



CS EXECUTIVE CHART BOOK QUICK REVISION GUIDE

JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS

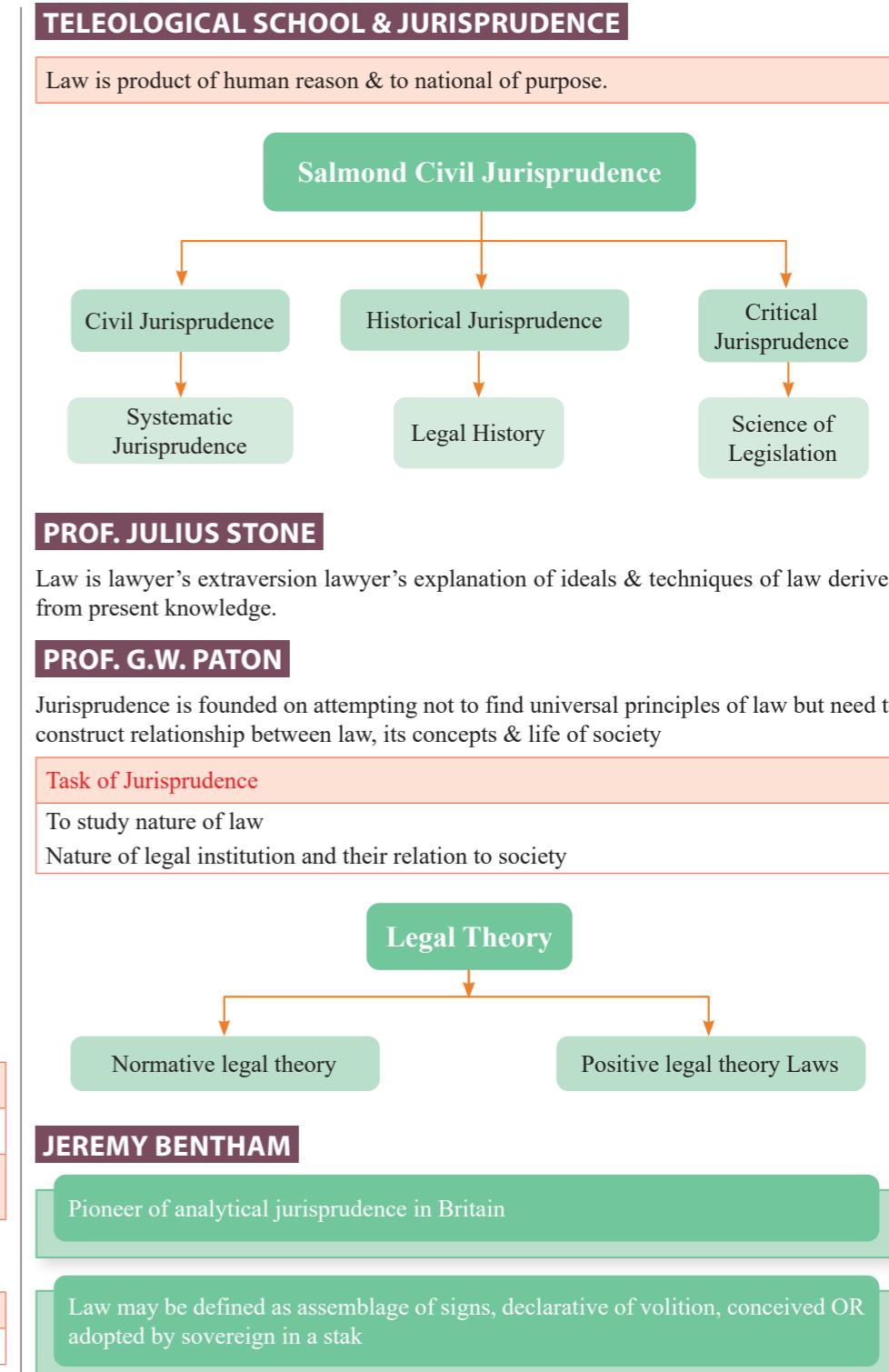
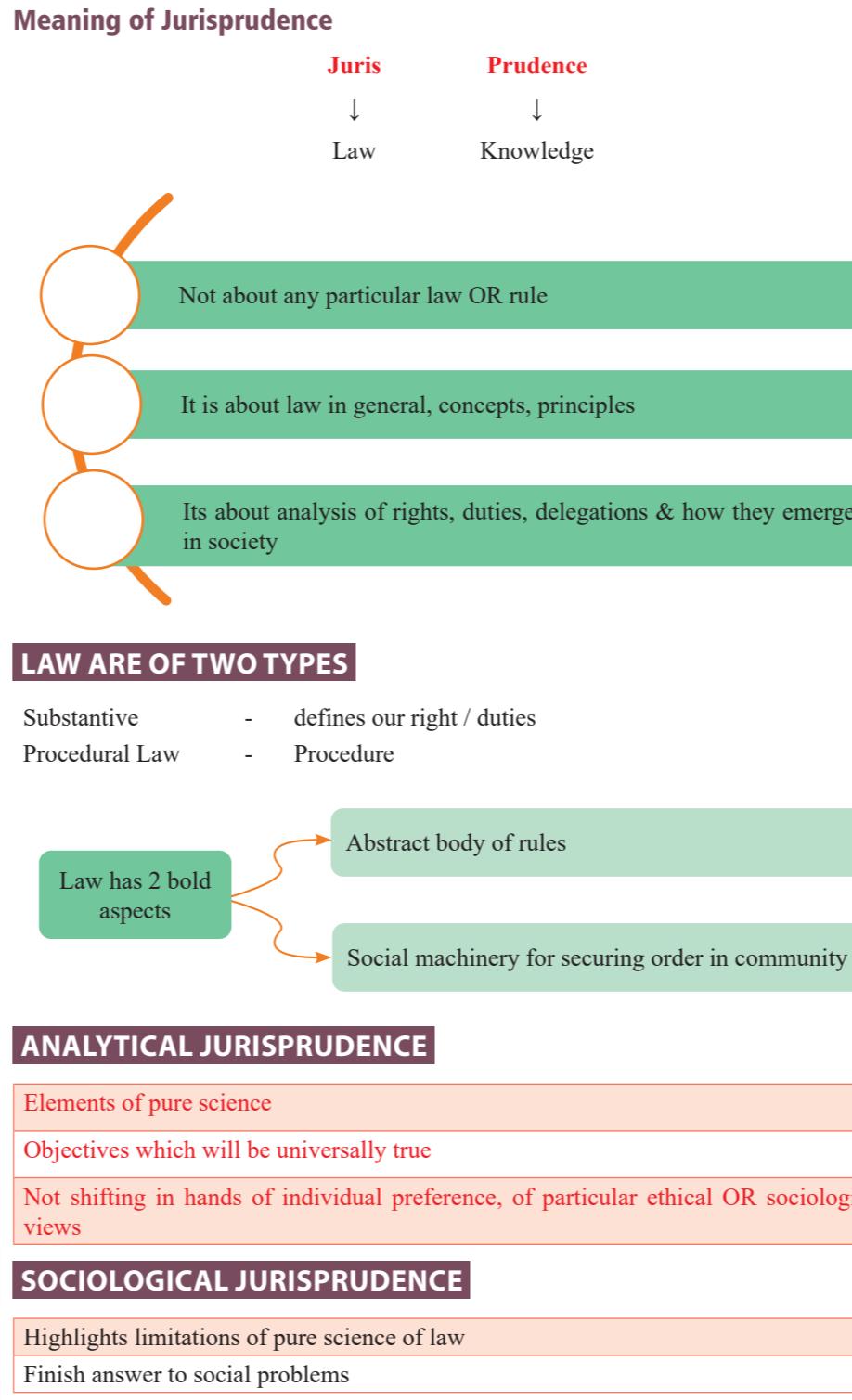
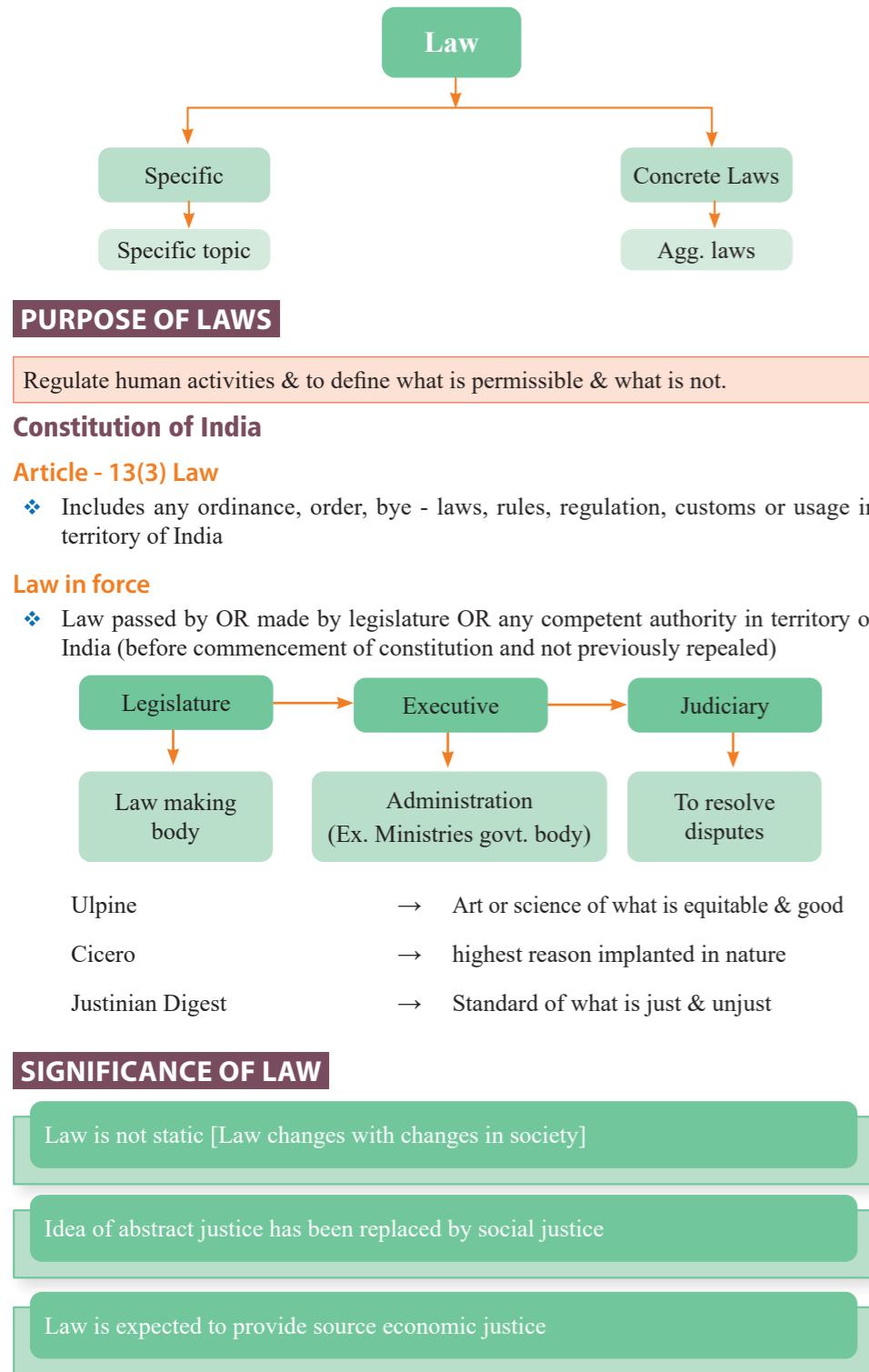


