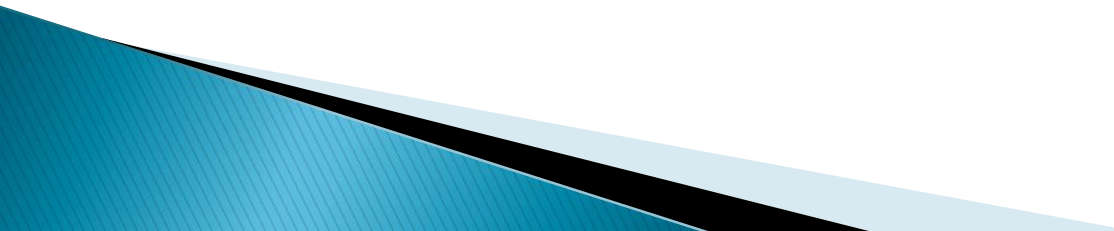


# CONTRIBUTION OF JUDICIARY TO DEMOCRACY

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# DEFINITION OF A STATE

- ▶ By State, we mean the following:
    - i. Territory
    - ii. Population
    - iii. Sovereignty
    - iv. Government
- 


# ORGANS OF A STATE

- i. Legislature
  - ii. Judiciary
  - iii. Executive
- 

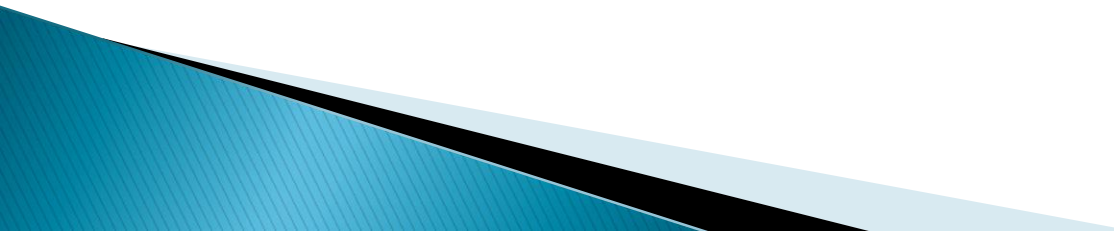
## THEORY OF SEPARATION OF POWERS:

- i. The Legislature, the Judiciary, and the Executive shall be independent of each other
- ii. No organ of a state shall encroach upon the sphere of activity of the other organ
- iii. There shall be checks and balances in the form of judicial review

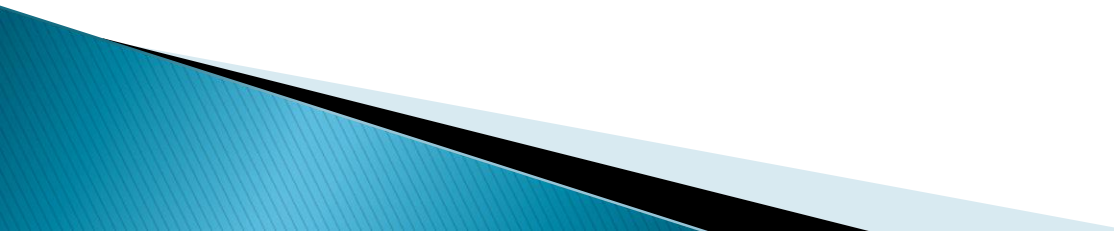
## CONSTITUTIONAL STATUS OF THE THEORY:

- Fully rejected in the United Kingdom
  - Accepted in France
  - Fully accepted in the United States of America
  - Partly incorporated in the Constitution of India
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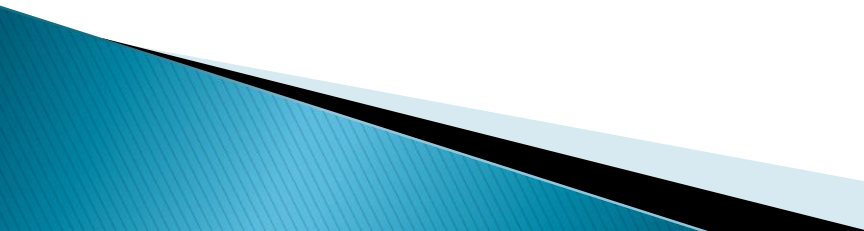
# DEFINITION OF DEMOCRACY

- ▶ A form of government in which the citizens share the power, and where the sovereignty belongs to the people.
  - ▶ It's the negation of autocracy, hereditary rule or concentration of power in a few hands.
- 

# ...continued

- ▶ The government is run by the elected representatives of the people.
  - ▶ Who are answerable to the people.
  - ▶ Governed by the Rule of Law.
  - ▶ Function within the ambit of the constitution.
- 

