council or the ministries and commissions, "which must answer the questions in a responsible manner."<sup>11</sup>

The Congress establishes a Nationalities Committee, a Law Committee, a Financial and Economic Committee, an Education, Science, Culture and Public Health Committee, a Foreign Affairs Committee, an Overseas Chinese Committee and such other special Committees as are necessary. These special committees work under the direction of the Standing Committee when the Congress is not in session. The Special Committees examine, discuss and draw up relevant bills and draft resolutions under the direction of the Congress and its Standing Committee. The National People's Congress and its Standing Committee may, when they deem it necessary, appoint committees of inquiry into specific questions and adopt relevant resolutions in the light of their reports. All organs of State, public organisations and citizens concerned are under a constitutional obligation to supply the necessary information to those Committees of inquiry when they conduct investigation.<sup>12</sup>

#### THE STANDING COMMITTEE

The Standing Committee of the National People's Congress is the permanent working organ of the Congress. As the Congress meets only once in a year and that too for a brief session, it appoints a committee to act on its behalf, during the interval preceding the next session of the Congress, in carrying out the powers and functions that the Constitution confers on it as the highest organ of State power. The Standing Committee, being the creature of the Congress that acts on its behalf, is constitutionally bound to submit a report to the Congress of all its actions and activities and is responsible to the Congress to all intents and purposes.<sup>13</sup> The Congress also alters or annuls inappropriate decisions of the Standing Committee. Hitherto the Standing Committee did not exercise legislative functions. The 1982 Constitution empowers it to enact or amend statutes with the exception of those which should be enacted by the National People's Congress.<sup>14</sup> This has been done to streamline administration and it was one of the significant innova-

11. Article 73.

12. Article 71.

13. Article 69.

14. Article 67(2).



tions that the framers of the 1982 Constitution had introduced. The other in this process is the provision that the National People's Congress must meet in session once in a year. No session of the Congress was convened between 1964 to 1974. Till the Constitution of 1982 became operative the session of the Congress could be "advanced or postponed."

### Composition and Organisation

The Standing Committee is composed of the Chairman, the Vice-Chairmen, the Secretary-General and the members,<sup>15</sup> all told about 200 in number, and are elected by the Congress. Minority nationalities are entitled to appropriate representation on the Standing Committee. The term of the Standing Committee is five years, but the National People's Congress has the power to recall them from office. No one on the Standing Committee can hold any post in any of administrative, judicial or procuratorial organs of the State.

A significant feature of the 1982 Constitution is limiting the tenure of important State functionaries to two consecutive terms, thus, eliminating the *de facto* system of life-long tenures that had hitherto existed. Accordingly, the Chairman and the Vice-Chairmen of the Standing Committee can not serve for more than two consecutive terms.<sup>16</sup>

The Chairman of the Standing Committee convenes its meetings and presides over them. The Vice-Chairmen and the Secretary-General assist the Chairman in the performance of his functions.<sup>17</sup> Executive meetings of the Committee with the participation of the Chairman, the Vice-Chairmen and Secretary-General "handle the important day-to-day work" of the Committee.<sup>18</sup> The Standing Committee exercises its functions and powers until a new Standing Committee is elected by the succeeding National People's Congress.<sup>19</sup> The organisation and working procedure of the Committee are prescribed by law.

The office of the President of the Republic was abolished by the 1975 Constitution and the dignified functions of that office were vested in the Chairman of the Standing Committee. He performed the functions of receiving foreign diplomatic envoys, promulgated law and decrees,

ratified treaties concluded with the foreign States and other ceremonial functions. With the restoration of the office of the President of the Republic by the 1982 Constitution, those powers have been taken back from the Chairman of the Standing Committee.

### Powers and Functions

In Western democracies the function of interpreting the constitution which is written rests with the judiciary and the process is known as the judicial review. In the United States there is no direct authority in the Constitution which empowers the Supreme Court to declare the constitutionality of any act, federal or State, and interpret the Constitution. But Chief Justice Marshall declared in *Marbury v. Madison* (1803) that judicial review is a part of the constitutional law of the country and it is inherent in a written constitution. In India, the Constitution specifically provides for judicial review.

But in Communist countries, though the Constitutions are written, the judiciary is specifically debarred from interpreting the Constitution. In the People's Republic of China the power to interpret the Constitution is vested in the Standing Committee of the National People's Congress. The theory of separation of powers has no relevance in a Communist polity.

The Standing Committee shares with the National People's Congress the power to legislate. The National People's Congress enacts and amends the basic statutes and the nature of these basic statutes is explained in Article 62 (3) of the Constitution. With the exception of those Statutes "which should be enacted by the National People's Congress," the Standing Committee is competent to enact or amend on residuary matters. All those persons who are members of the Standing Committee, together with Deputies to the National People's Congress, have the right, in accordance with the procedures prescribed by law, to submit bills and proposals within the scope of the respective functions and powers of the National People's Congress and its Standing Committee. The Standing Committee can also propose amendments to the Constitution.

The Standing Committee enacts, when the National People's Congress is not in session,

15. Article 65.

16. Article 66.

17. Article 68.

18. *Ibid.*

19. Article 66.



partial supplements, and amendments to statutes enacted by the Congress provided that such partial supplements and amendments do not contravene the basic principles of these statutes. The Committee also interprets these statutes. The Constitution is silent on the nature of the statutes that the Committee interprets. But the blanket provision that the Standing committee exercises the power "to interpret statutes" embraces the basic statutes that the National People's Congress had enacted as well as the statutes enacted by the Standing Committee itself.

The Committee also examines and approves, when the National People's Congress is not in session, partial adjustments to the plan for national economic and social development and to the State budget that prove necessary in the course of their implementation.

Supervision of the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate is another important function of the Standing Committee. It annuls those administrative rules and regulations, decisions or orders of the State Council that in its judgment contravene the Constitution and the statutes. The Committee also annuls those local regulations or decisions of organs of State power of provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations of the State Council.

When the National People's Congress is not in session, the Standing Committee decides upon nominations made by the Premier, on the choice of Ministers in charge of ministries or Commissions, the Auditor-General or the Secretary-General of the State Council; decides upon nomination by the Chairman of the Central Military Commission, choice of other members of the Commission; appoints and removes Vice-Presidents and Judges of the Supreme Court, members of the Judicial Committee and the President of the Military Court at the suggestion of the President of the Supreme Court; appoints and removes Deputy Procurator-General and procurators of the Supreme Procuratorate, members of the Procuratorial Committees and Chief Procurator of the Military Procuratorate at the suggestion of the Procurator-General of the Supreme Procuratorate, and approves the appointment and removal of the chief procurators of the people's procuratorate of provinces, autonomous regions

and municipalities directly under the Central Government.

The Standing Committee decides on the appointment and recall of plenipotentiary representatives abroad. It decides on the ratification and abrogation of treaties and important agreements concluded with foreign States. This power of appointment and recall of ambassadors accredited to the foreign States, decision on the ratification and abrogation of treaties and important agreements concluded with foreign States is the exclusive power of the Standing Committee whether the National People's Congress is in session or not.

When the National People's Congress is not in session, the Standing Committee decides on the proclamation of a state of war in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression. The Committee decides on general mobilization or partial mobilization and decides on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities directly under the Central Government.

The Standing Committee institutes systems of titles and ranks for military and diplomatic personnel and other specific titles and ranks, and institutes State medals and titles of honour and decides on their conferment. The Committee also decides on the granting of special pardons.

Finally, the Standing Committee is empowered, to exercise such other functions and powers as the National People's Congress may assign to it.

### **Role of the Standing Committee**

The Constitution holds the National People's Congress as the highest organ of State power and its jurisdiction extends to all subjects and matters and the Constitution empowers it "to exercise such other functions and powers as the highest organ of state power should exercise." It elects the members of the Standing Committee and has the power "to recall, all those on the Standing Committee." It can alter or annul inappropriate decisions of the Standing Committee. Though a creature of the National People's Congress to which body it is responsible and reports on its work, the Standing Committee eclipses the authority of the National People's Congress in practice. The actual functionary for the exercise of the powers and functions of the Congress is its



Standing Committee; the permanent and continuing working organ of State power in fact and law.

The National People's Congress meets once in a year for a short period and with its colossal membership of approximately 2,700 and that, too, assembled in a unicameral legislative chamber, it has neither the time nor the means to deliberate and discuss on all those issues that come before the Congress for approval and adoption. It only puts formal approval over already formulated bills by the Standing Committee and endorses the decisions taken by the Committee during the period that intervened between one session of the Congress and the other. Even if the Congress can find time to examine any matter and action taken, it is only *ex post facto* attempt which has practically no utility. Before 1982 the National People's Congress was the sole Legislative Assembly and the Standing Committee formulated the legislative measures and resolutions and they were approved by the Congress as a matter of routine. The *de facto* system of legislation has been legitimised by the 1982 Constitution and the Standing Committee has been empowered to enact and amend statutes with the exception of basic statutes that the Congress can only enact or amend. But even basic statutes can be supplemented and enacted by the Standing Committee, when the Congress is not in session, provided that they do not contravene the basic principles of these statutes.

As an interpreter of the Constitution and the statutes, whether basic or enacted by itself, the authority of the Standing Committee is final and unquestionable. To give a phrase a new interpretation is to give it a new meaning, and to give it a new meaning is to change it. Though it is absolutely not possible that the interpretation given by the Standing Committee may even smack of a deviation from the Party line, yet in terms of Constitution the exclusive power of the Standing Committee to interpret the Constitution and the statutes makes its authority unique from all other organs of State power including the National People's Congress.

The Standing Committee is alone responsible for completing elections of the deputies to National People's Congress two months before the expiration of its five-year term. If, however, exceptional circumstances prevent such an election, it may be postponed by decision of a majority vote of at least two-thirds of the members of

the Standing Committee. The election of deputies to the succeeding National People's Congress is required to be completed within one year after the termination of such exceptional circumstances. But who determines the existence of exceptional circumstances and their termination? All such decisions are taken by the inner circle of the Party and, then, there is interlocking of government and the Party at all levels of the organs of State particularly at the top level and both the Party and the political system in China, as it was in the USSR, are based on the principle of democratic centralism, which has been sanctified by the Constitution in Article 3 of Chapter One—General Principles. All the same, the importance of the Standing Committee in the matter cannot be denied. Then, the Standing Committee convenes the annual session of the National People's Congress and it may be convened "at any time the Standing Committee deems this necessary." There was no such provision in the earlier Constitutions.

The Standing Committee supervises the work of the State Council, the Central Military Commission, the Supreme People's Court and the Supreme People's Procuratorate. It is claimed that the supervision system provided by the 1982 Constitution has the same functions as "Constitutional Committees or courts of other countries. Our system conforms to the conditions of legal system of our country."<sup>20</sup>

The Standing Committee can also annul those administrative rules and regulations, decisions or orders of the State Council that contravene the Constitution and the statutes. It can also annul those local regulations or decisions of the provinces, autonomous regions and municipalities directly under the Central Government that contravene the Constitution, the statutes or the administrative rules and regulations.

The Standing Committee exercises extensive power of appointment, in some instances when the National People's Congress is not in session, and in others under the jurisdiction assigned to the Standing Committee itself. Coupled with it is the Committee's power of removal of a category of functionaries from office on its own determination.

In the domain of foreign affairs the powers exercised by the Standing Committee are impressive and vital too. It alone decides the appointment and recall of envoys accredited to foreign States and decides on the ratification and abroga-

20. "Nobody is above Constitution and Law," excerpts from Renmin Ribao (People's Daily) circulated by the Embassy of People's Republic of China, New Delhi.



tion of treaties and important agreements concluded with foreign States. When the National People's Congress is not in session, the Standing Committee decides on the proclamation of a state of war and in the event of an armed attack on the country or in fulfilment of international treaty obligations concerning common defence against aggression. The Committee also decides on general mobilization or partial mobilization and on the enforcement of martial law throughout the country or in particular provinces, autonomous regions or municipalities under the Central Government.

The Constitution also empowers Standing Committee, when the Congress is not in session, to enact partial supplements and amendments to statutes that have been enacted by the Congress and examines and approves partial adjustment of the plan for national economic and social development and the State budget that prove necessary in the course of their implementation.

Such is the extent of the authority of the Standing Committee that no other organ of State power can rival it. It, however, goes to the credit of the Standing Committee that it has exercised its powers judiciously, effectively and efficiently, though the centre of direction remains the inner circle of the Communist Party of China. Those who direct the Party find their due positions in the Standing Committee, the State Council and the National People's Congress. This fact of synchronisation of determination of policies and decisions at all higher levels of powers is the leading reason for the Standing Committee to become the real and actual centre of the exercise of State power. Peter S. Tang aptly said, "...like the Presidium (USSR), the Standing Committee serves as a small and manageable group for giving the necessary legal form and authority to acts of State which are essentially decided upon in higher councils of the Party."

#### SUGGESTED READINGS

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## CHAPTER V

# The President of the Republic

The Constitution of 1982 restored the offices of the President and the Vice-President of the Republic<sup>1</sup> that had existed under the Constitution of 1954, but ceased to exist with the enforcement of the 1975 Constitution. Liu Shaochi had succeeded Mao in this post of the President till the outbreak of the Cultural Revolution when he was removed from the office and disgraced. According to the 1975 and 1978 Constitutions the duties and functions of the President of the Republic, which were essentially dignified or ceremonial, were conferred on the Chairman of the Standing Committee. The Chairman of the Standing Committee presided over the work of the Standing Committee, received foreign diplomatic envoys and in accordance with the decisions of the National People's Congress or its Standing Committee promulgated laws and decrees, dispatched and recalled plenipotentiary representatives abroad, ratified treaties concluded with foreign States and conferred State titles. The Vice-Chairman of the Standing Committee assisted the Chairman of the Standing Committee in his work and could exercise part of the Chairman's functions and power on his behalf.