Module 1

- ☞ **Summarised Tabular Chart** Format for revising the subject matter in an easy-to-learn format
- ☞ **Point-wise Summaries** of each chapter are provided in a nutshell
- ☞ **Full-coverage of the New Syllabus** for CS-Executive exams

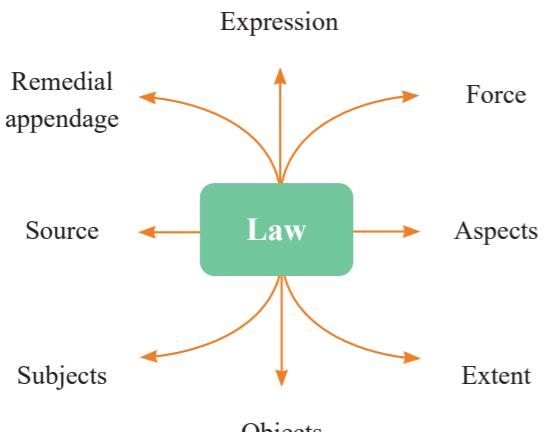
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He commanded that nature has placed man under command of two sovereigns pain & pleasure

Function of law is to bring max happiness to each individual resulting in happiness of all



COMPLETE LAW SHOULD HAVE FEARNESS OF INTEGRITY + UNITY

Law is complete in expression connection & design

Criticism

- Straight-Jacketing of law into an imperative theory (all laws are either command OR permission)
- He did not give fair treatment to customs as source of law
- Did not allow judge made law
- Theory did not provide subjective criteria of pain & pleasure
- It is not always true that an increase in happiness of a certain segment of society will lead.

John Austin

First occupant of chair of Jurisprudence at university of London

Command theory of law

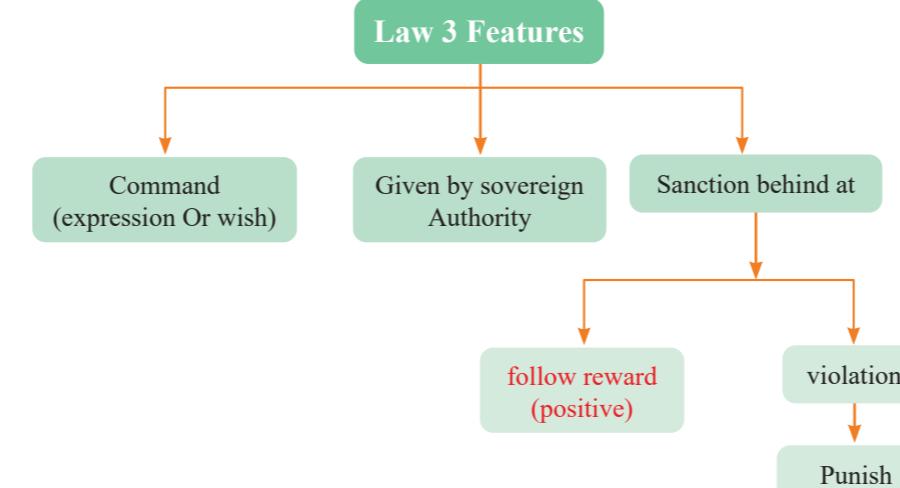
He was a positivist
Concerned himself on what is the law was instead of going into justice & fairness

"Law properly so called"

General Command

"Law un-properly so called"

Given by political superior to political inferior



Criticism

- State pass number of laws that do not command people but gives them rights & benefits
- Sovereign does not have to obey anyone
- Does not provide for judge made laws
- Presence of a sovereign is a prerequisite for proposition (law), but it failed to recognize international laws.

John William Salmon

- Law professor
- Judge of supreme court of New Zealand

A Law

Abstract ex. civil law

Concretes & specific law

Made it clear that some compulsion is required to maintain justice

Men can not be left to do what they believe is right in their eyes

Administration of justice by state (maintenance of right with political community by means of physical force of state)

Law

Primary Task

Administration of justice

Secondary Task

Laws

Laws are pre-established & authoritative rules are applied in administration of justice. Administration of justice is possible without laws but it is not desirable.

CRITICISM

- Justice is the end & law is medium to realize it.
- Pursuit of justice is not the only purpose of law.
- Justice is a universal concept
- Purpose of law → administration of justice to study first principles of law which should not be constrained by rational boundaries.

