

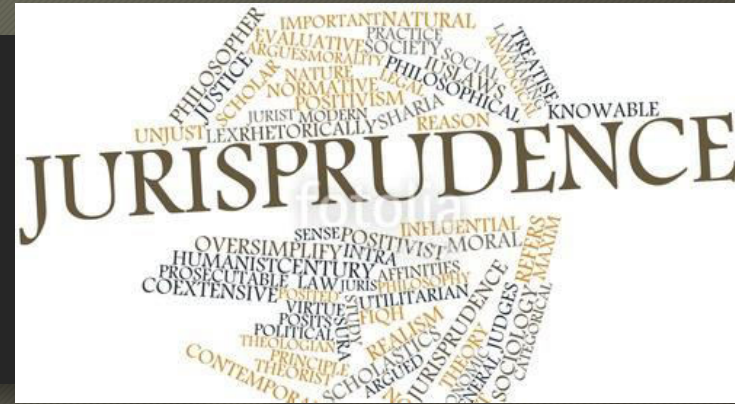


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# Jurisprudence

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# Definition-Jurisprudence

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- This term is derived from Latin word Jurisprudencia.
- Juris - Law
- Prudentia - Knowledge or skill
- There is no uniform definition
- Salmond -The science of Law
- Austin-The science of positive law

# Object

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- Object of studying Jurisprudence
- To study theory of Law
- To study its fundamental principles and concepts
- It is a systematic and scientific study of existing rules (it is also called philosophy of law)

# Definition of Law

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- Law means command or rule
- Austin : Law is command of sovereign. The aggregate of rules set by men as politically superior Sovereign
- Salmond :The body of principles recognized and applied by state



# POSITIVE THEORY

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- Austin theory is known as positive theory or imperative theory.
- Law is command of sovereign
- Sovereign here is a person or body of person whom the political society habitually obeys
- Every command of sovereign accompanied by Sanction . Hence is positive and imperative nature.

## Three main features are

- It is a command
- It is laid down by a sovereign authority
- It has a sanction behind it

# CRITICISM

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- All legal principles are not commands enforced by sanction
- Some principles may be exceptions
- It is not suitable to a modern democratic country.
- This definition cannot be applied to Hindu and Muslim law
- This definition cannot applied to international law .

# SALMOND- LEGAL REALISM

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- It is the body of principles recognized and applied by the state in administration of Justice.
- Law consists of the rules recognized and acted upon by the courts of justice.
- Court have to follow the principles of law
- Court have to interpret the true meaning of the acts of legislature
- This theory also known as legal realism

# CRITICISM

8

- Law is logically subsequent to the administration of justice
- Importance given to the courts instead of legislature.
- Salmond says law is a means to achieve justice
- **Purpose of law**
- To maintain law and order in the society
- To maintain the status quo in the society
- To enable individuals to have the maximum of freedom
- To maximize satisfaction of the needs of the people



# Schools of Jurisprudence

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- Jurisprudence mean knowledge of law
- School means idea

Schools are classified in to following

- Analytical school
- Historical school
- Natural law school
- Sociological school
- Philosophical school
- Realist school
- Comparative school

# Analytical school

10

- John Austin is the founder of this school
- It is also called positive school
- Law as the command of the sovereign backed by sanction
- It is advocated for codification of law followed by sanction.
- Criticism
- All laws are not commands e.g declaratory statutes.

# Historical school

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- Savigny is the chief exponent of historical school.
- According to him law is found, but not made
- Law is reflection of people's historical experience, culture and spirit.
- Ancient custom guides the law
- Law is result of the growth of legal principles and not the result of deliberate decisions

# CRITICISM

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- Every law cannot be people's common consciousness
- Customs are not always based on popular consciousness
- Every custom has no force of law
- Statue law overrides custom



# Distinction between Analytical school and historical school

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## Analytical school

- Law is command of sovereign
- Law is made by state
- There is no law without sovereign
- Sovereign enforces the law
- Customs is the source of law

## Historical school

- Law is product of history
- Law exists even before state exist
- Sovereign cannot enforce it
- Custom is not source of law

# Sociological school

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- Montesquieu and Emil Durkheim are chief exponents of sociological school
- Sociology is the study of society
- Law is part such society. Hence law is a social institution
- Sociological jurists consider law as a social phenomenon.
- Law reflects human needs and functions as an organized system

# Conti..

15

- According to Durkheim law is derived from morality of society
- Law binds the individuals to the society
- Law is measuring rod for society
- Law must be penal nature
- It is index to the level of development within a community

# Philosophical school

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- Kant , Hobbes are the chief exponents of Philosophical school
- Law is the product of human reason and its purpose is to elevate and enable human personality.
- Law act as a harmonizing agent to bring an individual with general will of the community.
- Justice can be achieved by applying ethical and moral principles through the courts.



# Comparative school

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- This school is mainly concerned with comparison of different systems of jurisprudence in different countries.
- The comparative analysis gives better insight about the legal system.
- The merits of two or more legal systems can be adopted to establish an effective system of law.
- The benefits of comparative study are seen in several countries in drawing up of new constitutional in modern democracies

# Theories of Punishment

18

- Deterrent theory
- Retributive theory
- Reformatory theory
- Preventive theory
- Expiatory theory.