### Election and Term of Office

The President of the Republic of China is elected by the National People's Congress for a term of five years, for the same term as that of the National People's Congress. Any citizen of the People's Republic of China who has the right to vote and to stand for election and has reached the age of 45 years<sup>2</sup> is eligible for election as President of the Republic. The Constitution also provides for the office of the Vice-President of the Republic, who assists the President in his work. The Vice-President fulfils all the conditions of

the President for his eligibility to the office and is elected in the same way and for the same term as the President. Both the incumbents of these two offices can not serve for more than two consecutive terms.

If the office of the President falls vacant, the Vice-President succeeds to the office of the President. In case the office of the Vice-President falls vacant, the National People's Congress elects a new Vice-President to fill the vacancy. In the event that the offices of both the President and the Vice-President fall vacant, the National People's Congress elects a new President and a new Vice-President. Prior to such elections, the Chairman of the Standing Committee temporarily acts as the President.

The Vice-President assists the President in his work. The Vice-President "may exercise such parts of the functions and powers of the President as may be deputed by the President."<sup>3</sup> He is, thus, the agent or deputy of the President with no plenary powers. He exercises the power of the President only when he succeeds to the Presidency.

### Functions of the President

The President, in pursuance of decisions of the National People's Congress and its Standing Committee, promulgates statutes; appoints and removes the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries and commissions and the Auditor-General and Secretary-General of the State Council. He confers State medals and titles of honour and issues orders of special pardons. The President proclaims martial law and a state of war and issues mobilization orders. Under the 1954 Constitution the Chairman of the Republic commanded the armed forces and was also the Chairman of the National

1. The incumbents of both these offices were designated as Chairman and Vice-Chairman of Republic by the 1954 Constitution.
2. Under the 1954 Constitution the age fixed for eligibility was 35 years.
3. Article 82.



Defence Council.<sup>4</sup> Whenever he deemed necessary, the Chairman convened a Supreme State Conference and acted as its chairman. He submitted the views of the State Supreme Conference to the National People's Congress, the Standing Committee, the State Council or other bodies concerned for their consideration. The 1982 Constitution did not revive these powers of the President.

### THE STATE COUNCIL

The State Council is the Central Government of the People's Republic of China and it is the executive body of the highest organ of State power; it is the highest organ of State administration. Being the highest executive body of the highest organ of State power, it is but natural that the top Party political leaders are associated with this decision-making organ of the Government in order to ensure the proper implementation of such decisions through the administrative departments and agencies into which the central administration is divided.

#### Composition of the State Council

The State Council is composed of the Premier, the Vice-Premiers, the State Councillors, the Ministers in charge of ministries, the Ministers in charge of Commissions, the Auditor-General, and the Secretary-General. The organisation of the State Council is prescribed by law. The Premier has overall responsibility for the effective and efficient functioning of the State Council where- as the Ministers have overall responsibility for the ministries or commissions under their charge.

The choice of the Premier is decided by the National People's Congress upon nomination by the President of the Republic whereas the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries or Commissions and the Auditor-General and the Secretary-General of the State Council is decided upon the recommendation of the Premier.<sup>5</sup> The term of office of the State Council is five years. The Premier, Vice-Premier and the State Councillors can serve only for two consecutive terms.<sup>6</sup> The National People's Congress has the power to recall or

remove from office the Premier, Vice-Premiers, State Councillors, Ministers in charge of ministries or commissions and the Auditor-General and the Secretary-General of the Council.<sup>7</sup> The Standing Committee decides, when the National People's Congress is not in session, on the choice of Ministers in charge of ministries or commissions or the Auditor-General and the Secretary-General of the State Council upon the nomination by the Premier.<sup>8</sup>

#### Working of the State Council

The Premier directs the work of the State Council. The Vice-Premiers and State Councillors assist in the work of the Premier.<sup>9</sup> The Premier has overall responsibility for the State Council and the State Council is responsible, and reports on its work, to the National People's Congress or, when the Congress is not in session, to its Standing Committee.<sup>10</sup>

The Ministers in charge of Ministries or Commissions are responsible for the work of their respective departments and convene and preside over ministerial meetings or commission meetings that discuss and decide on major issues in the work of their respective departments. The ministries and commissions issue orders, directives and regulations within the jurisdiction of their respective departments and in accordance with the statutes and the administrative rules and regulations, decisions and orders issued by the State Council.

The State Council establishes an auditing body to supervise through auditing the revenue and expenditure of all departments under the State Council and of the local governments at different levels, and those of State financial and monetary organisations and enterprises and undertakings. Under the direction of the Premier, the auditing body independently exercises its power to supervise through auditing in accordance with the law, subject to no interference by any other administrative organ or public organisation or individual. The State Council has a Secretariat under the direction of the Secretary-General of the Council. Steps are being taken to reduce the number of staff in the State Council

4. Article 85.

5. Article 62.

6. Article 87.

7. Article 63.

8. Article 67 (9).

9. Article 88.

10. Article 92.



and rationalise the portfolios of various ministries. About one-third of the State Council membership was axed in 1982.

In order to streamline the functioning of the State Council, the Constitution now stipulates that the executive meetings of the State Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council. The Premier convenes and presides over the executive meetings as well as plenary meetings of the State Council. It means that numerous Ministers, Vice-Ministers and chiefs of commissions and Bureaus will now be normally excluded from the executive meetings of the Council and, thus shall be manageable meetings facilitating speedy transaction of work which was hitherto retarded by unmanageable composition of the State Council. The Constitution definitely distinguishes between the executive meetings and plenary meetings of the council,<sup>11</sup> both convened and presided over by the Premier. The 1954 Constitution also made this distinction.

#### Functions and Powers

The State Council adopts administrative measures, enacts administrative rules and regulations and issues decisions and orders in accordance with the Constitution and the Statutes. It submits its proposals to the National People's Congress or its Standing Committee, when the Congress is not in session, for necessary approval and implementation. The Council lays down the tasks and responsibilities of the ministries and the commissions to exercise unified leadership over the work of the ministries, and commissions and to direct all other administrative work of a national character that does not fall within the jurisdiction of the ministries and commissions. It exercises unified leadership over the work of local organs of State administration at different levels throughout the country and also lays down the detailed division of functions and powers between the Central Government and organs of State administration of provinces, autonomous regions and municipalities directly under the Central Government.

The Council draws up and implements the plan for national economic development and social development and the State budget. It directs and administers economic affairs and urban and rural development, affairs of education, science,

culture, public health, physical culture and family planning. It also directs and administers civil affairs, public security, judicial administration, supervision and other related matters. Conduct of foreign affairs and conclusion of treaties and agreements with foreign States, direction and administration of the national defences, affairs concerning the nationalities and safeguarding the rights of minority nationalities and the right of autonomy of the national autonomous areas constitute another important bunch of the functions and powers of the State Council.

The Council protects the legitimate rights and interests of Chinese nationals residing abroad and protects the lawful rights and interests of returned oversea Chinese and of the family members of Chinese nationals residing abroad.

It alters or annuls inappropriate orders, directives and regulations issued by the ministries and commissions and of local organs of State administration at different levels. The Council approves the geographic division of provinces, autonomous regions and municipalities directly under the Central Government, and approves the prefectures, counties, autonomous counties, and cities.

The Council of State shares with the Standing Committee the power to decide on the enforcement of martial law in parts of provinces, autonomous regions and municipalities directly under the Central Government. But it has no power to decide on enforcement of martial law throughout the country. It is within the exclusive jurisdiction of the Standing Committee.

The Council examines and decides on the size of administrative organs and, in accordance with the law, appoints, removes and trains administrative officers, appraises their work and rewards and punishes them. The National People's Congress or its Standing Committee may assign to the Council of State with such other functions or powers as may be deemed necessary and expedient. A similar provision has been made in Article 67 (21) relating to the powers and functions of the Standing Committee. But it is in sharp contrast to the general and all embracing power that Article 62 (5) confers on the National People's Congress. The Congress can exercise such other functions and powers as the highest organ of State power may decide. The Standing Committee and the State Council can exercise only such functions and powers as the National Peo-

11. Article



ple's Congress may "assign" to them.

### THE CENTRAL MILITARY COMMISSION

The Central Military Commission, directly under the National People's Congress, is an innovation of the 1982 Constitution and it sharply departs from the earlier Constitutions. It does not quite compare with the National Council of Defence presided over by the Chairman of the Republic as it existed under the 1954 Constitution. The Constitution of 1975 abolished the National Council of Defence and the 1982 Constitution gives the 1954 Defence Council absolutely a new orientation. The National Military Commission is a numerous body composed of a Chairman and other members. The Chairman is elected by the National People's Congress and the choice of other members of the Commission is decided, upon nomination by the Chairman, by the Congress.<sup>12</sup> The National People's Congress may also recall or remove them from office.<sup>13</sup> The Commission is responsible to the Congress and its Standing Committee.<sup>14</sup> The Standing Committee also supervises the work of the Commission.<sup>15</sup> The Central Military Commission is, therefore, not a part of the State Council though it forms a part of Chapter Two of the Constitution which, *inter alia*, deals with the State Council.

The Constitution of 1978 vested the command of the armed forces of China in the Chairman of the Central Committee of the Communist Party. It also stipulated that the Chinese People's Liberation Army "is the workers' and peasants' own armed force led by the Communist Party of China; it is also the pillar of the dictatorship of the proletariat."<sup>16</sup> In order to avoid concentration of power of commanding the armed forces into the hands of a single person, the 1982 Constitution places its command under a collective organisation—the Central Military Commission—whose work is under the constant supervision of the Standing Committee. The Chairman of the Commission has overall responsibility for the Commission and he is responsible to the National People's Congress and its Standing Committee. The term of office of the Central Military Commission is five years. It is a single five-year tenure

for the Chairman of the Commission as well as for its other members. The Constitution specifically fixes two-tenure consecutive election of the President of the Republic, Vice-President of the Republic, the Chairman of the Standing Committee, the Premier, Vice-Premiers and State Councillors, the President of the Supreme Court and the Procurator-General, but it is only one-term tenure in the case of the Chairman as well as other members of the Central Military Commission. Xu Bing, a researcher with the Law Institute of the Chinese Academy of Social Sciences, says: "Most countries place their heads of States in command of their armed forces. But our armed forces are under an organization so as to guarantee that the command of the armed forces does not fall in the hands of one person, but remains in the hands of the people."<sup>17</sup> Article 29 of the Constitution declares that the armed forces of the People's Republic of China belong to the people."

### Appraisal of the State Council

The powers and functions of the State Council are very wide and impressive. There is no sphere of administration which it does not direct and control. The Constitution ordains the State Council as "the highest executive body of the highest organ of State power." It is the creature of the National People's Congress and reports and is responsible to it for the exercise of its functions and powers or when the Congress is not in session to its Standing Committee. The Standing Committee enforces the responsibility of the State Council by its supervisory power over its work. It may also annul those administrative rules and regulations, decisions, or orders of the State Council that contravene the Constitution or the statutes. The responsibility of the State Council, or the Ministers in charge of ministries and commissions is further invoked through the medium of questions, which the deputies have the right to address during the sessions of the National People's Congress and by members at meetings of the Standing Committee. The Constitution categorically stipulates that the State Council or the ministries and commissions "must answer the questions in a responsible

12. Article 62 (6).

13. Article 63 (3).

14. Article 94.

15. Article 67 (6).

16. The Constitution of the Republic of China, 1978, Article 19.

17. "New Constitution is uniquely Chinese," Special to China Daily and circulated by the embassy of the People's Republic of China, New Delhi.



way”.

The 1982 Constitution also strengthens the position of the Premier which had been eroded during the Cultural Revolution. The 1978 Constitution did not assign any function or position of eminence to the Premier *vis-a-vis* other members of the State Council except that the National People's Congress decided on the choice of other members of the State Council upon recommendation of the Premier. The choice of the Premier rested with the Central Committee of the Communist Party<sup>18</sup> and this choice the National People's Congress accepted invariably.

The 1982 Constitution retrieves the position of the Premier. The nomination of the Premier now rests with the President of the Republic and the National People's Congress makes the choice. The Congress decides on the choice of the Vice-Premiers, State Councillors, Ministers in charge of ministries and commissions, the Auditor-General and the Secretary-General of the State Council upon recommendations by the Premier. The position of the Premier is further strengthened by the Constitution by stipulating that the Premier has overall responsibility for the State Council, that the Premier directs the work of the Council and that the Vice-Premiers, and State Councillors “assist” the Premier in the work of the Council. The Constitution also provides that the Premier convenes the executive as well as plenary meetings of the State Council and presides over both. The executive meetings of the Council are composed of the Premier, the Vice-Premiers, the State Councillors and the Secretary-General of the State Council and it means

exclusion from executive meetings of the Council of other categories of ministers. It is a sort of “inner council” and was created in order to rationalise administration which was almost in shambles.

Despite all these efforts to restore the pre-eminence of the Premier, his position cannot be compared with his counterpart under a cabinet system of government. In a country where democratic centralism is the key-note of the administrative and political set-up, the position of the Premier and, in fact, all other functionaries of the State is dwarfed by the top-level Party men who determine the Party line, no matter whether they are young or old. The basic system of the State may be “democratic”, in reality it is minus democratic principles and practices. In a socialist State democratic centralism cannot and does not permit otherwise.