ROSCOE POUND

- American legal scholar
- Law is made by Engineer and lawyer = social engineering
- Goal → build a structure of society where max. satisfaction of wants can be achieved with minimum of function & waste

Legal Order → Successful

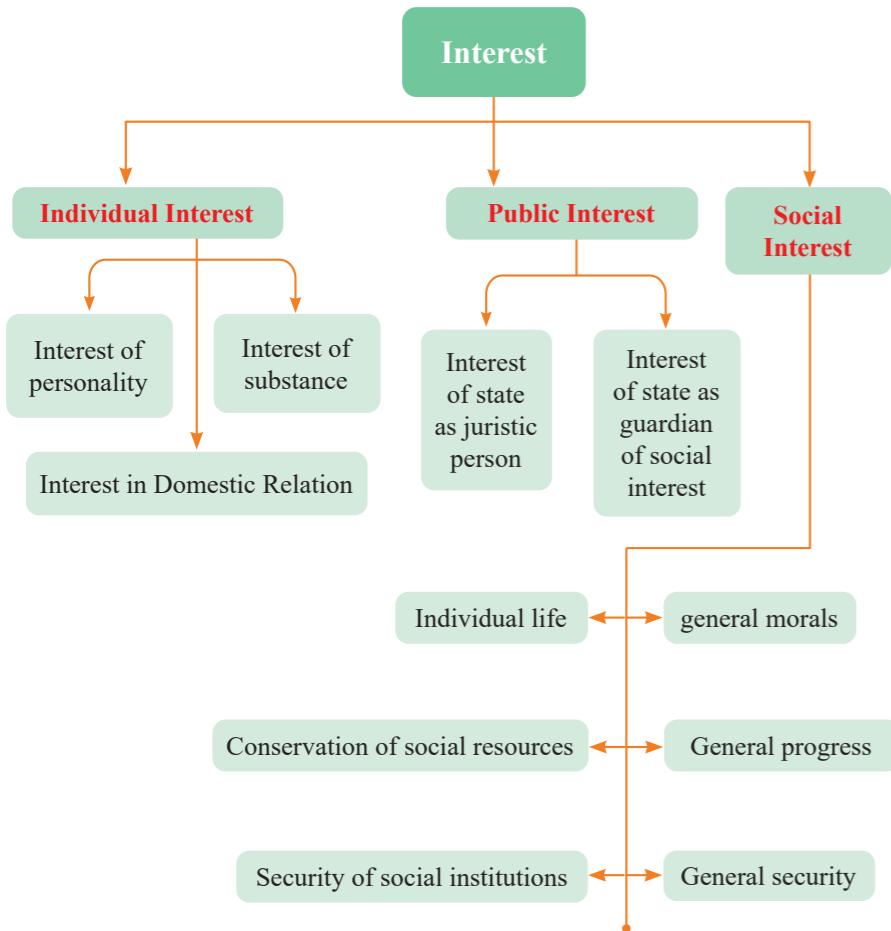
Recognition of certain interest

Defining certain limits

Securing these int. written limits defined

To Determine Scope & Subject Matter of Legal System

- (1) Preparation of interest of inventory + their classification
- (2) Selection of int. which are legally
- (3) Demarcation of limit of searing int.
- (4) Consideration of means (When to acknowledge OR limit)
- (5) Evaluation of principles of valuation of interest



CRITICISM

- ❖ Pre-existing law & legal system should have a balance (due to a lot of interest creation)
- ❖ Does not provide any criteria for evaluation of interest
- ❖ Judges translate the activity in terms of interest, (more importance to judiciary, not legislature)
- ❖ Distinctions are doubtful
- ❖ Recognition of new interests is a matter of policy.

PROF. HLA HART

British legal philosophers

Law are

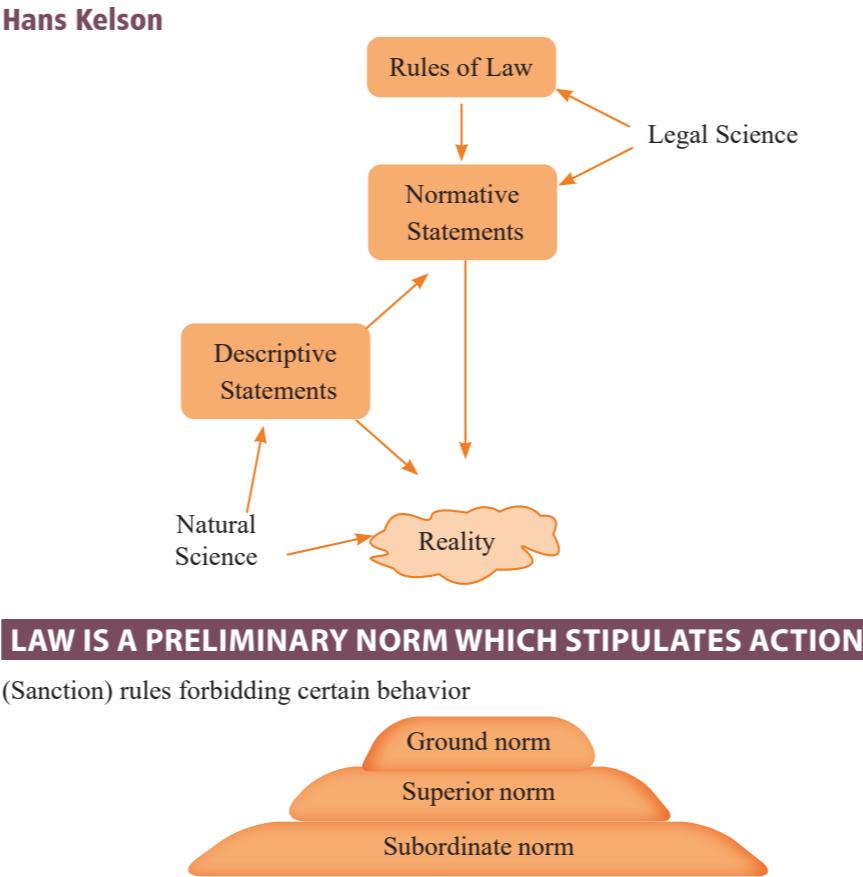
Analysis of Legal Concepts

- Worth pursuing
- Distinct from inquires
- Distinct from critical evaluation

DECISIONS CAN BE DEDUCED LOGICALLY FROM PRE-DELOMINED RULES

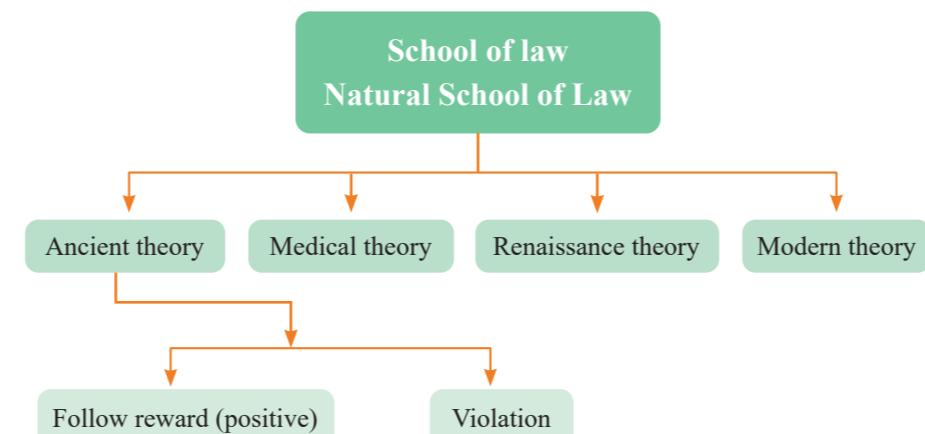
Moral judgments can not be established or defended by rational judgment, evidence or proof.

Law as it is lord down should be kept separate from law ought to be



Criticism

- ❖ Difficult to trace grund norm in every legal system
- ❖ Does not provide time frame for effectiveness OR validity
- ❖ Ceases to be "pure" the moment one tries to analyse groundnorm
- ❖ Does not sit well with international laws.