# Kinds of Punishment

19

- Death punishment
- Life imprisonment
- Imprisonment solitary confinement
- Forfeiture of property
- Fine.

# Sources of Law

20

- Legislation
- Precedent
- Custom
- Agreement
- Opinion of Jurists



# Legislation

21

- Legislation is one of the sources of law
- Salmond legislation is the declaration of legal rules by a competent authority
- Classification
- Supreme Legislation
- Subordinate legislation

# Legislation

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- Subordinate legislation
- Colonial legislation
- Executive legislation
- Judicial legislation
- Municipal legislation
- Autonomous legislation

# Advantages & Disadvantages of legislation

23

## Advantage :

- It is reliable
- It is declared law
- It can make and unmake law
- It is genral in application
- It is progressive and effective
- It is also applied retrospectively
- it can be amended and repeal

## Disadvantage

- It is complex
- It lacks clarity
- It is extremely rigid
- It contains water tight rules
- Is is sometimes ambigious

# Precedent

24

- Precedent means decision of a court
- It is also known as case law or judicial decision

## Kinds of Precedent

- Authoritative precedent
  - a) Absolute precedent
  - b) conditional precedent



# Precedents

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- Authoritative Precedent
- Whether judges approve it or not this kind of precedent must be followed
- Absolute precedent - Judges must follow
- Conditional Precedent - The judges may disregard or overrule.
- Persuasive Precedents: the judges are under no obligation to follow

# Advantages & Disadvantages

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## Advantages :

- Provides guidance to judge in decision making
- Effective check on the arbitrary discretion

## Disadvantages

- It is difficult to find out relevant decision
- It creates doubts on opinions of different court.

# Ratio Decidendi

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General meaning- reason for the decision

- An authoritative principle of Judicial decision is called ratio decidendi
- It is binding on the courts

# Obiter Dictum

28

- Something said by judge which does not have any binding authority



# Stare decisis

29

- the law which is settled by a series of decisions is generally binding on the courts and should be followed
- Law declared by the supreme court shall be binding on all the courts in India.

# Prospective over ruling

30

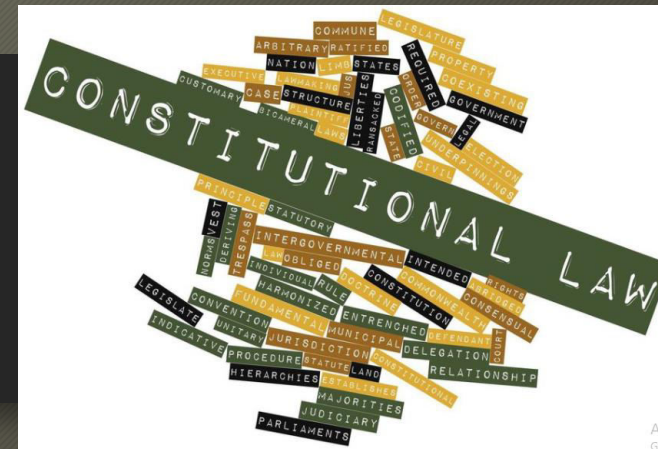
- Reversing the decision of a lower court by superior court .
- SC And HC can over rule their own earlier decisions by another bench of judges consisting of more number of judges.

# Custom

31

- Custom means long time practice

# Constitutional Law





# Introduction

33

- Our constitution was Adopted on 26<sup>th</sup> November, 1949
- Our constitution came into Force on 26<sup>th</sup> January, 1950



# Salient features of Indian constitution

34

- Longhiest Constitution in the world
- Preamble
- Parliamentary form of Government
- Unique blend of rigidity and flexibility
- Fundamental rights
- Directive Principles of state policy
- Fundamental duties
- Adult suffrage
- Single citizenship.... Dual Citizenship/OCI
- Independent Judiciary

# Types of constitution

35

- Unitary type
- Federal type
- The constitution of India is neither purely federal nor purely unitary. But is a combination of both.
- It may be also called as quasi federal

# Preamble

36

**WE THE PEOPLE OF INDIA** having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens

**JUSTICE**, social, economic and political  
**LIBERTY** of thought, expression, belief, faith and worship  
**EQUALITY** of status and of opportunity  
and to promote among them all.

**FRATERNITY** assuring the dignity of individual and the unity and integrity of the nation.

**IN OUR CONSTITUENT ASSEMBLY** the twenty-sixth day of November, 1949, do, **HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION**



# Preamble

37

- Preamble means introduction or preface
- By studying the preamble we can infer aim and object of the constitution
- Aim: To form a government, the government must be democratic, Republic, Sovereign, Socialistic, Secular
- Object : Equality for all, Justice for all, Freedom for all and fraternity.
- We can also infer that who enacted our constitution

# Kesavanada Bharati vs State of Kerala (AIR1973SC1461)

38

- Preamble is the part of the constitution
- It can be amended without altering the basic structure of the constitution
- After this ruling by 42<sup>nd</sup> amendment we have included the words Socialist, Secular in the preamble

# Citizenship

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- Part II of the Constitution speaks about citizenship
- Art 5 to 11 deals about citizenship

## Citizens

- Who are born in the territory of India
- Either of whose parents was born in the territory of India
- Who has been ordinarily resident in the territory for not less than five years preceding such commencement shall be a citizen of India

# Citizenship Act, 1955

40

Citizenship may be acquired by any one of the following mode

- Birth
- Descent
- Registration
- Naturalization
- By incorporation of Territory



# Definition of State

41

- State includes
- The Government and Parliament
- The Government and Legislature of each state
- All local bodies
- **Other authorities**(not clearly defined)

## CASE LAW

- Air Port Authority of india vs Ramana Dayaram shetty

AIR 1979 SC 1628. 3.