Even the Constitution itself does not allow freewheeling to the State Council within the sphere of functions assigned to it. The Standing Committee of the National People's Congress supervises its work and annuls those rules, and regulations, decisions or orders of the Council that may, in the judgment of the Committee, contravene the Constitution and the statutes. The Standing Committee interprets the Constitution and the statutes also and the meaning it gives is final and unchallengeable. It has been aptly said that the supervision system that the 1982 Constitution provides “has the same functions as Constitutional Committees or Courts of other countries” and the Chinese system “conforms to the conditions and legal system” of that country.

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18. *The Constitution of the People's Republic of China*, 1978, Article 22 (4).



## CHAPTER VI

# The Judicial System

### Role of the Judiciary

The judiciary plays an insignificant role in a socialist system and is even scantily described in the Constitutions of their respective countries. Under the 1954 Constitution of China twelve brief Articles in all including the system of people's procuratorate, dealt with the judiciary. The 1975 Constitution devoted only six printed lines and the 1978 Constitution took three Articles to describe it, one exclusively dealing with the people's procuratorate. The 1982 Constitution is no exception to this pattern, though it has thirteen Articles in all, five are devoted to the procuratorate system.

Socialist countries reject the Anglo-Saxon jurisprudence and the theory of the Separation of Powers has no place in this system. The socialist jurisprudence regards Judiciary as an arm of administration and its role is to provide a machinery for easy and speedy decision of cases and, more importantly, to educate the citizens to uphold and strengthen the socialist system in a spirit of dedication to the socialist ideology. The Preamble to the 1954 Constitution and the Organic Law of the People's Courts stated that the People's Courts in all their activities would educate citizens in their loyalty to the country and voluntary observance of laws. The law of the country was and is construction of socialism guided by Marxism—Leninism and Mao Zedong Thought. The 1982 Constitution defines the basic system and basic task of the State in legal form. Since it is the fundamental law of the land and supreme legal authority, "the country", as the Preamble says, "must take the Constitution, basic system and basic tasks of the State in legal form. Since it is the fundamental law of the land and supreme legal authority, "the country must take the Constitution, as the basic norm of conduct," and they have the duty to uphold the dignity of the Constitution and ensure its implementation, that is,

maintain, preserve and strengthen the socialist State under the people's democratic dictatorship. It is, accordingly, the duty of the courts to inculcate in citizens the spirit of devotion to the cause of socialism, to observe the basic norm of socialist conduct; to safeguard the unity of the country, to abide by the Constitution and law and to help the State in suppressing treasonable and other counter-revolutionary activities and penalise actions that endanger the public security and disrupt the socialist economy and other criminal activities and reform the criminals.

### Organisation of Courts

The judicial authority of the People's Republic of China is exercised by the Supreme People's Courts, and the local people's courts at all levels. The Constitution also establishes military courts and special people's courts. But the people's courts are the only judicial organs of the State. The organisation of the people's courts is prescribed by law. All cases handled by the people's courts except for those involving special circumstances as specified by law, are heard in public and the accused has the right to defence. Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and procuratorate are required to provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality. The people's courts, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organisations or individuals.

The people's courts constitute the collegiate system in the administration of justice. The Constitution of 1978 provided that, in accordance with the law, the people's courts "apply the system whereby representatives of the masses participate as assessor in administering justice"



(Article 41). It further provided: "with regard to major counter-revolutionary or criminal cases, the masses should be drawn in for discussion and suggestions." There is no identical provision in the 1982 Constitution, as in Article 41 of the 1978 Constitution. It simply says that the organisation of courts is prescribed by law. The prevailing law provides for the collegiate system in the administration of justice. In cases of first instance justice is administered by a collegiate bench consisting of a judge and people's assessors, with the exception of simple civil cases, minor criminal cases and other cases provided by law. In cases of appeal or protest, justice is administered by a collegiate bench of judges. People's courts at all levels set up judicial committees and justice is administered by a collegiate bench consisting of a judge and people's assessors, with the exception of simple civil cases, minor criminal cases and cases otherwise provided by law. In cases of appeal or protest, justice is administered by a collegiate bench of judges. Members of judicial committees of local court are appointed and removed by the people's congresses at the corresponding levels upon the recommendation of the presidents of the local people's courts. Members of the judicial committee of the Supreme People's Court are appointed and removed by the Standing Committee of the National People's Congress at the suggestion of the President of the Supreme People's Court. Meetings of the judicial committees of different sets of courts are presided over by the presidents of the concerned courts. The Procurator-General of the Supreme People's Procuratorate and local people's procuratorate at the corresponding levels have the right to attend such meetings and participate in the discussion. The task of the judicial committees at all levels is to sum up judicial experience and to discuss cases of great importance or difficult cases as well as other questions relating to judicial work.

An appeal may be brought by a party from a judgment or order by a local court as a court of first instance to the court of the higher level in accordance with the procedure prescribed by law. The people's procuratorate may lodge a protest against such a judgment or order before the court at the next higher level in accordance with the procedure prescribed by law.

If a person sentenced to capital punishment considers as erroneous the judgment or order of an intermediate court as a court of last instance, he may apply to the court at the next higher level

for re-examination. A judgment of a basic court and a judgment or order of an intermediate court in case of capital punishment, is required to be submitted to the higher court for approval before execution. If the president of a court finds, in a legally effective judgment or order of his court, some definite error in the determination of facts or application of law, he must submit his judgment or order to the relevant judicial committee for disposal. If the Supreme Court finds some definite error in a legally effective judgment or order of any lower court, or if an upper court finds such error in such judgment or order of a lower court, they have the authority to review such cases themselves or to direct a lower court to conduct a retrial. If the Supreme People's Procuratorate finds some definite error in legally effective judgment or order of a court at any level, or if it finds such error in such a judgment or order of a lower court, they have the authority to lodge a protest against the judgment or order in accordance with the prescribed procedure of judicial supervision.

The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. The Standing Committee supervises the work of the Supreme People's Court. Local courts are responsible to the local people's congresses at corresponding levels and are subject to their supervision. The judicial work of the lower courts is subject to their supervision by the upper courts. The judicial administration at all levels is directed by the judicial administrative organs.

The term of the President of the Supreme People's Court is five years and he does not serve for more than two consecutive terms. The Standing Committee appoints and removes Vice-Presidents and judges of the Supreme People's Court and members of the Judicial Committee. Presidents of local courts are elected by the people's congresses at the corresponding levels and other judges are appointed and removed by the Standing Committees of the local people's congresses. The Standing Committee also supervises at its corresponding level the work of people's court.

Citizens who have the right to vote and stand for election on attaining the age of 18 years are eligible to be elected as people's assessors. Their term of office and the method of their selection is decided by the Ministry of Justice. The assessors exercise their functions in the courts, are members of the division of the courts in which they participate, and have equal rights



with the judges.

### Basic People's Courts

Basic People's Courts are County People's Courts and Municipal People's Courts; People's Courts of autonomous counties and People's Courts of municipal districts. A basic court is composed of a president, one or two Vice-Presidents and judges. The court may set up a criminal division and a civil division, each with a chief judge and when necessary, associate other judges. A basic court may, according to the condition of the locality, population and number of cases, set up people's tribunals. A tribunal is a component part of the court and its judgments and orders are judgments and orders of the basic court.

Basic courts take cognisance of civil and criminal cases of first instance, except such cases as are otherwise provided by laws. Besides trying cases the courts settle civil disputes and minor criminal cases which do not need a trial, direct the work of conciliation committees and direct the judicial administrative work within their competence.

### Intermediate People's Courts

Intermediate People's Courts are established in various areas of a province, autonomous regions, and municipalities directly under the Central Government, large municipalities and administrative counties. An intermediate court is composed of a President, one or two Vice-Presidents, chief judges of divisions and judges. It has a criminal division and a civil division, and such other divisions as may be deemed necessary.

Intermediate courts take cognisance of cases of first instance assigned to them by law to their jurisdiction; cases of first instance transferred from the Basic Courts, appeals and protests against judgments and orders of the Basic Courts, and protests lodged by the People's Procuratorate in accordance with the procedure of judicial revision.

### Higher People's Courts

Higher courts are those of provinces, autonomous regions and municipalities directly under the Central Government. A higher court is composed of a President, Vice-Presidents, chief judges of divisions, and judges. The court has criminal division and a civil division and such other divisions as may be deemed necessary.

Higher People's Courts take cognisance of cases of first instance assigned to their jurisdic-

tion, cases of first instance transferred from lower courts, appeals and protests against judgments and orders of lower courts, and protests lodged by the Procuratorate in accordance with procedure of judicial supervision.

### The Supreme People's Court

The Supreme People's Court is at the apex and is the highest judicial organ. It supervises the administration of justice by the local people's courts at different levels and, by the special people's courts. It is composed of a President, Vice-Presidents, Chief Judges of divisions, associate chief judges of divisions, and judges. It has a criminal division and a civil division, and such other divisions as may be deemed necessary.

The Supreme People's Court takes cognisance of cases of first instance assigned by law and statutes to its jurisdiction or that case which the court considers that it should try; appeals and protests against judgments and orders of High Courts and special courts; protests lodged by the Supreme People's Procuratorate in accordance with the procedure of judicial revision.

## PEOPLE'S PROCURATORATE

### People's Procuratorate

The people's procuratorates are State organs of supervision. For the whole Republic of China there is the Supreme People's Procuratorate headed by the Procurator-General who is elected for a term of five years by the National People's Congress and is subject to recall or removal by the Congress. The Procurator-General cannot serve for more than two consecutive terms.

The Supreme People's Procuratorate directs the work of the local people's procuratorates at different levels and of the special people's procuratorates. People's procuratorates at higher levels direct the work at lower levels. People's procuratorates, in accordance with the law, exercise procuratorial power independently and are not subject to interference by administrative organs, public organisations or individuals. The Supreme People's Procuratorate is responsible to the National People's Congress and its Standing Committee. The Standing Committee supervises the work of the Supreme People's Procuratorate. The Standing Committee also appoints and removes Deputy Procurator-General and procurators of the Supreme People's Procuratorate, members of the Procuratorial Committee and the Chief Procurator of the Military Procuratorate at



the suggestion of the Procurator-General of the Supreme People's Procuratorate. The Standing Committee approves the appointment and removal of the chief procurators of the people's procuratorates of provinces, autonomous regions and municipalities directly under the Central Government. Local people's procuratorates at different levels are responsible to the organs of State power at the corresponding level which created them and to the people's procuratorates at higher levels.

Local organs of the people's procuratorate and special people's and military procuratorates exercise procuratorial authority within the limits prescribed by law. The people's procuratorates are State organs of legal supervision and it is their duty to see that resolutions, orders and measures of the local organs of state power conform to the Constitution and law, and that the Constitution and law are observed by persons working in these organs and by all citizens. The procuratorates investigate, prosecute and sustain the prosecution of criminal cases. They also see that the investigation departments, in performing their duties, conform to the Constitution and law, to see that the judicial activities of the people's courts, the execution of sentences in criminal cases, and the activities of departments in charge of reform conform to the law, and to institute or intervene in legal actions with regard to important civil cases which affect the interests of the State and citizens.

The work of the Procuratorate is closely

associated with the judicial courts. Being the official guardian of the Constitution and law and, consequently, that of the judicial and social legality, it is the duty of the Procuratorate to investigate all cases of sabotage of the socialist system, to investigate all cases of treasonable and revolutionary activities and actions that endanger public security and disrupt the socialist economy and see that the criminals are adequately punished. The Procuratorates being organs of legal supervision also protect the fundamental personal rights of citizens and safeguard the inviolability of their persons. No one may be arrested except with the approval and decision of a people's procuratorate or by decision of people's court.

The institution of the people's procuratorate is unique in the judicial system of China, as it was in the USSR. The powers of the Procurator-General are so extensive and his authority is so pervasive that it embraces all organs of administration, the army, public organisations, and all enterprises or organisations and citizens. In the discharge of supervisory functions, the Procurator-General has to ensure that there is the correct application and strict execution of the Constitution and laws by all ministries, commissions and other organs of State power at all levels as well as by officials and citizens of China. The Constitution invests the procuratorates with authority to exercise procuratorial power independently and none of them at any level are subject to interference by administrative organs, public organisations or individuals.

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## CHAPTER VII

# The Communist Party of China

### Party the Leader and Core of the Country

The general programme of the Chinese Communist Party declares that as the "highest form of class organisation, the party must strive to play a correct role as the leader and core in every aspect of the country's life." Liu Shao-chi, in his report on the Draft Constitution of the People's Republic of China (1954) presented to the First National People's Congress, said that the leadership of the Communist Party of China was essential not only to the Chinese people's democratic revolution, but also to the realization of socialism. "It must also combat any tendency to departmentalism, which reduces the party's role and weakens its unity." Though there was no mention of the Party in the Constitution of 1954 and the Party existed outside the administrative machinery of the State, yet as a teacher and leader of the people, it functioned as the prime force inside the structure of the State. In the politics of China there was only one party which operated and as it was the revolutionary party which had ousted the previous regime and established the People's Republic of China, it was certainly the decision-making centre and implementing organisation to the realisation of socialism. The members, therefore staffed all the key positions in the government. Explicit injunctions welded them into a disciplined body under central direction from Party organisation and officials at parallel or higher levels. Its leaders decided government policy regardless of their titles or constitutionally vested responsibilities. The Party's ideology was the only officially propagated doctrine mandatory for members and non-members alike. Party members were not to limit their loyalties just to Government and, thus, become the tools of 'departmentalism.' They were enjoined to respectfully and rigidly accept the higher directions of the Party. The Party constitution prescribed that: "Party decisions must be carried out

unconditionally. Individual Party members will obey the Party organisation, the minority should obey the majority, the lower Party organs, and all constituent Party organs throughout the country shall obey the National Party Congress and the Central Committee."