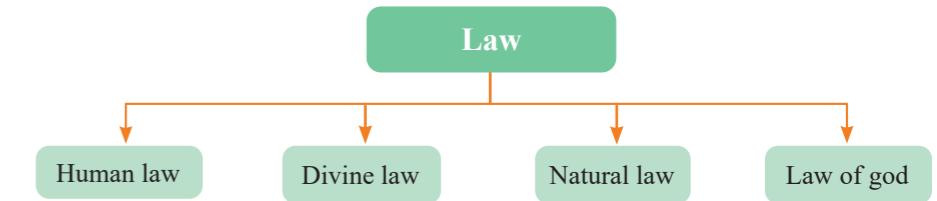


(1) Ancient Theory

- Herocles** - Greek philosopher 3 main features of law
 - Destiny
 - Reason
 - Order
- Socrates** - Human sight → helps a man distinguish between good OR bad
- Plato** - 2 man aspects - **wisdom and reason**
- Aristotle** - Reason unaffected by desires

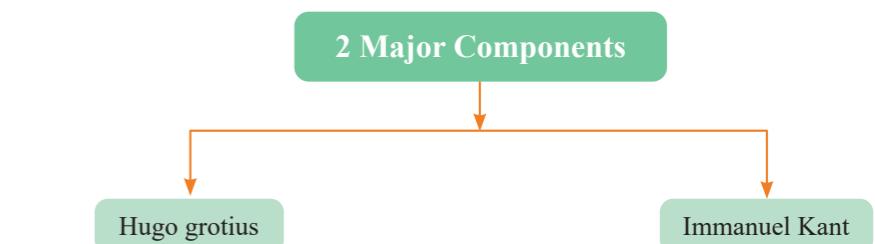
(2) Medieval Theory

- ❖ Theological idea of god
- ❖ Law is actually true
- ❖ Dharma connecting with god
- ❖ "Law is part of dharma"



(3) Renaissance Theory

- ❖ Marked by rationalism
- ❖ Reason is main foundation
- ❖ More secure, political was founded on human reasons
- ❖ Advocates natural rights of man & the state



(4) Modern Theory

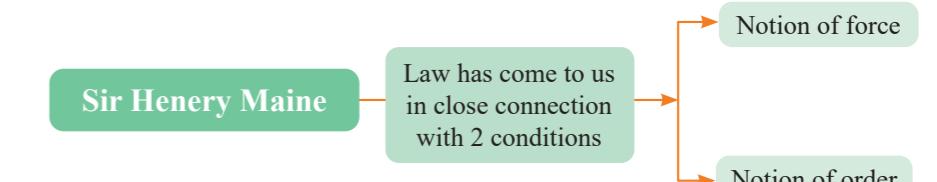
- ❖ Rejects older theories & conceptions
- ❖ Revival of natural law
- ❖ Reaction against positive & historical approaches

Analytical School of Law

- ❖ English jurist → John Austin
- ❖ Law is set of rules by man as politically superior or sovereign to men as political Subject
- ❖ Law is command of sovereign
- ❖ Includes Hans Kelsen theory

Historical School of Law

- ❖ Origin, formation & development of law is outcome of historical & evaluation forces
- ❖ Originates from a long drawn practice of customs, ongoing conventions, social habits, traditions etc.



THE PREAMBLE TO THE CONSTITUTION STATES

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 the individual and the [unity and integrity of the Nation];

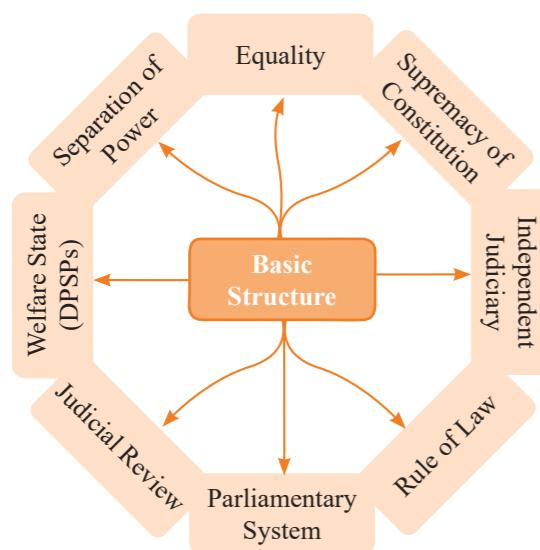
In Our Constituent Assembly this twenty-sixth day of November, 1949, do **Hereby Adopt, Enact And Give to Ourselves this Constitution.**

Structure of the Constitution

The Constitution of India is basically federal but with certain unitary features.

The majority of the Supreme Court judges in *Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461*, were of the view that the federal features form the basic structure of the Indian Constitution. However, there is some controversy as to whether the Indian Constitution establishes a federal system or it stipulates a unitary form of Government with some basic federal features. Thus, to decide whether our Constitution is federal, unitary or quasi federal, it would be better to have a look at the contents of the Constitution.

The political system introduced by our Constitution possesses all the aforesaid essentials of a federal polity as follows:

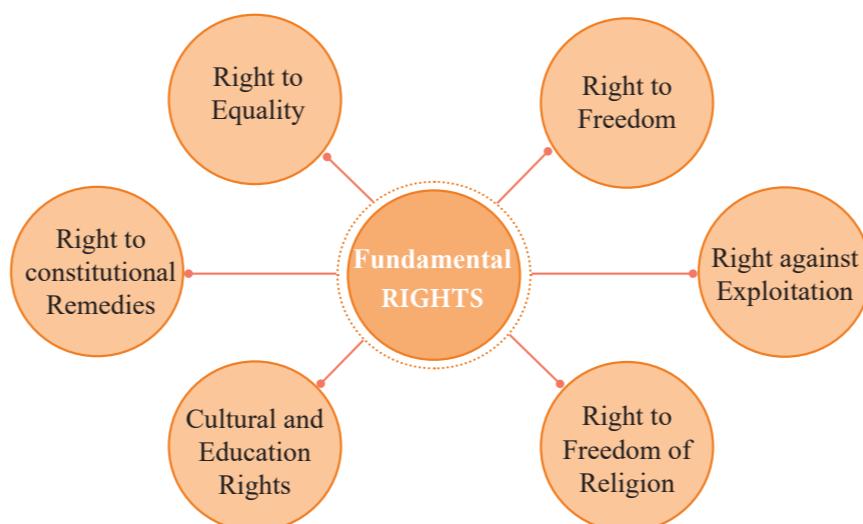


Fundamental Rights

The Constitution seeks to secure to the people "liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and fraternity assuring the dignity of the individual". With this object, the fundamental rights are envisaged in Part III of the Constitution.

Inclusion of Fundamental Rights in Part III of the Constitution

Part III of the Indian Constitution guarantees six categories of fundamental rights. These are:



Definition of State (Article 12)

With a few exceptions, all the fundamental rights are available against the State. Under Article 12, unless the context otherwise requires, "the State" includes "The expression 'local authorities' refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Port Trusts and Mining Settlement Boards".



The Supreme Court has held that 'other authorities' will include all authorities created by the Constitution or statute on whom powers are conferred by law and it is not necessary that the authority should engage in performing government functions (*Electricity Board, Rajasthan Mohanal, AIR 1967 SC 1957*).

It has also been held that a university is an authority (*University of Madras v. Shanta Bai, AIR 1954 Mad. 67*).

The Supreme Court in *Sukhdev Singh v. Bhagatram, AIR 1975 SC 1331* and in *R.D. Shetty v. International Airports Authority, AIR 1979 SC 1628*, has pointed out that corporations acting as instrumentality or agency of government would become 'State' because obviously they are subjected to the same limitations in the field of constitutional or administrative law as the government itself, though in the eye of law they would be distinct and independent legal entities.

JUSTIFIABILITY OF FUNDAMENTAL RIGHTS

Article 13 gives teeth to the fundamental rights. It lays down the rules of interpretation in regard to laws inconsistent with or in derogation of the Fundamental Rights.

Existing Laws: Article 13(1) relates to the laws already existing in force, i.e. laws which were in force before the commencement of the Constitution (pre constitutional laws). A declaration by the Court of their invalidity, however, will be necessary before they can be disregarded and declares that pre-constitution laws are void to the extent to which they are inconsistent with the fundamental rights.

Future Laws: Article 13(2) relates to future laws, i.e., laws made after the commencement of the Constitution. After the Constitution comes into force the State shall not make any law which takes away or abridges the rights conferred by Part III and if such a law is made, it shall be void to the extent to which it curtails any such right.

Doctrine of Severability

Only conflicting parts are void: Laws don't get scrapped entirely if a section clashes with Fundamental Rights. Just the problematic part becomes invalid.

Severability test: The remaining valid part must still fulfill the original purpose of the law after removing the unconstitutional section. If it can't function independently, the whole law might be struck down.

Doctrine of Eclipse

Pre-Constitution Laws and Fundamental Rights: Laws existing before the Constitution can be overridden (eclipsed) if they conflict with Fundamental Rights (like freedom to conduct business).