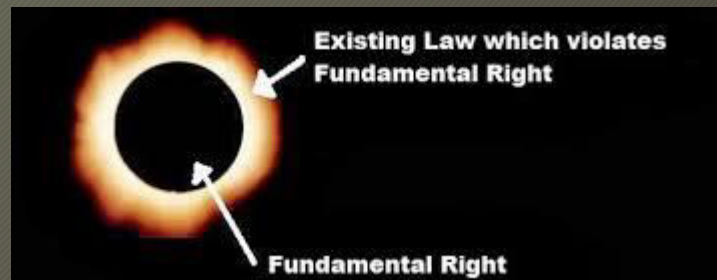
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# Doctrine of eclipse

42

- Eclipse means over shadowing
- Some times law becomes inoperative for the time being this is called eclipse.
- Pre constitutional laws which is inconsistent with the fundamental rights shall become void after constitution came into force later by way of amendment it becomes enforceable.
- The doctrine is not applicable to Post constitutional laws  
State of Gujarat Vs Ambika Mills (AIR1974SC1300)



# Judicial review

43

- Judicial review is the highest power of the High court and Supreme court.
- These courts pronounce upon constitutionality of the legislations past as well as future Under Art 226 and Art 32.

## Exception : Schedule IX

- Exception also removed in 2007 Judgment of SC
  - Case law
  - I.R. Coelho (Dead) By Lrs v State of Tamil Nadu and Others 2007 (2) SCC 1 : 2007 AIR(SC) 861

# Fundamental rights

44

- Right to Equality **Art 14 -18**
- Right to particular freedom **Art 19-22**
- Right against exploitation **Art 23-24**
- Right to freedom of religion **Art 25 -28**
- Cultural and educational rights(Right to minority)**Art 29-30**
- Right to constitutional remedies **Art 32**





# Fundamental rights

## Right to Equality Art 14-18

45

- Art 14: The state shall not deny to any person equality before the law and the equal protection of the laws within the territory
- Art 15 :The state shall not discriminate any citizen on the grounds only of religions, race caste, sex ,place of birth
- Art 16:Deal with Equality of opportunity in matters of public employment
- Art 17; Abolishes untouchablity.
- Art:18 :Abolition of title. If any body want get awards from foreign country (except educational award)then they have to get permission from Govt of India.

# Right to freedom

46

- Art 19 enumerates the following freedom
- Right to speech
- Right to Assembly
- Right to form Association
- Right to move
- Right to reside and settle
- Right to do trade or business
- Right to property ( Removed by way of 44 th amendment)

# Reasonable Restrictions

47

## Clause -2 of Art 19

- Security of the state
- Friendly relations with foreign state
- Public order
- Decency and morality
- Contempt of court
- Defamation
- Incitement of offence
- Sovereignty and integrity of India

## Protection in respect of conviction of offence- Ex post facto Law Art 20(1)

48

- **Ex post facto laws:** Art 20(1): if an act was not an offence at the time or when it is committed It cannot be an offence at the date subsequent to commission.
- The main focus :Retrospective effect for Criminal law is not permitted.

### **Kedar Nath Vs State of West Bengal AIR1953SC404**

- Accused committed offence in 1946 which under The act force was punishable by imprisonment or fine or both.The Act was amended in 1949 which enhanced the punishment for the same offence by additional fine equivalent to the amount of money The enhance punishment is not applicable for the offence committed in 1947



# Article 20(2) (Double Jeopardy)

49

- Art 20(2) Prohibits second trial or double punishment for the same offence more than once.
- Essentials
- The person must be accused of offence
- The person must have been prosecuted before a court of tribunal
- There must be prosecution and punishment in previous proceedings
- The offence must be same in both proceedings
- Case Law:
- Maqbool Hussain Vs State of Bombay AIR 1953 SC325
- Venkataraman Vs Union of India AIR 1954 SC 375.

# Self Incrimination Art 20(3)

50

- No person accused of any offence shall be compelled to be a witness against himself.

## Essentials

- The person must be an accused of an offence
- There must be compulsion against accused to give evidence
- It must be against himself.

## Case Law

- Nandini Satpathy Vs P.L Dani AIR 1977 SC 1025

# Protection of Life and liberty

## Art-21

51

- Right under Art 21 is available to both citizens and non citizens
- The right can be claimed only when the right to life and personal liberty is deprived by the state .

### Essentials:

- There must be a valid law
- The law must be prescribe the procedure
- The procedure must be just fair and reasonable

# Important case Law - Art 21

52

A.K.Gopalan Vs  
Union india  
AIR1953 Sc 27



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21. Protection of life  
and personal liberty.

-

No person shall be  
deprived of his life or  
personal liberty  
except according to  
procedure  
established by law.