This is democratic centralism. Article 2 of the 1954 Constitution also emphasised the practice of centralism within the structure of the State. It read: "The National People's Congress, the local people's congresses and other organs of the State practise democratic centralism." In his Report on the Draft Constitution, Liu Shao-chi explained this provision in the Constitution and said: "Our system of democratic centralism is explained by the fact that the exercise of state power is unified and concentrated in the system of people's congress...we Marxist-Leninists have long since publicly declared that we stand for centralism...In the Draft Constitution, we have combined a high degree of centralism with a high degree of democracy. Our political system has a high degree of centralism but it is based on a high degree of democracy." Mao Zedong, in his book, *On Coalition Government*, stated that the political system of China was "at once democratic and centralised, that is, centralised on the basis of democracy and democratic under centralized guidance." Democratic centralism is, therefore, a keynote of Communist doctrine and it is applied meticulously at all levels, governmental and social.

The democratic aspects of "democratic centralism" are manifested in free discussions before decisions are taken and in election of higher, bodies by lower groups. Elections are unanimous otherwise it creates factionalism and decisions once arrived at must be obeyed rigorously and regularly. Deviation therefore is indiscipline which is a heinous crime in Communist ideology. The General Programme of the Communist Party of China repeats at every step that



“the party is a united militant organization, welded together by a discipline which is obligatory on all its members.”

#### Party under the 1975 Constitution

The 1975 Constitution not only constitutionalised the Communist Party of China, but in unmistakable terms established the rule of Party, which had been virtually displaced by the revolutionary committees set up during the Cultural Revolution in the body politic of the country. It declared that the Communist Party of China “is the core of the leadership of the whole Chinese People” and “the working class exercises leadership over the State through the vanguard of the Communist Party of China.” The National People’s Congress was the highest organ of State “under the leadership of the Communist Party of China.” The National People’s Congress appointed and removed the Premier and the members of the State Council “on the proposal of the Central Committee of the Communist Party of China.” The Chairman of the Central Committee of China commanded the armed forces and the Chinese People’s Liberation Army and the People’s militia were led by the Communist Party.

The Constitution, thus, explicitly affirmed the principle of centralised and direct Party rule over the Government and the Armed forces. The Preamble summed up the achievements of the Party during the last 20 years and recounted that the people of all nationalities continuing their triumphant advances under the leadership of the Communist Party achieved great victories in socialist revolution and socialist construction and the great Proletarian Cultural Revolution and consolidated and strengthened the dictatorship of the proletariat. The Preamble also committed China to “continued revolution” under the guidance of the Party and emphasised that the country must adhere to its basic line and policies for the entire historical period of socialism and persist in continued revolution. Continued revolution, it was asserted aimed to resolve the contradictions which the danger of capitalist restoration and the threat of subversion and aggression by imperialism and social imperialism had created. The Constitution expressed the confidence of the Chinese people that led by the Communist party “they will vanquish enemies at home and abroad and surmount all difficulties to build China into powerful socialist State of the dictatorship of the proletariat so as to make a great contribution to humanity.”

#### Party under the 1978 Constitution

The 1978 constitution of the People’s Republic of China was the replica of its predecessor Constitution so far as the role of the Communist Party was concerned. The Preamble to the Constitution recounted the heroic struggle of the Chinese people, led by the Communist Party of China and “headed by our great leader and teacher Chairman Mao Zedong” finally overthrew the reactionary rule of imperialism, feudalism and bureaucratic capitalism, winning complete victory in 1949 and founded the People’s Republic of China. The Constitution also set forth the general task for all the Chinese people under the leadership of the Communist party to usher in an era of prosperity and socialist enthusiasm. It was the fundamental duty of citizens that they should support the leadership of the Communist Party and support the socialist system, the Preamble added.

Article 1 of the 1978 Constitution declared that the People’s Republic of China was a Socialist State of the dictatorship of the proletariat led by the working class and based on the alliance of the workers and peasants. This was followed by Article 2 stipulating that the Communist Party of China was the core of the leadership of the whole Chinese people and the working class exercised leadership over the State through its vanguard, the Communist Party of China. The Chairman of the Central Committee of the Communist Party commanded the armed forces of China and Article 19 further stated that the Chinese Liberation Army was the workers, and peasants’ own armed force led by the Communist Party of China and it was the pillar of the dictatorship of the proletariat. The Constitution assigned to the armed forces the task of safeguarding the socialist revolution and socialist reconstruction. The National People’s Congress decided on the choice of the Premier of the State Council upon the recommendation of the Central Committee of the Party.

#### Party under the 1982 Constitution

The Cultural Revolution had marked a stage in the implementation of the policies of Mao Zedong. The higher organs of the Party and the State were replaced by the proletarian headquarters of Mao Tse-tung, which consisted of a small group of functionaries loyal personally to Mao. This “headquarter” was proclaimed “the sole leading organ of the entire party, the entire army and the entire country.” A mechanism of power was built in which a definite place was given to



the Communist Party on a new basis and the central link of the system consisted of revolutionary Committees, which replaced the former Party and State organs. The Constitution of the Party was accordingly, changed and the central and local commissions were, *inter alia*, abolished. The Eleventh Party Congress, the first without Mao Zedong and Chou Enlai, which met in September 1977, changed for the fourth time the Party Constitution in order to overhaul the Party set-up to prevent future usurpation of power by a small coterie. An attempt was made to return to the positive traditions of the Party which included strengthening of discipline, democratic relations, free expression of opinions and greater respect for the interests of the masses. The Party organisation was overhauled from top to bottom and one of the safeguards introduced was the revival of central and local Commissions.

Despite denunciation of Mao's policies and the disaster he wrought on the Party and the State, his shadow still loomed large in the Party. This factionalism in the Party was evident from the fact that he still remained "our great leader and teacher" and "all our victories in revolution and construction" as the Preamble to the 1978 Constitution declared, "have been won under the guidance of Marxism-Leninism-Mao Zedong Thought. The fundamental guarantee that the people of all our nationalities will struggle in unity and carry the proletarian revolution through to the end is always to hold high and staunchly to defend the great banner of Chairman Mao." In all there were five such references to Mao in the Preamble to the 1978 Constitution, two years after his death, and was even described as the founder of the People's Republic of China. In the Preamble to the Constitution of 1982 there are two references to Mao-Zedong Thought "which integrates the concrete practice in China." The 1982 Constitution, thus, follows the trend of downgrading the stress on Mao, but of not pushing de-Maoification too far.

The Chinese Constitutions do show in their Preambles an increasing tendency to mention the leadership of the Communist Party in making and sustaining the revolution. There were two such references in the 1954 Constitution, three in the 1978 Constitution and no less than four in the 1982 Constitution. The Preamble to the 1982 Constitution declares that both the victory "of China's new democratic revolution and the successes of its socialist cause have been achieved

by the Chinese people of all nationalities under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, and by upholding truth, correcting errors and overcoming numerous difficulties and hardships." The Preamble exhorts the people that the basic task of the nation in the years to come "is to concentrate its efforts on socialist modernization. Under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought, the Chinese People of all nationalities will continue to adhere to the people's democratic dictatorship and follow the socialist road, steadily improve socialist institutions, develop socialist democracy, improve the socialist legal system and work hard and self-reliantly to modernize industry, agriculture, national defence and science and technology step by step to turn China into a socialist country with a high level of culture and democracy."

There is no provision in any Article of the Constitution which may describe the role of the Communist Party. The People's Republic of China is now a socialist State under the people's democratic dictatorship led by the working class and based on the alliance of workers and peasants (Article 1). Article 2 of the 1978 Constitution was dropped altogether. The command of the army no longer vests in the Chairman of the Central Committee of the Party. The Central Military Commission directs the armed forces of the country (Article 93). The armed forces of China belong to the people. Their tasks are to strengthen national defence, resist aggression, defend the motherland, safeguard the people's peaceful labour, participate in national reconstruction and work hard to serve the people (Article 29). The Premier is no longer the choice of the Central Committee. He is now chosen by the National People's Congress on nomination by the President of the Republic (Article 62 (S)).

The Communist Party of China having led the people in formulating the 1982 Constitution, is determined to lead the people in upholding the dignity of the Constitution and enforcing it firmly. The new Party Constitution adopted by the 12th National Conference of the Communist Party of China held in September 1982 stated, "All the activities of the Party should be in accordance with the Constitution and the law" and the Constitution defines the basic system and the basic tasks of the State in legal form. The



Communist Party is still the vanguard of the people but the role it plays is subject to the Constitution which is the fundamental law of the land.

### Membership and Organisation

In 1921, thirteen anarchists, radicals and Marxists met in Shanghai and established the first Congress of the Chinese Communist Party. In 1951, the membership of the Party had gone to 5.8 million and in another decade it went up to 17 million. In August 1977 the membership exceeded 35 million, in 1980 it was over 50 million and in 1986, it exceeded 62 million. The membership is strictly limited. Anyone who has attained the age of eighteen and who does work and does not exploit the labour of others is eligible to become a member. But a candidate must be recommended by two full members of the Party. If the Party branch as well as the next Party committee approve, he is given a probationary status. After a satisfactory completion of one year of "elementary education", during which "political qualities" are carefully observed, he is admitted as a full member of that group which approved him first for the probationary status.

At the bottom of the organisation is the local cell and the local branch chooses delegates to county or municipal Party Congress, which in turn elects the Provincial Party Congress. The Provincial Congress sends delegates to the National Party Congress which then chooses a 201-man Central Committee. The Central Committee is the highest leading body of the Party when the National Party Congress is not in session. The elections at all levels of the Party are to be periodically held, but in practice they have proved to be less than periodic and at the higher levels the Party positions were held beyond their constitutional tenure. This life-long tenure trend has now been ended. The Provincial Party Congresses are to elect the National Party Congress every five years, but actually only two such Congresses were elected during eighteen years, the seventh in 1945 and the eighth in 1956. Again, after thirteen years the ninth Congress was called in 1969 to legitimise the results of the Cultural Revolution and the tenth was convened in 1974 which was necessitated to "consolidate and multiply the achievements of the great proletarian cultural revolution." The eleventh Congress was held from August 12 to 18, 1977. Now it is held regularly.

The National Party Congress, consisting of

more than one thousand and five hundred members, is elected for five years and it must meet every year unless the Central Committee decided that "extraordinary conditions" do not permit such a meeting. There has been only one meeting till 1956 and subsequently at irregular intervals. It means that the Central Committee has exercised its extraordinary power of not convening annual meetings of the National Party Congress at regular intervals. Since the Congress elects the Central Committee "and therefore is legally superior to it, failure to convene the parent body removes the problems of co-responsibility to the membership at large. In this manner, reality mirrors theory, reversing the image in the process." In fact, the Congress does not elect the Central Committee. It is the outgoing Politburo and to be more precise its Standing Committee of seven men, which actually selects the Central Committee. The Standing Committee of the Politburo includes the top-ranking leaders, and the choice actually rests with them.

The Central Committee does not even formulate policy. It is a numerous body which meets once or twice yearly and that, too, for only a brief period. It is on record that at times of particular or prolonged crisis, the Central Committee does not meet at all. No Central Committee plenum was held in 1960, despite the marked deterioration of Sino-Soviet relations and the decline of agricultural productivity that had begun in 1958, when the tenth plenum of the Central Committee met in 1962, only four days were allotted for discussion of Party as well as national affairs. Taking into account the infrequency and short duration of its meetings, the Central Committee functions mainly as a sounding board for previously determined policy.

The Politburo with membership of twenty-three is the core of the important decision-makers and "probably acts as a controlling nucleus for the larger body." The Central Committee is important to the Politburo because it transmits and implements Politburo decisions. Central Committee's endorsement of Politburo actions gives the policies a legitimacy "far beyond that which is possible through Press announcement." Consistent with the principle of democratic centralism it is obligatory on all to accept and implement all such decisions without demur. Here is a matter of fact summing up of the position and functions of the Central Committee.....The Central Committee is too large and meets too infrequently and



too briefly to be the real decision-making centre of the CCP (Chinese Communist Party). Yet it is much more than a rubber stamp for Politburo. It gives legitimacy to Politburo decisions in accordance with the party constitution. It transmits decisions to lower levels linking the peak of the political pyramid with its mass base (more than other million basic level organisations). It provides status to worthy party members and, finally, offers a proving ground for potential leaders."

The Politburo, like other Party organs, is a numerous body and has, accordingly, its Standing Committee which constitutes the brain trust of the Politburo. It has always included top party leaders, as it once had Mao Zedong, Chou En-lai, Chow Ch'en Yun and Teng-Hsais-ping. With the Party Chairman, the Premier and other galaxy of Party leaders it is but natural that the Standing Committee should constitute the apex of the policy formulation.

Among other organs of the Central committee the most important are the Secretariat and Departments, such as, the Rural work, Industrial work, Social Affairs, and the Control Commission. The Secretariat monitors the execution of

policy on a daily basis through the Party Central organs, bureaus and Committees. The Control Commission, according to Party rules, examines and deals with cases of violation of the Party Constitution, Party discipline, Communist ethics, and state laws and decrees on the part of Party members and deals with appeals and complaints from party members. It originally consisted of seventeen regular and four alternative members. In September 1962, the tenth plenary session of the Eighth Central Committee decided to enlarge the membership in order "to strengthen the work of the Party Control Commission." Enlargement of the membership of the Control Commission emphasised the importance of this organ which was entrusted with the duty to combat "improper" attitudes and "sectarian" tendencies of the Party members. The Party rules explained that every member "has the duty to report to the party Control Committees whatever he knows about infractions against party rules, party discipline, communist morality, national laws and decrees on the part of other party members. Moreover, it is his duty to help the Party Control committee struggle against such phenomena."