Not Permanently Dead: These eclipsed laws aren't completely erased. They can be revived if the conflicting Fundamental Right is itself removed through a Constitutional Amendment.

Example: A law allowing government control over transportation became unenforceable due to Article 13. However, a subsequent amendment permitting state monopolies in transport revived that part of the law.

Doctrine of Waiver

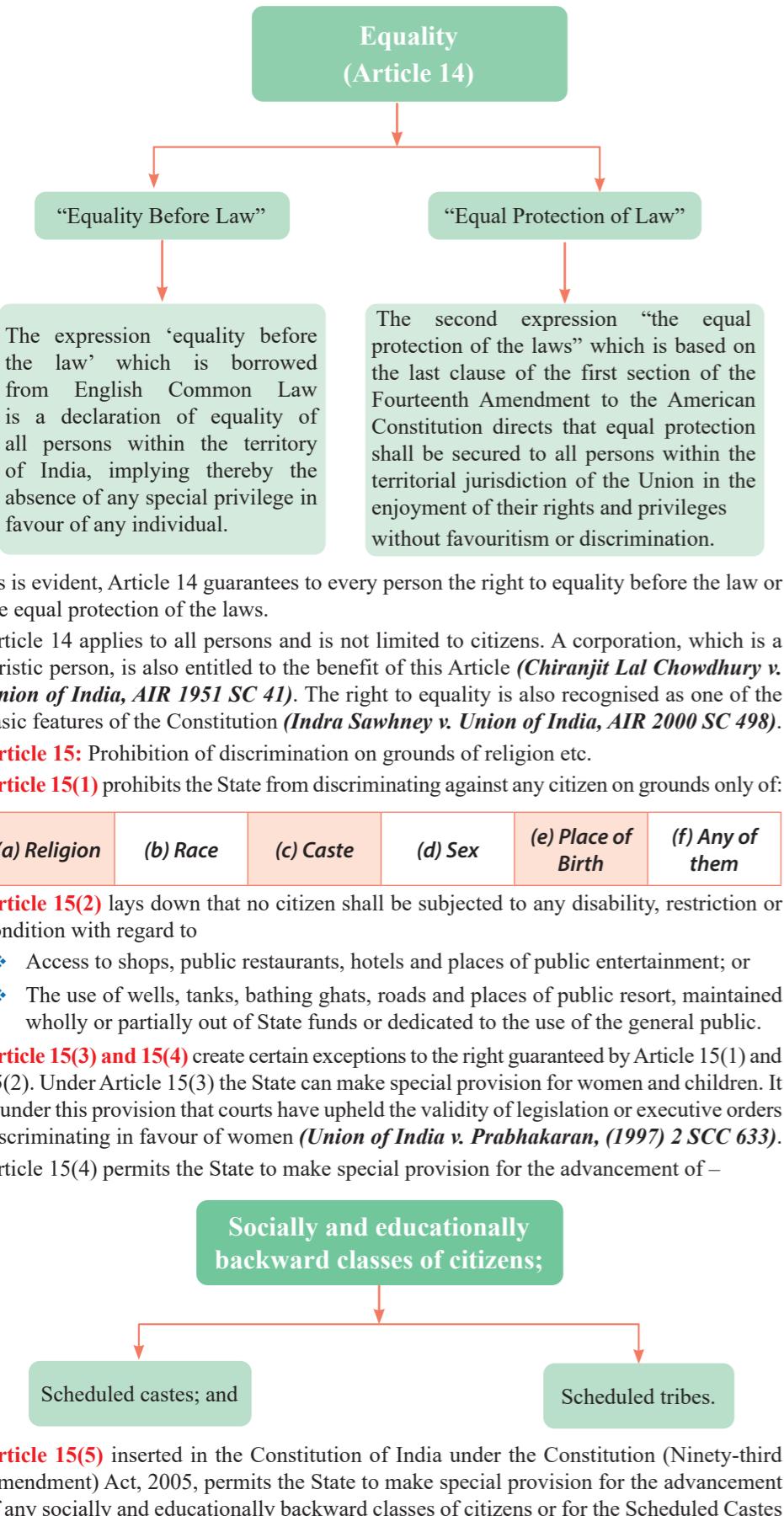
Doctrine of Waiver: People can generally give up certain rights granted by the state.

Limits on Waiver: This applies only if the person is aware of their rights and waives them voluntarily.

Fundamental Rights are Different: The Supreme Court, in the *Basheshar Nath case*, ruled that fundamental rights cannot be waived by citizens.

Article 14: Equality Before the Law and Equal Protection of the Laws

Article 14 of the Constitution says that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".



or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in of article 30.

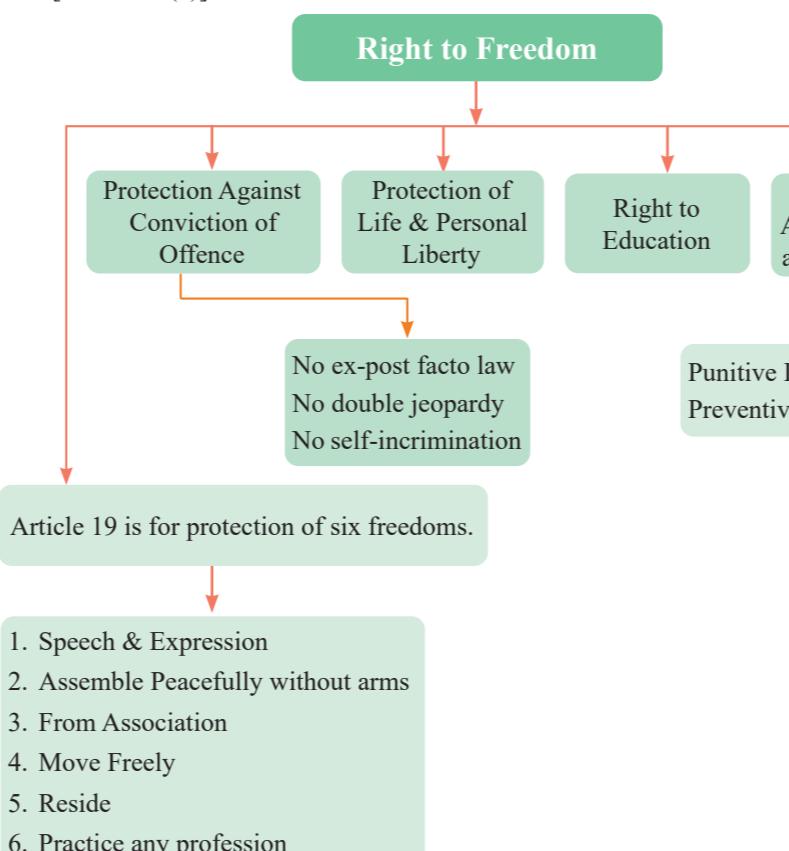
Article 16: Equality of Opportunity in Matters of Public Employment

Article 16 guarantees to all citizens’ equality of opportunity in matters relating to employment or appointment of office under the State.

This article also prohibits discrimination against a citizen on the grounds of religion, race, caste, sex, descent, place of birth or residence.

However, there are certain exceptions provided in Article 16(3), 16(4) and 16(5). These are as under:

- 1) Parliament can make a law that in regard to a class or classes of employment or appointment to an office under the Government of a State or a Union Territory, under any local or other authority within the State or Union Territory, residence within that State or Union Territory prior to such employment or appointment shall be an essential qualification. [Article 16(3)]
- 2) A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. [Article 16(4)]
- 3) A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. [Article 16(5)]
- 4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category. [Article 16(6)].



These freedoms are those great and basic rights which are recognized as the natural rights inherent in the status of a citizen. At the same time, none of these freedoms is absolute but subject to reasonable restrictions specified under clauses (2) to (6) of Article 19. The Constitution under Articles 19(2) to 19(6) permits the imposition of restrictions on these freedoms subject to the following conditions:

- (a) The restriction can be imposed by law and not by a purely executive order issued under a statute;
- (b) The restriction must be reasonable;
- (c) The restriction must be imposed for achieving one or more of the objects specified in the respective clauses of Article 19.