Maneka Gandhi  
V Union of India  
AIR1978SC597





# Right to Education

53

- Right to education is a fundamental right Children between the age of 6-14 has the right to free and compulsory education

## Case Law-

- Unni Krishnan v. State of A.P. and Ors. (1993 (1) SCC 645)

# Protection against Arrest and Detention

54

- Art 22 deals with following two different aspects
- Persons arrested under ordinary law of crimes Art 22(1)& (2)
- Persons detained under law of preventive detention(4)(5) (6)&(7)

# Article 22

55

- Art 22 (1)&(2) -Right to be informed of grounds of arrest as soon as may be
- Right to consult Advocate own choice
- Right to be produced before a magistrate within 24 hours
- Right not to be detained beyond 24 hours except by the order of Magistrate
- Art 22(3) The rights given to arrested person under clauses (1) and (2) are available to enemy and alien And person arrested under preventive detention Act
- Art 22(5) to (7)
- Grounds of Arrest must be communicated
- Review by Advisory Board
- Opportunity to represent against order of detention
- Information about arrest to his family or his friend
- No detention beyond two months (44<sup>th</sup> amendment) without approval of advisory board
- \* Structure of Advisory board-one sitting judge of high court and two retired judges of High court

# Right against exploitation

## Art 23-24

56

- Art 23: No person shall be forced to provide labour or service against his will under contract of service
- Art 24 Prohibits employment of Children below 14 years in factories and hazardous employment

### Case Law

- Peoples union for Democratic rights Vs union of India AIR1982Sc 1943

### Case Law

- M.C.Metha Vs TamilnaduAIR1997 SC699



# Right to Freedom of Religion

57

- Citizens of the country has the right to profess , practice and propagate any religion (Art 25(1))
- This freedom is subjected to public order, morality and health
- Freedom to manage religious affairs(Art 26)
- Prohibition of religious education (Art 27)
- Freedom from taxes (Art 28)

# Cultural and educational rights of Minority

58

- Rights of any section of the resident citizen to conserve their own language (Art 29 (1))
- Right of the citizen not to be denied admission into any state maintained and state aided educational institution on the ground of religion Art 29(2)
- Right of all religious and linguistic minorities to establish and administer educational institutions of their choice (Art 30(1))
- Right of an educational institution not to be discriminated against in the matter of state aid on the ground that it is under the management of a religious or linguistic minorities (Art 30(2))
- **T.M.A. Pai Foundation v. State of Karnataka (2002) 8 SCC 481**

# Right to constitutional remedies

59

- Arts 32 & 226 provide speedy and effective remedy for the enforcement of fundamental rights
- Art 32 gives right to any person to move supreme court to enforce fundamental right
- Art 226 gives right to move high court of the state for violation fundamental right as well as constitutional rights

# Difference between Art 32 & Art 226

60

## Art 32

- Gives power to Supreme court
- It can be enforced only for violation of fundamental rights
- It is considered as a Basic structure of constitution

## Art 226

- Gives power to High court
- To enforce fundamental rights as well as ordinary right
- where as Art 226 is not considered as Basic structure of constitution



# Types of writ

61

## Writs

- Writ of Habeas corpus
- Writ of Mandamus
- Writ of Certiorari
- Writ of Prohibition
- Writ of Quo Warranto

# Habeas corpus

62

- Meaning - have the body
- Purpose : Not to punish wrong doer, but to release detainee
- Who may apply: any body who having interest apply, next friend or relative
- Against whom: Against any authority or person who illegally detained the person

# Mandamus

63

- Meaning - We command
- Purpose : to protect legal right,
- Who may apply: any person whose right is violated
- Against whom: Authority amenable to this writ is government , quasi government Public authorities judicial and quasi judicial tribunals and universities

# Certiorari

64

- Meaning - means to demand the certification of proceedings before the subordinate authority
- Purpose : To supervise the lower courts
- Who may apply: those persons whose legal right is violated
- Against whom lie?: lies against inferior court or tribunal or body exercising judicial and quasi judicial functions



# Prohibition

65

- Meaning - restraint of permanent nature
- Purpose : To supervise the lower courts
- Who may apply: those persons whose legal right is violated
- Against whom lie?: lies against Judicial and quasi judicial authorities

# Quo warranto

66

- Meaning - under what authority
- Purpose : Controls the administrative action in the matters of public appointment
- Who may apply: Originally it was applicable to the aggrieved person only. Now any person can apply

# Directive Principles of state policy

## Art 38 -51

67

- Directive principles
- The state shall promote the welfare of the people (Art 38)
- Right to adequate means of livelihood (Art 39a)
- the ownership and control of the material resources of the community are so distributed as best to sub serve the common good (Art 39b)
- the operation of the economic system does not result in the concentration of wealth and means of production Art 39 ( c )
- Right of both sexes to equal pay for equal work (Art 39d)

# Contd..

68

- Health and strength of workers (men and women and the tender age children are not abused) and that citizens are not forced by economic necessity to enter in to avocation unsuited to their age Art 39 e
- Children's are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment Art 39 f



# Contd..

69

- Equal justice and free legal aid **Art 39 A**
- Organization of village Panchayat **Art 40**
- Right to work, to education and to public assistance in certain cases **Art 42**
- Just and humane conditions of work and maternity relief **Art 42**
- Living wage for workers **Art 43**
- Participation of workers in management of industries **Art 43 A**
- Uniform civil code **Art 44**