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## CHAPTER VIII

# Democratic Ferment

### Demand for More Reforms

Student agitation is not a new phenomenon in China. Since 1919 students have been a vocal political force fighting authoritarianism and corruption. This political role of the students was sanctified by the 1982 Constitution when Article 35 conferred on citizens the right to freedom of speech, of press, of assembly, of association, of procession and demonstration. This troublesome right, which even Sun-Yat-Sen, the father of New Chinese Nationalism, would never have conceded, ignited the spurt of student unrest first in 1986 and again in April-May 1989 eventually culminating on June 3-4, 1989 at Tiananmen square in Beijing, in the massacre of hundreds of unarmed youngmen and women at the hands of the People's Liberation Army (PLA). However, it has since become known that many in the People's Liberation Army feel shame at having fired at the young students spearheading the demand for more democratic reforms.

In December 1986 student unrest, which swept through nearly a dozen cities, was in favour of democracy and freedom. Deng Xiaoping's regime was certainly more democratic than its predecessor and there was an awareness on the part of the Chinese leadership of the need for democratization. But the leadership was in no mood to accept and launch another revolutionary movement at that juncture when Deng's economic reforms had met with severe criticism from the Conservative elements in the Communist Party of China. The pace of change that the students wanted alerted Deng Xiaoping and Hyaobang, the General Secretary of the Chinese Communist Party, and even had initially sympathised with the students' demand in their quest for a more "open" China. The Government in a bid to arrest the movement promulgated stringent regulations banning unannounced demonstrations and the putting up of unsigned posters in

public places. The penalty for violating the ban was five years hard labour in prison.

In mid-January 1987, a meeting of the Party's Politburo was held and the Secretary-General Hu Yobang was forced to resign, and some of China's intellectuals were attacked, demoted, and expelled from the Party. The Chinese citizens were, thus, once again, forcefully reminded of the sanctity of the four principles of China's policy. These principles were: to uphold the socialist road; to uphold the democratic dictatorship; to uphold the primacy of the Communist Party of China; and, to support the primacy of Marxist-Leninist-Mao-Ze-Dong Thought. Both the Government and the Communist Party made it unequivocally clear that nobody would be permitted to challenge these four cardinal principles which embodied the rules of prolonged struggle for the integration of Marxist-Leninist theory with the practice of Chinese Revolution.

The democratic turmoil subsided, but not the democratic fervour that culminated into the June 3-4, 1989 nightmare of the Tiananmen Square. In his June 9, 1989 speech, so far the ultimate official pronouncement of what had happened in China, Deng Xiaoping said, "It started as student unrest, then it developed into a turmoil. And finally, it turned out to be a counter-revolutionary rebellion." That was the official version. But how is one to describe the military operation in Beijing on the night of June 3-4, against unarmed mass of students mostly in their teens? "The brutal suppression" of a "peaceful student movement" was the invariable description given by countries adhering to the Western type of democratic government. The leaders of China's Republic and the Communist Party on the other hand, called it the liquidation of a "gang of counter-revolutionaries" who were determined to overthrow the socialist system. No matter how you describe it, it needs no great perspicacity to



see that what happened first in December 1986 and, then, in April-May ending on June 3-4, 1989, had its seeds in the changes Deng Xiaoping himself had ushered in. If it was a "counter-revolution," Deng was its architect. That he did not want his policies to have the effects they had is of no consequence.

#### Analysis of the Factors Responsible

At the beginning of 1989, a leading Chinese economist noted three phases in a "sweet and sour decade" from the end of 1978. The first and sweet period, period of six years saw the "heady" result of agriculture reforms in rapid and phenomenal increase in food output and labour productivity. In the second period from late 1984 to late 1987, rural growth lost its momentum, and reforms in the industrial sector, despite an astounding rise in investment and production, began to show the distorting effects of unrestricted industrial growth. With mounting inflation close to 30 per cent in 1989, increasing income disparities and alarming spread of corruption, the decade was turning sour. A thriving black market had become important area of corruption which was also rampant at almost every level of State and party administration.

Corruption is, undoubtedly, related to the price system, but a mere general explanation for the widespread prevalence of this vice is a new culture attached to easy and rapid money-making without any qualm of conscience. And when the market is flooded with consumer goods, it becomes a direct incentive for larger income disregardful of its source.

Regional income disparities were inherent in Deng's plan of liberalisation-action which created the eastern "gold coast." But personal and sectional disparities were the most important. A private person in construction, for example, earned twenty times more as much as the average urban income. Rural prosperity under the new dispensation was not evenly distributed. According to the estimate there were 100 million unemployed or under-employed peasants. Then, there was a floating estimated population of 50 million peasants who moved to urban areas from time to time causing a big strain on urban economy. The imbalance so created generated crime. There were also some 20 million migrant workers who added to the woes of the urban population. These bare facts evidently well establish how defective Deng's reforms scheme was.

The general economic improvement was

unquestionably impressive, but in the wild pursuit of prosperity, there had hardly been any pretence of egalitarian and moral concern and the people at large paid scant respect to China's "fine tradition" of plain living and hard struggle. It really became anachronistic in the context of the prevailing philosophy when the paramount leader declared: "to get rich is glorious." Money became an end and not a means. It did not matter how it was to be amassed as the measuring rod of glory was the amount of wealth the individual possessed. It meant that even corrupt practices were permissible in the pursuit of achieving glory.

Among those denied this glory were people engaged in what an American economist described as "knowledge-extensive" work, more "elegantly but loosely" described as intellectuals. Deng Xiaoping did make efforts to rehabilitate the intellectuals after the Cultural Revolution, but their economic condition only worsened in relative terms. In 1978, "brain workers in State employment earned just 2 percent more than manual workers; in 1986, on the eve of the first democratic upsurge, the latter earned 10 percent more than the brain workers."

This was an immediate cause of discontent in the academic community. Only a fourth of some Chinese students who went to the United States of America in the past 10 years were said to have returned home. Many more who had gone to various European countries and Japan did likewise. This process had two implications. Those who had lived in the foreign countries savoured the blessings of economic prosperity and political freedom. They could visibly see and feel that these people with whom they were living in the pursuit of acquisition of knowledge were enjoying a much higher standard of living without sacrificing individual liberty. China cut a poor figure by comparison. Those who could not go abroad for obvious reasons felt frustrated and deeply hurt as their cynicism had grown because of the way Party links at home influenced the prospects of employment.

The frustration of rural unemployed youth tended to be most socially disruptive. The prosperity of the rural new-rich did not assure them that opportunities were unlimited, and there was no longer Party compulsion or ideological motivation for collective work. Often drawn to the cities, they remained a source of potential trouble, as some of them did show during the student



unrest in Beijing both in 1986 and 1989. Neither the rural nor the urban youth found much inspiration for a better life in the ways of self-seeking Party cadres.

The Cultural Revolution was the great disservice that Mao did to the Party and the people. In it, most loyal Party members had been hounded out and many done to death. All intellectuals were cruelly punished. All this had virtually destroyed their faith in the goodness of Mao and the greatness of the Party, thus, choking all channels of ideological faith and pursuit of the desired goal.

In 1986-87 the Communist Party of China felt concerned about the attitude of Chinese students and launched a fact-finding exercise. The Party had always attached great importance to ideological orientation, and each army unit, every school and university had a Party cell which monitored and guided mental attitudes. In 1987, a long questionnaire was circulated to students at all levels to elicit information: (1) why they (students) take to the streets and demonstrate, (2) why the Chinese youth, who is brought up entirely on the Marxist thought since his childhood, evinces such a keen interest in western philosophy; and (3) why students show such suicidal tendencies at the slightest setback.

The survey found that the students had become blasé and entered the Party not through conviction and ideological urge but for self-advancement. The Vice-Chairman of National Education Council, Liu Chung-teh, concluded in 1987 that the two main factors responsible for this were the "negative" effect of the Cultural Revolution, and the growing outside contact as a result of the Party's economic liberalisation programme.

Not only was ideological education, as the Party leadership admitted, neglected during the past decade, visitors to China in recent years also spoke of moral vacuum, evident in sharp increase in crime, prostitution and general permissiveness. Apart from the high living by the new-rich, there had grown a consumerist and imitative culture, inevitably inspired by ideas and models imported from the West. From time to time Chinese leadership had bemoaned the existence of this "spiritual pollution", but it could hardly be checked so long as the door remained open for modernization and thousands of foreigners daily intermingled with the Chinese in China. Alien political ideas were bound to find their way into an ideological vacuum. Added to these was the

dawn of Gorbachev era in the Soviet Union. If the USSR could woo democracy and liberalise its institutional framework within the socialist society, why not China? They loudly questioned.

Party leaders, like Deng Xiaoping had themselves suffered harsh and humiliating treatment from Mao for their "dissent" which was nothing more than a plea for liberalisation, the same plea which the students and intellectuals had made in 1986 and in Tiananmen Square in Beijing beginning in April 1989 and culminating into the tragic events of June 3-4. In early May Party leaders like Chao Tse- Yang and Li Ping had shown an understanding attitude. The Party itself realised that in dealing with students, one has to think not only of logic (what is right and what is wrong) but of human emotions. Chao and Li Ping visited the fasting students in the hospital, and Li even gave a good chat to them by saying that they were "patriotic" and "enthusiastic." There was nothing then to suggest the "savage crackdown" which was to come only a fortnight later.

Almost two months after the "crackdown" of students, senior Chinese leaders and media officials claimed that the situation was "back to normal." In an informal talk with a visiting Indian Press delegation on August 2, 1989 Li Tie Ying, Politburo member and Education Minister, indicated that with the return to normalcy China would pursue "with greater vigour" the earlier policies of socialist reforms and the opening up of the economy. "We have achieved positive results by following these policies in the last decade. We will make a few adjustments when we make an assessment later," he said.

The Party's Politburo announced, some-time later "seven tasks of great concern to the people." All these tasks, interestingly related to one of the basic demands of the student demonstrators—the elimination of corruption amongst the Chinese Communist Party and Government officials. Other demands relating to this important aspect included the closing down of commercial firms by the children of high Party officials, including Deng Xiaoping's son, cancelling the special supply of food-stuffs of leading officials and banning the use and import of foreign cars by high party and government officials.

Li Tie Ying said that the student demonstrations were "manipulated" by "a handful of conspirators" who wanted to overthrow China's socialist system and the Communist Party. Under



the garb of slogans about "democracy, human rights and freedom," they actually "wanted to restore capitalism." He accused "hostile international forces," especially the United States' Congress of interfering in China's internal affairs. He asserted that China would continue to strive to bring about socialism under the leadership of the Chinese Communist Party, and any action in opposition to the party would end up in turmoil. The message Li conveyed to the West was that Beijing was ready to deal with it on the terms of a China under the Communist Party.

According to Shao Huaze, the Editor-in-chief of the *People's Daily*, those journalists who took part in the pro-democracy demonstrations would not be punished. "None of them have been removed from the posts, but they would have to undergo political re-education." Only those who committed criminal acts were to be dealt with severely.

The Government launched a massive campaign to educate the public on the "real facts" of the student movement and in order to show the People's Liberation Army (PLA) in a different light, television serials on their heroic war exploits were shown daily.

The events of June 3-4, 1989 showed up some of the major deficiencies of the Chinese political system. The foremost among them was the weakness, even irrelevance, of institutions. The Communist Party of China was hardly called to action in dealing with the "counter-revolutionary rebellion." The Central Committee of the Party did not meet during the two months of the crisis, from mid-April to mid-June. Nor was a session of the Standing Committee of the National People's Congress convened. The arteries of command and control were seized by an exceedingly small number of leaders, the majority of whom did not even sit in the Politburo, but had been retired from active political roles.

Deng Xiaoping's failure to build institutional scaffoldings of a regime of liberalisation and modernization allowed a "turmoil" to swell into a "rebellion" in a matter of six weeks. The system did not know how to deal with it. In the great institutional vacuum, restoration of order—the old order—had to be left first to the People's Liberation Army (PLA) and then largely to the internal security apparatus. Socialist legalism another laudable objective of Deng's programme of reforms, took a back seat as leaders of the unofficial students' and workers' unions were hauled

out of their homes or hiding places and thrown into prison.

Those who helped Deng to suppress the "rebellion" asserted their opposition to his strategy of economic reforms. They had long held the view that the often hasty and impatient search for financial business, trade and technological linkage with the capitalist countries had not only gravely distorted China's socialist economy by allowing the creation of large and strategically important capitalist conclaves, but nearly devastated its socialist ideology and values. They blamed the liberal openings to the capitalist world for the high incidence of "official profiteering," the Chinese name for corruption in high places.

The capitalist countries had invested \$11.5 million in modernizing China's industrial base. All this suffered major setback, because all those countries withheld any further aid to China. Even the World Bank stalled a \$60 million agriculture loan, and suspended indefinitely \$700 million in other credits. The Asian Development Bank shelved a loan of \$25 million to China's Sino Petrochemical Company. The Japanese Government echoed American concerns about developments in China and withheld certain major transfer of money and technologies.

The real loss for China was the confidence of the vast segment of democratic opinion all over the world. Throughout the upheavals even in the dark days of the Cultural Revolution, a solid body of democratic opinion all over the world stood by China. It was the steadfast good will of this segment that the Chinese leadership had forfeited by the barbarities committed on the Tiananmen Square on June 3-4, 1989, and the wave of suppression that continued for a pretty long time afterwards. It was estimated that more than 4,000 protesters languished in jail and scores had mounted the gallows. Two months after one member of the Chinese Communist Party had fled abroad, China announced the dismissal and expulsion of two prominent dissidents from the Party. The *People's Daily* said on August 10, 1989 that Yan Jiaqi former adviser to ousted Party chief Zhao Ziyang and head of a key Political Science Institute, and historian Bau Zunx had "clung to a bourgeois liberal stand and undertaken evil activities to overthrow the leadership of the Communist Party."