Article 19(1), of the Constitution, guarantees to the citizens of India six freedoms, namely:

<i>Freedom of speech and expression</i>
<i>Assemble peaceably and without arms</i>
<i>From associations or unions or co-operatives societies</i>
<i>Move freely throughout the territory of India</i>
<i>Reside and settle in any part of the territory of India</i>
<i>Practice any profession, or to carry on any occupation, trade or business.</i>

Reasonableness of the restriction is an ingredient common to all the clauses of Article 19. Reasonableness is an objective test to be applied by the judiciary. Legislative judgment may be taken into account by the Court, but is not conclusive. It is subject to the supervision of Courts. The following factors are usually considered to assess the reasonableness of a law:

- ❖ The objective of the restriction;
- ❖ The nature, extent and urgency of the evil sought to be dealt with by the law in question;
- ❖ How far the restriction is proportion to the evil in question;
- ❖ Duration of the restriction;
- ❖ The conditions prevailing at the time when the law was framed.

Protection in Respect of Conviction for Offences

Articles 20, 21 and 22 provide a system of protection, relevant to the criminal law. Article 20 guarantees to all persons – whether citizens or non-citizens three rights namely

(i)	Protection against ex-post facto law	Article 20(1) of the Indian Constitution prohibits convicting someone for an act that wasn't illegal when they did it, or punishing them more harshly than the law allowed at that time. This is called an ex post facto law. The Supreme Court clarified in <i>Shiv Bahadur Singh v. State of Madhya Pradesh</i> that this protection applies to substantive law, not procedural law. So, changes in legal procedures generally don't violate this rule. Another exception is if a new law lessens the punishment for a crime. This is because it benefits the accused.
(ii)	Protection against double jeopardy	Article 20(2) protects against double jeopardy in India. You cannot be both prosecuted and punished for the same crime. However, if you were only prosecuted (tried) but not punished, you can be prosecuted again. This is because “prosecuted and punished” are linked with “and”, meaning both must occur for the protection to apply.

(iii)	Protection against self-incrimination	Article 20(3) gives you the right against self-incrimination in India. You cannot be forced to say anything that might incriminate yourself. But there are three conditions to this right: You must be an accused of an offence; There must be a compulsion to be witness; and Such compulsion should result in his giving evidence against himself.
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Protection of Life and Personal Liberty

Article 21 confers on every person the fundamental right to life and personal liberty. It says that,

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

The right to life includes those things which make life meaningful.

The majority in the case of **A.K. Gopalan v. State of Madras, AIR 1950 SC 27**, gave a narrow meaning to the expression 'personal liberty' within the subject matter of Articles 20 to 22 by confining it to the liberty of the person (that is, of the body of a person). The majority of the judges also took a narrow view of the expression 'procedure established by law' in this case.

In the **State of Maharashtra v. Prabhakar Pandurang Sanzgri, AIR 1966, SC 424**, Subba Rao J. considered the inter-relation between Articles 19 and 21 as was discussed by the majority Judges in the A.K. Gopalan's case and came to the conclusion that "that view was not the last word on the subject".

It was stated in **Maneka Gandhi v. Union of India, AIR 1978 S.C. 597**, that 'personal liberty' within the meaning of Article 21 includes within its ambit the right to go abroad, and no person can be deprived of this right except according to procedure prescribed by law. In this case, it was clearly laid down that the fundamental rights conferred by Part III of the Constitution are not distinct and mutually exclusive. Thus, a law depriving a person of personal liberty and prescribing a procedure for that purpose within the meaning of Article 21 has still to stand the test of one or more of fundamental rights conferred by Article 19 which may be applicable to a given situation.

Article 21A: Right to Education

This was introduced by the Constitution (Eighty sixth Amendment) Act, 2002. According to this, the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. In **Environmental and Consumers Protect foundation v. Delhi Administration 2012 (4) SCALE 243** the Court held that in order to ensure compliance of article 21A of the Constitution, it is imperative that schools must have qualified teachers and basic infrastructure.

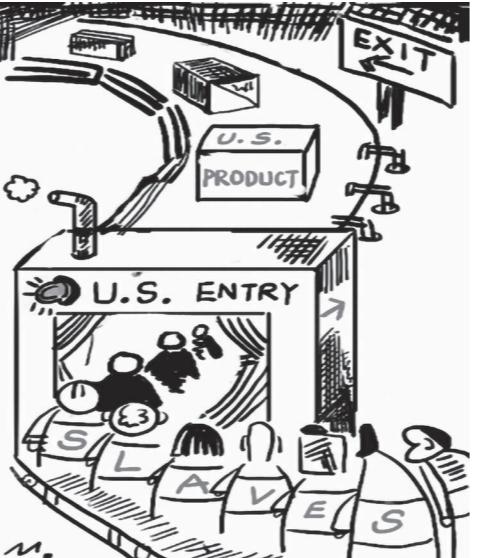
In the **State of Tamil Nadu v. K. Shyam Sunder AIR 2011 SC 3470** the Court held that the right of a child should not be restricted only to free and compulsory education, but should be extended to have quality education without any discrimination on the grounds of their economic, social and cultural background.

Safeguards Against Preventive Detention

Article 22 (amended by the 44th Constitution Amendment Act, 1978) contains following safeguards against preventive detention:



(a)	Such a person cannot be detained for a longer period than three months unless:
	<ul style="list-style-type: none"> ❖ An Advisory Board constituted of persons who are or have been or are qualified to be High Court judges has reported, before the expiration of the said period of three months that there is, in its opinion sufficient cause for such detention. ❖ Parliament may by law prescribe the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention and the procedure to be followed by an Advisory Board.
(b)	The authority ordering the detention of a person under the preventive detention law shall: <ul style="list-style-type: none"> ❖ communicate to him, as soon as may be, the grounds on which the order for his detention has been made, and ❖ afford him the earliest opportunity of making the representation against the order.



Right Against Exploitation

This group of fundamental rights consists of **Articles 23 and 24**. They provide for rights against exploitation of all citizens and non-citizens. Taking them one by one they guarantee certain rights by imposing certain prohibitions not only against the State but also against private persons.

- (a) Prohibition of traffic in human beings and forced labour (**Article 23**)
- (b) Prohibition of employment of children (**Article 24**)

Remedies for Enforcement of Fundamental Rights

That is why it is natural that this Court should, in the words of **Patanjali Sastri, J.**, regard itself 'as the protector and guarantor of fundamental rights', and should declare that "it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights. In discharging the duties assigned to it, this Court has to play the role of 'sentinel on the qui vive' (**State of Madras v. V.G. Row, AIR 1952 SC 196**) and it must always regard it as its solemn duty to protect the said fundamental rights 'zealously and vigilantly'. (**Daryao v. State of U.P., AIR 1961 SC 1457**).

- ❖ **Shankari Prasad v. Union of India (1951):** This case established that Parliament has the power to amend the Constitution, including fundamental rights, through Article 368. The court interpreted "law" in Article 13(2) (which prohibits laws that take away fundamental rights) as not including amendments made under Article 368's special process. This decision was upheld in a later case (**Sajjan Singh v. State of Rajasthan, 1965**).
- ❖ **I.C. Golak Nath v. State of Punjab (1967):** This case reversed the previous understanding. Here, the court ruled that Parliament could amend any part of the Constitution, including fundamental rights and even Article 368 itself, as long as it followed the proper procedure outlined in Article 368.
- ❖ **Kesavananda Bharati v. State of Kerala (1973):** This case introduced the idea that Parliament can amend the Constitution, but there's a limit. It can't change the fundamental, core principles ("basic structure") of the Constitution.
- ❖ **Indira Gandhi v. Raj Narain (1975):** This case helped define the "basic structure." The court ruled that removing judicial review over election disputes of certain officials (like the Prime Minister) weakens democracy, which is a core principle.