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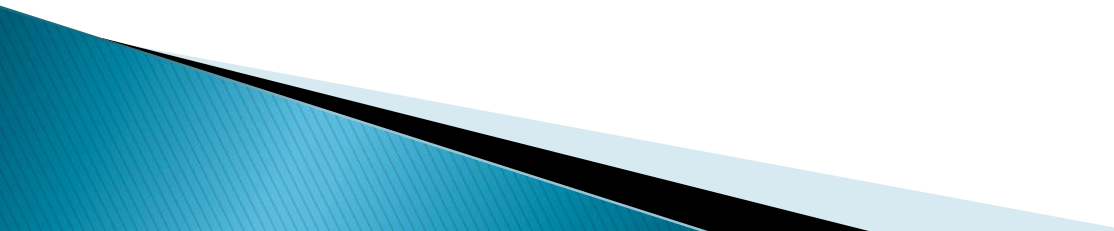
- ▶ In order for the democracy to function well, there has to be:
    - i. The Separation of powers between the three organs of the State, namely the legislature, the judiciary, and the executive (as in USA, France, etc.)
    - ii. The Rule of Law should govern the functioning of the three organs of the State (as in U.K., India, etc.)
- 

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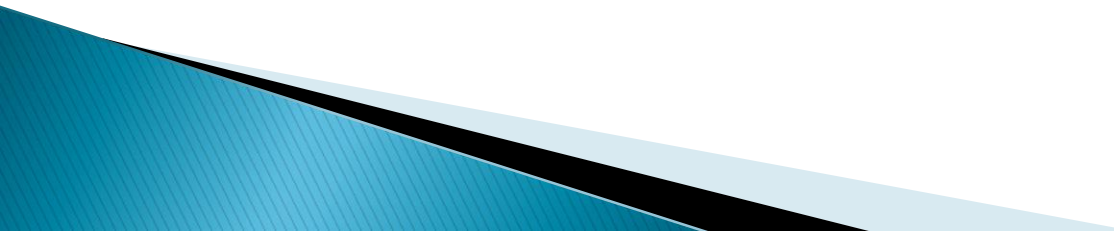
- ▶ The Independence of Judiciary.
  - ▶ The Power of Judicial Review.
  - ▶ Fundamental Rights and Liberties of the citizens.
- 



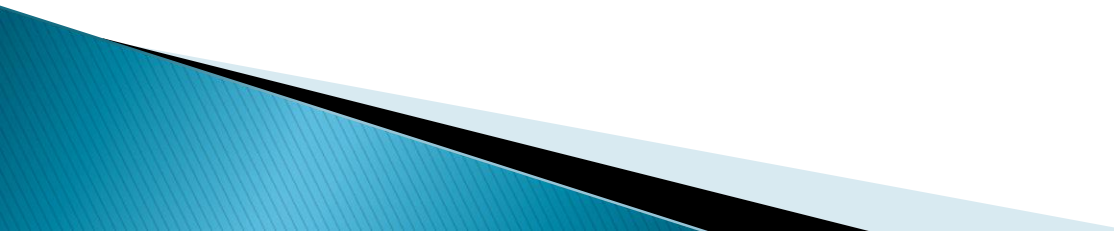
# DEFINITION OF JUDICIARY

- ▶ Judiciary is that branch of the Government that administers justice in the name of the State.
  - ▶ That interprets law or says what the law means.
- 

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- ▶ A Mechanism for the resolution of disputes between:
    - i. Citizen vs Citizen
    - ii. Citizen vs State.
    - iii. State vs Federal Government
    - iv. State vs State.
- 

# Importance of Judiciary

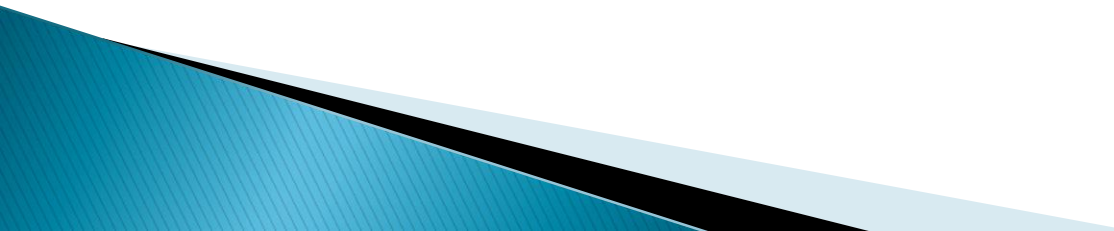
- ▶ Judiciary is considered the watchdog of democracy and also the guardian of the constitution.
  - ▶ As an organ of the State, it plays a crucial role in the functioning of India's democracy.
- 

# How Judiciary has Strengthened the Democracy in the US

## The Doctrine of Political Question:

- ▶ In United States Constitutional Law, the political question doctrine holds that a constitutional dispute that requires knowledge of a non-legal character or the use of techniques not suitable for a court or explicitly assigned by the Constitution to the U.S. Congress, or the President of the United States, lies within the political, rather than the legal realm to solve, and judges customarily refuse to address such matters.