# Contd..

70

- Provision for free and compulsory education for children  
Art 45
- Promotion of educational and economic interests of the schedule castes and Schedule tribes and other weaker section  
Art 46
- Duty of state to raise the level of nutrition and the standard of living and to improve Public health Art 47
- Organization of agriculture and animal husbandry Art 48
- Protection and improvement of environment and safeguarding of forest Art 48A
- Protection of monuments and places and objects of national importance Art 49
- Separation of judiciary from executive. Art 50
- Promotion of international peace and security Art 51

# Fundamental duties - Art 51-A

71

1. To abide by the constitution and respect the ideals and institutions, the national flag and National anthem
2. To cherish and follow noble ideals which is inspired our national struggle
3. To uphold and protect the soverginity, unity and integrity of India
4. To defend the country and render national service when called upon to do so



## •Contd..

72

1. To promote harmony and the sprit of common brotherhood amongst all the people of India transcending religious , linguistic minority and regional or sectional diversities , to renounce practices derogatory to the dignity of women
2. To value and preserve the rich heritage of our composite culture
3. To protect and improve the natural environment
4. To develop the scientific temper, humanism
5. To safeguard public property
6. 10.To strive towards excellence in all spheres of individuals and collective activity so that the nation constantly rises to higher levels of Endeavour and achievement
7. Parents must send their children to school



# The President Art 52-62 &72

73

- President is the head of the state (Art 52)
- Executive power of union is vested with the President (Art 53)

## Qualification

- He must be a citizen
- He must have completed the age of 35 years
- He must be qualified for election as member of the house of the people
- He must be a qualified voter
- He must not hold any office of profit under the Government

# Contd..

74

- Election of president (Art 54)
- Term of office of the president (Art 56)
- Pardoning power (Art 72)
- Emergency power (Art 352,356, 360)

# The Vice President Art 63-71

75

- Vice president -(Art 63)
- Qualification
  - He must be a citizen
  - He must have completed the age of 35 years
  - He must be qualified for election as member of the house of the people
  - He must be a qualified voter
  - He must not hold any office of profit under the Government
- Election of Vice president Art 66(1)
- Term of office of vice president (Art 68)

# The Governor Art 153-162

76

- Each state shall have a Governor (Art 153)
- Governor appointment (Art 155)
- Tenure of office (Art 156)
- Introduction of money bill only on recommendation of Governor (Art 203(3))
- Governor may power to Dissolve legislative assembly in accordance with (Art 174(1) &(2))
- Pardoning power (Art 161)



# Independence of Judiciary

77

- Restriction on discussion in parliament (Art 121)
- Appointment of judges to SC (Art 124)
- Removal of a judge of SC.(Art 124(4))
- Salary and expenses from consolidated fund for Supreme court(Art 146(3)& For high court (Art229))
- Court of Record- (Art 129)
- Autonomy \_ Autonomy for SC conferred under (Art 146) & for HC (Art229)
- Separation judiciary from executive ;(Art 50)

# Supreme court Art 127-143

78

- Supreme court is the Apex court in India
- Number of Judges 26 judges including Chief justice
- Age -up to 65 years
- Ad hoc judges -(Art 127)

## Jurisdiction of Supreme court

- Writ jurisdiction (Art 32)
- Court on Record (Art129)
- Original Jurisdiction (Art 131)
- Appellate Jurisdiction (Art 132,133,134)
- Federal courts jurisdiction (Art 135)
- Appeal by special leave (Art 136)
- Review of Jurisdiction (Art 137)
- Advisory jurisdiction (Art 143)

# Legislative relation between the centre and state Art245-255

79

- Legislative relation divided between central and state. The legislative powers are distributed with respect to

Territorial jurisdiction

Subject matter of jurisdiction

- Territorial Jurisdiction
- The union parliament is empowered to make laws for the whole or any part of the territory of india
- The state legislatures are empowered to make laws for the whole of any part of the state (Art 245(1))
- A law made by parliament shall not be declared to be invalid on the ground it has extra territorial operation. However the state laws would be void if it has extra territorial jurisdiction . (Exception :If there is sufficient nexus between object and the state the state extra territorial is valid)

Subject matter

- Central list 97 | State List 66 | Concurrent list 47



# Privilege of legislators

## Art 105-106

80

- Right to freedom of speech (Art 105)
- Right to publication (Art 105(2))
- Right to freedom from arrest
- Right to exclude strangers
- Right to prohibit publication of its reports and proceedings
- Right to regulate internal proceedings
- Right to punish for contempt



# Emergency Art 352-356

81

There are three types of emergencies

- Art 352- National Emergency - 1month,appro six month
- Art 356- State emergency 2month,appro 1 year,max3year
- Art 360 - Financial emergency
- Art 358-Suspension of right under Art 19
- Art 359- suspension of fundamental right

# Art 368

82

- Amendment means modification
- Kinds of amendment
- Amendment by simple majority
- Amendment by special majority
- Amendment by special majority and ratification states (Art 368(2))

## Cases

- Shankar prasad Vs UOI AIR1951SC455 ,Golak Nath Vs State of Punjab AIR1967 SC1643
- Kesavanada Bharai vs state of Kerala AIR 1973SC1461
- Indira Gandhi vs Raj Narain AIR 1975Sc 2299 ( Judicial review, free fair election , rule of law and right to equality are basic structure of the constitution)

# Doctrine of pith and substance

83

- Pith means ‘true nature’
- Substance means ‘the most important or essential part of something’
- Where the question arises of determining whether a particular subject (mentioned in one list or another) the court looks to the substance of the matter.