Yan fled to France after the Beijing bloodshed and from there called for a non-violent overthrow of the Beijing Government. After the



1986 student demonstration, the Provincial Governments showed little enthusiasm in arresting the young leaders of the democracy movement. In 1989, too, many of the leaders of the movement spread out to the Provinces in the hope that the Party's provincial leaders did not share the hardliners' perception of the "rebellion." Consequently, they would be in a position to make another bid for the massive demand for democracy. If the events in Western European Countries and the USSR itself, where Communism is a stale talk now and the Communist Party has been liquidated, is any guide it may happen any time or at the latest on the demise of Deng Xiaoping who is in his declining years at the age of 87. Deng is now off the stage of active politics of power.

China's Prime Minister, Li Ping, however, is not repentant on the use of military force in June 1989 to crush anti-government protests and he publicly refused to rule out doing it again. Addressing the customary Press Conference after the fortnight-long plenary session of the People's Congress, he said, on 10 April 1991, that history was vindicating his Government's action. "Had we not been forced to take resolute measures, China would be bogged down in economic crisis and political instability, at least as serious as in countries that used to be socialist." His obvious reference was to the East European countries. There was a hint of mellowing of Li's tone in talking about the 1989 protests. He said it was "entirely understandable that people should have different perceptions of unrest because of their different values and ideologies."

### Impact of Political Developments in Soviet Russia

Notwithstanding proclamations by top Chinese leaders that the political developments in the Soviet Union will have no effect on the pursuit of socialism in China, indications are to the contrary. The Premier, Li Peng, has assertively said that conditions in China differ widely from those in the erstwhile Soviet Union and hence Beijing's steadfastness in sticking to

hardline Marxist-Leninist policy would not be influenced by the developments in the homeland of Marxism-Leninism. However, reports leaking out of China have spoken of fears expressed by hard line leaders about the effects of the Soviet situation being felt in the country.

The latest such indications come in a report published by Hong King's *South China Morning Post* which quoted a Chinese Communist leader, Chen Yun, as having called on the Party to do its best to prevent the emergence of a "Yeltsin-like figure" in China. Quoting unnamed sources, the newspaper reported that the "conservative patriot," in a briefing to "intimates" soon after the failure of the *coup* in Moscow, said that the Party must draw the "right lesson" from the crumbling of Communism in the Soviet Union and the ascending of bourgeois liberal politicians.

The Chinese fears about their Communism facing a fate similar to the Soviet Communist Party is not hard to understand. As the Soviet Union disintegrates, with thirteen Republics having declared their independence, the Beijing's leaders are deeply concerned that ethnic nationalism in the vast Central Asian steppe will spill over into China's sensitive border regions. To China's west lie the three Republics of Kazakhstan, Kirghizia and Tajikistan. The mostly Muslim Kazakhs, Kirghis and Tajik who live in these Republics speak a Turkic language similar to that spoken by their predominantly Muslim brethren in China; the Uighurs, Kazakhs, Kirghis and Tajiks of Xijiang Province.

To China's North is Mongolia, the former Soviet satellite that abandoned Communism in 1990. The two million Mongolians there share a common heritage with China's estimated 4 million Mongolians most of whom live in Inner Mongolia.

China's 55 different minorities make up about 7 per cent of the total population. It will not be, therefore, wide of the mark to say that ethnic nationalism, already a source of serious tension in some regions, could fuel nascent separatist sentiment in China.

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## CHAPTER IX

# The Chinese Political System

### Imperial System and Feudalism

The character of traditional Chinese political system has become subject to a terminological debate. Terms such as 'gentry', 'feudalism' and 'bureaucracy' have been used to describe that system. The issue here is to determine how the upper classes were connected with landed property who also enjoyed near monopoly of bureaucratic posts in the state. Some Western scholars emphasize that the Imperial state in China was a form of Oriental despotism governed by a bureaucratic *literati* which was a group of Confucian scholars. The Marxists criticise this view arguing that the ruling class gentry in China was essentially feudal in character which exploited the peasantry, extracting an economic surplus from the tillers of the soil by virtue of their ownership of land.

The Chinese Communists treat the Imperial era and even the Kuomintang period as a form of Feudalism. But there was no system of vassalage in Imperial China and only very limited grants of land in return for military services. "Nevertheless," the Marxist stress on landlordism is thoroughly justified.<sup>1</sup> He adds, "Even the Emperor was a super-landlord who collected grain from his subjects. If the Imperial system relied to such a great extent on collection in kind, we may be sure that it prevailed quite widely elsewhere."<sup>2</sup>

As already indicated, the landlord relied on the Imperial bureaucracy to safeguard his property rights. As Owen Lattimore has remarked, behind each Imperial project was a powerful minister, and behind each minister a powerful body of landlords. These facts bring the Oriental agrarian bureaucracy and the idea of water control into proper perspective. Thus the bureaucracy constituted an alternative way of squeezing economic surplus from the peas-

ants. For the landlord, Confucian doctrines and the system of examinations gave legitimacy to his superior social status.

Imperial Chinese society never created an urban trading and manufacturing class comparable to that which grew out of the later stages of Feudalism in Western Europe. With the decay of the Imperial apparatus, visible during the eighteenth century, its capacity to control commercial elements declined. By the second half of the nineteenth century, the traditional rule of the feudal, scholar-official had disintegrated in the coastal cities. After the conclusion of the Opium War in 1842, the *comprodores* spread through all the treaty ports of China. When Chinese industry began on its own in a modest way in 1860s, it did so under the shadow of provincial gentry, who hoped to use modern technology for their separatist ends. Military aims were in the forefront and so production of arms was stressed. As this early push toward industrialisation came from provincial foci of power, with very little support from the Imperial government, it was more of a disruptive than a unifying factor.

Thus China, like Russia, entered the modern era with a numerically small and politically dependent middle class. This class did not develop an independent ideology of its own as it did in Western Europe. Even then it played a significant role in undermining the Manchu state. The growth of this class in coastal China led to the break up of the Empire and creation of "regional satrapies in a way that foreshadowed the combination of 'bourgeois' and militarist roles in the hey-day of the warlords (roughly 1911 to 1927) and on into the Kuomintang era."<sup>3</sup> A substantial amalgamation gradually took place between sections of the landlord class and leaders in trade, finance and industry.

This amalgamation provided "the chief

1. Barrington Moore Jr, *Social Origins of Dictatorship and Democracy*, p.163

2. *Ibid.*, p. 168

3. *Ibid.*, p. 177



social underpinning of the Kuomintang, and attempt to revive the essence of the Imperial system, that is, political support of the landlordism with a combination of gangsterism indigenous to China and veneer of pseudo-Confucianism that displays interesting resemblances to Western fascism."<sup>4</sup> This combination arose in a large measure out of the failure of the landowning gentry to achieve the transition from preindustrial to commercial forms of farming. Under conditions of an abundant labour and simple technology, there was no need for a Chinese landowner to rationalise production for the limited, urban market. When and where the market did grow, it turned the gentry into *rentiers* with bureaucratic connections rather than into agrarian entrepreneurs.

Hence, the Chinese landed upper classes failed to develop any significant principled opposition to the Imperial system. Western notion of parliamentary democracy did not appeal to the Chinese scholar-gentry. In Europe under feudalism aristocrats obtained immunities, privileges and a corporate identity that created a demand for representative institutions culminating in parliamentary democracy. Landed property in Chinese society could not serve as a basis for political power separate from the political mechanism of the Imperial state. The fact that circumstances precluded the emergence of a liberal aristocratic opposition decreased the capacity of the Chinese polity to respond successfully to a totally new historical challenge that came from Western imperialism.

A serious dilemma faced the Manchu regime during the final five decades of its rule. "On the one hand, it needed greater revenue to put down the internal rebellion and face foreign enemies. On the other hand, it could not obtain this revenue without destroying the whole system of gentry privileges. To raise adequate revenue would have required the encouragement of commerce and industry. The fact that foreigners managed the customs made such a policy even more difficult."<sup>5</sup>

Theda Skocpol points out, "Yet the Chinese Empire did decline, opening the way to the revolutionary destruction of the gentry... Essen-

tially, China came under extra-ordinary pressures from imperialist industrial nations abroad. This happened even as long-gestating internal developments were unbalancing the system from within precisely in ways that made it unlikely that Imperial authorities would, or could, respond effectively to the foreign threat."<sup>6</sup>

Barrington Moore points out, "a regime, many of whose key features had lasted for centuries, simply fell apart in less than a hundred years under the impact of western blows.... In China... the final period of anarchy lasted much longer. As a minimum, one might date it from the proclamation of the Republic in 1911 to the formal victory of the Koumintang in 1927. the latter initiated a weak reactionary phase".

There was a symbiotic relationship between the landlord and the Chinese warlord. The system of requisitions, taxes in labour and kind, compelled the peasants to support the cities in the rural areas. Merchants too joined hands with the landlords foreshadowing the class coalition of the Kuomintang. In the new situation, the successors to the old ruling class sought without success an alliance with the new forces. These "successors were to be landlords pure and simple, gangsters, or a combination of the two, a tendency that lay just below the surface in Imperial times."<sup>7</sup>

#### The Kuomintang Interlude

With significant Communist and Soviet assistance, the Kuomintang had won control of a large part of China in 1927 working out from its base in the south. This success was mainly due to the support which its armies had so far received from the peasants and the workers. The Kuomintang's social program gave it an advantage over the warlords. It was hoped that its 'revolutionary' ideology might enable it to unify China by defeating the warlords.

When the nationalist forces reached Shanghai, the Kuomintang leader betrayed the revolutionary cause. "On April 12, 1927, his agents, together with others on the spot, including French, British, and Japanese police and military forces, carried out a mass slaughter of workers, intellectuals, and others accused of sympathizing with the Communists."<sup>8</sup> Chiang's victory in-

4. *Ibid.*, p. 178

5. *Ibid.*, p. 182

6. Theda Skocpol, *States and Social Revolutions.*, p.73

7. *Ibid.*, p.186

8. Harold Isaacs, *Tragedy of the Chinese Revolution.*, pp. 180-181



initiated a new phase in Chinese politics. He unified China with imperialist support and promised suppression of Communism and agrarian discontent by using military force.

Commercial elements were weakening the peasantry and concentrating wealth in the hands of a new social formation—a fusion between sections of the old ruling class and new social strata rising in the towns. This fusion formed the social basis of the Kuomintang. Its agrarian policy was aimed at maintaining or restoring the *status quo*. The presence of the Communist rival polarised the situation making Kuomintang policy even more oppressive. "The Communists act as the inheritors to temporarily fanatical peasant rebellions; the National Government and the Kuomintang to ascendant mandarines."<sup>9</sup>

Industry failed to register significant advance under the Kuomintang. It cannot be attributed to Japanese blockade and occupation alone. An important factor was the continuing opposition from the landlords to China's transformation into an industrial power. China preferred to import military equipment instead of building up its own industrial base. China remained industrially backward because the landowning class retained through the Kuomintang the substance of political control and leadership.

The two decades of Kuomintang rule show some features of the reactionary phase of the European response to industrialisation, including some totalitarian characteristics. The social basis of the Kuomintang was an opportunistic but contradictory coalition between the rural landlords and the urban capitalists. "The Kuomintang, through its control of the means of violence, served as the link that held the coalition together. At the same time its control of violence enabled it to blackmail the urban capitalist sector and to operate the machinery of government both directly and indirectly. In both these respects the Kuomintang resembled Hitler's NSDAP."<sup>10</sup>

However, there are important differences between the social bases and historical circumstances of the Kuomintang fascism and Ger-

many's National Socialism. These differences account for the relatively weak character of the Chinese reactionary phase. One of the causes was the lack of a strong base in industry in the case of China. Japan's invasion of China further weakened the native capitalist element and prevented the Kuomintang fascism from assuming an expansionist character. For these reasons, "The Chinese reactionary and protofascist phase resembles that of Franco's Spain, where an agrarian elite also managed to stay on top but could not execute an aggressive foreign policy, more than it does corresponding phases in Germany and Italy."<sup>11</sup>

During its revolutionary phase, prior to attaining power, the Kuomintang had identified itself with the Taiping Rebellion of China's peasantry. After the conquest of state power, the Party under Chiang Kai-shek's leadership did an about-turn, identifying itself with the Imperial system and its superficial Restoration of 1862-1874.<sup>12</sup> It was a "a switch that recalls the early behaviour of Italian fascism. After victory, the doctrine became a curious amalgam of Confucian elements and scraps taken from western liberal thinking. The latter...had entered through the influence of Sun Yat-sen... The analogies to European fascism arise mainly from the pattern and shadings of emphasis that Chiang Kai-shek...placed upon these disparate elements."<sup>13</sup>

In Chiang Kai-shek's *China's Destiny*, there is practically no discussion of the social and economic factors that had brought China to her current state of degradation. Any serious analysis of these issues could have alienated upper class support to the Kuomintang. In this lack of a realistic analysis of socio-economic issues, its ideology reminds us of European fascism. In the Confucian theory of a benevolent elite that also assumes a heroic and martial character, the Kuomintang doctrine resembled western fascism. Chiang says, "Excessive personal liberty... cannot be allowed to exist either during wartime or in the postwar period." He quoted Sun Yat-sen to justify this, "In order to resist foreign oppression, we must free ourselves

9. Paul M. Linebarger, *The China of Chiang Kai-shek*, p. 233

10. Barrington Moore, *Social Origins of Dictatorship and Democracy*, pp. 196-197

11. *Ibid.*, p.197

12. Mary C. Wright, *The Last Stand of Chinese Conservatism*, p. 300. For an analysis of the Kuomintang ideology, see pp. 301-312

13. Barrington Moore Jr., *Social Origins of Dictatorship and Democracy*, pp. 197-198



from the idea of 'individual liberty' and unite ourselves into strong cohesive body."<sup>14</sup>

Chiang's talk about 'political tutelage' and preparation for democracy was mainly rhetoric. Actual policy was not to disturb the *status quo* and even to distort facts in order to idealize the past. Mary C. Wright has argued this point cogently in her book, *The Last Stand of Chinese Conservatism*, reminding that this distorted patriotic idealization of the past is one of main stigmata of European fascism. Another feature is the Kuomintang's effort to suppress native Communism by the use of force, which is again a major characteristic of Western fascism. This shows that fascism as an ideology dominated Japan and Kuomintang China in Asia as well as Germany and Italy in Europe, at the same time, as a single complex unit, affecting their social, political, and intellectual climate and movements, though in different ways.