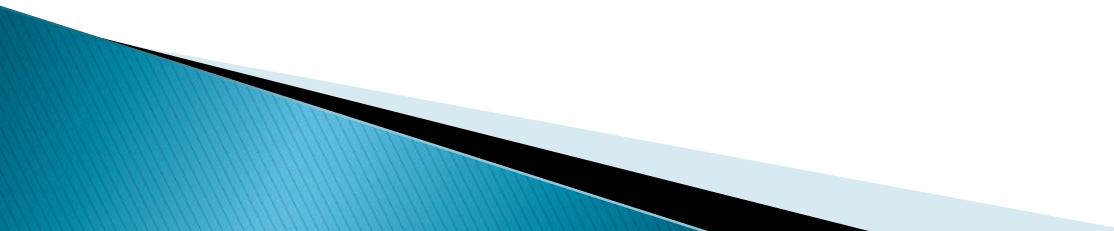
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- ▶ This is a self-restricting doctrine that was rigidly followed till the verdict in Baker vs Carr.
  - ▶ The constitution of several states of the United States provided that there should be a revision in the State, of congressional representatives districts according to the figures disclosed by successive Censuses of population in those states.
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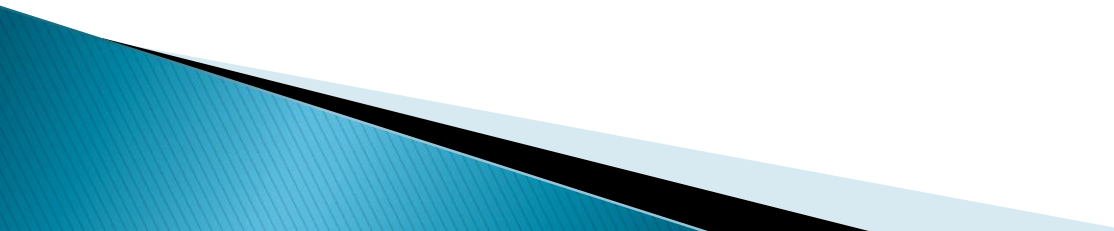
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- ▶ As a result of First and Second World Wars, the rural character of the population changed and the states became increasingly urbanized. However, in disregard of their constitutional obligation to revise the districts, rural-dominated legislatures refused to reapportion the districts in the states, and denied all redress to urban dwellers.
- ▶ The issue was first brought before the Supreme Court in *Colegrove vs Green* (June 1946) in which the court refused to entertain the matter brought against the State of Tennessee on the ground that it was a political question.

# Baker vs Carr (1962)

- ▶ In Baker vs Carr, the question raised in Colegrove's case with reference to the State of Tennessee, was again raised in respect of Tennessee itself.
  - ▶ Here again, the defense of the State was that the guarantee of the Republican form of the government to every State raised a political question.
- 

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- ▶ It was contended on behalf of Baker that “the failure of the Tennessee Legislature to reapportion the districts according to the figures of successive censuses denied to the citizen the equality of law guaranteed by the 14<sup>th</sup> Amendment.
  - ▶ There was a flagrant discrimination in voting power by adhering to an outdated reapportionment made in 1901 and never revised thereafter, so that the right of the Tennessee citizens to vote was debased by such denial of equality.
- 



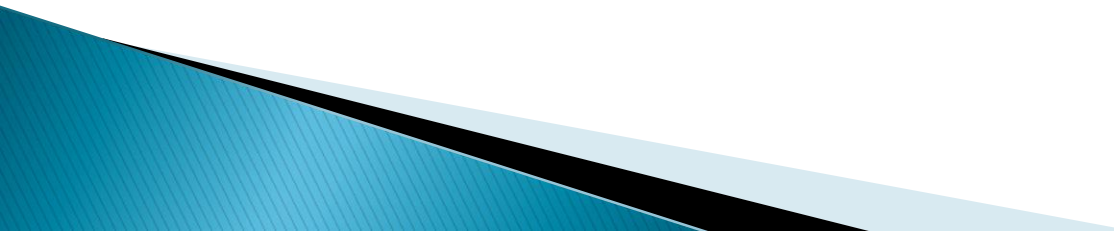
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- ▶ By a majority of 6:2, the contention was upheld.”
- ▶ This is a classic example of how the judiciary strengthened the democracy in the U.S.