- If the encroachment by the state legislature is only incidental nature, it will not affect the competence of the state legislature to enact the law in question

## The State of Bombay And Another vs F.N. Balsara

- This is the first important judgment of the Supreme Court that took recourse to the Doctrine of Pith and Substance. The court upheld the Doctrine of Pith and Substance and said that it is important to ascertain the true nature and character of a legislation for the purpose of determining the List under which it falls.



- *Vijay Kumar Sharma v. State of Karnataka [(1990) 2 SCC 562]*.

In the above mentioned case it was held:

- Where a law passed by the State Legislature while being substantially within the scope of the entries in the State List trenches upon any of the entries in the Central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and trenchment, if any, is purely incidental or inconsequential

# Doctrine of Colourable legislation

86

- when anything is prohibited directly, it is also prohibited indirectly. The legislature cannot seek to achieve a purpose on which it is otherwise not competent to legislate on.
- The literal meaning of Colorable Legislation is that under the 'color' or 'guise' of power conferred for one particular purpose, the legislature cannot seek to achieve some other purpose which it is otherwise not competent to legislate on

# Contd..

87

- The Primary Function of the legislature is to make laws. Whenever, Legislature tries to shift this balance of power towards itself then the Doctrine of Colorable Legislation is attracted to take care of Legislative Accountability.
- This doctrine is usually applied to Article 246 which has demarcated the Legislative Competence of the Parliament and the State Legislative Assemblies by outlining the different subjects under List I for the Union, List II for the States and List III for both, as mentioned in the Seventh Schedule.



# State legislature Art 168-187

88

- The legislature of a state consists of the Governor and the legislative assembly
- Legislative assembly consists of not more than 500 and not less than 60 members chosen by direct election
- The term of Assembly 5 years Eligibility(Art 173)
- State legislature legislate in state and concurrent list
- Assembly has a speaker and a deputy speaker



# Subordinate Courts Art 233-237

89

- Appointment of persons to be and the posting and promotion District judges in any state shall be made by Governor of the state in consultation with High court.
- Recruitment of other than district judge to judicial service after consultation with High court and state public service commission.
- High court is having Control over the lower courts -posting promotion grant of leave etc.

# Local Government

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# Unit-III : Local Government

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# Introduction

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- We know there is a government in India at the Center and State levels. But there is another important system for local governance. The foundation of the present local self-government in India was laid by the Panchayati Raj System (1992).
- But the history of Panchayati Raj starts from the self-sufficient and self-governing village communities. In the time of the Rig-Veda (1700 BC), evidence suggests that self-governing village bodies called 'sabhas' existed. With the passage of time, these bodies became panchayats (council of five persons).
- Panchayats were functional institutions of grassroots governance in almost every village. They endured the rise and fall of empires in the past, to the current highly structured system.





# What is Local self-government?

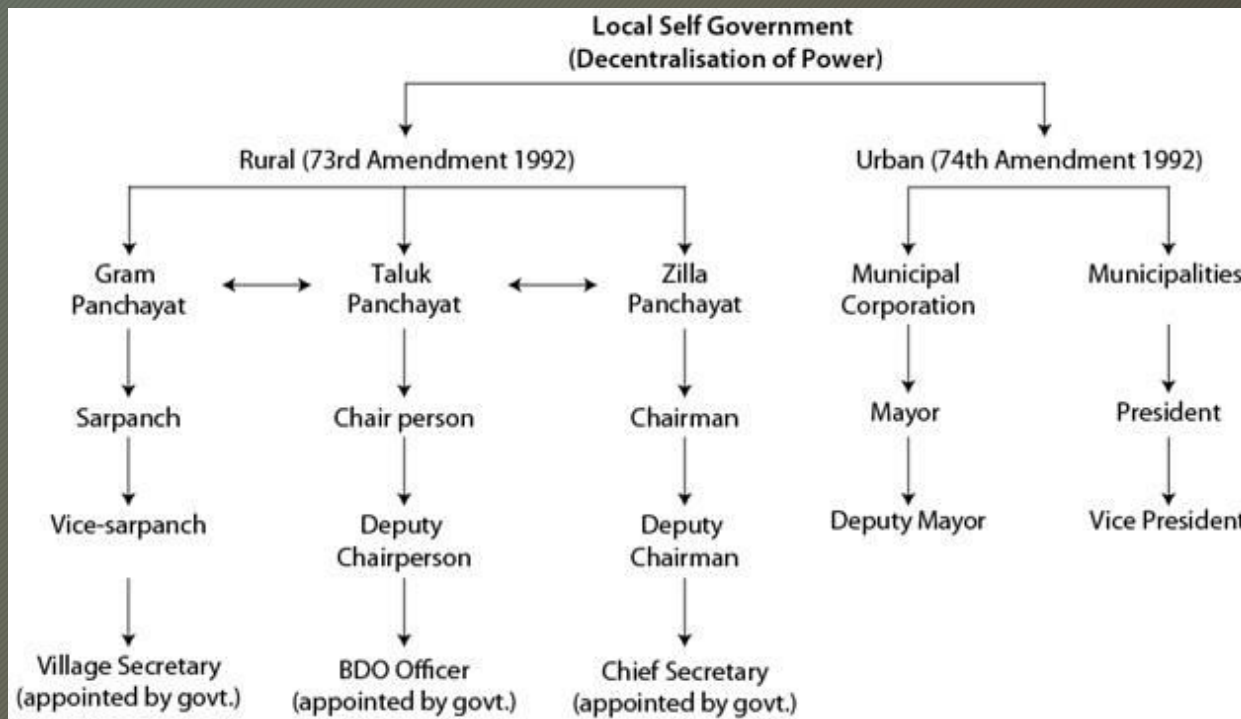
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- Local self-government implies the transference of the power to rule to the lowest rungs of the political order. It is a form of democratic decentralization where the participation of even the grass root level of the society is ensured in the process of administration.