#### Failure of the Bourgeois Republic

Like most revolutions, the bourgeois revolution of 1911 gave rise to great hope and euphoria in China and the people looked to it as a panacea for the country's ills and miseries. But the demise of the old dynasty did not lead to the creation of a bourgeois-democratic state. As soon as Sun Yat-sen was proclaimed Provisional President of the Republic, Yuan Shih-Kai, a reactionary General, forced the abdication of the nationalist leader and assumed the position himself. The Republican ideals were soon given up as the new dictator Yuan was proclaiming his ambition to found a new dynasty.

It was recognised that the transformation of China into a modern democratic nation could not be achieved by one simple revolution. From 1911 to 1925 China faced one of the most chaotic, confusing and disunited periods of her history. As C.P. Fitzgerald traces the collapse of the revolution through the tragi-comedy of General Yuan's rule to the dissolution of all central government into regional warlordism, he points out that the bourgeois revolution discredited not only the old monarchical system but also the credentials and ideals of the new republican regime.

According to Fitzgerald, the Chinese be-

came "completely disillusioned with the false gods of the west. They turned restlessly to some other solution." Soon the news of the Russian Revolution reached China., "Here was a new model, and what is more important, a model bearing none of the stigma of western colonialism. To young Chinese intellectuals trapped in the dark ages of modern Chinese history between warring factions of venal warlords and encroaching foreign powers eager to 'cut up the Chinese melon'; this new doctrine had a strong appeal."<sup>15</sup>

As the events proved, the bourgeois Republic was destined to end neither in democracy nor in a new dynasty, but in chaos. The foreign powers, including Japan, were hostile to the Republican cause. Strong republican China would banish Japan's dream of her continental empire and put an end to semi-colonial domination of China by other imperialist powers. But the emerging Republic did not exactly cover itself with glory by its mal-functioning. "The Parliament, elected in 1912, was a travesty of democracy. Votes were openly sold and openly quoted on the market. The members, when they met, devoted all their time to appropriate large salaries to themselves. Without roots in Chinese history, without tradition and without honesty, the organs of democracy presented a shameful picture of irresponsibility and corruption. Truly 'a monkey had dressed up in the roles of Duke Chou'."<sup>16</sup>

To the President, Yuan Shih-Kai, the spectacle of the Republic's degeneration was quite welcome as it gave him an opportunity to intrigue to found his own personal dynasty. He secured a large loan from the European powers, without the Consent of China's Parliament, and thus flouting the constitution he made himself independent of it. Then began the process of assassinating or exiling prominent Republican leaders. "The dynasty was proclaimed, the President, Emperor-elect, performed, for the last time in history, the rite of ploughing and sacrifice at the Temple of Agriculture and the Altar of Heaven, and the date of his enthronement was announced."<sup>17</sup>

By a historic irony, the Republic was saved by Japan's presentation of the notorious Twenty-

14. Chiang Kai-shek, *China's Destiny*, p. 208

15. Franz Schurmann and Ordville Schell (eds) *Republican China*, p.22

16. C. P. Fitzgerald, *The Birth of Communist China*, p. 47

17. *Ibid.*, p. 48



one Demands, which if accepted would have made China a virtual Japanese protectorate extinguishing her independence. Yuan accepted these demands in part but this destroyed his prestige. A military revolt in Yunnan and a wide-spread threat of a civil war forced Yuan to abandon his dynastic plans. The Republic was technically saved. But the Republican party had played no role in crushing the monarchical movement. Only the jealous generals had any hand in Yuan's overthrow. In Peking a succession of weak cabinets occupied office but the Republic failed to recover its former position. In the South, Sun Yat-sen established a rival regime of the Republican party, which was itself dependent on the good will of the local military satraps.<sup>18</sup>

With the disintegration of the bourgeois Republic, the generals, nicknamed the warlords, became the real rulers of China in different regions. "They supported or betrayed the government for money; they warred upon each other to secure richer revenues, they organised the opium trade, sold the official posts, taxed the people for years in advance, squeezed the merchants, and finally, immensely rich, allowed for a last payment, their troops to be defeated, and retired to the safety and ease of the foreign concessions in Shanghai or the British colony of Hong-Kong."<sup>19</sup>

The Chinese Revolution had become an incomprehensible chaos. The military rulers had alienated both the *literati* and the peasantry. No contest was visible between democracy and tyranny on the basis of principles. Throughout the period of warlord rule, from 1916 to 1925, conditions steadily deteriorated in the cities as well as the villages. In this period of disastrous floods and famines, democracy and the West's image had been discredited and cast aside. It is true that democracy was never given a fair trial in the early period of Republican China. Bourgeois democracy "had never taken root in this alien soil, and... the pitiful travesty of the early Republic was neither an example of democracy nor a proof of its failure."<sup>20</sup>

Yet this was the image that the Chinese

people witnessed of democracy in their country. "In the name of Parliament they had seen gross and shameless corruption; in the name of democracy they had seen nothing but weak and bad government, military usurpation, violation of law, every kind of oppression and national decline....the Chinese people were completely disillusioned with the false gods imported from the West."<sup>21</sup> Another effect of this tragicomedy was to discredit still further the fallen Empire. "The Chinese are not romantic, particularly in politics. No lost cause appeals to the Chinese, no fallen house receives sympathy or support. What has fallen is down and can never be raised up. There have been no restorations in China, no Jacobites, no ghosts from the political past....No one really thought that new dynasty, encumbered by the memories of the past, would prove able to steer China on to a new course. By 1920 it was clear that western democracy was not the solution and tacitly it was abandoned even by the revolutionary element."<sup>22</sup>

#### Towards People's Democracy

Nationalists and Communists alike consider the May Fourth Movement of 1919 as the culmination of China's cultural revolution. It also marks the beginning of modern nationalist struggle against foreign domination. The student-led demonstrations and the great general strike in Shanghai and other cities convinced many Chinese intellectuals that alliance with the masses was the only road to revolution and regeneration. The Russian Revolution of 1917 inspired many Chinese to study Marxism and Li-Ta-chao, the future Communist leader, "wrote prophetically of Russia and China's common revolutionary destiny.... Within a decade Marxism had become the dominant mode of thinking in both Communist and non-Communist intellectual circles."<sup>23</sup>

The Chinese Communist Party was formed in Shanghai in July 1921. Soon it entered into an alliance with the Kuomintang under Sun Yat-sen's leadership. But Sun died in 1925 and Chiang broke the United Front by resorting to White Terror against the Communists. When Chiang's brutality forced the Communists un-

18. *Ibid.*, pp. 50-51

19. Quoted in Schurmann and Schell (eds), *Republican China*, p. 31

20. Quoted in *Ibid.*, p. 33

21. C.P. Fitzgerald, *the Birth of Communist China*, p.53

22. *Ibid.*, p. 54

23. F. Schurmann and O. Schell (eds), *Republican China*, p. 87



derground, he cut them off from the workers of the city, but he could not break their contact with the agitated peasantry. The Communists started forming soviets in the areas liberated by them. Thus an 'armed revolution' came into existence confronting an 'armed counter-revolution' in China. After the famous Long March, the Communists established their own government in the Northwest. The Japanese invasion of China persuaded the Kuomintang and the Communists to form the Second United Front.

In 1945 the Japanese surrendered. China was now free from foreign invaders. But as soon as the Japanese laid down their arms, the old rivalry began between the Kuomintang and the Communists. The United Front, which was always vulnerable, collapsed. America helped Chiang to occupy Northern Chinese and Manchurian cities. The Communists moved into the countryside surrounding the urban centres. Despite American support, Chiang's army was routed in the Civil War. People's Republic of China came into existence in 1949. The Nationalists were driven out of the mainland and took refuge in the island of Taiwan where they are still ruling under American protection.

Mao has explained the nature of the people's democratic revolution in China in the following words, "The first imperialist world war and the first victorious social revolution, the October Revolution, have changed the whole course of world history and ushered in a new era....In this era, any revolution in a colony or semi-colony that is directed against imperialism *i.e.* against the international bourgeoisie or international capitalism, no longer comes within the old category of the bourgeois democratic world revolution, but within the new category. It is no longer part of the old bourgeois, or capitalist, world revolution, but is part of the new world revolution, the proletarian-socialist world revolution."<sup>24</sup>

The social basis of the People's Democratic State was a four class coalition of the workers, the peasants, the petty-bourgeoisie and the national bourgeoisie under the leadership of the Chinese Communist Party. It was directed against the feudal landowners, the bureaucratic capitalists and the imperialists. According to Mao, the proclamation of the Chinese People's Republic in 1949 was the consummation of the

new-democratic revolution which would create conditions for a continued revolution in the direction of socialism. The socialist transformation of China's economy was completed under Mao's leadership within a decade. Yet Mao was convinced that antagonistic contradictions still vitiated the Chinese society.

Mao Zedong pointed out, "In China although the main socialist transformation has been completed with respect to the system of ownership, and although the large-scale and turbulent class struggles of the masses characteristic of the previous military periods have in the main come to an end, there are still remnants of the overthrown landlord and comprador classes, there is still a bourgeoisie and the remoulding of petty bourgeoisie has only just started. The class struggle is by no means over. The class struggle between the proletariat and the bourgeoisie, the class struggle between the different political forces, and the class struggle in the ideological field between the proletariat and the bourgeoisie will continue to be long and tortuous and at times will become very acute. The proletariat seeks to transform the world according to its own world outlook, and so does the bourgeoisie. In this respect, the question of which will win out, socialism or capitalism, is still not really settled."<sup>25</sup>

In the cultural revolution, the radical wing of the Communist Party led by Chairman Mao fought against the 'capitalist-roaders' through a nation-wide campaign in which the workers and the youth were encouraged to participate in large number. Mao declared that representatives of the bourgeoisie have sneaked into the Party, the government and the army, occupying the highest posts in certain cases. They have also infiltrated into literary, educational and cultural institutions. All these bourgeois elements, he said, are counter-revolutionary revisionists who are conspiring to seize state power and establish a dictatorship of the bourgeoisie. Mao, therefore, asked the people to smash their plots for restoring capitalism in China.

After Mao Zedong's demise, the same revisionists and 'capitalist-roaders', led by Deng Xiaoping, who were denounced and persecuted during the cultural revolution, seized state power. The new ruling elite condemned the

24. Mao Zedong, "On New Democracy" in *Selected Works*, Vol. 2., pp. 343-344

25. Mao Zedong, *Four Essays on Philosophy*, p. 115



so-called 'cultural revolution' as a naked power struggle waged by a clique of the so-called 'radicals'. It disrupted production and inhibited economic development and demoralized the honest and hard-working Party and State cadres and leaders. Deng Xiaoping accused the 'gang of four', which also included Mao's wife, that it was trying to establish a 'fascist-type' dictatorship on the pretext of implementing the 'great proletarian cultural revolution'. The moderate ruling group gradually reversed the 'socialist' policies initiated by Maoist radicals in the sphere of agriculture and re-introduced privatization in industry, commerce and banking. Even foreign capital has been invited to contribute to China's industrialization in selected zones set up in the coastal provinces.

### The Cultural Revolution

The Great Proletarian Cultural Revolution, as Mao called it, was in the direct tradition of Mao's conception of revolution as a continuing process. "Central to this conception is the idea that the existing situation must be constantly reviewed and called into question to prevent the re-emergence of the former exploiting classes in positions of influence, in the form of repeated 'class struggle' movements, and a whole series of policies of 'thought reform' and 'rectification' movements."<sup>26</sup> The basic concept behind these campaigns has been that the human values and cultural norms are the crucial factor in the functioning of society; and that even a political revolution and seizure of state power leading to collective ownership of the major means of production cannot guarantee the success of a socialist revolution unless there is also a revolution in men's mode of thought.

The old morality was derived from the old bourgeois society of capitalism, private property and self-interest. The new morality must be related to socialism, collective property and public interest. Mao believes that bourgeois culture and ideas will not disappear on their own, they will have to be driven out and then replaced by socialist values and culture. The Cultural Revolution aimed at changing men's minds and, in addition, replacing the personnel wielding power that still retained older modes of thinking, bourgeois or feudal. One distinguishing feature of the Cultural Revolution was the

role played by a new extra-Party organisation of the youth, the Red Guards, that came into existence to spearhead it.

According to Mao's theory, classes continue to exist under socialism; these are not classes in the traditional Marxist sense which are related to the ownership of property like landlords, peasants, capitalists and workers. They are rather functional classes such as managers, party leaders, state officials intellectuals, peasants and workers. Contradictions still exist between them which may develop into sharp hostilities. Unless they are properly resolved, they can lead to a fundamental conflict between rulers and ruled. This happened in Russia after the death of Stalin. Through the Cultural Revolution, Mao wanted to escape from Russia's fate of backsliding into ideological revisionism.