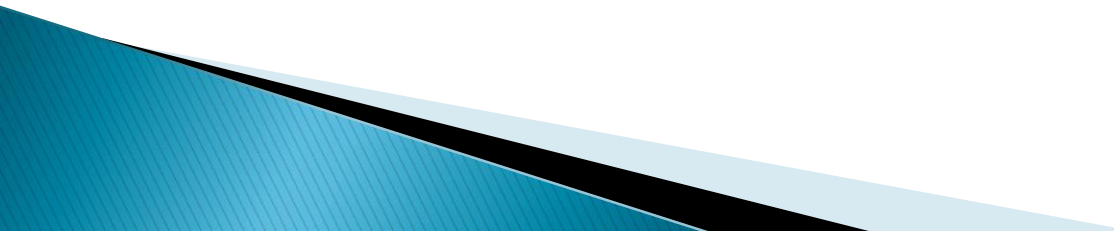
# HOW JUDICIARY HELPED/REFUSED TO STRENGTHEN THE DEMOCRACY IN INDIA

- ▶ **Nationalization of Banks** – July 19, 1969. A total of 14 banks were nationalized accounting to 85% of the deposits.
- ▶ The share of agriculture in credit was 2% in 1951 and remained unchanged till 1967. Whereas, the share of industry increased from 34% in 1951 to 64.3% in 1967.

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- ▶ The private banks were run by big industrialists.
  - ▶ They gave loans to themselves.
  - ▶ The directors of the top banks also held directorships in several other industries leading to conflict of interest.
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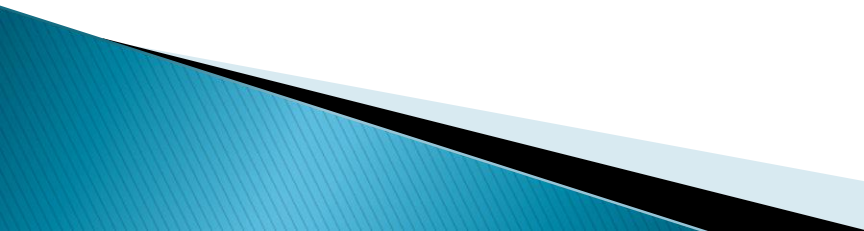
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- ▶ Apart from the wars with China and Pakistan in 1962 and 1965 respectively, the 1960s had two droughts leading to negative GDP growth rates and double-digit inflation.
  - ▶ Foreign exchange too declined in 1964–65.
  - ▶ In this backdrop, the banks were nationalized marking a shift towards social control of the financial resources of the country and to reduce the disparities between rich and poor.
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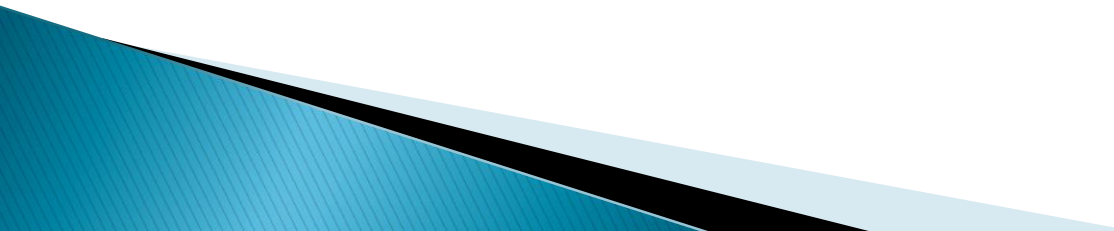
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- ▶ In RC Cooper vs Union of India ( Bank Nationalization Case – 1970), the Supreme Court held that the Constitution guarantees the right to compensation in full, i.e., the equivalent money of the property compulsorily acquired and held the nationalization as unconstitutional.
- ▶ Similarly, in Privy Purses cases also, the Supreme Court struck down the 26<sup>th</sup> Amendment to the Constitution holding the abolition of privy purses as unconstitutional.