# Panchayati Raj System under 73rd and 74th Constitutional Amendment acts, 1992

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- The acts of 1992 added two new parts IX and IX-A to the constitution. It also added two new schedules - 11 and 12 which contains the lists of functional items of Panchayats and Municipalities. It provides for a three-tier system of Panchayati Raj in every state - at the village, intermediate and district levels.





# What are Panchayats and Municipalities?

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- Panchayat and Municipality are the generic terms for the governing body at the local level. Both exist as three tier systems - at the lower, intermediate and upper levels.
- The 73rd Constitutional Amendment act provides for a Gram Sabha as the foundation of the Panchayati Raj system. It is essentially a village assembly consisting of all the registered voters in the area of the panchayat. The state has the power to determine what kind of powers it can exercise, and what functions it has to perform at the village level.
- The 74th Constitutional Amendment act provides for three types of Municipalities:
  - Nagar Panchayat for a transitional area between a rural and urban area.
  - Municipal Council for a small urban area.
  - Municipal Corporation for a large urban area.



# What are Panchayats and Municipalities?

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- Municipalities represent urban local self-government.
- Most of the provisions of the two acts are parallel, differing only in the fact that they are being applied to either a Panchayat or a Municipality respectively.
- Each Gram sabha is the meeting of a particular constituency called *ward*.
- Each ward has a representative chosen from among the people themselves by *direct election*.
- The chairperson of the Panchayat or Municipality at the intermediate and district level are elected from among these representatives at the immediately lower level by *indirect election*.

# Functions of the Panchayat

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- i) The panchayat is responsible for construction and maintenance of Roads
- ii) It provides street lights to the villages
- iii) It takes care of health, hygiene and sanitation
- iv) It maintain hospitals and schools
- v) It takes preventive measures against epidemics
- vi) It takes steps to improve irrigation and agriculture

# Powers, authority and responsibility of Panchayat - Art 243G

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- Powers, authority and responsibility of Panchayat - Art 243G, provides that subject to the provisions of this constitution the legislature of a state may, by law, endow the Panchayat with such powers and authority as may be necessary to enable them to function as an institution of self government. Such law may contain provisions for the devolution of powers and responsibilities upon Panchayat subject to such conditions as may be specified therein with respect to -
  - a. the preparation of plans for economic development and social justice
  - b. the implementation of schemes for social development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule.



# The matters listed in the Eleventh Schedule are as follows

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1. Agriculture, including agricultural extension
2. Land improvement, implementation of land reforms, land consolidation and soil conservation
3. Minor irrigation, water management and watershed development
4. Animal husbandry, dairying and poultry
5. Fisheries
6. Social forestry and farm forestry
7. Minor forest produce
8. Small scale industries, including food processing industries
9. Khadi, village and cottage industries
10. Rural housing
11. Drinking water,
12. Fuel and fodder,
13. Roads, culverts, bridges, ferries, waterways and other means of communication



# The matters listed in the Eleventh Schedule are as follows

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14. Rural electrification, including distribution of electricity
15. Non-conventional energy sources
16. Poverty alleviation programme
17. Education, including primary and secondary schools
18. Technical training and vocational education
19. Adult and non-formal education
20. Libraries
21. Cultural activities
22. Markets and fairs
23. Health and sanitation, including hospitals, primary health centers and dispensaries
24. Family Welfare
25. Women and child development
26. Social welfare, including welfare of the handicapped and mentally retarded

# The matters listed in the Eleventh Schedule are as follows

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- 27. Welfare of the weaker sections, and in particular, of the scheduled castes and the scheduled tribes
- 28. Public distribution system
- 29. Maintenance of community assets.

# Gram Panchayat

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- The Gram Panchayat has a Secretary who is appointed by the government. The Secretary is responsible for calling the meeting of the Gram Sabha and Gram Panchayat and keeping a record of the proceedings.
- The main task of Gram Panchayat is to implement the development programs for the villages that come under it. Gram Sabha is the place where all plans for work of Gram Panchayat are placed before the people.
- Panchayati Raj is a three-tier system: village level, block level and district level. and controlled by the Panchayat and Rural Development Minister