*Liberation Army Daily* in its editorial on the 3rd November 1966 explained the nature and purpose of the Cultural Revolution in the following words, "Conducted mainly in the ideological field, fundamentally it is a great revolution to destroy the thousands-of-years old concept of private ownership and establish the socialist concept of public ownership.... Ideas, culture, customs, habits, political views, legal concepts, views on art and so on are all ideological forms in society, which generally go under the name of culture. Why must we carry out a cultural revolution in the period of socialism? The reason is that the economic base of society has undergone fundamental change.... Since the economic base has changed, the ideological super-structure must change accordingly to keep step with it. Otherwise it will obstruct the forces from developing, lead to the loss of the already-won fruits of the revolution, and give rise to revisionist rule and the restoration of capitalism."<sup>27</sup>

In 1964, Mao claimed that literary and artistic circles had behaved for the last fifteen years as arrogant bureaucrats, had not identified with the workers and peasants and had not reflected socialist revolution and socialist construction. In 1965 he criticized the reactionary bourgeois authorities in the universities. In 1966 certain party leaders of Peking and their journals were attacked for their pro-capitalist views. *Peking Review* declared, "The overthrown bourgeoisie, in their plots for restoration and sub-

26. Stuart Schram, *Mao Tse-tung*, quoted in *The Chinese Road to Socialism*, p. 99

27. Quoted in E.L. Wheelwright and Bruce McFarlane, *The Chinese Road To Socialism*, pp. 106-107



version, give first place to ideology, take hold of ideology and the superstructure. The representatives of the bourgeoisie...did all they could to spread bourgeois and revisionist poison through the media of literature, the theatre, films, music, the arts, the press, periodicals, the radio, publications and academic research and in schools etc., in an attempt to corrupt people's minds... as ideological preparation... for capitalist restoration."<sup>28</sup>

After some time, the Eleventh Plenary Session of the Eighth Central Committee of the Chinese Communist Party adopted the sixteen points on August 8, 1966, as guidelines for the Cultural Revolution. The decision specified that "at present our objective is to struggle against and overthrow those persons in authority who are taking the capitalist road...so as to facilitate the consolidation and development of the socialist system."<sup>29</sup>

Mao and his allies were using the Red Guards as the spearhead of the new revolution. They were offered free rail transport anywhere in China, free food, and free lodging in schools and colleges. Millions of these young men and women came to Peking to be addressed by their leader, who exhorted them to fan out to other cities and the countryside. There was some violence. The 'capitalist-roaders' were beaten up, the temples were desecrated and houses of the 'bourgeoisie' were ransacked and their goods confiscated. Mao emphasized the people's right to rebel as the great truth of Marxism. He talked of "bombarding the Party headquarter". It is easy to see why. The Maoists were at that time the minority group in the Party Central Committee. Of seven members of the former Standing Committee, Liu Shaoqi, Deng Xiaoping, Zhu Deh and Chen Yun were "rightists", only three stood with the "proletarian line", Mao Zedong, Lin Biao, and Zhou Enlai. The task was to overthrow those in authority, smash the Party and State apparatus and assert the supremacy of "revolutionary committees" set up by the "proletarian headquarters" of the cultural revolution.

By April 1968, the Cultural Revolution in China had entered a new stage. The proletarian headquarters around Mao had seized power in

twenty-three out of twentyseven provinces; Mao's ally, Zhou Enlai had also established full control over the Central Government; and an attempt was being made to run a modern economy on "moral incentives" and "mobilization of the masses" with profound effects on production and efficiency. The latest phase was featured by the overthrow of an elite group of party bureaucrats, managers, technocrats and state functionaries. "Maoists did not see the Cultural Revolution as a zigzag stage in the policy and tactics between Left and Right, or as an opportunity for the Left to push ahead to a new advance, The issue between them and the Liu Shaoqi group was seen as being *Over the whole nature and raison d'etre of the socialist revolution.*"<sup>30</sup> The cultural revolution signified that the struggle between "two lines" in the Communist Party had been transformed into the struggle between "two roads" — capitalism and socialism-in the national arena.

#### Socialism with Chinese Characteristics

The last phase of Mao Zedong's life saw a high degree of polarisation between the ultra-leftist radicals of Shanghai led by Jiang Qing and the supporters of Zhou Enlai and Deng Xiaoping. A basic conflict between them centred on their experiences during the Cultural Revolution and their responses towards its legacy. Jiang's group believed that the class struggle between the proletariat and the bourgeoisie was an important feature of an early socialist society and during that phase the danger as well as the possibility of capitalist restoration was very real. They emphasized high levels of collectivisation, normative incentives, indigenous technological development and an open education system. The moderates stressed pragmatic policies in agriculture, industry and education which were more result-oriented and less ideological. As Kalpana Misra put it, 'Evaluating socio-economic policies in terms of developmental imperatives and efficiency they perceived ultra-leftist pre-occupation with class and class-conflict as antithetical to their goals.'<sup>31</sup>

Mao's approach at this time was dualistic. He tacitly supported the leadership of the moderates in the economic sphere but at the same time encouraged the ultraleftist criticism of their

28. *Peking Review*, June 10, 1966

29. *Eastern Horizon*, January 1967

30. E.L. Wheel Wright and Bruce McFarlane, *The Chinese Road to Socialism*, p. 122

31. Kalpana Misra, *From Post-Maoism to Post-Marxism*, p. 117



economic policies. "The twin campaigns to Restrict Bourgeois Right and Strengthen the Dictatorship of the Proletariat that dominated the Chinese media in 1975-76 aimed specifically at undermining the legitimacy of moderate economic initiatives and labelling them ideologically suspect tactical expedients."<sup>32</sup>

In 1981-82, the moderate reformers were in a stronger position. The controversy over stages was finally settled in their favour. The definition of socialism as public ownership of the means of production and distribution according to work was now recognized as the correct description of socialist society. An economic reform was expedited during the 1980s. However, the reality of economic liberalisation became inconsistent with such a statist conception of the socialist economy. Deng's intervention on behalf of the reformers propelled the Chinese economy further in the direction of liberalisation. Zhao Ziang's followers used the inherent contradictions of the half-way reform to press for further acceleration and deepening of the reform process.

Zhao Ziang pointed out that China's "per capita GNP still ranks among the lowest in the world... the backwardness of the productive forces determines the following aspects of the relations of production: socialisation of production... is still at a very low level; the commodity economy and domestic market are only beginning to develop; the natural economy and semi-natural economy still constitute a considerable proportion of the whole; and the socialist economic system is not yet mature and well-developed."<sup>33</sup> Given this under-development of its productive forces, China's primary stage of socialist development "was destined to span almost a century and a half. During this stage China would accomplish industrializing and modernization of production, which many other countries had achieved under capitalist conditions."<sup>34</sup>

The thesis that China was then in the primary stage of socialism aimed at clarifying the nature of both 'right' and 'left' mistakes. On the one hand it criticised the view that China

could not take the socialist road without going through the stage of fully developed capitalism. On the other hand, it argued against skipping over stages and attempting policies appropriate to a much higher level of development as this was sheer utopianism. On the basis of a proper understanding of the current stage of growth, it was possible for Dengist leadership to devise suitable policies for the building of "Socialism with Chinese Characteristics."

In fact, this thesis about the primary stage of development could not provide a proper ideological justification sought by the Dengist leadership. The developments related to structural reform as well the inconsistencies inherent in the theory of the 'primary stage of socialism' rendered the definition of socialism in the early 1990s quite ambiguous. They undermined the credibility of their claim that China was still engaged in building 'socialism' of any stage, primary or otherwise. "A premature declaration of socialism simply highlighted the fact that China's socialist transformation' was in essence an administrative decree and not in any way a reflection of objective reality."<sup>35</sup>

In late 1980s and early 1990s, when economic crisis and rampant bureaucratic corruption prevailed, some radical reformists advocated elimination of price controls, establishment of full-fledged market economy, even the abolition of public ownership and the institution of private property rights. "As a fulfilment of Maoist prophecy that such a state of affairs would eventually lead to 'capitalist restoration' some of the most vocal of Chinese reformers now insistently pressed for the substitution of public ownership with private-property relations."<sup>36</sup>

The theory of the primary stage of socialism failed to counter Zhao Ziang's critics both on the left and the right. From the moderate perspective it could not provide legitimation either to the system or generate support for the goals of the leadership. The rightists felt that Zhao's approach did not go far enough because they had by then completed the transition from revision to renunciation of the socialist protect. For Mao, 'payment according to work' was 'the

32. *Ibid.*, p. 118

33. Zhao Ziang, "Advance Along the Road of Socialism with Chinese Characteristics," report delivered at the 13th Conference of the Communist Party of China on 5 October, 1987

34. Kalpana Misra, "From Post-Maoism to Post-Marxism," p. 111

35. *Ibid.*, p. 113

36. *Ibid.*, p. 114



exchange of equal values' that prevailed in capitalist economy. The dangers of extolling this principle as a positive socialist method of distribution, as Deng Xiaoping and his supporters were doing, were correctly pointed out by Yao Wenyuan.

This Chinese critic of Dengist policies predicted that "a small number of people will in the course of distribution acquire increasing amounts of commodities and money through certain legal channels and numerous illegal ones; capitalist ideas of amassing fortunes and craving for personal fame and gain, stimulated by such 'material incentives' will spread unchecked; phenomena such as the turning of public property into private property, speculation, graft and corruption, the theft, and bribery will increase; the capitalist principle of the exchange of commodities will make its way into political and even into Party life, undermining the socialist planned economy; acts of capitalist exploitation such as the conversion of commodities and money into capital, and labour power will occur... as a result, a small number of new bourgeois elements and upstarts... will emerge from among Party members, workers, well-to-do peasants, and personnel in state organs. When the economic strength of the bourgeoisie has grown to a certain extent, its agents will demand political rule, demand the overthrow of the dictatorship of the proletariat and the socialist system, demand a complete changeover from socialist ownership, and openly restore and develop the capitalist system."<sup>37</sup>

The early post-Mao debate on 'the bourgeois right' developed out of the need to invalidate the leftist 'egalitarianism' and argue that China's socialist development was not being sabotaged by the new Dengist socio-economic policies. The controversy over whether class should be defined primarily on economic basis or in terms of ideological and political criteria also was likewise concerned with the denial of the hostile emergence of new exploitative social classes in 'socialist' China. For the moderate leaders and intellectuals, who were criticised as the 'capitalist roaders' in the past, the emphasis on economic criteria was quite necessary at this stage but this assertion brought them into conflict

with the growing reformist trend towards privatization. The radical reformers found political criteria more useful for understanding the new role of capital in the increasingly market-oriented economy. "For very different reasons, Mao's most vociferous critics found themselves in agreement with his position on class status."<sup>38</sup>

In addition to superstructural elements inherited from the old social order, a second source of class polarization and capitalist restoration, according to Mao, was bureaucratic degeneration and an alliance between party-state bureaucracy and the liberal and technocratic intelligentsia. The revolts of intellectuals, students and other strata in Eastern Europe, the 'cult of the expert' advocated by Liu Shaoqi, Deng Xiaoping and others and their opposition to the Socialist Education Movement had convinced Mao that a 'bureaucratic-political' nexus was emerging in China also which would obstruct further advance towards socialism. The post-Mao Dengist leadership reversed Mao's preference for continuous revolution in favour of an elite-guided process of steady economic development based on pragmatic planning and professional expertise.

After his rehabilitation, Deng restored the legitimacy of the 'revisionist' cadres and denounced the 'falsehoods' which were 'peddled by the Gang of Four (his term for the overthrown radical leaders). Deng's argument for dismissing the existence of a bureaucratic class was that the Communist cadres did not own the means of production and, therefore, it was not possible for them to exploit the workers or the peasants. Dengist educational reforms focused primarily on the tasks of economic modernization. The significance of differential access to education in systems in which the power and privileges enjoyed by the elite cannot be inherited has been highlighted by many writers. Paul Sweezy singled out privileged access to education as "probably the most important way in which the bureaucracy reproduces itself as a class."<sup>39</sup> The emergence of a powerful and wealthy group of industrial and commercial entrepreneurs reinforced the 'bureaucratic bourgeoisie within the Party' because it could assist them through bureaucratic manipulation of the partially pri-

37. Yao Wenyuan, "On the Social Basis of the Lin Biao Clique", *Hongji*, no. 4(1975) pp. 20-29.

38. Kalpana Misra, *From Post-Maoism to Post-Marxism*, p. 149

39. Paul Sweezy, "Towards a Programme of Studies on the Transition to Socialism," in Paul Sweezy and Charles Bettelheim, *On the Transition to Socialism*, New York: Monthly Review Press, 1972, pp. 123-135



vatzed economy.

As a shrewd observer explains it, "Party-state functionaries' privileged and monopolist access to and control over material resources, capital base, licensing etc., along with connections and networks put them in a unique position to exploit the opportunities offered them from economic liberalization. The beneficiaries of half-way economic reform were the bureaucrat capitalists whose new-found channels for amassing wealth would be undermined by a return to the structures, norms, and values of the planned socialist economy, whereas a transition to a complete market, i.e., a full-fledged capitalist restoration would deny them their special inside tracks."<sup>40</sup>

According to Charles Bettelheim, all Soviet-type societies eventually degenerated into bureaucratic or state capitalism and after the collapse of Communist Party rule in these countries, they are trying to create market-oriented economies, although the remnants of state capitalism still co-exist with the new features of market capitalism in all these societies. In China, the Dengist leadership introduced strong elements of market capitalism and capitalist social relations without completely demolishing the earlier structures of state capitalism and the command economy. Here we had a curious spectacle of the Communist Party itself presiding over the liquidation of its own revolutionary legacy.

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