# THE HABEAS CORPUS CASE OR THE ADM JABALPUR CASE

- ▶ On June 25th, 1975, the President of India declared emergency in India under Article 352 (1). With this proclamation, Article 359 was activated which provides that on proclamation of emergency, the President may declare that the right to move any court, for the enforcement of fundamental rights, remains suspended.
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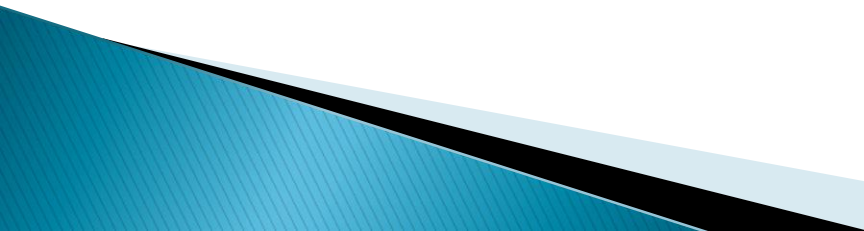
- ▶ In ADM Jabalpur Case, detenues were detained under MISA Act 1971. They challenged their detention before various High Courts through writs of Habeas Corpus. The majority of High Courts held the writs as maintainable.
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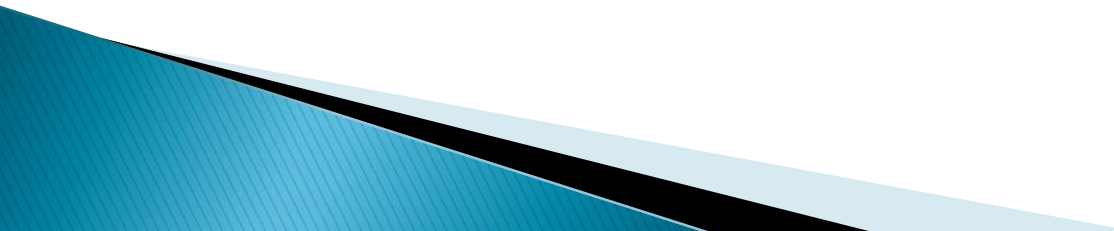
- ▶ The matter reached the Supreme Court of India. The question before the 5-judge constitutional bench was
- ▶ “Whether the order issued by the President under Article 359(1) of the Constitution suspends the right of every person to move any Court for the enforcement of the right to personal liberty under Article 21, upon being detained under a law providing for preventive detention?
- ▶ Meaning, thereby, can a writ of habeas corpus by a detainee under MISA before a High Court be denied on the basis of the Presidential Orders dated 27 June, 1975, under Clause (1) of Article 359 of the Constitution?”



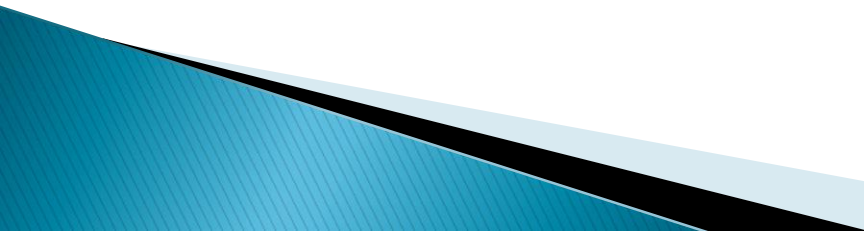
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- ▶ The majority (4:1) held that no person has any *locus standi* to move any writ petition under Article 226 before a High Court for Habeas Corpus, or any other writ or order or direction, to challenge the legality of an order of detention in view of Presidential Order dated 27th June 1975 whereby Article 21 was suspended.
  - ▶ However, HR Khanna, J gave a dissenting opinion.
- 

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- ▶ This is a classic example of how the Supreme Court of India refused to strengthen the democracy.
  - ▶ The challenges to the UEPA Act, abrogation of Article 370 have been pending for the last 1 – 1 /2 years without hearing. The facts of the UEPA Act are worse than facts of the Habeas Corpus Case, hitting upon the fundamental rights of the citizens.
  - ▶ The three farm laws are also pending without any urgent adjudication.
- 

# The Silver Lining

- ▶ However, the rulings in Keshav Anand Bharati and Minerva Mills Case, wherein the doctrine of the basic structure of the constitution was evolved, have resulted in strengthening the democracy.
  - ▶ The Ruling in S R Bommai's case has helped strengthen the democracy.
  - ▶ The Supreme Court in Puttaswamy Case in 2017, overruled the law laid down in Habeas Corpus Case.
- 

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- ▶ They held “*No civilized state can contemplate an encroachment upon life and personal liberty without the authority of law. Neither life nor liberty are bounties conferred by the state nor does the Constitution create these rights. The right to life has existed even before the advent of the Constitution. In recognizing the right, the Constitution does not become the sole repository of the right.*”
- ▶ *But the inaction of the Supreme Court in the cases listed above runs contrary to their observations above.*

**THANK YOU**