# Gram Sabha

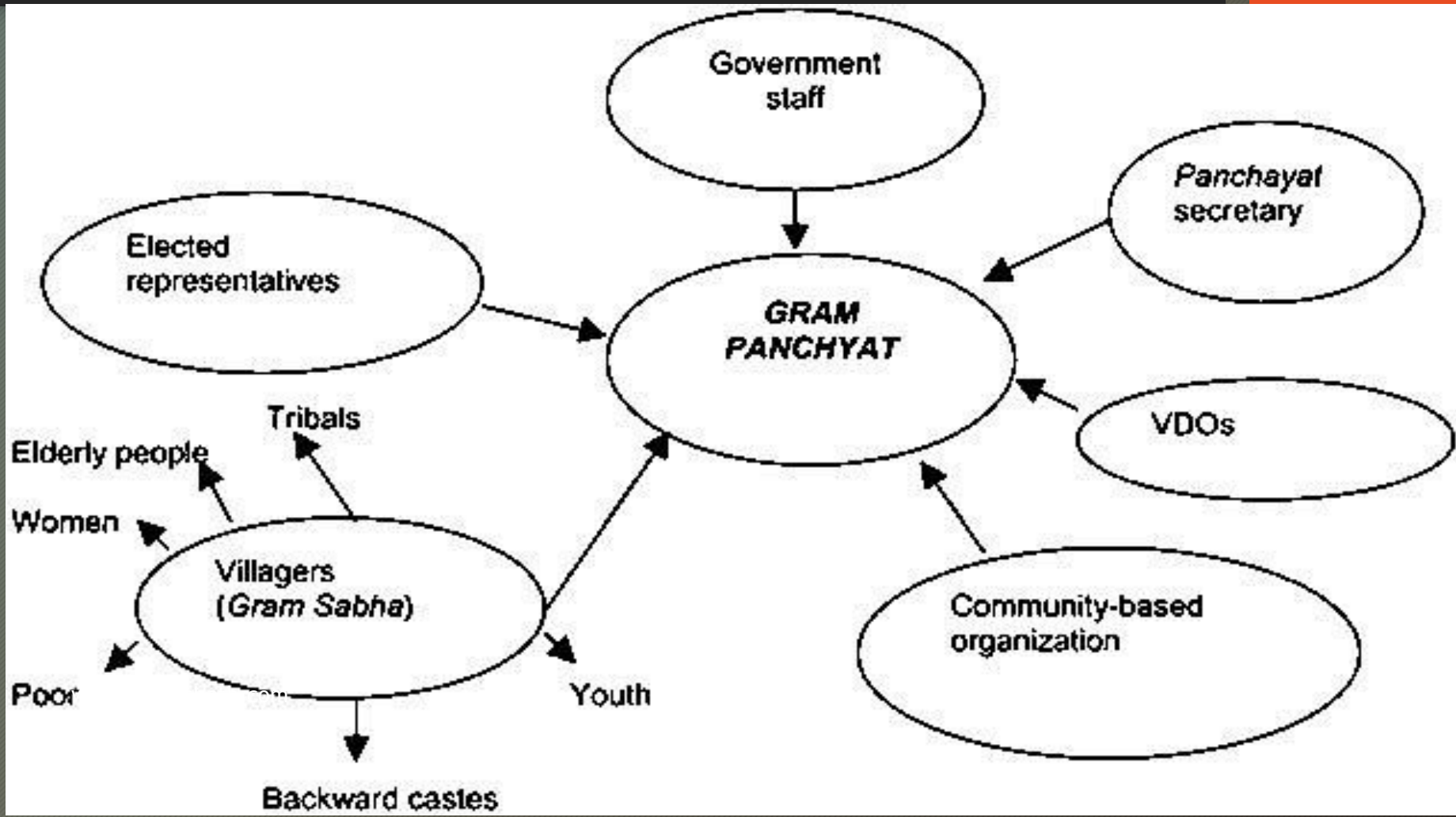
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- The Gram Sabha is a meeting of all adults who live in the area covered by the Panchayat. Anyone living in the area, who is an adult, that is 18 years old or more, is a member of Gram Sabha.
- The Gram Sabha members also elect the representatives to the Gram Panchayat. Together the Sarpanch and Panchs form a Gram Panchayat. A Gram Panchayat is elected for five years.



# Gram Sabha

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# Functions of Municipalities

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The municipalities look after the administration of the town. Some of the important functions of the municipality are

- i) It helps to keep the towns and surrounding and prevent diseases from spreading
- ii) It takes care to provide good drinking water and sees to the quick disposal of sewage and garbage
- iii) it lays and maintains good road
- iv) Municipalities have hospitals and dispensaries to take care of the sick people
- v) It keeps record of births and deaths
- vi) It maintains primary , secondary and higher secondary schools

# Source of income

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Municipalities collect the taxes which are the sources of income.

- 1) Property Tax
- 2) Water Tax
- 3) Professional tax
- 4) Entertainment Tax
- 5) Rents from the markets , shops and other building owned by the municipality.

# Types of Urban Local Government

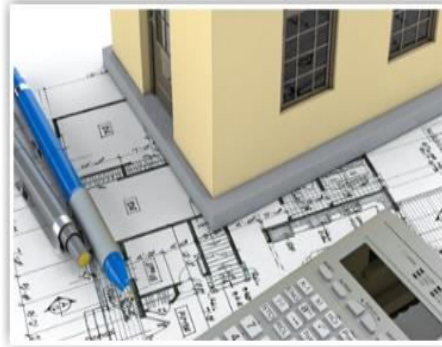
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There are eight types of urban local governments currently existing in India:

- Municipal Corporations.
- Municipality.
- Notified area committee.
- Town area committee.
- Cantonment board.
- Township.
- Port trust.
- Special purpose agency.



# THANK YOU



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