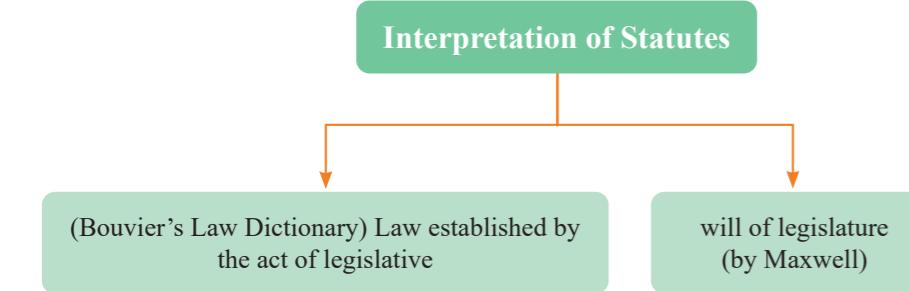
DIRECTIVE PRINCIPLES OF STATE POLICY

The Articles included in Part IV of the Constitution (Articles 36 to 51) contain certain Directives which are the guidelines for the future Government to lead the country. Article 37 provides that the 'provisions contained in this part (i) shall not be enforceable by any Court, but the principles therein laid down are nevertheless (ii) fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The Directives, however, differ from the Fundamental Rights contained in Part-III of the Constitution or the ordinary laws of the land in the following respects:

(i)	The Directives are not enforceable in the courts and do not create any justiciable rights in favour of individuals.
(ii)	The Directives require to be implemented by legislation and so long as there is no law carrying out the policy laid down in a Directive neither the state nor an individual can violate any existing law.
(iii)	The Directives per-se do not confer upon or take away any legislative power from the appropriate legislature.
(iv)	The courts cannot declare any law as void on the ground that it contravenes any of the Directive Principles.
(v)	The courts are not competent to compel the Government to carry out any Directives or to make any law for that purpose.

INTERPRETATION OF STATUTES

INTERPRETATION OF STATUTES



STATUTES

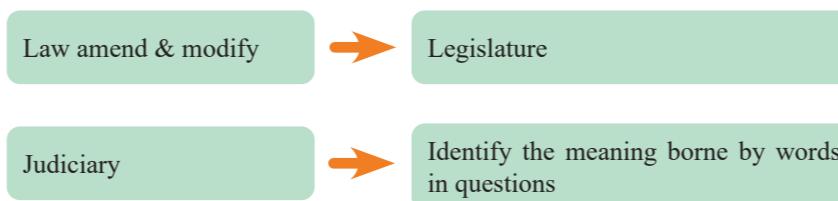
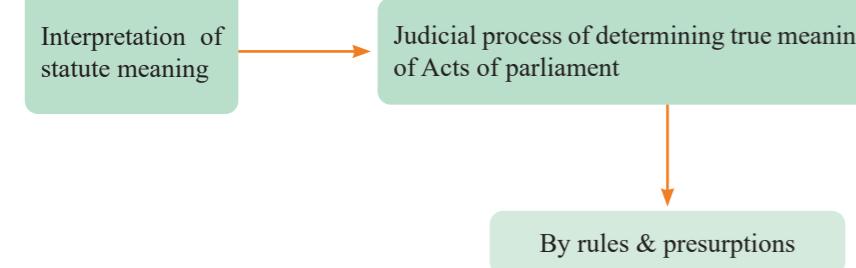
- ❖ Codifying
- ❖ Declaratory
- ❖ Remedial
- ❖ Amending
- ❖ Consolidating
- ❖ Enabling
- ❖ Disabling
- ❖ Penal

NEED FOR INTERPRETATION OF STATUTE

It is not within human powers to focus on the manifold set of facts which may arise, it is not possible to provide law free from all ambiguity (seaford court estates Ltd. vs. Asher) In case of any defect the judge can not simply fold his hands & blame draftsman and judge must not alter the material which is iron but he can and should iron out the creases.

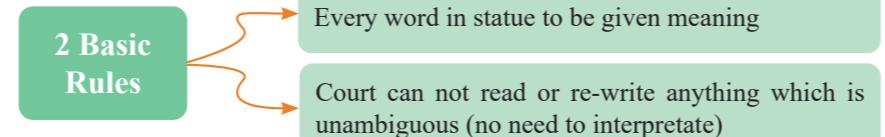
HASHBURY LAWS OF ENGLAND

Interpretation of written document is to discover the intention of author + construction must be as near to the minds & apparent intention of parties as possible (from natural and grammatical)

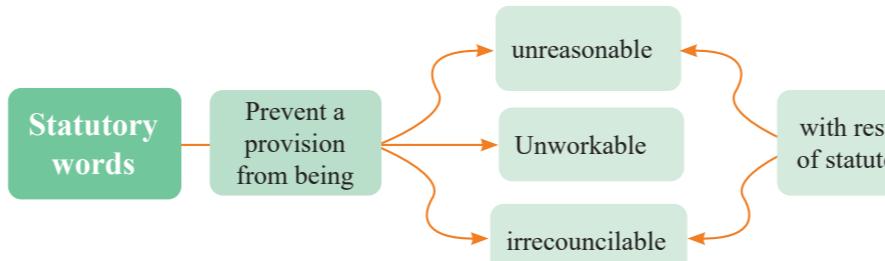


CASUS OMISSUS RULE

- ❖ Means situation not provided by statute OR Regulation

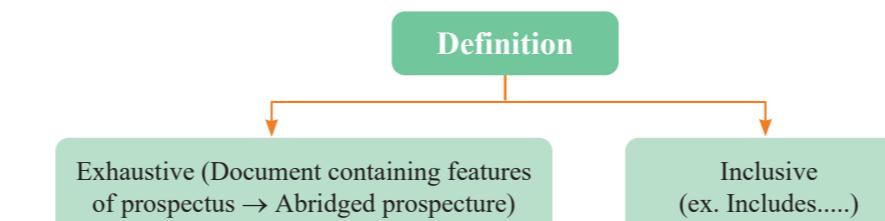


- ❖ Power of judge is limited to Add, Alter and Ignore.



INTERPRETATION OF DEFINITION CLAUSE

- ❖ Definition is always conclusive unless the context otherwise require
- ❖ Definition is not given, refer popular word



PRINCIPLES OF INTERPRETATION

Primary Rule

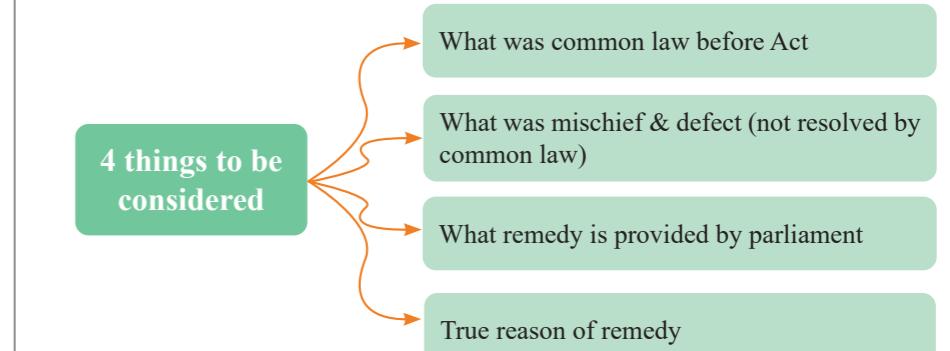
(a) Literal Construction

Statute (word, phrases, sentences) → Natural, ordinary, populars & grammatical meaning

- ❖ Interpretation would not make other provisions redundant (Naval Prakash Vohra vs. State of HP)

- ❖ Nothing is to be added OR taken from a statute unless these are adequate grounds to justify
- ❖ **State of H.P. vs. Pawan Kumar (2005) (Supreme court)**
Interpretation of statutes → plain, literal & grammatical meaning
In case of any inconsistency, contrary, absurdity, repugnancy, it must Modified to the extent of removal of problem
Advance something to grammatical construction (repugnant to intention of Act)

(b) Mischief OR Heydon's Rule



Courts must adopt construction that “Suppress the mischief & advance the remedy” and construction should not ignore the plain natural meaning

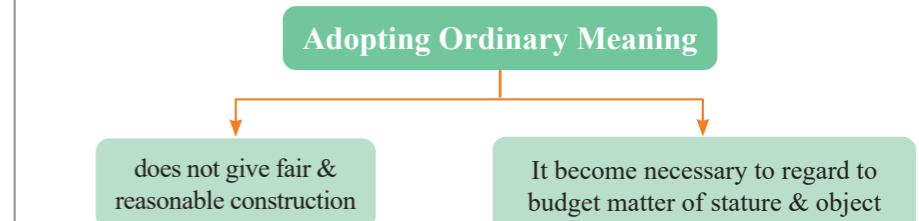
(Umed singh vs. Raj singh)(1975)

Heydon's Rule is applicable only → when words in question are ambiguous and capable of more than one meaning

(Sodheo Devi case) (Supreme court) (1957)

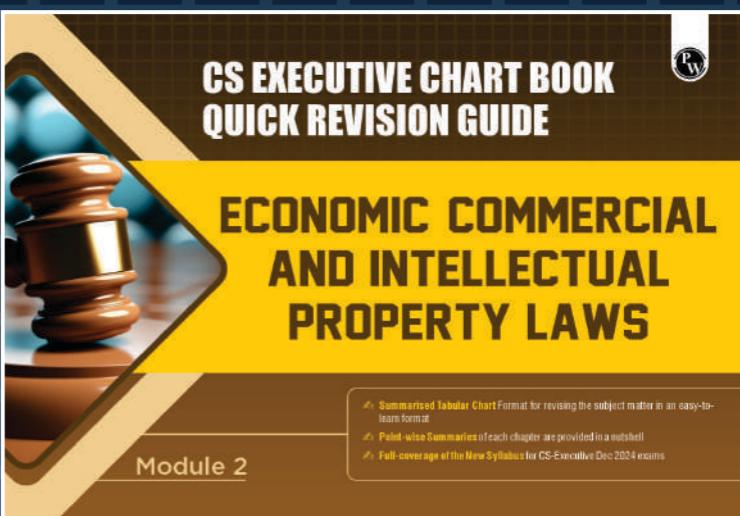
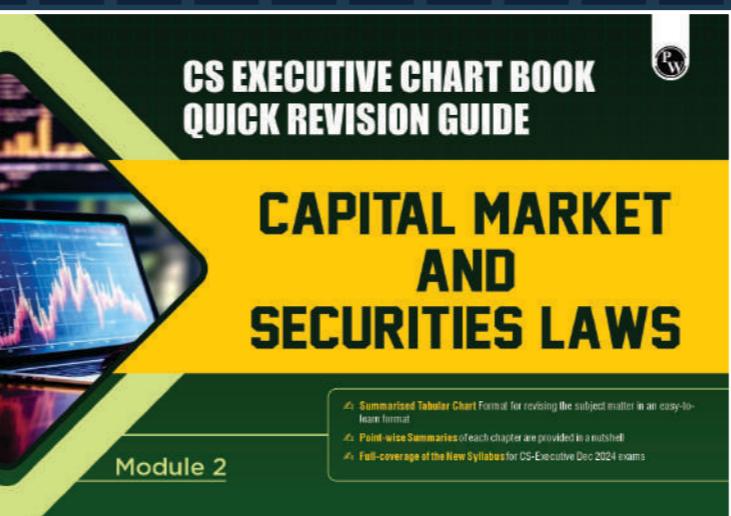
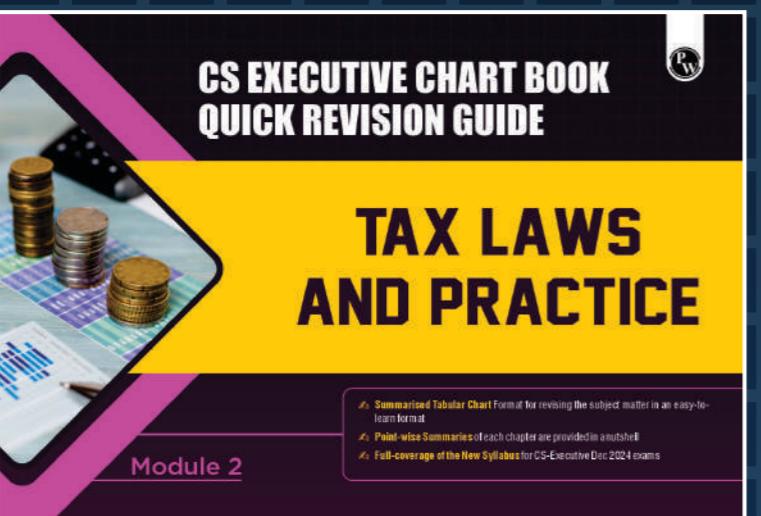
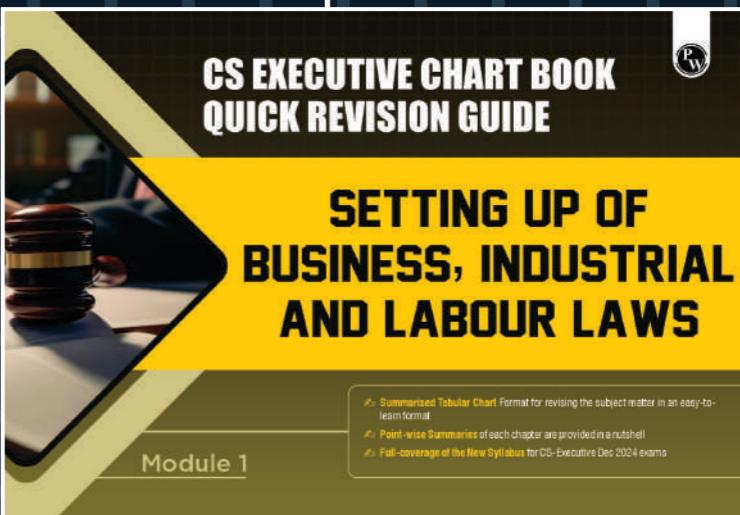
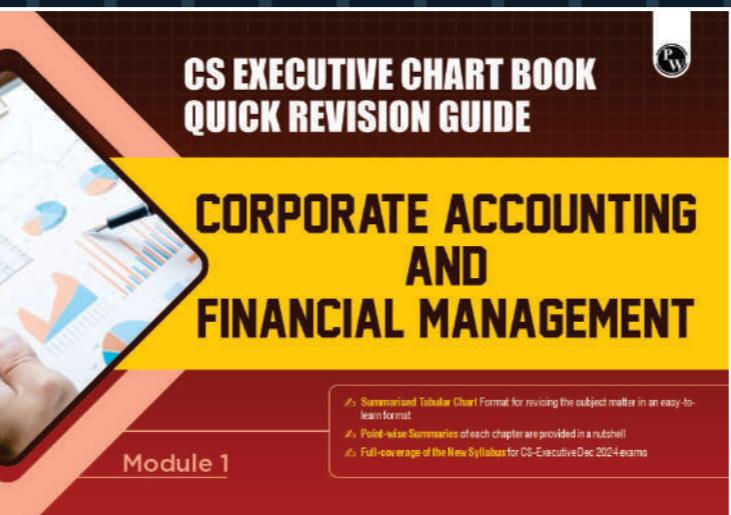
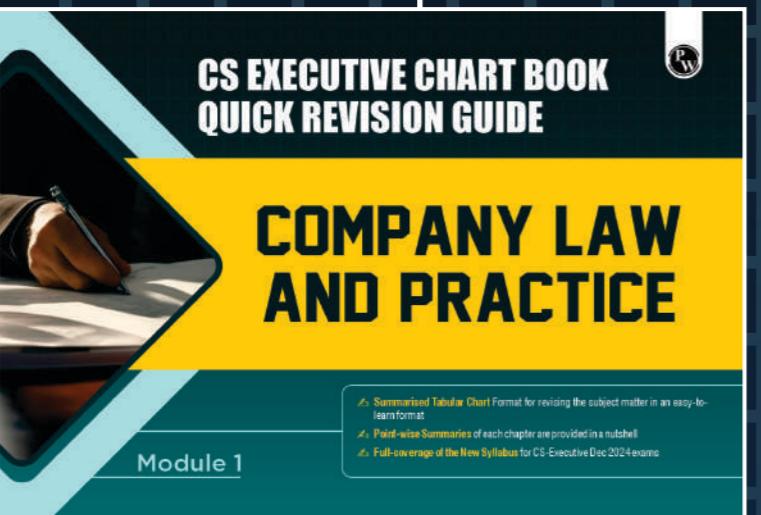
(c) Rule of Reasonable Construction

(Ut Res Magis valeat quam pereat)



- ❖ Provision of law can not be interpreted to divorce them from common cause + every word should have natural & fair meaning.
- ❖ Court can depart from dictionary meaning which will advance the remedy & suppress mischief
- ❖ **(RBI vs. peerless general Finance & Investment co.) (1987)**

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